Contemporary Governance Challenges in the Horn of Africa

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Chapter 2

The state of governance in Africa

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2.1 Introduction

The nature and quality of governance is a critical factor in shaping the level of peace and stability in any country as well as influencing the prospects for its economic development. After three decades of the economic and developmental paralysis that marked the immediate post-independence era, African governance was supposedly transformed by the dramatic reforms that came with the end of the Cold War in the 1990s. Most commentators were optimistic that a new era of good governance and constitutionalism had set in that would relegate the menace of authoritarian, corrupt, and incompetent governance to the dustbins of history.

Three decades later, are the prescriptions for promoting good governance and constitutionalism that were adopted bearing fruit? Have the prospects for political stability, peace, and economic development been enhanced? This is of particular importance today because the Covid-19 pandemic has caused a global economic crisis of unprecedented proportions and exacerbated the continent's governance challenges. The ability of African countries to cope with this crisis and numerous other challenges depends on the state of the governance instruments and institutions that are in place. Are they sufficiently robust and working effectively? If not, what are the problems and how can they be addressed? What are the prospects for the future?

In seeking to answer these questions, the discussion will continue in Section 2.2 by examining the framework for good governance. This briefly examines the concept of governance and then looks at the good governance initiatives introduced in the 1990s by African governments and reinforced by several instruments adopted to this end by the African Union (AU) and Regional Economic Communities (RECs). Against this background, Section 2.3 reviews a number of continental and global good governance indicators to see what they tell us about the state of governance in Africa. The question we attempt to answer is whether the reforms, institutions, instruments, and other measures taken to promote good governance are working. Is Africa rising?[1] Based on this, Section 2.4 highlights the main challenges to good governance on the continent, whilst Section 2.5 looks at the way forward. Section 2.6 concludes

that without a solid framework for good and inclusive governance, Africa will continue to lag behind in social and economic development, political instability will increase, and the continent will remain a byword for global poverty.

2.2 The framework for good governance

The 1990s marked a turning point in that almost all African countries initiated reforms designed to promote good governance. Before examining the nature and scope of these reforms, we discuss the concept of governance.

2.2.1 Conceptualising governance

The concept of governance has featured prominently in most debates in Africa since the start of the so-called 'third wave of democratisation' in the 1990s.[2] In spite of this, the concept is used in such a broad and flexible manner to cover a wide variety of phenomena that it is difficult to determine its exact meaning. It is therefore not surprising that the literature on the topic is replete with so many different descriptions of the concept that a single, coherent approach is hard to identify. Ultimately, the meaning is often determined by the context in which it is used. One of the most important issues raised in debates about the meaning of governance – and one particularly relevant to our discussion – is the distinction between good and bad governance.[3] Bad governance can be described simply as the absence of good governance. What, then, is 'good governance'?

As with the broad concept of governance, the more specific concept of good governance has also been defined in differing ways by scholars, development agencies, and international non-governmental organisations that measure trends in good governance, an example being the Worldwide Governance Indicators (WGI) project.[4] According to the United Nations (UN), good governance has eight major characteristics: it should be participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follow the rule of law.[5] Sometimes decentralisation is included as an element. The importance of good governance was underscored by the former UN Secretary-General, Kofi Annan, when he pointed out that 'good governance is perhaps the single most important factor in eradicating poverty and promoting development.'[6]

Notwithstanding the differences in views, there is some agreement on the constituent elements. These can be understood under four main perspectives: constitutional, political, administrative, and policy.[7] From the constitutional perspective, good governance is seen as promoting economic and political development in that the constitutional framework provides for accountability of political leaders, respect for human rights, respect for the rule of law, and decentralisation of political authority. Secondly, the political dimensions of good governance require measures designed to ensure pluralism, broad popular participation, and counter-corruption. Pluralism entails, inter alia, measures

that promote freedom of association, formal political equality of political parties, the protection of the right to vote, and freedom of speech, especially political expression, whilst broad participation requires policies that promote and facilitate effective political decentralisation. The political dimension of good governance also requires credible measures to combat corruption in order to eradicate poverty. The administrative element of good governance requires an accountable and transparent public administration and effective public management, which is designed to implement government policies. Finally, the policy dimension of good governance deals with the economic policies aimed at increasing welfare, reducing poverty, and promoting economic growth and human development.

However, as Blunt puts it, governance on the whole combines ideas about political authority, the management of economic and social resources, and the capacity of government to formulate sound policies and execute this effectively, efficiently, and equitably.[8] Given the diversity of political and legal systems and the corresponding institutional structures, governance should be evaluated in terms of the outcomes rather than the formal and institutional foundations on which it is established. The latter perspective does play a crucial role. As we will see, the weak forms and institutional foundations of the post-independence period have been at the heart of Africa's governance challenges and limited states' ability to deliver the basic goods and services that citizens need.

2.2.2 Recent good governance initiatives

From the 1990s to the present day, Africa has had a fervour for crafting and recrafting constitutions. The emphasis has been on constitutionalism, good governance, and the rule of law, all of which raised high hopes that the era of repressive, arbitrary, and autocratic rule that marked the first three decades of independence was over. A clear sign of the fundamental change in African governance was the collapse of the former bastions of apartheid, Namibia and South Africa, both countries that had been symbols of human tragedy. In the case of South Africa, the new era was marked by its 1996 Constitution, which most constitutionalists regard as one of the most liberal and transformative modern constitutions in the world.

Before the dramatic changes of the 1990s, the colonial legacy and the perception it created amongst Africans was of governance as a blunt, alien system for controlling citizens and exploiting the colonies to the fullest without regard to its possible developmental and transformative role[9] and, as such, did not prepare Africans for constitutional governance. The independence constitutions were virtually imposed on Africans on the eve of the colonialists' departure. In spite of a sprinkling of liberal principles regarding human rights and political freedom in these new constitutions, the new elites had learned the colonial lessons of repression and authoritarianism rather too well to change with any alacrity. Moreover, for inexperienced Africans assuming the role of leadership, the

constitutional documents were too complex, and perceived as too ill-adapted, to address the immediate problems with which they were confronted. This problem was exacerbated by the extreme haste[10] with which many European powers withdrew, as well as by their lack of advance planning for a political transition.[11]

Under the pretext of promoting national unity among the diverse communities which had been artificially forced together as states during the scramble for Africa, particularly after the Berlin Conference of 1884, and to promote a sense of political identity and thus facilitate nation-building and development, many of the liberal principles contained in the independence constitutions were incrementally repealed.[12] The frequent constitutional amendments carried out to this end led to a concentration of powers in the hands of presidents, authoritarian rule, and violations of human rights, which had been a common feature of colonial administration. By the end of the 1980s, the degradation of African constitutions had led to what one writer famously described as 'constitutions without constitutionalism'[13] and in so doing made the rise of dictatorship and authoritarian rule inevitable. It must be added that the process of constitutionalising dictatorship and authoritarianism in Africa was often done with the full complicity of the former colonial powers, especially the French.[14]

By the late 1980s and early 1990s, a combination of bad governance and repression had led the continent into severe economic crisis, high unemployment, poverty, famine, disease, and civil wars, all of which made change imperative. This system of governance not only spawned some of the worst dictators and repressive regimes the continent has ever seen[15] but led to other grave problems such as political instability, economic crises, and unemployment. In fact, by the 1970s, under the assumption that Africa's problems were economic and caused by the lack of financial and technical means to develop, the World Bank had introduced the structural adjustment programmes (SAPs).[16] SAPs not only failed to spur development but, with its emphasis on widespread cutbacks in state expenditure and subsidies, led to increased poverty, reduced social services, and a widespread degradation of infrastructure. Little wonder that by the end of the late 1980s and early 1990s, the continent was ripe for revolution. The collapse of the Berlin Wall and the revolutions in Eastern Europe provided the spark.

Eventually, it was a combination of external and intense internal pressure for radical changes in the system of governance that resulted in a wave of democratic change sweeping over the continent. Two important developments occurred. First, there was a radical shift in World Bank policy, with an abandonment of the SAPs in favour of a good governance programme informed by the recognition that the African crisis was political rather than economic. SAPs were replaced by the poverty-reduction strategy papers (PRSPs), which focused on political and institutional reform and required governments to put in place policies to facilitate development, reduce poverty, and strengthen the mechanisms of the market. The assumption now was that democracy was a prerequisite for development.[17]

Secondly, many African governments for the first time initiated reforms that promoted good governance, constitutionalism, respect for the rule of law, and human rights. As a result, the period from the 1990s until the present has been marked by fervour for making, unmaking, and remaking constitutions in Africa.[18] It will suffice to make a few general observations about these reforms.

In terms of their scope and content, many of the post–1990 African constitutional reforms have led to the incorporation of provisions aimed at protecting citizens against the worst aspects of abuse of power and arbitrary rule. They contain a catalogue of human rights and place constraints on governments to promote, inter alia, democracy, transparency, accountability, and service delivery. Many also have provisions limiting presidential terms to ensure alternation of power. In general, most African constitutions now contain provisions that lay a foundation for promoting constitutionalism and the basis for good governance, such as judicial independence, separation of powers, judicial review, checks on the arbitrary amendment of constitutions, and, in some cases, independent institutions, for supporting and promoting constitutional democracy, such as electoral commissions, human rights commissions, anti-corruption agencies, and public protectors.

However, as we move towards the end of the third decade since the winds of change of the 1990s started blowing, have these changes enhanced good governance? Before we turn to this, it is important to recognise the role of external bodies, and in this discussion, we briefly focus on the role of the African Union (AU) and Regional Economic Commissions (RECs).

2.2.3 Good governance initiatives by the AU and RECs

In many respects, the AU and, more specifically, its predecessor, the Organisation of African Unity (OAU), were complicit in the near-collapse of constitutionalism and good governance in Africa in the pre-1990 period. The establishment of the AU in 2002 to replace the OAU, which had proven too weak, unresponsive, and incapable of addressing contemporary African problems, especially the abuses inflicted by the continent's dictators on their people, appears to have marked a new phase in the third wave of democratisation. At its creation in 1963, the OAU was too obsessed with protecting the hard-earned independence of its member states and devising a strategy to eradicate all forms of colonialism on the continent to bother about issues of democracy and good governance. In fact, neither the promotion of democracy nor the protection of human rights is mentioned in the Charter of the OAU.[19] Whilst striving to promote unity and solidarity amongst its member states, the Charter strongly upheld the principle of territorial sovereignty of member states and strictly prohibited the organisation from intervening in the domestic affairs of a member state.

This turned out, in retrospect, to be a monumental error because the organisation was impotent and kept silent about internal disputes and frequent incidents of gross human rights violations committed by some of the continent's

bloodiest dictators, among them Francisco Macias Nguema of Equatorial Guinea, Jean Bedel Bokassa of Central African Republic, Mengistu Haile Mariam of Ethiopia, and Idi Dada Amin of Uganda. The latter, in spite of all the blood on his hands, was, to the disgust of the rest of the world, elected Chairman of the OAU in 1975 and therefore was Africa's spokesperson for a full year during which he was killing his own people at home.

The establishment of the AU raised hopes that it would arrest the faltering democratic transitions and rising threats of authoritarian resurgence.[20] Perhaps the most significant, and certainly unexpected, development that came with the creation of the AU was the special mandate it was given to promote democracy and good governance. Coming from the very leaders whom individually and collectively had in many respects been responsible for wrecking their countries' economies and suppressing the people for so many years, there were reasons for scepticism.[21] Nevertheless, whilst many welcomed the AU and its ambitious agenda for promoting democracy and good governance, there were others who saw it as a decorative blueprint drawn up by desperate dictators anxious to obtain new resources from an increasingly jaundiced international community.[22]

Be that as it may, the AU's basic framework for promoting democracy and good governance amongst member states is laid down in the Constitutive Act setting up the Union as well as in a number of treaties, declarations, and other instruments. As an international treaty, the Constitutive Act is binding on member states and is governed by the rules of the 1969 Vienna Convention on the Law of Treaties as well as the 1986 Vienna Convention on the Law of Treaties between states and international organisations or between international organisations. Although the AU as an international organisation possesses the capacity to make legal instruments and other acts that are necessary for the fulfilment of its purposes, it is important to note that not all of these are legally binding on member states.[23] A distinction needs to be made between acts adopted, such as treaties and protocols, which are binding on those member states who have signed and ratified them, and other acts, such as declarations, decisions, recommendations, and resolutions, which, although aimed at influencing the conduct of member states, are not necessarily legally binding.

Mindful of this, it can be said that there are six major instruments that contain the basic democratic principles of the AU democracy and good governance agenda, namely the Constitutive Act itself, the Declaration on the Framework for an OAU (AU) Response to Unconstitutional Changes of Government (2000), the Declaration Governing the Democratic Elections in Africa (2002), the Guidelines for African Union Electoral Observations and Monitoring Missions (2002), the African Union Convention on Preventing and Combatting Corruption (2003), and the African Charter on Democracy, Elections and Governance (2007).

Apart from the Constitutive Act, the African Charter on Democracy, Elections and Governance (ACDEG) is probably the most radical and most far-reaching instrument adopted by the AU as part of its democratisation and

good governance project. Its preamble reiterates all the commitments undertaken in previous instruments. It goes further than previous AU instruments in its attempt to make certain aspects of democracy and good governance fundamental human rights. It contains detailed provisions that provide for the recognition and protection of democracy, rule of law and human rights, a culture of democracy and peace, democratic institutions, democratic elections, sanctions in cases of unconstitutional changes of government, and political, economic, and social governance; it also has detailed provisions which contain mechanisms for its application at individual state-party, regional, and continental levels. Although the Charter tries to introduce its own implementation mechanisms, the AU democratisation and good governance agenda depend largely on several organs of the AU and the goodwill of member states for its implementation. Nevertheless, the ACDEG incorporates all the basic elements needed to entrench, promote, and sustain good governance in a modern, forward-looking Africa.

Mention should also be made of the African Peer Review Mechanism (APRM). The APRM was adopted by African Heads of State and Government as a systematic voluntary self-monitoring and self-assessment mechanism.[24] It originated from the New Partnership for African Development (NEPAD) foundational document, the 'Declaration on Democracy, Political, Economic and Corporate Governance' adopted in July 2002.[25] The mandate of the APRM is to ensure that policies and practices of participating member states conform to the agreed political, economic, and corporate governance values, codes, and standards contained in the AU Declaration on Democracy, Political, Economic and Corporate Governance. As a voluntary self-monitoring instrument, the APRM aims to foster the adoption of policies, standards, and practices that lead to political stability, high economic growth, sustainable development, and accelerated regional and continental economic integration through sharing of experiences and best practices, including identifying deficiencies and assessing the needs for capacity-building.

After a slow start, 40 member states of the AU have now joined the APRM. To ensure that the primary purpose of the APRM is realised, the participating states have committed themselves to adopt appropriate laws, policies, and standards, as well as building the necessary human and institutional capacity. However, although the APRM lies at the heart of the AU's drive for a broad vision of African rejuvenation and renewal that seeks to generate more goodwill from foreign trade partners and donors by proving good political and economic governance and accountability, its effectiveness and impact are limited by the fact that it remains a self-monitoring mechanism that member states of the AU may voluntarily accede to.

Insofar as the RECs are concerned,[26] article 44(2)(b) of the ACDEG states that the AU Commission 'shall establish a framework for cooperation with Regional Economic Communities on the implementation of the principles of the Charter'. Functional relations between the AU and RECs are guided by a 2008 Protocol between them and a Memorandum of Understanding on

Cooperation in the Area of Peace and Security.[27] As we will see, it is not par-
ticularly obvious that the AU has developed any specific framework with the
RECs to implement the ACDEG.

Nonetheless, a number of RECs have enacted instruments that complement
those of the AU and are designed to promote good governance, constitution-
alism, and respect for the rule of law.[28] These instruments include protocols
to the REC treaties, guidelines, plans of action, and even model laws, all of
them dealing with matters such as democracy, good governance, the con-
duct of elections, and the promotion and protection of human rights. Some
of these instruments authorise the RECs to intervene in member states where
good governance is threatened by acts such as serious and massive violations
of human rights and the rule of law. Regional mechanisms such as courts have
been established and given the powers to enforce some of these instruments.[29]

With the new and often more elaborate modern African constitutions rein-
forced by the international instruments adopted by the AU and complemented
by those of the RECs, have these paved the way for enabling good gov-
ernance, constitutionalism, respect for human rights, and the rule of law to
become a daily reality?

2.3 What the governance indicators tell us

Insight can be gained into the state of governance in Africa today by analysing
the reports of the continental and international NGOs that regularly carry out
annual surveys of governance. Whilst some focus on governance in general,
most of them look at specific aspects of governance. The surveys provide a
reasonably clear indication of the state of governance in Africa, but several
caveats should be borne in mind when interpreting and drawing conclusions
from their findings.

First, there are bound to be some differences. As we saw earlier, because
there are divergent views on the exact nature and scope of what constitutes
governance and the manner in which some of its basic elements are catego-
rised, there is no consensus on how to measure it. Secondly, many of the global
surveys, such as Freedom House's Freedom in the World and Fragile States
Index, have been criticised for their perceived bias in favour of Western posi-
tions, especially those extolled by the US. Thirdly, there is a need to be mind-
ful of subjective contextual factors that could affect some of the results. This is
so because the operation of some of the constitutive elements of governance
is influenced by the judicial, historical, political, social, or cultural context of
each country. In other words, while many of the surveys depend on responses
to uniformly formulated questions, there is no reason to assume that the local
context does not play a role in the responses.

These considerations make it difficult to arrive at an accurate, objective con-
clusion. For example, the quality of elections may be influenced by the extent
to which courts play a supervisory role in them, but differences in legal tradi-
tions often play an important role too. However, the combination of different

sources, instruments, and methods used by the different surveys affords a reasonable basis on which to draw conclusions about the state of governance in Africa. It enables us to compare developments not only between African countries but between African countries and the ones elsewhere in the world.

Having said that, the analysis will start with an overview of the results from the Ibrahim Index of African Governance (the Ibrahim Index), which so far is the only African survey that focuses on governance. We will then briefly look at some of the important conclusions that can be drawn from other surveys that deal with aspects of governance. The objective of analysing these survey results is to see whether there has been progress, decline, or stagnation with respect to governance and discern what factors have contributed to it. In order to do this, the analysis will look at the trend particularly during the last decade. It will try to identify the countries that are doing well (the top performers) and those that are not doing well (the poor performers) and see what lessons can be drawn.

2.3.1 An overview of governance trends from survey indicators

Constraints of space permit only an overview of the major trends in the Ibrahim Index. This will be followed by examining the trends in some aspects of governance, such as the state of freedom, the progress towards democracy, efforts to combat corruption, and the respect for the rule of law, all of which are critical to promoting good governance. Although most of the governance elements in the different survey reports overlap with one another, these overlaps often serve to reaffirm the various conclusions that can be drawn.

2.3.1.1 The Ibrahim Index of African Governance

The Ibrahim Index of African Governance, first published in 2007, is a tool that measures and monitors governance performance in 54 African countries. The Ibrahim Index defines governance as 'the provision of the political, social and economic public goods and services that every citizen has the right to expect from their state, and that a state has the responsibility to deliver to its citizens'. [30] The 2020 Index covers ten years' worth of data from 2010 to 2019. The Index's governance framework comprises four categories: security and the rule of law; participation, rights, and inclusion; foundations for economic opportunity; and human development. These categories are made up of 16 subcategories consisting of 79 indicators, all of which provide quantifiable measures of the overarching dimensions of governance.

In order to have a proper understanding, we will look briefly at some of the scores, the ranking of countries, and the trends from 2010 to 2019. Looking only at the rank or score without considering the trends overlooks the important trajectories that countries follow. For example, a country may have a high score and ranking but the trend may show that it is on a downward trajectory. This is also true of all the other survey reports examined in this discussion.

From the 2020 Index, two tables have been extracted. Table 2.1 shows the ten best performers, and Table 2.2 shows the ten worst for 2010–2019; each table indicates the trend in improvement, stagnation, or decline during this period.

The general picture shows that governance in Africa over the decade 2010–2019 improved by +1.2 from 47.6 to 48.8. Whilst 36 countries had improved, only 17 deteriorated in this period. A closer look at the details of the index reveals several worrying trends.

First, an overall governance score of 48.8 is not good enough for a continent in dire need of good governance to develop. This is particularly worrying when, in 2019, the average governance score showed a decline for the first time in the decade; this will probably decline further when the 2020 statistics are analysed, as they will reflect the devastating effect the Covid-19 pandemic has had on governance. Nevertheless, with overall governance improvement in 36 countries since 2010, this means that 61.2 per cent of Africans live in

Table 2.1 Ten best-performing states during the period 2010 to 2019

Rank/54	Country	2019 score/100.0	Change 2010–2019
1	Mauritius	77.2	−0.5
2	Cabo Verde	73.1	+0.2
3	Seychelles	72.3	+7.8
4	Tunisia	70.4	+8.2
5	Botswana	66.9	+0.8
6	South Africa	65.8	−0.9
7	Namibia	65.1	+3.4
8	Ghana	64.3	+01
9	Senegal	63.2	+3.3
10	Morocco	61.0	+5.3

Table 2.2 Ten worst-performing states during the period 2010 to 2019

Rank/54	Country	2019 score/100.0	Change 2010–2019
45	Congo Republic	36.1	−02
46	Libya	35.2	−5.5
47	Chad	33.9	+3.7
48	Sudan	32.5	+2.5
49	DR Congo	31.7	−2.8
50	Central African Republic	30.7	−0.9
51	Equatorial Guinea	28.7	−0.3
52	Eritrea	25.8	−0.8
53	South Sudan	20.7	—[a]
54	Somalia	19.2	+5.7

[a]Accurate results are not available because South Sudan became independent only in 2011.

countries where governance has improved, however slight this improvement might be.

Secondly, there is also a disquieting divergence in the different categories of governance. The minimal improvement in governance by +1.2 over the decade is due largely to improvements in two categories, foundations for economic opportunity and human development. The other two categories have shown a general decline, with security and rule of law deteriorating steadily whilst participation, rights, and inclusion declined at an accelerating rate. The latter, as the other surveys examined below show, explains the progressive deterioration in the quality of democracy on the continent.

Thirdly, Tables 2.1 and 2.2 show that whereas Mauritius, for the tenth consecutive year, remains the best-performing African country, with a score of 77.2, Somalia was stuck at the bottom during the same period, with a score of 19.2. When we compare the top-performing with bottom-performing countries, there are again worrying signs about the continents' governance trajectory. For example, although Mauritius has consistently – at least, according to the Ibrahim Index – been the best-governed country on the continent, it actually suffered a decline of −0.5 in the 2010–2019 period, whereas Somalia, stuck at the bottom of the rankings, improved by +5.7. It should also be noted that although South Africa is ranked sixth on the continent, this on its own is misleading given that Table 2.1 shows it declined steadily by −0.9 over the last decade. There are also warning signs for Botswana, in the fifth position and once the leading light for good governance and democracy in Africa, with an improvement of only +0.8 compared with Seychelles (third position) with +7.8 and Tunisia (fourth) with +8.2. [31]

Fourth, according to the 2020 Ibrahim Report, of the 16 subcategories, the rule of law, justice and inclusion, and equality show the strongest correlations with overall governance both in 2019 and over the decade. The analysis of the statistics shows that eight of the top ten countries in overall governance in 2019 also feature in the top ten countries in these two subcategories. This suggests that strong institutions, rule of law, impartial and effective justice, as well as equality are key dimensions for countries to set themselves on the path towards sound governance.[32]

Finally, from a regional perspective, the Ibrahim 2020 Report shows that of the five geographical regions, Southern Africa (53.3) is on average the highest-scoring at the overall governance level for 2019, followed by Western Africa (53.1). Central Africa is the lowest-scoring region (38.8) and the only region to have declined on average in overall governance over the last decade (by −0.1).

It is against this background that we turn to surveys on specific aspects of governance.

2.3.2 Trends observable from other indicators

As pointed out earlier, although there are numerous surveys, we will limit the discussion here to those that focus on the broad area of freedom, democracy,

control of corruption, and respect for the rule of law. In this respect, we briefly look at Freedom House's *Freedom in the World* reports, International IDEA's global state of democracy, Transparency International's Corruption Perception Index, and the World Justice Project (WJP) Rule of Law Index.[33]

Freedom House's *Freedom in the World* is a widely used and cited annual report assessing the condition of political rights and civil liberties around the world. Composed of numerical ratings and supporting descriptive texts, it has tracked global trends in freedom for more than 40 years since 1973. Generally, the combination of the overall score awarded for political rights and the overall score awarded for civil liberties, after being equally weighted, determines the status of 'Free', 'Partly Free', or 'Not Free'.[34] 'Political rights' covers and measures the electoral process, political pluralism and participation, functioning of government, and additional discretionary political rights. 'Civil rights', for its part, covers freedom of expression and belief, associational and organisational life, rule of law, personal autonomy, and individual rights. A few observations can be made with respect to the emerging trends in Africa.

First, according to the 2020 Report, 2019 marks the 14th successive year in which the number of countries with declines in their aggregate *Freedom in the World* score outnumbers those with gains.[35] The general trend in Africa has been more interesting. In 1990, only three countries (Botswana, the Gambia, and Mauritius) were ranked as free; 15 others were ranked as partly free, and the majority, 33 (65 per cent), as not free.[36] By 2000, there was a significant improvement, with nine countries classified as free, the majority of 24 classified as partly free, and the number of countries in the not-free category having reduced to 19.[37] The 2010 Report also shows a slight change, with 9 countries in the free category, 24 in the partly free category, and 20 in the not-free category.[38] In the 2020 Report, however, only 8 countries were classified as free; 25 were partly free and 21 not free.[39]

Secondly, although the number of African countries now classified as free and partly free has increased considerably since the 1990s while those in the not-free category decreased from 33 to 21, a close look at the scores, particularly in the last decade, confirms the downward spiral in the quality of freedom in many African countries. For example, Botswana, which is, with Mauritius, one of the few African countries to have been rated consistently as free, has seen its scores decrease slightly over time to suggest a slow decline in the quality of the freedom enjoyed by its citizens. Whilst many countries have occasionally moved from free to partly free, or even not free, such as Benin, Central African Republic, Niger, and Zimbabwe, a number of countries, such as Cameroon and Equatorial Guinea, have remained stuck in the not-free category since Freedom House began conducting its surveys.

Finally, in analysing the overall situation in the 49 countries in sub-Saharan Africa in its 2020 Report, Freedom House concludes that only 61 per cent of citizens live in countries that can be classified either as free or partly free; in most countries, the political space for exercising the different freedoms, especially democratic rights, is shrinking.[40]

For an indication of the democratic aspect of governance in Africa, we now turn to International IDEA's Global State of Democracy (GSoD), the only international report that, since 1975, provides a global health check on democracy. It reports on democratic trends, challenges, and opportunities and provides a comprehensive analysis of democracy at national, regional, and global levels. It uses a total of 28 aspects of democracy, based on 97 indicators, to measure and compare democratic performance over time. This brief account of its findings on Africa is based on its 2019 report, which presents its findings from 1975, when its surveys began, until 2018.[41] The analysis covers issues linked to representative government, fundamental rights, checks on government, impartial administration, and participatory engagement, highlighting the current opportunities for democracy in the region as well as the democratic challenges it faces. Although it does not cover one of the most dramatic periods in the current democratic transition, that is, the turbulence resulting from the Covid-19 pandemic of 2019, it does provide important insights into past trends.

According to this report, between 1975 and 2018, Africa made significant democratic advances second only to the Latin American and the Caribbean region in terms of range and scope. While encompassing most aspects of democracy, this was spread unevenly across the continent.[42] The advances gathered momentum in the early 1990s following the end of the Cold War. To put these developments into perspective, in 1975, a total of 41 African countries were non-democracies, while only three countries were classified as democracies. By 1990, the share of non-democracies was still high, at 85 per cent (39 countries) and the number of democracies had increased only by one (Namibia), while a new type of hybrid regime had emerged, with three countries in that category. In contrast, in 2018 a total of just 11 African countries (23 per cent) were still in the category of non-democracies. The share of democracies increased fivefold to 20 countries, but at the same time, the number of hybrid regimes increased to 18 (37 per cent); moreover, the gains made in many areas since 1990 had been countered, and to a degree neutralised, by declines recorded mostly on measures of civil liberties, media integrity, electoral conduct, and judicial access and accountability.

The GSoD findings also indicate that the democratisation landscape in Africa is currently characterised by the prospects of narrowing civic space and strengthening fundamental human rights in some countries. Hence, serious challenges remain in regard to shrinking civic space, democratic backsliding (including weakening of checks on governments), infringements on constitutional norms and practices, and reversals in fundamental freedoms or civil liberties.

The GSoD analysis shows that although elections have become the norm rather than the exception throughout Africa, four countries in the region (Eritrea, Libya, Somalia, and South Sudan) have for years held no form of elections. It also shows that Africa has the largest share of hybrid regimes in the world, with more than one-third of countries (18) in this category. The

latest country to regress into hybridity is Tanzania, which did so in 2018. Despite gains in the past decades, the conduct of elections in a number of African countries remains flawed. While the region has witnessed a rise in the number of transitions from ruling to opposition parties, many countries have failed to enact key reforms that would enhance the integrity of electoral processes. Disputed elections are a common occurrence and sometimes lead to violence. The report shows too that, to varying degrees, women in Africa lack equal access to political power and socio-economic status, with their inclusion remaining a major hurdle for most countries.

On the whole, despite the expansion of democracy in the region, several countries have experienced significant declines in recent years. Such declines are discernible in countries such as Egypt, which, following the Arab Uprisings, experienced further democratic declines and deepening autocratisation. Of particular significance is the fact that Africa is the region with the highest levels of corruption. High levels of corruption are closely correlated with low levels of human development, and this has a serious negative impact on governance. It is to the specific problem of corruption that we now turn.

Transparency International's Corruption Perception Index (CPI) is the most widely used indicator of levels of corruption worldwide. The CPI scores and ranks for countries or territories are based on how corrupt a country's public sector is perceived to be by experts and business executives. A composite index of 13 surveys and assessments of corruption collected by a variety of reputable institutions, it uses a scale of 0 to 100, where 0 is 'highly corrupt' and 100 is 'very clean'.

With a score of 66 in the 2020 CPI, Seychelles has consistently been the top performer in Africa in the past few years, followed by Botswana, with 60, and Cabo Verde, with 58. However, globally, they are ranked 27th, 35th, and 41st in the world.[43] The data for 2020 also show that, with an average score of 32, sub-Saharan Africa is the lowest-performing region on the CPI. In fact, the trend in the last decade is that corruption on the continent has progressively increased. The seriousness of the crisis is underscored by the fact that, on average, only about six countries in Africa have managed to score above 50,[44] while at least five African countries have been consistently among the countries with the lowest CPI globally.[45] Although a number of African countries regularly perform well, they have rarely featured amongst the first 25 top-performing countries in the world. On the other hand, with at least five African countries featuring regularly among the ten countries with the lowest CPI, the continent is clearly host to some of the most corrupt countries in the world.

Having said this, it must be noted, as Transparency International has often made clear, that the perception of corruption does not necessarily reflect the real level of corruption.[46] The fact that such perception is not diminished by time does strongly suggest that there is a serious problem in controlling corruption, which impacts negatively on governance. The general trend suggests that African countries are stagnating or showing signs of backsliding in their

anti-corruption efforts. This also has a serious effect on the state of respect for the rule of law, another important element of good governance.

The World Justice Project (WJP) Rule of Law Index provides some indication of how countries adhere to the rule of law in practice. Its major limitation is that, of the 128 countries it covers globally, only 35 are African. The Index is based on scores ranging from 0 to 1, with 1 indicating the strongest adherence to the rule of law. The conceptual framework of the Index comprises eight factors, which are further disaggregated into 44 sub-factors.[47]

The 2020 WJP Rule of Law Index shows that, for the third year in a row, more countries globally declined than improved in rule of law performance, continuing a slide towards weakened and stagnant rule of law around the world.[48] Africa's five top performers were Namibia (0.63), Rwanda (0.62), Mauritius (0.61), Botswana (0.60), and South Africa (0.59). The top five underperforming countries were Uganda (0.40), Zimbabwe (0.39), Mauritania (0.36), Cameroon (0.36), and DR Congo (0.34). As in some of the previous surveys, the top five global underperformers include three African countries (Cameroon, Egypt, and DR Congo).[49]

Using diverse measurements and often focusing on different aspects of governance, all of the surveys paint a picture of a governance crisis. This downward spiral has resulted from a number of challenges to which we now turn.

2.4 The main challenges to good governance

It is clear from the preceding analysis that the reforms which were introduced in the 1990s and seemed set to end Africa's long decades of authoritarianism, economic mismanagement, poverty, and hardship have not necessarily led to good governance. To consider what needs to be done to reverse this decline, it is necessary to identify the main challenges. The literature and survey results discussed above point to a number of them: the impact of global democratic recession and backsliding; the lack of good leadership; the weak framework for good governance; the impact of external factors; and the debilitating effects of the Covid-19 pandemic. Each of these challenges warrants full discussion on its own, but here we simply highlight some of the key factors that have undermined the state of governance in Africa today.

2.4.1 The democratic recession

Recent accounts paint a bleak picture of the state global democracy, referring variously to 'democratic recession',[50] 'democratic decay',[51] 'deconsolidation',[52] 'autocratisation',[53] and the writing of 'democracy's obituary'. [54] Recent developments in Africa appear to confirm this pessimistic appraisal. For example, Benin and Zambia, two countries once considered flag-bearers of Africa's new era of democracy and constitutionalism, have regressed almost to where they started three decades ago. Although there is no doubt that in Africa today more

people than ever before elect their leaders, the reality is that the quality of these elections has steadily declined since the first multiparty elections in the early 1990s.[55] African leaders do no more than mimic democratic characteristics, all the while retaining diverse forms of undemocratic rule. Elections have lost their meaning as an opportunity for voters to reward or punish political actors for their actions. A few insights from the global surveys will suffice to underscore this point.

First, not only has Africa as a region performed consistently below global averages on all attributes of electoral democracy, but it also harbours the highest concentration of authoritarian regimes in the world. Furthermore, it has the longest-serving presidents in the world, with at least 18 of them having served for more than a decade. This shows that the quantitative expansion of electoral democracy on the continent in the last two decades has not been matched by a qualitative increase. From a comparative global perspective, the Democracy Index shows that Africa, with an overall score of 4.36 in 2018 compared to a world average of 5.48, and an overall score of 4.31 for 2006–2018 as compared to a world average of 5.51, has consistently performed below the world average. [56]

Another indicator of the state of electoral democracy in Africa is found in the work carried out as part of the Perception of Electoral Integrity project, which produces the perception of electoral integrity (PEI) reports.[57] With electoral integrity understood to measure conformity to international norms governing the conduct of elections, the overall African PEI score of 58 for the period 2012 to 2014 is well below the global average of 64.[58] In one of the latest reports, based on a survey of all national presidential and parliamentary elections from 1 July 2012 to 31 December 2018, the PEI score for Africa was not only once more the lowest in the world but had deteriorated to 46. With PEI scores of 24 each, Burundi, Ethiopia, and Equatorial Guinea had the world's lowest ratings for elections.[59]

Democratic backsliding and democratic fragility are on the increase. Many countries on the continent remain democratically fragile and prone to regressing into hybridity or breaking down into non-democracy. In fact, according to the GSoD Indices, the continent is home to more than three-quarters of the world's fragile democracies. [60] Democratic erosion and backsliding are taking place not only in countries that consistently perform poorly on all indicators but also in those that regularly perform well, such as Botswana, Cabo Verde, Namibia, and South Africa. Looking at electoral democracy-related scores, particularly the three categories of participation and human rights for 2008 to 2017 in the Ibrahim Index for African Governance, the report shows that, on average, the continent lost momentum. The downward spiral worsened between 2013 and 2017. For example, since the end of apartheid in 1994 and the start of a new era of multiparty democracy, South Africa has undergone a decline not only in some of the attributes of electoral democracy but in its levels of electoral participation. Voter turnout was 88 per cent in 1999, but this has now dropped to an alarming 65 per cent – a 20 per cent decline over 20

years.[61] What is worrying is that studies show that it is youth and the poor, who rely on government services, who are least likely to vote.[62]

A similarly gloomy picture about the trajectory of democracy emerges from Freedom House survey reports. According to its 2019 report, only 17 of the 54 African countries (that is, 31.4 per cent) qualify as electoral democracies.[63] This is the lowest number of African countries that have ever been classified as electoral democracies. An analysis of the trend from 2009 to 2019 shows that the number has declined progressively.[64] In other words, according to the Freedom House criteria, there are fewer electoral democracies in Africa today than a decade ago. Using a slightly different set of criteria, the GSoD Indices data for 2018 suggest that representative government has been strengthened, with 20 countries categorised as democracies (of which only Mauritius is in the high range), 18 as hybrid regimes, and 11 as non-democracies.[65] A major contributor to this state of affairs is the lack of leadership on the continent, an issue to which we now turn.

2.4.2 The leadership challenge

Africa's governance challenges would have been mitigated had there been some capable and inspiring leaders who put the interests of their citizens before their own. Botswana's reputation as Africa's shining example of good governance and liberal democracy[66] was due entirely to the quality of its early leaders (Seretse Khama 1965–1979, Quett Masire 1984–1994, and Festus Mogae 1999–2004). Hardly involved in any corruption, these three leaders steered a country that at independence in 1966 was classified among the 25 poorest countries in the world into a middle-income country with one of the fastest-growing economies in the world by the 1980s.[67] It is a feat hardly any other African country has accomplished. Quite the contrary: most of the leaders have done nothing more than help run their countries down through bad governance. Many optimists thought the worst problems of governance had been banished with the good governance measures of the 1990s. Was this optimism about African leadership justified?[68]

In 2007, when the philanthropist Mo Ibrahim established the Ibrahim Index on African Governance, he also set up the Ibrahim Prize for achievement in African leadership, to the tune of USD 5 million awarded over ten years.[69] It is now 14 years since this annual prize was established, yet it has only been awarded to six leaders, or seven if we include Nelson Mandela, who was conferred an honorary prize in 2007. Unsurprisingly, Botswana's Festus Mogae was the second recipient.[70] Good and inspiring leadership has remained in short supply.

In the 1990s when authoritarianism appeared to be going out of fashion and a new generation of democratically elected leaders was emerging, many of the entrenched dictators transformed themselves into 'born-again' democrats or, as it has turned out, simply disguised themselves as such. A casual overview of the African leadership scene suggests that the born-again democrats have

stayed put, whilst most of the new-generation democrats swept into office by the third wave of democratisation were either forced to leave office or have transformed democracy into a farce.

The surveys examined earlier show a strong correlation between entrenched authoritarian leadership, which often holds sham elections and poor governance. For example, in African countries with the longest-serving dictators today,[71] frequent rights abuses, developmental and security challenges, stagnant or declining economies, and democratic backsliding are the main characteristic of their rule. Here, governance has remained the same as it was before the 1990s.

A few examples will show that the new generation of leaders who came to power after the post-1990 wave of democratisation tried to destroy the budding seeds of democracy. Zambian President Frederick Chiluba and Malawian President Bakili Muluzi left office only after their attempts to amend the presidential term limits in 2001 and 2003, respectively, were stopped by alliances of lawmakers and opposition and civil society groups. In 2006, Nigeria's senate rejected an amendment put forth by President Olusegun Obasanjo that would have allowed him to serve a third term. In 2012, large protests in Senegal led to an electoral defeat for Wade, a veteran who had fought for democracy in his country for decades but, once elected president, tried to get an illegal third term by subterfuge. After weeks of demonstrations in October 2014, Burkinabe citizens stopped Blaise Compaore from repealing the constitutional provision on term limits and forced his resignation.

Leadership changes in some countries, especially where the opposition leader won,[72] once again generated hope of political renewal and economic reform. This was the case in Angola after President José Eduardo dos Santos stepped down in 2017, in Ethiopia following the rise to power of Prime Minister Abiy Ahmed, and, perhaps most significantly, after the transfer of power from Robert Mugabe to Emmerson Mnangagwa in Zimbabwe. The continued, and in fact increasing, human rights abuses in both Ethiopia and Zimbabwe today strongly suggest that we have seen 'a changing of the guards' but not a change of political or governance systems. The same is true of many of the new leaders elected after the 1990s.

There has been a continuation of pre-1990 systems of governance by old guards who weathered the third wave of democratisation. This has been particularly so in the case of those presidents who are former military leaders or rebel leaders and simply swapped camo fatigues for Armani suits. The military background of most of Africa's post-1990 leaders is reflected in their governance style, which emphasises discipline, is intolerant of opposition, and relies readily on coercive institutions. This is true not only of those leaders who came to power through rebel army victory, such as the presidents of Burundi, Eritrea, Rwanda, South Sudan, and Uganda, but of those who did so through military intervention, such as the presidents of Central African Republic, Chad, Egypt, and DR Congo. It is no coincidence that these countries are amongst the most

undemocratic on the continent. Africa's leadership crisis has been facilitated by the weak governance foundations laid down in the 1990s.

2.4.3 Weaknesses in the legal framework

One of the major problems that paved the way for the authoritarian regimes that emerged under the immediate post-independence constitutions was the exorbitant powers they either conferred on African leaders or allowed them to arrogate to themselves. As a result, other constitutional provisions were regularly ignored or altered to enable incumbents to transform themselves into 'presidents for life'. The post-1990 reforms sought to address this in several ways, but after three decades the spectre of unruly presidents with unlimited powers persists. A few examples will suffice to highlight the weaknesses of the new generation of 'made-in-Africa' constitutions that continue to undermine the prospects of good governance.

First, the attempts to limit the ease with which these constitutions could be arbitrarily amended to suit the convenience of African leaders have failed in many cases. A clear manifestation of this is in the unending processes of constitutional tweaking that persist in Africa and the instability it has caused. For example, Niger has had five constitutions in 20 years, while the constitutions of others such as the Central African Republic, Guinea, DR Congo, and Rwanda have been amended several times, serving as reminders of the ugly ghosts of the past. Many of the changes, whether made to illiberal constitutions, such as Cameroon's 1996 Constitution, or liberal ones, such as South Africa's, have been designed to fortify the continent's imperial presidents and protect their dominant political parties in the legislature rather than deepen constitutionalism, democracy, and good governance.[73]

Perhaps the most serious effect of the frequent and abusive amendments of the modern African constitutions is that they have undermined one of the key constitutional reforms of the 1990s designed to check against life presidencies and promote alternation of power – namely the constitutional entrenchment of two-term presidential limits.[74] Term limits appeared in most of the revised constitutions but have been repealed[75] or manipulated[76] to benefit incumbents. In those constitutions that simply removed the term limit, this clears the coast for the incumbent to rule for life, given that, in spite of regular elections, incumbents have devised sophisticated means to ensure their victory or that of their party at elections. Unsurprisingly, most of those countries with no constitutional provisions for term limits,[77] or whose term limits have been removed or manipulated, such as Cameroon, Chad, Congo Republic, Eswatini, Eritrea, and Djibouti, have the poorest governance records in Africa.

Good governance, as pointed out earlier, is built on critical factors such as accountability, transparency, popular participation in governance, social justice, and a basic framework for respect for the rule of law. Fragile constitutional frameworks have also enabled incumbents to manipulate electoral laws and electoral management bodies regularly in such a manner that opposition parties are not

able to compete freely and fairly. This has not only undermined accountability and transparency but prevented leadership renewal. The progressive shrinking of civic and political space by restrictions imposed by governments to retain power has contributed significantly to increase democratic backsliding and the reversal of the gains made in democratic governance in the 1990s.[78]

Another critically important factor that has contributed in no small measure to undermining good governance is the fact that, in many countries, some of the progressive constitutional provisions introduced in the 1990s were, often for political reasons, not implemented properly and timeously.[79] An excellent example of political manipulation and sabotage frustrating the implementation process is the case of Cameroon's 1996 Constitution. Most of the new institutions that the government was pressurised to include in it were established only several years later and then often in truncated form. In fact, until recently, 24 of its 69 articles (that is, about 35 per cent of all the provisions in the Constitution) had not been implemented.[80]

The Cameroonian experience may be extreme, but it is typical of African constitutions.[81] Only the Kenyan Constitution of 2010, in section 5 of the sixth schedule, provided for a Commission for the Implementation of the Constitution. Unfortunately, it was given only a five-year renewable lifespan and became a victim of its own success because the very politicians who had the powers to renew it declined to do so because the Commission had been a thorn in their flesh. Ultimately, it has to be recognised that a constitution will achieve its purpose of promoting constitutionalism, good governance, and respect for the rule of law only if its implementation and enforcement can be guaranteed and put beyond the goodwill of any individual, group, or institution. One of the lessons of the last six decades of constitutional development in Africa is that incorporating constitutional mechanisms and institutions to supervise and monitor the implementation of the constitution is now an essential aspect of promoting constitutionalism and good governance.

Finally, only the Kenyan, South African, and Zimbabwean constitutions provide for a number of specially entrenched constitutional commissions with provisions designed to safeguard their independence and effectiveness for the purpose of promoting constitutionalism, good governance, and democracy.[82] These commissions include the Public Protector (or ombudsman), the independent electoral commission, the human rights commission, the gender commission, and the anti-corruption commission. Apart from South Africa, where these bodies have played an important role in promoting good governance, the record of their performance in the two other countries is mixed. Nevertheless, as the South African commissions, particularly the Public Protector, have shown,[83] the potential for these commissions to ensure transparency, accountability, and respect for the rule of law is considerable and their presence in other African countries could help improve their level of governance.[84]

2.4.4 *Corruption and state capture*

As noted earlier, corruption poses a major threat to peace and stability on the continent, casting an ominous shadow over the prospects for social, economic,

and political progress and undermining efforts over the years to establish a culture of constitutionalism, democracy, good governance, and respect for the rule of law.[85] Africa not only holds the record of having some of the most corrupt countries in the world but is also the most corruption-riddled continent. It is estimated that it loses at least USD 148 billion each year to corruption.[86] This is particularly alarming when we also note that it is the only continent in the world to have become poorer over the last three decades.[87] Owing to the scale with which corruption occurs in almost all African countries, their average growth rate of 5 per cent per annum since 2000 has not been large enough to allow for meaningful economic growth. The resulting poverty causes serious challenges for governance.

In most countries, corruption is so deep-rooted at every level of government – local, regional, and national – and in every department of government, from the lowest to the highest, that governance is often paralysed. As shown by Transparency International's CPI report, discussed earlier, corruption is a serious impediment to good governance in Africa. Its most crippling dimension, one which has not been sufficiently examined in contemporary literature, is state capture. State capture is a situation where public bureaucracies are controlled by powerful interest groups who are able to influence government policies and actions for their personal benefit. A classic example of this occurred during the Zuma presidency in South Africa (2009–2018) and was one of the reasons for his removal from office. In fact, a report by the Public Protector in 2016 led to the establishment in 2018 of a Judicial Commission of Inquiry into Allegations of State Capture in South Africa, popularly known as the Zondo Commission, which is currently investigating the extent of state capture during the Zuma era.[88]

All-pervasive plundering of public resources for patrimonial reasons through corruption and state capture is arguably the most visible evidence of the accelerating collapse of governance in Africa. It has been made easy by weak controls and regulations that allow officials too much discretion. Bureaucrats have 'privatised' the business of dispensing public services, thus charging 'fees' for preparing official documents such as passports or processing information as they are required to; police, customs, and tax officials, as well as nurses, regularly ask for bribes in the form of these illegal 'fees' before they perform their duties.[89] Ultimately, it is the poor and most vulnerable, the ones in greatest need of these services, who suffer. Some of these challenges have been exacerbated by external factors.

2.4.5 External factors

Many external factors contribute to the dire state of governance in Africa. In spite of the elaborateness of the instruments designed to promote good governance and constitutionalism on the continent, the AU and its RECs have failed to implement these instruments with any conviction. The trend is aggravated by the global democratic recession and rise of populism, the continuing impact of historical and colonial legacies, and the growing influence of China and Russia in Africa.

The AU and RECs, through their acts and omissions, have allowed authoritarian regimes to flourish with impunity. This is not surprising given that most African regimes are hardly democratic. As a result, there has been little will to implement continental and regional good governance instruments in a serious and consistent manner. For example, the AU and RECs rushed to declare the Kenyan 2017 presidential elections free and fair even though, due to limited expertise, they lacked the ability to carry out effective election monitoring. The same happened after the announcement of the preliminary results of DR Congo's elections in December 2018. The AU was one of the few international organisations to accept the results, with its chairperson congratulating the winner notwithstanding the fact that elsewhere the elections were condemned as flawed; the Southern African Development Community (SADC) did the same, notwithstanding that a report by 40,000 election observers fielded by *Conférence Episcopale Nationale du Congo* (CENCO) showed that the results were inaccurate.

The most important instrument in the AU armoury, the ACDEG, requires the organisation to adopt a number of implementation measures, such as setting guidelines and benchmarks for evaluating state-party compliance with the Charter, but African leaders have conveniently disregarded these measures. Loopholes in the ACDEG make it easy for authoritarian leaders to get away with unconstitutional changes of government. An example is a vague formulation of what circumstances amount to an unconstitutional change of government. The AU was silent when countries such as Rwanda, Burundi, Uganda, the Republic of Congo, Gabon, Chad, Djibouti, Cameroon, Equatorial Guinea, and Guinea amended their constitutions in ways that clearly violated the letter, if not the spirit, of the ACDEG and thereby paved the way for strongmen to be re-elected. In most of these countries, the situation remains tense as leaders and their patronage networks struggle to maintain popular support.

Of particular concern is the failure to deal clearly with situations such as the challenges posed by popular uprisings or the unlawful retention of power through indefinite postponement of elections, as Joseph Kabila did in DR Congo in 2016 when his constitutionally mandated second term ended. What has diminished the AU's credibility considerably is the inconsistent way it deals with the problems caused by popular uprisings, especially since this gives military leaders the impression that, instead of having to shoot their way to power, they can use a combination of protests, bullets, and the ballot box to become part of political governance.

A case in point is that after the protests that led to the removal of Sudan's al-Bashir, the AU suspended Sudan in June 2019 and promised to lift the suspension only after the Transitional Military Council returned the country to civilian rule; however, the AU was part of the negotiations that led to the August 2019 agreement that saw the installation, not of a civilian government but a mixed civilian-military council led by one of the army officers. Although the plan is to hand over to an elected government in about three years' time, the stage has been set for a civilian-military partnership which is likely to do

little more than return the country to a situation in the vein of al-Bashir's dictatorship.

At any rate, the Sudanese soldiers had no reason to worry about AU sanctions. Egypt's Sisi, a former coup leader, faced similar threats but was allowed by the AU to hold elections to legitimise his power grab. In Zimbabwe, the AU was silent about the military intervention that ousted Mugabe, as it was when the army chief who initiated the change was appointed vice president, a position confirmed a year later after elections were held to legitimise the new regime. Often the AU and RECs speak with different or contradictory voices. The result is that dictators choose to heed the least inconvenient voice, something which does not augur well for democracy and constitutionalism. Good governance will remain a myth so long as the AU and RECs seek only to curb the incidence of *coup d'états* and military rule, while, on the one hand, failing to address the tactics used to undermine elections and promote authoritarian democracy and, on the other, condoning leaders who manipulate the constitution to prolong their stay in power. The AU, much like the former OAU and its sponsors,[90] operates as a private club for incumbent heads of state who use this institution to protect each other.

Furthermore, authoritarianism is on the rise in Africa partly because of the waning interest of most international players in the state of governance on the continent. Increasingly, many of the key actors are little inclined to exert pressure on Africa's authoritarian regimes, especially when rigged elections lead to protests and protests lead to violent repression. The election of the populist Donald Trump as US president in 2016, followed by the election of a host of other populist leaders in Europe, radically exploded the myth of the West as a beacon of democracy. Trump openly expressed his admiration for repressive dictators such as Putin of Russia, Xi Jinping of China, and Sisi of Egypt. His own authoritarian style of governance and isolationist 'America First' doctrine made it clear that promoting democracy in Africa or feeling disquiet about its trajectory were the very least of his concerns. Europe, for its part, was for long too preoccupied with Brexit, the rise of right-wing governments and the influx of refugees from across the Mediterranean looking for a better life in Europe to bother about Africa. Like the US, it would prefer to support or turn a blind eye to, rigged elections that leave repressive strongmen in power than run the risk of having weak regimes that lead to instability and raise the spectre of takeover by jihadists.

Another impediment to good governance is the legacy of colonialism, especially in francophone Africa. It was assumed in the 1990s, particularly after President Mitterrand's La Baule speech marking the collapse of the Berlin Wall, that France's stranglehold on progress in francophone Africa would be relaxed in favour of democracy.[91] Although the last three decades have seen less French support than before for *coup d'états* and political assassinations, France's enthusiasm for defending dictators in its former colonies remains undiminished.[92] As a result, apart from Senegal and to some extent Benin, the state of governance in francophone Africa, according to indicators such as those

of Freedom House and the Mo Ibrahim Foundation, is well behind what it is in most of the continent's anglophone countries. Unsurprisingly, even the sole example of a third-wave-democratisation success in francophone Africa, Benin, is backsliding.[93] The French continue to prop up many of Africa's most dictatorial regimes, such as the ones in Cameroon, Gabon, and the Republic of Congo.

The West is caught on the horns of a dilemma. It is the chief promoter of liberal democratic values in Africa, but, out of short-term self-interest and in response to rising populist sentiment, it finds itself tolerating, or at worst supporting, African dictators who pay lip service to the principles of democracy while flagrantly violating them in bids to hold onto power forever.[94] It is a policy that has not only encouraged dictators to devise strategies to prolong their stay in power but opened the door into Africa to China and Russia, which have no qualms whatsoever about supporting dictators.

China has been moving fast to introduce the continent to its own syllabus in authoritarian democracy. If, as it appears, Russia's Vladimir Putin has taught African dictators the subtle art of finessing one's way around a constitution's presidential term limits, the Chinese parliament's repeal in 2018 of the country's two-term limit and its creation of the possibility for Xi Jinping to be President for life will reinforce the view of many African leaders that term limits are a dispensable inconvenience. Russian and Chinese influence on the continent is growing by leaps and bounds, which does not bode well for democracy and constitutionalism on the continent. China's substantial investment in Africa has made it one of the biggest players on the continent; as a result, many African leaders are increasingly tempted by the Chinese example of economic growth without democracy.

Indeed, China has been actively promoting its one-party-dominant governance system to Africans as an alternative governing model, including conducting regular training programmes in this regard in African countries.[95] Among the latter are not only countries that could hardly be termed democracies, such as Angola, Ethiopia, and Tanzania, but, surprisingly, those making progress in entrenching a democratic culture, such as Namibia and South Africa.[96] What many of these countries fail to realise is that China's development today owes little to the model it is selling to gullible African autocrats.[97]

In the final analysis, the increasing presence in Africa of China and Russia, two countries with no interest in promoting good governance and constitutionalism, along with the rise of global polarisation and the waning of Western interest in the continent, will only accelerate the ominous resurgence of authoritarianism and aggravate the governance crisis. In view of this, the turmoil caused by Covid-19 could not have come at a worse time.

2.4.6 The impact of Covid-19

African countries, like their counterparts the world over, responded quickly to the threats posed by Covid-19. Many countries, with South Africa in the lead,

introduced drastic measures to bring the pandemic under control. In almost all cases, this led to the concentration of power in the hands of politicians and other officials. Due to the nature of the pandemic, traditional checks, which normally ensure that emergency powers are not abused, were unable to function properly. Many countries had to adopt emergency measures that allowed their courts to stay operational only to a limited extent; the requirement of social distancing and restrictions on the number of persons who can meet meant that parliaments across the continent were unable to convene except virtually online, as happened in a few countries. As such, they were unable to exercise oversight powers ensuring that the executive and other government officials did not abuse the extraordinary powers conferred on them for dealing with the pandemic.

Many autocratic regimes in Africa seized this opportunity to grab more powers for themselves, silence their critics, and undermine the rule of law, safe in the knowledge that the world was too busy fending off the ravages of the virus to take notice. For example, in Togo, a law was enacted that allows the president to rule by decree until parliament revokes these powers.[98] Given that his party controls parliament, are we sure this law will be revoked? In Zimbabwe, peddlers of 'falsehood' or 'fake news' – often meaning those who make embarrassing disclosures or criticise the government – face an astonishing 20 years in prison.[99] Covid-19 has had a serious impact on participation, rights, and inclusion, with some scheduled elections, such as those which were supposed to take place in Ethiopia in 2020, being postponed and pandemic response measures used to conceal interference in the electoral process and restrict civil space, as was the case in Uganda's elections of February 2021.[100]

Powers, such as those given to the security forces to enforce 'stay-at-home' orders during periods of lockdown, were not always fully understood or obeyed. In most countries, security forces used them in an abusive manner that resulted in the loss of life. The 'stay-at-home' restrictions have had deleterious consequences for the poor, for low-income earners, and for the millions who rely on the informal economy to eke out a living. The prolonged periods of lockdown added many more millions to the millions of people in Africa who are already never sure where their next meal is coming from. This led not only to severe social stress but increased the risk of high unemployment and national economic collapse. In many countries, the huge sums set aside for cash relief or food parcels were diverted by the ruling elites or selectively distributed to areas that support the government. The serious economic deprivation that is likely to result from measures taken to control the spread of the virus, particularly the prolonged periods of lockdown, will leave people poorer, sicker, and angrier.

There is thus a well-founded fear that some of the excesses seen during the implementation of these emergency measures will endure and become a new way of life. Writing in *The Economist* in April 2020, Bill Gates said, 'When historians write the book on the Covid-19 pandemic, what we've lived through so far will probably take up only the first third or so. The bulk of the story will be *what happens next*.' He added: 'In a few weeks' time, *many*

hope, things will return to the way they were in December. Unfortunately, that won't happen.'[101] This raises the question of how can we ensure that Africa's gains in democracy, constitutionalism, and respect for the rule of law remain intact in the post-Covid-19 era. How can we ensure that temporary measures do not become permanent? How can we use this crisis instead to reverse some of the governance errors of the past – and turn it into an opportunity for innovation and creativity?

2.5 Looking to the future

There are no simple, straightforward solutions for addressing Africa's governance problems. In spite of the post-1990 reforms designed to ensure constitutionalism, respect for the rule of law, and good governance in Africa and thereby banish authoritarianism to the dustbin of history, the decline in the standards of governance, as accentuated by the Covid-19 pandemic, shows that these reforms did not go far enough. The plans being made to address the Covid-19 pandemic and similar viruses in the future must go hand in hand with addressing the serious governance issues that preceded the pandemic and caused its effects to hit all the harder, especially in the case of the most vulnerable in society. We will briefly mention some of the main corrective measures that are needed.

First, African governments must seriously consider strengthening the instruments and institutions of governance, accountability, and transparency. Particular attention should be paid to strengthening the system of checks and balances. In this respect, the role of parliament must be enhanced, with the rights of opposition parties being constitutionally entrenched. Judicial independence also needs to be strengthened. Good governance will be enhanced considerably if African countries emulate and strengthen the independent commissions set up under the constitutions of Kenya, South Africa, and Zimbabwe. Some of these commissions, such as those responsible for organising elections, checking against corruption and ensuring respect for human rights, will, if properly designed, go a long way in creating a conducive environment for good governance to flourish. As the former US president, Barack Obama, said, 'Africa doesn't need strongmen, it needs strong institutions.'[102] Wittingly or unwittingly, Africans have been exchanging one group of oppressors for another, some of whom, like Paul Biya of Cameroon, Paul Kagame of Rwanda, and Yoweri Museveni of Uganda, have been as repressive as the tyrants of the pre-1990s.

As we have seen, the political space has contracted over the years since the re-introduction of multiparty democracy in the 1990s. Africa is the world's most ethnically complex region and home to 20 of the world's most diverse countries in terms of ethnic composition; unfortunately, this had made it a source of such conflicts as the Nigerian/Biafra war, the genocide in the Great Lakes Region, Ethiopia's war in Tigray, and the ongoing anglophone conflict in Cameroon. As Chester Crocker put it, '[W]ise leadership respects ethnic

diversity and works toward inclusive policies,'[103] yet it is the case that many important but presently marginalised groups, such as women, youths, and the disabled, need to be brought under the governance tent.

Studies show that it is the youth and the poor, both of whom rely on government services, who are least likely to vote.[104] It was the young Kwame Nkrumah, Julius Nyerere, and Kenneth Kaunda who led the independence struggle and took over the mantle of leadership. However, today youths of their age are looked down upon and systematically marginalised on the grounds of lack of experience, whilst most leaders and their closest collaborators are septuagenarians and octogenarians. Africa, with 75 per cent of its people aged 35, has the largest concentration of young people.[105] Sustaining a culture of constitutionalism and good governance requires more constructive efforts to involve the younger people. An entire generation of youths cannot continue to be left out of active participation in governance because an older generation wants to cling to power as if it were a life-raft protecting them from the deep blue sea.[106] The same problem of exclusion is faced by women. Overall, women and the youth, who as a group generally constitute more than 65 per cent of the voting population, are usually not given sufficient space to express their views.

However, in promoting women's representation in parliament, Kenya,[107] Zimbabwe,[108] and even Rwanda[109] have made great strides. In 2017, 61 per cent of parliamentarians in Rwanda were women, while the figures were 35 per cent and 34 per cent for Burundi and Uganda, respectively. Ethiopia's ruling party allocates 30 per cent of parliamentary seats to women, while its new Prime Minister made 50 per cent of his cabinet women ministers. Due to the 'not more than two-thirds' gender rule in the Kenyan Constitution,[110] more women have been elected to parliament and local county assemblies. Yet although there were some individual breakthroughs in Kenya in 2017, the reality is that Kenya has failed to implement the constitutional gender clause fully, while the general proportion of women elected remains disappointing.

The same is true in spite of similar provisions in the Zimbabwean Constitution of 2013, although its gender quota rule is only for two terms. The reality is that many of the measures ostensibly designed to facilitate the active and effective participation of women and other marginalised groups in democratic governance in Africa have been perversely distorted instead to perpetuate a flawed system that sustains the existing structures of the authoritarian democratic system. Constitutional provisions need to be adopted to facilitate and promote the inclusion of disadvantaged groups such as women, the youth, and the disabled. However, a constitutional quota system and similar measures are not enough; more needs to be done to deal with the profound issues of cultural beliefs, socialisation, patriarchy, and misogyny that have limited the active political participation in African governance of these important groups.

The most one can say is that Kenya, Rwanda, and Zimbabwe, from the perspective of the legal framework, and South Africa, from a practical perspective, have made some effort to promote inclusive governance. Looking beyond this, are there any role models for good governance in Africa? Against the

background of a general decline in standards of good governance, what seems clear is that the gap between the continent's relatively well-governed and democratic states and the authoritarian states appears to be widening, a trend which the impacts of Covid-19 are likely to reinforce. Indeed, two countries, Botswana and South Africa, that could have served as models to the rest of the continent are struggling.

Botswana, as we pointed out earlier, was for many years rightly seen as Africa's shining example of liberal democracy. The fragility of its democracy was, however, underscored during the tenure of former President Ian Khama (2008–2018), an ex-military commander whose only claim to the position he held with an iron fist for ten years was that he was a son of the revered first president, Sir Seretse Khama. His intolerant and autocratic style of governance exposed the weaknesses of a system that, until his accession to power in 2008, depended entirely on the goodwill of the previous presidents rather than the solidity of the country's constitution and democratic institutions. He tried unsuccessfully to continue to rule from behind the scenes when he failed to manipulate his handpicked successor.[111] Predictably, most indicators of good governance show that the quality of democracy and governance in Botswana has been in sharp decline, with commentators doubting whether the country still warrants its exceptional status.[112]

With respect to South Africa, as a result of its highly regarded Constitution of 1996, the country seemed destined to take up the mantle of good governance leadership in Africa and become a beacon of hope for a democratically depressed continent. Whilst its regular free and fair elections underline the country's democratic credentials, President Zuma's nine-year tenure exposed the fragility of those credentials. The robust constitutional framework could not prevent him and his corrupt party cronies from capturing key state institutions and reducing parliament to little more than an expensive talk show. South Africa's saving grace was the effective operation of one of the institutions that escaped Zuma's ravages, the Public Protector, whose independent reports on his corrupt activities led to his early recall from office.[113] Much hope for a recovery from the brink was pinned on his successor, President Cyril Ramaphosa, arguably Africa's most internationally respected leader. Unfortunately, the profoundly corrupt African National Congress (ANC), captured and controlled by the machine Zuma set up, is an albatross around his neck and leaves him very little room for manoeuvre.[114] South Africa, in spite of its fine constitution and strong institutions, is edging closer to being a typical African post-independence authoritarian state rather than consolidating constitutional democracy.

Ultimately, although Africa's fate lies in the hands of Africans and in spite of all the contemporary rhetoric of 'African solutions for African problems',[115] Africanisation, and decolonisation,[116] external actors will continue to play a big role in governance on the continent. The global dimension of the Covid-19 pandemic and the influx of refugees into Europe from across the Mediterranean are timely reminders that external actors have an interest in

looking for effective and sustainable solutions to Africa's governance predicament. The international community as a whole, and the AU and RECs, in particular, should adopt a policy stance of 'zero tolerance' of measures – such as election-rigging, manipulating constitutions, and imposing repression – that pose a threat to constitutionalism, good governance, respect for the rule of law, and human rights. It is time for naming-and-shaming leaders who are ruining their countries through incompetence, corruption, and repression.

Civil society organisations and other advocacy groups in Africa need to bring pressure to bear on the AU to be strict in implementing its agenda for democracy and good governance. Such action should be designed to achieve the following: first, the adoption of a framework for election monitoring and observation that will make full compliance with its terms a condition for the AU involving itself and recognising elections in any African country; secondly, strict and consistent enforcement of the existing framework for promoting constitutionalism, good governance, and democracy regardless of the status of the country; thirdly, the adoption and implementation of the guidelines, mechanisms, and structures specified in the ACDEG; and, finally, the adoption of a clear strategy for subsidiarity, complementarity, and cooperation between the AU and the RECs in dealing with issues of governance.

It is most unlikely that the authoritarian regimes in China and Russia have any interest in promoting good governance in Africa. In the present polarising climate, the West has more to lose from the fallout of bad governance and authoritarianism in Africa than either China or Russia. The destination of choice for those running away from the economic and political crisis in Africa is hardly ever China or Russia. Hence, the West needs to intensify its good governance programmes in Africa. Nothing has ever been gained by sacrificing democracy and good governance for the short-term benefits of stability and giving solace to dictators like Paul Biya of Cameroon, Sassou Nguesso of Congo Republic, Teodoro Obiang Mbasogo of Equatorial Guinea, Yoweri Museveni of Uganda, and Idriss Deby of Chad. The more they are tolerated and appeased, the more they feel irreplaceable and will seek to do everything to stay in power. Such dictators should be treated as pariahs in international society and be subjected to targeted sanctions whilst financial and other support is given to marginalised and vulnerable groups. A new Cold War is emerging in which Africa could end up not only lorded over by dictators masquerading as democrats but recolonised by foreign powers, this time the Chinese.

2.6 Conclusion

All the governance indicators show that the demand for good governance in Africa remains very high but the supply is low. In fact, it can be said that the state of governance is finely balanced between a steady decline and stagnation. The Covid-19 pandemic, whilst making this worse, provides an opportunity for rethinking and reimagining the constitutional reforms that were initiated from the early 1990s and that were supposed to set Africa on a new trajectory

marked by democracy, good governance, respect for the rule of law, and re-engagement with the basic principles of modern constitutionalism. Whilst there has been a significant change, it can hardly be described as transformational, nor does it match the expectations raised by the hype around 'Africa rising' or 'the African renaissance'. The overall picture is neither good nor promising, and the challenges that lie ahead are enormous.

Although we have seen that governance is often described in different ways depending on the context, we noted that good governance has certain key elements that include accountability, transparency, anti-corruption measures, citizen participation, and an enabling legal framework. Based on this, it was shown that almost all African countries, following the fall of the Berlin Wall and the end of the Cold War, adopted new or substantially revised constitutions. To prevent the re-emergence of the harsh, repressive, and inefficient authoritarian systems that were established after independence, the new reforms provided for a system of checks and balances in government. Key elements of modern constitutionalism, such as the recognition and protection of human rights, the separation of powers, independent judiciaries, judicial review, and checks against the arbitrary amendment of constitutions have become a common feature of modern constitutionalism. These developments were reinforced by an elaborate set of instruments adopted mainly by the AU and some by its RECs to promote constitutionalism, good governance, and the rule of law.

To assess the impact of these reforms on the state of governance, a review was undertaken of survey reports by international non-governmental organisations that monitor the performance of countries with regard to governance in general or certain of its key elements. All the indicators show that, overall, the standard of governance in Africa has been dropping. Many factors have contributed to this. The main ones include the decline in the quality of democracy due to the increasing resort to sophisticated techniques of rigging elections and the lack of good leadership. Not only have many of the pre-1990 autocrats who reluctantly accepted some of the symbols of democracy continued to cling to power, but many post-1990 democratically elected leaders have become as autocratic, inefficient, and corrupt as those they replaced. Almost all African leaders, like their peers in the past, remain captives of corruption, self-interest, and avarice.

In most cases, the re-emergence of the authoritarian ghosts of the past has been facilitated by flaws in governance instruments. This has made it easy for African leaders to arrogate more powers to themselves, eliminate or manipulate constitutional term limits, and adopt election laws that lead to a shrinking of civic space and political activity. The global democratic recession marked by a rise of populist leaders in the West who show little interest in Africa coincides with China and Russia's increasingly strong presence on the continent. Because the latter show no interest in promoting democratic reforms or practices in Africa, they have provided African despots with an easy alternative to relying on in perpetuating autocratic rule. Predation and increasing state capture have resulted in the virtual privatisation of state services, with the poor

and marginalised the most seriously affected. The severe restrictions imposed in response to Covid-19 have aggravated the poor governance situation in Africa.

In looking to the future, it is argued that there is a need to review the existing governance framework and strengthen the instruments and institutions of governance, accountability, and transparency. More serious efforts must be made to promote democratic governance by ensuring alternation of power and inclusive governance that gives space for women, the youth, and persons with disabilities to participate in governance. Similarly, the instruments adopted by the AU and RECs must be made more robust and be enforced consistently, and these institutions need to act more decisively to name and shame countries that do not conform to the standards laid out in these instruments.

Without good governance, social and economic progress in Africa will peter out; the continent will not only continue to host the poorest people in the world, but many of them, out of frustration, will become a soft target for extremism or take flight as refugees seeking asylum in the West. It is therefore in the interests not only of the AU and its RECs but also of the international community, especially the West, to adopt a 'zero-tolerance' approach towards all of Africa's kleptocratic and repressive leaders and, in particular, speak out when elections are rigged. There is a clear correlation in the various survey indicators between prolonged stays in power and poor governance.

Notes

1 See E Frankema and M van Waijenburg, 'Africa Rising? A Historical Perspective', 117(469) *African Affairs* (2018), pp 543–568.
2 See S Huntingdon, *The Third Wave of Democratization in the Late Twentieth Century,* Norman, OK, University of Oklahoma Press (1991).
3 For example, in some of the literature, a distinction is made between multilevel and regulatory governance, and elsewhere, between network governance and regulatory politics. For a discussion of the definitional issues raised by this concept, see T Christiansen, 'Governance in the European Union' www.researchgate.net/publication/260226422 _Governance_in_the_European_Union (last accessed 1 February 2021).
4 See 'Worldwide Governance Indicator' https://info.worldbank.org/governance/wgi/ (last accessed 1 February 2021).
5 See United Nations Economic and Social Commission for Asia and the Pacific, 'What Is Good Governance?' www.unescap.org/sites/default/d8files/knowledge-products/good-governance.pdf (last accessed 1 February 2021).
6 Cited in R Gisselquist, 'What Does "Good Governance" Mean?' https://unu.edu/publications/articles/what-does-good-governance-mean.html (last accessed 1 February 2021).
7 These are discussed fully in BC Smith, *Good Governance and Development*, London, Palgrave Macmillan (2007).
8 See P Blunt, 'Cultural Relativism: "Good" Governance and Sustainable Human Development', 15(1) *Public Administration and Development* (1995), pp 1–10.
9 See, for example, R Roberts, 'Law, Crime and Punishment in Colonial Africa' in J Parker and R Reid (eds), *The Oxford Handbook of Modern African History*, www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199572472.001.0001/oxfordhb -9780199572472-e-017 (last accessed 1 February 2021).

10 In some cases, such as Algeria, this was because the colonial power was forced out after a war of independence, and in other cases, such as Guinea, the French left abruptly after trying to destroy every remnant of their presence because the Guineans would not accept independence on French terms.

11 In fact, F Reyntjens, 'Authoritarianism in Francophone Africa from the Colonial to the Postcolonial State', 7 *Third World Legal Studies* (1988), p 59, has suggested that the brief experience which the Congolese had with using political parties as vehicles for mobilisation and communication explains the ease with which the late President Mobutu, on assuming power in 1965, was able to assume the apolitical style of his Belgian colonial predecessors.

12 See JM Breton, '*Trente ans de constitutionalisme d'importation dans les pays d'Afrique Noire Francophone entre mimetisme et reception critiques: Coherences et incoherences (1960–1990)*' www.droitconstitutionnel.org/congresmtp/textes7/BRETON2.pdf (last accessed 1 February 2021).

13 HWO Okoth-Ogendo, 'Constitutions without Constitutionalism' in I Shivji (ed), *State and Constitutionalism in Africa,* Harare, SAPES (1991), pp 3–25. For a more general account, see GN Barrie, 'Paradise Lost: The History of Constitutionalism in Africa Post Independence', 2 *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg* (2009), pp 290–322.

14 See generally A Andereggen, *France's Relationship with Sub Saharan Africa,* Westport, CT, Praeger (1994); F Reyntjens, 'The Winds of Change: Political and Constitutional Evolution in Francophone Africa, 1990–1991', 35 *Journal of African Law* (1991), pp 44–55.

15 For example, Idi Amin Dada of Uganda, Emperor Jean Bedel Bokassa of Central African Empire (today Central African Republic), and Mobutu Sese Seko of Zaire (today DR Congo).

16 See generally H Stein and M Nissanke, 'Structural Adjustment and the African Crisis: A Theoretical Appraisal', 25(4) *Eastern Economic Journal* (1999), pp 399–420; T Mkandawire and CC Soludo, *Our Continent, Our Future: African Perspectives on Structural Adjustment*, Dakar, Council for the Development of Social Science Research in Africa (1998).

17 See P Chabal, 'The State of Governance in Africa', Occasional Paper No. 26 (2009), https://media.africaportal.org/documents/SAIIA_Occasional_Paper_no_26.pdf (last accessed 1 February 2021).

18 For a discussion of this, see CM Fombad, 'Constitution-Building in Africa: The Never-Ending Story of the Making, Unmaking and Remaking of Constitutions', 13(4) *African and Asian Studie*s (2014), pp 429–451.

19 For the Charter of the OAU, see https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf (last accessed 1 February 2021).

20 For fuller discussion of the role of the AU in promoting good governance, constitutionalism and democracy, see CM Fombad, 'The African Union and Democratization' in J Haynes (ed)*, Routledge Handbook of Democratization*, London, Routledge (2012), pp 322–336; F Aggad and P Apiko, 'Understanding the AU and Its Governance Agenda' https://ecdpm.org/wp-content/uploads/African-Union-Governance-Background-Paper-PEDRO-Political-Economy-Dynamics-Regional-Organisations-Africa-ECDPM-2017.pdf (last accessed 1 February 2021); J Akokpari, 'The OAU, AU, NEPAD and the Promotion of Good Governance in Africa' www.eisa.org/aprm/pdf/Resources_Bibliography_Akokpari.pdf (last accessed 1 February 2021).

21 Many sceptics find it difficult to bring themselves to believe that these same corrupt African dictators could miraculously bring themselves to implement a programme that would destroy the very basis of their power. See I Taylor, 'Why NEPAD and African Politics Don't Mix' wwwfpif.ofrg/commentary/2004/0402nepad_body.html (last accessed 20 May 2010).

22 See NC Ani, 'How Serious Is the African Union about Democracy?' https://issafrica.org/iss-today/how-serious-is-the-african-union-about-democracy (last accessed 1 February 2021).

23 See generally J Klabbers, *An Introduction to International Institutional Law*, 3rd edn, Cambridge, Cambridge University Press (2015).

24 See 'APRM' www.aprm-au.org/ (last accessed 1 February 2021).

25 Available at www.un.org/en/africa/osaa/pdf/aprm-declaration.pdf (last accessed 1 February 2021).

26 The following eight RECs are officially recognised by the AU: the Arab Maghreb Union (AMU); Community of Sahel–Saharan States (CEN–SAD); Common Market for Eastern and Southern Africa (COMESA); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD); and Southern African Development Community (SADC).

27 See in general APRM and the African Governance Architecture, 'The African Governance Report: Promoting African Union Shared Values, January 2019' https://au.int/sites/default/files/documents/36418-doc-eng-_the_africa_governance_report_2019_final-1.pdf (last accessed 1 February 2021).

28 For example, SADC has several instruments which include the Protocol Against Corruption (2001), the Charter on the Fundamental Social Rights in SADC 2003, and the SADC Principles and Guidelines Governing Democratic Elections (Revised in 2015). In ECOWAS, the main instrument on governance is the Protocol on Democracy and Good Governance (A/SP1/12/01).

29 See D Abebe, 'Does International Human Rights Law in African Courts Make a Difference?', 56(3) *Virginia Journal of International Law* (2017), pp 527–584; S Ebobrah, 'Human Rights Developments in African Sub-Regional Economic Communities during 2012', 13(1) *African Human Rights Law Journal* (2013), pp 1–26.

30 See Mo Ibrahim, '2020 Ibrahim Index of African Governance – Index Report' https://mo.ibrahim.foundation/iiag/downloads (last accessed 1 February 2021).

31 Alarm bells about Botswana's trajectory began ringing early in the decade. See C von Soest, 'Stagnation of a "Miracle": Botswana's Governance Record Revisited', No. 99 April 2009 www.jstor.org/stable/pdf/resrep07509.pdf?refreqid=excelsior%3A96d8f96c3fe35fc46c6fdbcbfcfe59c4 (last accessed 1 February 2021); A Cook and J Sarkin, 'Is Botswana the Miracle of Africa? Democracy, the Rule of Law, and Human Rights Versus Economic Development', 19 *Transnational Law and Contemporary Problems* (2010), pp 453–489.

32 See Mo Ibrahim (n 30), p 28.

33 Other surveys that could be consulted are the Economist Intelligence Unit's Index of democracy, available at www.eiu.com/n/campaigns/democracy-index-2020/; the Worldwide Governance Indicators, available at https://bit.ly/3rEkdMB; and the Varieties of Democracy (V-Dem) Annual Democracy Report, available at www.v-dem.net/en/publications/democracy-reports/.

34 For detail about the methodology, see Freedom House, 'Freedom in the World Methodology' https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology (last accessed 1 February 2021).

35 See Freedom House, 'Freedom in the World: A Leaderless Struggle for Democracy' https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy (last accessed 1 February 2021).

36 See Freedom House, 'Freedom in the World 1989–1990' https://bit.ly/3ue2LQR (last accessed 1 February 2021).

37 See Freedom House, 'Freedom in the World 2000–2001' https://bit.ly/3wgdFHz (last accessed 1 February 2021).

38 See Freedom House, 'Freedom in the World 2010' https://freedomhouse.org/sites/default/files/2020-03/FIW_2010_Complete_Book_Scan.pdf (last accessed 1 February 2021).

39 See Freedom House, 'Freedom in the World Report 2020' https://bit.ly/2OiFT3q (last accessed 1 February 2021).

40 *Ibid*. p 22. It is also significant that Freedom House notes that only seven countries in sub-Saharan Africa are now in the free category – the lowest figure since 1991. Furthermore, only 9 per cent of people in the region now live in free countries, compared with 11 per cent in 2018. See further, Freedom House, 'Democratic Trends in Africa in Four Charts' https://bit.ly/3meBbjM (last accessed 1 February 2021).

41 See International Idea, 'Chapter 2: The State of Democracy in Africa and the Middle East' https://bit.ly/3fxbqJX (last accessed 1 February 2021). This is also found in International IDEA, 'The Global State of Democracy 2019: Addressing the Ills, Reviving the Promise' www.idea.int/our-work/what-we-do/global-state-democracy (last accessed 1 February 2021).

42 See International Idea, 'Chapter 2: The State of Democracy in Africa and the Middle East' https://bit.ly/3fxbqJX (last accessed 1 February 2021).

43 See Transparency International, 'Corruption Perception Index 2020' www.transparency .org/en/cpi/2020/index/nzl (last accessed 1 February 2021).

44 For example, in the 2020 CPI, these were the Seychelles (66), Botswana (60), Rwanda (54), Mauritius (53), and Namibia (51). In the 2015 CPI, these were Botswana (63), Cabo Verde (55), the Seychelles (55), Rwanda (54), Mauritius (53) and Namibia (53).

45 In 2020, these were Libya (17), Equatorial Guinea (16), Sudan (16), Somalia (12), and South Sudan (12). See Transparency International, 'Corruption Perception Index 2020' (n 43). In the Corruption Perception Index of 2015, these were Libya (16), Angola (15), South Sudan (15), Sudan (12), and Somalia (8). See Transparency International, 'Corruption Perception Index 2015' www.transparency.org/en/cpi/2015/index/nzl (last accessed 1 February 2021). In the Corruption Perception Index of 2010, these were Equatorial Guinea (19), Burundi (18), Chad (17), Sudan (16), and Somalia (11). See Transparency International, 'Corruption Perception Index 2010' www.transparency .org/en/cpi/2010 (last accessed 1 February 2021).

46 See JG Lambsdorff, 'TI Corruption Perception Index 1996' www.transparency.org/ files/content/tool/1996_CPI_EN.pdf (last accessed 1 February 2021).

47 The eight factors are constraints on government powers; absence of corruption; open government; order and security; regulatory enforcement; civil justice; and criminal justice.

48 See World Justice Project, 'WJP Rule of Law Index 2020' https://worldjusticeproject .org/our-work/research-and-data/wjp-rule-law-index-2020 (last accessed 1 February 2021).

49 See generally World Justice Project, 'World Justice Project Rule of Law Index 2020' https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020 -Online_0.pdf (last accessed 1 February 2021).

50 See L Diamond, 'Facing Up to the Democratic Recession', 26(1) *Journal of Democracy* (2015), pp 141–155.

51 See International Institute for Democracy and Electoral Assistance (International IDEA), 'Geographic Definition of Regions in the Global State of Democracy' Background Paper, www.idea.int/gsod-2017/files/IDEA-GSOD-2017-BACKGROUND -PAPER-REGIONS.pdf (last accessed 1 February 2021).

52 See RS Foa and Y Mounk, 'The Democratic Disconnect', 28(1) *Journal of Democracy* (2017), pp 5–15; Y Mounk, *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It*, Cambridge, MA, Harvard University Press (2018).

53 See A Lührmann and SI Lindberg, 'A Third Wave of Autocratization is Here: What is New About It?' 26(5) *Democratization* (2019), pp 1095–1113; A Cassamo and L Tomini, *Autocratization in Post-Cold War Political Regimes*, London, Palgrave (2019).

54 See International IDEA, 'The Global State of Democracy 2019: Addressing the Ills, Reviving the Promise' www.idea.int/sites/default/files/publications/the-global-state-of-democracy-2019 .pdf (last accessed 1 February 2021).

55 Based on the findings of the Perception of Electoral Integrity project, Pippa Norris is able to show that electoral processes in sub-Saharan countries are almost identically distributed among three categories: failed elections (29 per cent), flawed elections (27 per cent), and acceptable elections (27 per cent). See P Norris, *Strengthening Electoral Integrity*, Cambridge, Cambridge University Press (2017).

56 See International IDEA, 'The Global State of Democracy 2019: Addressing the Ills, Reviving the Promise', www.idea.int/sites/default/files/publications/the-global-state-of-democracy-2019.pdf (last accessed 1 February 2021).

57 See 'The Electoral Integrity Report' www.electoralintegrityproject.com/ (last accessed 1 February 2021).

58 M Gromping and FM i Coma, 'Electoral Integrity in Africa' https://bit.ly/31E8P9a (last accessed 1 February 2021). It should be noted that the PEI index summary scale ranges from 0 to 100.

59 See P Norris and M Gromping, 'Electoral Integrity Worldwide' https://bit.ly/3fxsGih (last accessed 1 February 2021).

60 See International IDEA, 'The Global State of Democracy 2019: Addressing the Ills, Reviving the Promise' www.idea.int/sites/default/files/publications/the-global-state-of-democracy-2019.pdf (last accessed 1 February 2021), p 76. In fact, 21 of the 30 most fragile countries in the world are found in Africa. See further, Fund for Peace, 'Fragile States Index: Annual Report 2019' https://bit.ly/3rLutmi (last accessed 1 February 2021).

61 See 'SA's Voter Turnout "Lowest Ever"' www.thesouthafrican.com/news/south-africa-elections-2019-latest-voter-turnout-figure/ (last accessed 1 February 2021).

62 See LP Ramalepe, 'Young Voters Are Turning Their Backs on South Africa's Elections' https://bloom.bg/31Djcdb (last accessed 1 February 2021).

63 See Freedom House, 'About Freedom in the World' https://freedomhouse.org/report-types/freedom-world (last accessed 1 February 2021). The African countries with the status of electoral democracy in 2019 were Benin, Botswana, Burkina Faso, Cabo Verde, Ghana, Lesotho, Liberia, Madagascar, Malawi, Mauritius, Namibia, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, and Tunisia.

64 In addition to the countries listed in the 2019 survey, the following were classified as electoral democracies: Burundi, Comoros, Guinea Bissau, Mali, Mozambique, Niger, and Zambia in 2009; Comoros, Mali, Tanzania, and Zambia in 2011; Comoros, Mali, Niger, Tanzania, and Zambia in 2012; Comoros, Libya, Niger, and Zambia in 2013; Comoros, Kenya, Libya, Niger, Tanzania, and Zambia in 2014; Kenya, Comoros, Niger, Tanzania, and Zambia in 2015; Côte d'Ivoire, Comoros, Niger, Nigeria, Tanzania, and Zambia in 2016; Côte d'Ivoire, Kenya, Nigeria, and Tanzania in 2017; and Comoros and Tanzania in 2018.

65 This, it should be noted, is in contrast to 1975, when 41 countries were classified as non-democracies, three as democracies, and one as a hybrid regime. See further, See International IDEA, 'The Global State of Democracy 2019: Addressing the Ills, Reviving the Promise', p 83, https://bit.ly/3rMcoo1 (last accessed 1 February 2021).

66 The only other African country with a similar experience is Mauritius. See generally, 'Africa's Best-Kept Secret: Botswana, "A Shining Liberal Democracy"', ec.europa.eu/development/body/publications/courier/courier198/en/en_054.pdf (last accessed 1 February 2021); 'Democracy in Africa: A Good Example' www.economist.com/node/14699869 (last accessed 1 November 2018); J Perlez, 'Is Botswana a Model for Democracies in Africa?' https://nyti.ms/2PrNT2n (last accessed 1 February 2021).

67 See CM Fombad, 'Curbing Corruption in Africa: Some Lessons from Botswana's Experience', 160 *International Social Science Journal* (1999), pp 241–254.

68 See P Schraeder, 'Understanding the "Third Wave" of Democratization in Africa', 57(4) *Journal of Politics* (1995), pp 1160–1168.

69 For the motivation behind the prize, see Mo Ibrahim Foundation, 'Ibrahim Prize for Achievement in African Leadership' https://mo.ibrahim.foundation/prize (last accessed 1 February 2021).

70 The full list of winners includes Nelson Mandela of South Africa (2007), Joaquim Chissano of Mozambique (2007), Festus Mogae of Botswana (2008), Pedro De Veruna Pires of Cabo Verde (2011), Hifikepunye Pohamba of Namibia (2014), Ellen Johnson Sirleaf of Sierra Leone (2017), and Mahamadou Issoufou of Niger (2020).

71 Seven of the ten longest-serving presidents in the world are in Africa. These are Teodoro Obiang of Equatorial Guinea, 42 years; Paul Biya of Cameroon, 39 years; Dennis Sasso Nguesso of Congo Republic, 37 years; Yoweri Museveni of Uganda, 35 years; Idriss Deby of Chad, 31 years; and Isaias Afwerki of Eritrea, 28 years. To this list of presidential dinosaurs, one could add Ismail Omar Guelleh of Djibouti, 22 years.

72 Recent examples of opposition leaders winning the presidency were Muhammadu Buhari in Nigeria in 2015, Adama Barrow in The Gambia in 2016, Evaristo Varvalho in Sao Tome in 2016, Patrice Talon in Benin in 2016, Julius Maada Bio in Sierra Leone in 2018, Felix Tshisekedi in DR Congo in 2018, Wavel Ramkalawan in the Seychelles in 2020, Umaro Mokhtar Sissoco Embalo in Guniea Bissau in 2020, Lazarus Chakwera in Malawi in 2020, and Hakainde Hichilema in Zambia in 2021.

73 See Fombad (n 18).

74 See J Siegle and C Cook, 'Circumvention of Term Limits Weakens Governance in Africa' https://africacenter.org/spotlight/circumvention-of-term-limits-weakens-governance-in-africa/ (last accessed 1 February 2021).

75 See, for example, Gabon (2003), Cameroon (2008), and Djibouti (2010).

76 See, for example, Congo Republic (2015), Rwanda (2015), South Sudan (2015), Côte d'Ivoire (2016), Burundi (2018), Chad (2018), Egypt (2019), Togo (2019), Guinea (2020), and Uganda (2017).

77 This is certainly the case in Eritrea, Somalia, and the Gambia. However, some countries do not have term limits because they have a parliamentary system, such as Botswana, Ethiopia, Mauritius, and South Africa. This is also the case in Morocco and Eswatini, where the monarch is head of state.

78 See International Peace Institute, 'Elections in Africa: Challenges and Opportunities' www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_elections_in_africa_ _2_.pdf (last accessed 1 February 2021).

79 See generally, CM Fombad (ed), *The Implementation of Modern African Constitutions: Challenges and Prospects,* Pretoria, Pretoria University Law Press (2016), particularly chapter 2.

80 For example, articles 46–52, which provide for a Constitutional Council, have hardly been implemented effectively and the Supreme Court under article 67(4) continues to discharge its functions. The senate provided for in articles 20–24 was established only in 2013 – that is, merely 17 years later – and some degree of limited decentralisation provided for in part X was partially implemented between 2004 and 2008.

81 For example, although articles 157–179 of the 2006 Constitution of the DRC Congo elaborately provide for a constitutional court, the members of this court were appointed only in 2014 and the court itself was formally inaugurated only in March 2015 (almost ten years later). Another example is the Togolese Constitution of 1992 (as subsequently amended). A 2002 amendment provided for a senate in articles 51–57, but this institution has never been established. Similarly, its articles 141–142, which provide for decentralisation, have been implemented very slowly and ineffectively due to lack of political will. It was only in 2007 that Law No. 2007-011 was adopted to recognise the principle of decentralisation.

82 See articles 59, 67, 88–90, 127, 171–173, 215, 233–237, and 246–254 of the Kenyan 2010 Constitution, sections 181–194 of the South African Constitution of 1996, and chapters 12 and 13, sections 232–263 of the Zimbabwean Constitution of 2013.

83   For example, on 14 February 2018, Jacob Zuma reluctantly resigned as President of South Africa after being recalled from office the previous day by the national executive committee of the ruling African National Congress (ANC). His resignation had been precipitated by a report by the Public Protector which showed that state funds were used illegally to renovate his private home; the report was followed by a Constitutional Court ruling that he had to be held accountable. See Public Protector, 'Secure in Comfort' https://bit.ly/3fCcXOW (last accessed 1 February 2021). See also *Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another* (771/2016, 1170/2016) [2017] ZASCA 146; [2017] 4 All SA 726 (SCA); 2018 (1) SA 200 (SCA); 2018 (1) SACR 123 (SCA) (13 October 2017).

84   For a discussion of these commissions, particularly the South African experience, see CM Fombad, 'The Diffusion of South African–Style Institutions? A Study of Comparative Constitutionalism' in R Dixon and T Roux (eds), *Constitutional Triumphs, Constitutional Disappointments: A Critical Assessment of the 1996 South African Constitution's Local and International Influence*, Cambridge, Cambridge University Press (2018), pp 359–387.

85   See generally C Fombad and N Steytler (eds), *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Strategies.* Oxford, OUP (2020).

86   See K Fröberg and A Waris, *Bringing the Billions Back: How Africa and Europe Can End Illicit Capital Flight* (Forum Syd förlag 2011) www.medicusmundi.org/playground /rome2013/bringing-the-billions-back.-attiya-waris.pdf (last accessed 1 February 2021).

87   See R Guest, *The Shackled Continent: Africa's Past, Present and Future*, London, Macmillan (2005).

88   See 'State of capture: Report on an investigation into alleged improper and unethical conduct by the President and other functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of ministers and directors of state-owned enterprises resulting improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses', Report No. 16 of 2016/17, www.da.org.za/wp-content/uploads/2016/11/State-of-Capture-14 -October-2016.pdf (last accessed 1 February 2021).

89   See further CM Fombad, 'Corruption and the Crisis of Constitutionalism in Africa' in C Fombad and N Steytler (eds), *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Strategies,* Oxford, Oxford University Press (2020), pp 15–65.

90   There are credible reports that the French and Chinese have been trying to direct the programme of the AU from behind the scenes. See M Fidler, 'African Union Bugged by China: Cyber Espionage as Evidence of Strategic Shifts' https://on.cfr.org/2PKLgZr (last accessed 1 February 2021); PSC Report, 'It's Shakespeare vs Molière in the African Union' https://bit.ly/3ulajkV (last accessed 1 February 2021).

91   See J Donnett, 'Mitterand: African Nations Must Move toward Democracy' https://bit .ly/3sPl1ja (last accessed 1 February 2021).

92   See F-X Verschave, *La Françafrique, le plus long scandale de la République*, Paris, Stock (1998).

93   See Freedom House (n 63) and Mo Ibrahim Foundation, 'Ibrahim Index of African Governance' https://mo.ibrahim.foundation/iiag/ (last accessed 1 February 2021).

94   The extent to which Western companies help African leaders boost their electoral prospects was highlighted by the sinister role of Cambridge Analytica in Kenya's 2017 election. Equally concerning was the revelation that another British multinational company had waged a campaign to stir up racial tension in South Africa and deflect attention from the poor performance of the ruling ANC and boost the image of the latter's corrupt and unpopular president at the time, Jacob Zuma. See 'Bell Pottinger to Face the Music for Exploiting Racial Tension in SA' *TimesLive* (17 August 2017), https://bit.ly /2R4e149 (last accessed 1 February 2021). It is not only Western companies that are so involved, however. The Chinese multinational company Huawei, using spyware manu-

factured by an Israeli company, has been helping countries such as Uganda and Zambia to spy on opposition leaders. This technology was used to hack into a WhatsApp group in Uganda led by opposition parliamentarian Bobi Wine and resulted in his arrest and that of dozens of his supporters. See *Legalbrief Today*, Issue No. 4762 of Friday 16 August 2019, https://bit.ly/31FNVGx (last accessed 1 February 2021).

95 See Y Sun, 'Political Party Training: China's Ideological Push in Africa?' https://brook .gs/3sLaVQp (last accessed 1 February 2021). In recent years, the ruling Jubilee Party in Kenya has had engagements with the Communist Party of China in which the lat- ter trains the former in leadership. Kenyan party officials have visited China 'to learn', with the Chinese party providing training programmes for them. See S Mkawale, 'China Now Trains Jubilee Officials in Counties on Leadership, Strengthening Its Party' *Standard Media* (18 July 2018), https://bit.ly/39AWWVz (last accessed 1 February 2021); 'Communist Party of China Shares Tips with Kenya's Jubilee Party' *China Daily* (15 July 2018), https://bit.ly/2PUc6OH (last accessed 1 February 2021).

96 See W Gumede, 'How China Is Changing Democracy in Africa' https://bit.ly /2PwL5RD (last accessed 1 February 2021).

97 See further CM Fombad, 'Reversing the Surging Tide towards Authoritarian Democracy in Africa' in CM Fombad and N Steytler (eds), *Democracy, Elections and Constitutionalism in Africa*, New York, Oxford University Press (2021), pp 463–517.

98 See F Nabourema, 'Dictators Love Lockdown' https://bit.ly/3wfB4ZP (last accessed 1 September 2020).

99 See The Economist, 'Autocrats See Opportunity in Disaster' https://econ.st/3sMvSu3 (last accessed 1 September 2020).

100 See G Olukya, 'Uganda's Presidential Elections Mired in Controversy' https://bit.ly /3uhlRpm (last accessed 1 February 2021). The government used Covid-19 restric- tions, especially social distancing measures, as a pretext to prevent the opposition from campaigning; meanwhile, the incumbent president held large rallies with no regard to these restrictions.

101 See The Economist, 'The World after Covid-19: Bill Gates on How to Fight Future Pandemics' https://econ.st/3fCf4lU (last accessed 1 February 2021); emphasis added.

102 See 'Remarks by the President to the Ghanaian Parliament' https://obamawhitehouse .archives.gov/the-press-office/remarks-president-ghanaian-parliament (last accessed 1 February 2021).

103 See 'African Governance: Challenges and Their Implications' www.hoover.org/ research/african-governance-challenges-and-their-implications (last accessed 1 February 2021).

104 See LP Ramalepe, 'Young Voters Are Turning Their Backs on South Africa's Elections' https://bloom.bg/3dIcIQ3 (accessed February 2021).

105 See C Fomunyoh, 'Facing Democratic Backsliding in Africa and Reversing the Trend' https://bit.ly/3fBSfPs (last accessed 1 February 2021).

106 For example, T Goodfellow and PI Mukwaya, 'Museveni Has Failed to Win over Young, Urban Ugandans: Why He's Running Out of Options' https://bit.ly/3mcn7XQ (last accessed 1 February 2021), point out that although Yoweri Musoveni rigged his way back to a narrow victory in the January presidential elections in Uganda, his 'popularity has now hit rock bottom in the country's urban areas, particularly among young people'. For example, the opposition won all ten parliamentary seats in the capital city, Kampala.

107 See articles 81 and 100 of the 2010 Constitution.

108 See sections 120 and 124(b) of the 2013 Constitution.

109 See articles 76 and 82 of the 2003 Constitution.

110 See article 81(b) of the Kenyan Constitution of 2010.

111 See W Owino, 'Botswana's President Masisi Fooled His Master Ian Khama' https:// bit.ly/3cLLatL (last accessed 1 February 2021); J Cotterill, 'Botswana's Ex-President Hits Out at Successor Ahead of Election' https://on.ft.com/3sNaMfb (last accessed 1 February 2021).

112 See K Good and I Taylor, 'Botswana: A Minimalist Democracy', 15(4) *Democratization* (2008), pp 750–765; 'Botswana: Beyond the "Miracle"' democracyinafrica.org/botswana–beyond–miracle/ (last accessed 1 February 2021).

113 The two decisive reports by the Public Protector are (i) 'Secure in comfort: Report on an investigation into allegations and implementation of unethical conduct relating to the installation and implementation of security measures by the Department of Public Works at and in respect of the private residence of President Jacob Zuma at Nkandla in the KwaZulu-Natal Province' https://bit.ly/3uh1LeN (last accessed 1 February 2021); (ii) 'State of capture. Report on an investigation into alleged improper and unethical conduct by the President and other functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of ministers and directors of state-owned enterprises resulting improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses' Report No. 16 of 2016/17, www.da.org.za/wp-content/uploads/2016/11/State-of-Capture-14 –October-2016.pdf (last accessed 1 February 2021).

114 However, as chairperson of the AU for 2020, he did little to advance solutions to the political crises in countries such as Cameroon, Uganda, and Zimbabwe.

115 See R Lobaken, 'African Solutions to African Problems: A Viable Solution towards a United, Prosperous and Peaceful Africa?' https://bit.ly/3ueX3OD (last accessed 1 February 2021); C Ero, 'The Problems with "African Solutions"' www.crisisgroup.org /africa/problems-african-solutions (last accessed 1 February 2021).

116 See David Everett (ed), *Governance and the Postcolony: Views from Africa*, Johannesburg, Wits University Press (2019).

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