

Consolidating democracy in Africa:

A survey of citizens' perceptions of democratic governance in select countries in east, west and southern Africa

January 2021



Contents

Acronyms and Abbreviations	5
Executive summary	6
1. Introduction and background.....	10
2. Methodology	14
2.1. Legal analysis	14
2.2. Community Score Card.....	14
2.3. Afrobarometer	15
2.4. Limitations	16
3. Findings.....	18
3.1. Free and fair elections	18
3.2. Promotion of human rights including women's rights and the rights of young people.....	25
3.3. Democracy and rule of law.....	34
3.4. Governance/local government and enhancing provision of gender-responsive public services.....	39
4. Domesticating the Charter: the weak link?	43
5. African Governance Architecture (AGA) Platform and ACDEG Implementation	45
6. Conclusions.....	47
6.1. Recommendations	48

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Acronyms and Abbreviations

AADK	ActionAid Denmark
ACDEG	African Charter on Democracy, Elections and Governance (herein referred to as 'The Charter')
AGA	African Governance Architecture
APSA	African Peace Security Architecture
AU	African Union
AUC	African Union Commission
AWW	Africa We Want (project)
CSO	Civil society organisation
EACSO	East Africa Civil Society Forum
EMBs	Electoral management bodies
INEC	Independent National Electoral Commission (Nigeria)
JSC	Judicial Service Commission (Zimbabwe)
MFWA	Media Foundation of West Africa
MPOI	Mass Public Opinion Institute
NDP	National development plan
NGO	Non-governmental organisation
OAU	Organisation of African Unity
PRC	Permanent Representatives Committee (AU)
PSC	Peace Security Council (AU)
RECs	Regional Economic Communities
SADC-CNGO	Southern African Development Community of Council of Non-Governmental Organisations
SDG	Sustainable Development Goal
WACSO	West Africa Civil Society Organisations Forum
WHRDs	Women human rights defenders

Executive summary

Africa has made modest strides in consolidating democracy. The last decade has seen fewer military coups, although the continent has not been completely immune as was recently experienced in Zimbabwe and Mali. Today, most African Union member states hold regular elections. While the credibility and legitimacy of those electoral processes is questionable, a number of countries such as the Democratic Republic of Congo (DRC) have now experienced peaceful political transitions after previous decades of turmoil. However, there are many reports of killings, arbitrary arrests, beatings and other actions intended to intimidate voters during election campaigns which have been reported in different countries, for example Uganda, Zambia and Zimbabwe.

At continental level, the African Union (AU) has adopted norms and standards, notably the African Charter on Democracy, Elections and Governance (ACDEG), aimed at strengthening democratic governance across the continent. Regional Economic Communities (RECs) have equally risen to the occasion with mixed results. Some RECs, such as ECOWAS (Economic Community of West African States), are doing better than others in seeking to uphold and safeguard democratic ideals adopted by their member states through their robust regional courts of justice and the active intervention in some member states by the peace and security architectures. The AU's African Governance Architecture (AGA) adopted in 2010 sought to reverse democratic decline in some of the member states by, among actions, shifting focus from setting norms to implementing norms, tracking and providing technical support to member states. Adopted at the cusp of the 50th anniversary of the Organisation of African Unity (OAU), the AGA sought to equally accord primacy to citizen engagement and participation in the Union's work on strengthening democratic governance in Africa. In terms of upholding the rights of women in such processes, including equal participation, the AGA is complemented by Article 9 of the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

The ACDEG, herein referred to as the Charter, is considered the most comprehensive consolidated legal instrument adopted by AU member states on democracy consolidation. Currently 46 of the 55 AU member states have signed the Charter, with 34 having deposited their instruments of ratification. ACDEG has been the fulcrum for various policy and institutional frameworks and initiatives at continental, regional and national levels, given its broad, comprehensive and all-encompassing nature. It has become the benchmark upon which Africa's democratic governance progress is assessed. It affirms the legal and moral pre-eminence and importance of democratic governance as key to achieving the AU's goals of an integrated, prosperous and peaceful Africa.

Against this background, and in pursuit of the realisation of democracy and good governance on the continent, a consortium of civil society organisations (CSO)s, under the auspices of the Africa We Want (AWW) project, came together to mobilise civil society in Africa to advocate for the signing, ratification and implementation of ACDEG. These organisations are East African Civil Society Forum (EACSOF), SADC Council of NGOs (SADC-CNGO), West African Civil Society Forum (WACSOF), ActionAid Denmark along with ActionAid country offices in Ghana, Nigeria, Sierra Leone, Mozambique, Uganda, Zambia and Zimbabwe, the Media Foundation of West Africa and the Mass Public Opinion Institute (MPOI). The project involves advocacy and training of young people, media and civil society on ACDEG provisions, with the objective of building a critical mass of activists who would be able to mobilise various constituencies for the signing, ratification and implementation of the Charter. The project has also compiled citizens' opinions and views on the ACDEG, as presented in this report, as evidence and a basis for mobilising civil society actors to promote and popularise the Charter, as well as to demand that AU member states uphold the principles of democracy and good governance and to offer support in that endeavour.

Findings

With respect to **holding of regular free and fair elections**, the legal analysis in the eight countries of focus show that attempts have been made to ensure free, fair and well-organised elections through national laws. However, citizens in the focus countries expressed serious concerns about the right to vote for whomever they want. In Zambia, Zimbabwe, Mozambique and Sierra Leone, citizens surveyed expressed fear of election-related violence, vote buying, fraud, intimidation, threats and exclusion from the voting process. In Mozambique, there were many reported incidences of vote buying and threats made to those who belong to particular political parties.

In terms of **promotion of human rights**, the legal analysis in the eight countries surveyed for this report show that legal instruments have been enacted to support freedom of citizens to associate with various institutions in civic and political matters within the parameters of the constitution and legislative instruments. Citizens, according to the law, are free to join any political institution, interest group, civic engagement group, trade union etc.

In practice, however, citizens in most of the eight focus countries reported that their exercise of freedom of association is a challenge, for instance where citizens are coerced to join certain political parties. These incidents were reported, especially with respect to geographical location, ethnic affiliation or religious association. The challenges are associated with and exacerbated by the shrinking political spaces reported in some of the countries, for example Nigeria, Zambia and Zimbabwe, as evidenced by reports of citizens' arrests and/or harassment. These arrests and/or harassment are facilitated by draconian pieces of legislation such as Public Order Acts, Public Security Acts and criminal laws, among other legal instruments. Arrests and harassment became worse during the Covid-19 lockdowns. Media reports observed human rights abuses in Sierra Leone, Zambia and Zimbabwe during lockdowns, where people were arrested for reporting corruption regarding donated equipment and kits to fight Covid-19.

With regard to democratic institutions, the findings show that all the focus countries have made efforts to ensure the establishment of institutions that support democratic governance – for example, electoral management bodies (EMBs), human rights commissions, and anticorruption commissions. This is a positive development in the process of democratisation and development. However, some countries, while they have provided for these institutions in their legal frameworks, have not operationalised their existence. While others have operationalised the establishment of these institutions, there have been challenges with regard to their independence and operations, as is the case in Tanzania, Zimbabwe and Uganda where the findings note that government interference is rampant. For example, intimidation of the anti-corruption commissions to stop them pursuing corruption cases involving senior government or ruling party officials has been reported. Arbitrary arrests and detention of people without trial for more than six months, as is the case in Tanzania, also shows that the judiciary and law enforcement agencies are compromised.

On **decentralisation and devolution of powers to local authorities**, Article 34 of ACDEG places an obligation on states parties to decentralise power to democratically elected local authorities as provided for under national laws. Adherence to this obligation is fundamental to democracy and good governance within the states parties because it will open opportunities for citizens to be involved in decision-making processes at local level.

The findings in the eight focus countries show that attempts have been made to decentralise governance through constitutions in some countries, for example in Ghana, Sierra Leone and Zimbabwe. However, the full operationalisation of this is yet to be realised in some countries, for example Zambia as power is still centralised within the central government. All the above are fundamental provisions of the ACDEG.

Recommendations

It is apparent from the findings that although 46 AU member states have signed the Charter, of which 34 have deposited their instruments of ratification, there is still a long way to go in implementing the provisions of the Charter as shown in the findings above. The Charter makes specific provisions directed at member states, Regional Economic Communities (RECs) and the AU Commission (AUC) to ensure its full implementation. At national level, the state is obliged to apply the objectives of the Charter by making efforts to guarantee the conformity of its legislation with the Charter, translating the Charter's relevant clauses into domestic law, ensuring dissemination of the Charter at national level, and integrating the Charter's objectives and principles into national policies and strategies. At regional level, RECs are urged to encourage AU member states to become parties to the charter, and in so doing to designate focal points for coordination, monitoring and evaluation of the implementation of the commitments and principles enshrined in the Charter. RECs are further urged to ensure participation of stakeholders, particularly civil society organisations, in the process. At continental level, the AUC is mandated to support the implementation of the ACDEG including ensuring that various stakeholders are facilitated to achieve this objective. It is mandated to develop benchmarks for implementation of the commitments and principles of the ACDEG and evaluate compliance by the state parties.

In light of the above, this report recommends that all stakeholders consider taking the following actions to implement the provisions of the Charter and accelerate this process:

The African Union Commission should:

- ***Develop an action plan/guideline to support member states in implementing the Charter (including bi-annual reporting).***
Develop clear guidelines and benchmarks for member states bi-annual reporting on the implementation with reference to the Charters Article 49. The guidelines must take into consideration mainstreaming of the ACDEG into national development plans (NDPs) including on reporting and take into consideration other regional, continental and global instruments.
- ***Provide technical capacity to national monitoring and accountability mechanisms.***
This includes supporting the harmonisation of legal and regulatory policies at national level that enable implementation of the ACDEG and other regional and continental instruments.
- ***Strengthen the involvement of civil society in popularising the Charter.*** This includes ensuring effective participation by, and consultation with, civil society including women's rights organisations and youth groups, in activities aimed at implementing the provisions of the Charter at national, regional and continental levels.

RECs should:

- ***Develop regional monitoring reports and external assessments tools of compliance*** by member states. This also includes developing a harmonised reporting framework that encourages peer learning.

AU member states should:

- **ratify and implement all human rights conventions and provisions of the ACDEG including on women's rights and the rights of young people**
- **Appoint national focal points at the Ministry of Foreign Affairs and/or Ministry of Justice**, which will be responsible for the full compliance with and implementation of the Charter.
- **Submit national implementation reports every two years** in line with Article 49 of the Charter.

- **Form partnerships with civil society to engage stakeholders at local, district and national levels for the popularisation of the Charter.** This includes implementing decentralised outreach programmes including awareness raising on the regional and continental agenda and instruments using existing implementing structures facilitates uptake at various levels.
- **Increase legal, institutional, financial support and human capacity to key national institutions responsible for promoting democracy and good governance.** This must also include member states establishing sector-wide approaches to planning and budgeting to ensure that all regional and continental priorities are mainstreamed into the national plans and are adequately budgeted for.

Civil society organisations should:

- **Popularise the Charter and involve citizens in public campaigning** on national obligations and commitment for domestication and implementation of the Charter.
- **Produce shadow CSO reports based on the citizens' report methodology** and gather evidence to support national lobby efforts.
- **Develop regular evidence-based public reporting on the performance** of political and governance institutions responsible for the implementation of the Charter.



1. Introduction and background

The African Charter on Democracy, Elections and Governance (ACDEG) was adopted on 30 January 2007 and came into force on 15 February 2012¹. As of October 2020, 34 African Union (AU) member states were parties to the Charter. The Charter aims at consolidating the commitment of AU member states to promote and deepen democratic governance and human rights across the continent. It is inspired by several decisions, declarations, resolutions and normative instruments of the Organisation of the African Unity (OAU) and its successor, the AU. These include, inter alia, the 1981 African Charter on Human and Peoples' Rights, the 1999 Algiers Decision on Unconstitutional Changes of Government in Africa, the 2000 Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, the 2002 OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, and the 2002 Constitutive Act of the AU.²

In adopting the ACDEG, AU member states sought to strengthen democratic governance by, among other measures: holding regular, free, fair and transparent elections; promoting respect for human rights; rejecting unconstitutional changes of government; and establishing strong institutions that support democracy as depicted in *Figure 1*. Furthermore, the ACDEG also encompasses the Peace and Security Council of the AU to act positively in support of the provisions of the Charter. AU member states also receive support and technical assistance, where required, from the AU Commission as mandated by the Charter through the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund.

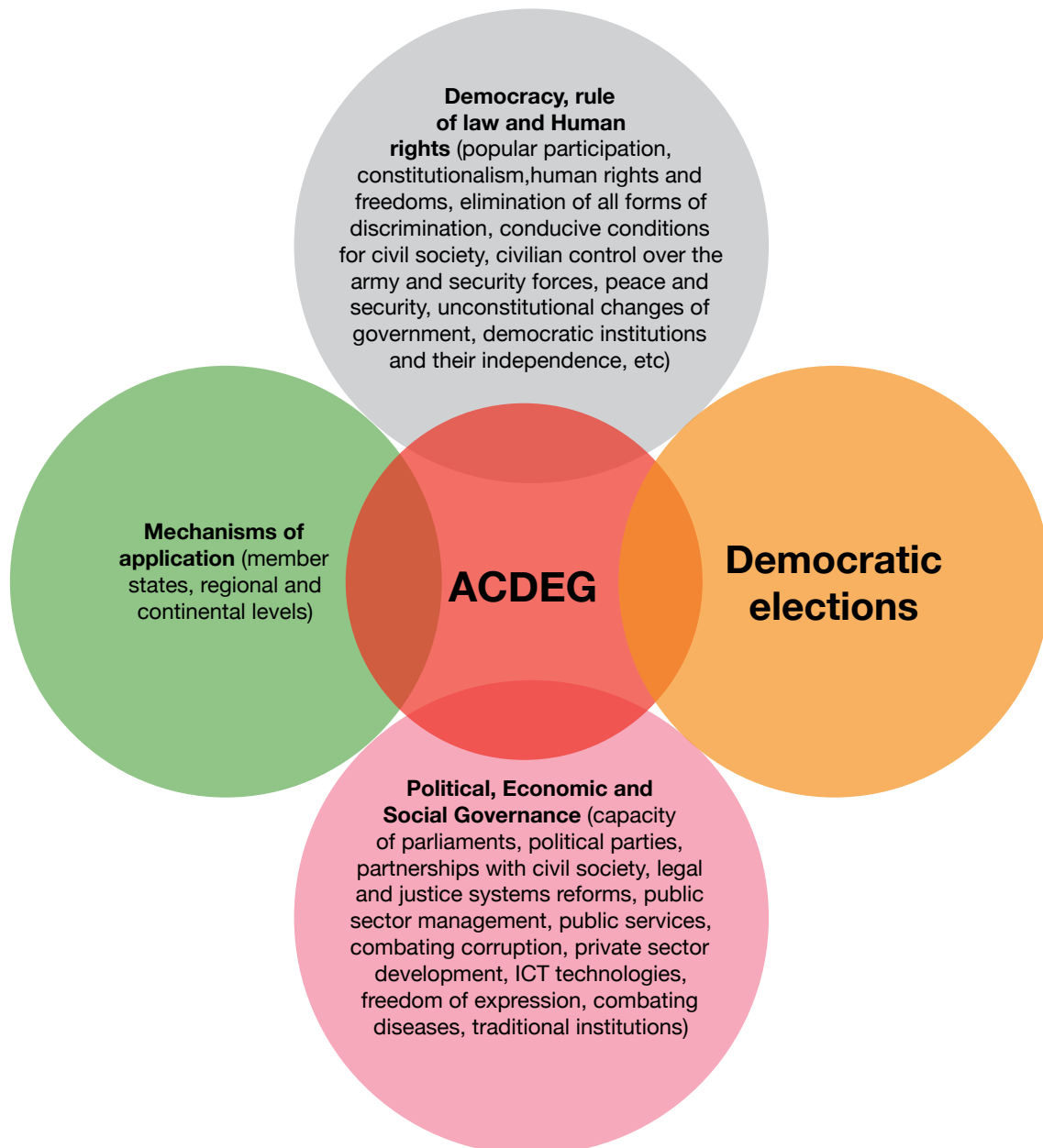
The Charter calls on state parties that have ratified the Charter to report every two years on the measures they have taken to comply with their obligations. Eight years since coming into force in 2012, only one state party – the Republic of Togo – has thus far submitted its initial State Report on the implementation of the principles and commitments of the Charter. The implementation of the ACDEG is envisaged to take place at national, regional and continental levels, leveraging normative instruments, policies and structures at those levels as stipulated under ACDEG Article 44.

At national level, the state is obliged to apply the objectives of the Charter by making efforts to guarantee the conformity of its legislations with the Charter, translating the Charter's relevant clauses into domestic law, ensuring dissemination of the Charter at national level, and integrating its objectives and principles into national policies and strategies. At regional level, Regional Economic Communities (RECs) are urged to encourage AU member states to become parties to the Charter, and in so doing to designate focal points for coordination, monitoring and evaluation of the implementation of the commitments and principles enshrined in the Charter. RECs are further urged to ensure participation of stakeholders, particularly civil society organisations in the process. At continental level, the AUC is mandated to ensure implementation of the ACDEG and support various stakeholders to ensure the achievement of this objective. It is also mandated to develop benchmarks for the implementation of ACDEG commitments and principles and to evaluate compliance by state parties.

The ACDEG is a fulcrum for various policy and institutional frameworks and initiatives at continental, regional and national levels, given its broad, comprehensive and all-encompassing nature. It is the most comprehensive consolidated benchmark upon which Africa's democratic governance progress among AU member states is assessed. It affirms the importance of democratic governance as key to achieving the continental goal of an integrated, prosperous and peaceful Africa.

The adoption of the Charter was aimed at ensuring that member states promoted a culture of democracy and good governance. However, there are still democratic governance deficits related to rising impunity, including, among others: increasing corruption, human rights abuses, and constitutional manipulations to prolong tenure by those in power; shrinking political and civic spaces; low participation of citizens in democratic governance processes; and refusal to accept election results. These deficits are exacerbated by the slow ratification and implementation of the ACDEG, thereby delaying the realisation of democratic and good governance practices across the continent.

Figure 1: Overview of the ACDEG



Against this background, and in pursuit of the realisation of democracy and good governance on the continent, a consortium of civil society organisations (CSOs), under the auspices of the Africa We Want (AWW) project, came together with the objective of building a critical mass of activists who could mobilise various civil society constituencies to advocate for the signing, ratification and implementation of the Charter. These organisations are: the East African Civil Society Forum (EACSO), SADC Council of NGOs (SADC-CNGO), West African Civil Society Organisations Forum (WACSOF), ActionAid Denmark (including ActionAid country offices in Ghana, Mozambique, Nigeria, Sierra Leone, Uganda, Zambia and Zimbabwe), the Media Foundation of West Africa and the Mass Public Opinion Institute (MPOI). The project involves advocacy and training of young people, media and civil society on ACDEG provisions. The project has also compiled citizens' opinions and views of the ACDEG, as evidence and basis for mobilising civil society actors to promote and popularise the Charter as well as demand and support AU member states to uphold the principles of democracy and good governance.

This report, therefore, is a synthesis of opinions and perceptions by citizens in selected African countries on how they view and rate the performance of their countries in upholding certain fundamental principles of democratic governance such as the holding of free and fair elections, establishment of institutions that promote democracy, the extent of freedom of association, freedom of assembly, media freedom, among others. These were gathered from eight countries that were the focus of the project: Tanzania, Uganda (east Africa), Ghana, Nigeria, Sierra Leone (west Africa) and Mozambique, Zambia and Zimbabwe (southern Africa). *Table 1* shows the status of signature and ratification by the respective countries.

Table 1 Status of signature and ratification (as at November 2020)³

No	Country	Date of Signature	Date of Ratification	Date Deposited
1	Ghana	15/01/2008	06/09/2010	19/10/2010
2	Mozambique	27/05/2010	24/04/2018	09/05/2018
3	Nigeria	02/07/2007	01/12/2011	09/01/2012
4	Sierra Leone	17/06/2008	17/02/2009	08/12/2009
5	Tanzania	-	-	-
6	Uganda	16/12/2008	-	-
7	Zambia	31/01/2010	31/05/2011	08/07/2011
8	Zimbabwe	21/03/2018	-	-

The report provides citizens and civil society actors with a chance to share their perception and reflections with member states and the AGA Platform on persistent threats, gaps and challenges to democratic governance as well as emerging opportunities to contribute to attainment of Agenda 2063, which is Africa's strategic framework that aims to deliver on its goal for inclusive and sustainable development. While the report sample only 8 of the 55 AU Member states, the lessons learnt and issues emerging are replicable in most of the other AU member states. The report thus makes overarching recommendations on how member states, AGA Platform Members, Civil Society and partners can improve democratic governance in Africa through implementation and tracking of compliance with the ACDEG. ⁴



2. Methodology

This report was produced using three participatory tools to assess the levels of implementation and compliance with the ACDEG in the eight countries of study: 1) a legal analysis; 2) Community Score Card; and 3) the Afrobarometer Index.⁵ The Afrobarometer data was important to consider given that it has been carrying out surveys on the continent on democracy and governance over a period of time and therefore has comparable data.

2.1. Legal analysis

Legal analysis was carried out by a group of experts in each of the eight focus countries. The groups comprised legal practitioners, members of civil society, academia, think tanks, human rights lawyers, researchers, journalists and trade union members. The experts undertook a review of relevant legal and policy frameworks at national level in each of the eight countries of focus and their link to the overall implementation of the ACDEG. The experts identified gaps and challenges in the laws and policies and proffered recommendations on how to address them. The experts also rated the different indicators (freedom of expression, freedom of association, conduct of elections without interference, participation in civic activities, equality, institutions supporting democracy, free and fair elections, and decentralisation and an enabling environment for civil society organisations) based on the nexus between the ACDEG provisions and those in domestic constitutions or other legal instruments.⁶

2.2. Community Score Card

In addition to the legal analysis, this report applied the Community Score Card⁷ approach to assess the performance of member states at local and regional levels in order to trigger conversations on the rights and responsibilities of citizens and governments, and the extent of implementation of the democratic principles enshrined in the ACDEG. The Community Score Card is a participatory, community-based approach that empowers people to make their own assessment of government services by scoring them.

The Community Score Card process was conducted in at least three districts in each of the eight focus countries (see *Table 2* on the total number of respondents in each country). A good gender balance was achieved in each country, although women were slightly less represented overall.

Community members were divided into focus groups of 10-15 people. Notably, the ethnic grouping, geographic spread and political party affiliation were taken into consideration to ensure that key constituents were not excluded. Participants were asked to give a score on the extent to which their governments meet their obligations, ranging from negative (low score) to positive (high score). The Community Score Card involved the prioritisation of relevant ACDEG provisions, namely freedom of expression, freedom of association, conduct of elections without interference, participation in civic activities, equality, institutions supporting democracy, quality elections, and decentralisation and an enabling environment for civil society organisations.

Table 2: Community Score Card respondents

Country	Males	Females	Total
Ghana	528	372	900
Mozambique	249	238	487
Nigeria	861	829	1690
Sierra Leone	955	955	1910
Tanzania	564	386	950
Uganda	273	223	496
Zambia	70	85	155
Zimbabwe	60	90	150
Total	2872	2747	6738

2.3. Afrobarometer

This report also gathered citizen perceptions based on the Afrobarometer index. Afrobarometer is a pan-African and non-partisan research network that carries out surveys on public attitudes to democracy, governance and economic issues in African states. The Afrobarometer conducts face-to-face interviews in local languages with a sample size between 1,200 to 2,400 adult interviewees per country, thus giving a maximum margin error of +/-3% at a 95% confidence level.⁸ Since 1999, Afrobarometer has carried out seven years of surveys in 37 countries, with the latest round conducted in 2017/18. This report is based on both surveys – round 6 from 2014/2015 and round 7 (2017/18) in the eight focus countries and captures the perspectives of citizens on the implementation of key ACDEG provisions. Data was disaggregated based on age, gender, education level and geography (urban-rural).

This report triangulates and synthesises the findings and observations from the legal analysis, citizen's perceptions and the Afrobarometer in the eight countries of study along eight indicators based on key provisions⁹ of the Charter on elections, governance and democracy. The report analyses common trends of convergence and, where possible, divergence to demonstrate the level of compliance with the ACDEG in the eight countries. It does not therefore reproduce specific country findings – which are available in specific country report annexes. While the Charter is broad and covers many different areas under social, economic and political governance, the focus of this report is on key areas identified during implementation of the project, which were noted as significantly inadequate in the majority of the countries, namely:

- holding of free and fair elections
- promotion of human rights (including freedom of expression, freedom of association, civic participation)
- democracy and rule of law (democratic institutions)
- local government and social services.

The report's overall findings are useful for collective reflection and learning and might inspire AU member states, the AU, RECs and African citizens, through civil society movements, to galvanise action to foster effective implementation of the ACDEG. The report acknowledges that while the findings and recommendations could motivate other countries that were not the focus of the study, not all the findings are replicable given that country contexts and issues of concern differ.

2.4. Limitations

Although Community Score Cards were used in every country to collect the opinions of communities, the samples did not cover all the districts within each focus country.

Despite this limitation, the gaps were complemented by reviewing more secondary information, particularly what is reported in the media, scholarly articles and papers as well as civil society reports on various issues related to democratic governance. In addition, the legal analysis not only reviewed existing legislation but also used other policy documents to measure the implementation of ACDEG.

Thus, it is believed that the limitation did not affect the overall findings in the different countries.

The findings are also not disaggregated by gender to understand how perceptions and experiences differ between women and men or by age. This is one of the limitations which could have improved our understanding of how different groups are affected.





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3. Findings

This section presents the findings on citizens' views on the following topics:

- holding of free and fair elections
- promotion of human rights (including freedom of expression, freedom of association, civic participation)
- democracy and rule of law (democratic institutions)
- local government and social services.

As noted above, these areas were identified as significantly lacking in the majority of the countries through the Afrobarometer surveys and Community Score Card.

3.1. Free and fair elections

Electoral processes are an important element of democracy consolidation. However, elections on their own do not necessarily guarantee the consolidation and entrenchment of democratic values and principles. While the Charter speaks of free and fair electoral processes, the AU has shifted the focus to legitimacy and credibility of elections. The shift has emerged out of the understanding and appreciation that free and fair elections are determined subjectively and the bar has crystallised to legitimacy and credibility of electoral processes. Not surprisingly, therefore, the AU electoral observation reports no longer speak of 'free and fair elections' but the 'legitimacy and credibility of the electoral processes'. The Charter's standard remains free and fair elections as measured on, among other factors, the independence of institutions at the service of elections including the electoral management bodies (EMBs), security agencies, parliaments and their ability to make the extant laws for elections, political parties etc.

Elections and political processes are critical to the quality of a state's governance. Elections can greatly enhance or set back a state's long-term democratic development.¹⁰ One of the rights at the core of an electoral system is the right to vote. It has been argued that voting is a foundational concept of democratic governance.¹¹ It is considered as such because through voting a government obtains the consent of the governed to rule. Thus, without an effective electoral system and exercise of the right to vote, no government can claim legitimacy to govern a state. Essentially, the transparency and fairness of the electoral system generally and the effectiveness in exercising the right to vote in particular, determines the quality of elections.

The ACDEG, as indicated in its preamble, seeks to entrench a political culture of change of power founded on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies. In Articles 17 to 22, the Charter lays out the obligations that state parties must adhere to in order to ensure that a political culture of change of government through regular, free, fair and transparent elections is entrenched. These obligations include: holding regular, transparent, free and fair elections; establishing national electoral bodies responsible for managing elections; ensuring timely resolution of electoral disputes; allowing all political parties access to state media during elections; ensuring a code of conduct for accepting or challenging electoral results through legal channels; asking the AUC to provide advisory services to strengthen electoral institutions; ensuring that AU electoral observer missions are impartial, transparent and made up of qualified African experts from parliaments, judiciary, civil society, academia, private sector, etc; and creating independent and impartial national electoral observer monitoring mechanisms.

Legal analysis

According to the legal analysis in the eight countries of focus, it is evident that attempts have been made to ensure freedom of elections and quality of elections through national laws. For example, in **Zambia**, Article 45(2) provides that the electoral processes and systems of administering elections should ensure that elections are free and fair¹². However, the Electoral Process Act No.35 of 2016 is silent with regard to assurance of conditions that guarantee free access to information, non-interference, freedom of movement and full cooperation with electoral observer missions.

In **Ghana**, the Public Elections Regulations 1996 requires the persons appointed by the Electoral Commission (EC) in conducting elections to “*abide by the laws and regulations governing the conduct of elections, and faithfully carry out duties in a fair and impartial manner*”. Hence, both the Constitution and the Act establishing the EC and relevant Regulations provide for free and fair elections.

According to Article 5 of the **Tanzanian** Constitution, every citizen of 18 years of age or above is entitled to vote in any election. However, there is a constitutional hindrance to voting for some groups of people, such as those who have committed certain criminal offences. The Constitution under Article 74 established the Electoral Commission of Tanzania whose members are appointed by the president, lending questions as to the integrity and independence of the Commission.¹³

In **Nigeria**, several laws have been enacted to regulate the conduct of elections. Article 153 of the 1999 Constitution¹⁴ established the Independent National Electoral Commission (INEC). Article 158 guarantees INEC independence by providing that it should not be subject to the direction or control of any other authority or person. However, legal experts pointed out that public confidence in INEC is low due to general public perception that it is susceptible to the whims and caprices of the ruling party. Nigeria’s Electoral Act confers power on the president to appoint the chairperson of the INEC.

In **Uganda**, Chapter 5 of the Constitution establishes the Electoral Commission¹⁵. Article 60 of the Constitution gives the president power to appoint commissioners. This is viewed as a bad precedent as other candidates vying against the incumbent must compete with the appointing authority of commissioners of the body which is supposed to oversee elections.

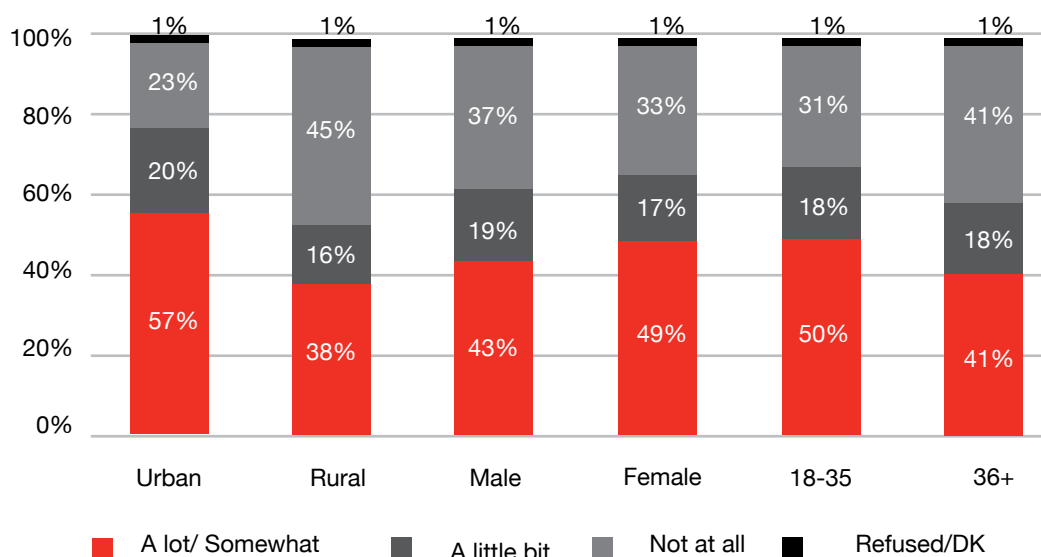
Generally, citizens in the focus countries expressed serious concerns about the right to vote for whomever they want. In Zambia, Mozambique and Sierra Leone, citizens surveyed expressed fear of election-related violence, vote buying, fraud, intimidation, threats and exclusion from the voting process. In Mozambique, there were multiple incidences of vote buying and threats, especially against those opposed to the ruling elite.

Perceptions of citizens

According to Afrobarometer, 35% of Mozambicans interviewed indicated that they were not at all afraid of becoming victims of political violence or intimidation while 33% stated that they were somewhat or afraid of becoming victims of political violence or intimidation and 27% stated that they were a little afraid of becoming victims¹⁶. In Uganda, Afrobarometer indicated that 64% of those interviewed stated that they ‘often or always’ had to be careful about how to vote while 19% said they rarely had to be careful and 15% stated that they never had to be careful. About 48% of Ugandans also stated that they were afraid of political intimidation and violence during election campaigns¹⁷. With respect to Nigeria, Afrobarometer showed that 33% of those interviewed said they feared being victims of political intimidation during elections¹⁸. In Sierra Leone, according to Afrobarometer, 59% of people indicate they fear somewhat/a lot political intimidation or violence during election campaigns.¹⁹

In Zambia, a greater proportion of adult Zambian citizens dwelling in the urban areas (57%) said they feared ‘somewhat/a lot’ becoming a victim of political violence compared to those in the rural areas (38%).²⁰ More so, a greater proportion of citizens within the age group 18-35 seem to have been more fearful of becoming victims of political violence, with 50% saying they feared becoming victims of political violence somewhat/a lot compared to 41% of those in the 36+ age group as shown in Figure 2.

Figure 2: Fear of political intimidation and violence | Zambia | 2019



From the Community Score Card administered in Sierra Leone (3,660 people interviewed) 82% responded that the 2018 general election were free and fair because citizens in their districts went to the polls without intimidation and voted for the representatives of their choice. They accepted the outcomes of the election when it was announced and the process of transfer of power was smooth, with 19% of respondents rating it as fair.

In Tanzania, the largest category of respondents (230), that is 24%, rated as ‘very bad’ the government’s performance in ensuring that the last elections had been held in a free and fair manner²¹. That was a very thin margin compared to those who rated it as ‘fair’ (23%). Generally, the negative scores of ‘very bad’ and ‘bad’ on the quality of elections constitute 45% of respondents, which is substantive, therefore suggesting the country has a long way to go in upholding the fundamental principles of free and fair elections.

In Zimbabwe, the Community Score Card participants rated the quality of elections as very bad (64.3%) and 26% as bad²². This was due to the fact that elections in the country are often characterised by violence, rigging and delayed results. In Nigeria, the Community Score Card showed that 38% of respondents held that voters were bribed ‘very often’.

The Community Score Card in Mozambique indicated that 28% of voters hold the view that voters were never bribed, 24% stated that voter bribery happens sometimes, 25% stated that voter bribery happens often or always and 23% expressed ignorance about the issue. In addition, 25% of the voters indicated that they often or always felt threatened during election campaigns.

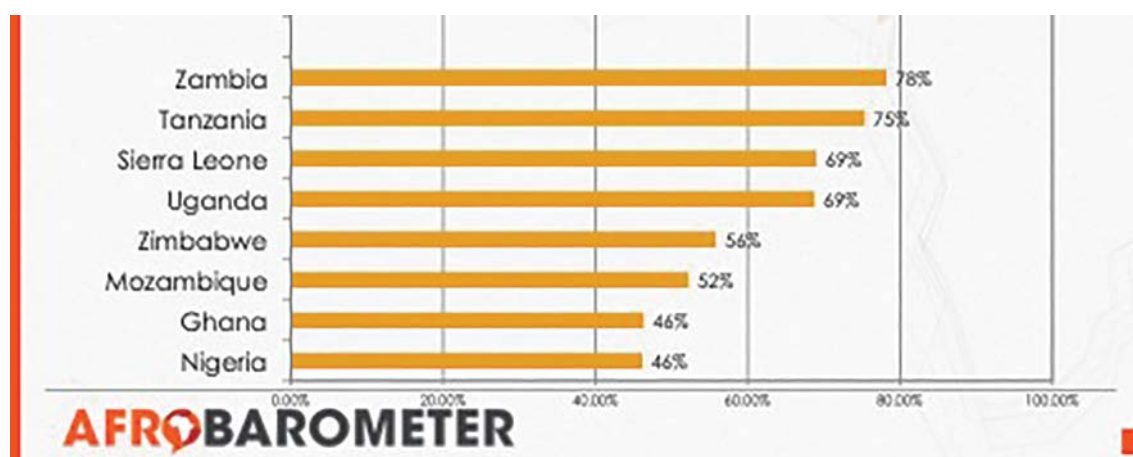
The situation is different in Ghana, one of the continent's oldest democracies. On citizens' perceptions of quality of elections (i.e. freeness and fairness), all the statements were ranked on the average between the range of 'not sure' and 'agree'. The statement with the highest average score of 3.75 is 'All citizens are free to vote without being pressured', followed by the statement 'All the political parties in Ghana had equal opportunities to campaign for the last elections' with an average score of 3.5. Both the statements 'The last elections in Ghana (2016) were free and fair' and 'Political parties had equal access to the state media' were ranked 3.25 on average²³. When it comes to access to state media, however, some respondents claimed the ruling party always has an upper hand. Notwithstanding this, the general perception was that Ghana's elections and the democratic process have been free and fair, although participants felt that the ruling party always has the advantage of the incumbent when it comes to accessing media and resources for campaigns. Further analysis of these findings can be found in the discussion section; Ghana represents an interesting environment with regards to democratic governance.

Analysis and discussion

In light of these findings, it is important to note that the most fundamental principle that defines credible elections is that they must reflect the free expression of the will of the people.²⁴ To attain credible elections, there must be transparency, inclusivity and accountability as well as equality of opportunities to compete in electoral processes. This means equal access, for example, to the public media regardless of gender, age or party political affiliation. Fraud, voter bribery, intimidation and political violence render elections less credible, limit the freedom to vote freely and greatly impair the quality of the election.

In 2014/15 the Afrobarometer found that a large percentage of respondents across the eight countries in this study believed the elections were free and fair, as shown in *Figure 3*. However, from the Community Score Card above (conducted in 2018 and 2019), indications are that elections in most of the eight countries are now deemed less free and fair. Sadly, intimidation has increased with the participation of young people in the electoral processes, particularly for young women who choose politics as a career, for example the challenges young female opposition leaders, including a Member of Parliament, Joanna Mamombe in Zimbabwe have faced. There is, however, the exception of Ghana, which seemed to have improved judging by the respondents in the Community Score Cards on the 2016 general election.

Figure 3: Elections Free and Fair (2014/15) Afrobarometer



The eight focus countries have in place the necessary regulatory and institutional frameworks to conduct free and fair elections and to manage democratic transition, including mechanisms to redress infractions and to dispute power. These include one constitution, electoral acts and guidelines, independent electoral management bodies (EMBs) and special judicial arrangements that largely conform to ACDEG principles. However, there are still fundamental challenges with operationalisation of these frameworks and the behaviour of political elites that largely undermine these provisions. These can be observed clearly in practices such as election rigging, violence, vote-buying, manipulation of the electoral laws, judicial theft of electoral mandate, interference of security and other institutions in the electoral processes.

The findings in this section indicate that the constitutions in all the eight focus countries allow for the conduct of elections under free and fair conditions for people to choose a government of their choice. However, as noted above, there are increased restrictions on such civil liberties as the incumbent ruling parties have manipulated elections to remain in power. Thus, it can be noted that although the constitutions allow political parties to exist and carry out their activities freely, political parties are sometimes denied permission to hold rallies or disseminate information on their party ideology to members of the public, as was reported in Uganda, Zambia and Zimbabwe.

Ghana presents interesting views from the survey. While generally respondents consider the holding of elections in the country to be free and fair, there are still issues that need to be addressed in order to realise the full objectives of the Charter. The Afrobarometer perceptions survey data shows that a significant proportion of the adult population in Ghana do not feel that they are free to express themselves, while fear of political intimidation or violence is an issue of concern, among both men and women. Adult Ghanaians are also concerned about the need to exercise caution when voting, an indication that they do not cast their ballots in a totally free manner.

In Nigeria, the survey pointed to citizens' dissatisfaction with the electoral process largely on account of practices that totally negate the standards for the conduct of elections: interference by security agencies, widespread practice of vote buying orchestrated by political parties, and perception of votes being manipulation by the electoral umpire, among others. The survey also found a small proportion of citizens who viewed elections as free and fair. The real issue, however, is the challenge that flawed elections present to the legitimacy of ensuing government, and the extent to which such a flawed process undermines the credibility and legitimacy of the national constitution as the foundation for the rule of law.

The Tanzania national citizens report also identified some critical issues on electoral maleficence that are rampant in Africa and have been reported in various media and fora. It is noted that many of the key institutions that administer elections are often biased and are invariably appointed in a non-transparent manner by the president of the incumbent political party in power. "To make matters worse, the 1977 Tanzania Constitution illegalizes the practice of independent electoral candidacy thus forcing independent-minded Tanzanian citizens to be denied their basic constitutional right to be voted for in equal measure to their right to vote."²⁵

Thus, citizen perceptions on electoral processes in the focus countries point to huge deficiencies that need to be addressed through the domestication of the Charter and its implementation in letter and in spirit. The above situation prevails in several countries participating in this survey, whether they are new or old democracies. They all seem to be feeding from the same pot when it comes to electoral deficiencies. Hence there is a compelling imperative for the authorities in the different countries to institute measures to ensure that all citizens are able to fully express themselves, exercise their right to vote without undue pressure and be treated equally before the law. That is what the ACDEG demands.

Electoral violence and intimidation of voters is a regular occurrence in the majority of countries in Africa. In 2019, there was widespread violence in some countries that held elections in the region, including Mozambique²⁶ and Malawi. Such violence mainly erupts as a result of the suppression of human rights, such as people's right to assemble, vote and choose leaders of their choice. The photo below shows some voters marching through the streets in Mozambique before the general election in 2019; they were demanding free and fair elections and a number of such marches turned violent. In Uganda, as described in *Box 1*, protesters have been killed by police for exercising their rights to freely express themselves.



Photo credit: Deutsche Welle (DW) Media company 2 October 2019

In Zimbabwe's last harmonised elections on 30 July 2018 combining presidential, parliamentary and local government elections, violence broke out when demonstrators became impatient following the delay by the Zimbabwe Electoral Commission to release the presidential election results. According to Amnesty International, the army, which was illegally deployed, used live ammunition to disperse protests in the capital, Harare, and opened fire on protesters, killing at least six and injuring scores more. To date, the police have still not been held accountable for their actions²⁷.

Such acts of human rights abuses are what citizens in this survey have described as 'grossly inhuman' and 'violation of rights with impunity'.

A more chilling situation erupted in Uganda in November 2020 as citizens in the capital protested against the arrest of the main opposition leader Bobi Wine and the police reacted with brutal and excessive force, killing at least 37 people and wounding dozens more. *Box 1* highlights critical issues on the freeness and fairness of elections in Uganda (held in January 2021) with regard to media access, police harassment, disenfranchisement of voters and intimidation, among other issues.

Box 1: Election campaigns in Uganda

Uganda's unequal political campaigns during Covid-19 times

General Elections in Uganda took place on January 14th 2021 in which President Museveni won the same bouncing back for a sixth term in office. The Campaigns and Presidential Candidates consultations were marred with violence and outright discrimination based on the need to prevent the spread of COVID-19. It was a difficult task for opposition candidates as rallies were always interrupted by the security agencies yet they could not easily access media and in some places, they were totally banned. A few days to the elections, campaigns in Wakiso, Mukono and Kampala were banned again in the name of preventing COVID-19. The citizens were denied chance to interface with their upcoming leaders which is key in Democratic governance. In a DW publication interview, his challenger Bobi Wine accused the government of obstructing his election campaign.

Wine told DW that he got to feel this himself during a radio interview appointment he recently had: "When I tried to enter the radio station, the media building was surrounded by the army, and the soldiers began to beat my companions."

DW correspondent Alex Gitta is familiar with such incidents in Uganda: "When Bobi Wine appears on radio stations, many follow him on their Boda-Bodas [local motorcycle taxis]. The fans also often wait in front of the media houses to cheer him on. The police then intervene to stop them."



Uganda's police often target Bobi Wine supporters in the streets of Kampala. According to Gitta, booking airtime with private media is also expensive, and state broadcasters do not air debates with the opposition. It is also difficult for opposition politicians like Wine to gain traction on the internet. "Many of his supporters cannot buy data packages to follow his messages on the net," Gitta said.

Museveni's free-for-all airtime

In contrast to Wine and others, Museveni's ruling NRM party has several advantages. "There is even a rule that presidential speeches must be broadcast live by all radio and television stations. So, Museveni has a lot of airtime to himself," Gitta said. Analysts accuse the ruling party of using public funds to finance its political activities. It was only a few days ago that they officially nominated Museveni as a candidate for the elections.

Voter disenfranchisement

The government has, however, made sure it could throw a spanner in the works for young voters in particular: voter registration ended back in December 2019, and people who have come of age since then will not be able to vote in the February 2021 elections. According to estimates, this could affect around one million people.

Source: DW (abridged version) available at: <https://www.dw.com/en/ugandas-unequal-political-campaigns-during-covid-19-times/a-54488099>

3.2. Promotion of human rights including women's rights and the rights of young people

The promotion of human rights, including the rights of women and youth, is one of the fundamental principles that the Charter demands from the state parties. Among other requirements, the Charter demands that state parties promote human rights through recognising popular participation, by promoting universal suffrage as the inalienable right of the people. It also demands that member states ensure that constitutional rule is adhered to, particularly constitutional transfer of power, and that citizens enjoy fundamental freedoms and human rights, taking into account their universality, interdependence and indivisibility. In addition, state parties are expected to:

- eliminate all forms of discrimination, especially those based on political opinion, gender, ethnicity, religion or race as well as any other form of intolerance
- adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons, and other marginalised or vulnerable social groups
- respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

This section is focussing only on freedom of expression.

Freedom of expression is a fundamental human right and essential in a democratic society. It is a *sine qua non* for the free exchange of opinions, ideas and information, and thus provides an opportunity for citizens to form opinions on issues of public importance.²⁸ Freedom of expression allows members of a society to engage in public debates, to support independent and free press, to become an informed citizenship and to hold government accountable.²⁹

The ACDEG under Article 27(8) provides that, *"in order to advance political, economic and social governance, state parties shall commit themselves to: promoting freedom of expression, in particular freedom of press and fostering professional media"*. In a similar vein, the African Charter on Human and Peoples' Rights under Article 9 provides that, *"1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law."*³⁰

The African Commission in the *Constitutional Rights Project and Others v Nigeria*,³¹ regarding the arrest and detention for three months without charge of certain suspects for kidnapping and murder to allow for investigations, recognised the importance of freedom of expression by stating that, *"freedom of expression is a basic human right, vital to an individual's personal development and political consciousness, and participation in the conduct of public affairs of his country"*. Furthermore, in *Ghazi Suleiman v Sudan*, in a court hearing addressing a

complaint by Mr. Ghazi that he was threatened with arrest and prevented from travelling to a meeting to address human rights defenders, the African Commission stated that freedom of expression was a “cornerstone of democracy and... a means of ensuring respect for all human rights and freedoms”.³²

The legal analysis undertaken in the eight focus countries established that laws and regulations on freedom of expression are not aligned with Article 27(8) of the ACDEG. Consequently, most of the rankings returned on freedom of expression were ‘fair’. For instance, in Sierra Leone, although the *Access to Information Act* promotes freedom of expression and an independent media commission regulates and ensures media professionalism, other pieces of legislation, such as the *Public Order Act 1965*, has restrictive provisions on defamation, which constricts the media in passing on significant information – thereby hindering freedom of expression. In Zimbabwe, the legal analysis of laws indicated that although Section 61 of the Constitution guarantees freedom of expression and freedom of media, there are not many legislative interventions to guarantee compliance.

In Uganda, the Constitution under Article 29 guarantees freedom of speech and expression, including freedom of the press and other media. However, freedom of expression in Uganda is not absolute as is the case elsewhere in the world, as *Box 1* illustrates. Article 43 of the Constitution of Uganda contains general restrictions on fundamental rights for the public interest, the good of others and the security of the state. The interpretation of this provision has at times led to unjustified limitation of freedom of expression in Uganda. In addition, Uganda has restrictions on freedom of expression under criminal and civil law.

Ghana sets a good example in the protection of freedom of expression measured on the basis of its legal frameworks, practices and the perceptions of its citizens. Under Article 21 of the Constitution Ghana³³, freedom of speech and expression is protected. Chapter 12 of the Constitution protects the freedom and independence of the media.³⁴

Citizens’ perceptions on the right to freedom of expression

The Afrobarometer showed that 87% of Ghanaians interviewed stated that they were free to say what they think, while 12% reported that they were not very or not at all free to say what they think. One percent of those surveyed in Ghana professed ignorance on the issue. The Community Score Card indicated that 96.5% of the people interviewed ‘strongly agree’ or ‘agree’ with the statement that “Ghanaians are free to express their views on political issues in the media”, with 85.75% indicating that they ‘strongly agree’ or ‘agree’ with the statement that “media is free to air dissenting views on political matters”; 5.1% of respondents ‘strongly disagree’ or ‘disagree’ with that statement.

According to Afrobarometer, a majority of Zambian citizens interviewed (61%) felt that they were free to express what they think. However, 25% stated they were not very free to say what they think and 11% felt not free at all to air their opinions. According to the Community Score Card, the majority of Zambians (77%) stated that they were ‘somewhat/completely free’ to say what they think about politics compared to 22% who stated that they were ‘not very’ or ‘not free at all’ to air their opinions about politics.

In Mozambique, Afrobarometer indicated that about one in two citizens (53%) believed they were ‘somewhat/completely free’ to express what they think. About six in ten (59%) Mozambicans felt that Mozambique is a democracy facing minor problems while three in ten (30%) believed Mozambique is a democracy with major problems. According to the Community Score Card, 47% of Mozambicans felt they were ‘somewhat/completely free’ to state what they think regarding politics, 46% felt they were ‘not very free’ or ‘not free at all’ to express their views regarding politics, while 7% professed ignorance about the issue. In Nigeria, according to Afrobarometer, 62% of Nigerian citizens stated that they were

‘somewhat/completely’ free to say what they think. More than 73% of Nigerians indicated that they were often/always careful about what they say regarding politics. The Community Score Card indicated that 41% of Nigerians felt they were ‘free to say’ what they think, 35% stated they were ‘very free’ to say what they think, 34% indicated they were ‘not free’ to say what they think.

In light of the findings from the legal analysis, Community Score Card and citizen perceptions based on Afrobarometer, it is important to reiterate that freedom of expression is a cornerstone of democracy and good governance and should not be limited unjustifiably. As stated by the African Commission in its *Declaration on Freedom of Expression in Africa 2002*,³⁵ freedom of expression and information is a fundamental and inalienable human right and an indispensable component of democracy. As pointed out by the Supreme Court of Appeal of South Africa in the case of *Hoho v the State*:³⁶

“The importance of the right to freedom of expression has often been stressed by our courts. Suppression of available information and of ideas can only be detrimental to the decision-making process of individuals, corporations, and governments. It may lead to the wrong government being elected, the wrong policies being adopted, the wrong people being appointed, corruption, dishonesty and incompetence not being exposed, wrong investments being made and a multitude of other undesirable consequences. It is for this reason that it has been said ‘that freedom of expression constitutes one of the essential foundations of a democratic society and is one of the basic conditions for its progress and the development of man.’”

For this reason, as held by the African court in the case of *Konaté v. Burkina Faso*,³⁷ for a restriction of freedom of expression to be acceptable it does suffice for it to be provided by the law and be written precisely, it must also serve a legitimate purpose. Therefore, it is not acceptable for AU member states to enact a law limiting freedom of expression: the limitation must be for a legitimate purpose. Any limitation on freedom of expression must be justifiable in an open and democratic society.

Freedom of association

Universally, freedom of association is accepted as fundamental to a democratic society. Freedom of association is considered fundamental to the functioning of a democracy and good governance because it is an essential prerequisite for the exercise of other freedoms and rights.³⁸ In addition, freedom of association plays a critical role in achieving goals that are in the public interest through political parties, non-governmental associations, trade unions and other interest groups.³⁹ Freedom of association makes provisions for individuals, organisations or groups, either formally or informally, to engage and associate with each other without fear of the law.⁴⁰ Moreover, it is an indispensable right which enables individuals to monitor human rights situations in a state and support the implementation of human rights laws and policies.⁴¹

Freedom of association is guaranteed by major international and regional human rights and governance treaties, such as the Universal Declaration of Human Rights. With respect to Africa, Article 12 of the ACDEG requires state parties to undertake programmes and carry out activities that promote democratic principles and practices and consolidate a culture of democracy by, for example, “*creating conducive conditions for civil society organisations to exist and operate within the law*”. In addition, Article 2 of the ACDEG names one of the Charter’s objectives as promoting the necessary conditions to foster citizen participation. Further, the African Charter on Human and Peoples’ Rights under Article 10 provides that “*every individual shall have the right to free association provided he abides by the law*”.

Considering the importance of association, it is crucial that the role and functioning of associations and freedom of association be effectively facilitated and protected in domestic laws and regulations. The African Commission in its 2017 *Guidelines on Freedom of Association and Assembly*,⁴² states that national legislation on freedom of association shall be drafted with the objective being to facilitate and encourage the establishment of associations and promotion of their ability to pursue their objectives.

The legal analysis in the eight countries of focus for this report shows that legal instruments have been enacted to support freedom of citizens to associate with various institutions in civic and political matters as long as it is within the parameters of the constitution and legislative instruments. According to the law, citizens are free to join any political institution, interest group, civic engagement group, trade union or gathering of their choice. For instance, in Mozambique, under Article 75 of the Constitution⁴³, the formation, structuring and operation of political parties is provided for but should be regulated by law. Article 81 also allows every citizen to engage in popular action in line with the law, either individually or through associations for defending the interests in question.

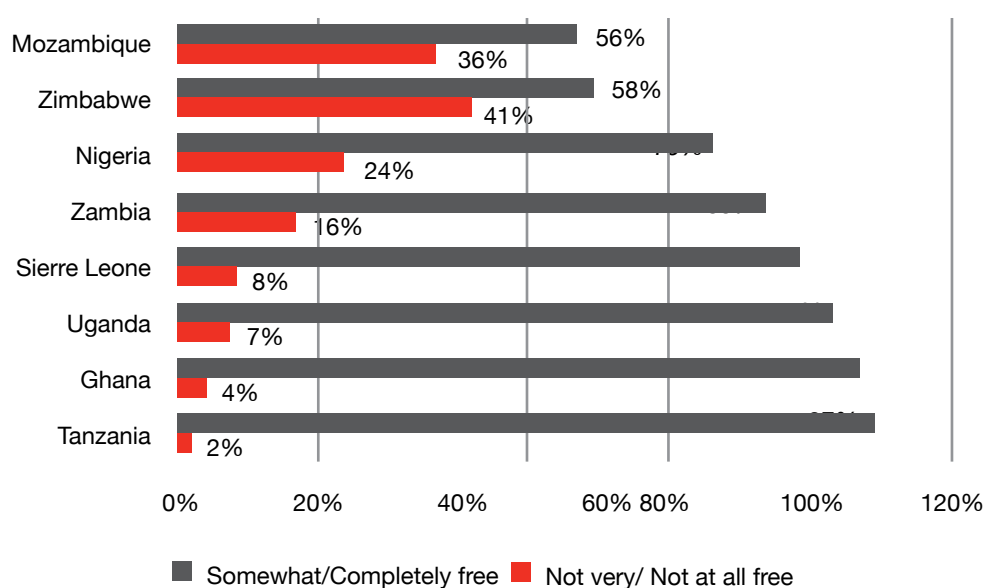
In Tanzania, the Constitution under Article 20 provides for the right of individuals to join and form associations of common interest, including political parties. In Ghana, the Constitution under Article 21(1) provides for freedom of association, which includes the freedom of every individual to form or join a trade union or other association whether national or international for the protection of their interests. The *Companies Act* 1963 provides for the registration of CSOs but there have been calls for specific legislation to regulate and monitor CSOs or charities, as it is challenging for CSOs registered under the *Companies Act* to comply with its provisions.

In practice, the exercise of the freedom of association is a challenge in certain situations, for instance where people are coerced to join particular political parties, especially with respect to geographical location, ethnic affiliation or religious association. The challenges in question are associated with and exacerbated by the shrinking political spaces in some of the focus countries, resulting in citizen arrests and/or harassment. These arrests and/or harassment, which have worsened due to Covid-19 lockdowns, are facilitated by draconian pieces of legislation such as Public Order Acts, Public Security Acts and criminal laws.

According to Afrobarometer, 47% of Mozambicans stated that they often or always had to be careful about the organisations they join, about 24% stated they rarely had to be careful and 19% stated they never had to be careful about the organisations they join. Afrobarometer indicates that in Tanzania 70% of people often or always had to be careful about the political organisations they join, 17% said they rarely had to be careful, while about 10% stated they never had to be careful. In Uganda, Afrobarometer shows that 53% of the people often or always had to be careful about which organisations they join, while 23% stated that they never had to be careful, 22% stated they rarely had to be careful and 2% either refused to respond or said they did not know. In Nigeria, Afrobarometer indicated that 45% of the people are free to join a political organisation of their choice.

Figure 4 shows people's perceptions on freedom of association in the eight countries as recorded by the Community Score Cards.

Figure 4: Citizen perceptions on freedom of association in the eight focus countries



In Uganda, the Community Score Card ranked freedom of association as ‘bad’ because freedom of association of opposition members is limited unjustifiably. Members of the opposition are harassed, mistreated or tormented by security forces, making it difficult for one to join or support a party of their choice. In Zimbabwe, the Community Score Card indicated that 45% of people felt that the level of freedom of association was ‘bad’ while 26% stated that the level of freedom of association was ‘very bad’. This is because of intimidation, reprimands or punishment for challenging the ruling party, which is made worse by the Public Order and Security Act and the Criminal Law Codification and Reform Act which restrict freedom of assembly in Zimbabwe.

The African Commission in its 2017 *Guidelines on Freedom of Association and Assembly*, states that governments should respect, in law and practice, freedom of association without threats, harassment, interference, intimidation or reprisals of any kind.⁴⁴ The obligation of states to protect freedom of association according to the *Guidelines* extends to protection of the principal and most visible members of associations from intimidation, harassment, interference or reprisals from third parties or non-state actors.⁴⁵ In addition, in the case of *Huri-Laws v Nigeria*,⁴⁶ the African Commission concluded that the regulation of freedom of association by state authorities should not override constitutional provisions or undermine rights guaranteed under the constitution and international standards.

Gender equality and non-discrimination

The Principle of equality as enshrined in the UN Universal Declaration of Human Rights, asserts that all people are born free and equal⁴⁷. It presupposes that all individuals should enjoy equal rights and deserve the same level of respect.⁴⁸ As stated by the UN Human Rights Committee, equality before the law, together with non-discrimination and equal protection under the law, are fundamental to the upholding of human rights.⁴⁹ Equality and non-discrimination protect individuals from being denied their rights on grounds such as race, colour, gender, sexual orientation, language, religion, age, nationality, political or other opinion, social origin or birth.⁵⁰ International instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.⁵¹

CEDAW defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The African Commission in the case of *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v Zimbabwe* defined discrimination as:

“Any act which aims at distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms.”⁵²

In addition, the African Commission, in the case of *Nubian Community in Kenya vs The Republic of Kenya*,⁵³ stated that the principle of equality and non-discrimination is vital to safeguarding human rights and is therefore enshrined in all major international and regional human rights instruments. Notably, the ACDEG underscores equality as a fundamental pillar for deepening democracy and governance in Africa.⁵⁴ It creates obligations for state parties to create the necessary conditions to ensure equal and full participation of men and women in democratic and governance processes.⁵⁵

One objective of the ACDEG, as set out in Article 2, is to “promote gender balance and equality in governance and development processes”. Article 3 requires state parties to promote gender equality in public and private institutions. Article 8 places an obligation on state parties to eliminate all forms of discrimination, particularly those founded on political opinion, gender, ethnicity, religion or race as well as any other form of intolerance. Furthermore, Article 8 of the ACDEG requires state parties to adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, refugees and displaced persons, people with disabilities, migrants and other marginalised and vulnerable groups.

Importantly, Article 10 requires state parties to protect the right to equality before the law and equal protection by law as a fundamental condition for a democratic society. Article 29 requires state parties to recognise the critical role of women in the development and strengthening of democracy. In addition, Article 29 places an obligation on state parties to create the requisite conditions for full and active participation of women in decision-making processes and to take all possible measures to encourage the full and active participation of women in the electoral process and to ensure gender parity at all levels. These provisions indicate the ACDEG’s acknowledgment and appreciation of the necessity of taking a gender-conscious approach to democratic and governance processes in Africa.⁵⁶

Legal Analysis on equality and non-discrimination

Legal analysis in the eight countries of focus indicated that equality and non-discrimination has been enshrined in domestic law. For instance, Article 17 of the Ghanaian Constitution provides for equality of all persons before the law and prohibits discrimination on grounds of gender, race, colour, ethnic origin, religion, creed or socio-economic status. Part of the challenge is that, although Ghana has enacted a law in 2006 to protect the rights of people with disabilities, the government has failed to comply with many of the law’s provisions. In Zimbabwe, Section 56(1) of the Constitution⁵⁷ confers equality of all persons before the law and the right to equal protection and benefit of the law. In addition, Section 56(3) includes an open list of grounds upon which non-discrimination is prohibited. Further, Section 80 of the Constitution affords every woman in Zimbabwe full and equal dignity with men and includes equal opportunities in social, economic and political activities. Despite these provisions,

major gaps remain in the realisation of gender equality and the fulfilment of women's rights, including their right to engage in political decision making at all levels, with the Covid-19 pandemic further threatening many hard-won gains. For centuries, patriarchal norms have limited women's mobility and placed responsibility for most unpaid care and domestic work on women, while they must very often, at the same time, undertake paid work. This huge burden on women's time leads to gender-based violence (see report⁵⁸).

In Zambia, the Constitution under Article 8 provides for human dignity, social justice, equity, equality and non-discrimination. The Gender and Equality Act No.22 of 2015 has also been enacted. Although the Constitution specifies the need for the participation of women, young people and people with disabilities in governance, implementation is a challenge. In Sierra Leone, the Constitution guarantees equal protection and guarantees equal access to justice for vulnerable populations through the creation of the Legal Aid Board. In Tanzania, Article 12 of the Constitution provides for equality of all people. In addition, Article 13 provides for equality before the law and disallows discrimination and prohibits the enactment of any discriminatory law. In addition, Article 66 provides for special seats for women (30% of total number of members of parliament) in order to promote their participation in democratic and decision-making processes.

According to Afrobarometer, 47% of Zambians reported that they were 'often' or 'always' treated unfairly under the law, while 24% stated this 'never happens' and 26% stated this 'rarely happens.' In Sierra Leone, 42% stated that they 'often' or 'always' felt treated unfairly under the law, while 34% stated this was never the case. In Ghana, Afrobarometer showed that 63% of people were 'often' or 'always' treated unequally before the law while 14% stated this rarely happened, with about 21% stating that ordinary people in Ghana never experienced unequal treatment. In Mozambique, Afrobarometer indicated that 43% of citizens felt that individuals were treated unfairly before the law while 26% stated this rarely happened and 21% stating this was never the case.

The Community Score Card indicated that in Uganda citizens rated equality as 'bad' because those in leadership treated people differently based on tribalism, nepotism, patronage and favouritism. In Mozambique, the Community Score Card showed that 49% of the population felt that they were 'often' or 'always' treated unequally before the law, while 25% felt this rarely happened and 21% indicated this never happened. In Zimbabwe, the Community Score Card indicated that 47.6% rated equality as 'very bad' while 35.7% rated equality as 'bad', 14.3% rated it as 'fair' and 2.4% 'very good'.

In the case of the *Nubian Community in Kenya vs The Republic of Kenya*,⁵⁹ the African Commission held that the principle of equality and non-discrimination is fundamental to the protection of human rights as provided for under international and domestic law. For this reason, states should ensure that equality and non-discrimination are respected by state agents and all actors under their jurisdiction. Failure to protect and promote equality and non-discrimination by states amounts to violation of their obligations under international law and the ACDEG in particular.

Discussion and analysis

The findings in this section reveal that democratic freedoms – such as freedom of expression, peaceful assembly and association – are significantly constrained in the majority of the focus countries. In recent times this has been the case in state-civil society relations, which has worsened in many contexts with the onset of the Covid-19 pandemic. On the back of the failure of governance to meet the basic social and development needs of citizens, governments have been systematically trying to stifle dissent in public discourse and citizens' action. This has generally been done through enacting legislation that aims to control mainly the media and civil society, thereby limiting progressive powers that place checks and balances on government excesses.

Attempts have been made in various countries to shrink the civic space through legislation purportedly aiming to protect citizens.

In recent months a number of journalists, lawyers, nurses and civil society activists in Zimbabwe have found themselves behind bars in what appears to be a serious clampdown on government critics. As Farai Mutsaka of the Associated Press reported, *“Zimbabwe’s courts have been hearing cases of lawyers, nurses, journalists and politicians who are among scores arrested for criticizing the government, assisting activists or demanding better working conditions, according to lawyers. The latest arrests include that of Job Sikhala, a member of parliament from the main opposition party (MDC Alliance Party) who had been in hiding for weeks after being accused of mobilizing anti-government protests. Another opposition legislator, Prince Dubeko Dube, has been charged with inciting violence after he gave employees of a supermarket two face masks marked with the words ‘ZANU-PF must go’”*⁶⁰.

The above is not unique to Zimbabwe. Uganda, Zambia, Tanzania and Nigeria have all witnessed the harassment of journalists and civic leaders in recent months, thereby negating the principles enshrined in the ACDEG. In general, freedom of expression in the eight countries of focus remains a major challenge and citizens are, at times, arrested and/or persecuted for expressing their opinions, especially when demanding accountability or the stemming of corruption. In Zambia, human rights defenders live in fear of expressing their views, particularly on issues relating to transparency and accountability.



As Box 2 shows, politically motivated arrests have been reported on several occasions in Zambia and have become the norm in most countries, particularly against human rights defenders, including women human rights defenders (WHRDs). According to the UN Human Rights Office of the Human Rights Commissioner, WHRDs are seen as challenging traditional notions of family and gender roles in society, which can lead to hostility from the general population and authorities. “Due to this, WHRDs are subjected to stigmatization and ostracism by community leaders, faith-based groups, families and communities who consider them to be threatening religion, honour or culture through their work⁶¹.

Box 2: Politically motivated arrests of human rights defenders

Zambia: Activists in court on escalating crackdown on human rights⁶²

Two activists, Laura Miti and Bornwell Mwewa, were arrested in late 2019 facing politically motivated charges of ‘assault on a police officer’ and ‘disorderly conduct’. They were arrested after they travelled to the city of Livingstone in support of Pilato, aka Fumba Chama, after he was arrested for ‘unlawful assembly’ for addressing a gathering of young people.

“The charges against Laura and Bornwell fit into a much wider pattern of suppression of peaceful dissent that we have seen in Zambia in recent years,” said Deprose Muchena, Amnesty International’s Director for East and Southern Africa.

“Authorities are using intimidation and harassment against human rights defenders, activists and political opponents as a strategy to instil fear across Zambian society. All charges against Laura and Bornwell must be immediately dropped.”

Human rights activists have been increasingly targeted in Zambia recently for demanding accountability and challenging corruption.

Source: Amnesty International

In buttressing the above point, Nigeria’s national citizens report has noted that despite the ‘hazardous’ nature of the country’s politics and the huge challenges that have characterised its democratic experience after previous decades of military dictatorship, freedom of expression is relatively a luxury. The government is curtailing freedom of expression through various means, including attempts at regulating the media (formal and informal) space through the Social Media Bill and attacks on freedom of the press on different fronts, including the arrest and arraignment of journalists and citizens for their opinion on certain issues.

In October 2020, Nigeria experienced massive protests that started with the calling for an end to police brutality. The demonstrations, dominated by young people, began with calls for a police unit, the Special Anti-Robbery Squad (Sars), to be disbanded.

In response to the protests, “President Muhammadu Buhari dissolved the Sars unit – accused of harassment, extortion, torture and extrajudicial killings – days later, but the protests continued, demanding broader reforms in the way Nigeria is governed.”⁶³

The protests spread to other states after unarmed protesters were shot by security forces in the country’s largest city, Lagos. At the time of writing the report, it was believed that 12 people had been killed during the protests. The failure to uphold the provisions of the Charter creates an environment of impunity especially as it relates to abuse of human rights.

3.3. Democracy and rule of law

Effective and accountable institutions in a democratic society are fundamental to the fulfilment of elements of democracy and good governance such as: participation and inclusion in governance and decision making either directly or indirectly, rule of law, independence of the judiciary, separation of powers, entrenchment of human rights, free press, accountability, transparency, and free and fair elections.⁶⁴ Strong institutions in a democracy ensure that those in leadership – as principle rights duty-bearers – are accountable for substantive issues, including those vital to the progressive realisation of gender equality and human rights, such as resource allocation, policies and decision making.⁶⁵ Strong institutions also offer the promise of accountability for procedural matters arising out of abuse of power, bias, unfairness and other challenges.⁶⁶

The Charter emphasises issues of democracy and rule of law in Chapters 4, 5, 6 and 11 which refer to fundamental issues such as popular participation, constitutionalism, elimination of all forms of discrimination, conducive conditions for CSOs to operate in within the confines of the law, civilian control over the army and security forces, unconstitutional changes of government, democratic institutions and their independence, and regional and continental cooperation in the enforcement of the above.

This section focuses on assessing democratic institutions created in the eight countries that foster the above elements on democracy and rule of law. The imperative of accountable, transparent and credible institutions to foster democracy and good governance cannot be over-emphasised. Good governance and democracy are founded on credible and accountable institutions. Importantly, good governance, the rule of law and strong institutions are cornerstones of an effective, functioning and responsive society.

The ACDEG under Article 15(1) provides that state parties should establish public institutions that promote and support constitutional order and democracy. Article 15(2) places an obligation on state parties to ensure the independence or autonomy of the institutions. In addition, Article 15(3) requires state parties to ensure that the institutions are accountable to competent national organs and Article 15(4) places an obligation on state parties to provide the institutions with resources to perform their assigned role and mission efficiently and effectively. The requirement for establishment of strong institutions is in line with Sustainable Development Goal (SDG) 16 which calls for the establishment of effective, accountable and inclusive (strong) institutions, access to justice, and peaceful and inclusive societies⁶⁷. *Table 3* identifies some of the institutions that are essential for fostering democratic governance and indicates that most countries have enacted laws including constitutions that create the aforementioned institutions.

Table 3: Selected institutions that foster democratic governance

Institutions that support democracy	Ghana	Mozambique	Nigeria	Sierra Leone	Tanzania	Uganda	Zambia	Zimbabwe
Human Rights Commission	✓	✓	✓	✓	✓	✓	✓	✓
Gender/Equal Opportunities Commission	✓	✓	✓	✓	✓	✓	✗	✓
Auditor-General	✓	✓	✓	✓	✓	✓	✓	✓
Electoral Commission	✓	✓	✓	✓	✓	✓	✓	✓
Anti-corruption Commission	✓	✓	✓	✓	✓	✓	✓	✓
Media/ Communications Commission	✓	✗	✓	✓	✓	✓	✓	✓
Judicial services commission	✓	✓	✓	✓	✓	✓	✓	✓
National Prosecution Authority	✓	✓	✓	✓	✓	✓	✓	✓

Legal analysis

Legal analysis shows that the eight countries in focus have taken steps to establish institutions that support democracy. In the majority of these countries, laws provide for the establishment of these institutions; some governments have put them in place, others have not. For example, in Zambia, the Gender Equity and Equality Act (2015) provides for the establishment of the Gender Equity and Equality Commission to ensure the mainstreaming of gender equality and equity in public and private affairs and structures, other provisions. Despite this legal provision, five years after adoption of the Act, the Commission has not been established. The reason given is lack of funding.

Tanzania, despite not having signed the Charter, has established a Commission for Human Rights and Good Governance⁶⁸ which has the mandate to oversee the promotion and protection of human rights in the country. The Commission is an independent entity not subject to any orders or directives from the government, private institutions or political parties, according to Article 130(2) of the Constitution. However, the Commission is bound to receive directives and orders from the president when public interest demands.⁶⁹ The country has also constituted other institutions such as the electoral commission, media commission, anti-corruption commission, among others. As in other countries, Tanzania has established an Electoral Commission which has, over the years, overseen elections. Although the independence of the commission has been questioned due to reported disputes over election results in the past years, this has not resulted in violence, unlike in other countries.

In Nigeria, Article 153 of the 1999 Constitution establishes the Independent National Electoral Commission (INEC). Article 158 guarantees its independence by providing that INEC should not be subject to direction or control by any other authority or person. However, legal experts point out that public confidence in INEC is low due to the general public perception that

INEC is susceptible to the whims and caprices of the ruling party; Nigeria's Electoral Act gives the president power to appoint the INEC chairperson.

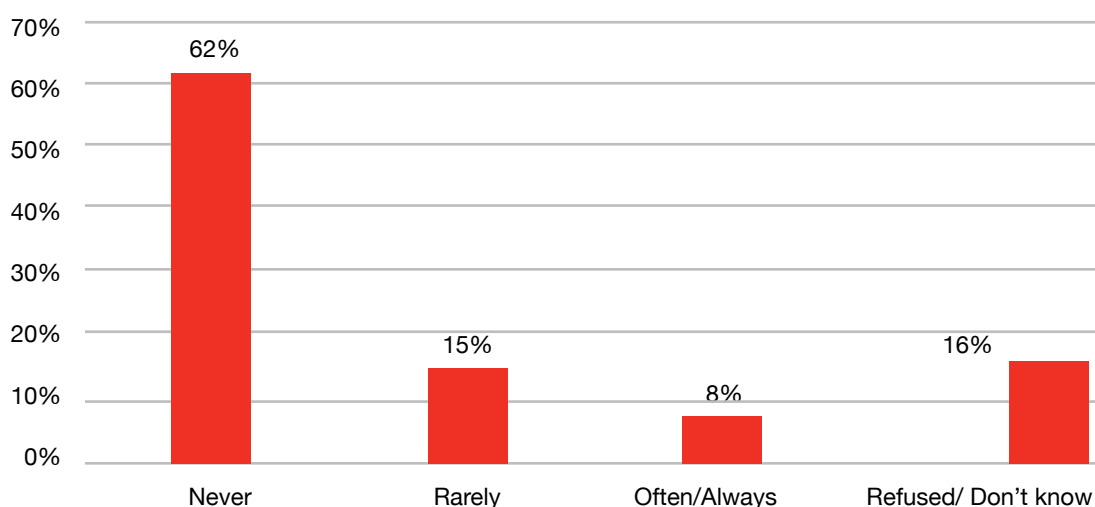
In Uganda, Chapter 5 of the Constitution establishes the Electoral Commission. Article 60 of the Constitution gives the president power to appoint commissioners. This is viewed as a bad precedent as other candidates vying against the incumbent must compete with the appointing authority of commissioners of the very body that is meant to oversee elections. Therefore, the independence and impartiality of the commission becomes questionable given the role of the president in appointing the commissioners.

In Zimbabwe, the 2013 Constitution establishes what are called chapter 12 and 13 institutions that support democracy. In its preamble, the Constitution states that these institutions are established to, inter alia: support and entrench human rights and democracy; protect the sovereignty and interests of the people; promote constitutionalism; promote transparency and accountability in public institutions; secure the observance of democratic values and principles by the state and all institutions and agencies of government and government-controlled entities; and ensure that injustices are remedied. However, these democratic tenets are not always followed even with the existence of the said institutions. For example, the Constitution adopted in 2013 had made strides in ensuring the independence of these institutions, for example the Judiciary Service Commission. The Constitution under Section 164 provides for the independence of courts, and the orders of courts bind the state and all persons and they must be obeyed. However, before the Constitution of Zimbabwe amendment Act (no 1) of 2017, which accords the president unfettered power to unilaterally fill the highest judicial positions in the country (Chief Justice, Deputy Chief Justice and Judge President of the High Court), Section 180 of the 2013 Constitution had introduced a new approach to the appointment of judges; it entailed nominations by the public and holding of public interviews conducted by the Judiciary Service Commission. In this regard, it is telling that the country is sliding back on democratic tenets by clipping the powers of democratic institutions.

Citizens perceptions

On respecting democratic institutions, data from round 7 (2017) of the Afrobarometer, which sampled 1,200 adult Tanzanians on their perceptions of democracy and quality of governance found that the majority (62%) felt that the president never ignores laws administered through the country's democratic institutions. *Figure 5* summarises the perceptions of citizens.

Figure 5: Perceptions of how often president ignores laws | Tanzania | 2017



The above perceptions paint a positive situation in a country that has not signed or ratified the Charter. This suggests an important opportunity for civil society to engage the country's leadership on seeking their support for signing the Charter.

However, the situation differs in other countries that have signed the Charter. In Nigeria, data from round 7 (2017) of the Afrobarometer, which sampled 1,600 adult Nigerians, show that 36% of the people stated that the president 'often' or 'always' ignored laws, 34% stated that he rarely did so, 27% stated that he never did and 3% professed ignorance on the issue. In addition, 34% of Nigerians expressed the opinion that the president often or always ignored parliament, 33% hold the view that he rarely ignored parliament, 31% stated that he never ignored parliament and 3% refused to answer or professed ignorance on the issue.

In Mozambique, where 1,200 adult citizens were sampled, the Afrobarometer found that 31% stated the president never ignored courts and laws while 25% stated that he rarely did, 17% stated that he did it often or always and 27% said they did not know. In addition, 31% stated that the president never ignored parliament, 23% stated that he rarely did, 17% stated he often or always did and 28% said they did not know.

In Ghana 2,400 adult citizens were sampled. Afrobarometer indicated that 56% of the sample stated that the president never ignored laws, 19% stated that he rarely did and 14% that he often or always did. On the question of whether the president ignores parliament, 59% of the sample hold the view that the president did not ignore parliament, 17% felt that the president rarely ignored parliament, 14% stated he often or always did and 12% professed ignorance on the issue.

With regard to corruption, the Community Score Card administered in Zimbabwe indicated that citizens feel the government is not doing enough to address the menace. There are political elites who have been exposed as corrupt but no action has been taken to hold them to account. In fact, during the data gathering some citizens indicated that the anti-corruption commission has been threatened and intimidated by some senior ruling party or government officials, thereby compromising their work. In Nigeria, the Community Score Card showed that Nigerians do not have faith in the police force, with almost half of those who participated in the Score Card stating that all police officers in the country are involved in corrupt practices. In Uganda, the Community Score Card indicated that citizens perceived that the police, courts and Electoral Commission follow the orders of the executive, especially the President, in the performance of their duties. The Community Score Card in Ghana showed that, in general, the independence of the five institutions that support the country's democracy was rated relatively low, with the Electoral Commission having the highest average rank 'fair' (3). The courts, parliament and traditional leaders all have an average rank of 2.5, which is between 'fair' and 'bad'. The police scored 1.5 on average, which is between 'bad' and 'very bad'. Every region scored the police either 1 or 2, which indicates serious public distrust in the police force. As a security and law enforcement agency, the police force should have enough independence to carry out its mandate without fear or favour, yet this is not the situation.

Discussion and analysis

The findings in this section show that countries have made efforts to ensure the establishment of institutions that support democratic governance. This is a positive development in the process of democratisation and development. However, as noted above, some countries, while they have provided for these institutions in legal frameworks, have not operationalised their existence. While others have operationalised such institutions, there have been challenges with regard to their independence, as is the case in Tanzania, Zimbabwe and Uganda where the findings note that government interference is rampant. For example, intimidation of anti-corruption commissions to prevent them pursuing corruption cases involving senior government or ruling party officials has been reported. Arbitrary arrests and

detention of people without trial for more than six months, as in Tanzania, also show that the judiciary and law enforcement agencies are compromised. In Zambia, for instance, the Constitution states that parliament should be dissolved three months before an election. However, this was not adhered to in the 2016 General Election, as ministers stayed in office beyond the time legally specified. The Constitutional Court ruled that the 64 Ministers who had stayed in office after the dissolution of parliament in 2016 must pay back the money they received during the period they illegally occupied their positions. Despite this ruling the ministers refused to pay back the money. The issue dragged until the end of 2019 when the ministers agreed they would pay back the money, but the modalities were still being finalised. This is a clear example of defiance and contempt of court. Although the issue has now been settled, it was only after a struggle. In any functioning democracy, this should not be the case, as independent institutions are established in terms of the supreme law of the land, which is the Constitution, and these should be respected.

In Tanzania, the existence of these institutions has not curtailed the harassment of civic and political leaders including journalists, some of whom have been arrested and detained for long periods without trial. For example, investigative journalist Erick Kabendera was arrested in July 2019 and spent more than seven months in detention without trial⁷⁰. He was only released in February 2020 after he entered “into a plea-bargain agreement with the prosecution”⁷¹.

In Nigeria, a country that has signed and ratified the Charter, various institutions have been established to support and promote good democratic governance. However, an analysis of the situation in the country has noted that lack of political will, corruption, traditional factors and non-domestication constitute some of the major challenges affecting the effective implementation of the Charter by the various institutions. It has been stated that Nigerian laws largely comply with the tenets of the Charter, but implementation and adherence have been minimal. This can be attributed to the insincerity of Nigerian politicians who take advantage of the lapses in the system and are unwilling to improve or change the status quo as long as it benefits them.

“These institutions mandated to support democracy are not independent and have not performed well because of discrimination and inadequate resources to some extent. Corruption has prevented these institutions from functioning and their heads fear to lose their jobs in case they act independently, so many times they follow the ‘orders from above’,” one of the participants in the score cards noted.

The independence of state institutions is one of the major strongholds of a constitutional democracy, as recognised by Chapter 6 of the Charter. Nigerian public bodies, although designed to be independent, have been known to be very partisan. For example, the Office of the Attorney General is constitutionally fused with the political office of Minister of Justice, a political appointee hindering a neutral pursuit of justice. This renders democratic institutions irrelevant.

Accountability and transparency are critical building pillars for democratic governance and fulfilment of human rights. Therefore, all states must promote the accountability of all leaders and institutions, without which the process of governance cannot be legitimate. Citizens (including women, young people and excluded groups) must be allowed to enjoy their right to meaningfully participate in decision making. Those who abuse power or become involved in malpractices should be held to account. Governance processes are most legitimate if they promote democratic principles such as transparency, respect for institutions, accountability and citizen engagement in decision-making.⁷² Thus ACDEG state parties must respect their obligation to build strong, efficient and effective institutions that support democracy and good governance.

Good governance is central to sustainable development, poverty alleviation and efficient management of resources. Corruption is one of the greatest threats to democratic

governance and achievement of the Sustainable Development Goals (SDGs). Corruption is a human rights violation, as it undermines economic development, erodes trust in state institutions and violates social justice. As such, stakeholders have a particularly important responsibility to curb corruption by strengthening accountability mechanisms through legal frameworks and by exercising oversight on the executive arms of governments and wider systems in communities under their jurisdiction.

3.4. Governance/local government and enhancing provision of gender-responsive public services

Decentralisation is characterised by strong, autonomous and vibrant systems of local governance.⁷³ Decentralisation is fundamental to bringing government close to the people. This is useful because it enables citizens, including women, young people and marginalised communities and groups, to be better informed, to better appreciate how governance is conducted and to participate in those processes.⁷⁴ In addition, decentralisation can promote the creation of stronger relationships between those who govern and the governed and citizens' identification with government, thus reducing alienation of people from decision-making processes.⁷⁵

Article 34 of the ACDEG places an obligation on state parties to decentralise power to democratically elected local authorities as provided for under national laws. Adherence to this obligation is fundamental to democracy and good governance because it will open up opportunities for citizens to be involved in decision-making processes at local level.

Legal analysis in the eight focus countries showed that attempts have been made to decentralise governance. In Ghana, under Article 35 of the Constitution the state is required to take appropriate measures to decentralise administrative and financial machineries of government to the regions and districts. Article 240 of the Constitution states that "Ghana shall have a system of local government and administration which shall, as far as possible, be decentralised." Citizen perceptions on decentralisation in Ghana, summarised in *Box 3*, reflects what the literature and legal analysis has also been established in other countries:



Box 3: Perceptions of Ghanaian citizens on decentralisation (Ghana national citizens report)

- *“We disagreed because sometimes the central government takes decisions without letting the Assemblies know about it”*
- *“The central government promised to give some money to the Assembly but failed to do so”*
- *“When we take the district assembly common fund even before it comes in, the central government tells us what it should be used for so where is the decentralisation”*
- *“Some of the central government activities negatively affect development in the districts”*
- *“The government says that it is committed to full decentralisation and devolution of power but it doesn’t work as we hear it to be. They do not consider ‘we’ the underprivileged”*
- *“The government is committed to full decentralisation and devolution of power only on paper”*
- *“The central government has its programmes and the District Assembly also has its programmes but with the District Assemblies Common Fund (DACF), the central government will instruct the Assembly to use it for what the central government wants”*

There are three tiers of government in Zimbabwe, namely, central government, provincial councils and local authorities (urban and rural). Article 14 of the Constitution of Zimbabwe deals with decentralisation and devolution of power in the country. The Charter provides that “whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively”. In Tanzania, the Local Government (Elections) Act, Cap 292 R.E 2015 provides for the law relating to the election of persons to local authorities.

At the time of conducting the survey, the Community Score Card in Zimbabwe indicated that there were no concrete measures to operationalise devolution and decentralisation. Sixty percent (60%) of respondents ranked decentralisation and devolution of power in the country as very bad and 20% rated decentralisation and devolution of power as bad. In Zambia, the Community Score Card showed that decentralisation in the country is in a bad state. There is no clear-cut decentralisation and everything in the country is controlled by the ruling party, the Patriotic Front. The other major challenge is that there is not enough funding allocated for decentralisation of governance processes. Similarly, the Community Score Card in Uganda rated decentralisation and devolution as bad despite government steps to create new districts, municipalities and villages.

In Sierra Leone, the majority of those interviewed believe the government is committed to decentralisation, given that it is enshrined in law. A total of 3,545 respondents said ‘yes’ with a rating of 3 (fair), 97%; 115 respondents said ‘no’ with a rating of 2 (bad), 4%. One of the reasons given for those responses is that not all the ministries, departments and agencies of central government are devolved to local councils as yet. Even those that are devolved (Ministries of Education, Health, Youth, Social Welfare, Agriculture and Water Resources),

are not fully devolved, as some activities and programmes are still implemented by ministries, departments and agencies (MDAs) at central government level. They also noted that government quarterly budgetary allocations and disbursement to local councils are not received on time. Sometimes councils only receive half of promised disbursements within a year and the other half is usually rolled over to the following year and this stifles development at local level. It was noted this has been common practice since the past administration and the new administration is continuing with the same pattern. Thus, commitment to and implementation of the provisions of the laws are two different issues, which is a recurring challenge across the different areas being assessed in this report.

Decentralisation offers multiple benefits or advantages as an approach to state governance, including:⁷⁶

- substantial fiscal decentralisation, which provides a framework enabling and encouraging local sustainable development throughout all regions of the state
- provision of an effective means of addressing excessive concentration of power at the centre through ensuring openness, transparency, fairness and probity
- facilitation of greater popular participation in governance process, including of women and young people
- enhancement of efficiency in determining public service provision, including ensuring these are gender-responsive, as all citizens – including women – can have more opportunity to influence and participate in decisions on public service provision.

However, specific measures and efforts are needed to ensure that a gender-responsive approach is taken, for example gender budgeting and consulting with women, recognising women are not a homogenous group and have different needs and priorities based on the particular intersecting forms of oppression they may face based not only on gender but also on age, class, race, ethnicity, religion, sexual orientation, migrant status etc. Gender-responsive public services are vital to the fulfilment of women's rights including their right to participate in decision making, by reducing time spent on unpaid care work.

- the tailoring of solutions to local problems to local conditions, as citizens are empowered to run their affairs
- enhances accountability, transparency and openness.

ACDEG member states should faithfully adhere to their obligation to ensure decentralisation of governance. Without respecting this obligation, they cannot reap the abovementioned benefits of devolution.

Discussion and analysis

The reasons outlined above illustrate that decentralisation and devolution of power and functions from central to provincial/local authorities is a more effective, inclusive, accountable and democratic form of governance. The concept has been viewed as “an instrument to widen and deepen democracy ...with evolution of planning implying that people can be involved not merely in making demands but in taking decisions on how to improve their lives and their communities”⁷⁷. Although attempts are being made by various countries to implement the decentralisation strategy, as shown in *Section 3.4*, citizens in Ghana have raised concerns that the concept is not yet fully functional and the executive at national level wields undue power and influence in regard to decentralisation.

In Zimbabwe, there are concerns that legislation to operationalise decentralisation effectively is yet to be adopted. In Sierra Leone, a number of challenges have been raised especially where central government has only half implemented decentralisation.

Such hesitancy by central governments to a large extent confirms their appetite to continue controlling not only power but also resources that are meant to be distributed to where they are needed most.

Although 10 provincial development coordinators have been appointed in Zimbabwe to assist in the technical and administrative support needed for the national decentralisation and devolution agenda, full authority and powers will be needed if the aspirations of the people are to be met. Seven years after adopting the new constitution with decentralisation included, the country is yet to put in place the requisite legislation to drive the process.



4. Domesticating the Charter: the weak link?

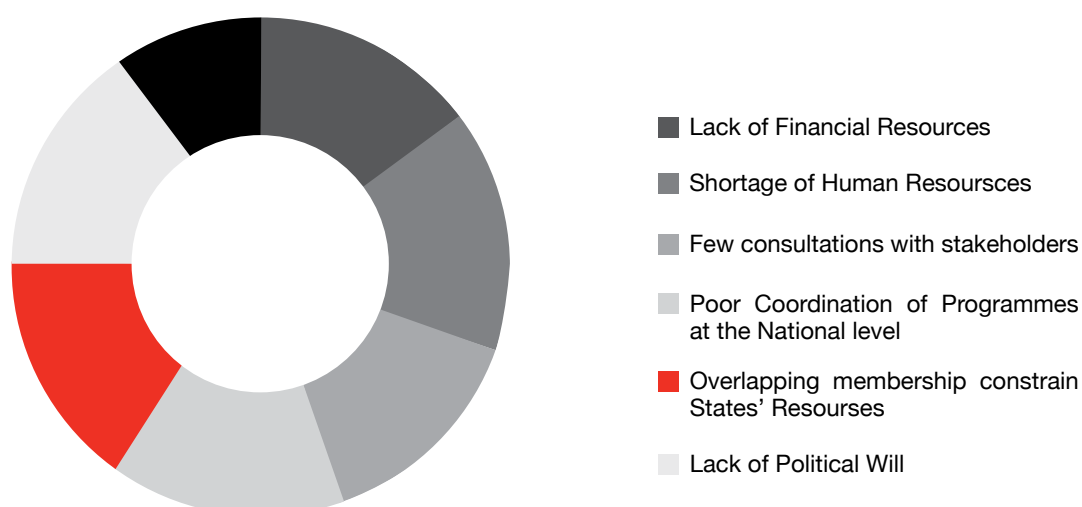
The issues discussed in the section above point to a plethora of challenges in ensuring the Charter is signed, ratified, domesticated and implemented at national level. One of the key challenges is inadequate infrastructures and capacity to effectively coordinate the process. As outlined in the introduction, the Charter is a comprehensive guide to the consolidation of democratic governance on the continent. However, without a strong monitoring and evaluation framework, the best instruments can fail because of poor execution or weak monitoring.

AU member states are obliged to apply the objectives of the Charter by making efforts to guarantee the conformity of its legislation with the Charter, translating the Charter's relevant clauses into domestic law, ensuring dissemination of the Charter at national level, and integrating its objectives and principles into national policies and strategies. This also includes reporting their progress to the AU. By December 2020 only Togo had reported on its progress in the implementation of the Charter⁷⁸.

There is largely a poor response by member states to implement the regional and continental instruments they have signed. Questions have been raised as to why this is the case. One of the issues could be an indication of weak national capacities, including limited political will to meet the obligations of international instruments. This further raises the question of why member states negotiate instruments, adopt and ratify them when they do not intend to follow through with implementation. It remains necessary, therefore, for member states to consider developing and implementing interventions aimed at capacity development at national level and at establishing and/or strengthening coordination and monitoring implementation of regional and international instruments. Putting in place effective, simple and sufficiently flexible structures to steer and monitor progress at member state level, including arbitrating between diverging interests, and remedying any delays in implementation, will be critical to the successful consolidation of democratic governance spurred by the ACDEG.

For most member states, international instruments are yet to be fully integrated into national development plans and strategies. Full domestication and implementation of such instruments has been hampered by a number of factors, including those shown in *Figure 6*.

Figure 6: Factors limiting domestication and alignment of international protocols at national level



Source: R. Machemedze, 2016⁷⁹

While factors shown in *Figure 6* have been identified as factors limiting domestication and alignment of international instruments at national level, the issue of lack of resources (both financial and human) cannot be the entire reason given the resources African countries have and the plunder and corruption that follows.

In fact, despite significant limitations to many state budgets caused by decades of debt, austerity measures linked to loan conditionalities, as well as tax avoidance, evasion and other illicit financial flows, the resources to implement this agenda are arguably available, and the African leadership needs to draw up priorities that will enhance social, economic and political development of the continent including in enhancing gender equality/women's rights/youth – gender-responsive and participative policy making⁸⁰. In addition, such prioritisation could address the inequalities in how resources are allocated in access to resources for socio-economic and political wellbeing. Public institutions play a very critical role in addressing unfair inequalities that have been entrenched over decades in our countries. We have witnessed the harm to democratic governance from the underfunding, commercialisation and privatisation of many state institutions, including our institutions that support democracy. Even policy making has been privatised, with decisions being made without adequate public transparency or scrutiny, sometimes far from the relevant region.

Democracy is under threat and attack. There is a global trend of reversal of democracy as governments, political and economic elites increasingly suppress dissenting voices, crack down on human rights defenders and undermine political and civil rights. This is part of a wider struggle against contemporary neoliberalism to marketize the state, hollow-out democracy and reduce opposition by (re)defining the contours of legitimate, extra-parliamentary political activity and redefining space for policy to protect the position of the elite 1%.

State capture by economic and political elites (foreign and domestic), privatisation and the public-private partnership model have contributed to the undermining of trust in democracy by further unbalancing the playing field for political participation, particularly for women, young people and other excluded groups that have limited access to financing. The power and access elites now enjoy has enabled them to shape policy-making processes and the rules of the game in ways that protect their own interests, blocking policies that would seek to equalise wealth or promote concern for the wider public good.⁸¹



5. African Governance Architecture (AGA) Platform and ACDEG Implementation

AGA Platform members have a responsibility to support member states to implement their ACDEG commitment as well as track progress of implementation. The Charter envisions that the AU Commission, RECs and other relevant AU organs and institutions (all of whom are AGA Platform members) shall, among other actions:

- develop benchmarks for implementation of the commitments and principles of the Charter and evaluate compliance by member states (Art 44(2)a)
- assist state parties in implementing the Charter (Art 45(b)).

The AGA Platform has since developed its Rules of Procedure and ACDEG State Reporting Guidelines for evaluating compliance.⁸² However, to date, the Platform has neither provided technical support to any of the AU member states nor reviewed compliance of implementation of the ACDEG. There are several challenges including limited capacity and resources among Platform members, lack of requests for support from member states and also the fact that only one member (Togo) has to date submitted its ACDEG report.

Of concern is the limited collaboration and partnership by the AGA Platform with civil society organisations and citizens specifically to provide such support and or track member states' implementation of the ACDEG. While the AGA Secretariat has commendably improved its relationship and engagement with citizens, especially through the High-Level Dialogues and particularly with young people and women, an institutionalised framework for civil society to engage and support member states and the AU, as well as RECs, to monitor compliance with the ACDEG is lacking. The ACDEG State Reporting Guidelines and AGA Rules of Procedure provide for civil society engagement, which is yet to take place in earnest. Comparable experiences with individual AGA Platform members such as the African Peer Review Mechanism (APRM), the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the Pan African Parliament and the African Committee on the Rights and Welfare of the Child demonstrate that it is possible to include civil society and ensure they are able to contribute to and participate in AGA Platform processes to consolidate democratic governance in Africa.

The biannual State of Governance Report⁸³ by the AGA Platform, led and coordinated by the APRM, provides a unique opportunity to engage and partner with civil society actors and think tanks. The report, while welcome, requires greater and authentic citizen voices and perspectives. While the AGA Platform continues to engage and encourage member states to submit inaugural and biannual annual ACDEG state reports, the State of Governance Report is an opportunity to evaluate the state of democratic governance in Africa and, importantly, offer views and reflections from citizens on how to consolidate democratic governance through ACDEG implementation. Recommendations emerging from the report, and eventually in the concluding observations and recommendations of the AGA Platform upon review of state reports, should include the role of civil society to support member states to implement the Charter. In addition, civil society should have an opportunity to provide alternative and complementary reports to the AGA Platform on the status of ACDEG implementation. Citizens, civil society actors and think tanks can use alternative data and information on ACDEG compliance and implementation by employing innovative tools, technologies and methodologies of tracking citizens' perceptions and views of how to strengthen democratic governance.

It is important to underscore that the ACDEG state reporting process and methodologies are not unique. They build upon the existing state reporting processes of other AU human rights treaty monitoring processes such as at the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). Those two mechanisms, as well as that by the APRM country reviews, already consult and engage civil society extensively, and these should be emulated with the ACDEG process. Although challenges to implementation in these processes equally obtain, concerted efforts with RECs, member states, AGA Platform members and civil society could leverage political policy-making actors such as the PRC and Peace and Security Council (PSC). The newly established PRC-Sub Committee on Human Rights, Democracy and Governance was operationalised in December 2019. One of the tasks of the Sub-Committee was to evaluate on a regular basis the implementation of Summit Declaration Assembly/ AU/ Decl.1(XVI) on implementation of AU Shared Values and provide a critical link between AU organs with the mandate on human rights, democracy and governance, and member states. The Sub-Committee is therefore a critical platform for civil society, through the AGA Platform, to provide input and perspectives on implementation of the ACDEG. It is equally envisioned that AU institutional reforms, including on sustainable financing of the Union and the merger in 2021 of the Department of Political Affairs with the Peace and Security Department (which seeks to foster closer links between the AGA and the African Peace and Security Architecture (APSA), will improve support for member states and tracking of compliance with the ACDEG.



6. Conclusions

There is no doubt that democracy and good governance in Africa is sliding backwards. African nations face many problems with regard to consolidating democracy and the rule of law. Increased restrictions on civil liberties, curtailment of the media and manipulation of electoral processes that indirectly suppresses legitimate opposition in countries such as Tanzania, Uganda, Zambia and Zimbabwe reflect democratic backsliding and a general retreat from political pluralism. As noted by the 2019 Democracy Index, centralised policy making, acquiescent legislatures, a general lack of accountability mechanisms and entrenched corruption all lead to negative public perceptions of governments, political parties and civil servants.⁸⁴ Those pushed to the bottom of the economic or social hierarchy, such as women, young people and other marginalised groups and communities facing intersecting forms of discrimination and oppression, have little say in political decision and policy making – despite their participation being vital to the design and implementation of relevant, sustainable policies and gender-responsive public services. Young Africans, who make up the largest segment of the global youth population, should have the strongest incentive to drive the continent's democracy agenda but the possibility of engaging in political processes is limited for a number of reasons, including domination by political heavyweights. Young women are often deterred from entering public spaces to raise their demands when political elites, mostly male, threaten their reputation or physical security based on regressive, patriarchal gender norms that denigrate women's voice and agency, prescribe limitations on their mobility, and normalise gender-based violence against them. However, as reported in the findings of this report, dialogue and coordinated engagement from African citizens with governments can create substantive changes at country level and help ensure the domestication and implementation of the Charter.

Civil society organisations have noted previously in various statements that democracy on the continent must evolve beyond notions of a 'tick-box' exercised in periodic elections⁸⁵. The elections, in the manner in which they are currently conducted, exacerbate and give rise to ongoing crises of democratic governance exemplified by insignificant or less meaningful progress on governance and human security in the region despite the ever-increasing frequency of 'tick-box' elections.

Citizens have bemoaned the lack of transparency and accountability in the conduct of elections and have been calling for AU member states to ensure and guarantee the independence and impartiality of Election Management Bodies with constitutional power and adequate resources as is provided for in their respective constitutions and the ACDEG.

In like manner, the 'rule of law' in the majority of the member states is conflated with a subverted legalism which has no purpose other than to support the agenda of the ruling party and classes to perpetuate entrenched power, as the Community Score Cards have revealed. We have constitutions without constitutionalism and rule of law without justice for all, as exemplified by what is happening in several countries, for example the detention without trial of journalists in Tanzania and Zimbabwe. Several countries are also witnessing democratic 'backsliding', where authoritarian leaders and elected despots increasingly seek to use or manipulate the law (rather than violate or ignore it) to pursue their own ends within the boundaries of the constitution. This includes: extensions of constitutional term limits for political leaders such as Uganda in 2017; increased concentration of power in executive branches; curtailing the independence of the judiciary and the media; reducing legislative oversight; and tight control of democratic competition by passing legislation restricting constitutionally guaranteed rights – legislation which is often targeted at reducing political opposition and dissent.

It is clear that the African continent is not bereft of policies and instruments that promote good governance. A number of countries have signed the Charter, but its implementation is a huge challenge, hence the perception that there is reluctance by member states to domesticate it. The challenges of implementation presented in Section 5 above could be addressed if member states prioritised implementation of international instruments in partnership with key stakeholders.

These realities disproportionately affect women and young people. Overarching disadvantages for these excluded groups are expressed through their lack of opportunities for political participation; the absence of spaces to voice their concerns; and under-representation in influential government positions. Other forms of systemic discrimination against women and young people involve their exclusion from electoral processes through the absence or poor enforcement of relevant laws and policies, the ineffective working of electoral management bodies, and the discriminatory attitudes of those who dominate those processes, institutions and systems, as well as gender-based violence and limitations on women's time and mobility due to their disproportionate share of unpaid care and domestic work. Such barriers limit the great promises of democracy that women and young people hope to realise, including improved livelihoods, citizen participation, gender equality, empowerment of young people and the creation of an environment that upholds human rights.

Democratic governance is not simply about elections, inclusivity, constitutionalism, equal distribution of resources, etc but is also about the power that social groups – including within civil society, such as women's rights organisations and youth groups and movements – have to ensure democratic governance and to influence the decisions that affect them. We have experienced how bad governance has undermined this collective power. It has broken down solidarity between people.

6.1. Recommendations

In light of the above, it is recommended that in order to accelerate the adoption, domestication and implementation of the African Charter on Democracy, Elections and Governance, the analysis of challenges and opportunities for Africa's development should lead to an affirmation of three areas that require attention:

- reclaiming resources
- reclaiming the state
- reclaiming collective agency and solidarity.

In paying attention to the above three areas, it is recommended that:

The **African Union Commission** consider the following:

- ***Develop an action plan to support member states in popularising the Charter.***
Develop clear guidelines and benchmarks for member states bi-annual reporting on the implementation with reference to the Charters Article 49. The guidelines must facilitate the domestication of the ACDEG into National Development Plans (NDPs) and serve as tools for assessing NDP alignment with other regional, continental and global instruments.

- **Provide technical capacity to national monitoring and accountability mechanisms.** This includes helping in the harmonisation of legal and regulatory policies at the national level that enable implementation of ACDEG and other regional and continental instruments
- **Develop regional monitoring reports and external assessments tools of compliance** by member states. This also includes developing a harmonised reporting framework that encourages peer learning
- **Strengthen the involvement of civil society in popularising the Charter.** This includes ensuring effective participation and consultations of civil society, including women's rights organisations and youth groups, in the activities aimed at implementing the provisions of the Charter at national, regional and continental levels.

AU member states consider the following:

- **Ratify and implement all human rights conventions and provisions of the ACDEG, including the rights of women and young people** and implement them to remove economic, social and cultural barriers to the participation of women and young people
- **Appoint national focal points at the Ministry of Foreign Affairs and/or Ministry of Justice** to be responsible for the full compliance with and implementation of the Charter
- **Submit national implementation reports every two years** in line with the Charter's Article 49
- **Form partnership with civil society, including women's rights organisations and youth groups, to engage stakeholders at local, district and national levels for the popularisation of the Charter.** This includes implementing decentralised outreach programmes including awareness raising on the regional and continental agendas and instruments using existing implementing structures facilitates uptake at various levels
- **Develop National Development Plans** as a multi-stakeholder process to ensure full compliance and alignment of the NDPs to regional, continental and global agendas including ACDEG to facilitate implementation and harmonised reporting
- **Increase legal, institutional, financial support and human capacity to key national institutions responsible for promoting democracy and good governance.** This must also include member states establishing sector-wide approaches to planning and budgeting to ensure that all regional and continental priorities are mainstreamed into the national plans and are adequately budgeted for.

Civil society consider the following:

- **Continue to raise public awareness** on the provisions and implementation of the Charter
- **Popularise the Charter and involve citizens** in public campaigning on national obligations and commitment for domestication and implementation of the Charter
- **Produce shadow CSO reports** based on the Citizens' Report Methodology and gather evidence to support national lobby efforts
- **Develop regular evidence-based public reporting** on the performance of political and governance institutions responsible for the implementation of the Charter.

Endnotes

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6. The rankings are as follows: 'very bad' (not at all in line with legal instruments in the country); 'bad' (very little link with legal instruments in the country); 'fair' (reasonable link with legal instruments in the country); 'good' (most clauses linked with legal instruments in the country); or 'very good' (all clauses linked with legal instruments in the country).
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'Intimidation or reprisal' means any form of violence, threat, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary or detrimental action or threat related to status, or legitimate work or activity, including proposed, attempted or imputed work or activity.
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