THE PARTICIPATION MYTH

Outcomes of participatory constitution building processes on democracy

Abrak Saati
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Abrak Saati
To my parents, Masood and Mojgan
Abstract

Since the early 1990s a growing number of constitution building processes in countries transitioning from authoritarian rule or recovering from war or severe institutional crisis have involved public participation. This increase stems from an assumption made by many peacebuilding scholars and practitioners that public participation in constitution building will lead to higher levels of democracy. This assumption has not, however, been the subject of systematic or comprehensive analysis. Therefore, the overarching purpose of this thesis is to scrutinize the participation-hypothesis - as it is referred to in this study.

The study is a two-step investigation. The first part begins with an analysis of twenty cases of participatory constitution building that have occurred in post-conflict states, transitioning states and countries that have experienced a severe institutional crisis. In order to differentiate the cases in terms of how much influence participants were granted, an analytical framework is developed and the cases are categorized as either false, symbolic, limited, consultative or substantial participation. The participation-hypothesis is then empirically investigated by comparing democracy levels prior to and after the process for each of the 20 cases. In order to further test the hypothesis, cases of constitution making in which there was no public participation are then added to the investigation. These cases are included as a point of reference – the democratic outcome in this group is compared with the democratic outcome in the twenty participatory processes. The empirical results reveal that there is no relationship between public participation in constitution building processes and higher levels of democracy. On the contrary, some cases that involved considerable influence for participants have not experienced improved levels of democracy, while cases with low levels of influence for participants have shown democratic improvement. Moreover, a majority of cases of constitution making without public participation have also experienced increases in their democracy scores. Therefore, the conclusion of the first part of the study is that the participation-hypothesis does not stand up to empirical scrutiny.

Particularly challenging for the participation-hypothesis is the fact that the analysis in part one shows that similar participatory processes have been followed by democratic improvement in some countries and democratic decline in others. Two such cases are Kenya and Zimbabwe. While democracy levels have increased in Kenya since the conclusion of the process, they have steadily declined in Zimbabwe. In the second part of the study, these two countries are therefore the object of intense, systematic and comparative scrutiny in order to explore factors beyond participation in constitution building that might explain the different trajectories of democracy. The comparison shows that the actions of political elites – in particular their ability to cooperate with each other – is the major explanation as to why the two wind up on different paths. The importance of elite cooperation is well-established in the democratization literature. One major conclusion of this study is therefore that the participation-hypothesis needs to be informed by insights drawn from this literature.

Keywords: participatory constitution building processes, participation, peacebuilding, post-conflict, transitioning states, democracy, democratization, Kenya, Zimbabwe.
Acknowledgements

It is almost a surreal feeling, and it hits me now that I am writing this preface, that five years have come and gone. Five years of writing this dissertation. It has truly been an adventure, marked by moments of great joy as well as moments of doubt and despair. Though writing a doctoral thesis is a lonesome undertaking, I could never have finished this project had it not been for a number of people; I would like to mention a few of these. To begin with, words cannot even begin to describe how grateful I am to my supervisors Malin E. Wimelius, main supervisor, and Magnus Blomgren, co-supervisor. Both of you have been so devoted to this project throughout the years, reading and providing insightful comments on the chapters of this thesis, constantly encouraging me as well as pushing me to challenge myself – your efforts have truly surpassed all of my expectations. I will really miss our meetings, discussing and debating issues related to this research project and beyond. I just might have to come up with new reasons for us to keep on having these regular sessions together, because if I do not, I will simply miss your company too much. I also wish to convey my gratitude to Anders Lidström, who has also been my co-supervisor during this project, for carefully reading the manuscript and giving me valuable input at a critical stage of the process. Thank you Malin, Magnus and Anders for generously sharing your time and expertise with me.

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extraordinary person, and I am convinced that the world would be a better
place if everyone had the same positive outlook on life as you do. Thanks for
inspiring me. I love you!

As this thesis goes to print, exactly thirty years has passed since my father,
mother and I left Iran and moved to Sweden. My dad has told me that on his
daily walk to the office in Tehran, he used to pass a girls elementary school.
The girls wore headscarves to cover their hair and their teacher often guided
them in some sort of religious chant in the courtyard. The sight used to “make
me shiver. I knew we had to leave”, he has said. Though I never saw the girls
in the courtyard or heard them chanting, I have imagined this scene
throughout my life. It has made me immensely thankful to be living in a
country where I enjoy freedom; where I am able to speak my mind without
fear, love whomever I want without being jailed, believe in whichever God I
want to (or believe in no God), vote in democratic elections, dress as I want
without being detained, etc. My sense of gratitude to my father and mother for
choosing to leave their country behind in order for me to have a brighter future
cannot be conveyed by the use of words, there are simply no words in the
dictionary for my thankfulness. But still, from the bottom of my heart; thank
you, to the both of you for giving me a world filled with opportunities, for
always encouraging me, for always believing in me, for teaching me about the
ture values in life and for motivating me. In this respect, my mother has been
a true inspiration; watching her study day and night to pass her exams in
medical school just a few years after we arrived to Sweden made me realize
that by working hard, all obstacles can be overcome. Mom, dad, doseton
daram (“I love you”, in farsi) and your courage inspires me. I dedicate this
thesis to you.

Abrak Saati
Umeå, April 2015
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<th>Full Form</th>
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<tr>
<td>ACCAPP</td>
<td>Administrative Center for the Coordination of Assistance and Public Participation</td>
</tr>
<tr>
<td>ANC</td>
<td>African National Congress</td>
</tr>
<tr>
<td>ATA</td>
<td>Antiterrorism Assistance Program</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>BEAC</td>
<td>British East Africa Company</td>
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<tr>
<td>BSA</td>
<td>British South Africa Company</td>
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<tr>
<td>CIO</td>
<td>Central Intelligence Organization</td>
</tr>
<tr>
<td>CIPEV</td>
<td>Commission of Inquiry on Post Election Violence</td>
</tr>
<tr>
<td>CoE</td>
<td>Committee of Experts</td>
</tr>
<tr>
<td>COPAC</td>
<td>Select Committee of Parliament on the new Constitution</td>
</tr>
<tr>
<td>COSATU</td>
<td>Congress of South Africa Trade Unions</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of the Congo</td>
</tr>
<tr>
<td>ECK</td>
<td>Electoral Commission of Kenya</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>Economic and Social Council</td>
</tr>
<tr>
<td>ELN</td>
<td>Ejército de Liberación Nacional</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FARC</td>
<td>Fuerzas Armadas Revolucionarias de Colombia</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investments</td>
</tr>
<tr>
<td>FPZ</td>
<td>Forum Party of Zimbabwe</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GNU</td>
<td>Government of National Unity</td>
</tr>
<tr>
<td>GPA</td>
<td>Global Political Agreement</td>
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<tr>
<td>HDI</td>
<td>Human Development Index</td>
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<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>IAEA</td>
<td>International Atomic Energy Agency</td>
</tr>
<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>IDEA</td>
<td>International Institute for Democracy and Electoral Assistance</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
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<tr>
<td>JOC</td>
<td>Joint Operation Command</td>
</tr>
<tr>
<td>KADU</td>
<td>Kenya African Democratic Union</td>
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<tr>
<td>KANU</td>
<td>Kenya African National Union</td>
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<tr>
<td>KISM</td>
<td>Kenya Security Intelligence Machinery</td>
</tr>
<tr>
<td>KPU</td>
<td>Kenya People’s Union</td>
</tr>
<tr>
<td>LPD</td>
<td>Liberal Democratic Party</td>
</tr>
<tr>
<td>LSZ</td>
<td>Law Society of Zimbabwe</td>
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</table>
MAS  Movimento Al Socialismo
MDC  Movement for Democratic Change
MoU  Memorandum of Understanding
NAPK  National Alliance Party of Kenya
NARC  National Alliance of Rainbow Coalition
NATO  North Atlantic Treaty Organization
NCA  National Constitutional Assembly
NGO  Non-Governmental Organization
NORDEM  Norwegian Resource Bank for Democracy and Human Rights
NP  National Party
NSIS  National Security Intelligence Service
OAS  Organization of American States
ODM  Orange Democratic Movement
OECD  Organization for Economic Co-operation and Development
OLF  Oromo Liberation Front
OSCE  Organization for Security and Cooperation in Europe
PCK  People’s Commission of Kenya
PNU  Party of National Unity
QCA  Qualitative Comparative Analysis
SADC  Southern Africa Development Community
UAE  United Arab Emirates
UCDP  Uppsala Conflict Data Program
UN  United Nations
UNDP  United Nations Development Programme
UNICEF  United Nations Children’s Fund
UNMIK  United Nations Interim Administration Mission in Kosovo
UNSCR  United Nations Security Council Resolution
UNTAET  United Nations Transitional Administration in East Timor
USIP  United States Institute of Peace
WDI  World Development Indicators
WTO  World Trade Organization
WVA  War Veteran’s Association
ZANLA  Zimbabwe African National Liberation Army
ZANU  Zimbabwe African National Union
ZANU-PF  Zimbabwe African National Union – Patriotic Front
ZAPU  Zimbabwe African Peoples Union
ZCTU  Zimbabwe Congress of Trade Unions
ZEC  Zimbabwean Electoral Commission
ZESN  Zimbabwe Election Support Network
ZIPRA  Zimbabwe People’s Revolution Army
ZMC  Zimbabwe Media Commission
ZUM  Zimbabwe Unity Movement
PART ONE
Chapter 1
Introduction

Peacebuilding. The term gained currency when it was articulated by former UN Secretary General, Boutros Boutros-Ghali in *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*. The year was 1992. In the report, Ghali emphasized the importance of complementing traditional peacemaking and peacekeeping efforts with peacebuilding initiatives in the aftermath of conflict. Although he did not provide an exact definition of peacebuilding, the former Secretary General made reference to the importance of supporting structures aimed at consolidating peace in order to avoid a relapse into conflict (Ghali 1992: 15). Four years later, Ghali authored another formative report, *An Agenda for Democratization*, in which he claimed that “democracy contributes to preserving peace and security, justice and human rights, and promoting economic and social development” (Ghali 1996: 6). Indeed, in the post-Cold War world, the view that liberal democracy is the main method *through which* sustainable peace can prosper has become a deeply rooted belief among governments, civil society organizations and numerous United Nations’ member states (Sisk 2008: 239, Jarstad & Sisk 2008: 1, Brown 2003: 141, Fox & Roth 2001). This position, with its origins in the “liberal internationalist tradition” of the twentieth century, is informed as much by a normative view as by theoretical and empirical insights (Ponzio 2011: 2). The abundant literature pertaining to democratic peace theory has undoubtedly contributed to the common understanding of democracy as essential for sustainable peace.\(^1\) As expressed by Levy (1989: 88), the democratic peace is: “the closest thing we have to an empirical law in the study of international relations”. Simply put, democratic states do not wage war against each other. Likewise, they are presumed to act peacefully within their own borders (Hegre et al. 2001). In addition to democracy being a peace-enhancing good, democracy as a desirable form of government is also a core normative value in international conventions and declarations. “The will of the people shall be the basis of the authority of government”, asserts the Universal Declaration of Human Rights (United Nations Declaration of Human Rights, 1948, Article 21: 3). The Universal Declaration of Democracy, adopted by the Inter-parliamentary Council, states:

“As an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquility, as well as to create a climate that is favorable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction”.

(Inter-parliamentary Council, A Universal Declaration of Democracy, 1997, Article 3)

In 1999, the United Nations also fully acknowledged the existence of a right to democracy (UN Commission on Human Rights, Resolution 1999/57). This notion of democratic legitimacy has subsequently been endorsed by regional organizations around the globe – for example, the European and Inter-American Commission of Human Rights, the Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE) (Fox & Roth 2001, Fox 2003: 181-182). The normative claim for democracy hence appears to be strong. But what do the peacebuilding literature and peacebuilding practitioners say about how this desirable form of government can be brought about and strengthened? On this point, a claim is made that links public participation in constitution building processes to democracy.

In fact, since the beginning of the 1990s, constitution building with the assistance of ordinary women and men has become a specific peacebuilding initiative that is held to promote democracy and thus lead to sustainable peace in countries recovering from war, countries transitioning from authoritarian rule and countries that have experienced severe institutional crisis. Although there are a few examples of citizen participation in constitution drafting processes prior to the advent of the peacebuilding agenda, an increase in what is referred to as “participatory constitution building” (e.g. Brandt et al. 2011, Ginsburg et al. 2009) has taken place since 1992. Despite this increase, however, the proposed link between participatory constitution building processes and democracy remains largely unexplored and there is a striking absence of systematic comparative research. Ginsburg et al. usefully capture the current scholarly challenge by stating that:

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2 Some regional organizations even make it mandatory for member states to adhere to democratic principles. The European Union (EU) in the Treaty of Lisbon establishes that: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (Treaty of Lisbon, 2007, Article 1 A). The North Atlantic Treaty Organization (NATO) explicitly outlines in its statues that members in NATO shall be “determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law” (North Atlantic Treaty, 1949). The Organization of American States (OAS) also affirms its belief in representative democracy as indispensable for stability, peace and development in the region, and in its statues, the organisation includes the right to suspend the membership of any country that overthrows a democratically elected government (OAS statues, 1993, Article 9).
“On the theoretical side, we find a broad consensus in the literature about the importance of public involvement as well as an apparent trend in practice. Yet many of the assumptions of proponents of participation remain untested, and the precise relationships between participation and desirable outcomes remain underspecified”.

(Ginsburg et al. 2009: 219)

This is echoed by Moehler (2008: 35), who notes that much of the current scholarly work is based on “hopeful predictions” concerning what we believe public participation will bring about, rather than on actual empirical investigations of past participatory constitution building processes. Similarly, Horowitz (Diamond et al. 2014: 99-100) concludes that although there is an emerging consensus in favour of extensive citizen participation in constitution building processes, there is still: “not even a scintilla of evidence that it improves the durability or the democratic content of constitutions”. The observations made by Ginsburg et al. (2009), Moehler (2008) and Horowitz (Diamond et al. 2014) in large part spring from the fact that previous work in this field of research has not provided a precise definition of what public “participation” in a constitution building process actually implies. What does it mean to participate? If participation is expected to influence a particular outcome, we have an undeniable need to understand what it signifies and how it can be operationalized so that such a claim can be empirically analysed.

The above-mentioned observation of Ginsburg et al. (2009: 291) about current gaps in existing research is also explained by another fact; namely, that this vein of scholarly work suffers from a lack of rigorous comparative studies, although it is rich in single-case studies. To be sure, in many earlier academic contributions much attention has been devoted to examining the procedural aspects of individual cases of participatory constitution building processes, including detailed accounts of the design of the process, rather than to carrying out a “process-outcome” analysis (e.g. Benomar 2003, 2004, Thier 2010, Morrow 2005, 2010, Carlson 2010, Santiago 2008, Rosenn 2010, Versiani 2010, Fox et al. 2010, Aucoin & Brandt 2010, Selassie 1998, 2010, Wodajo 2001, Tewfik 2010, Cottrell & Ghai 2004, Bannon 2007, Reding 1986, Ihonvbere 2000, Gasamagera 2007, Klein 1998, Tripp 2010, Waliggo 2001, Ndulo 2010). Another striking feature of the single-case study oriented focus of this field of research is that the South African case has received considerably more scholarly attention than other countries that have also carried out participatory constitution building processes (e.g. Ebrahim 1999, 2001, Haysom 2001, Jagwanth 2000, Ebrahim & Miller 2010, Maphai 1999, Mbete-Kgositsile 2001, Pottie & Hassim 2003). Notwithstanding the fact that South Africa is interesting for a number of reasons that will be touched upon later in the study, the strong focus on this specific case as an archetype for “successful” participatory constitution building has rendered the research field unbalanced; other cases have not received as much attention, and systematic
comparative studies that include many cases for the purpose of determining whether participation is linked to democracy have not yet been conducted.

1.1 Research problem

Nearly twenty-five years of peacebuilding missions by the UN and other international and national organizations has meant greater emphasis on participatory constitution building processes as part of a broader peacebuilding agenda (Benomar 2003, Ghai & Galli 2006, Samuels 2009, Samuels 2006, Ponzio 2011: 97, Weber 2011: iv, IDEA 2011: 10). The constitution – the supreme law of the land and a political roadmap that stipulates the “rules of the game” and establishes the institutional order – is also a political and social contract between the government and the citizenry. It is a text that has the potential to transcend merely judicial significance, a text that can also embody the shared values and aspirations of the people (Hart 2003, Ghai & Galli 2006). Certainly, its role in post-conflict states in particular is fundamental, because it can provide the country with institutional mechanisms for managing future conflicts within a democratic order, rather than through the use of weapons on the battlefield (Reilly 2001, Ponzio 2011, IDEA 2012).

Unquestionably, constitution building matters. Following the publication of an Agenda for Peace, the world has witnessed an increase in the number of new constitutions that is unmatched in human history (IDEA 2011: 8, IDEA 2012: 3, Hart 2003). Over the past thirty years, more than half of the world’s almost two hundred national constitutions have either been written or re-written (Weber 2011: iv). This considerable increase in constitutional activity has doubtlessly served to reignite the scholarly debate about constitution making and has encouraged a re-evaluation of best practices for constitution building (Moehler 2006: 277, Ghai & Galli 2006: 5).

In a significant shift, since the dawn of the peacebuilding era, a growing number of constitutions have been drafted with the help of the general public in countries recovering from war, countries transitioning from authoritarian rule and countries that have experienced a severe institutional crisis (Miller 2010: 601-611). At this

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3 Following the definition of a post-conflict situation provided by Junne & Verkoren (2005: 1), in this thesis the term is used to denote “conflict situations in which open warfare has come to an end. Such situations remain tense for years or decades and can easily relapse into large-scale violence”.

4 Increased scholarly attention has also resulted in a distinction between “constitution building” and “constitution making”. Constitution building is taken to encompass all phases involved in the process that results in having a written constitution. Constitution making is defined as the actual drawing up of – i.e. the writing of – the constitution (Ghai & Galli 2006: 13). This distinction also ties into the notion of constitution building as a “process”. The use of the term constitution building processes communicates that we are concerned with such matters as the procedures through which the constitution is negotiated, the constitution making bodies used to arrive at a final document, the ways in which public views are allowed to be expressed and how these views are collated, how decisions about the content of the final text are made, etc.

5 A severe institutional crisis denotes a situation in which the exercise of power, such as it is stipulated in the constitution, is violated (e.g. coup d’État, unconstitutional dismissal of the executive, etc.)
point it is worth recalling that, historically, the writing of constitutions has been reserved for the smoke-field chambers of political elites and lawyers. Tully (1995: 28) even claims that constitution making is the single activity in “modern politics that has not been democratized” over the last three centuries. Therefore, participatory constitution building stands in stark contrast to traditional methods of arriving at a final document (Arato 2000, Moehler 2008, Hart 2010: 20).

Scholars and practitioners alike generally argue that public participation in constitution building is important for five different reasons. First, issues pertaining to the legitimacy of the document are frequently stressed. It is argued that a constitution cannot be written for the people of a jurisdiction without input from those people, who will subsequently be bound by it; the document will simply lack legitimacy (Hart 2003; Samuels 2009; Samuels 2006; Widner 2008; Moehler 2006; Ghai & Galli 2006). Secondly, the educational aspects of a participatory process are also repeatedly emphasized. Public participation in the process is believed to educate people in democratic values and even to broaden the democratic polity, because it offers previously excluded groups an opportunity to have their voices and values considered (Ghai & Galli 2006: 14, Samuels 2006: 8, Widner 2005a). In other words, the process is seen as an exercise in democracy and as a way to support the growth of a democratic political culture in a society (Hart 2003: 12, Moehler 2006: 276-278). Thirdly, proponents also underscore that a participatory process helps build much needed social capital, especially in war torn societies, because it is believed that ownership induces a sense of influence and trust (Widner 2005a: 506). Fourthly, public participation in constitution building is also often emphasized as a method through which those who were previously adversaries in a violent conflict can be reconciled. It is argued that a participatory process can provide antagonists with an arena in which they can collectively address past grievances and structural inequities at the root of the conflict (Ghai & Galli 2006: 13, Hart 2003: 3, Samuels 2006: 5-6).

In accordance with the broader peacebuilding agenda, however, the prime reason advanced for participatory constitution building is its proposed effects on democracy. There is a belief that public participation will lead to higher levels of democracy after the finalization of the process. In this dissertation, this belief will be referred to as the participation-hypothesis. A few illustrative statements by prominent scholars and practitioners in the field serve to give expression to this understanding:
“We know (emphasis added) that inclusiveness and participation can make a major contribution to democratization”.

(Ghai & Galli 2006: 17)

“Participation is necessary to “legitimate” the new constitutional order, promote awareness, acceptance and assertion of human rights and promote democratic governance…”

(Paul, cited in Hart 2010: 40)

“...effective participation in an ongoing process of constitution-writing and policy-making helps nations avoid violent conflict and build democracy by encouraging the expression of diverse citizen concerns”.

(Wing 2008: 2)

“The literature on participatory constitution making contends that citizen participation facilitates democratization by grounding the state’s governance system in a set of principles and practices for which there is a national consensus”.

(Banks 2007: 106)

“Participatory constitution making is fundamentally about enacting social and political change in post-conflict states. Its supporters within the international community view it as a tool for implementing democracy where it has ceased to exist and for entrenching social and political rights where they have only nominally existed”.

(Banks 2008: 1055)

“...the way a constitution is made in a war-torn country can play a key role in rebuilding or strengthening state and political systems as well as securing a durable peace – particularly if it entails an inclusive process that leads to the creation of a consensus-based road map for a more just economic, political and social order. Despite the important role such a process can play, little attention has been paid to how to design and implement a participatory and inclusive constitution-making process that supports a lasting peace”.

(Brahimi 2011)

“One opportunity for societal dialogue that arises in most UN managed peace-building is the adoption of a participatory constitution-making process. It is increasingly recognized that how constitutions are made, particularly following civil conflict or authoritarian rule, impacts the resulting state and its transition to democracy”.

(Samuels 2006: 5)

As the accounts above reveal, public participation in constitution building is seen as desirable because it is assumed to have a positive effect on democracy, democratization, transitions towards democracy, the promotion of democratic governance, etc. Although the statements are not exactly the same in the sense that they all express one specific claim, it is clear that all of them depict a relationship between public participation and democracy in which the former is expected to have a positive effect on the latter, which implies that democracy levels will improve. However, these proclamations are, in fact, problematic. This is because there is actually no comparative evidence that confirms that a participatory constitution building process leads more directly to democracy and that (in consequence) an elite-driven constitution writing exercise results in an authoritative system of government (Skach 2005: 161).
For now, this remains an unresolved question. What is also unclear is the concept of “participation” and how it is construed. Judging from the statements above, it is difficult to fully comprehend what proponents of the participation-hypothesis understand “participation” to mean, nor is it clear to what extent, if at all, they understand the notion of participation in the same manner. Because previous scholarly work has not provided a theoretical or empirical differentiation of participation in constitution building, we currently lack analytical tools that enable us to untangle the concept and understand how it can play out in different cases. We are currently not even certain if advocates of the participation-hypothesis believe that whether or not democracy levels improve depends upon how much participation is permitted, or whether democracy levels are thought to increase no matter how little participation is exercised during the course of a given constitution building process. Undeniably, many questions remain unanswered. This thesis will address these research gaps with the help of three research questions, which will be discussed below.

1.1.1 Aim and research questions

The overarching aim of this thesis is to systematically scrutinize the participation-hypothesis in order to investigate whether public participation in constitution building processes results in higher levels of democracy, which is what the hypothesis suggests. In the first part of the thesis, twenty cases that the peacebuilding literature and scholarly work concerned with the study of constitution building processes identify as cases of “participatory constitution building processes” will be analysed. The analysis is guided by the following research questions:

1) How can participatory constitution building processes be classified?

   In order to scrutinize the participation-hypothesis, we must first define “participation” in a constitution building context. A classification scheme that covers different types of participation will be developed by drawing on earlier theoretical and empirical research on public participation in different arenas and by conducting a systematic comparison of the twenty cases of participatory constitution building processes.

2) Does participation in constitution building processes lead to higher levels of democracy?

   Once we have a good understanding of how public participation in constitution building processes can be classified, we will be able to investigate whether participation does, in fact, lead to higher levels of democracy. Thus, after answering the first research question, we will
investigate whether cases which had more wide-ranging public participation experienced greater improvement in their democracy levels as compared to cases in which participation was less extensive. After this, to further scrutinize the participation-hypothesis and test its empirical validity, cases in which there was no participation by the public will be added to the study. These cases will be referred to as cases of non-participation. This analysis will provide even greater understanding of whether public participation has the desirable effect on democracy levels that advocates of the participation-hypothesis suggest that it has.

The second part of the thesis is concerned with exploring factors beyond participation in constitution building processes that shed light on why cases that display similar levels of public participation are different as regards levels of democracy. This second part revolves around a third research question:

3) *If not participation in constitution building processes, then what causes higher levels of democracy?*

With the help of theories of democratization, the third research question leads to an investigation designed to explain why cases with similar levels of public participation in their constitution building processes nonetheless display very different trajectories as regards their democracy levels after the processes. The insights gleaned from this investigation will facilitate a discussion about the limitations of the participation-hypothesis and the need for it to be informed by knowledge drawn from the democratization literature.

By fulfilling the purpose of the study and answering the research questions posed here, the hope is that this thesis will make theoretical as well as empirical contributions in several areas. As regards conceptualizing participation to fit a constitution building context and developing a systematic method for differentiating among different types of participation, it is hoped that the theoretical and methodological suggestions made here will help other researchers who seek to understand individual cases of participatory constitution building processes and/or to compare cases with each other. Scrutinizing the twenty cases of participatory constitution building in order to classify their processes as embodying less or more extensive forms of participation is empirically valuable because it draws our attention to *how* cases differ from each other. As regards the investigation of whether participation in constitution building leads to higher levels of democracy, this thesis aims to make an important empirical contribution. As illustrated earlier, at present we have assumptions concerning the perceived rewards of participatory processes on democracy levels, but they have not yet been
This study is empirically validated. This study is the first of its kind that sets out to actually scrutinize this proposition in an effort to determine if there is empirical support for the participation-hypothesis. Lastly, this thesis will help bridge the gap between the peacebuilding literature, from which the participation-hypothesis derives, and the democratization literature, which contains rich insights about the outcome of interest to advocates of the participation-hypothesis – i.e. the enhancement of democracy.

1.1.2 Approach of the study

Although a more detailed account of the research design of the thesis is presented in Chapter 3, some words on this topic are warranted at this stage as well. To begin with, this study is a two-step investigation in which the empirical results of the first part of the study inform the theoretical and methodological choices of the second part. The main rationale underlying this choice has to do with the purpose of the thesis and the research questions that it poses, both of which make this the most suitable design. In practice, the approach implies a comparative, mixed-method research design in which comparisons of relatively many cases are combined with a focused comparative case study. In the first part of the thesis, the twenty cases of participatory constitution building are compared to each other as well as to cases of non-participation, while the second part of the study is devoted to a comparison of just two cases.

The reason for including many cases in the first part of the study rather than limiting the comparison to only a few is that we seek to say something general about the claim made by proponents of public participation in constitution building processes. In the first part of the study we also set out to analyse the participation-hypothesis such as it has been formulated by its proponents, which, in effect, requires that the empirical investigation take the form of a bivariate analysis. To put it in another way, since advocates of the participation-hypothesis do not consider additional factors that, in conjunction with public participation in constitution building, can lead to higher levels of democracy, this analysis will not consider any such factors either.

The research focus in the second part of the thesis is, however, different. Here we seek to explore factors beyond participation in constitution building processes that help explain why cases with similar levels of public participation nonetheless display different outcomes as regards levels of democracy. Based on the empirical findings of the first part of the thesis, two cases – Kenya and Zimbabwe – will be subject to in-depth analysis in the second part. These two cases have been selected because they are unquestionably very similar to each other as regards the extent of public participation in their constitution building processes, and yet their trajectories of democracy following the process are quite different. Because the second
part of the thesis is only concerned with comparing two cases, variables that could not be taken into consideration in the first part of the study (and, in fact, were not relevant at that point in the study, given the goal of analysing the participation-hypothesis as it has been formulated by proponents) will be brought into the analysis. An examination of the wide-ranging democratization literature will reveal a vast number of factors that are theoretically argued to influence democratization. These variables will then be systematically analysed for each of the two cases. The results of this part of the investigation will highlight the limitations of the participation-hypothesis and show that it needs to be informed by knowledge drawn from the democratization literature.

1.2 Previous research
To begin with, it should be noted that in the broader field of constitutional studies, scant attention has been paid to issues pertaining to the process of writing a constitution. Indeed, this research focus is something of a novelty. Traditionally, scholarly attention has instead been devoted to matters that are concerned with the content of the document. In research that is particularly focused on post-conflict states with deep-seated ethnic/religious/linguistic cleavages, there is an abundance of scholarly work emphasizing various constitutional design options that such societies can adopt in order to develop democratic systems of government – often including specific recommendations concerning power-sharing arrangements or preferential voting systems that serve to stimulate cross-communal integration (e.g. Lijphart 1969, 1977, 2004, 2008, Horowitz 1985, Reilly 2001, 2009, Reynolds 2005, Simonsen 2005, Bastian & Luckham 2003, Sisk 1996, Norris 2008). As constitutional practice has started to shift from an exclusively elite-driven exercise to a broad-based citizen-driven process, scholarly attention has also (of necessity) responded to this change.

as well as for practitioners and citizens who reside in countries where participatory processes are currently being carried out or may occur in the future. For those who are active in the academic field, these scholarly works about individual participatory constitution building processes – which include detailed accounts of the type/types of constitution making bodies employed; procedures for communicating and involving the people in the process; information about how to compile and review constitutional submissions from the public, etc. – are valuable because they provide a good foundation for conducting systematic comparisons between cases. For “practitioners” who are working with matters of public participation in constitution building in their own or other countries, these earlier scholarly contributions are also likely to be appreciated as a resource for inspiration and “lessons learned”. For the same reason, much of the existing single-case research offers ideas and perhaps also functions to form opinion among ordinary citizens in countries where participatory constitution building processes are under way.

Though it is important to acknowledge these benefits, the focus on descriptive single-case studies appears to have come at the expense of rigorous comparative research in which the effects of public participation on a given outcome are investigated (Ginsburg et al. 2009). The closest we have to a systematic comparison within this strand of scholarly research comes from Hyden & Venter (2001). In their edited volume, these two authors gather scholars who devote their attention to three African countries that have carried out participatory constitution building processes. Although the accounts are very informative, they are focused on detailed descriptions of the processes rather than on investigating whether participation had any effect on a given outcome of interest.

One single-case study that stands out as a piece of research that goes beyond providing a descriptive account is Devra Moehler’s research from 2008, *Distrusting democrats: outcomes of participatory constitution making*. Focusing on the Ugandan case, Moehler sets out to investigate the link between participation and democracy at the individual level of analysis. This implies that her research is focused on understanding whether or not participation changes individuals’ attitudes such that they become more or less supportive of democracy. Many of the results are quite interesting, because they illustrate that Ugandans who participated actively in the process became more knowledgeable about the political system and developed a preference for participation, tolerance and individual rights (Moehler 2008: 183). At the same time, however, citizens who participated in the process also developed an increased level of institutional distrust when they realized the disjunction between what the political system ought to provide them with – i.e. in terms of civil and political rights – and what they actually had access to (Moehler 2008: 185-187). Though Moehler’s (2008) investigation offers many
valuable and interesting insights about the perceived rewards of participation at the individual level of analysis, the focus of this thesis is different, because it is directed at the effects of participation on democracy at the macro-level of analysis.

Due to the overwhelming focus on single-case studies in this field of research, there are no earlier studies that specifically analyse a larger number of participatory constitution building processes in a systematic way in order to differentiate different ways in which “participation” has actually played out. As things stand today, previous research either labels any and all engagement by the public in the making of the constitution as an example of a “participatory constitution building process” (e.g. Miller 2010) or acknowledges that participation can take different forms (e.g. Töpperwien 2014), but without going further and proposing a systematic method for distinguishing among these differences. As a consequence, the term “participation” is currently employed in a very wide sense.

Interestingly, Angela Banks’ study from 2007, “Challenging political boundaries in post-conflict states”, departs from this pattern. In this paper, the author makes an analytical distinction between what she refers to as “external” and “internal” participatory systems, with the former signifying systems in which the public is excluded from meetings during which substantive decisions about the constitution are made, but is allowed to “interact with the drafting body in a consultative capacity”. This is in contrast to the latter – internal participatory systems – where the public is directly (or indirectly) involved in decision-making forums that deal with substantive issues concerning the constitution (Banks 2007: 118). Though this distinction problematizes the issue of “participation”, what interaction in a “consultative capacity” really implies and the actual results of direct or indirect public involvement as regards the content of the constitution remain vague. Moreover, after making this analytical distinction (external/internal participatory systems), Banks’ focuses her empirical investigation on a single case (Rwanda) in order to illustrate her line of reasoning, which means that her study also exemplifies the broader tendency within this specific vein of research – i.e. the dominance of single-case studies.

Similarly, Jennifer Widner’s (2004, 2008) “Constitution Writing and Conflict Resolution” project sets out to “tap the participatoriness and representativeness” (Widner 2008: 1527) in constitution building processes in post-conflict settings that have taken place during 1975-2002. Widner goes about this by distinguishing and coding five different process features: type of deliberative body, method of delegate selection to the deliberative body, method of delegate selection to the body that drafted the initial text, extent of public consultation and whether or not a referenda was employed to pass/reject the document (Widner 2008: 1527-1529). It is important to understand that Widner wants to analyse the degree of public participation as
well as the degree of representativeness. These are two different notions. While the two final features of the process (public consultation and referendum) capture participatory aspects, the first three deal with representativeness. Widner’s approach is to distinguish and code “public consultation” into three different categories: “0” for no public consultation, “1” for consultation either before the development of an initial text or after the revision of a final draft and “2” for consultation at both stages. Her contribution is valuable, because it says something about the extent of public participation in the process; however, it is silent about what consultation actually implies. When the people are “consulted” – before, after or both before and after the draft has been written – what impact does their input have? Is the constitution drafting body required to incorporate the public’s input into the document or are they free to treat it merely as advice? It is relevant to consider these issues when we set out to determine the effects of participation on a specific outcome. Moreover, Widner’s research focus involves assessing the impact of degree of participation and representativeness on subsequent levels of violence rather than on levels of democracy (Widner 2008).

In a recent contribution, Mendez & Wheatley (2013) studied the link between constitution-making and democracy and between constitution-making and conflict resolution. Although the authors develop a framework for analysing constitution making processes, their main interest is in exploring the different ways through which political elites create constitution making bodies (Mendez & Wheatley 2013: 15). The framework is thus not developed for analysing public participation in constitution building processes in particular, nor is the aim of the study to investigate the participation-hypothesis. Still, Mendez & Wheatley (2013: 17) discuss what they refer to as the “style of the constitution-making process”, and on a general level they conclude that it can be either “broadly open and participatory” or an “exclusive and largely closed affair”. Beyond this general description, they code the variable in three different categories: “1” for a process in which the deliberations of the constitution making body are transparent and the general public is allowed to provide input to its work; “0” if the process is held behind closed doors, and “0.5” if the public is passively involved as a recipient of information about the process (Mendez & Wheatley 2013: 32). The authors make a valuable contribution to the field by acknowledging that, when it comes to constitution making processes, there is more to the story than that such processes are either entirely “open” or entirely “closed”. However, their empirical analysis does not include the style of the process variable, because they lack data for approximately half of the cases included in the study (Mendez & Wheatley 2013: 32).

The general inclination in earlier scholarly work to avoid systematic comparisons of many cases and to avoid analytical distinctions about the
different forms that “participation” has taken is problematic for at least two reasons. First, it is not implausible – rather the opposite, in fact – that participatory constitution building processes are not homogenous; how public participation has been carried out in different constitution building processes probably varies across cases. These differences should be acknowledged, especially since one might be tempted to believe that if participation has an effect on democracy, then the extent of such participation might matter. Secondly, and related to the first point, an examination of the participation-hypothesis requires us to clearly determine what participation entails and how it can be operationalized, because only then can we answer the question of whether participation even matters as far as democracy is concerned and, if so, whether the extent of participation matters. To this end, this thesis will provide conceptual clarity as regards the notion of participation – in particular, an analytical framework for differentiating various participatory constitution building processes from each other will be developed, and twenty cases of participatory constitution building processes and cases of non-participation will be included in the empirical investigation.

1.3 Limits of the study
It should be acknowledged that “the public” that, in varying degrees, has participated in the twenty participatory constitution building processes (and future publics who will participate in coming constitution building processes), actually consists of many different groups. The truth is that there is no such thing as a homogenous “public”. Rather, all communities consist of multiple segments of ethnic, religious, social, linguistic, economic and, in some cases, indigenous groups. In this thesis, however, the concept of “the public” will not be disaggregated in such a way as to make it possible to determine exactly how much or how little various segments of the population participated in the process. Nonetheless, a complete boycott by a particular group or political party or the banning of a group/party from participation will be taken into consideration and included in the classification scheme. The reason for not further disaggregating the notion of the public is two-fold. To begin with, there is no relevant data available for all twenty cases, which makes it impossible to conduct a systematic comparison. Second, the participation-hypothesis does not say that particular segments of the population must be involved/more involved than others if democracy levels are to increase. Rather, “the public” is understood in general terms as ordinary citizens.

It is also important to underscore that this study does not attempt to offer policy recommendations as to how participatory constitution building processes ought to be carried out. However, the hope is that the analytical approach for differentiating participatory processes from each other that is presented in the thesis will be helpful to scholars and practitioners seeking to understand how participation actually takes form in different cases. Also, the
results of the empirical investigation about whether participation leads to higher levels of democracy should be of interest to scholars as well as practitioners in the peacebuilding field who promote it as a practice that enhances democracy.

1.4 Outline of the thesis
This study is organized in two parts. The first part is presented in chapters 1-5 and is composed of comparisons of relatively many cases, while the second part, in chapters 6-9, is a comparison of two cases. The final chapter of the study, Chapter 10, brings the findings of the two sections together and discusses them in the light of the overarching purpose of the study.

This introductory chapter has explained the purpose, research questions and rationale of the study. In Chapter 2, the theoretical arguments for public participation in political decision making in general and constitution building in particular are explained. This chapter also discusses what participation in the context of building a constitution entails and how it can be conceptualized. An analytical framework for distinguishing between and classifying participatory constitution building processes is also developed, as is a participation typology of different forms of participation in such processes. Lastly, Chapter 2 includes a discussion about how the study defines and conceptualizes democracy and democratization. Chapter 3 is concerned with the methodological choices that guide the research endeavour in both the first and the second part of the thesis. The reason for conducting a two-step investigation is more thoroughly explained; the issue of case selection is discussed, and the question of how to operationalize public participation in constitution building processes is covered. Chapter 3 also includes a discussion about how to measure democracy and the empirical indicators that the study uses for this purpose. The chapter ends with a discussion of material and sources.

Based on extensive empirical research, Chapter 4 classifies the twenty cases of participatory constitution building processes. The cases are placed in a classification scheme that shows that they represent different types of participation, ranging from false participation to substantial. This is done with the help of the analytical framework and typology developed in Chapter 2. For the purpose of bringing even greater clarity as to why the cases have been classified as they have, illustrative examples of three cases are included in the final part of Chapter 4. In Chapter 5, the participation-hypothesis is analysed. Democracy levels prior to and after the constitution building process in cases of participatory constitution building and cases of non-participation are probed. After general tendencies have been considered, the different types of participation are added to the investigation in order to give the analysis greater depth. The chapter ends with a discussion of the different trajectories of democracy in Kenya and Zimbabwe after their constitution building
processes, despite the fact that their processes were very similar to each other as regards the extent of public participation.

Chapter 6 marks the beginning of the second part of the thesis. From this point, we are no longer concerned with comparing many cases, but focus instead on a comparison of Kenya and Zimbabwe. Chapter 6 analyses the constitution building processes that have been carried out in these two countries in order to show how similar they actually were, something that is important insofar as this specific similarity is the rationale for selecting these cases for in-depth probing. The chapter ends with the conclusion that the processes were, indeed, very similar; yet the outcome as regards democracy levels is markedly different. Therefore, in Chapter 7, we ask what theoretically informed explanations there might be for the different trajectories. Chapter 7 is a theoretical chapter in which the main schools of thought in the democratization literature are presented: structural perspectives, external perspectives and actor-oriented perspectives. The different schools stress different factors as the main drivers of democratization, and they also formulate a number of propositions that can be empirically investigated. When we subsequently set out to explore what might explain the different paths of democratization in Kenya and Zimbabwe, the two countries, are systematically compared on a considerable number of variables drawn from the different schools of thought in the democratization literature. These comparisons are the subject of chapters 8 and 9. In the final chapter we bring the pieces together by summarizing the main findings, and then we go on to discuss conclusions and present some thoughts about future research.
Chapter 2
Public participation, constitution building and democracy

The aim of this chapter is to provide an understanding of what participation in the context of building a constitution implies and how it can be conceptualized as different types of participation. The concept of “participation” is central to the study, and these issues must be addressed in order to assess the proposed effects of participatory constitution building processes on subsequent levels of democracy. The chapter is organized into two main sections. The first section addresses the concept of participation. We will begin by tracing the ideas that inform the participation-hypothesis. Where do these ideas come from and why is public participation in political affairs seen as beneficial? After locating the origins of these ideas in the classic writings of liberal theorists, we will go on to identify the theoretical and legal claims that proponents of participation in constitution building rely on most heavily. The concept of “participation” in a constitution building context is defined and a classification scheme for participation in constitution building is developed. This section of the chapter ends with the presentation of an analytical framework for analyzing public participation in constitution building processes and a typology of different forms of participation in such processes. The second section of the chapter is devoted to defining and conceptualizing democracy, which is the other central concept of the thesis.

2.1 Why participation?
Arguments about perceived rewards of public participation in political life are rooted in the writings of classical liberal theorists of which the contributions of Jean Jacque Rousseau (1971, 1994) and John Stuart Mill (1862, 1963) are among the most commonly cited. Participation in decision-making is argued to lead to many beneficial effects, primarily due to its supposed educational merits (Rousseau 1994). Taking part in public affairs is said to teach people how to work together and how to adjust and reflect upon their own wishes and concerns while taking into account the wishes and concerns of other members of society. Participation is also believed to promote the development of responsible and politically aware citizens who recognize that cooperation with other members of society is in their own self-interest, both in the long, and short run (Rousseau 1994: 9-12, 42-43). In this sense, participation in public affairs is also seen as a cure for the individual’s narrow and selfish tendency to consider only his/her own particular concerns (Mill 1963: 230-231). For these reasons, Mill stressed that it is the responsibility of ‘good government’ to create institutions that facilitate participation, because that is what fosters
responsible and moral citizens. He argued that good government is not only about conducting the everyday business of state affairs, but also involves acknowledging that the act of governing (oneself and society as a whole) enhances mental capabilities. Thus, it is all the more important to include the public in political decision-making (Mill 1862: 21-22).

As these ideas suggest, participation in political decision-making is first and foremost perceived to be beneficial for the individual who engages in it. However, theorists also stress that democratic attitudes that individuals develop during the course of participation in political decision-making will also lead to democratic development at the macro-level (Moehler 2008: 13-14, Radcliff & Wingenbach 2000).

Contemporary participatory theorists have built on the ideas about participation put forth by Rousseau and J.S Mill as a means of developing democratic characteristics. In the 1960s and 1970s there was considerable interest in the United States about issues of political participation, both within the private and public sphere, and this lead to a revitalization of theories on political participation (Moehler 2008: 14). In her much cited work Participation and Democratic Theory, Carole Pateman (1970), further substantiates the normative claim of participation, referring to the psychological benefits of repeated participation in decision making as well as the increased sense of political efficacy it brings about (1970: 45). At this time, it also became increasingly clear that participatory theorists viewed greater participation – either more intensive or extensive citizen engagement – as desirable at all times, because it was thought to produce a number of side-effects, all of which were hypothesized to be positive (Thompson 1970: 67-72). Participation was seen as enhancing the individual’s knowledge about the political system, which would build social capital. This would in turn lead to more support for government institutions, which would make individuals feel a stronger bond to democratic principles (Moehler 2008: 14-15). Participation was also viewed as self-enforcing. It was believed that participation fostered qualities that would make the individual more able and willing to participate even further (Pateman 1970: 25).

These ideas about the benefits of participation have flourished and continued to prevail among participation theorists in the new millennium (see e.g. Radcliff & Wingenbach 2000, Mutz 2002, Finkel 2003). However, while traditional participation theorists and those writing in the 1960s and 1970s focused their attention on the US and the rest of the industrialized world, the focus today is broader and includes the exercise of participation in the so-called developing world (Moehler 2008: 15).

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6 Radcliff & Wingenbach (2000: 986), for example, echo the sentiments of Rousseau and J.S Mill, that the ultimate goal of participation is to “enhance human capabilities”, and that participation holds educational benefits that teach individuals how to deliberate with others, and how to engage in “intelligent argument” with people whose views differ from one’s own (2000: 986).
Today, the normative underpinnings of participatory theories have made their way into policy documents of international organizations. Participation is not only defined as the involvement of recipients of aid in the implementation of projects, but as a development strategy. This approach to participation is clear in the 1993 Human Development Report. Participation is seen as important in all spheres of life – not only the political (UNDP 1993):

“Participation, from the human development perspective, is both a means and an end. Human development stresses the need to invest in human capabilities and then ensure that those capabilities are used for the benefit of all. Greater participation has an important part to play here: it helps maximize the use of human capabilities and is thus a means of increasing levels of social and economic development. But human development is also concerned with personal fulfillment. So, active participation, which allows people to realize their full potential and make their best contribution to society, is also an end in itself”.

(UNDP 1993: 21)

This new understanding of “participation” stems partly from heavy criticism of top-down approaches to development. Lack of local participation is considered to be both disempowering and ineffective (Escobar 1995, Scott 1998). In addition, many projects without local participation have turned out to be unsustainable (Khwaja 2004). In consequence, the ideas promoted by participation theorists both past and contemporary are once again gaining ground, while the concept of “local participation” has become a slogan within the development community.

2.1.1 Why participation in constitution building?

Due to its foundational status, a country’s constitution is of fundamental importance for the journey upon which it embarks. This is, of course, true for all countries. However, according to the proponents of the participation-hypothesis, when the crafting of a constitution is carried out in the aftermath of violent conflict, after a severe institutional crisis or during a transition from authoritarian rule, then the significance of the constitution and particularly the process through which it comes into being is even more central (Hart 2003, Aucoin 2010, Jega 2000). Their argument is that in such circumstances, public participation in what has traditionally been a stronghold of power for political elites and lawyers is absolutely necessary for a number of reasons, some of which resonate well with the arguments of participation theorists mentioned above.

One such reason is the educational merits of participation. Supporters of public participation in constitution building argue that involvement in the drafting of the constitution should be regarded as an education in democracy

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7 The Human Development Reports have been published annually by the UNDP (United Nations Development Programme) since 1990.
8 Very similar passages can be found in the 2002 Human Development Report (UNDP 2002: 52)
and an opportunity for participants to learn and understand their constitutional rights (Samuels 2006: 5, Ghai & Galli 2006: 10, Widner 2008: 1519). When an individual actively takes part in forming the constitution, she/he learns its content more fully and she/he is also more likely to defend the provisions enshrined in it (Widner 2005a: 506). This means that participation in constitution building supports the growth of a democratic political culture, which then has macro-level benefits in terms of strengthening democracy (Ghai & Galli 2006, Hart 2003: 12, Moehler 2006: 276-278).

Also in accordance with the theoretical claims of participation theorists, advocates of public participation in constitution building assert that involvement creates trust, which contributes to the growth of social capital (Widner 2005a). The self-enforcing “loop” proposed by participation theorists in general can thus be detected among supporters of participatory constitution building as well: participation in constitution building bolsters democratic attitudes, people become more open to listening to and respecting the views of others, a democratic political culture develops and state institutions are strengthened (Moehler 2008: 33).

In addition to these conventional ideas that resonate with the propositions of participatory theories, advocates of participatory constitution building also stress that participation is essential for legitimacy. If not allowed to have a say during the course of the drafting process, the public will not view the constitution as a legitimate document, in turn making the constitution difficult to implement (Hart 2003, Moehler 2008, Ihonvbere 2000). Public participation in constitution building is also advanced as a means through which former enemies in violent conflict can be reconciled, i.e. as participants in a process of social dialogue that includes a larger segment of the population than merely the political elites (Ghai & Galli 2006: 13, Hart 2003: 3, Samuels 2006: 5-6).

In addition to normative claims about the benefits of participation in constitution building, a legal argument has also been put forth by supporters of the approach. In particular, the International Covenant on Civil and Political Rights (ICCPR), and more specifically article 25, has been invoked. The article states that:

“Every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives”

(ICCPR, 1976, Article 25).

Whether or not “public affairs” extends to the realm of constitution building is nevertheless a contested issue, wide open for interpretation The law is far from clear on the matter (Hart 2010: 20-27). And even if international law were unambiguous in supporting participation in constitution building, “take part” is a vague formulation providing little guidance as to how it is or should
be practiced (Hart 2010: 31-32). This undeniably ties into the question of what “participation” actually implies in the context of constitution building, which is something that has not been clearly addressed in earlier research. We turn to a discussion of this matter below.

2.2 What does it mean to participate?

As established in Chapter 1, when it comes to differentiating participatory constitution building processes based on how participation in such processes has taken form, there is no previous research to lean on. In order to address the first research question of this dissertation it is therefore necessary to sort out what “participation” actually means – i.e. what does it mean to “participate”? More specifically, what does the concept imply when applied to a context of constitution building?

It is useful to begin with a repetition of the participation-hypothesis: 

*participation in constitution building processes leads to higher levels of democracy.* This says little about the nature of the “participation”, so it is easy to imagine that it is an issue of quantity, primarily defined as number of individuals active in the process, but also number of public hearings held, number of constitutional submissions received, etc. In a sense, this is a view that the greater the number of people engaged, the more participatory the constitution building process is. It is important to note, however, that even if a considerable number of individuals participate in their country’s constitution building process, this does not reveal whether or not their participation has had an effect on the constitutional document or whether or not the constitutional draft enters into force. For us to be able to define “participation”, a first step is to acknowledge that participation in constitution building is a political form of participation. Given that, this study accepts the view that the concept of political participation includes the degree of influence participants have over decisions being made in relation to the constitutional document – both in terms of its content and in terms of its adoption.

Approaching the notion of political participation like this is not unique. In what has become a classic definition of the concept, Verba & Nie (1972: 2) say that “Political participation refers to those activities by private citizens that are more or less directly aimed at influencing the selection of government personnel and/or the actions they take”. Similar understandings have since followed. Nagel (1987: 1), for example, defines political participation as “...actions through which ordinary members of a political system influence or attempt to influence outcomes”. Parry et al. (1992: 16) understand political participation as “action by citizens which is aimed at influencing decisions which are, in most cases, ultimately taken by public representatives and officials”. Kaase and Marsh (1979: 2) refer to political participation as “all voluntary activities by individual citizens intended to influence either directly or indirectly political choices at various levels of the political system”. Brady
(1999: 737) construes political participation as “action by ordinary citizens directed toward influencing some political outcomes”.

Scholars have also proposed different typologies of political participation to facilitate empirical measurement. Teorell et al. (2007) offer a wider definition of political participation than the authors mentioned above, and have developed a typology that includes five dimensions of political participation: electoral participation, consumer participation, party activity, protest activity and contact activity (Teorell et al. 2007: 341-343). Challenging this typology, Ekman & Amnå (2012) propose an alternative classification that, in addition to manifest forms of participation, also includes latent ones. Their proposal is a typology-scheme ranging from “non-participation”, to “civil participation” (latent form of participation) to “political participation” (manifest participation) (Ekman & Amnå 2012: 295). For the purposes of this study, however, we benefit from returning to the scholarly contributions of Carole Pateman (1970), as well as those of Sherry R. Arnstein (1969), also a distinguished researcher in the field of participatory democracy. Their theoretical and empirical studies offer a good starting point for the development of a typology of participation in constitution building.

Pateman (1970) and Arnstein (1969) also understand participation as an idea inherently coupled to influence. Additionally, both scholars recognize that people can be invited to participate in decision-making procedures in many ways that do not actually involve giving them power to influence the outcome of decisions (Pateman 1970: 67-71, Arnstein 1969: 216-224). Forty years prior to the theoretical contributions of Teorell et al. (2007) and Ekman & Amnå (2012), Pateman and Arnstein, in their respective works, also found it necessary to develop typologies and classification schemes covering different forms of participation in order to illustrate that “participation” is not, in fact, exercised in the same manner with the same amount of influence everywhere, rather it differs from one context to the other.

Pateman’s typology was originally developed for the purpose of classifying various forms of workplace participation. With the help of French et al. (1960), she sets out to determine what participation actually implies, and her point of

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9 The understanding of political participation articulated by Teorell et al. (2007: 336-337) differs in the sense that although they perceive political participation to imply attempts to influence political outcomes, this can be achieved without participants directing their actions exclusively towards government personnel. For example, there are instances when participants attempt to influence political outcomes by trying to influence, e.g. corporate actors.

10 Electoral participation (voting in elections), consumer participation (e.g. donating money to political causes, signing petitions, boycotting certain consumer goods in hopes of bringing about political change, etc.), party activity (e.g. being involved in a political party), protest activity (e.g. taking part in public demonstrations), contact activity (e.g. contacting politicians and civil servants) (Teorell et al. 2007: 341-343).

11 Ekman & Amnå (2012: 287-288) understand latent forms of participation as various forms of engagement that may be considered as “pre-political”. This implies activities that are not directly aimed at influencing people in power, but that nonetheless entail involvement in the community and current affairs, e.g. discussing political issues with colleagues, debating political issues on the internet, etc.
departure is that participation must first and foremost involve participation in something (Pateman 1970: 68). Hence, people do not “participate” by merely being physically present at various decision-making activities/meetings if they do not also have the possibility of influencing decisions. This baseline definition also disqualifies the use of the term “participation” to describe situations in which people are merely informed about decisions that will affect their work/life, without having any possibility to influence such decisions. Following Verba’s (1961: 219-221) terminology, Pateman suggests that such situations are examples of “pseudo participation”, where “participation” is really persuasion. “Participation” is used as a buzzword to instill a sense of legitimacy among those who are affected by the decisions, without actually allowing them to have real influence (Pateman 1970: 68-69). In addition to “pseudo participation” Pateman identifies two other forms of participation in her typology, “partial participation” and “full participation”, and envisions a progression of influence as one moves from the former to the latter. According to Pateman, key components that signal the possibility of exercising participation in a way that leads to influence include relevant information and final authority over decisions being made (1970: 68-70). Her reasoning is quite straightforward. In order to fully participate, people must first have relevant and sufficient information about the issues under consideration. Without information, any meaningful participation becomes difficult. However, even when participants are well informed and granted a position where they might influence decisions, this does not automatically imply that they are also able to determine outcomes. That is, there is a difference between influencing decisions and determining the outcome of decisions. In Pateman’s typology, “partial participation” is reserved for the former situation, whereas “full participation” implies having final authority over decisions being made (Pateman 1970: 69-71).

The components of Pateman’s typology correspond quite well to Arnstein’s, which was originally developed to address citizen participation in the realm of urban planning (Arnstein 1969). Arnstein depicts a ladder of participation with eight steps in which influence over decisions increases with every step. The eight steps are divided into three categories, with steps 1-2 being referred to as “non-participation”, steps 3-5 as “tokenism” and steps 6-8 as “citizen power”. Basically, on the lowest rungs of the ladder, “participation” is nothing but an empty ritual; participants engage in the act of participation without exerting any influence over the decisions being made. Communication between authorities, on the one hand, and participants, on the other, operates in one direction only – from the former to the latter. Participation is essentially a matter of keeping participants informed rather than allowing actual influence – this resembles Verba’s (1961) and Pateman’s (1970) description of “pseudo participation”. Moving a few steps up the ladder, the middle rungs constitute forms of participation in which participants are allowed to voice
their opinions, which suggests that the lines of communication at least run both ways. Still, these instances do not translate into influence, because power holders are not required to take the participants’ views into consideration when they make final decisions. This in turn corresponds well to Pateman’s understanding of “partial participation”. On the final steps of the ladder Arnstein defines forms of participation that allow participants to have a say, be listened to and to reside over decision-making authority (Arnstein 1969), which in turn resonates with Pateman’s idea of “full participation”.

The contributions of Pateman (1970) and Arnstein (1969) are valuable for this dissertation because they provide theoretical guidance for developing a classification scheme of participation that is specific for the area of constitution building. Their respective typologies also encourage and support the construction of a classification scheme in which extent of influence is the key component used to situate cases on a scale. However, Pateman’s (1970) and Arnstein’s (1969) typologies share a weakness, namely that it remains unclear as to what exactly makes a specific case of participation an example of pseudo/partial/full participation (Pateman 1970) or non-participation/tokenism/citizen-power (Arnstein 1969). In essence, the question is: where do the cut-off points occur? What, exactly, determines the cut-off points? How is influence translated into categories on the scale? All we know is that the idea of a progression implies that participants have more influence in cases of “full participation” than in cases of “pseudo participation”, more in cases of “citizen-power” than cases of “tokenism”. The lack of theoretical clarity about how participation translates into influence further demonstrates the need to address this issue by developing a new typology, one that is specific to a constitution building context.

2.2.1 Developing a classification scheme for participation in constitution building

In this section a classification scheme (and new typologies) specific for participation in constitution building will be presented. It should be noted that the scheme has been developed using a combination of deductive and inductive analysis. In practice this means that the theoretical underpinnings of Pateman’s (1970) and Arnstein’s (1969) classifications of participation – in particular the key elements of information and final authority – have been used as reference points in analyzing the twenty cases of participatory constitution building processes in order to determine how participation has taken form. It has however been necessary to move back and forth between theory and the empirical material in order to identify factors in addition to information and final authority that are important for understanding participation. By using this combined deductive-inductive approach, four variables have been identified that can be used to determine the extent of participation in constitution building processes:
A. Initiators of the process (who initiates?)
B. Forms of communication (how does communication or information between the public and decision-makers occur?)
C. Degree of inclusion (are all individuals and groups in society both willing and allowed to participate in the process?)
D. Final authority (who has the final say over whether or not the constitution enters into force?)

Each of the four variables will be discussed in detail below.

2.2.1.1 A) Initiators of the process
Examining the twenty empirical cases reveals that the identity of the initiators of the process can impact on the degree of influence that participants are granted during a constitution building process. An initial distinction can be made between initiators who are “outsiders” and those who are “insiders”. The former includes international actors, regional actors and/or individual states that exert influence over the constitution building process. The latter are national actors.

As regards outside actors, in a policy paper concerned with external support for constitution building, the International Institute for Democracy and Electoral Assistance (IDEA) concludes:

“External engagement depends on the capacity of external actors to exert influence and the openness of national actors to accepting influence. External actors cannot succeed in their support goals if they do not succeed in first gaining access to decision makers and then building confidence. Influence in this context is understood to mean the ability to work together with national actors to identify, set and achieve specific support- or assistance-related outcomes with respect to the constitution building process”.

(IDEA 2011: 12)

In the passage above, international involvement is understood as being primarily supportive. External actors are seen as partners working together with national actors, assisting them in achieving various outcomes related to the constitution building process. However, the empirical evidence indicates that outside actors can undertake activities during a constitution building process that far exceed supporting and offering assistance to inside actors. It rather appears that outsiders engage in other countries’ constitution building processes with different extents of influence, both as regards their impact on the process and on constitutional content. This outside influence, in turn, diminishes the opportunity national actors have to exert influence over their

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12 When referring to initiators of the process, we are concerned with the actor or actors pushing for and driving the agenda for constitutional reform. Thus, it is necessary to understand the distinction between such initiators and the public at large – the people are participants in the process, the initiators are just that, i.e. those who get the process started.
own country’s process. Based on an examination of the empirical material, it is possible to identify two types of outsiders who engage in constitution building activities:

- Outsiders that influence the content of the constitution
- Outsiders that determine how the constitution building process will be carried out

The first type of actor is more influential, because authority over constitutional content rests with outsiders rather than with national elites, and even less so with ordinary citizens. Although the second type of outside actor is less powerful, it is nonetheless influential. The ability to determine how the constitutional process will be carried out means that these actors have the power to shape the process in such a way as to make public participation difficult to achieve. Based on the empirical material, it appears that such impediments to public participation mainly come in the form of relatively short timetables to complete the process, which makes it difficult to adopt a broadly inclusive approach to constitution building. Outside engagement is often accompanied by short timetables because outside actors usually have a specific amount of funding that must be spent within a specific period of time, especially if they are international or regional organizations (IDEA 2011: 16, Brandt et al. 2011: 49, 323-325). Being pressed for time can however have a detrimental impact on both content and process. For example, a rushed process makes it impossible to include the whole population and can also produce a poorly formulated document with internal inconsistencies (Brandt et al. 2011: 46). In short, although outsiders of both types might intend to be supportive, there is a risk that they will become the main drivers of the process and turn insiders into passengers with a subordinate role.

Having raised the issue of the role of outsiders versus insiders in constitution building, it is important to discuss another distinction found in the peacebuilding literature – i.e. state-building as opposed to nation-building. The issue needs to be mentioned because there is reason to believe that while outsiders can be helpful in assisting with the former, the latter may well be beyond their reach (Bogdandy et al. 2005: 580-588, Brahimi 2007). 13

In the context of state failure, when public institutions are no longer able to provide citizens with public goods, state-building activities serve to establish or re-establish public and legal structures so that basic public services can be delivered (Bogdandy et al. 2005: 580, Greener 2012: 418). These activities

13 There is a growing literature about “state-building” and “nation-building” activities prompted by recent international interventions. While many authors argue that it is necessary to treat these two terms as different concepts that lead to different practices (e.g. Brahimi 2007, Bogdandy et al. 2005, Dinnen 2007, Greener 2012), there are some who use the terms interchangeably, which undermines conceptual clarity (e.g. von Hippel 2000, Rondinelli & Montgomery 2005).
include a range of technical tasks such as establishing public offices, criminal justice systems, police and military forces and a number of other things of this nature. In fact, various state-building efforts have become the international community’s default response when faced with weakened or beleaguered governments in need of help (Greener 2012: 415). Though these tasks are primarily technical, many of them can quickly turn into political processes, which makes the role of outsiders a delicate matter (Greener 2012: 419). For example, helping insiders create various state institutions is one thing (and primarily a technical task); dictating how those institutions are to provide the public goods that they are set up to deliver is another, separate matter (and primarily a political project).

In cases of nation failure, where both state institutions have collapsed and the social fabric that holds a nation together has deteriorated, additional measures beyond building or re-building state structures are necessary. In this sense, nation-building is something quite different from state-building. When speaking of nation-building, the technical tasks of state-building play no significant role – here it is instead a matter of nurturing a sense of common identity where one has perhaps never existed before or where it has previously existed but has withered away in the face of violent conflict. Hence, in many ways, nation-building is concerned with creating the “glue”, that holds various community groups in a society together based on a shared sense of common identity, common goals, common values, common aspirations, etc. (Dinnen 2007). Bogdandy et al. define nation-building as:

“...the most common form of a process of collective identity formation with a view to legitimatizing public power within a given territory. This is an essentially indigenous process which often not only projects a meaningful future but also draws on existing traditions, institutions, and customs, redefining them as national characteristics in order to support the nation's claim to sovereignty and uniqueness. A successful nation-building process produces a cultural projection of the nation containing a certain set of assumptions, values and beliefs which can function as the legitimatizing foundation of a state structure". (Bogdandy et al. 2005: 586)

Nation-building as conceptualized by Bogdandy et al. bears a strong resemblance to what Dinnen (2007: 2) and Ghai & Galli (2006: 7) call the formation of a “political community”. Ghai & Galli (2006: 7) argue that democracy cannot be enforced if there is no political community and that the establishment of a political community is one of the main tasks of a constitution. This makes democracy, the political community and the constitution three closely related concepts. A political community does not require a culturally or linguistically homogenous population – this is not what a “common identity” means – but it does imply a community of people who have agreed to live together (Ghai & Galli 2006: 7).
Given the merits of participation in constitution building that proponents of participatory processes advocate – particularly its educational benefits and contribution to developing social capital and increased sense of tolerance for opposing views – it may be fair to suggest that a participatory constitution building process can also be viewed as a nation-building exercise, in addition to the state-building endeavor that it more clearly is. However, if we agree with Bogdandy et al. that nation-building is an essentially indigenous process, then it is doubtful that outside actors can be of assistance, and national actors might actually interpret their efforts as intrusive (Bogdandy et al. 2005: 588). This leads us back to the other main type of initiator of a constitution building process: inside actors, to which we will turn our attention now.

As is true with outsiders, insiders, include many different actors with different mandates within the constitution building contexts of which they are a part. Exactly who the “insider” is also varies from case to case. The empirical material reveals that, like outsiders, insiders are a heterogeneous group of people and organizations whose motives for constitutional reform are rooted in different goals and purposes. Based on these varying goals and purposes, the extent to which inside actors seek public input in the constitution building process also differs.

Analysis of the empirical material also makes it possible to identify different kinds of insiders and to pinpoint the main initiators of various constitution building processes. In some cases the main initiators are political elites from the ruling party, in others, civil society organizations. Sometimes, members of the military initiate constitutional reform. And in some cases, all of these actors agree to instigate constitutional reform. As noted above, the extent to which there is public participation with genuine influence for participants depends on which insider or combination of insiders pushes for constitutional change. Thus, in cases in which the main initiators are political or military elites, the decisions of these actors determine the avenues for public participation in the process and the extent of influence that participants are granted. When the initiators are domestic civil society organizations, it is reasonable to expect that they will attempt to secure public participation in the process. However, whether or not their ambitions are realized depends on the political situation in the country and on the relationship between these organizations and the ruling elite.

To summarize the discussion in this section, constitution building processes can be endeavors that include a variety of actors and different constellations of actors. We know that constitution building is both a state-building and nation-building task, which makes the involvement of outsiders something of a challenge insofar as they might be helpful in assisting with the former, but are unlikely to be of help with the latter. Having explained the distinction between various types of outsiders and insiders we now turn our attention to the question of how initiators communicate with and inform the
public about the constitution building process, so that people are in the next step able to get involved.

2.2.1.2 B) Forms of communication
In this section we focus on the second variable that has consequences for how people can participate in the constitution building process: how the process is communicated to the public. This variable is inspired by the theoretical contributions of Pateman (1970) and Arnstein (1969), who stress the importance of information (Pateman 1970: 68-70) and communication (Arnstein 1969) for creating a process in which participation can be exercised in a manner allowing influence. Advocates of participatory constitution building also widely agree that preparing the people to participate is an important part of the process (Brandt et al. 2011: 91, Ghai & Galli 2006, Hart 2003).

As part of that preparation, a particular method is advanced by proponents of the approach, namely to carry out constitutional education programs on a countrywide scale prior to asking the people their views about constitutional proposal and/or asking them to contribute their own proposals (Brandt et al. 2011, Ghai & Galli 2006, Hart 2003). After studying the twenty cases of participatory constitution building processes, it is clear that in many of them (albeit not all), a considerable portion of the population cannot read or write and are only vaguely familiar with the concept of constitutionalism. Understanding the level of existing knowledge that various segments of society have about ideas such as constitutionalism, democracy, etc. might be a necessary first step to developing further communication with the public. For example, if initiators of the process understand the existing level of peoples’ knowledge, then they will be better able to design constitutional education programs that suit different segments of the population (Brandt et al. 2011, Ghai & Galli 2006).

It appears that if people are going to be able to participate, the lines and forms of communication between the initiators of the process and the population are essential. People cannot participate if there are no channels for participation (Hart 2003: 1). Thus, it is possible to uncover the motives of the initiators by examining the lines of communication they form. If they are formed in a way that gives the public opportunities to comment on constitutional proposals made by those tasked with writing the constitution, then it suggests that power-holders are at least interested in listening to the views of the people. If, on the other hand, lines of communication are almost closed, then it seems fair to assume that power-holders are not interested in public participation, and have therefore not provided opportunities for it.

Palm & Windahl (1989) have developed a figure that illustrates the most common factors in a communication process. It is useful for structuring this discussion and is therefore presented below (Figure 2:1).
The figure characterizes the process as circular, with a sender sending a message through a selected medium to one or more receivers. The message has an effect on the receivers, who then respond to the message in the form of providing the sender with feedback.

The empirical material reveals that the ways in which the constitution building process has been communicated to the public varies quite substantially across the different cases. On a general level, however, applying the communication process illustrated in Figure 2:1 to a constitution building context, the following steps can be anticipated. First, the initiators of the process send a message to the public (e.g. by radio, television or newspaper) that a constitution building process will be carried out. If constitutional education programs are going to be conducted, it is likely that this information will also be announced at this stage, along with other relevant information about the process (e.g. timetables, locations for public meetings, etc.). The subsequent steps in the communication process have a critical impact on whether or not public participation can lead to public influence. If initiators define public participation to mean that the public has influence over decisions being made about constitutional content, then it seems reasonable to expect that they have also created channels through which the public can comment and give feedback on proposed constitutional provisions. Referring to the figure, the arrows from “effect” to “feedback” and from that to “sender” reveal whether communication is a matter of informing the public about the constitution building process or a matter of communicating with them on issues surrounding the content and adoption of the document.

The difference between information and communication is a relevant distinction that deserves further attention. To speak to someone is quite different from speaking with someone. Among the cases looked at here, there are ones in which the initiators of the constitution building process...
constructed one-way communication processes – from power-holders to the public – which gave the public no avenues to respond to the information conveyed to them. That is, the last two stages in the communication process are missing. The receiver is unable to provide feedback to the sender. Since the flow of information runs entirely from senders to receivers, this form of relationship with the public is less democratic in nature than a two-way model of communication (Palm & Windahl 1989: 13). It is also likely that when initiators are only interested in informing the people about the process, then this will have consequences for the “effect” component in the communication chain. In such instances, it is less likely that there will be constitutional education programs, which probably negatively impacts on people’s ability to react and offer feedback compared to what they would be able to do after attending such programs. In cases like these, the process is essentially carried out as an information campaign, and the main purpose is to keep the public informed. When there is nothing more than one-way information, it is a sign that the public has no influence over the constitutional document and “participation” is used as a catchphrase. Nevertheless, as Arnstein (1969) has pointed out, information is perhaps the first step towards achieving participation, but without additional measures, information alone is not enough to achieve participation, particularly not when participation is taken to mean influence.

If information understood as “speaking to” the people is considered a less democratic method for engaging with the public, communication is generally seen as more democratic, because it envisions lines of communication as running both ways. Communication can therefore be understood as “speaking with” the people, and it implies that all of the individual parts of the communication process visualized in Figure 2:1 are present. People are affected by the message sent to them by the initiators, and they are also able to provide feedback on the content of the message.

In addition, the empirical material includes some cases in which the initiators of the process seek consultation with the people on the constitutional document. The term “consultation” has a positive connotation and might imply that “consulting” goes a step beyond “communicating”. However, this is not necessarily the case (Arnstein 1969). Although communicating with the public is a more democratic form of interaction than just informing them about events, communication per se says very little about the degree of actual influence that participants have over decisions. The same is true when power-holders announce that their aim is to consult the public (Arnstein 1969). As long as those in power are not required to incorporate feedback from the people into the constitution, then the people cannot really exert any influence on the final document. As Arnstein frankly notes, in such cases they have only “participated in participation” (1969). Hence, when trying to determine the extent of influence participants have been allowed to
exercise in the constitution building process, it is important not to attach too much significance to the words used by the initiators to describe how they have reached out to the public (e.g. “informing” them, ”communicating” with them, ”consulting” them, etc.). Instead, it is necessary to take a detailed look at the communication process in order to identify avenues for participation and feedback and to determine whether or not those tasked with writing the constitution are required to incorporate participants’ feedback into the constitutional document.

2.2.1.3 C) Degree of inclusion

As with variable A (initiators of the process), variable C – degree of inclusion – has been arrived at by using an inductive approach. Neither Pateman (1970) nor Arnstein (1969) specifically refer to inclusion, but a review of the empirical material makes it clear that inclusion impacts on how much influence participants are able to exert in constitution building processes.

Hence, in order to fairly assess how “participatory” a participatory constitution building process actually is, it is necessary to examine whether all groups in society have been invited to participate or if some have been disqualified from participating, as well as whether or not invited groups have voluntarily chosen not to participate. While inclusion does not equal influence, it is worth considering, because if some groups are banned from participating and/or some groups boycott the process then this impacts on the public’s overall degree of influence on the content of the constitution. There is also a normative understanding among many proponents of participatory constitution building that all segments of the population should be invited to participate, regardless of their social position – e.g. whether they are persons with political power, ordinary men and women with varying social status or former warlords. The most common argument in favor of full inclusion is that it is the only way to avoid potential spoiler behavior from those who were denied the right to participate, which might, in turn, endanger future political stability and sustainable peace (Benomar 2004: 84, 88, Brandt et al. 2011: 84-85, Hart 2010: 20). Thus, a classification scheme for different types of participation in constitution building processes must also consider the issue of inclusion.

2.2.1.4 D) Final authority

“There is a critical difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process”.

(Arnstein 1969: 216)

The question of who has final authority over the constitutional document is another variable that must be considered when evaluating the extent of public
participation in the constitution building process. Both Pateman (1970) and Arnstein (1969) emphasize the significance of decision-making authority, because, as noted previously, it determines whether participation can have an effect on outcomes.

Just as participatory constitution building processes differ from one other in terms of who initiates it, how it is communicated and whether it is fully inclusive, processes will also differ as regards final authority over the constitutional document. The public may be allowed to accept or reject the constitutional draft directly through a referendum, or indirectly by voting for members of a constitution making body who then make decisions on their behalf. Alternatively, the public may have no say at all, for example if all decision-making authority is vested in the hands of an executive.

A few additional comments are necessary as regards voting as an instrument for participation. Voting for a constitution-making body or in a referendum on the final document might be regarded as an invalid method of participation if we understand participation to mean something deeper than just expressing a “yes” or a “no” opinion on a political package of constitutional provisions negotiated by political parties (Ginsburg et al. 2009: 200-208). Nevertheless, as Hart argues:

> “Despite their limitations, however, elections remain at the very heart of conceptions of democracy. The vote is powerful for its history and symbolism, and electoral participation in constitution making is the most concrete indicator of accessibility”.

(Hart 2010: 32-33)

Additionally, if approval through a referendum is decisive for the adoption of a draft constitution, then it is a manifestation of public influence that is relevant to consider.

Another theoretical proposition relates to how different lines of authority can produce so called “upstream” and “downstream” constraints on those involved in the constitution building process. When the rules of procedure are clear and communicated, it is reasonable to assume that those involved in the early stages of the process will anticipate the reactions of those who will become involved at the later stages of the process and adapt their behavior accordingly. This implies that the attitudes and behaviors of the initiators of the constitution building process will be influenced in particular ways if final authority lies with the people. For example, it seems unlikely that such actors would propose constitutional provisions that they suspect, in advance, the people would reject in a referendum. It would seem rational for them to refrain from even including clauses that might be conceived of as controversial (Ginsburg et al. 2009: 204). A public referendum is, of course, a good example of a downstream constraint on power-holders.
The four variables that affect public participation in constitution building processes are listed in the column to the left in Table 2:1. In the column to the right, the different forms that these variables can take are listed. In essence, Table 2:1 presents an operationalization of participation. We will return to this operationalization in greater detail in Chapter 3, where the methodological aspects of the thesis are further elaborated. For now it is sufficient to understand that the four variables (A-D) can take different forms and together they determine the overall extent of participation in a given constitution building process. Different mixes of the variables lead to different kinds of participation, in particular the five different types of participation described in Table 2:2.
### Table 2.1  Framework for analysing public participation in constitution building processes

<table>
<thead>
<tr>
<th>Variables that affect public participation in the constitution building process</th>
<th>Forms the variables can take</th>
</tr>
</thead>
</table>
| **A) Initiators of the process** | - Outside actors who influence constitutional content  
- Outside actors who determine how the constitution building process will be carried out  
- National elites (political or military elites)  
- Civil society organizations  
- Political elites from the ruling party, military elites, political parties in the opposition and civil society organizations |
| **B) Forms of communication** | - One-way model of communication  
- Two-way model of communication  
- Two-way model of communication with integrated proactive measures  
- Consultation |
| **C) Degree of inclusion** | - Constitution building process bans certain groups/political parties from participation  
- Constitution building process open to all groups/political parties, some of whom voluntarily decided to boycott the process  
- Constitution building process open to all groups/political parties and all groups/political parties interested in participating do so |
| **D) Final authority** | - Final authority vested in the hands of an appointed or executive body  
- Final authority indirectly vested in the hands of the people (e.g. through a popularly elected constitutional assembly)  
- Final authority directly vested in the hands of the people (through a referendum) |
<table>
<thead>
<tr>
<th></th>
<th>False participation</th>
<th>Symbolic participation</th>
<th>Limited participation</th>
<th>Consultative participation</th>
<th>Substantial participation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initiators of the process</strong></td>
<td>Outside actor (determines the content of the constitution or the process)</td>
<td>Outside actor (determines the constitution building process, or different types of inside actors)</td>
<td>National elites (political or military)</td>
<td>National elites (political or military)</td>
<td>Civil society organizations, or broad array of national actors</td>
</tr>
<tr>
<td><strong>Forms of communication</strong></td>
<td>One-way model of communication</td>
<td>One-way model of communication</td>
<td>Two-way model of communication, or two-way model of communication with integrated proactive measures</td>
<td>Consultation</td>
<td>Two-way model of communication with integrated proactive measures</td>
</tr>
<tr>
<td><strong>Degree of inclusion</strong></td>
<td>Certain groups banned from participation</td>
<td>All segments of the population/political parties allowed to participate, but some choose to boycott the process</td>
<td>All segments of the population/political parties allowed to participate, but certain choose to boycott the process</td>
<td>All segments of the population/political parties allowed to participate, and all interested in doing so participate</td>
<td>All segments of the population/political parties allowed to participate, but certain choose to boycott the process</td>
</tr>
<tr>
<td><strong>Final authority</strong></td>
<td>Final authority rests with the executive or indirectly in the hands of the public</td>
<td>Final authority rests with the executive or indirectly in the hands of the public</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Final authority directly vested in the hands of the people through a referendum</td>
</tr>
</tbody>
</table>
Table 2.2 illustrates five different types of participation in constitution building: false, symbolic, limited, consultative and substantial. Moving from false to substantial involves an increasing level of influence for participants, much like the classifications of participation developed by Pateman (1970) and Arnstein (1969). It should be noted that each type of participation is described in general terms. This means that a specific case can be categorized as an example of “false” participation even if it does not conform exactly to all elements of the description.

One main difference between false and symbolic participation is the identity of the initiators of the process. While outside actors are the primary initiators of the process in cases of false participation, this is not as common in cases of symbolic participation, where different types of inside actors typically perform the role of initiator. The second main difference between false and symbolic participation concerns degree of inclusion. Whereas some groups are banned from taking part in the constitution building process in cases of false participation, all segments of the population are allowed to participate in symbolic participation (although some voluntarily choose not to). False and symbolic types of participation have similar forms of communication: the initiators of the process employ one-way models with no possibilities for feedback. These two types are also similar to each other as regards final authority over the constitutional document. Decision-making power either rests with the executive or is indirectly in the hands of the public (through, for example, a popularly elected constitutional assembly).

Limited participation, in turn, is different from false and symbolic participation mainly as regards the initiators of the process and also how the constitution building process is communicated to the public. Initiators in cases of limited participation are national elites (either political or military elites). They usually establish a two-way model of communication, or even a two-way model with integrated proactive measures (e.g. constitutional education programs), thus making it possible for people to get engaged in the process and provide more feedback than in cases of false and symbolic participation. As regards degree of inclusion, cases of limited participation are similar to symbolic participation. All segments of the population are allowed to participate, but some groups (for various reasons) choose not to engage. Final authority over the constitutional document is indirectly vested in the hands of the public.

The two main features that distinguish consultative participation from the other four types are forms of communication and degree of inclusion. In consultative participation, the initiators of the process establish a more developed form of communication, providing not only avenues for feedback but also various types of mechanisms that enable constitution making bodies to contact individuals that who have provided feedback in order to ask
additional questions about their arguments and ideas on particular issues. In consultative participation, constitutional education programs are also taken more seriously than in any other type of participation. Here, much greater attention is devoted to understanding the degree of existing knowledge about constitutional issues among various segments of the population and to designing and implementing various strategies to prepare people, depending on what they already know about different issues. Degree of inclusion also sets this type of participation apart from the other four in the sense that not only are all segments of the population allowed to participate in the process, all segments actually take the opportunity to do so (i.e. no groups voluntarily choose to boycott the process).

The final type of participation is substantial participation. It differs from the other types on the last variable – final authority. In addition to a two-way model of communication with integrated proactive measures and full inclusion (i.e. no banned groups), final authority over the constitutional document is placed directly in the hands of the people through the use of a referendum.

In Chapter 4, we will use the analytical framework in Table 2:1 in order to differentiate the twenty cases of participatory constitution building processes into a classification scheme. The scheme will also cover the five types of participation just described. In the remaining part of this chapter we will turn our attention to the notion of democracy.

2.3 Defining democracy

“To begin with a topic that has already been examined from every conceivable angle for over twenty-five centuries might seem unpromising, but it is also inescapable”.

(Whitehead 2002: 8)

The effort also continues in this study. Next to the notion of participation, “democracy” is the second central concept in this dissertation. An important goal of the thesis is to study whether or not participation in constitution building processes leads to higher levels of democracy, as proposed by the participation-hypothesis. Thus, it is vital to address the question of how democracy is defined for the purposes of the dissertation.

As the citation from Whitehead makes clear, what democracy is and the more normative question of what it ought to be has engaged political scientists both past and present. Wars have been fought in its name; governments and insurgences alike have struggled to implement it; ordinary men and women have craved it. In the aftermath of the breakdown of the Soviet Union, a democratic system of government has become convention rather than a cause of controversy (Weale 1999: 1, Berman 2007: 28). Similarly, what appears to be a universal hunger for liberty and dignity has undeniably materialized even
more in the wake of the Arab Spring of 2011. In 1989, Robert Dahl wrote: “Today, the idea of democracy is universally popular” (Dahl 1989: 2). He was clearly correct since regimes of nearly all types and characteristics, from representative democracies to authoritarian states and military administrations, are eager to define themselves as democratic countries (Dahl 1989: 233, Bollen 1980: 371, Lively 2007: 13).

However, despite consensus concerning the desirability of a democratic system of government, scholars have not yet been able to agree upon a single, uncontested definition of what the concept ought to encompass. Rather, countless definitions are in circulation, which is a source of some concern. Indisputably, a term is vulnerable to ambiguity when too many and quite wide-ranging definitions are attached to its name. A word that seems to mean almost anything might very well end up meaning nothing. This is something to be avoided, if for no other reason because it makes measurement difficult or impossible. Democracy is unquestionably a difficult concept to define, likely more so than many other that occupy the minds of political scientists. At least one reason for this is that “democracy” is a term that operates on two different levels. Democracy belongs as much to the world of ideals – where the functioning of systems that do not exist is imagined – as it does to the empirical world, where it is used to describe actual political systems (Lively 2007: 14, Coppedge & Gerring 2011: 248, Dahl 1989: 6).

“Rule by the people”, the etymological meaning of democracy, is perhaps the baseline definition that most political scientists accept (Coppedge & Gerring 2011: 248), but even this understanding falls short of explaining how democracy should be practiced. As Lively points out (2007: 13-15), “rule by the people” can look quite different when transferred from the ideological sphere, where it is a theoretical construct, to the real world, where it is formalized into proceedings and processes. This transference can produce weaker and stronger forms of democracy. In addition, the defining characteristics of democracy have changed significantly since ancient times. Who “the people” are/have been/should be has been far from clear and far from uncontroversial. The Athenians had a very local understanding of who was part of the “demos” (people) and thus entitled a voice when public matters were decided. “The people” consisted of free male citizens of Athens, not even the rest of Greece. Obviously, today’s definition of “the people” differs dramatically from this view. Similarly, the notion of people “ruling” has also been debated and continues to be a source of disagreement today. What does it really mean for the people to rule? Various practices imply diverse actions that have differing levels of impact on outcomes. These range from direct forms of citizen participation in legislation to “rule” through the ballot box (Lively 2007: 32-33).

In an attempt to illustrate the many and widespread interpretations of democracy, Coppedge & Gerring (2011) reviewed a substantial volume of the
literature and arrived at six key models of the concept (Coppedge & Gerring 2011: 253): electoral, liberal, majoritarian, participatory, deliberative and egalitarian forms of democracy (Coppedge & Gerring 2011: 253). Each of the six models interprets “rule by the people” in a different way. Some interpretations are more or less complementary, whereas others seem to contradict each other by emphasizing different institutional components (Coppedge & Gerring 2011: 254). The purpose here is not to give an exhaustive account of the extensive research field that pertains to defining democracy. This is well beyond the scope of this dissertation. However, it is important to be aware that opinions differ as regards specific features of democracy and how it should be measured. These range from minimalist, thin approaches in which the holding of regular elections suffices to define a regime as democratic, to maximalist, thick approaches in which other factors about what democratic systems deliver come into play, for example the securing of political rights, civil rights, etc. (Coppedge & Gerring 2011: 255, Norris 2008: 55).

As noted in Chapter 1, the participation-hypothesis forms part of a broader peacebuilding agenda in which democracy is understood in its liberal form. It follows from this that the research presented here must conform to this understanding and also adopt a liberal definition of democracy. This is necessary in order to conduct a fair assessment of the hypothesis. Our understanding of liberal democracy is in turn greatly influenced by Robert A. Dahl’s idea of “polyarchy”. Dahl (1989: 221) highlights two main characteristics of democracy: contestation and participation. In practice, when attempting to identify democratic political regimes, or to use Dahl’s own terminology, “polyarchies”, there are seven key indicators to look for: 1) elected officials, 2) free and fair elections, 3) inclusive suffrage, 4) right to run for office, 5) freedom of expression, 6) alternative information, and 7) associational autonomy (Dahl 1989:221). This, the liberal form of democracy, has as expressed by Teorell (2010: 30), become the mainstream approach to defining democracy in the comparative democratization literature. These 7 elements are the conventional aspects of democracy; the holding of free and fair elections, universal suffrage and in addition to these procedural aspects, a number of political and civil rights. One thing should however be clear, while it has become mainstream to define democracy in its

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14 Frequently referred to as a “Schumpeterian” definition of democracy (Coppedge & Gerring 2011: 253).
15 It is worth quoting Dahl on the concept of polyarchy: “Polyarchies [...] may be thought of as relatively (but incompletely) democratized regimes, or to put it in another way, polyarchies are regimes that have been substantially popularized and liberalized, that is, highly inclusive and extensively open to public contestation” (Dahl 1971: 8). It should be noted that Dahl argues that no system in the world is entirely democratic, which is why he developed the concept of “polyarchy”. However, the seven institutions of polyarchy are necessary for democracy on a large scale (i.e. the nation state) (Dahl 1989: 222)
liberal form, the question of how to conceptualize democracy remains highly contested. This will be the focus of the next section of this chapter.

2.3.1 Conceptualizing democracy: a dichotomous or graded approach?

 Intellectuals have long fiercely debated how democracy best ought to be conceptualized and then measured. A review of the literature in this field of research reveals a gulf between scholars who firmly believe that democracy can only be measured as an “either/or” concept and scholars who argue that democracy can be measured in terms of gradations.\(^\text{17}\) In this section we will review the main arguments from both sides.

The Italian political scientist Giovanni Sartori is one of many prominent democratic theorists who rejects “degreeism” and advocates a dichotomous approach to the conceptualization of democracy (Sartori 1987, 1991). In his classic work, *The theory of democracy revisited*, (1987), Sartori explains his argument by referring to the terms *contraries* and *contradictories*. While there is room for middle ground positions and “in between” cases when working with contrary concepts – e.g., big and small, hot and cold, rich and poor – there is, per definition, no such space when referring to concepts that are contradictory. According to Sartori, democracy versus non-democracy constitutes such a contradictory pair of concepts. Therefore, it cannot be referred to in terms of “more” or “less” and it cannot be measured in various degrees (Sartori 1987: 182-184, 1991). When attempting to sort out what democracy actually entails, Sartori firmly maintains that it is a matter of exploring the specific features of a political system; in other words we are studying a *kind* of system, not a degree, and we have to approach them as such – i.e. as systems. He is also concerned that resorting to degreeism will only complicate matters, because concepts might be used to describe situations, occurrences or instances that lie outside their normal scope of reference – i.e. that concepts will be stretched beyond their initial purpose (so called “conceptual stretching”). In this case, that we would end up referring to certain states as “democracies” even though they do not meet all the standards that the majority of the research community includes in its understanding of the pillars of the concept.

On the other hand, as argued by proponents of what Sartori calls “degreeism”, it could be argued that conceptual stretching might actually be avoided by acknowledging that democracy, rather than solely being a *system*, might be conceived of as a *property* that particular regimes demonstrate to various extents. This position would in turn make it completely reasonable to talk about degrees of the property, a point we will return to shortly.

\(^{17}\) To quote Bogaards (2012: 690): “In the literature on measuring democracy, there are roughly two camps: those who see democracy as an all-or-nothing affair and those who view democracy as a matter of degree”.
Sartori is by no means alone in advancing arguments for a dichotomous approach to the conceptualization and measurement of democracy. Alvarez and colleagues (1996) first of all quite clearly express their frustration with far-flung descriptive aspects of democracy: “...democracy has become an altar on which everyone hangs his or her favorite ex voto”, and “lumping all good things together is of little use” (Alvarez et al. 1996: 4). Instead, they propose a minimalist definition of democracy that straightforwardly equates the concept with contestation: “Democracy, for us, is thus a regime in which some governmental offices are filled as a consequence of contested elections” (Alvarez et al. 1996:4). In addition to this minimalist definition, they also propose a dichotomous conceptualization of democracy, which means that if a given state does not hold contested elections, it is, according to their definition, a dictatorship (Alvarez et al. 1996).

As Collier & Adcock (1999) have noted, a drawback of using a categorical approach like the one proposed by Alvarez et al. (1996) is that so-called cut-off points that define the boundaries of dichotomies will likely change over time in response to evolving theoretical understandings and new empirical evidence. Democracy as practiced by the Athenians differs from how the concept was understood even by individuals in other cities at the same time, not to mention people in other countries. Similarly, how we define democracy today differs from how democracy was conceptualized only forty years ago, and how democracy is conceptualized twenty years from now may differ from broad-based understandings of the term today (Collier & Adcock 1999: 541-545). Consequently, many scholars (Teorell 2010, Collier & Adcock 1999, Elkins 2000, Bollen & Jackman 1989, Dahl 1989) argue that it is more fruitful to approach the concept of democracy as a continuum with a “range of variation in degree and form” (Diamond 1996: 53). If this perspective is adopted, it is possible to detect traces of democracy in cases that Alvarez et al. (1996) categorically label as non-democracies or dictatorships (Bollen & Jackman 1989, Elkins 2000). The basic line of argument made by scholars such as Diamond (1996), Teorell (2010), Elkins (2000), Collier & Adcock (1999), Dahl (1989), Bollen & Jackman (1989) and others is that an inherently continuous concept cannot be conceptualized and measured in an “either/or” way. Using Sartori’s language, these scholars understand democracy as a continuous concept rather than a contradictory term. Consequently, they argue that it is difficult, not to mention empirically misleading, to classify a country as either a clear-cut democratic state or a definite dictatorship. Because countries below (as well as above) the defined threshold for democracy can display huge variation as regards practices, institutions and outcomes (Dahl 1989: 316). Thus, democracy is always a matter of degree (emphasis added) (Bollen & Jackman 1989: 618).
2.3.2 Defining and conceptualizing democratization

The question of how to define and conceptualize democratization is also relevant to the discussion above. Democratization can either be understood as the replacement of an undemocratic system with a democratic system (Bernhagen 2009: 25), or as the process during which a state becomes more democratic - however small that change may be (Bogaards 2010: 476). These two understandings are not the same thing expressed in two different ways. The first interpretation of democratization leans on a dichotomous conceptualization of democracy, while the second one rests on a graded approach.

The purpose of this thesis is to study whether or not the participation-hypothesis holds up under closer scrutiny. This means that we are interested in knowing whether democracy has indeed changed for the better after the completion of the constitution building process, which is what the hypothesis suggests. In order to explore this issue, we must define democracy in the same way as proponents of the hypothesis do, and as established above, this implies a definition of democracy that is liberal in form. In addition, adopting a graded approach to the conceptualization of democracy and democratization is the most suitable course of action because it will enable us to more fairly assess the participation-hypothesis. This study accepts the arguments of Collier and Adcock (1999), who emphasize that it is more beneficial to maintain a pragmatic attitude to conceptualizing and measuring democracy and to choose an interpretation that is suitable in light of one’s research questions and the tradition in which the research is being conducted (Collier & Adcock 1999:545-546). Using a graded approach will enable us to examine whether or not the participation-hypothesis holds up in the face of empirical testing in a much more nuanced manner than if we used a dichotomous approach.

A graded approach also fully acknowledges democratization as a process, a transition. A growing branch of research is devoted to these transitional “hybrid” regimes, and an astonishing number of terms have been proposed by scholars to capture such regime types. Examples include “semi-consolidated democracies”, “authoritarian regimes”, “contested autocracies”, “electoral democracies”, “pseudo-democracies”, “illiberal democracies”, “competitive authoritarianism”, “semi-authoritarianism”, “electoral authoritarianism”, “pseudo-multiparty systems”, “protodemocracy”, “neopatrimonial democracy”, and “military dominated democracy” (Diamond 2002, Bernhagen 2009, Morlino 2008, Collier & Levitsky 1997). Definitional clarity concerning these proposed regime-types is scarce among authors, which makes it complicated to use them, and for this reason this study will not do so. Instead, we will only use the general term “democratization”, because it is more suitable to the research objectives of the thesis and because it is a more straightforward task to define “democratization” than to try to provide precise definitions of the numerous regime types listed above.
Now that the theoretical points of departure have been discussed and the concepts of participation in constitution building processes and democracy have been defined, we are one step closer to being able to analyze the participation-hypothesis. In the next chapter we will turn our attention to a discussion of how the analysis will be conducted.
Chapter 3
Designing a two-step investigation: approach, methods and sources

The purpose of this chapter is to discuss the methodological choices that have guided the empirical investigation of this thesis and the methods and sources that have been used to answer the three research questions. The chapter begins with a discussion of the research design that frames the thesis, after which a section is devoted to discussing the matter of case selection. This is followed by a discussion of the operationalization of public participation in constitution building processes, which will be done in a manner that enables us to classify such processes later on in the thesis. We will then look into the issue of how democracy is measured and the empirical indicators that the study uses for this purpose. Thereafter, the specific tasks that will be undertaken in order to answer the study’s research questions will be presented. The chapter ends with a presentation and discussion of the research material used in the thesis.

3.1 Research design

3.1.1 A comparative method

It has been said that “comparison lies at the heart of human reasoning and is always there in the observation of the world – thinking without comparison is unthinkable” (Swanson 1971: 45 cited in Rihoux & Ragin 2009: xvii). Even when we are dealing with singular phenomena we make use of comparisons, because singularities in themselves are hard to acknowledge and recognize until they are compared to other phenomena. To use a perhaps banal, yet illustrative, example: “We know that apples are not pears because we have compared the two” (Rihoux & Ragin 2009: xvii).

Émile Durkheim, one of the founders of modern empirical social science, once stated that the comparative method is the only one that suits the social sciences (Durkheim 1978: 101). David Collier (1993: 105) has said that comparison is a “fundamental tool of analysis”. Similarly, King et al. (1994: 5) suggest that all social science research requires comparison, regardless of whether one compares a few or many cases. Some might consider this view to be overly presumptuous. Still, it is undeniably true that comparisons are widely used in the social sciences, and particularly so in political science.

Looking specifically at political science, we find, however, that the scope, purpose and units of analysis for comparison have changed quite a lot over time. As noted by Schierenbeck & Lindvert (2008: 11), for a long time, comparisons in this field were focused almost exclusively at the level of countries. This is no longer the case. Today, we compare the political economy...
of countries, regions or administrative units; we compare how different policies affect different segments of the population within countries or regions; we compare cease fire agreements and their implementation in different contexts; we compare how nations deal with post-conflict institution building after protracted violent conflicts and so on.

Comparisons are also done for different reasons and based on different logics. With regard to the former, it can be said that some scholars compare for the purpose of describing differences and similarities, while others compare for the purpose of explaining differences and similarities. According to King et al. (1994: 34), who argue that “inference, whether descriptive or causal, quantitative or qualitative, is the ultimate goal of all social science”, descriptions and explanations are, nevertheless, usually two sides of the same coin, both of which lead us towards being able to make inferences. We often start by describing phenomena, which, in the context of this study, means comparing participatory constitution building processes in order to describe their differences. We then go on to develop causal explanations – which in the context of this study involves investigating the participation-hypothesis.

The argument of the participation-hypothesis is clearly causal in its articulation. The hypothesis assumes that public participation in constitution building processes will lead to higher levels of democracy. Therefore, it is undeniable that this hypothesis formulation is based on causal inference in which, to use the language of causality, we have an independent variable (participation in constitution building processes) that is envisioned to cause an effect on the dependent variable (level of democracy). To be strictly correct, however, developing causal explanation is not what this thesis aims to do. Rather, the goal is to scrutinize a casual explanation that has yet to be empirically validated. In this context, it should also be noted that the participation-hypothesis does not include any other variables that might contribute to bringing about higher levels of democracy. Instead, the sole focus of the hypothesis is on public participation in constitution building processes. If, on the other hand, the participation-hypothesis were formulated such that public participation in constitution building processes was envisioned as a necessary condition for higher levels of democracy, then it would open the door to investigating additional conditions that, in combination with public participation in such processes, might be assumed to contribute to higher levels of democracy.\textsuperscript{18} However, since the participation-

\begin{footnotesize}
\textsuperscript{18} If the participation-hypothesis were formulated such that public participation in constitution building processes was envisioned as a necessary condition for higher levels of democracy, QCA (Qualitative Comparative Analysis) methodology, and more specifically fuzzy-sets, could have been used to conduct the analysis. However, using QCA would still be problematic. When employing QCA, it is important to keep the number of conditions fairly low, because the number of combinations increases exponentially with the number of conditions. This means that if were to have a data-set containing, for example, four conditions and each of these in turn being able to take three different values, then the number of possible configurations would be: \(3^4\times3^3\times3=81\). It is easy to understand that we might encounter a problem if the number of possible
\end{footnotesize}
hypothesis is formulated as a causal argument and makes no reference to other variables, the empirical analysis will only take into consideration the factor that gets exclusive attention – i.e. public participation in constitution building processes – and will investigate its effect on democracy levels. By conducting the analysis in this manner, we will investigate the participation-hypothesis as it has been formulated by its supporters, and, therefore, we will be able to assess its legitimacy fairly.

As regards comparisons based on different logics, some researchers select similar cases for comparison – for example, cases that share geographical location, degree of economic development or similar traditions – in an effort to “hold these variables constant”, thus making it possible to determine the influence of other factors that are believed to affect the outcome of interest. The logic behind the comparison can also be the opposite – i.e. that the cases selected for comparison are very different from each other in order to make it possible to generalize beyond a limited area (della Porta & Keating 2008: 29, della Porta 2008: 214-215, Laitin 2002: 630). We might also compare just a few cases, perhaps limiting our study to a comparison of two units of analysis, or we might compare a middle-range number of units (countries, policies, economies, etc.), or we could compare a large number of cases. The number of “N” (cases) thus varies greatly when individual researchers conduct comparative studies. As regards this specific issue, within the broad context of comparative analysis, the term comparative method has been used to signify an approach that is understood to be an alternative to the statistical method (Lijphart 1971, Collier 1995: 105). In essence, when the number of N is too small for statistical analysis, the comparative method is the most suitable option. As will become clear shortly, the first part of this thesis is conducted using the comparative method in order to systematically compare a middle-range number of cases, whereas the second part of the study is concerned with a focused comparison of two cases.

3.1.2 A two-step investigation
This study is a two-step investigation in which the empirical results of the first part of the study inform the theoretical and methodological choices of the second part. The rationale for choosing a research process that is so clearly divided into two distinct steps is that the purpose and research questions make this an appropriate approach for the thesis. In practice, the approach configurations were higher than the number of cases included in the study. What if each case exhibits one specific configuration out of the 81 configurations possible? Furthermore, the issue of keeping the number of conditions low becomes quite problematic when the dependent variable is “democracy”. Given that there are many different theoretical understandings about the factors that contribute to higher levels of democracy (something we will devote considerable attention to in Chapter 7), it is difficult, and likely unwise, to limit the number of conditions to merely two or three. For further reading on QCA analysis, see Ragin, C. (1987, 2000, 2009).
implies a comparative mixed-methods research design, in which comparisons of relatively many cases are combined with focused comparative case studies. In the first part of the study, the twenty cases of participatory constitution building are compared to each other as well as to cases of non-participation, whereas in the second part of the study the comparison is limited to two cases.

In addition to being the most suitable research design given the purpose and research questions of the thesis, a mixed approach is also employed because it will allow the study to better capture a multifaceted empirical reality that is not easily understood by using just one approach. This research strategy is supported by Johnson & Onwuegbuzie (2004: 14-15), who argue that the research reality of today is such that it is often necessary for researchers to complement one method with another in order to answer the research questions they pose. Therefore, one should be hesitant about holding on to the notion of a gulf between quantitative and qualitative orientations. It is better to acknowledge that both have their respective strengths and weaknesses, and then to consider the possibilities of marrying design components in such a way as to enable the overarching research questions to be answered (Brady et al. 2004: 5, Johnson & Onwuegbuzie 2004: 14-15).

Simply put, pragmatism over purism. King et al. (1994: 3-6), in their groundbreaking work Designing Social Inquiry: Scientific Inference in Qualitative Research, also emphasize the need to acknowledge that the rapidly changing social world requires us to look beyond the quantitative/qualitative divide, wed methods within these traditions when the research questions we pose demand it, and recognize that both quantitative and qualitative research can be systematic and scientific.

Although it would be misleading to claim that the research design of this study is “nested” in the sense that it combines statistical analysis with case-study analysis, it applies a mixed-methods research design in the sense that it combines research that has both breadth and depth and in the sense that the analysis in the first part of the study guides the selection of cases for the second part (Lieberman 2005: 435). It is undeniably true that studying many cases imposes certain restrictions as to the level of detail and amount of data that can be processed and analysed. When comparing many cases, the researcher also tends to seek out types of data that are more manageable and, ideally, as regards data on the independent and dependent variables, data that is already operationalized and gathered in databases. In contrast to this, when the researcher is concerned with comparing a few cases, conducting focused comparisons along many dimensions is a much more viable option.

The first part of the study analyses the twenty cases of participatory constitution building processes and cases of non-participation rather than limiting the comparison to, say, two, three, four or five cases. This is motivated by two considerations. First, comparing a small number of participatory constitution building processes in order to learn about how the processes were
structured has already been undertaken in previous research (see e.g. Hyden & Venter 2001). As appropriately described by Ginsburg et al. (2009: 202), this specific research field is “thin with respect to rigorous comparative research” and amply rich in case study research. Furthermore, as the authors also note:

“In general, scholars have been far better at generating hypotheses relating process to outcomes than at testing them. Individual case studies have provided some insights, but large-n work has been hindered by a lack of data and by a need for conceptual refinement”.

(Ginsburg et al. 2009: 219)

For these reasons, it seems redundant to adopt a small-N research design. Furthermore, considering that the purpose of this thesis is to investigate the participation-hypothesis, it is crucial that we compare a larger number of cases than merely two or three. The systematic comparison of many cases is the only method by which we can achieve greater understanding about the claims of the participation-hypothesis, and it is only by comparing many cases that we will be able to say something general about the claim made by proponents of public participation in constitution building processes – i.e. that such participation is a democracy-enhancing endeavour.

However, in the second part of the study, when we set out to study factors beyond public participation in constitution building that might explain higher/lower levels of democracy, the comparison will be limited to two cases. In particular, we will compare two cases that had very similar levels of participation in their respective constitution building processes, but where subsequent levels of democracy are very far apart. In an effort to understand what has caused these different trajectories, we turn to the extensive democratization literature for guidance as to which theoretically informed variables we need to include in the analysis. Many of these (although not all) turn out to be qualitative, which makes a statistical analysis difficult. Furthermore, because the goal of the second part of the thesis is to perform a thorough and systematic analysis of a broad array of such variables, due to time limitations, it is not possible to include more than two cases.

Having said all this, in this thesis, regardless of whether we are speaking about the analysis of a larger number of cases or the analysis of two cases, comparisons lie at the heart of the study, and comparisons are conducted both between and within cases. To begin with, the twenty cases of participatory processes are compared in order to describe differences among them. To use casual language, they are compared on the independent variable. These comparisons also provide the basis for a classification scheme of different types of participation. Second, all cases included in the study are also compared on the dependent variable, which means that they are compared for the purpose of increasing our knowledge as to whether or not participation in
constitution building has brought about higher levels of democracy, as suggested by the participation-hypothesis. Third, in order to enable us to determine whether or not participation has, in fact, resulted in higher levels of democracy, within-case comparisons of democracy levels prior to and after the completion of the constitution building process are also conducted.

3.2 Case selection

3.2.1 Case selection I

As was discussed in the introductory chapter, no previous research systematically compares a relatively large number of participatory constitution building processes in order to understand 1) how they differ from each other or 2) whether public participation in the constitution building process leads to higher levels of democracy. In order to address these gaps, it is essential to include a large number of cases in the study. Accordingly, this is what is done in this thesis.

In order to analyse the argument put forth by the proponents of the participation-hypothesis, the study will focus on twenty cases of participatory constitution building processes that have occurred in post-conflict states, transitioning states and countries that have experienced a severe institutional crisis. This choice is motivated on the grounds that it is these types of countries that the participation-hypothesis speaks to.\(^{19}\) The cases are presented in Table 3:1.

\(\text{Table 3:1 Cases of participatory constitution building processes}\)

<table>
<thead>
<tr>
<th>Albania</th>
<th>Iraq</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Kenya(^{21})</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Kosovo</td>
</tr>
<tr>
<td>Brazil</td>
<td>Nicaragua</td>
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<tr>
<td>Colombia</td>
<td>Nigeria</td>
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<tr>
<td>East Timor</td>
<td>Rwanda</td>
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<tr>
<td>Eritrea</td>
<td>South Africa</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Thailand</td>
</tr>
<tr>
<td>Fiji(^{20})</td>
<td>Uganda</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Zimbabwe(^{22})</td>
</tr>
</tbody>
</table>

\(^{19}\) It should be noted that participatory constitution building processes that are still ongoing are not included in the analysis (e.g. the ongoing processes in Nepal and Somalia). The reason for this is that we cannot determine the effect of these processes on democracy levels until the process has been completed.


In the peacebuilding literature and scholarly work concerned with the study of constitution building processes, the cases in Table 3:1 are commonly referred to as cases of “participatory constitution building processes”. This implies that even though there is no uniform definition that explicates what “participation” in constitution building actually means – other than that the public has taken part in the process in one way or another – there is still a *shared usage* of the label in existing scholarly work. In order to scrutinize the participation-hypothesis, this thesis therefore includes cases that have previously been identified as such.

To identify the cases, this study has first explored the literature in order to find cases that have been referred to as “participatory constitution building processes”. Secondly, the cases have been carefully studied in order to understand the form that this “participation” has actually taken. Thirdly, a classification scheme and a new typology of participation have been developed, and they show that having a single label for this phenomenon gives us a picture of them that is too crude, because there are important differences among the cases as to how “participation” has been exercised.

A number of publications have been particularly valuable for identifying the twenty cases. To begin with, the United States Institute of Peace\(^{23}\) (USIP) released a publication in 2010 entitled *Framing the State in Times of Transition: Case Studies in Constitution Making* (edited by Laurel E. Miller). In this compilation, a number of constitution building processes are thoroughly described, more often than not by individuals who were themselves involved in the constitution building processes they describe and analyse. This publication is also concerned with pinpointing constitution building processes that have included public participation, and it concludes that Albania, Afghanistan, Brazil, Colombia, East Timor, Eritrea, Fiji, Iraq, Nicaragua, South Africa, Uganda and Zimbabwe are cases of participatory constitution building processes.

Second, in 2011, Interpeace\(^{24}\) published a volume entitled *Constitution-making and Reform: Options for the Process* (authored by Brandt et. al 2011) on the topic of constitution building. Here too, case studies of constitution building processes are featured. Among these, Afghanistan, Bolivia, Kenya, and Uganda are described as cases in which public participation formed part of the constitution building process.

Third, the International Institute for Democracy and Electoral Assistance\(^{25}\) (IDEA) has expertise in the area of constitution building, particularly in post-conflict and transitioning states. The institute has also solicited scholars to

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\(^{23}\) USIP is an independent and non-partisan institution based in Washington DC.

\(^{24}\) Interpeace was originally an international peacebuilding organization created by the UN. Since 2000, however, Interpeace is an independent organization

\(^{25}\) The International Institute for Democracy and Electoral Assistance is an intergovernmental organization whose mission is to support sustainable democracy worldwide.
analyse constitution building in various countries. Examples include Rwanda, Guatemala, Nigeria, and Afghanistan (Simpkins 2004, Ankut 2005, Brett & Delgado 2005, McCool 2004). These are also referred to as cases in which public participation was part of the constitution building process. Through IDEA’s online “constitutional library”, ConstitutionNet, the country profiles of Thailand and Kosovo also establish these cases as ones in which public participation was part of the process (ConstitutionNet 2014a, ConstitutionNet 2014b). This has also been recognized elsewhere (Klein 1998, Uwanno & Burns 1998).

Fourth, Hyden & Venter’s (2001) edited volume, Constitution-making and democratization in Africa, also includes several chapters devoted to constitution building processes in South Africa, Uganda and Ethiopia. These contributions establish these countries as cases in which public participation formed part of the process. Likewise, Moehler’s in-depth exploration of the Ugandan constitution building processes in Distrusting democrats: outcomes of participatory constitution making (2008) depicts a constitution building process with clear participatory elements. The same applies to Panfil’s publication, Constitutional Development with Civil Society: Case Studies from Southern and East Africa (2012). Here as well, a number of constitution building processes are described. Among these, the cases of Kenya, Zimbabwe and South Africa are defined as cases in which public participation was part of the process.

To summarize, in order to scrutinize the participation-hypothesis, twenty cases that have been identified as “participatory constitution building processes” in the peacebuilding literature and in scholarly work concerned with constitution building will be analysed. These cases have been identified by reviewing the two literatures as discussed above.

### 3.2.2 Case selection II

Since the purpose of this study is to investigate the participation-hypothesis, cases of participatory constitution building processes are logically the focal point of attention. However, an investigation that sets out to analyse the outcome of participatory constitution building processes on democracy levels also raises the question of how democracy levels develop in cases that do not include any element of public participation in the drafting of the constitution. Therefore, such cases are also included in the study. These are cases of constitution writing in which the task of doing so was exclusively assigned to political elites and lawyers, with no public involvement during the process at all. These cases are included as a point of reference, a group of cases against which the outcome of the twenty participatory processes can be compared.

The cases of non-participation have been selected in accordance with the following principles. To begin with, since the participation-hypothesis addresses post-conflict states, transitioning states and countries that have
experienced a severe institutional crisis, cases of non-participation must also be post-conflict states, transitioning states and/or countries that have experienced a severe institutional crisis. This is important because if there is an assumption that a participatory process results in higher levels of democracy in these specific types of contexts, then the investigation needs to include cases that mirror such contexts, but where there was no public participation in the making of the constitution in order to be well suited to evaluate the argument. The second condition for the selection of cases of non-participation is that they must be countries in which the new constitution came into effect during the same time period as the twenty cases in which participation was part of the constitution building process. This implies that, in cases of non-participation, the constitution must have been promulgated sometime between the mid-1980s and the present. (The very earliest instances of participatory constitution building processes were initiated in the mid-1980s and completed a few years later). This is important because the environment in which the constitutional documents of the past three decades have been drafted differs considerably from earlier periods. Constitutional texts drafted towards the end of the Cold War, and definitely since then, have been formulated during an era in which a democratic system of government has become something resembling a norm in large parts of the world. Therefore, in order to fairly compare cases of non-participation with cases of participation, it is preferable to focus on constitutions that came into effect when the norms and outlooks about matters of governance were similar. The third condition for selecting cases of non-participation relates to the one just discussed, but also ties into a broader matter. It is necessary to keep in mind that the view that public participation in constitution building enhances democracy is part of a more comprehensive peacebuilding agenda and an initiative that has been accentuated in the period since the Cold War. The onset of the period also marked a significant shift in the characteristics of violent conflict – in particular a substantial decrease in interstate wars and an increase of intrastate wars. All twenty cases of participatory constitution building processes took place in countries that experienced violent internal conflict or transition from authoritarian rule (internal by definition) or severe institutional crisis (also internal). Participatory constitution building processes are envisioned to mend these societies and thrust them onto a democratic path. Therefore, it is important that cases of non-participation also be countries that have experienced violent internal conflict, transition from authoritarian rule (internal) or severe institutional crisis (internal). The reason for this is the same as what was said above as regards the first condition: if the argument is that a participatory process will lead to higher

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26 Since the end of the 1980s and beginning of the 1990s, interstate wars have become uncommon. When wars and minor conflicts occur, it is much more common that they take place within the borders of states (intrastate conflicts) (Themnér & Wallensteen 2011, Themnér & Wallensteen 2012).
levels of democracy in these specific contexts, then we must include cases that represent the same type of contexts, but where there was no public participation when the constitution was drafted.

The Uppsala Conflict Data Program (UCDP database) has been used to identify wars and minor conflicts from about 1975 to the present. In selecting cases of non-participation, only countries that have experienced intrastate war/minor conflict since the mid-1980s have been considered. Using this filter (internal war/minor conflict occurring since the mid-1980s), the UCDP gives us a set of approximately 60 cases.27 Of these, several wars and conflicts are still ongoing (e.g. Syria, Somalia, Central African Republic, Pakistan, Mauritania, Algeria, Sudan, South Sudan, Turkey, Myanmar, Ivory Coast, Philippines, Tajikistan, Senegal, Yemen), which disqualifies them as potential cases.28 Moreover, in many of these cases, new constitutions were not adopted after the termination of conflict (e.g. Sierra Leone, Liberia, Guinea Bissau, Haiti, Sri Lanka), which also rules them out as potential cases of non-participation. Of the approximately 60 cases, 26 countries have enacted new constitutions after the termination of war/minor conflict. These are included as cases of non-participation in this study. They are Bosnia-Herzegovina, Cambodia, Venezuela, Suriname, Cameroon, Panama, Trinidad & Tobago, Paraguay, Mozambique, Croatia, Angola, Togo, Ghana, DRC, Burkina Faso, Niger, Guinea, Lebanon, Comoros, Serbia, Macedonia, Romania, Moldova, Georgia, Azerbaijan and Laos. In addition to being post-conflict states, some are countries that are or have been in the process of transitioning from authoritarian rule (e.g. Suriname, Burkina Faso, Ghana, Romania, Moldova), while others have experienced severe institutional crises (e.g. Venezuela, Paraguay). In addition to these countries, Namibia and Hungary have also been included as cases of non-participation. Namibia has been included because it enacted its constitution following its war of independence (1990) (Wiechers 2010, Widner 2005b). Hungary is a case that is often referred to as a transitioning country, as well as a country that experienced a severe institutional crisis in the late 1980s, which prompted it to draft a new constitution (e.g. Arato & Miklósi 2010, Bruszt 1990, Linz & Stepan 1996: 296-316, Widner 2005b).

To summarize, the following 28 cases have been selected as cases of non-participation:

27 These are Venezuela, Suriname, Mexico, El Salvador, Paraguay, Peru, Panama, Haiti, Trinidad & Tobago, Mozambique, Angola, DRC, Burundi, Congo, Central African Republic, Cameroon, Togo, Ghana, Ivory Coast, Burkina Faso, Liberia, Lesotho, Sierra Leone, Guinea, Guinea Bissau, Senegal, Mauritania, Mali, Algeria, Libya, Niger, Chad, Sudan, South Sudan, Djibouti, Comoros, Somalia, Croatia, Bosnia, Serbia, Macedonia, Romania, Moldova, Georgia, Azerbaijan, Egypt, Israel, Lebanon, Syria, Turkey, Iran, Yemen, Russia, Uzbekistan, Tajikistan, Pakistan, India, Sri Lanka, Nepal, Bangladesh, Laos, Cambodia, Myanmar, Indonesia and Papua New Guinea.

28 The selection of cases was conducted in late 2012. These wars and minor conflicts were on-going in 2011 (Themenr & Wallensteen 2012: 573-574).
Table 3:2 Cases of non-participation in constitution building

<table>
<thead>
<tr>
<th>Angola</th>
<th>Lebanon</th>
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<tbody>
<tr>
<td>Azerbaijan</td>
<td>Macedonia</td>
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<tr>
<td>Bosnia-Herzegovina</td>
<td>Moldova</td>
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<td>Burkina Faso</td>
<td>Mozambique</td>
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<td>Cameroon</td>
<td>Namibia</td>
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<tr>
<td>Cambodia</td>
<td>Niger</td>
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<tr>
<td>Comoros</td>
<td>Panama</td>
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<tr>
<td>Croatia</td>
<td>Paraguay</td>
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<tr>
<td>Democratic Republic of Congo (DRC)</td>
<td>Romania</td>
</tr>
<tr>
<td>Georgia</td>
<td>Serbia</td>
</tr>
<tr>
<td>Ghana</td>
<td>Suriname</td>
</tr>
<tr>
<td>Guinea</td>
<td>Togo</td>
</tr>
<tr>
<td>Hungary</td>
<td>Trinidad &amp; Tobago</td>
</tr>
<tr>
<td>Laos</td>
<td>Venezuela</td>
</tr>
</tbody>
</table>

3.2.3 Case selection III

Based on the empirical findings of the investigation of the participation-hypothesis, two cases have been selected in accordance with the most similar system design logic for additional analysis in the second part of the thesis. The two cases, Kenya and Zimbabwe, were chosen because their constitution building processes were very similar to each other, yet the level of democracy following the process increased only in Kenya (which is in accordance with the expectation of the hypothesis), while it has steadily declined in Zimbabwe (which is contrary to the hypothesis). Furthermore, in these specific cases, participation was exercised in such a way that it did, indeed, imply considerable influence for participants (which is shown in the classification scheme presented in Chapter 4, and by the in-depth analysis in Chapter 6). Despite this, however, the outcomes as regards democracy levels are very different, which makes it even more important to compare these cases in particular. The cases are the focus of the second part of the study, where we set out to answer the third research question: If not participation in constitution building processes, then what causes higher levels of democracy? By systematically comparing these two cases on a considerable number of factors that are theoretically argued to influence democratization, we can shed light on this issue.

It should be noted that a number of earlier studies have also found it useful to investigate the two cases of Kenya and Zimbabwe. In these earlier studies, comparing Kenya and Zimbabwe has not been motivated on the grounds of their similar constitution building processes, but by the fact that both countries installed governments of national unity in 2008 in response to serious political crises: the post-election violence in Kenya in 2007 and the post-election violence in Zimbabwe in 2008. These scholarly works are thought-provoking in a number of ways, but what makes them particularly
interesting is that they share an emphasis on the role of political elites, which is singled out as the most important factor that can explain the different democratization trajectories that the two countries have taken (Cheeseman & Tendi 2010, Cheeseman 2011, Mapuva 2010, Eaglestone 2013, Ikejiaku & Dauda 2011). Additionally, single case studies that only devote attention to either Kenya or Zimbabwe also call attention to the role of political elites as a key explanatory factor as regards democratization (Branch & Cheeseman 2009, Tamarkin 1978, Blair 2002, Compagnon 2011, Dorman 2001). Hence, previous comparative as well as single case study research on democratization in Kenya and Zimbabwe appear to be in agreement about the role of political elites as a particularly important factor for understanding the state of democracy. Even so, there has not been any previous systematic comparison of the two countries for the purpose of strengthening this argument while simultaneously excluding other possible explanations. When we set out to develop a deeper understanding of the different trajectories of democratization in these two countries, a systematic comparison of this sort will be carried out (in chapters 8 and 9).

Having addressed the issue of case selection, in the next section of the chapter, the operationalization of public participation in constitution building will be discussed.

3.3 Classifying participatory constitution building processes

In order to classify participatory constitution building processes, we must revisit the analytical framework in Chapter 2 (Table 2:1). The table conveyed the fact that the four variables that affect public participation can take different forms (as seen in the column to the right in the table). In essence, Table 2.1 shows an operationalization of participation. In this section of the chapter, the reasoning behind this operationalization will be elaborated.

3.3.1 Operationalizing the variables

As mentioned in Chapter 2 when the classification schemes of Carole Pateman (1970) and Sherry Arnstein (1969) were discussed, the existing categorizations of various forms of participation fall short of telling us where specific cut-off points between different types of participation occur and why these points in particular mark a shift from one type of participation to another. The operationalization of participation in constitution building specifically seeks to address this issue by being clear about how different forms of participation in constitution building differ from one another. Once consideration has been given to how an individual case reflects each of the four variables (A-D), a qualitative assessment will be done, which will make it possible to categorize the case as an instance of false, symbolic, limited, consultative or substantial participation.
3.3.1.1 Operationalizing variable A – Initiators of the process

As we can recall from our previous discussion, variable A - initiators of the process – has been identified using an inductive approach. Who the initiators of the process are can affect the degree to which the public is invited to participate in the constitution building process. The initial distinction between initiators who are “outsiders” and those who are “insiders” can be further broken down into five types of initiators:

- Outside actors who influence the content of the constitution
- Outside actors who determine how the constitution building process will be carried out
- National elites (political or military elites)
- Civil society organizations
- Political elites from the ruling party, military elites, political parties in the opposition and civil society organizations.

By studying the empirical cases, it is possible to see that the degree to which the public is able to participate might depend upon which of the different kinds of actors listed above is pushing for constitutional change. Although the initiators can be any one of these five alternatives, the order in which they are listed above should not be interpreted as suggesting an automatic progression of influence for participants from the first kind to the last. For example, public participation might sometimes involve greater influence in cases where military elites are the initiators of the process compared to cases in which, for example, civil society organizations are the initiators.

3.3.1.2 Operationalizing variable B – Forms of communication

The second variable is forms of communication. The theoretical discussion in Chapter 2 about how information and communication during a constitution building process can unfold, together with an examination of how it has actually played out in the twenty empirical cases, leaves us with four different forms of this variable:

- A one-way model of communication
- A two-way model of communication
- A two-way model of communication with integrated proactive measures
- Consultation

In this case, the order in which the forms are listed does embody a progression in the extent of public participation, with the first form (one-way model of communication) representing the least amount of participation and the last form (consultation) the most.
As regards the first approach, a one-way model of communication, the initiators of the process are mainly interested in keeping the people informed about the constitution building process, but without allowing them to participate in a way that results in influence. “Participation” is merely a façade that serves to create a sense of participation. When implementing this approach as a method of communication, there are no channels for the public to provide feedback to the senders (i.e. we have a strict case of communication as information alone).

Concerning the second approach, a two-way model of communication, although communication channels are open in both directions, a closer study of the cases reveals that influence for participants is still limited. There are two main explanations for this. The first is that not enough time has been set aside for the process, which makes it difficult both for the public to provide feedback within the given time period and for those who are tasked with writing the constitution to process the feedback that is provided. The second reason why participants have limited influence despite a two-way model of communication is that those who are in charge of the actual writing of the constitutional document are not compelled to incorporate the feedback that they get into the constitution.

The third approach, a two-way model of communication with integrated proactive measures, is used by initiators of the process who seem to be genuinely interested in listening to and gathering the opinions of the people. Accordingly, various mechanisms are set up during the course of the constitution building process that, first of all, are designed to enable the people to participate and, secondly, designed to make it possible for them to provide feedback. Such mechanisms are proactive initiatives such as constitutional education programs and ensuring that the two-way model of communication is a realizable practice that is not hampered by time pressure.

The fourth and final approach, consultation, resembles the third approach in many respects, because a two-way model of communication is its main feature. However, in cases of consultation, the scope and comprehensiveness of the communication strategy distinguishes it from the previous three approaches. In these cases, the communication strategy also involves mechanisms for systematically reviewing the feedback of the people, civil society organizations and NGOs in order to make it possible to gather additional information and opinions from them as regards specific suggestions, recommendations, etc. Constitutional education programs have been carried out in the country and have been made available to people living in the countryside as well as urban areas. The programs have also been designed in such a way that individuals with varying degrees of previous knowledge about the concept of constitutionalism can benefit from them. This last point also involves making education programs available in all spoken languages in the country. Innovative ways of both communicating and
designing education programs are also characteristic of the fourth approach. For example, Internet, radio broadcasts, television shows, songs, plays, essay contests, etc. are employed for these purposes.

3.3.1.3 Operationalizing variable C – Degree of inclusion
As mentioned earlier, variable C – degree of inclusion – has also been arrived at through an inductive approach. Though inclusion, in and of itself, does not reveal the degree of influence participants have, it is nevertheless an important aspect to consider if one aims to provide an overall assessment as to how “participatory” a process has been. If certain segments of the population have been disqualified from taking part or if certain groups have voluntarily chosen not to do so, then this impacts on the people’s overall degree of influence over the content of the constitution.

The examination of the empirical cases reveals that this variable can take three different forms, which are listed below. As with the forms of communication discussed above, here, too, the order in which they are listed captures a progression of public participation from the first form to the last.

- Constitution building process bans certain groups/political parties from participation.
- Constitution building process open to all groups/political parties, some of whom voluntarily boycott the process.
- Constitution building process open to all groups/political parties and all groups/political parties interested in participating do so.

3.3.1.4 Operationalizing variable D – Final authority
Recalling the theoretical discussion in Chapter 2 about how Pateman (1970) and Arnstein (1969) both highlighted the importance of participants being allowed to influence the outcome of decisions, variable D addresses this very issue – the question of final authority. As regards this variable, in the empirical cases, we find the three different forms listed below. Again, in this case the order of the list implies a progression of influence, from least to most.

- Final authority vested in the hands of an appointed or executive body
- Final authority indirectly vested in the hands of the people (e.g. through a popularly elected Constitutional Assembly)
- Final authority directly vested in the hands of the people (through a referendum)

In conclusion, depending upon how the cases reflect different mixes of the variables (A-D), it will be possible to make a qualitative assessment as to which participation-type each case most accurately belongs to: false, symbolic, limited, consultative or substantial participation.
3.4 Measuring democracy

3.4.1 Occasions for measurement

We now turn our attention to how democracy is measured in this thesis and what empirical indicators will be used. However, before discussing these matters, we will devote some attention to when (in time) democracy levels for the cases will be measured.

All research that attempts to relate processes to a given outcome or outcomes must grapple with some unavoidable difficulties, and measuring the outcomes of constitution building processes is no exception to this. One of the pioneers and leading researchers in this field of research, Jennifer Widner, has listed three “outcome measures” that indicate how successful a constitution building process has been. In her study, which covers 200 cases of constitution writing, Widner compares the level of violence in the country five years prior to and five years after ratification; measures the rate of replacement or suspension of the new constitution, and evaluates the extent to which rights are protected in the text of the constitution (Widner 2005a: 1526). As Widner herself acknowledges, it is very difficult to ascertain the exact effects of the process (2005: 1514), and even when various criteria are more or less fulfilled, the question remains as to how these should be weighed against one another when judging the overall “success” of the process. Balancing multiple criteria is one issue that must be taken into consideration; how to assess an effect in relation to its proximity to the finalization of the process is another – i.e. how many weeks, months or years must have passed before we can accredit the observable outcome to the effects of the process?

Developing a specific set of criteria, as Widner has done, still does not eliminate the difficulties involved in linking procedure to performance. Even when outcome measures have been established and operationalized, it is complicated – and probably also unwise – to proclaim absolute certainty about specific procedural choices and the precise effects that a process has had on a given outcome, regardless of which outcome variable we are talking out – e.g. political stability, peace, reconciliation, democracy or something else. Since it is nearly impossible to fully isolate the constitution building process from all outside effects that surround it, it is also difficult to know the extent to which the indicators on the outcome measures are actually attributable to the procedural aspects employed in the process, or whether they are an effect of some other variable or variables.

While acknowledging these complexities, they must not be allowed to discourage us from attempting to seriously and systematically measure the effects of participatory constitution building processes on democracy levels. Indeed, it is by including many cases in the comparison that patterns of similarity and divergence can be revealed. In addition, and of great importance for the purpose of addressing these challenges, it is worthwhile to

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complement this knowledge with careful case studies that can increase our understanding as to both the procedural choices employed in the process and other variables that may have affected the outcome variable (democracy levels).

In order to distinguish whether or not public participation in constitution building has had an effect on the state of democracy, a comparison that measures democracy levels before and after the process is necessary. Since the twenty cases of participatory constitution building processes did not take place in exactly the same years, there are two ways of conducting the comparison. The first way is to decide a time interval, for example five years prior to and after the process, and then measure the degree of democracy for each of the cases on an individual basis, in accordance with the chosen interval. For example, the Afghan case would be assessed by comparing the state of democracy in 1997 with the state of democracy in 2009, because the process itself lasted from 2002 to 2004, and in the case of South Africa, the state of democracy in 1989 would be compared to democracy in 2001, since the process was carried out during 1994-1996. The other way of going about the task is to attempt to compare all of the cases using measurements taken at the same point in time for all of them. If this strategy is chosen, it is wise to allow the Ugandan constitution building exercise to determine the initial year of comparison, because this country’s process is the earliest example of a participatory process among the twenty cases. This way of measuring would mean that the level of democracy would be measured for the first time in all twenty cases sometime around 1984-85 (pre-constitution building process), and this would be compared to democracy levels today (post-constitution building process), in order to enable us to determine the degree to which the level of democracy has changed during the time interval.

Quite a few objections can be raised against the latter approach. Above all, one might think that it is unsound to use the same time interval to compare cases that finalized their processes many years apart. For example, the process in Brazil was finalized in 1988, while the Bolivian process was not completed until 2009. Based on this, it can be reasonably argued that democracy has had a far greater chance to consolidate in Brazil, which has had almost 30 years to devote to the task, than in Bolivia, which has only had 5 years to do so. This is true despite the fact that some indication about democratic upswings or downturns can be noted even in the years immediately following the completion of the process.

Since this second approach to measurement presents issues that are potentially serious for the credibility of the study, the first approach has been chosen, albeit with one additional feature. For each case, the level of democracy prior to the constitution building process is determined by measuring democracy in the country at a point in time that is set to five years before the initiation of the process. In order to observe change, democracy
levels will be measured again at the time of the first general elections following the process. In addition to these two occasions, the study will also investigate democracy levels on a third occasion – at the time of the second general elections following the process.

Among the twenty cases in which public participation has been part of the process, we find three countries that have conducted such processes not just once, but twice: Fiji, Kenya and Zimbabwe. Therefore, when measuring democracy in these three cases, their first processes will be the point of departure, which will enable us to collect data at a second as well as third occasion. Since the second processes in Fiji and Zimbabwe were finalized in 2013, and Kenya’s second process was finalized in 2010, second elections following these processes have not yet been held.

3.4.2 Democratic indicators

For researchers setting out to measure democracy, there are quite a few empirical indices that one might turn to. Foweraker and Krznaric list no fewer than 44 separate indicators of democratic performance (Foweraker & Krznaric 2000), most of which differ in empirical scope, time period covered, geographical area, case selection and in terms of whether they adopt a maximalist or minimalist definition of democracy.

Since this study measures the level of democracy on three different occasions – pre-constitution building phase, at the time of the first elections after the constitution building process and at the time of the second elections after the process – it is necessary to use time-series indicators. Indicators that only provide cross-national measurement at one point in time are not relevant, nor are indicators that only include specific geographical regions, for example East/Central Europe, Western Europe or Latin America. Also, based on the discussion in Chapter 2, empirical indicators that are constructed using a strictly dichotomous approach to the measurement of democracy are not of interest either. Thus, what is needed in order to fulfil the purpose of this study is a cross-national (with a broad geographical range), time-series (from at least 1980 until today) indicator of democracy that is based on a liberal understanding of the term and that measures it on a multi-point scale (not on a binary democracy/non-democracy scale). These requirements narrow the list of 44 indicators of democracy down to two – the Gastil index of political rights and civil liberties from Freedom House and the Polity project started by Ted Robert Gurr in the 1970s. It can be noted that using these two measures to determine democracy levels has become standard in the comparative democratization literature, which is also a motivation for using them in this

29 Nearly half of the existing indicators only provide empirical indicators measuring democracy at one single point in time.

3.4.2.1 Freedom House
Since 1972, Freedom House, an American based, independent “watchdog” organization, has provided annual analytical reports and numerical ratings for most countries in the world. It is, “one of the best known measures of liberal democracy, and one of the most widely used in the comparative literature” (Norris 2008:60, Norris 2012: 52). In 2014, 195 countries and 14 territories were included in the survey.

Freedom House measures democracy along two dimensions, political rights and civil liberties, and then averages the score to get a rating ranging from 1-7. The specific score that is assigned to an individual country is thus an aggregate number. In fact, detailed country assessments based on a 40 point scale for political rights and a 60 point scale for civil liberties underlie the score. Countries are rated on the basis of a checklist of 10 political rights questions and 15 civil liberties questions. The political rights questions are grouped into three subcategories: electoral process, political pluralism and participation and functioning of government. The civil liberties questions are grouped into four subcategories: freedom of expression and belief, associational and organizational rights, rule of law and personal autonomy and individual rights. Scores ranging from 0-4 are recorded for each of the questions, where 0 represents the lowest degree of rights or liberties, and 4 the highest. Hence, the highest possible number that a country can get for political rights is 40 (four points for each of the ten questions), which is the 40 point scale mentioned above. For civil rights, the number is 60 (four points for each of the fifteen questions), which is the 60 point scale (Freedom House, Freedom in the World Methodology 2014). It should be noted that all questions are given equal weight when aggregated, and that Freedom House is more concerned with the actual status of political rights and civil liberties than with whether such rights and liberties are constitutionally guaranteed. It is one thing to offer the legal protection of rights, it is another matter to actually implement those rights.

The numerical ratings on the 40 point and 60 point scale are subsequently converted into a 7 point scale of political rights and a 7 point scale of civil liberties, which are then used to classify each country in the world as “free”, “partly free” or “not free”. The categorization of countries into these three groups is based on an average of the ratings attained on the two scales. The countries that score an average of 1.0 to 2.5 are considered “free”; an average of 3.0 to 5.0 means that the country is considered to be “partly free”, and an average of 5.5 to 7.0 puts the country in the “not free” category (Freedom House, Methodology 2014). These specific rating characteristics (1-7) will be further elaborated in Chapter 5, when the index is used in the empirical
investigation. This will provide us with greater understanding of what the specific scores actually mean in terms of political rights and civil liberties, as well as knowledge about the overall status of liberal democracy in a specific country.

Although Freedom House’s index refers to individual countries in terms of various degrees of “freedom”, in reality, it is a measurement of the extent to which a country is or is not a liberal democracy. Given the character of the subcategories of political rights and civil liberties just presented, it is clear that, in effect, Freedom House’s measurement of “freedom” embodies the idea of liberal democracy. The components that Freedom House includes when calculating a political rights and civil liberties score definitely satisfy the criterion of construct validity, as their conditions cover the full range of democratic principles (Hadenius & Teorell 2005: 16). Also Jaggers & Gurr, designers of the Polity IV project for measuring democracy/autocracy in individual countries (see below), acknowledge that there is an obvious overlap between what Freedom House considers “freedom” and the concept of democracy (Jaggers & Gurr 1995: 474). Although the index is praised for its ability to use empirical measures that accurately reflect the notion of democracy, the methodology is not perfect. Objections have been raised concerning how countries are assessed on the checklist questions that underlie the political rights and civil liberties scores, and on the grounds that the procedures are somewhat unclear, which reflects poorly on the issue of transparency (Hadenius & Teorell 2005: 17).

3.4.2.2 Polity IV project
The Polity Project, initiated by Ted Robert Gurr in the 1970s, was developed for the purpose of coding the authority structures of states so that they could be used in comparative, quantitative analysis. Gurr’s dataset has continued to evolve since then, and a number of versions have been released since the project was initiated nearly 40 years ago. The latest version, which is of relevance for this study, is the Polity IV project. The central unit of analysis, as indicated by the name of the dataset, is the “polity” – defined as a political or governmental organization; a society or institution with an organized government (Polity IV Project, Dataset Users’ Manual).

Like the Freedom House index, Polity IV provides annual time-series data, and it also covers a large number of the countries in the world. Specifically, 162 countries are included in the dataset. The time period covered is also extensive, reaching as far back as 1800 and continuing up to 2014. Numerical ratings are used in Polity IV to describe the authority structure of states, and the scale applies ranges from -10 to +10, in which +10 represents full democracy and -10, full autocracy. A difference between the Polity IV

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30 Please be referred to Table 5:1 in Chapter 5.
democracy-autocracy scale and Freedom House’s index of liberal democracy is that while the latter weighs all questions in its survey equally when aggregating, Polity IV does not, which will be described below.

The Polity IV project conceives of democracy in terms of three essential and interdependent elements: 1) the presence of institutions and procedures through which citizens can express preferences about alternative policies and leaders, 2) the existence of institutionalized constraints on the exercise of power by the executive, and 3) the guarantee of civil liberties to all citizens in their daily lives and in acts of political participation (Polity IV Project, Dataset Users’ Manual). However, it is important to note that the Polity IV project does not attempt to measure this last element – thus, the existence (or absence) of civil liberties in countries is not captured by the empirical indices represented in the data, and, hence, it can be argued that the index does not fully measure liberal democracy.

The democracy measure is an accumulative eleven point scale (0-10) which is operationalized on the basis of the competitiveness of political participation (1-3), the competitiveness of executive recruitment (1-2), the openness of executive recruitment (1), and constraints on the chief executive (1-4). Autocracy, on the other hand, is defined as a polity in which competitive political participation is severely restricted, the chief executive is chosen in a regularized process within the political elites, and, once installed, the chief executive is subject to very few institutional constraints on the exercise of power. To capture this dimension on the scale, Polity IV uses negative versions of the same indices discussed above. The combined Polity score is computed by subtracting a state’s autocracy score from its democracy score, and the result is a unified polity scale ranging from +10 (strongly democratic) to -10 (strongly autocratic).

In contrast to Freedom House’s index, the Polity project leaves much to be desired when it comes to construct validity (Hadenius & Teorell 2005: 18). The empirical measurements are not entirely successful in capturing the core notion of the concept of democracy, most notably due to the fact that the index does not take into account civil liberties when assigning countries a score in the index. This is something that the constructors of the index are fully aware of and acknowledge (Jaggers & Gurr 1995: 471). However, although the index has flaws in construct validity, its methodology is good (Hadenius & Teorell 2005: 19). As mentioned above, Polity makes public the individual country scores on the individual components, and it is also open about how the coding has been conducted. On the other hand, as noted by Hadenius & Teorell (2005: 19) “the available codebook is hardly an example of clarity or systematic presentation”.


Choosing empirical indices

As with all decisions when conducting research, the decision about what empirical indicator of democracy to use should be based on careful consideration, and, as always when confronted with a choice, tradeoffs and compromises are unavoidable. This choice also has theoretical relevance when the decision to be made requires one to choose between empirical indicators that rely on a minimalist understanding of democracy and indicators with a maximalist understanding of the concept.

According to their advocates, the advantage of choosing empirical indices that use a limited number of theoretical components when measuring democracy is that clean-cut, baseline definitions make it easier to identify empirical indicators and more straightforward to operationalize definitions and enhance the reliability of the measures. The main drawback is that a minimal understanding of democracy risks ignoring significant dimensions of the concept, which harms the validity of the measure (Norris 2008: 56-57, Hadenius & Teorell 2005, Munck & Verkuilen 2002: 27-28). On the other hand, maximalist approaches risk incorporating criteria that are not as easy to operationalize and empirically measure, including criteria that might require the subjective judgment of individual researchers or “country experts”. This, in turn, has consequences for the reliability of the measurements, although they are likely to better capture the essence of the concept, thus improving their validity (Norris 2008: 56-57, Hadenius & Teorell 2005, Munck & Verkuilen 2002: 27-28).

Thus, theoretically, the choice about which empirical indicators to use deserves thorough consideration, because we would expect that indices based on different philosophical understandings of the concept will yield very different results when measuring level of democracy across a number of cases. For example, we would expect that a dataset that construes democracy as Alvarez et al. suggest and a different one that defines democracy as Freedom House does will give us different outcomes. Empirically, however, as a burgeoning literature in this field of research has shown, it is remarkable that the most commonly used indices of democracy strongly correlate with each other (see e.g. Norris 2008, Hadenius & Teorell 2005, Hadenius 1992, Casper & Tufis 2003, Munck & Verkuilen 2002, Jaggers & Gurr 1995, Elkins 2000, Alvarez et al. 1996).

Although this study will not rely on indices that adopt a minimalist definition of democracy and conceptualize it in a dichotomous way, it is interesting to know that even such indices correlate strongly and significantly with both Freedom House’s index of liberal democracy and the Polity IV project indices (Norris 2008: 71). As noted even by Alvarez and associates (Alvarez et al. 1996: 21), different views of democracy, and even datasets that incorporate additional elements beyond contestation, correlate so strongly that it shows that the measurements are very robust. For our purposes, it is
even more interesting to know whether or not Freedom House’s index and the Polity IV project data correlate, because these are the two empirical indices of democracy that met the requirements necessary for this study. And, in fact, they do, actually more so than all other empirical indices of democracy. With an N of 4382 cases, the correlation between the Freedom House measure and the Polity IV project is .904 (Norris 2008: 71), despite the fact that the latter does not include civil liberties in its measurement and also assigns different weights to various components of the concept of democracy. Casper & Tufis (2003: 197), who also call attention to and acknowledge the high correlation between these two indices of democracy, nonetheless stress that correlation does not imply interchangeability, and that considerable thought should go into deciding which empirical indices to use. Nevertheless, as an indicator of the validity of the values assigned by the indexes, the high correlation between Freedom House and the Polity IV project is encouraging. It indicates that the empirical indicators used to capture the concept are accurate, and that the coding of the cases is free from systematic coding bias, or that, “all empirical researchers that have coded democracy share similar biases” (Jaggers & Gurr 1995: 476).

Having explained how democracy will be measured and with which empirical indices, we are now ready to move on to a discussion about how the research questions in the dissertation will been answered.

3.5 Addressing the research questions

3.5.1 Answering research question 1

The first research question posed in this dissertation is: How can participatory constitution building processes be classified? In order to address this query, the first step is to develop an understanding of what participation actually implies, which is addressed in Chapter 2. The second step is to scrutinize each of the twenty cases of participatory constitution building processes in order to discover how such participation has actually played out. By combining a deductive-inductive approach, four variables (A to D below) have been identified that can be used to determine the extent of participation in constitution building processes. These variables guide the empirical investigation and greatly facilitate the research endeavour, which involves the examination of a relatively large number of cases. Thus, the four variables provide valuable assistance as a way to navigate and sort through an extensive amount of empirical material, and without them, a systematic comparison would not have been possible.

A. Initiators of the process (who initiates?)

B. Forms of communication (how does communication or information between the public and decision-makers occur?)
C. Degree of inclusion (are all individuals and groups in society both willing and allowed to participate in the process?)
D. Final authority (who has the final say over whether or not the constitution enters into force?)

As regards the first variable, *initiators of the process*, the question is with whom did the initiative for a participatory constitution building process originate? Data relating to this question is fairly easy to access, because previous research on the twenty cases has addressed the question of agency. In some of the cases in which outside actors had a prominent role in the constitution building process, existing scholarly work is complemented with UN Security Council Resolutions in which such external actors’ responsibilities in relation to the constitution building process are spelled out. The main challenge related to this variable is thus not a lack of information, but rather the sheer amount of material that must be taken into consideration and studied in order to clearly understand the question of agency. In fact, this is also a challenge when addressing questions concerning forms of communication, degree of influence and final authority as well – not an absence of data pertaining to these issues, but rather the extensiveness of material when dealing with twenty cases.

As regards the second variable, *forms of communication*, the task is to carefully study the methods of communication between those who initiated the process and the public at large for each of the twenty cases. Was it a one way or a two way model of communication? With or without integrated proactive measures? Or was it even a matter of consultation? Here too, there is previous case study research on most of the twenty processes that can be used. For some of the cases, i.e. the ones in which participation was actually taken to mean influence, official documents from various formal bodies/organizations include detailed accounts about how communication is to be practiced and how feedback is to be handled.

In order to develop a deeper understanding of how communication channels between initiators and the public have evolved, it is also necessary to look into the issue of whether *constitutional education programs* were included in the process. This is important because such programs serve to equip the public with necessary skills so that, if given the opportunity, they are more capable of participating. The importance of constitutional education programs as an instrument for preparing people for participation has been acknowledged in previous research (see for example Brandt et al. 2011), which implies that this specific matter is almost always addressed in existing single case studies of participatory constitution building processes.

Related to the broader issue of communication strategies, it is also relevant to take into account and think about the *timetable* for the process in each of the twenty cases. If there is only a short time to complete the constitution
building process, this will, by default, have a negative impact on the comprehensiveness of any communication strategy that aims to do more than simply inform the population about the process. Hence, the issue of time is also taken into consideration in all cases. Here too, data concerning year of initiation/finalization of the process is easy to find in official documents as well as in previous research.

Of central importance for the third variable, degree of inclusion, is to determine whether “public participation” actually included everyone, or if some individuals/groups/political parties were excluded from the broader notion of the “public”. Hence, the course of action for studying this particular issue is, first, for each of the twenty cases, to get acquainted with official documents and previous research that identifies who were included and who were not. Once this material is studied, it is possible to establish if “participation” was an invitation extended to everyone/all groups or if certain groups were disqualified. However, even if a participatory constitution building process was fully inclusive (formally), it is still possible that certain groups voluntarily decided not to participate. Because this also says something about the degree of inclusion, cases in which all groups were invited to participate are scrutinized further for the purpose of learning whether or not certain groups boycotted the constitution building process, despite the fact that they were welcome to participate.

Concerning the fourth and final variable, final authority, the focus of the investigation is to understand where final authority concerning the fate of the constitution actually rested. This involves studying each of the twenty cases individually to find out if final authority was vested in the hands of an appointed body/executive body, i.e. far away from arenas in which the people have influence, or vested in the hands of the people, either indirectly or directly.

Once all of these inquiries are addressed, we will have a comprehensive understanding about the nature of public participation in all twenty constitution building processes. It will then be possible to categorize the cases into different types of participation (false, symbolic, limited, consultative or substantial), depending on how much influence participation actually translated into for the public. This task is carried out by conducting a qualitative assessment based on a wide-ranging knowledge base. The results of the classification, including a discussion, will be presented in Chapter 4.

3.5.2 Answering research question 2
The second research question in this thesis is: Does participation in constitution building processes lead to higher levels of democracy? Once we have established what participation in the context of constitution building means and how it can be classified, what we need to do in order to answer the second research question is to establish what “democracy” implies in this
particular context. This issue was addressed in Chapter 2. Once the definition of democracy has been settled, answering the second research question is a straightforward exercise, because the operationalization of “democracy” is determined by the empirical indicators chosen, as has been illustrated above. In particular, answering the second research question involves the following steps:

- First, for all twenty cases of participatory constitution building processes, we must identify the year that the process was initiated and the year the process was completed. Once this is established, we must determine the three different occasions at which level of democracy is to be measured, in accordance with the principle explained earlier (i.e. pre-constitution building democracy level, democracy level at the time of the first elections following the process and democracy level at the time of the second elections following the process).
- Second, the three occasions for measuring level of democracy must be decided for all cases of non-participation. Since no “process” of public participation preceded the enactment of the constitution in these cases, the first occasion for measuring the level of democracy is set at five years prior to the enactment of the constitution. The following two occasions for measurement are exactly the same as for the twenty participatory cases (democracy level at the time of the first elections following the enactment of the new constitution and democracy level at the time of the second elections following the enactment of the new constitution).
- Third, Freedom House’s annual assessment of civil liberties and political rights must be probed in order to establish democracy levels for all cases at each of the three occasions. Performing this procedure makes it possible to identify whether or not democracy levels have increased, decreased or remained the same when we compare levels before and after the process/enactment of the constitution.
- Fourth, since the twenty participatory cases constitute the focal point of concern in this study, the empirical data from Freedom House for these cases are also cross-checked using data from the Polity Project.

In reviewing how the second research question will be answered, we have noted that we will use two empirical indices to measure level of democracy. Nonetheless, it must be stressed that data from Freedom House is the principal source of material. The main reason for this choice lies in the fact that, in this thesis, we seek to understand the proposed effects of participatory constitution building processes on liberal democracy, which, in turn, makes Freedom House’s index the most suitable one. This is the case because Polity IV does not take civil liberties into account in its measurement (Jaggers &
Gurr 1995: 471, Norris 2008: 62). The second reason that supports using Freedom House’s index as the main source of data is that the Polity IV index suffers from missing values for some of the cases included in the study. In Chapter 5, where the second research question is addressed, measurement points where data from the two sources exhibit divergent tendencies are discussed, and these differences are accounted for.

3.5.3 Answering research question 3
The third research question sets out to investigate factors beyond public participation in constitution building processes that shed light on why cases with similar levels of public participation manifest different levels of democracy. The question reads: “If not participation in constitution building processes, then what causes higher levels of democracy?”

In order to answer this question, we must first become acquainted with the vast democratization literature, which is done in Chapter 7. After this, in Chapter 8, Kenya and Zimbabwe will be systematically compared on a large number of structural and external variables that are theoretically argued to influence democratization. This comparison is organized according to the topics and questions raised in columns A and B in Table 7:1 in Chapter 7. To be explicit, to answer the third research question, the two countries will be compared on the following dimensions:

To begin with, we compare structural variables, which are divided into socioeconomic variables, communication variables and political-cultural traits.

**Socioeconomic variables:**
1. GDP/capita (expressed in current USD)
2. Industrialization (% of GDP)
3. Urbanization (% of total population)
4. Education (gross primary and secondary school enrolment ratio)
5. Life expectancy at birth (in years)
6. Infant mortality (per 1000 live births)

Measuring these six variables is commonplace in the field of political science, so there are established operationalizations of all of them, and there is an abundance of time-series datasets that include indicators for all of these variables for most of the world’s countries. (We will return to a discussion of material later in this chapter). As Chapter 7 will make clear, as regards prospects for democratization, structural theories are extremely focused on structural *preconditions* that are considered necessary for such a governing system to be established. Given that the structural approach emphasizes these pre-existing requirements, it is not sufficient to compare present-day Kenya and Zimbabwe on all of the six variables enumerated above (nor the
communication variables to be discussed below). Rather, in order to analyse the hypotheses proposed by the structural school and to fairly assess their explanatory value, we will conduct a historical comparison in which we trace developments of these structural factors up to present day. In Chapter 8, depending on the availability of data, historical comparisons between Kenya and Zimbabwe on all of the six variables listed above – going back to the 1970s or, in some instances, to the 1960s – are presented.

The comparison of the socioeconomic variables is followed by a historical comparison of 3 communication variables:

**Communication variables:**
1. Radios (% of population that owns radios)
2. TVs (% of population that owns a TV set)
3. Newspapers (% of population that has access to newspapers)

Here as well, data in the form of time-series indicators for all three variables already exists, which makes it quite easy to conduct a historical comparison of the two countries. Once we have done this, we will turn to a final group of structural variables, namely ones that capture political-cultural traits:

**Political-cultural traits:**
1. Colonial legacy
2. Ethnic fractionalization
3. Trust in public institutions

Determining and comparing colonial legacy is a straightforward task, so a detailed explanation about how this will be done is unnecessary. As far as measuring ethnic fractionalization is concerned, data from Alesina et al. will be used (2003). The authors use *Encyclopaedia Britannica* as their main source of data, and complement it with additional sources where necessary (Alesina et al. 2003: 159-160). The measure developed by Alesina and colleagues (2003) follows the traditional approach to assessing how ethnically fragmented a society is. Ethnic fractionalization is calculated as 1 minus the Herfindahl index of ethno-linguistic groups and mirrors the likelihood of two randomly selected individuals from the population belonging to two different groups (Alesina et al. 2003: 156-160). 1 is the highest possible score, and the index is constructed such that the higher the score, the more ethnically and religiously fragmented the society is; the lower the score, the more homogenous the society.

To get an indication as to the level of trust in public institutions in Kenya and Zimbabwe, survey answers from the Afrobarometer are useful. The survey, which was done most recently in Kenya in 2011 and in Zimbabwe in 2012, covers a wide array of topics, including an entire section devoted to the
specific subject of trust in public institutions. Because the exact same survey questions are asked of the two population samples in Kenya and Zimbabwe, it is possible to make a fair comparison between the two countries when it comes to trust in public institutions.

After comparing Kenya and Zimbabwe on the structural variables discussed for above, Chapter 8 will continue the quest to answer the third research question by comparing the two countries on a number of external variables that are also theoretically argued to influence democratization. These external variables are divided into Western leverage and linkage to the West (see Chapter 7).

In trying to understand (potential) Western leverage vis-à-vis Kenya and Zimbabwe, the theoretically informed questions enumerated below (1-3) will guide the empirical investigation and facilitate the research endeavour by serving as an operationalization of “Western leverage”. This operationalization has been proposed by Levitsky & Way (2005, 2010), as described in Chapter 7.

Western leverage:
1. Are the countries economically weak states, and thus vulnerable to Western demands to democratize?
2. Do the US and EU have geopolitical interests in the countries, thus making them less vulnerable to demands to democratize?
3. Do the countries have access to political, economic and/or military support from another regional power, thus enabling them to curb Western demands to democratize?

The first question, about the extent to which Kenya and Zimbabwe are economically weak states and thus vulnerable to Western demands to democratize, will, in many respects, be addressed in the empirical investigation of the structural variables (in particular, GDP/capita and the size of the industrial/agricultural sector). As regards the second and third questions, this involves mapping out and studying Kenya and Zimbabwe’s relations with the Western world, particularly after the end of the Cold War. Kenya’s relationship with the US is of particular interest, as it has changed significantly since the 9/11 terrorist attacks on US soil. As regards Zimbabwe, we will look at this country’s relations with both Great Britain and the US. To address the third question, we must map out and try to determine if, in fact, there is any regional power “in the equation” that might possibly neutralize Western leverage on the two countries to democratize.

After conducting the comparison between Kenya and Zimbabwe on the matter of Western leverage, both countries linkages to the West will be investigated. In order to measure this, the study adopts the operationalization offered by Levitsky & Way (2005, 2010), who were mentioned above. They
suggest that linkage to the West can be determined by studying the following five areas:

*Linkage to the West:*

1. Economic linkage: aid disbursements, FDI, trade volumes
2. Geopolitical linkage: ties to Western governments, ties to Western-led alliances and organizations
3. Social linkage: tourism, immigration, diaspora communities in the West
4. Communication linkage: internet penetration, Western media penetration
5. Transnational civil society linkage: ties to international institutes/organizations

In order to sort out and compare Kenya and Zimbabwe’s economic linkage to the West, this study compares:

- Aid disbursements (from the US and Great Britain) from the 1980s to the present.
- Foreign Direct Investments from the 1980s to the present.
- Trade volumes (sum of exports and imports of goods and services measured as a share of GDP) from the 1980s to the present day. Related to trade, Chapter 8 will also look at Kenya and Zimbabwe’s trade in terms of *who* trade volumes are being exchanged with. (Is it primarily countries in the West or countries in other regions of the world?)

To measure *geopolitical linkage* to the West, the study compares Kenya and Zimbabwe’s ties to governments in the Western world. The focus is on their respective ties to the US and the EU. Possible and actual geopolitical interests of the US and EU in Kenya and Zimbabwe are explored in order to see if there are any differences as to how these Western powers relate to the two countries as regards pressuring them to democratize. Both countries are also compared as regards their inclusion in various Western-led alliances and organizations in order to see if there are differences here that might offer an explanation as to the different levels of democracy in the two countries.

As for *social linkage* to the West, Kenya and Zimbabwe are compared on the following dimensions:

- Tourism. Here we want to compare the countries in terms of how much tourism by Westerners they attract. In accordance with the theoretical propositions that will be presented in Chapter 7, this can tell us something about the countries’ social linkages to the West.
• Immigration. As regards the question of immigration, it is immigration by Westerners that is of interest. Basically, we want to know how many Westerners have immigrated to Kenya and Zimbabwe.

• Diaspora communities. This involves comparing Kenya and Zimbabwe in order to understand where their respective diaspora communities reside. In particular, can they be found in countries in the West?

Also in Chapter 8, Kenya and Zimbabwe’s communication linkages to the West are investigated. This is done by comparing the two countries on the following:

• Internet penetration. Here, Internet availability and usage in the two countries is compared.

• Western media penetration. In relation to this issue, Chapter 8 first compares press freedom in both countries, because this provides an indication of the degree to which foreign journalists, from the West and other places, can work freely without government meddling. Secondly, Western media penetration in Kenya and Zimbabwe - in terms of daily newspapers and news broadcasts originating in the West – is compared.

Lastly, Kenya and Zimbabwe’s transnational civil society linkages with the West are compared. In carrying out this comparison, the study will consider the two countries’ ties to international organizations and institutes in order to determine whether or not there are differences that can give us another piece of the overarching “linkage-puzzle”.

After conducting a systematic comparison of Kenya and Zimbabwe along the structural and external dimensions discussed above, we will turn to a comparison of political actors. Based on theoretical arguments primarily developed by Burton et al. (1992), Higley & Burton (2001) and Cheeseman (2011), all of whom stress political elite cohesion as key for democratization (see Chapter 7), the role of political elites is the subject of Chapter 9. The empirical investigation is focused on the issues raised in column C in Table 7:1 (Chapter 7). Specifically, the two countries are compared on the following issues:

In order to understand whether political elites are united or disunited:

1. The history of cooperation between political elites is investigated and compared in the two countries.

2. The history of political violence is investigated and compared in the two countries.
In order to determine whether political elites in Kenya and Zimbabwe are “united” or “disunited” elites, the history of cooperation between political elites in these two individual countries will be examined. When doing so, we will study in detail the relationship between the main political factions in these two countries from independence up to the present day. How the main political party – i.e. the party that managed to gain control at independence – opted to relate to opposition political affiliations is given particular attention. The purpose of doing so is to gain an understanding of whether or not the history of elite cooperation has evolved into intimate interactions, bargaining and coalition building or if, instead, relations have been tainted by deceit and foul-play, which continues to infect them today.

Another factor that is argued to be theoretically important is the history of political violence, because it says something about the prospects for elite cooperation. Hence, the two countries are also compared on this dimension. In Kenya, the investigation of the character of political violence is organized chronologically around the ruling periods of the country’s different executives from independence to the present day. In Zimbabwe, since there has not been any alternation of executive power since independence, the investigation of political violence is structured around the first decade of independence and then around the elections of 2000, 2002, 2005, 2008 and 2013.

When the comparison described above has been completed, it will be possible to discuss which of the political elite types developed by Higley & Burton (2001) seems to best describe the elites that we find in Kenya and Zimbabwe (as seen below).

**Are political elite relationships characterized by:**
- Strong integration and wide differentiation?
- Strong integration and narrow differentiation?
- Weak integration and wide differentiation?
- Weak integration and narrow differentiation?

We will then discuss the different elite types in the two countries, a task that will be greatly facilitated by the historical accounts of political elite relationships and history of violence conducted earlier in the chapter. This discussion will show that political elite relationships in Kenya and Zimbabwe have varied over time. In addition, the empirical investigation will enable us to discuss whether or not political elites in Kenya and Zimbabwe have transformed from “disunited” elites to “united” ones, and, if so, how this transformation occurred.
3.6 On material

3.6.1 Written secondary sources
In answering the first research question, which is particularly concerned with how participatory constitution building processes can be classified, the primary task is to understand how participation has actually materialized in the twenty cases under scrutiny. This exercise is guided by the analytical framework in Chapter 2 (Table 2:1). In order to collect information about this matter, the main source of data used in the thesis is previous case study research. Although these earlier works neither distinguish between different types of participation nor determine the extent or actual meaning of participation in such processes, to varying degrees, they offer accounts of the way the different constitution building processes were designed and how the general publics were involved in them. Hence, this earlier research by scholars in the field has been of great help. To give just a few examples of works that have been used in order to understand how public participation has been exercised, the following can be mentioned: “The drafting process for the 1998 Albanian constitution” (Carlson 2010), “Iraq’s constitutional process II: an opportunity lost” (Morrow 2005), “Designing a constitution-drafting process: lessons from Kenya” (Bannon 2007), “By the people: constitution making in Nicaragua” (Reding 1986), “How to make an undemocratic constitution: the Nigerian example” (Ihovebere 2000), “The Thai constitution of 1997: sources and process” (Uwanno & Burns 1998), “Participation and support for the constitution in Uganda” (Moehler 2006), “The public participation process in South Africa” (Ebrahim 2001), “Zimbabwe’s unfulfilled struggle for a legitimate constitutional order” (Ndulo 2010) and “The constitution making process in Rwanda: lessons to be learned” (Gasmagera 2007).

The fact that influential organizations within the peacebuilding community also stress the importance of participatory constitution building processes has resulted in an upsurge of studies concerned with this topic. Earlier in this chapter, the 2010 publication by USIP, Framing the State in Times of Transition: Case Studies in Constitution Making (edited by Laurel E. Miller), was mentioned. This book has been very useful as a source of information for this thesis, because it contains nineteen case studies of contemporary constitution building exercises, many of which have been labelled as “participatory” processes. It should also be acknowledged that the USIP publication is particularly useful because some of the contributions were written by authors who, themselves, had an active role in the process they wrote about. These contributions have given the thesis access to “insiders’ views” on the processes in question. For example, Bereket Habte Selassie, who wrote a chapter on the case of Eritrea, was the chairman of the Constitutional Commission in that country during the constitution building process. Yash Ghai who, together with Jill Cottrell, describes the Fijian constitution building
process in the edited USIP publication, was himself advisor to the Fijian opposition parties during the process. Scott N. Carlson, who wrote about the Albanian process, was director and legal advisor to the secretariat that was in charge of supporting and organizing public participation in the Albanian constitution building process. The chapter on the Afghan constitution building process was written by J Alexander Thier, who was a legal adviser to Afghanistan’s Constitutional and Judicial Reform Commission in Kabul during 2002-2004. Hassen Ebrahim who, together with Laurel E. Miller, contributed a chapter on the South African process, was executive director of South Africa’s Constitutional Assembly during its 1994-1997 term.

Similarly, the 2011 publication from Interpeace, Constitution making and reform: options for the process, (Brandt et al. 2011) has been particularly useful as a source of material for this thesis, because it describes a number of participatory constitution building processes. Interpeace, originally an international peacebuilding organization created by the UN, but now an independent organization, has recruited scholars with vast practical field experience to come together and co-author a “state-of-the-art” book on constitution making after war. Head-author Michele Brandt has spent over twelve years working in the field, directly assisting in constitution building processes. She was the permanent constitutional advisor to the United Nations Assistance Mission in Afghanistan and the Afghan Constitutional Commission. Brandt has also been involved in the East Timorese constitution building process as a judicial affairs officer to the United Nations Transitional Administration in East Timor (UNTAET). Jill Cottrell, another one of the authors behind the Interpeace publication, has been a consultant on constitution making in East Timor and Iraq, cases that are also featured in the book. Yash Ghai, who was mentioned above, is another one of the contributing authors. In addition to his experience in the Fijian case, he has been involved in the Kenyan constitution building process in the capacity of chairman of the Constitution of Kenya Review Commission and the Kenya National Constitutional Conference during 2000-2004. He shares his knowledge in a case study on Kenya. Lastly, Anthony Regan shares his knowledge on constitution making in Uganda, where he assisted the Ugandan Constitutional Commission and the Ugandan Constitutional Assembly in developing the country’s new constitution. Regan has also been involved as an advisor in the East Timorese and Fijian constitution building processes.

Continuing the theme of an “insider’s view” on participatory constitution building processes, Hyden & Venter’s edited volume Constitution-making and democratization in Africa (2001) has been valuable because of its in-depth, exhaustive accounts of the constitution building processes in Ethiopia, Uganda and South Africa, which cover how representative the processes were, how opinions were aggregated and how public participation was exercised. John Waliggo and James Wapakhabulo, each of whom wrote individual
chapters on the Ugandan process, also have personal experiences with the Ugandan case. Waliggo is former secretary to the Ugandan Constitutional Commission and Wapakhabulo is former speaker of the Ugandan Constitutional Assembly. Kifle Wodajo, who contributes a piece on the Ethiopian process, was Chairman of the Ethiopian Constitutional Commission, and Baleka Mbete-Kgositsile, who offers an account of the principal actors in the South African constitution making, was herself a member of the ANC negotiation commission.

To summarize this part of the discussion, the combination of using sources from existing scholarly research and case studies written by individuals who were, themselves, involved in the various constitution building processes is of great value for the thesis. It makes it possible to check the reliability of different sources, while also offering a glimpse into aspects of the processes that only someone who was involved is able to offer.

In the second part of the study, where Kenya and Zimbabwe are compared, different types of sources are used – one of which is secondary written material. Although space limitations make it impossible to list all of them here, some of the articles and books that have been particularly useful must be mentioned.

In order to understand Kenya-US relations and how the relationship between these two countries has evolved since 2001, Samuel L. Aronson’s (2011) article “United States Aid to Kenya: A Study on Regional Security and Counterterrorism Assistance Before and After 9/11” is insightful, as is Beth E. Whitaker’s (2008) article, “Reluctant partners: Fighting terrorism and promoting democracy in Kenya”. Daniel Volman’s (2008) “U.S Military Activities in Kenya” should also be mentioned in this context, because it is valuable for increasing our understanding about the relationship between the two. In the same way, Princeton N. Lyman’s article from 2006, “The limits of influence”, is particularly instructive when it comes to depicting relations between Zimbabwe and the West. Daniel Compagnon’s book from 2011, A Predictable Tragedy: Robert Mugabe and the Collapse of Zimbabwe, has also been of great value for this thesis, because it thoroughly describes political developments in Zimbabwe from independence to 2011.

For the purpose of acquiring greater knowledge about the history of political elite cooperation in both Kenya and Zimbabwe, Nic Cheeseman & Blessing-Miles Tendi’s (2010) publication, “Power-sharing in comparative perspective: the dynamics of ‘unity government’ in Kenya and Zimbabwe”, is a very useful introduction. Karolina Hulterström’s (2004) dissertation In Pursuit of Ethnic Politics: Voters, Parties and Policies in Kenya and Zambia calls attention to the importance of ethnicity in Kenyan politics and makes it clear that it is necessary to know more about this and how it plays into the issue of elite cooperation. Also significant in this regard is Michael Bratton and Mwnagi S. Kimenyi’s (2008) article,”Voting in Kenya: Putting Ethnicity

In addition to previous scholarly work, other types of written secondary material have also been used. Reports from Human Rights Watch (HRW), Amnesty, the Redress Trust and International Crisis Group must be mentioned here. A majority of these reports have been studied for the purpose of acquiring deeper knowledge about the history of political violence in Zimbabwe. In particular, reports from HRW have been of great value. The 2008 publication, “Bullets for Each of You: State-Sponsored Violence since Zimbabwe’s March 29th Elections”, gives thorough insight into the transgressions of the Zimbabwean government vis-à-vis its own citizens. Likewise, the organization’s 2011 report, “Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe”, is very insightful. On a similar topic, another report from HRW should also be mentioned – “Not a Level Playing Field: Zimbabwe’s Parliamentary Elections in 2005”.

In addition to these reports, which depict in words as well as pictures the extent and nature of political violence in Zimbabwe, the International Crisis Group, both in its 2005 report, “Post-Election Zimbabwe: What Next?”, and its 2008 publication “Policy Briefing: Negotiating Zimbabwe’s Transition”, cover the issues of political elite cooperation and political violence, which makes them particularly useful for this thesis. Also, publications from the Redress Trust, a London-based human rights organization, have been very valuable as sources of information about political violence in Zimbabwe.

The merits of using so many different sources on the topic of political violence in Zimbabwe is that it makes it possible to compare the accounts and to discover that there is great concordance across the different sources. The same can be said about the 1993 report from HRW, “Divide and Rule: State Sponsored Ethnic Violence in Kenya”, which provides a historical depiction of political violence in that country that is in accord with the one provided by The Commission of Inquiry on Post Election Violence, the formal body that investigated the post-election violence in Kenya in 2007 (which will be mentioned below).

As regards the specific issue of how much trust Kenyans and Zimbabweans have in the public institutions of their countries, survey answers from the Afrobarometer have been used. The Afrobarometer is a non-partisan, independent research project that conducts surveys on a regular basis
(currently, in 35 different African countries). The instrument asks a standardized set of questions, which makes it easy to trace people’s attitudes both over time in the same country and across countries, thus making it a suitable source of data to use to compare Kenya and Zimbabwe.

3.6.2 Primary sources
On a few occasions, personal contact with experts on specific constitution building processes has been made. In order to learn more about the communication strategies for mediating the message of constitution building to the Thai people, and in order to understand if, and, if so, to what extent constitutional education programs were used in this process, contact was made with James R. Klein. Klein was the Asia Foundation’s Thailand Country Representative for fourteen years, and he has extensive knowledge about the promotion of public participation in the Thai process, information that went beyond what could be found in existing research on the Thai process. Hence, the opportunity to tap into his expertise was of great help. Also, although the Kenyan participatory processes are quite well covered in previous research, through the facilitation of IDEA, contact was established with Ekuru Aukot, who served as the director of the Committee of Experts (CoE), the organ in charge of drafting the Kenyan constitution. Aukot was able to shed additional light on the participatory process, and his insights were particularly helpful for the purpose of learning more about the degree of inclusion in the Kenyan process (i.e. whether any group/groups had boycotted the process, even though they were allowed and encouraged to participate).

3.6.3 Official documentation
Various official documents have also been a valuable source of information in this study. As previously mentioned, in cases where the UN had a prominent role in the constitution building process, their mandate and responsibilities are usually outlined in Security Council Resolutions. For example, in relation to the East Timorese constitution building process, UN Security Council Resolution 1272 from 1999 and the subsequent UN Regulation No 2001/2, “On the election of a Constituent Assembly to prepare a constitution for an independent and democratic East Timor”, stipulate the responsibilities of the UN (as a transitional authority) in the East Timorese constitution building exercise (among other areas). Likewise, regarding the process in Kosovo, a number of official documents are significant for understanding the extent to which the people of the country were able to participate in the making of their constitution. In this case we can turn to UN Security Council Resolution 1244 from 1999, the Kosovo Declaration of Independence from 2008, and the Comprehensive Proposal for the Kosovo Status Settlement from 2007, also referred to as the “Ahtisaari plan” – all official documents that reveal the extent to which the public had the possibility to participate in the process. In
relation to the constitution building process in Afghanistan, the Bonn Agreement of 2001 established the legal basis for the process, which makes it a useful reference for this thesis. Official documentation from the Secretariat of the Constitutional Commission of Afghanistan has also been helpful as a complement to existing case study research on the Afghan case. As regards the case of Kenya, official documentation from the Constitution of Kenya Review Act has been of assistance in terms of explicating the ways in which it was envisioned that public participation would be carried out. Official documents from formal bodies involved in the second round of constitution building in Kenya (2009-2010) have also been particularly useful, as they contain illustrative examples of how constitutional education can be conducted in a population that has meager experience of constitutional issues (e.g. Handbook for Civic Education, Curriculum for Civic Education, Beginners guide to the new constitution, all of which were produced by CoE, which was responsible for finalizing the draft constitution). Similarly, the Constitutional Commission Proclamation no 55/1994 issued by the Eritrean Constitutional Commission is a good complement to case study research about how public participation was exercised during the constitution building process, because it outlines in great detail the methods through which participation was to be facilitated.

When investigating and comparing structural variables in Kenya and Zimbabwe in the second part of the study, official documents from the Ministry of Tourism in Kenya have been useful for understanding the number of tourists that the country hosts each year and the countries from which the tourists originate. As regards tourism in Zimbabwe, official documentation from the Zimbabwe National Statistics Agency is used. To develop a greater understanding of US-Kenyan relations, official documentation from the United States Department of State Bureau of Diplomatic Security has been of value. Official documentation in the form of EU Council and EU Commission regulations concerning economic sanctions towards Zimbabwe have also been useful for developing a deeper understanding of Zimbabwe’s relations with the West. In particular, EU Council Regulation 310/2002, EU Council Regulation 314/2004, EU Commission Regulation 77/2009 and European Union Restrictive Measures 2013 can be mentioned. Similarly, official US documentation that restricts US economic affairs with Zimbabwe has been used to understand the relationship between the two countries (e.g. U.S Department of State Public Notice 4068 and U.S Department of State Public Notice 7552).

When it comes to the history of violence in Kenya, official documentation in the form of the final report of The Commission of Inquiry on Post Election Violence (2008) has been of significant value, as it investigates and analyses the events that unfolded in connection with and in the aftermath of the 2007 Kenyan elections. It also provides a historical account of the roots of political
violence in the country, which has been a valuable complement to the scholarly work on political elite cooperation and political violence in Kenya that was mentioned above.

Another type of official documentation has been of particular value in this thesis for understanding the extent of political violence in Zimbabwe, namely various election observer reports. In this regard, the Norwegian Center for Human Rights, through its NORDEM programme and its election reports, has been significant. Kåre Vollan’s reports from 2002, 2005, 2008 and 2013 (on behalf of NORDEM) cover the Zimbabwean elections of those years, and are truly a treasure trove of information. As a complement to these reports, the Commonwealth Observer Report covering the 2002 elections and the European Union Election Observation Mission and its subsequent report covering the 2008 elections have also been used. The SADC (Southern African Development Community) election observer report covering the 2005 elections has been used, but it has been complemented by the above-mentioned HRW reports and scholarly work, primarily Gwinyayi A. Dzinesa & Webster Zambara’s (2011) article, “SADC’s role in Zimbabwe: guarantor of deadlock or democracy?”, due to speculation raised about SADC’s neutrality.

3.6.4 Time-series indicators

In order to answer the second research question, the databases of Freedom House and the Polity IV Project have been used. Since both of these provide time-series indicators, it has been possible to follow the development of democratic upturns/downturns/stagnation over many years, which is necessary in order to fulfil the purpose of the study. Since the Polity Project does not consider civil liberties when assigning countries a score on its index, and also because the index contains missing values for some of the cases, data from Freedom House has been the main source of information.

In the second part of the study that compares Kenya and Zimbabwe, time-series indicators from various other sources have useful. Data on all of the socioeconomic variables listed earlier in the chapter (GDP/capita, industrialization, urbanization, life expectancy, etc.) have been gathered from the World Bank, more specifically from the World Development Indicators (WDI). The WDI are time-series indicators, which make it possible to perform historical comparisons both within and between the two cases. When necessary, this source of data has been complemented by additional data from the United Nations Children’s Fund (UNICEF).\(^\text{31}\) Time-series indicators from the Organization for Economic Co-operation and Development (OECD) have also been helpful for comparing aid disbursements to Kenya and Zimbabwe. For data on communication variables, the Cross-National Time-Series Data Archive (CNTS) by Arthur Banks at the State University of New York at

\(^{31}\) UNICEF has provided valuable data specifically on the issue of education attainment.
Binghamton has been useful. The data archive contains information on almost 200 variables, and covers over 200 country units from 1815 to the present. This record has been of particular significance when comparing the number of radios and TV sets in the two countries, as well as newspaper circulation, both historically and today.

3.6.5 Daily Press
In the second part of the thesis, for the purpose of developing an even better understanding of how political elites in Kenya and Zimbabwe relate to one another, newspaper articles have also been of value. In these sources, it has been possible to find public statements from elites, in which they either embrace or reject collaboration with each other. In addition, newspaper articles have been useful for understanding more about the relationship between the countries and the West, mainly as regards Zimbabwe, where the president has made it his customary habit to publicly insult the British in particular, and this is frequently captured in the daily press. Newspapers that have been used are: The New York Times, The Washington Post, BBC News, NBC News, The Telegraph, The Guardian, The Zimbabwean, Zimbabwe Independent, NewsDay, and Daily Nation.

* Having now completed the discussion of methodological issues, in the next two chapters, 4 and 5, we shall move on to the empirical investigation. In Chapter 4, the first research question will be answered, and the results will be discussed. In Chapter 5 we focus on answering the second research question and discussing the findings.
Chapter 4
Classifying 20 cases of participatory constitution building processes

The purpose of this chapter is to answer the first research question: How can participatory constitution building processes be classified? A theoretical discussion of this issue was presented in Chapter 2, and the operationalization of participation in such processes was discussed in Chapter 3. In this chapter, we classify 20 cases of participatory constitution building processes based on extensive empirical research. The intent of the chapter is to place the twenty cases in a classification scheme that clearly illustrates that they represent different types of participation, ranging from false to substantial participation. This will be done with the help of the analytical framework (Table 2:1) and the typology of different kinds of participation in constitution building (Table 2:2), both of which were developed in Chapter 2.

The chapter is organized as follows. We start with a brief recapitulation of why it is necessary to make distinctions among the cases and the basis upon which they will be classified. This is followed by a presentation of the results of the classification of the twenty cases of participatory constitution building processes. The results are discussed and, thereafter, a discussion concerning the limitations of the classification scheme is presented. In order to bring greater clarity to the classification of the cases, the chapter concludes with illustrative examples of three specific cases.

4.1 Rationale for developing a classification scheme of participation in constitution building

Let us recall that the reason for developing a classification scheme that clarifies how participatory constitution building processes differ from each other is that no previous research has systematically performed this task. As noted earlier, at present, all instances of public participation in constitution building processes are lumped together as cases of “participatory constitution building processes”, regardless of how minimal participation might have been. As we are interested in learning about the supposed effects of participatory processes on levels of democracy, we must first acknowledge that these processes differ from each other. Only then can we investigate whether or not different types of participation influence levels of democracy to greater or lesser degrees. The second reason for developing a classification scheme of participation is because existing typologies of participation (recall Pateman’s (1970) and Arnstein’s (1969) efforts) do not identify cut-off points that transparently determine why cases are classified as representing a specific type of participation. The classification proposed in this study attempts to
come to terms with both of these shortcomings. Thus, it is designed to enable us to identify the underlying factors that explain why cases are determined to be different types of participation.

4.1.2 How to classify
When classifying the twenty cases as particular types of participation in constitution building, attention is paid to how the individual cases reflect each of the four variables: A) initiators of the process, B) forms of communication, C) degree of inclusion and D) final authority. More specifically, we must look at how they reflect the different forms that each of the four variables can take (as specified in Chapter 3 and the analytical framework in Table 2:1). Guided by these variables, a thorough analysis of all twenty cases has made it possible to understand the extent of public participation in each case and to categorize it as a specific participation-type.

4.1.3 Classifications and types of public participation in constitution building processes
After having studied the twenty cases of participatory constitution building processes and how they reflect the four variables, they have been classified as presented in Table 4:1 below. Each row represents a case. The column on the far right in the table shows us which participation-type each case represents. Type of participation indicates the extent of public participation, i.e. the extent of influence that participants in the constitution building process were able to exercise. Different types of participation are grouped together in the table. Thus, cases of false participation are listed first, followed by cases matching the category symbolic participation. Cases of limited participation come next, then consultative participation and finally substantial participation. Hence, as we move down in the table from the first participation-type to the last, there is a progression of influence for participants in the constitution building process.
Table 4.1  Classification and types of public participation in constitution building processes

<table>
<thead>
<tr>
<th>Variables/ Country</th>
<th>A Initiators of the process</th>
<th>B Forms of communication</th>
<th>C Degree of inclusion</th>
<th>D Final authority</th>
<th>Participation-type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kosovo</td>
<td>Outside actors influence the constitutional content</td>
<td>One-way model of communication</td>
<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>False participation</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>Outside actors determine how the constitution building process will be carried out</td>
<td>Two-way model of communication</td>
<td>Constitution building process banned certain groups/parties from participation</td>
<td>Final authority vested in the executive body</td>
<td>False participation</td>
</tr>
<tr>
<td>Iraq</td>
<td>Outside actors determine how the constitution building process will be carried out</td>
<td>One-way model of communication</td>
<td>Constitution building process banned certain groups/parties from participation</td>
<td>Final authority directly vested in the hands of the people</td>
<td>False participation</td>
</tr>
<tr>
<td>Nigeria</td>
<td>National elites (military)</td>
<td>One-way model of communication</td>
<td>Constitution building process banned certain groups/parties from participation</td>
<td>Final authority vested in the executive body</td>
<td>False participation</td>
</tr>
<tr>
<td>East Timor</td>
<td>Outside actors determine how the constitution building process will be carried out</td>
<td>One-way model of communication</td>
<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Symbolic participation</td>
</tr>
</tbody>
</table>

32 Representatives from the former Taliban regime were not invited to take part in the discussions in Bonn, where it was decided that a number of constitution making bodies were to be established in order to prepare and adopt a new Afghan constitution (Brandt 2005: 9)

33 Members of the Baath Party were excluded from participation (Morrow 2010).

34 The CDCC (Constitution Debate Coordinating Committee, which was handpicked by General Abubakar) did not engage the Nigerian opposition, for example the National Democratic Coalition, the United Action for Democracy and the Joint Action Committee of Nigeria. Rather, they were completely sidestepped in the process (Ihonvbere 2000).
FARC (Fuerzas Armadas Revolucionarias de Colombia) and ELN (Ejército de Liberación Nacional) refused to participate in the process (Fox et al. 2010).

None of the political forces that had actively engaged in the genocide (mainly Hutu political parties) were invited to take part in the Constitutional Commission, whose mandate was to draft a new constitution for the country (Ankut 2005: 15–16).

"Coordinadora," which represented the business sector in the Nicaraguan constitution building process, decided to boycott the elections to the Constituent Assembly and was therefore absent from the constitution building exercise (Walker & Williams 2010).

<table>
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<tr>
<th>Variables/Country</th>
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<th>C Degree of inclusion</th>
<th>D Final authority</th>
<th>Participation type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiji</td>
<td>National elites (political)</td>
<td>One-way model of communication</td>
<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Symbolic participation</td>
</tr>
<tr>
<td>Colombia</td>
<td>Civil society organizations</td>
<td>Two-way model of communication</td>
<td>Constitution building process open to all groups/political parties, but some voluntarily decided to boycott the process</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Symbolic participation</td>
</tr>
<tr>
<td>Thailand</td>
<td>National elites (political)</td>
<td>Two-way model of communication</td>
<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Limited participation</td>
</tr>
<tr>
<td>Rwanda</td>
<td>National elites (political)</td>
<td>Two-way model of communication</td>
<td>Constitution building process banned certain groups/parties from participation</td>
<td>Final authority directly vested in the hands of the people</td>
<td>Limited participation</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>National elites (political)</td>
<td>Two-way model of communication</td>
<td>Constitution building process open to all groups/political parties, but some voluntarily decided to boycott the process</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Limited participation</td>
</tr>
</tbody>
</table>

35 FARC (Fuerzas Armadas Revolucionarias de Colombia) and ELN (Ejército de Liberación Nacional) refused to participate in the process (Fox et al. 2010).

36 None of the political forces that had actively engaged in the genocide (mainly Hutu political parties) were invited to take part in the Constitutional Commission, whose mandate was to draft a new constitution for the country (Ankut 2005: 15-16).

37 “Coordinadora”, which represented the business sector in the Nicaraguan constitution building process, decided to boycott the elections to the Constituent Assembly and was therefore absent from the constitution building exercise (Walker & Williams 2010).
Political parties as such were banned from engaging in the constitution building process. Political candidates could engage as individuals, but not as representatives of political parties (Tripp 2010).

<table>
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<th>B Forms of communication</th>
<th>C Degree of inclusion</th>
<th>D Final authority</th>
<th>Participation-type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uganda</td>
<td>National elites (political)</td>
<td>Two-way model of communication with integrated proactive measures</td>
<td>Constitution building process banned certain groups/parties from participation(^38)</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Limited participation</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>National elites (political)</td>
<td>Two-way model of communication with integrated proactive measures</td>
<td>Constitution building process open to all groups/political parties, but some voluntarily decided to boycott the process(^39)</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Limited participation</td>
</tr>
<tr>
<td>Bolivia</td>
<td>National elites (political)</td>
<td>Two-way model of communication</td>
<td>The process was open to all groups/political parties that wanted to participate, and all groups/political parties that wanted to participate, did so</td>
<td>Final authority directly vested in the hands of the people</td>
<td>Limited participation</td>
</tr>
<tr>
<td>Brazil</td>
<td>National elites (military)</td>
<td>Consultation</td>
<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Consultative participation</td>
</tr>
<tr>
<td>Eritrea</td>
<td>National elites (political)</td>
<td>Consultation</td>
<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
<td>Consultative participation</td>
</tr>
</tbody>
</table>

\(^{38}\) Political parties as such were banned from engaging in the constitution building process. Political candidates could engage as individuals, but not as representatives of political parties (Tripp 2010).

\(^{39}\) OLF (Oromo Liberation Front) withdrew from the constitution building process in mid-1992 (Abebe 2013).
<table>
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<td>Process open to all groups/political parties who wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority indirectly vested in the hands of the people</td>
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<td>Civil society organizations</td>
<td>Two-way model of communication with integrated proactive measures</td>
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<td>Final authority directly vested in the hands of the people</td>
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<tr>
<td>Kenya</td>
<td>Civil society organizations</td>
<td>Two-way model of communication with integrated proactive measures</td>
<td>Constitution building process open to all groups/political parties, but some voluntarily decided to boycott the process</td>
<td>Final authority directly vested in the hands of the people</td>
<td>Substantial participation</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Political elites from the ruling party, military elites, political parties in the opposition and civil society organizations</td>
<td>Two-way model of communication</td>
<td>Process open to all groups/political parties that wanted to participate, and all groups/political parties who wanted to participate, did so</td>
<td>Final authority directly vested in the hands of the people</td>
<td>Substantial participation</td>
</tr>
<tr>
<td>Albania</td>
<td>Political elites from the ruling party, political parties in the opposition and civil society organizations</td>
<td>Consultation</td>
<td>Constitution building process open to all groups/political parties, but some voluntarily decided to boycott the process</td>
<td>Final authority directly vested in the hands of the people</td>
<td>Substantial participation</td>
</tr>
</tbody>
</table>

40 The NGO community that initiated the process, as well as the political opposition, decided to boycott the parallel government-led commission’s process (Panfil 2012, Ndulo 2010).
41 Constitution building with broad based public participation has occurred twice in Kenya (2001-2005, 2009-2010). The second time, the constitution building process was open to all groups/political parties, and all groups/political parties who wanted to participate, did participate. The first time, however, a number of ministers walked out of the National Constitutional Conference during the last stages of the process because they felt that their views were not respected by other stakeholders (Cottrell & Ghai 2004, Lumumba 2009).
42 The Democratic Party in Albania initiated a boycott campaign in autumn 1997 that lasted throughout most part of the constitution building process (Carlson 2010).
So what does Table 4:1 tell us? To begin with, it reveals that participatory constitution building processes are not homogenous across all twenty cases. The fact that the cases reflect the four variables (A-D) differently, tells us that the ways in which the public has been allowed to participate has varied. Although the classification reveals no precise patterns, some conclusions can be drawn.43

An important observation is that although inside actors were the initiators of the constitution building process in a clear majority of the cases (16 of 20), they included the public to very different extents. This is important because it confirms that it is relevant to distinguishing processes from each other. Just because inside actors are the agents of a participatory constitution building process does not necessarily imply that “participation” is always structured in such a way that participants have actual influence. This finding confirms a point that was hinted at on a theoretical level in Chapter 2.

4.1.3.1 National elites (political or military elites)
In 11 of 20 cases the initiators of the participatory process were national elites (either political or military elites), yet the extent of public participation differs across these cases. As we see in Table 4:1, national elites as the initiators of the process can be found in cases that are categorized as different types of participation, from false to consultative participation. In order to illustrate why they have been categorized differently, let us briefly consider four different examples in which national elites were the initiators: one case categorized as false participation, one as symbolic participation, one as limited participation and one as consultative participation.

In Nigeria, where military elites were the main initiators of the 1999 constitution building process, the participation of the people was nothing but a deceptive maneuver that failed to produce any actual participation (Ihonvbere 2000). This is why the constitution building process in Nigeria is categorized as a case of false participation in Table 4:1. Jega (2000: 8, 13-14) notes that the Nigerian military was interested in soliciting the views of the Nigerian people as long as their views expressed support for a strong military branch with considerable power. Constitutional suggestions about other matters or proposals that would imply less power for the military were not of

43 For the purpose of testing alternative ways of classifying cases, the proposed classification scheme shown in Table 4:1 was subjected to a cluster analysis. The results of this procedure were similar to the classification in the table, although not identical. Another method that was tested was to assign the different possible forms each variable could take (e.g. outside or inside initiator, one-way or two-way communication, etc.) a different numerical value (e.g. 1-4), and then to classify cases as different types of participation based on mean values of the variables. Here too, the results of this approach were similar but not identical to the classification seen in Table 4:1. Thus, the classification of the cases can be done using different methods (cluster analysis, mean values, etc.). The important thing to bear in mind is that in this study, the classification is based on a qualitative assessment of how public participation in constitution building has been exercised, taking all variables into consideration.
interest. Furthermore, the Committee in charge of writing the constitution did not engage the opposition or civil society organizations. Moreover, it chose a posh hotel in the capital of Abuja as its venue for people to come and propose constitutional submissions, which made it impossible for most Nigerians to participate (Jega 2000: 13). Adding to these unfavorable conditions for participation, final authority over the constitution was not placed in the hands of the Nigerian people, neither directly nor indirectly, but instead was vested in the hands of the president.

The Fijian case is similar in the sense that inside actors (national political elites) initiated the constitution building process and also similar in the sense that the degree of public participation was low. Yet, there are some differences between this case and the Nigerian one, which explains why Fiji is classified as a case of symbolic participation. Unlike in Nigeria, all segments of the population and all political parties were invited to participate in the Fijian process. No group or political party was banned; no group or political party chose to voluntarily boycott the process, and final authority over the document was vested in parliament. Nonetheless, circumstances surrounding the process made it difficult for the population to participate in a comprehensive manner. For example, the commission in charge of writing the constitution consisted of only three people, and it did not have enough staff to support it in its work. Also, the Commission’s travel schedule was not determined in advance, so even though they toured the country, it was impossible for people to know when they would visit their region/city to talk to the public and gather views. No constitutional education programs were offered to the Fijians, and the final draft produced by the Commission was published only in English, not in either of the other two national languages, which also prevented some of the public from providing feedback on it (Cottrell & Ghai 2004, Cottrell & Ghai 2010).

In Uganda, national actors (political elites) were also the initiators of constitutional reform. In contrast to the cases of Nigeria and Fiji, however, Ugandans were extensively involved in their country’s constitution building process, and they were also allowed some influence regarding the content of the document. This explains why Uganda is categorized as an instance of limited participation in Table 4:1.

44 The Reeves Commission.
45 Fijian and Fiji Hindi.
46 Similarly, the second round of constitution building in Fiji (2012-2013) did not imply influence for participants. Although no group was excluded from participation, the people were not allowed to influence the document. Although the country’s prime minister, Frank Bainimarama, endorsed a participatory process, he rejected the draft of the Constitutional Commission, which was based on the views of the Fijian people. Instead, he directed the Attorney General’s office prepare a new draft, which the people were then allowed to comment on (Töpperwien 2014: 9). However, the period for commenting on the draft was limited to two weeks, after which it went to the president for final approval (ABC News 2013-08-22).
Before engaging in its mission of drafting the constitution, the Ugandan Constitutional Commission organized two-day seminars in all 34 districts of the country in order to develop a constitutional agenda based on input from the “grassroots”. For an entire year, constitutional education programs were conducted on a nationwide scale. In all of Uganda’s 890 sub-counties, constitutional materials with titles such as “Guidelines to Constitutional Issues: Guiding Questions on Constitutional Issues” were distributed. After that, for another full year, constitutional submissions were gathered from the public in all parts of the country. By the end of the year, the Commission had received well over 25,500 written memoranda, reports and oral submissions from a cross-section of Ugandans (Waliggo 2001). Only after all the documents had been translated from local languages, read and digested by the full Commission did the drafting procedure begin. The writing of the document was supposed to be based on the submissions of the people (Waliggo 2001).  

However, the degree to which the popularly derived constitutional provisions are actually reflected in the document is difficult to establish. It has been argued that although the extent of public participation in the process was unprecedented, the public’s input had little real impact on the substance of the document and the ruling elites’ main purpose in involving the citizens was to give the constitution a “shimmer” of legitimacy (Tripp 2010: 172). Nevertheless, in terms of involving and preparing Ugandans to participate in the process, the constitution building process in Uganda was successful (Waliggo 2001, Wapakhabulo 2001, Mugwanya 2001, Ebrahim et al. 1999: 13). Nonetheless, it should also be kept in mind that the process was not fully inclusive. Although politicians could engage in the process in their capacity as Ugandan citizens, they were not allowed to engage as representatives of a political party, because political parties themselves were banned from participating (Tripp 2010). Final authority over the constitution was not directly vested in the hands of the people, but indirectly so. The Ugandans voted for members of a Constitutional Assembly who, in turn, voted on the final document.

The constitution building process in South Africa was likewise initiated by national elites. Much attention has been devoted to the South African constitution building process elsewhere, so a detailed account of it will not be

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offered here. However, it should be acknowledged that the South African process was a remarkable achievement in terms of involving the people of the country in the making of their constitution. All political groups and segments of the population were invited to express their views and no particular group voluntarily refused the invitation to take part. Massive constitutional education programs were launched throughout the country. Newsletters, television programs, and radio programs were produced by the Constitutional Assembly, which was in charge of drafting the document. A telephone hot line was also established so that people could call to get general information about the process or ask specific questions. Moreover, the Constitutional Assembly traveled extensively throughout South Africa, holding public meetings in order to meet with and talk to people face to face. The Assembly received input to the draft constitution in the form of nearly 2 million constitutional submissions from the public. An additional 250,000 submissions were then gathered on the text of the draft constitution (Ebrahim & Miller 2010).

While acknowledging all this, it should be noted, however, that the initiators of the South African process did much more than merely set the process into motion. The constitution building process in South Africa was preceded by elite negotiations at the highest possible level. In practice, constitution building was a two-step undertaking, the first of which was completely devoid of engagement from the broader public. During the first phase, an interim constitution that would guide the political life of the country until a new permanent constitution had been adopted was negotiated and agreed on by the so called “Multi-party Negotiating Process” (MPNP) in 1993. This was an elite pact between the leaders of the main political parties in the country, primarily the African National Congress (ANC) and the National Party (NP) (Ebrahim & Miller 2010: 120, Brahim 2007: 8, Benomar 2003: 6, 10). The interim constitution, in turn, had fundamental bearing on both the process of developing the new constitution as well as its content. It specified the modalities for the constitution building process and also imposed thirty-four binding “constitutional principles” that were to be protected in the final constitution. Hence, when the second phase of the process – which was open to all South Africans – began in 1994, the final document was already to some extent constrained by the constitutional principles negotiated by the political

elites (Ebrahim & Miller 2010, Haysom 2001). So although the South African constitution building process has become the reference point for many other participatory constitution building processes, many accounts downplay the elite political negotiations that preceded the public participation phase in favor of highlighting the benefits of the participatory achievements. As far as final authority over the constitutional document is concerned, this too was not directly vested in the hands of the South African population. Instead, it was indirectly vested in them through the members of the Constitutional Assembly.

4.1.3.2 Civil society organizations
In 3 out of 20 cases we identified another type of inside actor as the main initiator of the process, namely civil society organizations. Here too, the extent of public participation differs somewhat across the cases, particularly the Colombian case differs from the two cases of Zimbabwe and Kenya. Whereas public participation in Colombia is classified as a case of symbolic participation, public participation in constitution building in Zimbabwe and Kenya are categorized as instances of substantial participation. In a later part of this chapter we will devote more attention to the Colombian case, and Chapter 6 is entirely devoted to comparing the constitution building processes in Kenya and Zimbabwe, so details about them will not be provided here. Suffice it to say that while civil society organizations in Colombia were indeed successful in pushing an agenda for constitutional reform with broad based public participation, the subsequent stages of the constitution building process were not a success in terms of actually involving the Colombian citizenry and providing them with avenues for participation. In Kenya and Zimbabwe, on the other hand, civil society organizations were not only able to initiate the process, but also to ensure that the Kenyan and Zimbabwean citizenries were able to participate in the making of their respective constitutions. Hence, even when the initiators of the process are civil society organizations, we cannot assume that this will automatically lead to wide-ranging participation with actual influence for participants, even though we might, perhaps, be inclined to believe so.

4.1.3.3 Political elites from the ruling party, military elites, political parties in the opposition and CSOs
2 of the 20 cases had another type of inside actor as the main initiator of the constitution building process. In Guatemala and Albania a full range of inside actors came together and agreed that constitutional reform with broad based public engagement was a desirable option (Carlson 2010, Brett & Delgado 2005, Stanley & Holiday 2001). As we can see in the classification scheme, these two processes are also similar to each other in the sense that final
authority over the constitutional document was vested in the hands of the people.

There are also some differences between the cases. In Albania, extensive measures were taken in order to prepare the people to participate. The Administrative Center for the Coordination of Assistance and Public Participation (ACCAPP) was created to facilitate technical assistance, distribute information, gather constitutional submissions, conduct constitutional education, etc. (Carlson 2010). It also organized working sessions with domestic NGOs and international donors for the purpose of developing strategies to include the Albanians in the process. However, after the process was underway, the Democratic Party boycotted it and was thus not an active participant during the rest of the process. In Guatemala, although the people were able to provide input in terms of submitting constitutional proposals to a number of constitutional commissions charged with drafting the document, constitutional education programs were not part of the process, and, therefore, the public’s preparedness to participate fully can be discussed (Brett & Delgado 2005). On the other hand, all groups and political parties were invited to participate in the process, and there were no incidents of voluntary boycotting. And again, the very fact that the Guatemalan citizenry had the power to decide the ultimate fate of the constitution through a referendum signals a decisive degree of influence for participants.

4.1.3.4 Outside actors
Among the bulk of the twenty cases there are four in which outside actors where the main initiators of constitutional reform: Kosovo, Afghanistan, Iraq and East Timor. Though public participation in the sense of influence for participants was kept at a bare minimum in all four of these cases, there are still some differences among them as regards which type of participation they are examples of. In Kosovo, which we will devote more attention to below, there was really no legal space for the public to exert influence on the constitution, because international actors had already agreed on the fundamental elements of the document. As a consequence, the participation of the people of Kosovo was an illusion without substance. Therefore, Kosovo is categorized as an instance of false participation.

In Iraq and Afghanistan, although national actors themselves did the actual drafting of the constitutional document, it was international actors who settled the rules surrounding the process. In Iraq, the US government rushed the exercise and insisted that the constitution was to be adopted within a given time frame of nine months. When Iraqi nationals expressed concern about the limited amount of time and voiced a desire to extend the deadline, the request was rejected (Morrow 2005). In the next step of the process, the UN endorsed the US-proposed time frame and also decided that the UN was to “promote national dialogue and consensus-building on the drafting of a national
constitution by the people of Iraq” (UNSCR 1546). To develop constitutional education programs, implement them and then invite the public to submit constitutional proposals in a process that was to be completed within nine months turned out to be difficult. As a result, the Iraqi people were not able to fully engage in the process. Furthermore, members of the former Baath party were banned from participating in the drafting of the constitution (Morrow 2010). The only real avenue for participation for the Iraqis was therefore through a referendum, which at least gave them the opportunity to vote on the document in its entirety. The combination of these circumstances explains why the participatory process in Iraq is categorized as an instance of false participation.

Likewise, Afghanistan is categorized as a case of false participation due to the circumstances that surrounded its constitution building process. Under UN auspices, the constitution building process in Afghanistan was initiated by the signing of the Bonn Agreement in 2001. The conference in Bonn gathered the four most dominant Afghan political groups in order to reach a compromise on transitional governing structures until a fully representative government could be elected. Representatives from the former Taliban regime were not invited to the conference and were subsequently also disqualified from participation in the constitution building process (Brandt 2005). In Bonn, it was decided that the process was to be finalized within 18 months from its inception. When Afghan President Karzai finally agreed to open the process for public participation in March 2003, a drafting committee of nine people had already prepared a draft behind closed doors, which made the “participation” of the Afghans in the construction of their own constitution an empty exercise; rubberstamping something that had already been decided without their input (Brandt 2005). As far as final authority over the document was concerned, this too was left to the president and his closest colleagues in the cabinet (Brandt 2005).

Outside actors had a prominent role in the East Timorese constitution building process as well. However, in comparison to constitution building in Kosovo, Iraq and Afghanistan, the East Timorese process was slightly more participatory. Therefore, it is categorized as a case of symbolic participation. The circumstance that led to the constitution building process in East Timor was the violent turmoil that followed the province’s yes-vote for independence from Indonesia in 1999. The outbreak of chaos and violence prompted rapid action from the UN. Through UN Security Council Resolution 1272, the United Nations Transitional Administration in East Timor (UNTAET) was established with a far-reaching mandate.49 The subsequent UNTAET Regulation 2001/2, “On the election of a Constituent Assembly to prepare a

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49 UNSCR resolution 1272 states: "... [UNTAET] will be endowed with the overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of the justice” (UNSCR 1272).
constitution for an independent and democratic East Timor”, provided the legal framework for East Timor to initiate its constitution building process (UNTAET Reg.2001/2). The Regulation also established a time frame of 90 days for the process. Despite calls from local NGOs to create a broadly inclusive Constitutional Commission to draft the constitution rather than a Constituent Assembly, UNTAET stood by its decision and the time frame that it had suggested. The rushed process left very little time for genuine participation. Civic education was carried out by UNTAET, but it did not involve education on constitutional issues. When the “participatory” phase of the process started, people were therefore not very well equipped to participate (Brandt 2005). The public’s opportunity to comment on the proposed draft was also severely circumscribed by the fact that it was published in Portuguese, which only 10% of the population reads and speaks (Brandt 2005; Charlesworth 2003; Garrison 2005). Still, as opposed to the processes in Afghanistan and Iraq, at least all groups and political parties who wanted to engage in the process were welcome to do so; no one was banned from participation. Also, in contrast to the Afghani case, final authority over the constitutional document was at least indirectly vested in the hands of the people. The East Timorese voted for members of a Constituent Assembly, which, in turn, prepared as well as voted on the document.

4.2 Limitations of the classification scheme of participation

The main issue with existing typologies of participation is that they fail to be clear about the underlying factors that determine why a specific case is categorized as a particular type of participation. The purpose of developing a classification scheme for participation in constitution building processes has been to address this concern. Although the operationalization of the four different variables that is presented in this thesis serves to fill a knowledge gap that exists in the existing literature in this specific area of research, it is not without flaws. While the goal has been to be as thorough as possible when operationalizing the variables – as explained in Chapter 3 – it is nevertheless worthwhile to keep in mind that each of the twenty cases is unique as regards the circumstances that led up to the constitution building process and the exact procedures that were employed during the course of it. Consequently, some cases are more difficult to place in the scheme – i.e. to classify as a specific type of participation – than others. Also, there are undoubtedly additional context-specific factors beyond the four variables (A-D) that influence whether or not and to what extent people are able to participate in the building of their constitution.

Nevertheless, based on thorough and systematic research, these four variables have been determined to be the most relevant to take into consideration. Furthermore, these four variables are possible to identify in all
of the cases, and, when taken together, they convey a fair picture of the extent of participation in each individual case. It is also worthwhile repeating that no earlier research has attempted to sort and classify participatory constitution building processes into any kind of “types”, “categories”, “degrees” etc., which is a necessary first step in order to investigate the participation-hypothesis. Therefore, the classification scheme of participation in constitution building is a valuable contribution. However, since there is always room for improvement, it is hoped that future scholars will both apply the methods developed here for classifying participation in constitution building processes when analyzing new cases and further refine these methods based of their findings.

Just as the need for a classification scheme of participation in constitution building processes has been greatly emphasized in this study, the need for such a scheme to be transparent about the logic behind classifications is equally important. For this reason, the final part of this chapter has an illustrative purpose and will focus on three examples in order to explain why they have been categorized as they have in the scheme in Table 4:1. These particular examples have been chosen to illustrate how the classifications have been done because they either depart in a substantial way from the majority of the twenty cases or because, in one way or another, they differ from the other cases grouped within the same participation type. The examples we will devote attention to are Kosovo, Colombia and Bolivia. When examining these three examples, the process will be discussed in terms of A) who the initiators of the process were, B) how the forms of communication with the public were organized, C) degree of inclusion and D) final authority. This will enable us to understand the categorization of each of the cases in a much more informed manner. Let us begin by looking more closely at the constitution building process in Kosovo.

4.3 Example I: Kosovo
As shown in Table 4:1, Kosovo is the only case of false participation – as well as the only case among all of the twenty cases – in which outsiders had such a prominent role that they influenced the content of the constitution. Still, as is also shown in Table 4:1, we can see that despite considerable external engagement, the degree of inclusion was high and final authority over the constitutional document was indirectly vested in the hands of the people through the Kosovo Assembly. This might seem a bit contradictory, which is why the case of Kosovo has been chosen as an illustrative example here.

4.3.1 Initiators of the process
In June 1999, the United Nations Security Council approved Resolution 1244 with reference to the situation in Kosovo. The passing of the resolution marked the end of the conflict between the Yugoslav state and the Kosovo
Liberation Army. Pending a final settlement for the future status of Kosovo, Resolution 1244 authorized the Secretary General to establish an international civil presence that would have as its mandate to administer the province during an interim period while simultaneously developing provisional democratic self-governing institutions (UNSCR 1244: 1999). Thus, in passing Resolution 1244, the UN created the United Nations Interim Administration Mission in Kosovo (UNMIK), a mission that operates under the authority of a Special Representative of the Secretary General, who has civilian executive power in Kosovo. According to the Resolution, UNMIK will perform its functions “where and as long as required” (UNSCR 1244: 1999). UNSCR 1244 also stipulated that the international civil and security presence was to be established for an initial period of 12 months, and then continue unless the Security Council decided otherwise (UNSCR 1244: 1999). During the interim period, when the final status of Kosovo was to be settled, the constitutional order for the province was explicated in a “Constitutional Framework for Provisional Self-Government” authored by UNMIK. Thus, the constitution of Kosovo during this interim period was drafted by an international actor and signed by the Special Representative at the time, Hans Haekkerup, on May 15, 2001 (UNMIK/Reg/2001/9).

In 2005, the UN Secretary General appointed former President of Finland Martti Ahtisaari as his Special Envoy for the final settlement of the future status of Kosovo. In what has been referred to as the “Ahtisaari plan”, Ahtisaari proposed that Kosovo adopt a constitution that guaranteed the highest democratic standards. A further proposal, or rather demand, was that the document would incorporate constitutional provisions that Ahtisaari had formulated in a separate Annex to the proposal (Comprehensive Proposal for the Kosovo Status Settlement 2007, Art. 1: 1.3). The Annex, in turn, was quite far-reaching in terms of covering everything from economic provisions to very detailed prescriptions concerning the composition of government and parliament and the configuration of the constitutional court (Comprehensive Proposal for the Kosovo Status Settlement 2007: Annex 1). Ahtisaari’s proposal was agreed upon by the Security Council on March 26, 2007. The political leadership of Kosovo unilaterally declared independence from Serbia on February 17, 2008, and in its Declaration of Independence the new country committed itself to adopting a constitution and pledged that the document would incorporate all relevant principles of the Ahtisaari plan and that the constitution would be adopted through a democratic and deliberative process (Kosovo Declaration of Independence Art. 4).

4.3.2 Forms of communication
Based on the specific recommendations set forth in Ahtisaari’s proposal, Kosovo established a Constitutional Commission with a mandate to draft the constitution in a manner that would reflect the best interests of all the people
of Kosovo. It should be noted, however, that the Constitutional Commission was not popularly elected. The 21-member body had fifteen commissioners appointed by the president and another six appointed by members of the Kosovo Assembly who belonged to the Serb minority and other minority populations.

In order to produce a constitution that would indeed mirror the interests of all people living in Kosovo, public participation was sought in order to provide the drafters of the constitution with input. However, an examination of the process in Kosovo makes it clear that there was not much time set aside for public participation. Considering that Kosovo became independent on February 17, 2008, it is remarkable that the public participation phase of the process had already come to an end by March 2. Furthermore, in a press release dated March 4, 2008 the Commission expressed its “commitment to take into consideration every comment submitted by citizens”, but did not disclose anything about being obliged to base the draft constitution upon the views of the public.50

However, it should be noted that when the draft version of the constitution was completed, it was widely distributed throughout Kosovo in different languages. The draft was translated into Albanian, Serbian, Bosnian, Turkish, Roma and English, as well as into the Braille alphabet (in Albanian and Serbian). This confirms that the Commission considered it important to make the constitution available to all citizens, but the procedure resembled an information campaign and was a one-way model of communicating with the public rather than opening up channels for two-way communication.

4.3.3 Degree of inclusion

Given that the Ahtisaari proposal had called for a Constitutional Commission to draft a constitution that would reflect the interests of all people living in Kosovo and that the composition of the body was formed such that no ethnic group would be disqualified from participation, no specific political parties or segments of the population were banned from participating in the process. Nonetheless, this does not say much in this specific case. It is true that everyone was welcome to participate in the constitution building process, but considering the extremely limited time frame for drawing up a constitution, participation was undeniably heavily circumscribed.

4.3.4 Final authority

The question of final authority in the case of Kosovo is quite unique compared to the other twenty cases. This again has to do with the role of outside engagement in the process. Straightforwardly, the possibility for the people of

Kosovo to exert influence over the constitution building process and the document that it produced was lost at the same moment that the leadership of Kosovo committed itself to acknowledging and incorporating Annex 1 of the Ahtisaari plan into the constitution. The first article of Annex 1 even goes so far as to establish the superiority of the status settlement vis-à-vis future constitutional suggestions from the people or leadership of Kosovo by stating that in case of a conflict between provisions in the constitution and provisions as set forth in the Ahtisaari plan, the latter shall prevail (Comprehensive Proposal for the Kosovo Status Settlement 2007, Art. 1: 1.1.). In light of this, constitution building in Kosovo remained a quasi-endavor from a public participation perspective, as real influence over the document was essentially non-existent and very limited at best.

4.4 Example II: Colombia
To categorize the Colombian case as one of the five different types of participation is not an entirely straightforward exercise. The case is neither a clear-cut example of symbolic participation nor one of limited participation; rather, it falls somewhere in between these two types of participation. Colombia has been chosen as an illustrative example of how the cases have been classified because it shows that even when the initiators of a constitution building process are civil society organizations, the extent to which public participation is allowed to influence the content and adoption of the constitution may still be circumscribed.\footnote{This is in strong contrast to the Kenyan and Zimbabwean cases, both of which also had civil society organizations that acted as the initiators of the process. As opposed to how the participatory process played out in Colombia, in these cases the communication channels between constitution-making bodies and the public were much more structured and provided several avenues for feedback. In addition, constitutional education programs formed an integral part of the process and the people of Kenya and Zimbabwe also had final authority over the constitution through a referendum. These processes are further analyzed and compared in Chapter 6.}

4.4.1 Initiators of the process
In Colombia, the initiators of the constitution building process were civil society organizations (Fox et al. 2010). By being adamant about the need for constitutional reform as a way to address the history of political exclusion and ongoing conflict in Colombia, civil society organizations were successful in persuading both the sitting president (Virgilio Barco Vargas) and the Supreme Court of Justice to allow the Colombian citizenry to vote on the matter of establishing a Constitutional Assembly for subsequent constitutional reform. The referendum was held in May 1990, and the vote revealed substantial support for constitutional change, with 88% of the voters expressing support for convening a constitutional assembly to “strengthen participatory democracy” (Fox et al. 2010: 471). In December of that same year, members of the Constitutional Assembly were popularly elected.
Colombian civil society organizations were thus successful in getting their agenda for constitutional change accepted by the ruling elite. However, once the governing party and the opposition reached agreement on the modalities of the constitution building process, it became evident that the general public would not be included to any considerable extent.

4.4.2 Forms of communication

As indicated in Chapter 2, the issue of time frame is important to consider when assessing how the forms of communication in a constitution building process are structured. Limited time hinders feedback from participants, and it does indeed seem as if scarce time was one of the most decisive factors preventing Colombians from fully engaging in their constitution building process. The rules of procedure for the constitution building exercise that the government and opposition agreed upon established that the Constitutional Assembly would convene in February 1991, and that its members would meet for 150 days, after which a constitutional document would be presented to the public. In effect, this implied that from the time of the election to the Constitutional Assembly in December 1990 to the promulgation of the constitution in July 1991, a mere seven months elapsed. Moreover, considering that the Constitutional Assembly did not have its first meeting until February, it had only five months to complete its work. Also, once it convened in February, the Constitutional Assembly started its work by inviting the government, the Senate, the House of Representatives and other official bodies to propose constitutional revisions, which they did. More importantly, the submissions received from these official bodies weighed more heavily than those that the assembly received from NGO groups and universities (Fox et al. 2010: 473). Though the proposals gathered from “unofficial” persons were given “serious consideration by the Constitutional Assembly” (Fox et al. 2010: 473), it is still difficult to know whether these considerations had any impact on the content of the document. The number of proposals gathered also says something about the limited time frame for the process. In total, 131 official and merely 28 other proposals for reform were submitted.

Undeniably, with a population of over 40 million people, five months is a short timespan if one’s goal is to first carry out constitutional education programs so that people are equipped with the necessary skills to enable them to participate in a meaningful manner, and then to collect submissions from people and organizations throughout all regions of the country, and, finally, to collate all the input and provide it to the Constitutional Assembly for consideration. It was likely because of the short timespan they had to complete the entire exercise that the Constitutional Assembly appeared to have been mainly interested in disseminating information about its own work, while leaving constitutional education programs out of the process. Instead,
education about the new constitution was offered to Colombians after it had been promulgated in July 1991, but this too was only a short-term initiative (Fox et al. 2010: 476). Certainly, the merits of constitutional education in the aftermath of the adoption of a new constitution should not be downplayed; however, at this point in a constitution building process, there is no need for public input as to the content of the constitution and people are thus not able to influence the document at all.

4.4.3 Degree of inclusion
The Colombian constitution building process was also somewhat unsuccessful from a participatory point of view due to the fact that the government was not able to convince two of the major guerilla groups – Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Ejército de Liberación Nacional (ELN) – to participate in it. Instead, these two groups boycotted the process early on, and also refused to come on board later, even though the Constitutional Assembly extended invitations to do so to both groups. Fox et al. (2010) discuss the potential impact that these guerilla groups’ resistance to participation in the process might have had on the resulting constitutional document. Fox et al. acknowledge that FARC’s and ELN’s participation would have been beneficial, but conclude that the compromises that the government would have had to make in order to meet their demands to enter into negotiations about the contents of the future constitution would have been too costly (Fox et al. 2010: 476). Undeniably, the consequences of FARC and ELN participating in the Colombian constitution building exercise can only be speculated upon in hindsight. However, we do know that one of the main reasons why civil society organizations pushed for constitutional reform in the first place was to bring the conflict between different guerilla groups and the Colombian government to a halt, something that has still not occurred nearly 25 years after the completion of the constitution building process.

4.4.4 Question of final authority
Finally, in addition to the fact that it was difficult for the Colombian public to participate in the process (due to limited time and lack of constitutional education programs) and it proved impossible to convince FARC and ELN to take part, the ultimate fate of the constitutional draft was not vested in the hands of the general public. Rather, the 70-member strong Constitutional Assembly that had been in charge of writing the constitution was also, through a presidential decree, authorized to adopt it (Fox et al. 2010). However, since the assembly was popularly elected, final authority was at least formally indirectly vested in the hands of the people.
4.5  Example III: Bolivia

As regards Bolivia, we see in Table 4:1 that it is grouped together with Nicaragua, Thailand, Rwanda, Uganda and Ethiopia – all cases that have been categorized as instances of limited participation. Bolivia, however, differs somewhat from the other cases in this participation type. At first glance it appears as if this case allowed much more influence for participants than did the other cases within this participation type - not only was the process fully inclusive in the sense that it engaged all groups who wanted to participate, but final authority was also directly vested in the hands of the people, both features that set it apart from the other cases of limited participation. Yet certain circumstances in the Bolivian constitution building process motivate categorizing it as an example of limited participation. For this reason we will study this example a bit more in order to understand the logic behind the categorization.

4.5.1  Initiators of the process

In Bolivia, just as in the other cases of limited participation, the initiators of constitutional reform were national elites. Evo Morales, the first indigenous president of “the Plurinational State of Bolivia”,\(^{52}\) won the presidential election of 2005 on a promise that the constitution would be rewritten to ensure a strengthened role for groups previously marginalized in Bolivian politics. Thus, more participatory and inclusive forms of democracy were envisioned, particularly for the indigenous populations of the country.

Intent on keeping his promise, an election was scheduled for July 2007 to choose members of a constituent assembly, and 255 representatives were duly elected by the Bolivian electorate. Although Morales’ own political party, Movimiento Al Socialismo (MAS), won a majority of the seats (137 of 255), opposition political parties and minority groups were also elected to the Assembly, which was deliberately formed to ensure balance between regional interests, ideological representation, and cultural/ethnic representation (Irahola 2009:32). After the election, the Constituent Assembly was subdivided into 21 separate commissions, each dealing with different constitutional areas (e.g. duties, rights and guarantees, education and inter-cultural relations, economic development and finance, legislative branch, judicial branch, etc.). Unfortunately, members of MAS and the opposition parties were not able to reach agreement on the internal working procedures for the Constituent Assembly until February 2007. This meant that nearly seven months of the process was misspent trying to agree on voting procedures for approving the draft constitution in the assembly.

\(^{52}\) The official name of the country from the promulgation of the new constitution in January 2009.
4.5.2 *Forms of communication*

The Bolivian constitution building process, despite President Morales ambition to provide the country a new constitutional content that would serve to broaden the scope of participatory democracy, was not too participatory in the process leading up to the final document. The fact that settling the internal rules of procedure for the Constituent Assembly dragged on for so many months meant that there was not much time left before the assembly was to present its final draft constitution. The deadline had been set to December 14, 2007. From March to August the members of the 21 commissions received proposals from civil society organizations concerning constitutional issues. However, no constitutional education programs preceded the gathering of submissions. Perhaps even more unfortunately, due to conflicts in the Constituent Assembly, the proposals from civil society organizations and individual citizens were never discussed in plenary sessions, which probably reduced the possibility that such citizen proposals would influence the constitutional document (Irahola 2009: 33). This concern was actually raised at the very last stages of the constitution building process by the Bolivian congress. How, they asked, had the Constituent Assembly been able to prepare a coherent draft when the commissioners of the different commissions had not been able to sit together in plenary sessions (Irahola 2009: 34)?

4.5.3 *Degree of inclusion*

The degree of inclusion is one of the dimensions that primarily sets the Bolivian case apart from its fellow cases in the limited participation group. In Table 4:1 we can see that all segments of the population and all political parties were allowed to participate, and that all of them also took advantage of this opportunity. This means that there was no banning or boycotting on the part of anyone or any political party. However, this is only partly accurate, which explains why Bolivia is categorized as an instance of limited participation instead of consultative participation.

As indicated above, members of the Constituent Assembly belonging to MAS and the opposition parties had severe difficulties getting along. Disagreements further escalated when opposition parties suggested that Sucre should become the capital of Bolivia, while members of MAS were firm that La Paz should continue to be the capital. Because of this disagreement, the assembly was paralyzed until the end of November 2007. With the deadline fast approaching, the Chair of the Constituent Assembly decided to move the location of the Assembly to a military facility, where its work would continue. MAS and its allies were able to relocate to the new facilities, but opposition parties were not. Thus, when deliberations resumed, delegates from the opposition were not present, and they were still absent at the end of the day, when the Constituent Assembly approved the text of the new constitutional draft (Irahola 2009:33). Thus, although the Bolivian process
was formally fully inclusive, the circumstances just described must be taken into consideration when making an overall assessment as to the appropriate classification of the case in the classification scheme.

4.5.4 Final authority
The deliberations that were held among the members of the Constituent Assembly belonging to MAS and its allies but without the presence of the opposition parties was not the final step of the constitution building process. As conveyed in Table 4:1, final authority over the constitutional document was directly vested in the hands of the Bolivian people and was to be decided in a referendum. The people had the opportunity to have their say in January 2009 at which point the constitutional document was approved by approximately 60 % of the electorate (Irahola 2009:37).

* 

This chapter has categorized twenty cases of participatory constitution building processes and illustrated that the cases differ from each other in terms of how much influence participants were allowed to exercise. This has been done by classifying the processes on the basis of how they reflect each of the four variables (A-D). The last part of the chapter has also illustrated the classification procedure using three cases: Kosovo, Colombia and Bolivia. In Appendix 1, the constitution building processes in all twenty cases are explained using the same procedure as has been outlined in this chapter in regards to these three cases. Careful consideration has been given to each and every one of the individual processes to learn more about them in order to make the classification as accurate as possible. Nonetheless, as stressed earlier and as illustrated in the descriptions of the classifications of the three examples, it is not always a straightforward exercise to categorize cases into the different participation types. Some cases are much easier to categorize than others are, and hence an overall assessment as to the extent of influence must be done before a case can be categorized as a case of a specific type of participation.

Now that we have classified the twenty cases of participatory constitution building processes as different types of participation, the next chapter can focus on the empirical investigation that will answer the second research question of the study.

53Since an exploration of how the constitution building processes in Kosovo, Bolivia and Colombia reflect each of the four variables (A-D) is addressed in this chapter, an additional exploration of this matter does not figure in Appendix 1. Also, because Chapter 6 is entirely devoted to exploring the participatory constitution building processes in Kenya and Zimbabwe, also based on how these cases reflect the four variables (AD), Kenya and Zimbabwe do not figure in Appendix 1 either.
Chapter 5
Participation, better democracy?
Evidence from 48 cases

The purpose of this chapter is to answer the second research question: Does participation in constitution building processes lead to higher levels of democracy? Thus far, the chapters in the dissertation have defined what participation in constitution building processes implies (Chapter 2), developed both an analytical framework for classifying cases as different types of participation and a typology that covers different forms of participation in such processes (Chapter 2), and located the twenty cases of participation in the scheme based on extensive empirical investigation (Chapter 4). The rationale and method for adding cases of non-participation to the study – cases in which there was no public participation at all in the drafting of the constitution – has also been discussed (Chapter 3). In addition, how the study defines (Chapter 2) and measures (Chapter 3) democracy has been explained. In accordance with the claim of the hypothesis under scrutiny, we expect that cases in which there was public participation in the constitution building process will display greater improvements in their levels of democracy when we compare levels prior to and after the process than cases of non-participation will. As regards cases of participatory processes that are identified as "types of participation", but which involve no real participation in terms of actual influence, we expect that they will reveal no improvement in levels of democracy prior to and after the process – or at least much less – compared to cases of participation in which participants’ influence has been extensive. We shall soon see whether these expectations are borne out.

This chapter is structured as follows. First, a table is presented (Table 5:1) in which the underlying meaning of the scores on the seven-point index from Freedom House are outlined. This is done for the purpose of making it easier to understand what is actually implied when countries are assigned different values on the scale. Second, for each of the forty-eight cases (twenty participatory cases and twenty-eight cases of non-participation), democracy levels prior to and after the constitution building process/enactment of the new constitution will be presented. Once these general tendencies have been considered, the different types of participation in constitution building processes will be added to the investigation in order to bring depth to the analysis. When carrying out this analysis, mean democracy levels on an aggregate level for cases within each of the participation types will be

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54 Enactment of the new constitution is used to refer to cases of non-participation, since these cases were not preceded by a process in the sense that the public were invited to participate in the drafting of the constitution.
presented, as will democracy scores for each individual case. The results will be presented by type, starting with the group with minimum public participation in constitution building processes (false participation), and concluding with the group with the most extensive public participation (substantial participation). This is followed by a discussion about how the results can be interpreted. The chapter ends with a discussion of the different trajectories of democracy taken by Kenya and Zimbabwe after their constitution building processes, despite the fact that their processes were very similar to each other as regards the extent of public participation that was allowed.

5.1 Rating characteristics
In Table 5:1 below a summary of the rating characteristics for Freedom House’s seven point political rights scale and seven point civil liberties scale is presented. When averaged, these scales provide a total score ranging from 1 to 7 for each country (Freedom House, Freedom in the World 2014 Methodology). It should be borne in mind that the difference between a country’s score on political rights and its score on civil liberties is usually very small. It is perhaps not unexpected that authoritarian states do not tolerate a very active civil society; likewise, political freedoms are seldom upheld in countries where civil liberties such as press freedom and the rule of law are absent. As we can see in the table, the scale is reversed in the sense that a lower ranking (1) implies greater political rights and civil liberties than a higher ranking (7), which indicates an unfavourable situation as regards political rights and civil liberties.
<table>
<thead>
<tr>
<th>Political rights</th>
<th>1</th>
<th>Countries have a wide range of political rights; free and fair elections; multiparty democracy; opposition plays an important role.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>Countries have slightly weaker political rights compared to those with rating 1 because of; political corruption; limits on the opposition and political parties; foreign military influence.</td>
</tr>
<tr>
<td></td>
<td>3, 4, 5</td>
<td>Countries moderately protect almost all political rights or strongly protect some political rights while neglecting others. Political corruption, limits on the opposition and political parties and foreign military influence might also be present but to a larger extent than for countries with rating 2.</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>Countries have very restricted political rights; ruled by one-party/military dictatorship/religious hierarchies/autocrats; may allow a few political rights; may tolerate political discussion and public petitions.</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>Countries have few or no political rights due to severe government repression; may lack an authoritative and functioning central government; suffer from extreme violence or rule by regional warlords.</td>
</tr>
<tr>
<td>Civil liberties</td>
<td>1</td>
<td>Countries have a wide range of civil liberties; freedom of expression/association/education/religion; rule of law; strive for equality of opportunity for everyone.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Countries have slightly weaker civil liberties compared to those with rating 1 because of; restrictions on media independence/trade union activities; discrimination against minorities.</td>
</tr>
<tr>
<td></td>
<td>3, 4, 5</td>
<td>Countries moderately protect almost all civil liberties or strongly protect some civil liberties while neglecting others. Restrictions on media independence/trade union activities and discrimination against minorities might also be present but to a larger extent than for countries with rating 2.</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>Countries have very restricted civil liberties; rights to expression/association is strongly limited; may allow a few civil liberties such as some religious and social freedoms, and some open discussion.</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>Countries have few or no civil liberties; allow almost no freedom of expression/association.</td>
</tr>
</tbody>
</table>

As will become clear, it is useful to keep the descriptions outlined in Table 5:1 in mind when reading the second part of the chapter. This is because they improve our understanding of what it means when cases move up or down the scale after the finalization of the constitution building process. With this said, we are now ready to move on to the empirical investigation.
5.2 Democracy levels prior to and after the constitution building process/enactment of the new constitution

In this part of the chapter we will focus our attention on general tendencies as regards democracy levels, in particular, comparing democracy ratings in a country before and after the completion of the constitution building process/enactment of the new constitution. In Table 5:2, for each of the forty-eight cases, we can see democracy ratings during the pre-constitution building phase, at the time of the first elections following the finalization of the process/enactment of the new constitution and at the time of the second elections. The years during which each constitution building process occurred is also reported in the table.

Based on the democracy scores in Table 5:2, some general observations can be made. To begin with, taking into account all of the cases and the three separate measurement points, four main tendencies are revealed. Specifically, we are able to observe:

- Cases that exhibit a continuous democratic downturn from the first point of measurement through the third point of measurement.
- Cases that exhibit a tendency that we may refer to as “the first election effect”. This means that democracy levels had improved at the time of the first elections following the finalization of the constitution building process/enactment of the new constitution, but then declined by the time of the second elections.
- Cases that exhibit a continuous improvement in democratic performance from the first point of measurement through the third point of measurement.
- Cases that exhibit no change in their democracy level on the three separate measurement points.
Table 5:2  Freedom Houses designated ratings for all cases (1-7). Year of measurement in brackets

<table>
<thead>
<tr>
<th>Cases</th>
<th>Year(s) constitution building process occurred</th>
<th>Democracy rating pre-constitution building phase (Year)</th>
<th>Democracy rating at the time of first elections (Year)</th>
<th>Democracy rating at the time of second elections (Year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eritrea&lt;sup&gt;58&lt;/sup&gt;</td>
<td>1994-1997</td>
<td>5.5 (1993)&lt;sup&gt;59&lt;/sup&gt;</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Niger</td>
<td>2010</td>
<td>3 (2005)</td>
<td>3.5 (2011)</td>
<td>-</td>
</tr>
</tbody>
</table>

(continues on next page)

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<sup>55</sup> For the twenty-eight cases of non-participation, the year of enactment is reported, because there was no process of public participation that preceded the coming into effect of the new document (Angola, Azerbaijan, Bosnia-Herzegovina, Burkina Faso, Cameroon, Cambodia, Comoros, Croatia, DRC, Georgia, Ghana, Guinea, Hungary, Laos, Lebanon, Macedonia, Moldova, Mozambique, Namibia, Niger, Panama, Paraguay, Romania, Serbia, Suriname, Togo, Trinidad & Tobago, Venezuela).

<sup>56</sup> Year of independence. There is no data in Freedom House’s “Freedom in the World” reports for Azerbaijan prior to 1991.

<sup>57</sup> Year of independence. There is no data for Croatia in Freedom House’s “Freedom in the World” reports prior to 1991.

<sup>58</sup> Elections have not been held in Eritrea since 1993, thus, we lack data on measurement points two and three.

<sup>59</sup> There is no data in Freedom House’s “Freedom in the World” reports for Eritrea prior to 1993.

<sup>60</sup> Uganda exhibits “the first election effect” as well as a democratic downturn (an even lower democracy level on the third measurement point compared to before the initiation of the constitution building process).
### “The first election effect”

|----------------|----------------|--------------------|--------------------|--------------------|

### Continuous democratic improvement

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Guinea</td>
<td>2010</td>
<td>5.5 (2005)</td>
<td>5 (2013)</td>
<td>-</td>
</tr>
</tbody>
</table>

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61 There is no data in Freedom House’s “Freedom in the World” reports for East Timor prior to 1999. The East Timorese voted for independence from Indonesia in 1999. In 2002, the country became the first new sovereign country of the 21st century.

62 Year of independence. There is no data in Freedom House’s “Freedom in the World” reports for Georgia prior to 1991.

63 Year of independence. There is no data in Freedom House’s “Freedom in the World” reports for Bosnia-Herzegovina prior to 1992.
<table>
<thead>
<tr>
<th>Country</th>
<th>Period</th>
<th>1990s</th>
<th>2000s</th>
<th>2010s</th>
</tr>
</thead>
</table>

### No change

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>2010</td>
<td>5.5 (2005)</td>
</tr>
<tr>
<td>Mozambique</td>
<td>2004</td>
<td>3.5 (1999)</td>
</tr>
</tbody>
</table>

#### 5.2.1 Continuous democratic downturn

In 10 out of 48 cases, democracy levels have continuously declined from the first point of measurement through the third point of measurement. This is a phenomenon that we find in cases in different geographical locations (three cases in Latin America, four in Africa, two in Europe and one case in the Middle East), and in cases in which the constitution building process/enactment of the new constitution took place during the 1990s as well as the 2000s. Democratic downturn is hence not a phenomenon that can be attributed to a specific continent or a specific decade. The cases that display a continuous democratic downturn are: Bolivia, Niger (albeit the third measurement point is recorded as missing data for these two cases, because second elections after the process have not yet been held), Azerbaijan, Angola, Mozambique, and Venezuela.

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64 In their annual ratings, Freedom House designated Kosovo as a “territory” during 1993-2008, which explains why there is data for Kosovo during this period even though the country did not gain independence from Serbia until 2008.

65 Year of independence. There is no data in Freedom House’s Freedom in the World” reports for Moldova prior to 1991.

66 The analysis in this chapter was conducted during 2013 and early 2014. General elections in Bolivia were scheduled for May 2014, Freedom House’s ratings for 2014 are available in 2015. General elections in Niger are scheduled for 2016, and Freedom House’s ratings for 2016 will be available in 2017.
Croatia, Colombia, Namibia, Lebanon, Trinidad & Tobago and Zimbabwe. As shown in the table, Uganda is also classified as a case in which democracy levels have declined, despite the fact that the country exhibits the “first election effect”. However, the democracy level in Uganda at the time of the second elections subsequent to the constitution building process had declined so much that the country’s score was even lower than its pre-constitution building score, which we can see in Table 5:2.

When discussing cases in which democratic performance has regressed, the circumstances in Eritrean must also be mentioned. The case of Eritrea is peculiar in the sense that no elections have been held there since 1993, as indicated in Table 5:2 (missing data for the second and third measurement points). Although the country carried out a constitution building process that was quite inclusive and characterized by broad-based public participation, the constitution that emerged from the process was never enacted, and to this day it remains on the shelf. Therefore, there is no data in the table for Eritrea other than the level of democracy prior to the commencement of the constitution building process. This score was 5.5 in 1993/1994. It can be mentioned, however, that during the first fourteen years of the 2000s, in every single year the country has been rated between 6.5 to 7 on Freedom House’s seven point scale, which indicates a regression as far as democratic performance is concerned (Freedom House, Freedom in the World Country Ratings 1972-2014). Among the other cases that exhibit a continuous democratic downturn, the Zimbabwean case is the most eye-catching example. In Zimbabwe, the democracy score in the period prior to the constitution building process was 5 on the seven point scale. This score regressed to 5.5 at the time of the first elections held after the process, and then declined further, falling to a level even lower than the one the country had before the process started – 6.5 on the seven point scale at the time of the second elections.

5.2.2 “First election effect”
In 11 of the 48 cases, democracy levels have improved at the time of the first elections following the finalization of the constitution building process/enactment of the new constitution, but then declined somewhat by the time of the second elections. This “first election effect” is an occurrence that we see in cases on different continents (four cases in Africa, three in Asia, one in Europe, one in the Middle East and two in Latin America), and in cases that conducted their constitution building processes/enacted their new constitutions in the 1980/1990s as well as the 2000s. Therefore, as with the cases in which democracy scores have continuously regressed since the finalization of the constitution building process/enactment of the new constitution, “the first election effect” is not reserved for cases in a specific region or during a specific period in time. The eleven cases that exhibit the
“first election effect” are: DRC, Uganda, Kenya, Ethiopia, Thailand, East Timor, Fiji, Afghanistan, Georgia, Paraguay and Brazil.

Though democratic performance has declined somewhat from the second to the third measurement point, it should be noted that, with the exception of Uganda, all of these eleven cases show improved democracy scores after the finalization of the process/enactment of the new constitution compared to their pre-constitution building democracy level. The case of East Timor can be used to exemplify this. In Table 5:2 we can see that although the country’s democracy rating at the time of the second elections following the constitution building process is a score of 3.5, which is a regression on democratic performance compared to the country’s rating of 3 at the time of the first elections following the process, it is still a better rating than the pre-constitution building democracy score of 5. In addition to East Timor, the Ethiopian, Paraguayan and Kenyan cases also stand out as countries in which democracy levels have improved substantially after the constitution building process/enactment of the new constitution, despite the fact that there has been a small “drop” in democratic performance between the second and third point of measurement.

It is not an entirely straightforward task to explain why the “first election effect” occurs, certainly not in the sense of finding an explanation that is valid for all of the cases. This task is also well beyond the scope of this thesis. Nonetheless, some observations and possible explanations can be briefly discussed. First, it can be assumed that in the aftermath of (at least) a participatory constitution building process, there is a great deal of optimism and confidence among power-holders to continue to live up to the same types of democratic standards that characterized the entire process. The intentions of such power-holders may very well be sincere in terms of aiming for a strengthening of democracy. However, even if intentions are genuine, insufficient resources for the full implementation of the new constitution might explain why there is democratic progress and then downturn. The participatory process in Brazil, for example, produced a constitution with a potpourri of conservative, progressive, liberal and moderate provisions, and these have proven to be difficult both to accommodate in a cohesive manner and to implement (Rosenn 2010).

Secondly, in cases where participatory constitution building processes have been highly publicized events, with extensive reporting by both domestic and foreign press, it is expected that the media will continue to cover events in the

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67 When exploring democracy rates in Fiji, the first constitution building process has been used as the point of departure, because this enables us to collect data for a second measurement point (at the time of the first elections following the process) as well as a third (at the time of second elections following the process). Since the second constitution building process in Fiji lasted from 2012-2013, there has only been one general election since then (in 2014).
country, at least during the immediate aftermath of the completion of the process, in order to see how things have developed. This type of attention can contribute to making power-holders steer the country on a democratic path as long as “international eyes” are on the country. Likewise, it is quite likely that not only attention in terms of media reporting, but also actual international presence in some of these countries has had an effect on democratic development. In countries where international actors had a prominent role during the constitution building process, there is undeniably a vested interest, and perhaps also a certain amount of prestige, among these actors to stay behind after the completion of the process to see how the situation develops. However, as indicated in Chapter 2, various types of international missions/actors have a specific amount of funding that is to be spent within a given period of time, which implies that international involvement and the attention that goes along with it comes with an expiry date. Peacebuilding endeavours in a specific country, among which constitution building is only one type, grab the attention of the international community for a brief period of time, and then attention shifts to another peacebuilding process in another part of the world. Focus remains there for some time, before moving on to the next place, and so on. The decline in international interest may, in turn, lead to democratic backsliding. When the international community is no longer watching – at least not to the same extent as before – power-holders may not feel the same incentives to strengthen democratic performance. The developments in the cases of Afghanistan and East Timor might, to some extent, be explained by this type of reasoning.

Furthermore, on a general level, we simply cannot expect that democratization will be a linear process, particularly not in post-conflict and transitioning countries. Temporary setbacks will likely be part of the process, and are probably more frequent than democratization processes that evolve without any serious impediments. These brief reflections offer possible explanations as to why we sometimes see that democratic levels improve at the time of the first elections after the completion of the constitution building process/enactment of the new constitution only to decline somewhat by the time of the second elections, but, of course, this is an issue that requires further inquiry.

5.2.3 Continuous democratic improvement
In 24 of the 48 cases we are able to see a continuous improvement in democracy levels from the first to the third measurement point. And just as with cases that display the “first election effect” and those in which democracy rates have continuously deteriorated, here too the cases are located in different geographical areas and the constitution building processes/enactment of the new constitution in these 24 cases have taken place during different decades. The cases in this category are: Albania, Bosnia-
Herzegovina, Burkina Faso, Cambodia, Cameroon, Comoros, Ghana, Guatemala, Guinea\footnote{There is missing data for Guinea’s third measurement point because the second elections after the enactment of the new constitution have not yet been held. Guinea’s next elections are scheduled for 2015. Freedom House’s rating for 2015 will be available in 2016.}, Hungary, Iraq, Kosovo\footnote{There is missing data for Kosovo’s third measurement point because the second elections after the finalization of the constitution building process have not yet been held. Kosovo’s next elections are scheduled for 2015, and Freedom House’s rating for 2015 will be available in 2016.}, Laos, Macedonia, Moldova, Nicaragua, Nigeria, Panama, Romania, Rwanda, Serbia, Suriname, Togo, and South Africa.

A couple of things stand out when one examines this group of cases. The first is that although there are only a few European cases among the group of forty-eight (a total of eleven cases), ten of them are found among the cases that exhibit a continuous improvement in democracy rates. Secondly, we can also see that, in most of these cases, the constitution building processes\footnote{Enactment of the new constitution in cases of non-participation.} were carried out during the late 1980s and 1990s; only five (Rwanda, Kosovo, Guinea, Serbia and Iraq) took place during the 2000s. As conveyed by Table 5:2, South Africa, Panama, Ghana, Romania and Hungary stand out as countries in which democratic improvement has been quite noticeable. But democracy rates have also improved substantially in Guatemala, Nigeria and Nicaragua. In South Africa, the level of democracy before the constitution building process was 5.5 on Freedom House’s seven point scale. By the time of the first elections after the process, democratic performance had improved to 1.5, and it was still at that level at the time of the second elections. Hungary scored 5.5 on the seven point scale five years prior to the enactment of the new constitution in 1994. The country experienced a democratic upturn and was scored as 2 by the time of the first elections after the enactment of the constitution and 1.5 at the time of the second. Panama scored 6.5 on the Freedom House scale five years before the enactment of its new constitution, which also occurred in 1994. By the time of the first elections under the new constitution, the country’s democracy rating had improved to 1.5, where it remained at the time of the second elections as well.

The reasons behind democratic improvement in these cases might well vary from case to case. However, considering that the twenty-four cases include both countries that had participatory constitution building processes as well as cases of non-participation (although this difference is not highlighted here), factors other than public participation in such processes must be at play. Though no definitive conclusions will be offered here as to what factor or factors offer the best explanation of democratic improvement in these countries, some observations seem worth exploring a little bit. To begin with, why is it that an overwhelming majority of the European countries can be found in this group of cases that displays continuous democratic improvement? We can speculate about whether this is explained, at least in
part, by the prospect of membership in the EU or the possibility of negotiating an association agreement with the EU. Given that the EU conditions membership on adherence to democratic principles (Treaty of Lisbon, Article 1 A), it is possible to imagine that this works as an incentive for potential member states to democratize. Secondly, most of the cases that display continuous democratic improvement conducted their constitution building processes/enacted their new constitution in the late 1980s and 1990s. This suggests that perhaps democracy has had a greater chance to take root in countries that completed the process/enacted the constitution before the start of the new millennium compared to cases in which the process/enactment occurred after 2000. It does appear that cases that display more substantial improvements (i.e. increases of 1.5 to 2 points in their democracy levels) are cases in which the process/enactment of the constitution was carried out in the late 1980s and the early to mid-1990s (Bosnia-Herzegovina, Cambodia, Guatemala, Hungary, Nicaragua, South Africa, Surinam, Panama, Ghana, Burkina Faso, Romania and Moldova), although Nigeria and Iraq do not fit this pattern. These two cases carried out their constitution building processes in 1999 and 2005, respectively; yet democracy levels have improved quite a bit, despite the fact that only 10-15 years have passed. This incongruity also indicates that many different factors are needed to explain why democracy levels have continuously improved in these cases, and this, in turn, makes it difficult to identify general patterns.

5.2.4 No change
Among all 48 cases, three exhibit neither democratic upturns nor downturns on the three measurement points examined here. These cases are Venezuela, Mozambique and Angola.

The foregoing analysis of the forty-eight cases was conducted without acknowledging that they are very different from each other on the independent variable. Thus, we have not distinguished the cases of non-participation from the twenty cases of participatory constitution building, nor have we distinguished the participatory cases from each other in terms of differences in the nature of participation. In the next section, we will focus attention on the former task – that is, distinguishing the participatory cases from the cases of non-participation.

5.3 Distinguishing participatory cases from cases of non-participation
Continuing the analysis, we will now compare the two sets of cases (non-participation and participatory cases) in order to identify similarities and differences and draw conclusions. In Table 5:3, the data from Table 5:2 is organized on the basis of the outcome on the dependent variable, which makes the differences easier to observe.
Some of the findings presented in Table 5:3 ought to be encouraging for the proponents of the participation-hypothesis. Considering that the seven participatory cases that display the “first election effect” nonetheless succeeded in improving their democracy scores after the process as compared to their pre-constitution building democracy level, means that the total number of participatory cases that were able to improve their democracy score is fifteen. Though this is a positive result, it must also be viewed in light of how democracy scores have developed in countries characterized by non-participation. Looking at these cases, it is worth noticing that more than half of the cases of non-participation were able to continuously improve their democracy scores. In addition to this, the three cases of non-participation that exhibit the “first election effect” (DRC, Paraguay and Georgia) also managed to improve their democracy levels compared to their pre-enactment scores, although there is a minor decline between the second and third measurement point. This means that, in total, 19 of 28 cases of non-participation show improvement in their democracy scores when ratings before the enactment of the new constitution are compared with ratings after enactment.
It is easier to compare the democracy levels between the two groups if the data is presented on an aggregate level. In Figure 5:1, the data in Table 5:2 is displayed in this way. The figure shows mean democracy levels on the three different measurement points for both the twenty cases of participatory constitution building processes and the twenty-eight cases of non-participation. The graph reveals that, on an aggregate level, both of these groups improved their democracy levels between the pre-constitution building phase and the first elections after the finalization of the process/enactment of the new constitution. The aggregate democracy score for the participatory group actually declines between the second and third measurement point (from a mean value of 3.7 to 4.1), while the aggregate score for the non-participation group improves somewhat (from 4.1 to 3.9).

Figure 5:1 Comparing mean democracy levels of participatory constitution building cases and cases of non-participation

This data has also been analysed using repeated measures ANOVA. The test shows that there is a statistically significant change within the groups over time, but no reliable difference between the groups. That is, there appears to be a change in democracy levels over time, but the change is independent of which group the cases belong to.71 The question is whether this matters for the legitimacy of the participation-hypothesis? It could perhaps be argued that since 15 of 20 participatory cases have shown increases in their individual democracy scores, we have a sufficiently strong indication that the

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71 A p-value of 0.43 confirms that we cannot dismiss the null-hypothesis that there is no difference in mean democracy levels between the two groups over time. The results of the repeated measures ANOVA test are found in Appendix 2.
participation-hypothesis is legitimate, and, therefore, it ought to be endorsed regardless of how democracy levels have fared in cases of non-participation.

At this point, however, we should recall that “participation” in constitution building processes actually differs considerably from one case to the other, and we should also bear in mind that the results presented above have been reached without separating the participatory cases into different types of participation. Therefore, in the next section of the chapter we will bring the different types of participation in constitution building processes – false, symbolic, limited, consultative and substantial participation – into the analysis. By making use of these participation-types, we will be able to determine whether or not cases that are characterized by greater levels of influence for participants have shown greater improvements in their democracy levels than cases characterized by less participant influence.

5.4 Introducing the different types of participation into the analysis

As we can recall from earlier chapters, public participation in constitution building processes takes many different forms. The extent of participation in terms of influence over decisions being made in regard to the constitutional document – both in terms of its content and in terms of its adoption – can also vary substantially. This study has identified four variables that can be used to determine the extent of public participation in such processes and, based on these variables, a typology of participation specific to constitution building processes has been developed. These participation-types range from very low to high levels of participation in terms of actual influence. In Chapter 4, the twenty cases of participatory constitution building processes were categorized as different types of participation. They are summarized in Table 5:4.

Table 5:4 Types of public participation in constitution building processes and cases

<table>
<thead>
<tr>
<th>False participation</th>
<th>Symbolic participation</th>
<th>Limited participation</th>
<th>Consultative participation</th>
<th>Substantial participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan, Iraq, Kosovo, Nigeria</td>
<td>Colombia, East Timor, Fiji</td>
<td>Bolivia, Ethiopia, Nicaragua, Rwanda, Thailand, Uganda</td>
<td>Brazil, Eritrea, South Africa</td>
<td>Albania, Guatemala, Kenya, Zimbabwe</td>
</tr>
</tbody>
</table>

Below, aggregate mean democracy levels for each of the five types of participation will be presented, as will the democracy scores of the individual cases. We will start with the participation-type on the far left of Table 5:4, i.e. “false participation”, and move to the right, discussing each type in turn. It seems useful to reiterate that the purpose of doing so is to scrutinize the participation-hypothesis, which means that we want to find out if cases
categorized in the participation-types on the left side of the table reveal no (or at least much smaller) improvements in their democracy levels as compared to cases found in the categories on the far right of the table. This is, at least, what the participation-hypothesis leads us to expect.

Figure 5:2 provides a good overview of how mean democracy ratings on an aggregate level have changed over time for each of the five types, and it will serve as our point of departure in presenting and discussing the results of the analysis.

**Figure 5:2** Mean democracy values for different types of public participation in constitution building processes

### 5.4.1 Comparing mean democracy levels: false participation

As shown in Table 5:4, Kosovo, Afghanistan, Iraq and Nigeria are categorized as cases of false participation. In all four of these cases, public participation in the constitution building process was nothing more than an empty ritual. Figure 5:2 shows the development of the mean democracy level for this group of cases using measurements at three points in time: in the period prior to the start of the constitution building process, at the time of the first elections after the finalization of the process, and at the time of the second elections after the process. The figures tell us that mean democracy scores on an aggregate level have improved for the cases in this group. While mean democracy on an aggregate level was 6.4 on Freedom House’s seven point scale before the initiation of the constitution building process, it took an upward turn by the time of first elections following the completion of the process. However, at the time of the second elections after the finalization of the process, aggregate mean democracy levels had again weakened somewhat, and were at 5 on the
seven point scale. The drop from 4.7 to 5 can be explained by one case – Afghanistan. Let us look at each of the cases individually.

Considering the four cases separately, Afghanistan is the only case within this participation-type where we see the “first election effect” – i.e. that democracy levels improved in time for the first elections, but this was followed by a decline in level of democracy by the time of the second elections after the process. In 1997, five years prior to the initiation of the constitution building process in Afghanistan, the country scored 7 on Freedom House’s index, i.e. the lowest possible score on the scale. By the time of the first elections after the process was finalized (2005), the country had improved its score to 5, but democracy then weakened, and the country had a score of 6 by 2010, at the time of the second elections after the process. This signifies a democratic downturn from the second to the third measurement point, although the country has not experienced a complete reversal to pre-constitution building democracy levels.

In Iraq and Nigeria, the same level of democracy has been maintained from the time of the first elections to the time of the second elections. Iraq improved its pre-constitution building democracy score, going from 7 to 5.5 at the time of the first elections in 2005, where it remained at the time of the next elections, in 2010. Nigeria’s pre-constitution building democracy score was 6.5. It had improved to 4 at the time of the first elections in 2003, and it remained at this level in 2007, when the second elections after the finalization of the process were held. Although we have only one measurement point for Kosovo, it too has improved its level of democracy. Five years before the process, Kosovo had a score of 5, and this had improved to 4.5 in 2010, when the first elections after the constitution building process were conducted. Hence, what we see here is that in cases of false participation – where public participation in the constitution building process did not lead to influence over the final document and where the process was designed more as an information campaign than as an avenue for active participation – individual democracy scores have improved, i.e. democracy levels after the process are higher compared to levels prior to the process.

5.4.2 Comparing mean democracy levels: symbolic participation

Turning our attention to the cases in the next participation-type, symbolic participation, we see in Figure 5:2 that mean democracy on an aggregate level reveals the “first election effect”. Again, it is necessary to look at the cases individually. Colombia is a quite interesting case, one that stands out from the

72 For information about specific ratings, see Table 5:2
73 Kosovo’s next elections (presidential) are scheduled for 2015, Freedom House’s rankings for 2015 will be available in 2016.
other two in this group. In this country we find a situation in which democracy levels deteriorated in the aftermath of the process compared to the country’s pre-constitution building democracy rate. In 1985, five years prior to the process, Colombia scored 2.5 on Freedom House’s seven point scale. By 1994, at the time of the first elections after the process, democracy had weakened to 3.5 on the scale. At the time of the second election, in 1998, the country was still rated at a level of 3.5. Fiji and East Timor exhibit the “first election effect”, with a democratic upturn observable at the time of the first elections after the process, but both then experienced a democratic downturn by the time of the second elections. However, here too, as with the case of Afghanistan, the democratic downturn has not implied a complete reversal of democratic progress; Fiji and East Timor have not fallen back to ratings lower than their pre-constitution building ones.

Hence, in this group, where we have cases of symbolic participation in the constitution building process – participation in which participants had almost no influence over decisions being made – the results as regards the strengthening of democracy are mixed. In one case, democracy has actually deteriorated after the process compared to the pre-constitution building democracy level, while in the other two cases the “first election effect” has occurred. Given that symbolic participation does not imply actual influence, the results of the Colombian case is perhaps unsurprising. It might be possible to argue that democracy levels have deteriorated because public participation did not develop into actual influence. Undeniably, however, it would be very difficult to prove this argument. It is perhaps more interesting to note that East Timor has succeeded in improving its level of democracy from 5 to 3.5 at the time of the second election, despite the fact that public participation was kept to a bare minimum. Because of this, it appears highly unlikely that the democratic upturn in East Timor can be attributed to the “participatory” constitution building process – participation was just too limited and the possibility for influence was just too circumscribed.

5.4.3 Comparing mean democracy levels: limited participation
The cases of Bolivia, Ethiopia, Rwanda, Thailand, Uganda and Nicaragua have been categorized as instances of limited participation. Looking at Figure 5:2, we see that, on an aggregate level, the “first election effect” reveals itself yet again. Mean democracy levels improved from 4.7 to 3.75 at the time of the first elections, and then weakened to 4.4 at the time of the second elections.

Here too it is worthwhile to look individually at each of the cases and their respective scores. As mentioned earlier, it should be noted that we do not have democracy data for Bolivia on the third measurement point, because the second elections after the process have not yet been held. However, it is interesting to note that in Bolivia, just as was the case in Colombia, democracy levels at the time of the first elections after the process had declined in
comparison to the pre-constitution building democracy level. In 2001, five years prior to the commencement of the process, Bolivia scored 2 on Freedom House’s index, but at the time of the first elections after the process in 2009, democracy had weakened and Bolivia’s score had declined to 3. As mentioned before, Ethiopia and Thailand demonstrate the “first election effect”, but still exhibit improvements in their democracy levels at the time of the second elections after the process compared to their pre-constitution building process levels. In Thailand, however, much has happened since 2005, when the second elections after the participatory constitution building process were held. We will return to this later. Uganda, also as mentioned previously, is the one case in this group in which the democratic downturn after the second elections was so steep, that democracy in the country declined to levels even lower than those that existed in the period before the constitution building process started.

The only two cases that have continuously improved their democracy scores after the process compared to democracy ratings prior to it are Rwanda and Nicaragua. Rwanda scored 6.5 on the seven point scale five years prior to the process, and its democracy score improved to 5.5 by the time of the first elections after the process, where it remained at the time of the second elections in 2010. Nicaragua was rated at a level of 5 on the Freedom House index five years prior to the process, but its democracy subsequently improved, and the country’s rating was 3 in 1990, when the first elections were held, and it had the same score in 1996, when the second elections were held.

Thus, among the cases of limited participation, we also find mixed results. If participatory constitution building processes are supposed to improve the level of democracy in a country, it is somewhat of a conundrum as to why Uganda displays a continuous democratic downturn. As we can see in Table 5:2, the Ugandan process, compared to almost all of the other twenty participatory constitution building processes, is a case in which substantial time was set aside for the carrying out of the process (1988-1995), and there was much consideration of the issue of how to prepare the people to participate. Why, then, has democratic performance in Uganda not only not improved, but actually deteriorated to levels even lower than before the constitution building process was embarked upon? If, as was described above, democracy levels improved in East Timor despite the fact that participants had almost no influence in the process, why has this not happened in Uganda, where public participation and influence was more extensive? Observations like these challenge the general validity of the participation-hypothesis and imply that the proposition needs to be informed by additional theoretical insights.
5.4.4 Comparing mean democracy levels: consultative participation

Let us continue the analysis with an examination of cases of consultative participation: Brazil, Eritrea and South Africa. Looking at these cases in Figure 5:2, an immediate impression is that if we compare their mean democracy levels in the pre-constitution building period with the two subsequent measurement points, they have improved considerably on an aggregate level. Yet again, however, some words of caution are warranted. When we look at the individual cases we discover that the results shown in the figure are caused by somewhat special circumstances. First of all, as mentioned before, Eritrea is something of a special case. It is true that the country organized and carried out a very participatory constitution building process, but the document that emerged from the process was never enacted. Nor has the country organized any elections since 1993, which means that there is no data for Eritrea other than the level of democracy before the constitution building process was initiated (5.5 on the seven point scale in 1993/1994). As mentioned earlier, democracy ratings in Eritrea have plummeted even further in the first fourteen years of the new century, which indicates a democratic downturn in the country after the finalization of the constitution building process. As far as Brazil is concerned, as in so many other cases, the “first election effect” can be observed here as well. In 1982, five years prior to the initiation of the process, Brazil scored 3.5 on Freedom House’s index. At the time of the first elections after the process, in 1990, the country had improved its level to 2.5, only to drop to 3 by 1994, when the second elections after the process were held.

The remarkable improvement in the mean level of democracy from the pre-constitution building phase to the first and second elections after the completion of the process that can be observed in Figure 5:2 is almost exclusively explained by the case of South Africa. In 1989, five years prior to the initiation of the constitution building process, while the country was still under apartheid rule, South Africa had a score of 5.5 on Freedom House’s index. Ten years later, in 1999, the first elections after the finalization of the process were held. At this point, democracy had been strengthened to 1.5 in the index. At the time of the second elections after the process, in 2004, South Africa remained at 1.5 in the index.74

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74 Data from Polity IV is slightly different from that provided by Freedom House when it comes to this group of cases. As we can see in Figure 5:2, mean democracy values on an aggregate level from the second to the third measurement point declined slightly (from 2 to 2.25), as measured by Freedom House. However, data from Polity IV shows no change between the second to the third measurement points. Democracy levels as measured with Polity IV data remain at a constant 8.5 from the second to the third measurement point. Appendix 3 contains a figure similar to 5:2, but with data from Polity IV. Looking at the individual countries’ ratings in the Polity IV dataset, we find that it is the Brazilian case that explains the different results in mean democracy level in the Freedom House data as compared to data from Polity. While Brazil goes from 2.5 to 3 (a weakening of its democracy score) between the second and the third measurement points on the Freedom House index – as we can see in Table 5:2 – the country remains at a constant 8 on both the second and third measurement points in
5.4.5 **Comparing mean democracy levels: substantial participation**

We have now reached cases of substantial participation; cases in which participation has been broad based, where individuals and organizations have been invited to participate through various innovative avenues, and where they have been allowed to exert influence, most significantly through a final referendum in which the fate of the constitution has been decided. In accordance with the expectations of the participation-hypothesis, we should expect that, if any group, the cases categorized as instances of substantial participation will show improved democracy levels when democracy scores before the completion of the constitution building process are compared with those after it. In this group we find the cases of Albania, Guatemala, Kenya and Zimbabwe. Observing Figure 5:2 we see that, as has been true of the previous four groups, on an aggregate level, the “first election effect” has occurred. A more nuanced picture emerges when we study each of the cases individually, however.

In Albania and Guatemala, democracy levels have improved in accordance with the proposed expectations of the hypothesis. Five years prior to the initiation of the constitution building process, in 1997, Albania scored 3.5 on Freedom House’s index. At the time of the first elections after the process, in 2005, the democracy rating remained the same (3.5), but it improved somewhat, to a score of 3, by the time of the second elections after the process in 2010. In Guatemala as well, a very low democracy score of 6 on the seven point scale five years prior to the commencement of the constitution building process improved to a score of 4 on the scale at the time of the first elections following the process, and then to 3.5 at the time of the second elections. It should be noted, however, that Guatemala is something of a special case among the bulk of the twenty participatory constitution building processes in the sense that the process was unusually long (12 years). This, in turn, implies that the time span between the first and second measurement point of democratic performance is also quite long compared to the other cases. The Guatemalan constitution building process, which was an integrated part of the broader peace process, took place between 1987 and 1999. This means that the first measurement point for democratic performance was set at 1982 (five years prior to the initiation of the process). The first elections after the finalization of the process were held in 2003. Hence, 21 years elapsed between the first and second measurement points for democratic performance; 21 years during which democratic performance has changed quite a lot. One need

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the dataset from the Polity IV project (Polity IV Annual Time-Series 1800-2012 dataset). For further reading on proposed explanations as to why and how rankings differ between the two empirical indices, see Hadenius & Teorell (2005). These authors discuss the fact that, on a general level, democratization that occurred around the globe during the end of the 1980s and beginning of the 1990s left a bigger imprint on Polity IV data than on Freedom House’s. They also argue that countries that are more democratic tend, in general, to rate higher in Polity than in Freedom House (Hadenius & Teorell 2005: 26-27).
only study Freedom House’s ratings for Guatemala from the 1980s and 1990s to see that democracy scores have fluctuated around 5 to 3 during these two decades (Freedom House, Freedom in the World Country Ratings 1972-2014). Hence, in the case of Guatemala, it is even more difficult than with the other cases in the study to attribute improvement in democratic performance by 2003 exclusively to the constitution building process.75

As mentioned earlier, Zimbabwe is an interesting case because, despite the substantial nature of public participation during the constitution building process, democracy levels after the finalization of the process have deteriorated to even lower levels than before the process was initiated. This development runs directly counter to the expectations of the participation-hypothesis. Since Zimbabwe initiated a second round of participatory constitution building, it is also relevant to know that the country’s score remained at 6.5 in 2006, 2007 and 2008, and then rose to 6 in 2009, where it has remained. Nonetheless, this is a lower level than the country’s pre-constitution building democracy rating. Kenya, on the other hand, showed marked improvement in democratic performance at the time of the first and second elections after the completion of the process compared to its pre-constitution building phase democracy rating. In 1996, five years prior to the start of the first process in Kenya, the country scored 6.5 on Freedom House's index. By 2007, when it was time for the first elections after the process, the country’s score on the scale was 3.5. And even though Kenya demonstrates the “first election effect”, because its democracy score decreased somewhat – to a score of 4 – by the time of the second elections in 2013, a complete regression to the pre-constitution building democracy level has not occurred.76

Although it appears that cases of substantial participation conform to the participation-hypothesis to a greater degree than cases of other types of participation, the Zimbabwean case disturbs this picture and indicates that if a country wants to secure high democratic performance, then there is more to the story than merely enabling public participation in constitution building processes.

5.5 What to make of it?
Before we attempt to understand the results of the above investigation, one issue to be discussed is the time horizon of the inquiry. It could be argued that

75 Another noteworthy aspect of the Guatemalan case is that the referendum through which the people of the country decided the fate of the constitution resulted in a defeat for the document. Hence, the country has democratized under the old constitution rather than under the “people-driven” document that emanated from the participatory process.
76 Here too, data from Polity IV is slightly different from that provided by Freedom House. In Figure 5:2, which uses data from Freedom House, there is a slight democratic downturn between the second and the third measurement points for the group as a whole (from 4 to 4.25). However, the corresponding figure based on data from Polity IV (see Appendix 3) shows a slight upturn instead - from 4.25 to 4.3. It should be noted, however, that data for Kenya on the third measurement point is missing in the Polity IV dataset.
it is simply too short. The foregoing discussion of the empirical results almost immediately begs the question, “how has democracy evolved/regressed after the third occasion of measurement, i.e. after the second elections following the process/enactment?” Have the cases of participatory constitution building processes where democracy ratings improved succeeded in maintaining, and perhaps even strengthening, democratic performance? And what about cases in which democracy levels deteriorated? What has happened in these places since the third occasion of measurement? The same queries can be raised in relation to the cases of non-participation. How have democracy levels developed in these cases after the second elections following the enactment of the new constitution?

These are all valid questions. The fact of the matter is that an examination of the individual democracy scores for each of the twenty participatory cases for each year from the time of the second elections to present day reveals that all cases except for three exhibit democracy scores that are almost completely constant, with just small fluctuations of 0.5 – 1 towards weaker or stronger democracy. Fiji, Thailand and Brazil are the three exceptions.

Fiji maintained its democracy score of 3.5 until 2006, when developments took a turn for the worse, and its democracy score fell to 5, where it has remained ever since. The democratic downturn in Fiji is a lingering effect of the military coup that took place there in 2000. Those who carried out the coup suspended and later abrogated the constitution (which was the result of the participatory process that took place between 1993 and 1997). It was subsequently restored by a court ruling, only to be suspended again in another coup in 2006 and abrogated by another court ruling in 2009 (Cottrell & Ghai 2010: 275). A new constitution building process with elements of public participation was begun in 2012 and resulted in the adoption of a new constitution in 2013, but the country has not yet been able to improve its democracy rating.

In Thailand, democratic progress took a downturn immediately after the second elections subsequent to the constitution building process. Having been assigned a score of 3 by Freedom House in 2005, the country dropped quite dramatically to a score of 5.5 the following year, and since then has fluctuated around 4.5 – 4. The downturn in 2006 is explained by a military coup that took place in September of that year, resulting in the abrogation of the constitution and the ousting of democratically elected Prime Minister Thaksin Shinawatra from office. Brazil, on the other hand, has seen its democracy strengthened since the time of the second elections after the constitution building process in 1994; the country was given a score of 2 in 2002, and it has maintained it ever since (Freedom House, Freedom in the World Country Ratings 1972-2014).

A similar examination of the individual democracy scores of the cases of non-participation also reveals either no change from the time of the second
elections after the enactment of the new constitution to the present day, or quite small fluctuations of $0.5 - 1$ towards weaker or stronger democracy. However, Croatia is a clear exception to this pattern. Croatia maintained its democracy score of 4 on the seven point scale until the turn of the century, after which the country improved its rating to 2.5 in 2000, 2 the following year and 1.5 in 2009, where it has remained ever since.\footnote{This also means that with a perspective that stretches beyond the second elections after the constitution building process/enactment of the new constitution, all European cases have improved their individual democracy ratings. Here it can also be mentioned that Croatia became a member of the EU in 2013.}

Having settled that, as yet, there have been no dramatic changes either in terms of democratic upturns or downturns in the forty-eight cases since the third occasion of measurement (except for the four cases just discussed), we should now move on to providing an answer to the second research question, which was the purpose of this chapter. Does participation in constitution building processes lead to higher levels of democracy? Based on the empirical investigation presented here, the answer is, “not necessarily”. What the preceding inquiry has shown is that how “participation” in the context of building a constitution is defined determines whether or not we perceive the participation-hypothesis to be valid. When all cases of participatory constitution building processes were treated equally, and their individual democracy scores were not viewed in light of the democracy levels of the cases of non-participation, it did indeed appear as if the participation-hypothesis had empirical support. In 15 of 20 cases we observed improvements in countries’ democracy ratings after the finalization of the process. Even though some of these cases saw their democracy scores decline somewhat during the period between the first and second elections following the process, they have still been able to maintain a democracy score which is higher than their pre-constitution building democracy level. Extending the time horizon of the study beyond the second elections after the process and including Fiji and Thailand as cases in which democratic performance has deteriorated, we find 13 cases that conform to the participation-hypothesis, and 7 cases that do not. Still, these are encouraging results for advocates of the hypothesis. However, the fact that more than half of the cases of non-participation also displayed improved democracy ratings after the second elections following the enactment of the new constitution reveals that, when it comes to strengthening democracy, there is more to the story than public participation in constitution building. When we introduced the different types of participation in constitution building into the analysis, this hunch was further substantiated.

To be sure, the proposition concerning participatory constitution building processes as democracy enhancing endeavours has been further challenged by the results presented in the second part of the chapter. How is it that all cases of false participation have seen increases in their democracy levels, while at
the same time, some cases of limited participation (e.g. Uganda and now Thailand as well), consultative participation (Eritrea) and substantial participation (Zimbabwe) have not only not been able to do so, but have instead seen their democracy scores decrease after the finalization of the process? How are we to interpret these results? Undeniably, to attribute democratic progress in Nigeria, Afghanistan, Iraq, Kosovo and also East Timor to the “participatory” constitution building processes in these cases seems quite suspect in light of the fact that participation implied minimal or no influence for the public.

One conclusion that can be drawn on the basis of the analysis presented above is simply that, evidently, public participation in constitution building does not need to include any influence over decisions for it to have a positive impact on advancing the country’s democratization. Even if participation is used as an empty catch phrase, democratic performance is strengthened. At the same time, we also see a strengthening of democracy in cases that have involved a lot of influence, and based on the results, we cannot say that democratic upturns have been more dramatic in these cases compared to cases that involved no actual participation (except for the case of South Africa). As far as democratization is concerned, the pieces of the puzzle simply do not add up – the results are inconclusive and beg further inquiry.

Two conclusions indicate that other factors are relevant to consider if the objective is to improve democratic performance. The first is that participation, with or without influence, renders the same result: democratic improvement. The second is that public participation in constitution building, even when exercised in the same manner in different cases, can be followed by diametrically different developments: democratic improvement as well as democratic decline. For example, as regards the extent of influence for participants, the cases of Eritrea and South Africa were quite similar to each other. Despite this, however, the outcomes as regards democratic developments in the two countries have been very different. Whereas democracy rates in South Africa climbed sharply following the country’s constitution building process, democracy rates have plummeted in Eritrea. Likewise, the cases of Zimbabwe and Kenya illustrate this observation as well. We can see this in Figure 5:3 below. Following the constitution building processes in the two countries, democracy ratings improved in Kenya, while they have steadily declined in Zimbabwe. What makes the different trajectories of democracy in these two particular cases even more interesting is that they both represent cases of substantial participation, i.e. the participation-type in which participants have the greatest degree of influence.

In Chapter 6, considerable attention will be devoted to the two cases of Zimbabwe and Kenya, because they are good examples of participatory constitution building processes that involved considerable influence for participants. They were very similar in terms of the extent to which people
were invited to participate in the process and in the methods through which participation took place. Furthermore, both countries carried out these processes not only once, but twice during roughly the same time period. And again, despite their similarities as far as constitution building is concerned, their democratization trajectories are very different.

Figure 5:3  Democracy ratings in Zimbabwe and Kenya 1994-2013

As shown in Figure 5:3, Kenya has achieved quite remarkable progress as far as democratic performance is concerned. In the figure we see that the country’s starting point five years prior to the commencement of the first round of constitution building (1995) was very low – 6.5 on the seven point scale. In fact, Kenya’s first measurement point indicates a considerably lower democracy score than Zimbabwe’s. Five years before the initiation of the first constitution building process in Zimbabwe (1994), the country scored 5 on the seven point scale, which indicates that the country was more democratic before the initiation of its process than Kenya was before it initiated its own. Moreover, it is quite fascinating to see that the democratic downturn in Zimbabwe correlates with the first round of constitution building in 1999-
As will become clear in Chapters 8 and 9, it was in the aftermath of the constitutional referendum in 2000 that things took a turn for the worse in Zimbabwe, including, among other things, large scale government sponsored violent action directed towards members of civil society organizations that initiated the process and members/supporters of the opposition, the Movement for Democratic Change (MDC). As the figure also tells us, there is a slight democratic upturn in Zimbabwe during the years of the second constitution building process (2008-2013), yet democracy scores are still lower than they were in 1994, before the first round of constitutional reform had even begun. In Kenya, on the other hand, there is a democratic upturn that correlates with the years of the first constitution building process (2000-2005). Democratic performance since then has fluctuated around 3.5 to 4 on the seven point scale. Although we are able to see a democratic downturn at the time of the second phase of constitutional reform in 2009-2010, the country’s democracy ratings are considerably better during this period than they were before the start of the first round of constitution building. At least here, as opposed to the situation in Zimbabwe, there is not a regression to the pre-constitution building score or even lower.

*This chapter marks the end of the first part of the thesis. The second part begins with an analysis of the constitution building processes in Zimbabwe and Kenya, the purpose of which is to offer a comprehensive description of how similar these processes actually were. This is important because it is this particular similarity that motivates the selection of these two cases for further analysis and comparison in the remaining part of the study. In the forthcoming part of the thesis, we set out to explore factors beyond participation in constitution building processes that can explain different trajectories of democracy even when the extent of public participation has been nearly the same. In order to do so, we must first acknowledge, both theoretically and empirically, that the drivers of democratization are numerous. In Chapter 7, we identify the main theoretical explanations as to why countries democratize and also briefly mention some empirical evidence in support of different theories. Following that, Zimbabwe and Kenya are compared to each other on a considerable number of variables drawn from the democratization literature. As we become more aware of the determinants of democratization in these two countries, we also become even more aware of the limitations of the participation-hypothesis and how important it is that it be informed by insights drawn from the democratization literature.

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78 Ratings from Freedom House are always based on the political rights and civil liberties situation in the previous year; which means that ratings from, for example, 2013 reflect the situation in the country during 2012.
PART TWO
Chapter 6
Comparing the participatory constitution building processes of Kenya and Zimbabwe

The purpose of this chapter is to analyze the constitution building processes that have been carried out in Kenya and Zimbabwe in order to illustrate that they were indeed similar to each other. In order to do this, detailed accounts of the first and second constitution building processes in both countries are presented. This is done using the now familiar analytical framework developed in Chapter 2. The chapter starts with a historical overview of constitution making in Zimbabwe, after which the country’s 1999-2000 constitution building process is analyzed. This is followed by an analysis of Zimbabwe’s 2008-2013 constitution building process. After that, we turn our attention to the Kenyan case, starting with a historical overview of constitution making there, before directing our attention first to the 2001-2005 constitution building process and then to the process of 2009-2010.


The two Zimbabwean constitution building processes have been quite similar in set-up. Even though the specific modalities of the individual processes of 1999-2000 and 2008-2013 were somewhat different, the extent of public participation in both of them was comprehensive. After a brief historical overview of constitution making in Zimbabwe, we will look at each process in turn.

6.1.1 Historical overview of constitution making in Zimbabwe

Zimbabwe’s history as a former British colony has had substantial effects on constitutional developments in the country. The British South Africa Company (BSA) and, later on, the British Crown, controlled or significantly influenced all constitutional changes from the late 1880’s until Zimbabwe became independent in 1980 (Ndulo 2010: 177-178). Even though the self-governing colony of Southern Rhodesia\textsuperscript{79} had a number of domestic constitutions before it gained official independence, all of these documents were drafted by the white minority political elite and in some way or other ensured the retention of provisions that served to enhance the white population’s predominance at the expense of the indigenous populations (Ndulo 2010: 178-179).

\textsuperscript{79} The colonial name of Zimbabwe
As expected, the black Zimbabwean community resisted the British occupiers from the very first day they set foot in the country. Still, it was not until the 1940s that various local groups and nation-wide political parties were formed in order to challenge the colonizing power in a more organized manner. Among others, the **African Workers Voice Association**, the **African National Congress**, the **National Democratic Party**, the **Zimbabwe African Peoples Union (ZAPU)** and, nearly two decades later (in 1963), the **Zimbabwean African National Union (ZANU)** were formed. Both ZAPU and ZANU, through their respective armed wings, **Zimbabwe People’s Revolution Army (ZIPRA)** and **Zimbabwe African National Liberation Army (ZANLA)**, initiated an armed struggle against the British in 1964, yet independence was not won until 1980. As military attacks intensified over the years of the liberation struggle, so did international pressure to end the violence. As a result, a meeting was held in 1979 at Lancaster House in London, with participation by members from ZANU, ZAPU, the Rhodesian government headed by Ian Smith at the time and the British government. During this session, an independence constitution for Zimbabwe was agreed upon. In reality, however, the content of the constitution had already been settled by the British, leaving the Zimbabwean parties as silent bystanders with the main role of sanctioning the document (Dzinesa 2012: 2). Undeniably, this course of action also meant that the constitutional order that would guide the political life of Zimbabwe was established without any participation by the Zimbabwean people (Ndulo 2010: 180, Panfil 2012: 25).

Once the Lancaster House Constitution had been enacted, general elections were held. The vote produced a considerable victory for ZANU, securing the party a majority of seats in the newly formed parliament. Under the pretext of reforming the constitution to make it more democratic and more relevant to the specific needs of Zimbabwe, the government enacted a great number of amendments to the Lancaster constitution. To be exact, between 1980 and 2009, 19 amendments were made to the document, most of which served to concentrate more power in the hands of the executive (Panfil 2012: 25, Dzinesa 2012: 2). To be sure, when studying the Lancaster House Constitution today – or even as early as the 1990s – it is clear that so many revisions have been made to the document that it bears little resemblance to the negotiated settlement agreed upon three decades ago (Ndulo 2010: 183).

The original Lancaster Constitution called for a president with ceremonial duties, a prime minister with executive powers and a cabinet to assist him/her, a bi-cameral legislature with members of parliament directly elected by the people and a Senate with indirectly elected members. The elections to parliament were structured in a way designed to ensure the inclusion of the white minority population. Subsequent amendments have changed many of these features. In 1987 the office of the prime minister was abolished and the executive presidency was created in its place. Also in 1987, the seats in
parliament reserved for the white minority population were abolished, and the role of the Judicial Services Commissions was altered to ensure presidential control over the judicial branch. That same year, the Senate was abolished, only to resurface in an amendment in 2005. Provisions were also adopted to reduce the independence of the public sector. One of the most controversial amendments was introduced in 2005, the one that decreed that farmland could be legally nationalized and that original owners could not challenge the confiscation in court (Ndulo 2010). It is also important to know that the 1987 amendment concerning the abolition of the post of prime minister and the creation of the executive presidency was preceded by a forced merger of ZAPU into ZANU, creating ZANU-PF. The merger made Zimbabwe a de facto one-party state (Ndulo 2010: 180). It would not be until the turn of the millennium that another opposition political party would emerge in Zimbabwe – the MDC.

6.1.2 The 1999-2000 constitution building process
Constitutional reform with broad-based public participation has occurred in two different phases in Zimbabwe. The first one took place during 1999-2000 and resulted in a defeat for the constitutional document, because it was voted down by Zimbabweans in February 2000. Table 6:1 summarizes the 1999-2000 constitution building process in terms of A) the initiators of the process, B) how forms of communication with the public were organized, C) degree of inclusion and D) final authority. These four factors will now be elaborated in greater depth.

Table 6:1 The Zimbabwean constitution building process (1999-2000)

<table>
<thead>
<tr>
<th>Variables</th>
<th>Initiators of the process</th>
<th>Forms of communication</th>
<th>Degree of inclusion</th>
<th>Final authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil society organizations</td>
<td>Two-way model of communication with integrated proactive measures</td>
<td>Some groups/political parties voluntarily boycotted the process</td>
<td>Directly vested in the hands of the people through a referendum</td>
<td></td>
</tr>
</tbody>
</table>

6.1.2.1 Initiators of the process
The first round of constitutional reform in Zimbabwe was initiated through the formation of the National Constitutional Assembly (NCA) in 1997. The NCA; consisting of over 100 non-governmental organizations, civil society organizations, student and youth groups, labor organizations, business groups, human rights organizations, churches and individual citizens; was the largest and most heterogeneous coalition in Zimbabwe. Despite the disparate membership base of the association, the various organizations that formed the NCA all shared one common aim: to reform the Zimbabwean constitution (Dorman 2003: 848). By this time, towards the end of the 1990s, the social,
political and – perhaps most of all – economic situation in Zimbabwe was disastrous. The health and educational systems had both broken down; serious evidence concerning systematic corruption among top government officials had been revealed, and severe economic hardship was widespread throughout the population at large. In the opinion of the NCA, the almost limitless power of the executive was the root cause of the alarming situation, and, therefore, the organization argued, constitutional reform was the only viable way to halt the spiraling negative trend. Moreover, the coalition firmly held the view that this time around constitution making would have to be a *peopled-driven* affair, as opposed to the process that led to the adoption of the Lancaster House constitution in 1979 and the subsequent series of constitutional amendments, which had also been adopted without engaging the Zimbabwean population in prior discussions (Dorman 2003, Ndulo 2010).

The NCA also clearly made its objectives known in its statutes. One of these was:

“To strive for the initiation of a Constitutional making process in Zimbabwe, including: engaging in the process or processes of enlightening the general public on the deficiencies and weaknesses of the current constitution of Zimbabwe and advocating for a new Constitution for Zimbabwe; (b) participating in any fora organized to discuss the current Constitution of Zimbabwe and issues to be covered in the new Constitution of Zimbabwe; and (c) preparing a draft or drafts of a new Constitutional order for Zimbabwe”.

(Lumina 2009: 12)

The ways in which the NCA proceeded to achieve its aim is discussed below.

As expected, Zimbabwe’s President Robert Mugabe could not sit idly by and observe the launching of a constitutional reform program that would, with all certainty, limit and fundamentally change the governing structure of Zimbabwe. Thus, using his presidential powers under the Commissions of Inquiry Act and “apparently with the intention of maintaining control over both the review process and the contents of the new constitution” (Hatchard 2001: 210), Mugabe established the government-led *Constitutional Commission*. It is important to note that the establishment of this organ involved two things: 1) considerable government control, insofar as the president was allowed to determine the size and composition of the Constitutional Commission, and 2) the task of the Commission was to write *recommendations* for the new constitution, which the president was not legally obliged to obey (Ndulo 2010: 186, Hatchard 2001: 210). This made it possible for Mugabe to ensure that the majority of the Commission’s 500 members would be ZANU-PF supporters (Hatchard 2001, Ndulo 2010, Panfil 2012). Thus, with the launching of the Constitutional Commission, two parallel constitution building processes were under way in Zimbabwe – the NCA-led initiative and the government-led initiative, under which the Constitutional Commission carried out its activities.
6.1.2.2 Forms of communication

Even though two parallel constitution building processes might have led to some confusion and hesitance for Zimbabweans regarding which of the processes to participate in, the coexistence of the two created a knowledgeable Zimbabwean citizenry that was quite vigorously involved in discussing constitutional matters (Austin 2009: 78). The forms of communication between the initiators of the process and the general public were fairly well thought through, with the objective of actually involving the people. Zimbabwe was a case in which a two-way model of communication with integrated proactive measures was implemented. Actually, this form of communication strategy was used for both the NCA-led process and the government-led initiative, although the NCA-led process was somewhat more structured with regard to the proactive measures aimed at trying to equip people with the necessary skills to be able to participate effectively.

In order to achieve its goal of a people-driven constitution building process, the NCA undertook a number of different activities. The organization developed materials and instructed facilitators to carry out constitutional education programs on a countrywide scale. This initiative shows that the NCA believed that people had to grasp the ideas of constitutionalism before they could be expected to participate in the process in any meaningful way. Pamphlets and booklets were produced and cartoons were employed – all of which were designed to be used by the facilitators during workshops with Zimbabweans all over the country. These materials addressed issues such as the principles of democracy, the declaration of rights, the roles of the judicial, legislative and executive branches of government, etc. and were written in a manner that communicated a serious topic with humor and an educational message. With financial support from a number of European countries and organizations, Australia and Canada, the NCA instructed a total of 600 facilitators who were dispatched to all eleven provinces of the country, where they held district-level meetings based on a booklet series called “Debating the Constitution”, which also explained how they were to collect feedback from the people (Dorman 2003: 849).

The Constitutional Commission was also concerned with creating favorable conditions to ensure a participatory process (Hatchard 2001: 211, Dorman 2003: 850). To this end, an outreach program was developed which involved all 500 of the commissioners touring the country in order to solicit the people’s opinions concerning the new constitution. According to official figures, the Commission’s public meetings were well-attended. In the six months that it had to complete its work, the Commission held 4,321 meetings across the country, with a total attendance of 556,276 people (Panfil 2012: 26, Hatchard 2001: 211).

As regards educating Zimbabweans about constitutional matters or even the fundamentals of constitutionalism, the Constitutional Commission did
not have a strategy as elaborate as the one the NCA undertook before collecting the opinions of the people. To prepare the people for participation, the government-led Constitutional Commission developed a “List of Constitutional Issues and Questions” containing some guidance as to the most pressing constitutional matters that needed to be discussed. The list was distributed through various media outlets in English, Ndebele and Shona, and the government thought this was sufficient to prepare the public and motivate discussion and debate about the new constitution (Dorman 2003: 850, Hatchard 2001: 211). According to Hatchard (2001: 211), in principle the list was a good effort and likely to be useful in the sense that, by reading it, people at least became somewhat more aware of the types of issues to be discussed. At the same time, the list was quite substantial, containing over 400 questions, many of which were formulated in a way more suitable for a constitutional law examination than to stimulate public debate. An additional problem was that the Commission did not have a comprehensive strategy as to how to review and then collate and condense the input of the people into an actual draft constitution. Since the procedures that would guide this transformation were either not considered or deliberately not shared with the public, the drafting exercise would have to involve a great deal of interpretation, which is exactly what happened (Hatchard 2001: 211). We will return to this issue shortly.

Based on this review of the forms of communication, it can be concluded that the NCA probably had a more appropriate strategy for communicating the message of constitution building to Zimbabweans than the Constitutional Commission did. Nevertheless, as said earlier, the combination of two parallel processes and two parallel communication strategies did provide the public with sufficient information and knowledge about constitutional matters to enable them to participate in a meaningful way.

6.1.2.3 Degree of inclusion

Looking at Table 6:1 The Zimbabwean constitution building process (1999-2000) we see that as regards the question of whether or not everyone was allowed to participate in the constitution building process in Zimbabwe, the process – or processes, since there were two – were open to everyone. However, the table also tells us that some parties voluntarily decided not to participate. In this case, early on, when the government chose to respond to the NCA process by launching a process of its own, the NCA decided to boycott the ZANU-PF initiative and continue to pursue and engage the public in its own process. The reasons for the NCA boycott were manifold. First of all, the NCA objected to the fact that the constitutional draft was to be written by an appointed Constitutional Commission rather than by a popularly elected constitutional assembly. Not all stakeholders had agreed that a constitutional commission was the most appropriate modus operandi for creating the constitution; rather, this had been singlehandedly decided by President
Mugabe. Secondly, the NCA firmly held that it simply was not possible to reach national consensus on the overarching values and more detailed sections, paragraphs and articles of the constitution when, to their way of thinking, the process was so obviously biased. Thirdly, and quite importantly, the fact that the Constitutional Commission had been construed under the Constitutional Inquiry Act meant that the process and the results that emerged from it rested in the hands of the president, who could act as he wished – either accept the proposed draft or simply reject it. Instead, the NCA argued that legally binding agreements should form part of the constitution making process, legal agreements that would serve to ensure that the final document would be constructed on the basis of the input of the people as it had been conveyed to the commissioners during the public meetings and hearings. Fourth, the NCA contended that a mere six months to initiate and finalize the entire process was too little time to carry out the exercise in as a comprehensive manner as needed. Finally the coalition also objected to the fact that the Constitutional Commission was heavily overpopulated by men. Of the 500 commissioners, only 13 were women (Ndulo 2010: 186, Hatchard 2001: 210-211). Thus, based on these arguments, the NCA decided not to lend its legitimacy to the government-led process, boycotted the Constitutional Commission’s work and carried on with its own constitution building process. It also declared that its members could not, at the same time, be commissioners in the Constitutional Commission (Dorman 2003: 851).

6.1.2.4 Final authority

The ultimate fate of the constitution rested in the hands of the Zimbabwean people, who would decide it in a referendum. In the steps leading up to the plebiscite, the Constitutional Commission finished its draft constitution which, in the words of Hatchard (2001: 213), “was in many respects a progressive and impressive document and might have formed the basis for a new constitutional order”. The proposed constitution included a more comprehensive Bill of Rights section than the Lancaster House Constitution; it imposed term-limits on the presidency and also introduced limits on the number of government ministers. However, Mugabe was not satisfied with these suggestions and made use of the powers given to him under the Commission of Inquiry Act. In the Government Gazette, a list of “Corrections and Clarifications” was published which altered the content of the document considerably. Among other things, same-sex marriages were forbidden, compulsory military service was introduced and land expropriation without compensation was enshrined in the president-altered version of the document. After these changes, the NCA and the government initiated their respective “no” and “yes” election campaigns.

In the referendum, which had been scheduled for February 2000, Zimbabweans were asked whether they wanted to replace the 1979
Constitution with the “New Democratic Constitution” (Hatchard 2001: 214). When the vote was tallied, there was no doubt as to the will of the people: the constitution was rejected by 54% of those who voted. The NCA’s no-campaign had been successful. The ZANU-PF government was shocked by the outcome. Evidently, Mugabe had been confident enough that a “yes” majority for the constitution could be secured that he had agreed to a referendum in the first place, but when the result was a victory for the NCA-campaign, he responded with fury. The defeat unleashed a reign of terror on the members of the NCA, the newly formed MDC and its supporters and on the white minority population who were blamed for conspiring against the government (Ndulo 2010, Dorman 2003, Hatchard 2001). (The terror tactics that were employed in the aftermath of the referendum are more thoroughly described in Chapter 9 of this study.) The constitution building process that had been initiated by the NCA, matched by the government and designed in such a way as to include the people never led to the enactment of a new constitution as the final step of the process. Consequently, the heavily amended Lancaster House Constitution remained in place, and it would take another eight years before constitutional reform was initiated in Zimbabwe again.

6.1.3 The 2008-2013 constitution building process
An already volatile political situation was made even worse by state-sponsored violence in the aftermath of the 2000 constitutional referendum and the subsequent general elections that same year, and similar violence after the 2002 presidential elections, the 2005 general elections and the 2008 presidential, parliamentary and local council elections. It was against this backdrop of political mayhem that the second episode of constitutional reform in Zimbabwe was launched in 2008. At this point, the Southern African Development Community (SADC) had been able to negotiate an agreement between ZANU-PF and the political opposition, consisting of MDC-T and MDC-M$^80$. The Global Political Agreement (GPA) envisioned an inclusive transitional government that would make room for representatives from both MDC formations and ZANU-PF (GPA, Article 20). The agreement also included a section entirely dedicated to constitutional reform and the drafting of a new document in a process that was to be people-driven (GPA, Article 6).

Table 6:2 summarizes the 2008-2013 constitution building process in terms of A) who the initiators of the process were, B) how the forms of communication with the public were organized, C) degree of inclusion and D) final authority. In what follows, these four factors will be thoroughly elaborated, as was done for the 1999-2000 process.

$^80$ In late 2005, the Movement for Democratic Change broke down into two separate factions: MDC-M and MDC-T. The circumstances that surrounded this event are further elaborated in Chapter 9.
Table 6:2  The Zimbabwean constitution building process (2008-2013)

<table>
<thead>
<tr>
<th>Variables</th>
<th>Initiators of the process</th>
<th>Forms of communication</th>
<th>Degree of inclusion</th>
<th>Final authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>National elites (ZANU PF and the two MDC formations)</td>
<td>Two-way model of communication with integrated proactive measures</td>
<td>Some groups/political parties voluntarily boycotted the process</td>
<td>Directly vested in the hands of the people through a referendum</td>
</tr>
</tbody>
</table>

6.1.3.1 Initiators of the process

With the signing of the GPA in 2008, the second round of participatory constitution building in Zimbabwe was initiated. This time, in contrast to the 1999-2000 process, constitutional reform was initiated by national elites at the same moment the GPA was signed. However, it should be kept in mind that the agreement was an externally brokered pact rather than a domestic initiative, which could perhaps also lead to the conclusion that the 2008-2013 process was not internally initiated, at least not entirely. Nevertheless, article 6 of the GPA compelled the signatories to ensure an inclusive and democratic constitution building process. It also obliged the parties to establish a Select Committee of Parliament consisting of members from ZANU-PF and the two MDC formations. The duties of this committee, which came to be called the Select Committee of Parliament on the New Constitution (COPAC), were, among other things, to hold public hearings and other forms of consultations that it considered necessary in order to compile data for the purpose of drafting a new constitution, to convene an “All Stakeholders Conference” to consult stakeholders, to draft a new constitution, to present the new constitution at a “Second All Stakeholders Conference”, and to ultimately submit the draft to a referendum (GPA, Article 6)\(^\text{81}\).

Just as in 1999, the second constitution building effort in Zimbabwe was not harmonized into one single process. Yet again the NCA opposed the government-led initiative, even though the 2008-process was led by an inclusive government composed of both MDC formations and ZANU-PF, in contrast to the 1999-process in which only ZANU-PF called the shots. The NCA raised concern with the fact that the COPAC process gave too much influence to political actors, not leaving any formal role for civil society organizations (Panfil 2012: 27, Zimbabwe Independent 2013). On the basis of this concern, the NCA launched its own constitution building process called “Take Charge” in July 2009. With the commencement of its own process, the

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\(^\text{81}\) COPAC consisted of 17 men and 18 women, of which 11 were members of MDC-T; 10 were members of ZANU-PF; 3 were members of MDC-M and one representative represented the traditional chiefs (Dzinesa 2012: 5).
NCA opted to boycott the COPAC-led initiative, just as it had boycotted the Constitutional Commissions work in 1999.

In addition to these two parallel processes, the *Law Society of Zimbabwe* (LSZ) launched a third one. The LSZ-led initiative, however, was mainly focused specifically on the *making* of the constitutional draft, not on undertaking activities for the purpose of equipping ordinary citizens to participate in the process. The LSZ firmly held that their duty was to represent the views of the legal profession, as stipulated under their own statute, and that since it was a non-political body, the organization would be able to draft a constitution without being accused of representing either one of the three political parties in the government (The Law Society of Zimbabwe, draft constitution, 2009). In pursuing its aim, during the course of a year the LSZ gathered expertise by consulting its members throughout the country as well as discussing pressing issues with domestic and international constitutional experts. It then proceeded to draft a constitution that was circulated among its members for further debate, after which it was sent to COPAC (Panfil 2012: 27). In summary, the 2008-2013 constitution building process was initiated by national elites, ZANU-PF and the two MDC formations, upon the signing the GPA. Parallel to this constitution building process, two other processes were initiated as well: the NCA-led “Take Charge” process and the LSZ-led process.

6.1.3.2 Forms of communication
Since Article 6 of the GPA established that constitutional reform was to be a democratic exercise driven by the Zimbabwean people, COPAC needed to make use of communication strategies that not only made it possible for them to inform the public about the process, but also enabled the people to be active participants in the process. In the summer of 2009, after lengthy negotiations, an outreach agenda was agreed upon by the members of COPAC and other stakeholders, and 1400 people were subsequently trained to facilitate participatory sessions throughout the country. The three parties provided 30 % of the facilitators, while the remaining 70 % were recruited from civil society organizations (Vollan 2013). Measures were also taken to include children in the process, in an effort to better understand what kinds of children’s rights were missing from the Lancaster House Constitution, so that these shortcomings could be addressed in the new document. By playing various kinds of games with children and having them relate to different types of problematic situations, it was also possible to ask them what kinds of solutions they would propose. The views expressed by children in numerous workshops were then compiled and published on the COPAC website (Children’s Submissions Report, COPAC).

COPAC also paid special attention to people with disabilities for the purpose of providing avenues for such individuals to participate in the
process. Special outreach programs for this group were developed by the United Nations Development Program (UNDP), the National Council of the Disabled Persons of Zimbabwe and COPAC, and made possible through UNDP funding (COPAC brochure, 20 June 2012). The Zimbabwean diaspora community was also invited to participate in the constitution building process by following it on the website and submitting submissions through that platform (COPAC brochure, 20 June 2012).

The public consultation phase under the directive of COPAC took place during the summer months of 2012 and stretched into autumn. Although much thought had gone into creating well-designed constitutional education programs for various segments of the population, the preconditions for the consultation phase could have been more favorable. By the time that the constitution building process reached this stage, nearly four years had elapsed since the signing of the GPA and, to say the very least, ZANU-PF and the two MDC formations did not co-exist harmoniously in the power-sharing government. To some extent, their schisms also affected how they were able to communicate the constitution building process to the public. There were reported incidents of ZANU-PF members “coaching” people on what kinds of “wishes” they ought to express during the public hearings. There were also some episodes of violence between ZANU-PF and MDC-M/MDC-T supporters during public hearings, which did not contribute to creating a positive atmosphere for the sharing of ideas on constitutional issues (Dzinesa 2012). Not unexpectedly, people were also deterred from participation after the police disrupted a number of MDC-organized meetings and arbitrarily arrested some participants (Dzinesa 2012).

As far as the NCA’s attempts to communicate the message of constitution building are concerned, Panfil (2012: 28) notes that towards the end of the process the organization seemed to lose some of its “steam” due to lack of resources and increasing concern among its members about the decision not to participate in the COPAC-led initiative. At the same time, a report written by Lumina (2009) on behalf of the Norwegian Agency for Development Cooperation evaluated the activities of the NCA during 2003-2007 (the years between the two processes). It credited the organization for keeping the constitutional issue active in Zimbabwe despite a very difficult political environment and applauded many of the programs and activities that the coalition had undertaken during the course of the years. These included civic education campaigns to raise popular awareness on the need for a new constitution, workshops focusing on gender and youth issues in the new constitution, peaceful demonstrations, press statements, press conferences, interviews with the media, distribution of fliers, placards, posters and banners, training of hundreds of facilitators to conduct grassroots workshops, and organizing various conventions. In 2004 alone, the NCA were responsible
for organizing 2,369 advocacy workshops that were attended by nearly 8,000 participants (Lumina 2009: 30).

6.1.3.3 Degree of inclusion
Just as with the 1999-2000 process, the second round of constitution building was open for all Zimbabweans who wished to participate – at least formally. Whether or not participation was possible in practice is another matter. Although the concerted efforts of the NCA and COPAC, as described above, provided plenty of avenues for participation, it must be acknowledged that violent acts directed towards members of the MDC from ZANU-PF supporters might have deterred some individuals who wanted to participate from doing so.

Also as noted above, the NCA again boycotted the government-led initiative, even though COPAC included members from all three political parties, not just Mugabe’s ZANU-PF, choosing instead to proceed with its own initiative, “Take Charge” (Zimbabwe Independent 2013). The Zimbabwe Congress of Trade Unions (ZCTU) also decided to boycott the COPAC-led process, as did some factions of the student organizations in the country, essentially because they saw the process as flawed. The main objection that was raised against the COPAC process was that it was controlled by parliament rather than by an independent commission. There was also some concern about whether or not the political parties would take the input of the public into consideration or only rely on their own understanding concerning the most appropriate provisions to include in the constitution. Towards the end of the process, based on their assessment of the content of the constitution, ZCTU decided to recommend to its members that they vote in favor of it in the upcoming referendum, although they continued to hold the view that the process leading up to the final draft left much to be desired. As mentioned earlier, the LSZ did not participate fully in the COPAC-led initiative either, claiming their unique position as an actor capable of writing a constitution for the country in a much more professional manner than the members in COPAC could. Still, the fact that LSZ submitted a final draft proposal to COPAC for consideration indicates that they did not entirely boycott the process (Vollan 2013, Panfil 2012).

6.1.3.4 Final authority
The GPA stipulated that the people of Zimbabwe would decide the fate of the proposed constitution through a referendum. Nearly three years later than planned in the original timetable, the people had their say in March 2013 (Vollan 2013). In the years preceding the final referendum, a total of three drafts were released by COPAC. The first one was distributed in late 2011 and was actually supposed to be an internal document disseminated only among the members of COPAC, but the document somehow leaked and was
published by the *Herald* in February 2012. A number of unresolved issues were then agreed upon among the COPAC members and a new draft was published in July 2012, and scheduled to be presented at the “Second All Stakeholders Conference” in October that same year. However, when confronted with the second draft in its entirety, strong voices within ZANU-PF requested alterations to the text before the October session. Among other issues, questions concerning citizenship, executive powers, composition of the constitutional court, devolution of powers, land issues and whether or not to outlaw homosexuality concerned ZANU-PF. The MDC formations, on the other hand, rejected opening up discussions on topics that had already been agreed upon by COPAC. However, after dialogue within the two MDC formations, an agreement was reached to revisit some of the issues raised by ZANU-PF as areas of concern. Compromises were again reached, but not before the October session, which had been the original wish of ZANU-PF. The new compromises were included in the final draft of the constitution, which was presented in February 2013. One month later, on March 16, the document was voted on in the referendum, and it was supported by 94.5% of the population, most likely because all three political parties stood by and supported it (Vollan 2013). The new constitution of Zimbabwe was enacted on May 22, 2013.

6.2 Kenyan constitution building processes of 2001-2005 & 2009-2010

Turning our attention to the Kenyan constitution building processes, we will see that, just as in Zimbabwe, participatory constitution building processes have been attempted not only once, but twice. Here too, on both occasions, the degree of public participation was quite extensive. The first time, between 2001-2005, the outcome was a defeat for the constitutional draft in a referendum. The second effort took place in 2009-2010. In the next section, a brief historical overview of constitution making in Kenya is presented, after which we direct attention to both of these constitution building processes, beginning with the 2001-2005 process.

6.2.1 Historical overview of constitution making in Kenya

Kenya gained its independence from Great Britain in 1963. The break with the former colonial power was preceded by negotiations in London that resulted in an interim constitution for Kenya in 1960. However, this document failed to grant the country sovereignty and was abandoned. Negotiations between the British Parliament and representatives from Kenya’s political parties continued. These discussions produced a framework for self-government that was agreed upon in 1962. From this document, the step to complete sovereignty was not too large. The British Parliament, realizing that independence was the next phase of its withdrawal from the country, drafted
and adopted an independence constitution for Kenya, which entered into force in 1963.

It is common that newly independent countries that were former colonies mimic their former colonial master’s system of government. Kenya was not an exception to this pattern, and, consequently, the Westminster parliamentary system was introduced in the country. This form of government was nevertheless very short-lived. Only one year after independence, the two most prominent political parties in Kenya, *Kenya African National Union* (KANU) and *Kenya African Democratic Union* (KADU), merged and thereafter amended the constitution in order to introduce a presidential system, thereby making Kenya a republic. The fusion of KADU into KANU was also the first step towards establishing what would later become a one-party state in Kenya. KANU dominance was briefly interrupted during a few years towards the late 1960s with the advent of a new political party, *Kenya People's Union* (KPU), but it was restored and formally institutionalized when the constitution was amended in 1982 in order to limit political activity to KANU alone. This amendment effectively enshrined the one-party system in Kenya (Lumumba 2009: 16). Such was the state of affairs until late 1991, when multipartyism reemerged in the country.

In many ways, the need for constitutional reform in Kenya resembles the events leading up to the need for a break with the constitutional past in Zimbabwe. Just as in Zimbabwe, the Kenyan independence constitution of 1963 had been amended so many times during the course of its existence (39 times by 2008), that it bore very little resemblance to the original document. Of course, the fact that numerous amendments had made the constitution different might not, in itself, have been a sufficient reason for engaging in a comprehensive review of the whole constitution and reforming it in its entirety, but it was the nature of the amendments that had been adopted over the years that caused concern. Just as in Zimbabwe, many of the alterations that had been done to the document served to concentrate power in the hands of the executive and, in consequence, undermined the powers of the legislative and judicial branches of government (Bannon 2007: 1824, Lumumba 2009: 16).

Discontentment with the regime, headed by President Daniel arap Moi (1978-2002), grew stronger from the beginning of the one-party system in 1982. With the end of the Cold War, international concern was added to the domestic pressure on KANU to democratize, and, alongside this plea, the clamor for constitutional reform grew stronger. Moi made some concessions to appease Kenyans, but they were too modest and came too late; KANU could not pacify the public merely by making piecemeal changes in a number of provisions scattered throughout the constitution. Hence, calls were made for a complete overhaul of the existing document and the making of a new one.
6.2.2 The 2001-2005 constitution building process

The first round of participatory constitution building in Kenya took place during the years 2001-2005. The document never entered into force because it was rejected by Kenyan voters, so a second initiative to make a new constitution with the help of the people was initiated in 2009 and continued until 2010. Table 6:3 summarizes the 2001-2005 constitution building process in terms of A) who the initiators of the process were, B) how the forms of communication with the public were organized, C) degree of inclusion and D) final authority. In the coming section, these four factors will be comprehensively elaborated.

Table 6:3 The Kenyan constitution building process (2001-2005)

<table>
<thead>
<tr>
<th>Variables</th>
<th>Initiators of the process</th>
<th>Forms of communication</th>
<th>Degree of inclusion</th>
<th>Final authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Civil society organizations</td>
<td>Two-way model of communication</td>
<td>Some groups/political parties voluntarily boycotted the process</td>
<td>Directly vested in the hands of the people through a referendum</td>
</tr>
</tbody>
</table>

6.2.2.1 Initiators of the process

As hinted at above, small and almost trivial constitutional amendments made by the Moi government in the early 1990s did not suffice to satisfy either the Kenyan people at large or the opposition political parties who argued that structural disadvantages in the political system continued despite the changes (Bannon 2007: 1823). Therefore, the struggle for constitutional reform continued in earnest in the mid 1990s, primarily driven by Kenya’s civil society, comprised of numerous religious groups and human rights organizations that were able to mobilize the political opposition so that a social movement was created (Bannon 2008: 1823). Agitation eventually led to additional constitutional amendments, but, more importantly, to the enactment of the Constitution of Kenya Review Act (henceforth referred to as the Review Act) in 1997 (Bannon 2008: 1832). The Review Act was the result of an inter-party parliamentary negotiation, something that would have been good if only it had not been completely dominated by KANU members. All participants in the Review Act were appointed by the president without any prior consultation with civil society organizations, opposition political parties or other stakeholders. Undeniably, this undermined its legitimacy as a representative body.

In response to the government’s reluctance to invite civil society organizations and the Kenyan public at large into the constitution building process, 54 civil society groups, social movements and opposition political
parties joined forces under what became known as the *Ufungamano Initiative* and initiated a parallel constitutional review process called the *People’s Commission of Kenya* (PCK). In the words of Patrick Lumumba: “With two parallel initiatives, the ‘Parliamentary Process’ claiming legal legitimacy and the Ufungamano Initiative claiming moral authority, Kenya was at daggers drawn” (2009: 18). This situation did not last long, however. Renowned Kenyan constitutional lawyer Yash Pal Ghai was chosen to chair the parliamentary-led process, but refused to engage in any activities unless and until representatives from civil society organizations were also represented in the process that had been initiated by the government (Panfil 2012: 5). Thus, intense negotiations between the government and the Ufungamano Initiative began. The discussions resulted in the merger of the two processes and also to an amendment of the Review Act to include members from the Ufungamano Initiative. The revised Review Act also allowed for a comprehensive review of the constitution and the option to draft an entirely new document (Gathii 2008: 1117, Lumumba 2009, Bannon 2008).

6.2.2.2 *Forms of communication*

In the Review Act, the modalities of the constitution building process and the mandates of each of the bodies are clearly stipulated. First, the Review Act established a *Review Commission*. The purpose of this Commission was, among other things, “to conduct and facilitate civic education in order to stimulate public discussion and awareness of constitutional issues” and “to collect and collate the views of the people of Kenya on proposals to alter the Constitution and on the basis thereof, to draft a Bill to alter the Constitution for presentation to the National Assembly” (The Constitution of Kenya Review Act 1997, article 17 a, b). The Review Act goes on to state that the Commission shall:

> “Visit every constituency in Kenya to receive the views of the people on the Constitution and to without let or hindrance, receive memoranda, hold public or private hearings throughout Kenya and in any other manner collect and collate views and opinions of Kenyans, whether resident in or outside Kenya, and for that purpose the Commission may summon public meetings of the inhabitants of any area for the discussion of any matter relevant to the functions of the Commission”

(The Constitution of Kenya Review Act 1997, article 18 a, b)

Based on these directives, the Review Commission embarked on an ambitious project of public outreach. Documentation centers were established in all districts of the country, and here people would be able to find information about the constitution building process and materials serving to familiarize and explain constitutional issues to them, regardless of their previous degree.

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82 Ghai has been the head of the Constitution Advisory Support Unit of the UNDP in Nepal, Special Representative of the UN Secretary General in Cambodia on Human Rights, and he also drafted the Asian Human Rights Charter. During 2013-2014 he was Chairman of the Fiji Constitution Commission.
of knowledge concerning constitutional matters. This channel for acquainting the Kenyans with the process was also extended to electronic and printed media outlets.

After having completed this first step in the communication process, the Review Commission was ready to proceed to the second stage in its communication strategy. Indeed, thus far it had mainly been a matter of informing and preparing people to participate – very much resembling a one-way line of communication with the arrow pointing from the Commission to the public. The second stage was comprised of public consultations during which the Commission carried out its mandate as stated above: visiting all constituencies in the country and conducting public hearings. When confronted with the challenge of not speaking the same language as the people they were meeting in their travels throughout the country, the commissioners used translators as well as sign-language interpreters when needed (Brandt et. al 2011: 340). All meetings with the public were documented, either in writing or by recording oral presentations. This was important since the Review Act also stipulated that the Commission’s constitutional draft proposal must accurately reflect the wishes of the people as they had been expressed to the commissioners during the public meetings (The Constitution of Kenya Review Act 1997, article 5 d). The Commission was quite successful in terms of realizing its goals of public outreach. During its visits throughout the country it managed to collect no less than 35,000 submissions from people who grabbed the opportunity to participate (Panfil 2012: 5). Many more individuals likely participated during the hearings and consultations, albeit without actually writing submissions themselves. Following this stage, the Commission systematized the large amount of data in order to make sense of what had been conveyed during the numerous public meetings and for the purpose of being able to present the systematization of the material to the people on national, provincial, district and constituency levels, so that they had an opportunity, to make sure that the draft constitution truly reflected the propositions that they had submitted (Brandt 2011: 340, Lumumba 2009: 20). It should also be noted that in addition to the efforts of the Review Commission, civil society organizations also played an important role in communicating the message of the constitution building process to the public. They too carried out massive civic education programs, encouraged Kenyans to participate in the process and helped individuals write and present constitutional proposals to the commissioners (Panfil 2012: 5).

The Review Act stipulated that the Commission, after having conducted public hearings and collated the submissions, was to “convene a National Constitutional Conference for discussion, debate, amendment and adoption of its report and draft Bill” (The Constitution of Kenya Review Act 1997, article 27 c). However, for reasons that we will return to shortly, the draft constitution was not adopted by the National Assembly after being discussed by the
National Constitutional Conference as the Review Act anticipated. Rather, civil society organization mobilized their efforts and managed to convince the High Court of Kenya to organize a referendum as the last phase of the constitution building process (Panfil 2012: 5).

6.2.2.3 Degree of inclusion
By observing Table 6:3 The Kenyan constitution building process (2001-2005) we can see that in terms of being a constitution building process open to all groups and individuals interested in participating, the Kenyan process was successful. Although civil society organizations initially chose not to participate in the parliamentary process, they altered their stance when Ghai requested that members of civil society be included in the process that had been initiated by the government. Furthermore, the Kenyan government did not ban any particular group or political party from participation, although during the last stages of the process, when the draft was discussed in the National Constitutional Conference, a number of ministers chose to boycott the process because they felt that their views were not respected by other stakeholders. At one point, the government even walked out of the negotiations (Cottrell & Ghai 2004: 12, Lumumba 2009: 21). Even so, it is worthwhile to call attention to the composition of the National Constitutional Conference, as it says something about the nature of inclusiveness in the process. This assembly, which was responsible for drafting the final constitution on the basis of the template it received from the Commission, consisted of 629 delegates. All of the members of the Review Commission were included (although not allowed to vote), as were all members of the National Assembly; representatives from all of the registered political parties in the country; representatives from religious organizations, women’s organizations and professional bodies; trade unions; NGOs, and representatives from each district in Kenya (Panfil 2012: 5, Lumumba 2009: 21). The proceedings of the Conference became highly political, which the departure of the government mentioned above demonstrates quite well, and many issues were extremely contentious. Nonetheless, decisions were made by consensus, and in instances when provisions were not accepted by all parties, two-thirds of the delegates had to agree for the article to pass.

Civil society organizations continued to be active during this stage of the constitution building process as well, closely observing the deliberations in the conference and acting as a bridge between the proceedings in the National Constitutional Conference and the public, trying to help people understand the implications of the proposals introduced on the floor during the conference (Panfil 2012: 5).
6.2.2.4 Final authority

The Review Act originally anticipated that the draft constitution would be sent to the National Assembly for enactment after it had been deliberated and agreed upon by the National Constitutional Conference. However, in a turn of events, civil society organizations as well as political opponents of the draft successfully convinced the High Court of Kenya to amend the Review Act to include a referendum as the last stage of the process (The Constitution of Kenya Review Act 1997, article 27 (7)). Thus, final authority over the constitution was vested in the hands of the people. However, after an entire year of negotiations in the National Constitutional Conference, Kenyans never saw the document that emerged from it.

When confronted with news of the referendum, the government, now headed by President Mwai Kibaki from the National Alliance of Rainbow Coalition (NARC), altered the draft considerably before presenting it to the public in the referendum. KANU, now in opposition, objected to the revised draft, claiming that it no longer reflected the will of the people and disregarded the views that had been expressed during the public hearings (Bannon 2008: 1840). In the run-up to the referendum, both the government and the opposition used sordid tactics to win – the government threatening to fire civil servants who did not support the draft, the opposition spreading untruths about the actual contents of the altered draft (Bannon 2008: 1841). In November 2005 the draft constitution was defeated in a referendum, with 57% of Kenyans voting against it. Consequently, the 1963 constitution remained in place until 2010, when a new constitution was adopted after the finalization of the second round of participatory constitution building. This process will be the focus of our attention in the next section.

6.2.3 The 2009-2010 constitution building process

The contested Kenyan elections in December 2007 threw the country into complete chaos. The political turmoil claimed over 1000 Kenyan lives and caused the displacement of 300,000 people before a political settlement – The National Accord and Reconciliation Act – was reached between the main rival factions, Raila Odinga for the Orange Democratic Movement (ODM) and Mwai Kibaki for the Party of National Unity (PNU). The agreement also provided for constitutional reform.

Table 6:4 summarizes the 2009-2010 constitution building process in terms of A) who the initiators of the process were, B) how the forms of communication with the public were organized, C) degree of inclusion and D) final authority. In the coming section, these four factors will be elaborated, as was done for the 2001-2005 process.

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83 The circumstances surrounding the 2007 post-election violence are elaborated in Chapter 9.
Table 6.4  The Kenyan constitution building process (2009-2010)

<table>
<thead>
<tr>
<th>Variables</th>
<th>Initiators of the process</th>
<th>Forms of communication</th>
<th>Degree of inclusion</th>
<th>The question of final authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>National elites (through the “National Accord and Reconciliation Act” and the “Constitution of Kenya Amendment Act”)</td>
<td>Two-way model of communication with integrated proactive measures</td>
<td>All groups/political parties who wanted to participate, did participate</td>
<td>Directly vested in the hands of the people through a referendum</td>
</tr>
</tbody>
</table>

6.2.3.1 Initiators of the process

By signing the National Accord and Reconciliation Act in February 2008, the ODM and the PNU agreed to constitutional reform. This promise was further formalized in August 2008, when the Kenyan National Assembly adopted “The Constitution of Kenya Amendment Act” which established that the constitution of the country would be revised (The Constitution of Kenya Amendment Act, 2008). Against the backdrop of the political turmoil that hit the country in late 2007 and continued on into the early months of 2008, it was Kenyan political elites who initiated the second round of constitution building. “The Constitution of Kenya Review Act” of that year outlined the modalities of the new constitution building process. Although this document stated that a “Committee of Experts” (CoE) would be the main technical organ in the process, the Act also stipulated that the process was to “provide the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to review and replace the constitution” (The Constitution of Kenya Review Act 2008, article 6 D: 1).

The CoE was to consist of nine individuals, six of whom were to be Kenyans and three non-Kenyans recommended by the African Union’s Panel of Eminent African Personalities. All members of the committee were then to be nominated by the National Assembly and appointed by the president. Because the Review Act also determined that the CoE would have one year from the day of its appointment to finalize a new draft constitution, public submissions would have to be collected within this time frame as well (The Constitution of Kenya Review Act 2008, article 28 (1)). This leads us to a consideration of the forms of communication between the CoE and the public that were established so that input for the constitution could be gathered.

6.2.3.2 Forms of communication

Since the CoE had limited time to complete its mission of drafting a new constitution, the Review Act from 2008 stated that the committee was to revisit all earlier draft constitutions that had been produced during the previous constitution building process of 2001-2005 and identify already
agreed upon issues as well as contentious ones. Where contentious issues were identified, public hearings were to be conducted in order to, in written memoranda, solicit the Kenyan population’s views concerning these issues (The Constitution of Kenya Review Act 2008, article 23 a-c). The CoE was also to draw upon the views and materials that had been collected during the 2001-2005 process so that the abundance of submissions gathered from the Kenyan populace only four years earlier would not be ignored. In fact, the CoE was to ensure that the outcome of the review process would faithfully reflect the wishes of the people of Kenya. In order to perform its tasks, the committee was also to use a reference group of 30 representatives from civil society organizations to assist it in its work (The Constitution of Kenya Review Act 2008, article 29 a-c, 31 (1)). When the Committee had received submissions on issues that had been identified as contentious, it was to prepare a draft constitution that would be sent back to the populace for a second round of input. These submissions were to be turned in to the CoE within 30 days. Overall, the committee solicited over 25,000 submissions.

The CoE was also to conduct civic education programs throughout the year of its work in order to stimulate public discussion and awareness, and was to make sure that civic education materials on the constitution building process were made available for persons with disabilities. Additionally, the Committee consulted with the Kenya Broadcasting Corporation to assure air time for the purpose of disseminating information about the constitution building process. The Review Act from 2008 also made sure to emphasize the need for the continuation of civic education on the proposed constitution even after the final draft had been completed in order to stimulate further discussion, but also to spread knowledge about the proposed constitution, its chapters and provisions and what they actually implied (The Constitution of Kenya Review Act 2008, article 27 (1)). To this end, a number of different pamphlets and ‘guides’ were produced and distributed in print and electronically. For example, Christina Murray, professor of human rights and constitutional law at the University of Cape Town, who was one of the external members of the CoE, put together a comprehensive and detailed booklet – yet easily accessible in plain and simple English – called “Beginners guide to the New Constitution – Chapter by Chapter” (Murray 2009). Other informative and easily accessible materials were produced by the CoE and distributed, for example a handbook on the proposed constitution with cartoons and very informal language. The Review Act from 2008 also declared that the CoE was to involve non-state actors in the delivery of civic education as well (The Constitution of Kenya Review Act 2008, article 35 (2)). On the basis of this, civil society organizations carried out extensive nationwide constitutional education programs.

By and large, it could be argued that given the limited time frame the CoE was given to finalize a draft constitution, the opportunities that the Kenyan
population had to properly engage in the constitution building process were not nearly as generous as they had been in the earlier process that spanned over a four year period. Still, since the Review Act of 2008 compelled the CoE to make use of the submissions that formed part of the 2001-2005 process and, despite the short time frame, to engage the populace throughout the process, it is fair to say that the Kenyan population actively participated in the second round of constitution building as well. It is commendable that in spite of the one year time frame, the members of the CoE visited 280 places, produced their own materials as well as materials developed together with various civil society organizations and installed “constituency civic educators” in all of the 210 electoral districts of the country to answer questions and provide training on the proposed constitution (Panfil 2012: 27).

6.2.3.3 Degree of inclusion
The second round of participatory constitution building in Kenya, like the 2001-2005 process, was an inclusive initiative. Just as the previous process, no political parties or other types of affiliations were banned from actively engaging in the process. There were, however, some Christian religious groups who openly and quite fiercely rejected the proposed constitution and actively engaged in a no-campaign in the period before the referendum (Panfil 2012, Branch 2010). Their objections were in response to clauses in the draft constitution related to abortion and Islamic courts. This pronounced protest is not, however, to be confused with a boycott; rather, it represents the contrary – the vigorous presentation and debating of issues of concern is part of the very nature of a participatory process.

The 2009-2010 process was different from the earlier attempt at participatory constitution building in Kenya as far as the modalities of the process were concerned. Whereas the use of a National Constitutional Conference with broad based representation was employed in the first process, the 2009-2010 initiative involved a CoE consisting of nine individuals, a Parliamentary Select Committee of 27 members drawn from the National Assembly, the whole National Assembly and a public referendum, which we will return to below. Even though a National Constitutional Conference was not used this time, the procedures of the 2009-2010 constitution building served to make sure that the views of Kenyans as they had been conveyed to the CoE and the submissions that had been gathered during the 2001-2005 process would form basis for the final draft. The Parliamentary Select Committee was to reach agreement on the proposed draft that it received from the CoE, after which the CoE had the opportunity to revise the draft in accordance with the proposals of the Parliamentary Select Committee. The Parliamentary Select Committee would then present the draft to the whole National Assembly for discussion, but the latter was not allowed to amend the document. The draft would then go back to the CoE with the
National Assembly’s proposals for changes. At that point, the CoE would have seven days to make whatever alterations it saw fit. In the final stage of the process, the draft constitution would be put to a public referendum. This will be the focus of the next section.

6.2.3.4 Final authority
The Constitution of Kenya Amendment Act of August 2008 established that the sovereign right to replace the existing constitution with a new one belonged to the Kenyan people acting through a referendum (The Constitution of Kenya Amendment Act 2008, 2 a). The Constitution of Kenya Review Act further explicated that the Interim Independent Electoral Commission was to organize, conduct and supervise the referendum and that the question on the ballot would be posed such that voters could answer “yes” or “no” to adopting the proposed constitution (The Constitution of Kenya Review Act 2008, article 38, 37:3). Thus, the question of final authority over the proposed constitutional document was directly vested in the hands of the Kenyan people. The referendum took place in August 2010, and the draft was approved by 68.5% of those who voted (EISA 2010). The new constitution entered into force August 27, 2010.

6.3 Similar levels of public participation, differing levels of democracy
The analysis of the two Zimbabwean and two Kenyan constitution building processes presented in this chapter illustrate that as far as public participation is concerned, both of these countries allowed extensive participation with genuine influence. Both times in both countries, there were avenues for participation throughout the entire process, and the ultimate fate of the constitutional document was placed in the hands of the people. Hence, the extent to which the people were involved in the processes appears to be very similar, and yet, when it comes to level of democracy in the aftermath of the finalization of the process, the two countries had markedly different trajectories. Figure 5:3 in Chapter 5 allows us to conclude that democracy levels improved in Kenya, much in accordance with the assumption of the participation-hypothesis, whereas democracy levels declined in Zimbabwe, which runs counter to the proposed effects as stated in the hypothesis. Since public participation in constitution building processes does not appear to be the sole explanation of higher or lower levels of democracy, what other theoretically informed answers might there be? This query is the focus of the next chapter.
Chapter 7
If not participation, then what?

By now we understand that public participation in constitution building does not sufficiently explain the different trajectories of democracy taken by Zimbabwe and Kenya. The countries had very similar constitution building processes both times, yet democracy levels improved only in Kenya; they have steadily declined in Zimbabwe. This means that we must turn our attention to other possible explanations of change in level of democracy. This will be the focus of this chapter, where we will dive into and explore the democratization literature. By the end of the chapter we will be acquainted with a broad range of theoretical propositions that can be studied empirically. This will be the focus of Chapters 8 and 9, where we will systematically compare Kenya and Zimbabwe in terms of these propositions.

Much can be said concerning the determinants of democratization, and, accordingly, much has been said. Our curiosity about why some countries democratize while others do not has spurred a voluminous body of theoretical research devoted to this specific subject, a field that has grown considerably since the advent of the “third wave of democracy” in the mid-1970s (Huntington 1991). As we are dealing with a very comprehensive theoretical field, the explanations that have been offered about the determinants of democratization are wide-ranging. However, an examination of the democratization literature reveals that there are three main approaches, each of which generates a number of hypotheses.84 These are: structural perspectives, actor oriented perspectives and external perspectives (sometimes referred to as “internationalized” perspectives) (Hydén 1998, Bratton & van de Walle 1997). While a structural theoretical stance views democratization as a consequence of structural developments within a given state, an actor-oriented stance considers democratization as a dynamic process shaped by domestic actors, their strategic choices, and their conflicting interests. An external theoretical position, in turn, looks outside the domestic borders of individual states, looking for the determinants of democratization in outside structures and outside actors. The main thing that distinguishes the structural approach from the others is that it is more or less deterministic in character. In some sense, the message being conveyed is that if certain socioeconomic factors are present, then democratization will occur. On the other hand, if these factors are absent, then it will not occur (Berman 2007: 28, Karvonen 1997: 75, Bratton & van de Walle 1997: 19). Still, one

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84 Some democratization theorists also distinguish a fourth – i.e., “domestic explanations” (see for example Bratton & van de Walle 1997), while others merge such domestic explanations with structural and actor oriented perspectives when they concern domestic structures and actors (see for example Hydén 1998).

85 Also referred to as the “strategic” approach by e.g. Teorell 2010.
ought to be cautious about the determinant character of structural explanations; structures may also be amenable to change, albeit not swiftly and expeditiously. In this chapter, these three main approaches in the democratization literature will be thoroughly expounded.

The chapter will proceed as follows: in the next section, the three perspectives mentioned above will be elaborated. Attention will also be drawn to a number of empirical studies that have set out to test various theoretical postulates raised by the different schools of thought. The chapter ends with a summary that illustrates all the variables that will be used to systematically compare Kenya and Zimbabwe in Chapters 8 and 9.

7.1 The structural dimension

The structural analysis takes its point of departure in the socioeconomic system. Scholars from various ideological backgrounds have traced the origins of democratic governance to structural changes in Western Europe when many countries transformed from agrarian to industrial societies. Hence, the backbone of the structural approach is that democracy is contingent on the social order which modern industrial society brings about. One could say that, according to a structural perspective, the reasoning and theoretically envisioned causal mechanism underlying democratization is that the processes of industrialization and urbanization, which are accompanied by expanded involvement in a market economy and the development of an educated citizenry, makes countries prone to adapt a more “pragmatic” attitude about the governing of their country (i.e. they become secular), which, in turn, provides fertile soil for democratization (Inglehart & Welzel 2005, Welzel 2009, Hydén 1998). Structural perspectives thus hold that modernity and democracy are each other’s counterparts. More precisely, there is a particular kinship between capitalist industrialization and political democracy, in which the former by necessity leads to the latter (Bratton & van de Walle 1997: 20-21, Welzel 2009: 80-81). Since “modernity” lacks an agent, the driving forces behind such systematic changes are theorized to be impersonal and consist of technological innovations applied to production and market based social relations (Welzel 2009: 81-81, Bratton & van de Walle 1997: 20).

Structural theorists are interested in studying aggregate phenomena. This holds true regardless of whether they are empirically concerned with comparing cross-national statistical data or comparing historical case studies – the focus is on macro level structures. The most influential study that epitomizes the structural approach is Seymour Martin Lipset’s contribution “Some Social Requisites of Democracy: Economic Development and Political Legitimacy”, published in 1959. Using quantitative measures, Lipset sets out to study the correlation between socioeconomic development and democratization, stating his argument as: “the more well-to-do a nation, the
greater the chances that it will sustain democracy” (Lipset 1959: 75). Undeniably, both Lipset’s proposition concerning the relationship between socioeconomic modernization and democracy and the numerous political scientists who have devoted substantial time and energy to scrutinizing and testing the argument broke new ground in what has conventionally come to be referred to as “modernization theory”. Although Lipset’s article is one of the most influential works in the democratization literature, it has been pointed out that empirical support for his hypothesis has mainly been gathered by studying the level of economic development of individual states – the most standard measure for doing so being the GDP/capita measure (Teorell 2010: 54-55, Karvonen 1997: 28, Wucherpfenning 2009).

Socioeconomic modernization, however, includes much more than economic development, which Lipset acknowledged in his original account back in 1959 (Lipset 1959). In addition to economic development, he also devoted attention to level of industrialization, education, urbanization and communication as factors related to democracy. The essence of what Lipset was saying is that structural factors such as high degrees of wealth, high levels of industrialization and urbanization, an educated citizenry, low rates of infant mortality and long life expectancy are expected to be positively correlated with democratization (Lipset 1959, Gasiorowski & Power 1998). It should also be noted that supporters of this theoretical view attribute democratization entirely to domestic circumstances; outside forces that might possibly influence democratization are completely missing in the approach (Hydén 1998: 19).

In addition to these well-established propositions, there is also another set of structural factors that are theorized to influence prospects for democratization. These factors concern various political cultural traits such as colonial legacy, ethnic and religious fragmentation and trust in various public institutions. A number of scholars propose that cultural traits that are favourable for democratization are more common in Protestant societies than in societies based on Islam, Catholicism and other religions (Borooah & Paldam 2007, Bollen 1979, Esposito & Piscatori 1991). Likewise, there are scholars who have argued that ethnic homogeneity is beneficial for sustainable democracy (Dahl 1971, Lijphart 1977).

With regard to colonial legacy and its effects on democracy, the literature concerned with this specific issue addresses a number of different propositions. It has been suggested that colonialism was detrimental for democratic development because it caused underdevelopment, social fragmentation and post-colonial state-civil society relations, all of which have left both state and civil society actors unprepared for democracy (Robinson 1979, Tomlinson 1999, Gasiorowski 1995, Diamond 1988, Diamond et al. 1995, Abernethy 2000, Chirot 1996, Young & Turner 1985). Undeniably, a large part of the literature on colonialism and its relationship to democracy
focuses on how the former has been negative for the latter. But the literature in this field also often discusses the issue of who the colonizing power was, because this is seen as an influential factor impacting on democracy in the post-colonial state. It is argued that some colonial powers might have better prepared their colonies for democracy. This debate has largely contrasted British colonialism with that of other colonial powers, suggesting that the British legacy is more conducive to democracy than, for example, the French legacy (Bernhard et al. 2004, Teorell 2010, Blondel 1972, Huntington 1984, Lipset et al. 1993). For instance, it has been suggested that former British colonies have been predisposed to inherit a parliamentary system of governance from their former colonial master, which is why post-independence democracy has fared better in these countries compared to democracy in, for example, former French colonies that adopted a presidential system of governance. It has also been suggested that the British prepared their former colonies for independence and offered them “training” in democratic practices by allowing them to vote for local self-governing bodies during the years before independence was finally gained (Bernhard et al. 2004: 233).

Related studies (Huntington 1984, Diamond 1988) have also called attention to the duration of colonialism as a factor that helps explain democratization in former colonies, in particular that a longer period of colonial rule might be positively related to post-colonial democracy. For example, the poor track record of British colonialism as regards bringing and sustaining democracy after independence in former African colonies (as compared to former British colonies like India and Jamaica) has been theorized to be a result of the fact that colonization did not last long enough to enable democratic values to be implanted in the colonized country. Others are sceptical to any kind of relationship between a colonial past and democracy. They suggest that when one considers the entire history of the developing world, colonialism was such a short experience that its effects on democracy in either direction are questionable (see e.g. Herbst 2000). Nevertheless, these kinds of arguments are difficult to substantiate empirically, because we cannot know how democratization processes in former colonies would fare today if they had not been colonized in the first place. All we can do is study the duration of colonial rule and the ways in which colonies were ruled in a comparative perspective.

Colonialism has also been related to high levels of ethnic and religious fractionalization, largely due to the artificial geographic boundaries established by colonizers, who literally split ethnic and religious groups by drawing new geographic borders right through them. It has been theorized that ethnic fractionalization impedes democratization, and some studies empirically substantiate this (Bernhard et al. 2004, Lijphart 1977, Diamond et al. 1995). Thus, high levels of ethnic fractionalization as well as high levels of
religious fractionalization are theoretically posited to be negatively related to democracy.

Trust in public institutions is the final political cultural trait examined in the democratization literature that focuses on structural forces. The notion of trust as a significant factor for enhancing and reinforcing democratization is most widely associated with Robert Putnam’s study of social capital in Italy (1993). With regard to this specific factor, the assumption is that trust in public institutions is positively related to democratization (Paxton 2002, Letki 2009).

As amply expressed by Bratton & van de Walle: “to varying degrees, structural propositions have been internalized into the conventional wisdom of political science” [emphasis added] (Bratton & van de Walle 1997: 21). To be sure, there are many empirical studies that support different propositions concerning the link between various structural variables and democratization, but there are also many studies that do not. For example, Przeworski & Limongi (1997) have found that modern industrial society is not actually linked to democratization, per se. Rather, modernization helps democracies that are already established to survive. This finding is echoed by Teorell (2010) who says: “If democracy is a ladder, modernization does not help countries scale upwards; it helps them avoid falling downwards” (Teorell 2010: 5). Instead, he finds that, among the structural components of a modern society, it is not industrialization or education that is the most important factor for preventing democratic backsliding; rather, media proliferation appears to matter the most – yet this phenomenon is almost entirely missing from the theoretical literature (Teorell 2010: 5-6). At the same time, Boix & Stokes (2003) find that modernization does, in fact, bring about and help sustain democracy.

As far as economic prosperity is concerned, structural theories of democratization would lead us to believe that economic wealth is positively related to democratization, and in the long term this seems to be accurate (Teorell 2010). Przeworski et al. (2000), in their much cited work Democracy and Development: Political Institutions and Well-Being in the World 1950-1990, establish that although economic development does not bring about democracy, the conditions for democratic states to survive are much more favourable in wealthy societies. Epstein et al. (2006) partly confirm the results of Przeworski et al. (2000), and they endorse the finding that high per capita incomes are helpful for democratic consolidation. However, in addition to this, the authors find that higher per capita incomes also significantly increase the likelihood that authoritarian states will make the transition to democracy (Epstein et al. 2006: 23-24). Other studies also provide empirical support for

86 Though recent work by Jebril et al. (2013) attempt to fill the theoretical knowledge gap that Teorell points at.
the proposition, or at least acknowledge that there is some truth to it, as long as additional circumstances are also present (e.g. Londregan & Poole 1996, Barro 1997, Barro 1999, Geddes 1999). Then again, there are a number of studies that find no such correlational relationship between higher income and democracy (e.g. Acemoglu et al. 2008, Robinson 2006, Bermeo 2003).

Propositions that colonial legacy and ethnic and/or religious fragmentation impact on prospects for democratization have also been empirically probed with mixed results. Teorell (2010: 142-143) has found that these factors are not robustly related to democratization, at least not during the third wave of democracy. In the same study, the proposition that Muslim countries are unfavourable settings for democratic systems was not empirically supported either (Teorell 2010). In related studies, Ross (2001) and Welzel (2009) have found that it is the extensive oil wealth of Middle-eastern countries that impedes democratization, not their predominantly Muslim populations. Other studies have called attention to the great variation that exists among countries in the Middle East and North Africa, emphasizing that the diversity of Muslim people must be acknowledged before any study can confirm or discredit the proposition (Davis 2013). Still, there are studies that support the claim that a large Muslim population is detrimental for democratization (e.g. Borooah & Paldam 2007).

The structural perspective draws our attention to the fact that, once established, institutional structures tend to persist, which, in turn, suggests that individual initiatives for political change can be hampered by the social structures in which those initiatives are taken, thus making it more difficult to bring about change. The principal strength of the approach is that it has produced a number of hypotheses that can be empirically investigated – various features of individual countries are quite easy to observe and describe, which explains the wealth of empirical studies based on structural propositions. As far as measurement is concerned, there are a number of international databases that annually record and report economic figures for all states, including degree of urbanization, education, industrialization, ethnic fractionalization, etc. However, although the perspective provides us testable hypotheses, its understanding of democratic development as something determined by the presence or absence of particular preconditions might be considered quite detached from the dynamic processes of democratization. According to Bratton & van de Walle (1997: 23), it is possible that foundational social structures – for example, mode of production and size of the industrial sector – are too entrenched in a given society; they simply cannot explain democratization or the lack of it on their own – other factors must be brought into the analysis as well. Furthermore, there is no denying the fact that the structural approach offers a static view of the world, which makes it more suitable for analysing the stability of democratic regimes rather than abrupt, sudden changes in a country’s political landscape (Bratton & van
de Walle 1997: 23). Finally, as mentioned briefly above, the deterministic approach of structural theories risks leaving out, and even failing to acknowledge, the prospects for innovation and alternative routes to democracy. Rather, this theoretical approach is resigned to the “fact” that democracy simply “cannot” take root in countries that do not meet certain preconditions. Samuel P. Huntington’s statement of thirty years ago captures this point quite well: “with a few exceptions, the limits of democratic development in the world may well have been reached” (Huntington 1984: 218).

7.2 The external dimension

For a long time scholars have focused on domestic factors when trying to understand democratization – or the lack of it. The theoretical propositions discussed above and the propositions suggested by actors-oriented theories to be discussed in the next section, are evidence of this. Lindberg (1998: 267) summarizes the reasons underlying this focus in three main points. First, most political scientists who are concerned with this strand of research are from the Western hemisphere. Democratization in the West has been explained by domestic factors, which is why we tend to have a domestic perspective in mind when we analyse democratization in other parts of the world as well. Secondly, “democracy” literally has to do with rule by the people in a given state; there is nothing in the term that directs our attention to anything other than domestic factors. Lastly, socioeconomic factors that constitute the backbone of the structural perspective have dominated research on democratization for a long time, and such elements are, in turn, construed solely as domestic factors.

However, there is a school of thought that directs attention towards external determinants as the driving forces behind democratization. As scholars Gleditsch & Ward (2006) express it: “democracy does not evolve sui generis”. This means that democracy does not evolve in and of itself, but rather as a consequence of a number of international factors. The point of departure for analysts who lean on external theories is that sovereign states, although independent, are part of a world system in which other countries, influential international organizations and regional organizations exert influence over national decision-making (Grugel 1999, Yilmaz 2002, Yilmaz 2009, Pevehouse 2002, Dimitrova & Pridham 2004, Gleditsch & Ward 2006). These researchers theorize that globalization, especially economic liberalization and the need for national governments to consider external circumstances when selecting financial policies, but also cultural globalization, including the spread of ideas and values to nearly all parts of the world, ought to have some effect on democratization processes. Likewise, it is possible to imagine that aid donors, both individual states and organizations such as the International Monetary Fund and the World Bank, condition aid
disbursements in ways that serve to affect political outcomes in the recipient state (Hydén 1998). An external perspective also pays attention to how massive demonstrations by the political opposition in one country can encourage the opposition in another country to do the same, so that a domino effect might occur such that regime transition in one state leads to transition in other states as well (Bratton & van de Walle 1997: 29). In a similar manner, it is also theoretically possible that membership in a democratic regional organization can spur democratic development among member states through the diffusion of democratic norms among the members, or by the organization itself either putting pressure on member states to adhere to democratic principles or requiring that states fulfil a set of democratic standards as a prerequisite for membership (Pevehouse 2002, Gleditsch & Ward 2006, Yilmaz 2009, Teorell 2010: 89-90). According to Pevehouse (2002: 516), the proposed link between membership in an international or regional organization and democratization has even been used as a justification to enlarge organizations such as NATO and the EU.

Scholars Steven Levitsky & Lucan Way (2005, 2010) contend that external factors are indeed important to consider when attempting to understand the different democratization trajectories that individual states have taken. They suggest that in the post–Cold War world, previously authoritarian or semi-authoritarian regimes that have been able to democratize have done so largely as a consequence of their relationship with the West. To be more precise, it is argued that what determines whether or not such regimes democratize is the extent of Western leverage combined with the extent of linkage to the West (Levitsky & Way 2005: 21-22). Let us explore what this entails.

Western leverage is defined as a government’s vulnerability to external pressure, whereas linkage to the West involves the density of a country’s ties to the US, the EU and Western-led multilateral institutions (Levitsky & Way 2005: 21). The authors propose that Western leverage can be exercised in various ways, for example through diplomatic pressure, retaliatory sanctions and military intervention. The level of Western leverage is nevertheless primarily determined by three factors, the first of which concerns a country’s size and its economic and military strength – weak states that have underdeveloped economies run a greater risk of having to yield to external pressure. The second factor concerns the competing geopolitical interests of Western states. Countries in which Western states have considerable security or financial interests are less vulnerable to Western leverage. Additionally, if Western states have competing security and/or financial interests in a particular country, then they are unlikely to be able to forcefully and

87 The arguments put forth by Levitsky & Way in their 2005 article are elaborated in depth in Competitive Authoritarianism: Hybrid Regimes After the Cold War (2010), Cambridge University Press: Cambridge. In the book, the extent of linkage and leverage to the US and the EU are scrutinized for a number of countries in Europe and the Americas. Political transitions in Africa that do not lead to democratization are also discussed.
coherently demand democratization, which, of course, limits their ability to exert leverage. Third, Western leverage may also be lower in states that have access to political, economic and/or military support from another regional power (Levitsky & Way 2005: 21). It is important to note, however, that none of these forms of leverage are, alone, sufficient to promote democratization; rather, leverage must be accompanied by linkage to the West.

Levitsky & Way suggest that **geography** is the primary source of linkage. Countries that are geographically close to the US or the EU will have greater economic interactions with these powerful players and more regular contact through intergovernmental and inter-organizational links. In addition, states that are practically neighbours to the US or the EU will likely experience greater flows of people traveling in and out across national borders, in turn bringing new experiences back to their countries of origin including demands for democracy (Levitsky & Way 2005). According to the authors, the density of an individual country’s ties, i.e. its linkage, to the West is a product of its connections in five different dimensions (Levitsky & Way 2005: 22-23): 1) **Economic linkage**, which entails various economic ties, including foreign direct investments (FDI), credits, aid disbursements, trade, etc.; 2) **Geopolitical linkage**, which involves ties to Western governments and Western-led alliances and organizations; 3) **Social linkage** which includes migration, tourism and diaspora communities in the West; 4) **Communication linkage**, including ties to the West by telecommunications, Internet connections and the extent of Western media diffusion, and 5) **Transnational civil society linkage**, which deals with the extent to which a country has ties to international NGOs and other networks. In contrast to leverage, linkage can be likened to soft power. In the words of Levitsky & Way: “Its effects are diffuse, indirect and often difficult to detect. Yet where linkage is extensive, it creates multiple pressure points – from investors to technocrats to voters – that few autocrats can afford to ignore. As a result, the democratizing pressure generated by linkage is often more pervasive, and more persistent, than that generated via leverage alone” (Levitsky & Way 2005: 25).

Despite the numerous theoretical propositions just reviewed, it is important to remember that when it comes to using external factors to explain democratization, speculation has been more common that actual systematic research (Hydén 1998: 24, Teorell 2010: 7). Again, this has much to do with the fact that domestic explanations have predominated research in this field for a very long time. Nevertheless, some empirical probing has been conducted. Regarding the proposed link between membership in international organizations and democratization, Pevehouse’s (2002) study shows that smaller, more homogenous organizations are more likely to be able to influence their members to democratize. Results from the same study also indicate that in order to be effective in promoting democracy, international and regional organizations must condition membership on certain democratic
criteria and enforce them. As regards foreign direct investment, Li & Reuveny (2003) show that it is directly linked to democratization, while Teorell’s study finds that (2010: 142-143) foreign direct investments are not robustly related to democratization, at least not during the third wave of democracy. When it comes to leverage by and linkage to the West as a determinant for democratization, Levitsy & Way (2010: 352-353) assert that a combination of the two is in fact critical for democratization. Countries that have social, economic and institutional ties to the West (such as countries in Eastern Europe and the Americas) have been able to democratize as a consequence of such ties, while countries with limited ties to the West have not been able to do so, or at least not to the same extent. At the same time, Tolstrup (2014) raises concerns about the underlying assumption that linkage is completely determined by geography. Instead, he proposes that whether or not linkage is established between a given country and “the West” depends upon the political elites of that country and whether or not they actually want to increase or decrease ties with the Western world (Tolstrup 2014: 127). Tolstrup’s assertion is a good transition to the final perspective on why countries democratize: the actor-oriented approach.

7.3 The actor-oriented dimension

“Inert, invisible structures do not make democracies or dictatorships. People do.”
(McFaul 2002: 214)

There is yet another school of thought that emphasizes something quite different from external factors and structural factors at a macro level. These analysts stress the freedom individuals have to make choices, and, accordingly, they direct their attention to the specific actions that individuals take and the consequences that these actions have for making democratization possible. Events that lead to democratization unfold in ways that are utterly connected to human activity, with the choice of one individual affecting the choices and responses of another individual and so forth. Whether individuals choose to side with the incumbent regime or the opposition depends on subjective perceptions and calculations as to which alternative better suits their own interests. Since people and their behaviour are at the centre of attention, actor oriented perspectives are not concerned with socioeconomic prerequisites for successful democratization (Bratton & van de Walle 1997: 24-26, Rustow 1970). As argued by Dankwart A. Rustow (1970), structural approaches to democratization are believed to be fundamentally flawed because they ask the wrong question. Rather than striving to understand how a democratic system comes into existence, they seem to want to understand how an already existing democratic state can safeguard and enhance its democratic status (Rustow 1970: 339). He therefore suggests that it is worth pointing out the importance of not confusing factors that maintain democracy
with factors that theoretically bring it about in the first place. There is a difference between function and genesis (Rustow 1970: 346).

In order to understand variations in political outcomes we are better off analysing the motivations, preferences and calculations of self-interested actors. Larry Diamond, a prominent scholar in the field of democracy studies, is so sure about the role of actors for democratization that he recently stated: “In my view, the only absolute precondition for achieving a democratic transition, aside from Rustow’s background condition of a reasonably coherent state, is a set of elites who decide for whatever reasons that democracy is in their interest” (Diamond 2014: 91).

Undeniably, this very much sounds like a rational-choice approach and actor oriented perspectives of democratization do indeed lean on a rational-choice logic (Bratton & van de Walle 1997: 24-25). Much as Rustow theorized in 1970, the process of democratization springs from interaction and bargaining, particularly among political elites. The surest way towards democracy in this game of bargaining is to make certain that all stakeholders get at least some of their demands met, so that no one is left empty handed (Rustow 1970, Bratton & van de Walle 1997). Taking this line of reasoning one step further, O’Donnell and Schmitter (1986) argue that democratization is determined by interactions and bargaining between, on the one hand, “hard-liners” and “soft-liners” who support the incumbent regime, and, on the other, between the radical and moderate segments of the opposition who do not support it.

Interestingly, as highlighted by Bratton & van de Walle, who examine political reforms in a majority of African countries in the early 1990s in their book *Democratic Experiments in Africa* (1997), the literature on African politics fails to analyse the influence of individual political leaders on political outcomes and democratization. This is peculiar, because, with the exception of the former communist bloc, Sub-Saharan Africa has shown the most dramatic rate of democratization since the 1990s (Bratton 2009: 340). Still, systematic research that focuses on the role of political elites in this transformation is quite rare. This is even more remarkable in light of the fact that the idea that individual African leaders pursue policies with their own interests in mind is a notion that runs through the Africanist literature (Bratton & van de Walle 1997: 24-26, Hydén 1998, Posner & Young 2007, Bratton & Chang 2006).

When it comes to Africa in particular, Göran Hydén (1992) argues that we are well advised to include the actions of specific actors in our analysis in order to better understand political transitions. Echoing the concerns of Bratton & van de Walle, he too calls attention to the fact that the exercise of politics in many African countries is tightly connected to the individual preferences of current rulers (Hydén 1998). Having said this, however, he does not deny the impact of structural factors as well – they too come into play. Hydén’s
overarching message is to acknowledge that politics are dynamic, but so are the social and economic variables that underlie it (Hydén 1992: 1-10, 1998).

Burton et al. (1992), Higley & Burton (1998) and Burton & Higley (2001) have further developed the arguments of Rustow and Hydén. These authors have consistently argued that political change (from any type of political regime to another) hinges on political elite transformations and that the key factor that distinguishes consolidated from unconsolidated democracies is the presence of elite consensual unity (1992, 1998, 2001). Simply put, strong democracies require elites who are willing and able to consensually agree on the democratic rules of the game and who have formal as well as informal channels through which they can influence decision-making.

7.3.1 **Who are the elites?**

Before proceeding further it is imperative that we have a clearer idea as to whom we are speaking of when we refer to “elites”. Burton et al. (1992: 8-9) and Burton & Higley (2001: 182-183) discuss elites as individuals who have the possibility to affect national policies regularly and substantially by virtue of their top positions in powerful organizations. Top business, government and military leaders are perhaps the three elite groups that first spring to mind, and rightly so, because these are definitely elites. Bratton’s (2009: 348) understanding of political elites also covers these, one might say, more “traditional elites”, namely: the incumbent regime, the opposition, and the armed forces. But in addition to these, Burton & Higley (2001) and Burton et al. (1992) also include leaders from trade unions, political parties, interests groups, religious groups, etc. as part of the so called elite. Many of these individuals are people whom we believe affect national decision-making in one way or the other, some perhaps mainly by blocking decisions, but even in their capacity as “blockers” they are powerful players.

In an ideal world it would be possible to study all components of the political elite in the same way. However, the reality of research is quite distant from this ideal situation. As expressed by Burton & Higley (2001: 190), the first problem is that elites tend to resist and, if possible, avoid investigations. This behaviour is not surprising, insofar as their actions are often “deliberately deceptive and secretive”, something which contributes to making them difficult to uncover (Burton & Higley 2001: 190). Secondly, it is common that various elite groups come together and merge their interests, which makes it

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88 According to the authors, a consolidated democracy is an ideal type: a state in which all procedural criteria of democracy are fulfilled and in which all politically significant groups accept and obey the rules of the political game. As noted by Burton et al. (1992: 4-5), no such state exists in the real world – invariably there are always political groups that do not completely adhere to the democratic political rules of the game nor grant the system under which they live full legitimacy. Because a truly consolidated democracy remains an elusive ideal, the authors accept the definition of democratic consolidation provided by Morlino (1986) who understands it as a “process of adaptation/freezing of democratic structures and norms, which come to be accepted as legitimate by part or all of civil society” (Morlino 1986: 210).
difficult for researchers to clearly determine who the main initiators of various proposals actually are. In this mix of actors, politicians emerge as the most observable manifestation of a complex cooperation that probably exists out of sight. Hence, when studying political elites we are necessarily focused on groups and individuals who are explicitly involved in the governing of their countries (Burton & Higley 2001: 190).

7.3.2 United and disunited elites

Now that we have a clearer understanding of who political elites are, we can turn our attention to the various types of such elites. According to Burton & Higley (2001: 184), political elites vary as regards the extent to which they are internally differentiated and integrated. Differentiation in this context refers to the processes that make existing political elites more numerous, more diverse in terms of how their organizations are built and function, more functionally specialized and more socially heterogeneous. Integration refers to the structure and specific attributes of the internal relations of the elites, and it is evaluated in terms of the cohesion or unity of elites. Integration thus involves how differentiated elite groups are able to deal with each other politically (Burton & Higley 2001: 184). Based on how well or poorly the political elites in a society are able to interact and integrate, two types of elites can develop: united or disunited.

United political elites are able to reach agreement on important issues, and they also share codes of conduct, which make their interaction patterns quite straightforward and predictable. Disunited elites, on the other hand, operate in precisely the opposite manner. There is no basic agreement concerning fundamental issues; the distinct elite groups are different from one another; there is no real communication among them, and, consequently, there is no predictability as regards their patterns of interaction (Burton & Higley 2001: 185). Burton & Higley outline four subtypes of united and disunited political elites based on extent of integration and differentiation. It is useful to explore each of them, if only briefly, as they help us to better understand which elite type we are dealing with when studying the elites in Kenya and Zimbabwe in Chapter 9.

- Strong integration and wide differentiation

Elites in these societies have developed numerous and overlapping networks of communication, which means that there is a crosscutting and continuous dialogue among the many different elite groups. There is basic agreement among the elite groups concerning the rules of the political game, and this brings predictability to the political arena – something resembling what Burton & Higley (2001: 187) refer to as “tamed politics”. This means that political elites view each other as legitimate players and understand the
its opponents. However, opposing elite groups try to resist rather than silently accepting oppression directed at them. This fourth subtype of united/disunited elites can be referred to as “divided elite” (Burton & Higley 2001: 187).

7.3.2.1 How to transform from a disunited to a united elite
Historically, the processes of elite formation have been tightly interwoven into the creation of nation states. Inter-elite violence is a common characteristic of such processes, and it often leaves the newly created nation state with a situation in which there are entrenched animosities among those groups who succeed in establishing themselves as new powerful elites and those who failed to do so. As theorized by Burton & Higley (2001: 181), once a specific elite group has seized the opportunity and established itself in a country, it tends to persist, as do governing techniques associated with it. Thus, while other things in a state may change more easily – for example a country’s international standing – political elites are inclined to persist until an extreme crisis occurs, at which point elite transformation might come about. It follows from this that elite transformation is essential for political change. As regards how elite transformations happen, the route from elite disunity to consensual unity can take one of two forms: elite settlement or elite convergence (Burton et al. 1992: 13)

7.3.2.2 Elite settlements
Elite settlements occur when conflicting elite groups unexpectedly sit down together with the stated purpose of rearranging their relationship and subsequently attempt to find institutional ways to do exactly that. Such settlements thus require that the conflicting parties show a willingness and, more importantly, an ability to compromise on matters that cause resentment among them (Burton et al. 1992: 14). According to Burton et al. (1992), a historical review reveals that elite settlements have been instigated in two sets of circumstances, the first of which is in the aftermath of a conflict during which all factions experienced substantial losses. Conflicts of this nature seem to make deeply divided elites more prone to seek compromises with each other than they are in normal circumstances. The second type of situation that has prompted elite settlement is instances in which it has become clear that an ongoing crisis has the potential to spark renewed violence. Also in such cases, elites have succeeded in cooperating, compromising and rearranging their patterns of interaction in order to reach a settlement (Burton et al. 1992: 15). Judging from the past, Burton et al. (1992: 15) conclude that elite settlements are either agreed upon quickly or not at all, because when a serious crisis is looming, there is no time for drawn out negotiations. Other features that have characterized elite settlements are face-to-face – often secret – negotiations among the main elite groups, written agreements and the participation of
political game as a positive-sum bargaining exercise. Therefore, as far as possible, they try to reach compromises in order to avoid conflicts. Although the interaction patterns of elite groups are institutionalized, they are at root voluntary, which makes it possible to refer to the elite as a “consensual elite” (Burton & Higley 2001: 187).

- Strong integration and narrow differentiation

Elites belong to a single party or movement that is hierarchically structured and controls the state. To a large degree, the elites are well integrated with each other, but it is the top leaders in the party or movement who are the central nodes in the network. Allegiance to the dominant party is very strong (and outspoken). In addition, the party’s authority is extremely entrenched and its members are very loyal. As a result, there is almost no differentiation in these societies as regards organizational diversity and autonomy. Although the elites are united, it is an enforced form of unity rather than a consensual one (Burton & Higley 2001: 187).

- Weak integration and wide differentiation

In these societies we find numerous elite groups who are divided into competing factions, and there are no actual networks of communication among them. The lack of interaction prevents elites from reaching consensus concerning codes of political conduct and rules that should guide political life. The situation is rather the opposite of mutual consensus; in this case elites disagree about beliefs and goals, and they approach politics as a zero-sum game. In spite of these shortcomings as regards elite integration, the distribution of power across the elite groups is sufficiently dispersed among them that no single group is capable of gaining control over the other groups (Burton & Higley 2001: 187).

- Weak integration and narrow differentiation

Elites are organized into two or three clearly separated and well-organized factions, each of which outspokenly opposes the other/others. There are no communication networks that cut across the factions, so integration between elite groups is close to non-existent and there is no consensus between the groups about the political rules of the game. In societies where relations among the political elite are characterized by weak integration and narrow differentiation, power struggles often have a violent character. It is not unusual that one of the factions completely dominates the state apparatus and uses its coercive capacities (police, military, etc.) to cause injury and harm to
experienced political leaders – i.e. settlements have been entered into by such leaders. As regards the last of these features, the authors emphasize its bearing on reaching settlements with reference to experienced political leaders’ skills, familiarity with the political game and standing among their followers, the latter of which makes them authority figures able to impose concessions that less experienced leaders would be unable to do (Burton et al. 1992: 16).

7.3.2.3 Elite convergence
Turning our attention to the other route from elite disunity to elite unity, elite convergence, the processes that lead to unity are somewhat different. Elite convergence occurs in unconsolidated democracies when opposing factions who are usually at each other’s throats realize that if they form a broad electoral coalition, then they will be able to mobilize a substantial and reliable part of the electorate, thus enabling them to win elections not only once, but repeatedly. Securing votes in this manner gives the coalition an executive majority, which, of course, guarantees that their interests will be looked after (Burton et al. 1992: 24-25). Coming together like this – i.e. elite convergence – also requires elites who are able to moderate their ideological positions in order to attract centrist voters.89

Have said all this, it is still rather unclear why elite settlements or elite convergence occur in some societies but fail to do so in others. Burton and associates only mention in passing that settlements take place when elites “unexpectedly” sit down and renegotiate their relationship and that elite convergence happens when opposing factions “realize” that they are better off forming an electoral coalition than running for office on their own. Nic Cheeseman (2011) introduces some helpful theoretical insights that can be useful here. Cheeseman suggests that the existence of elite cohesion in a society is dependent on two main characteristics. The first is whether or not there is an already established history of political leaders being willing and able to work together, compromise and remain open to finding mutually acceptable ground. If this pattern of behaviour is rooted in a given society, then it will inform individuals’ expectations concerning the prospect of resolving threats to their immediate interests through compromise with their political opponents. The second factor that affects the prospects for elite cohesion is, according to Cheeseman (2011), the history of violence. As many democratic theorists assert, democracy entails more than just conducting multi-party elections. Political actors in a democracy are also able to admit defeat without injuring or, even worse, killing their opponents, because they trust that the democratic system offers them another chance to win at the next

scheduled elections. Political violence directly obstructs democracy and creates a breeding ground for the continued use of violence in order to achieve political ends (Mueller 2011: 100).

Of course, like other theoretical approaches, the actor oriented perspective has both advantages and drawbacks. It is a perspective that allows the analyst to scrutinize the dynamic transition process, the actors involved in it and the ways in which their interactions shape it. Also, this perspective is not narrowly focused on analysing macro level structures in order to understand political outcomes. On the other hand, a strict actor oriented approach understands the actions of actors as voluntary, rather than as somehow influenced by the context of which the actors are a part. In real life, this is probably a simplification. Even though regime transitions are uncertain, they are not completely random. Rather, they have some measure of regularity, which is determined by the specific context within which the various actors operate, and, therefore, the analysis should not be completely detached from this context (Bratton & van de Walle 1997: 26).

While comparative studies devoted to studying the influence of, in particular, socioeconomic variables in relation to democratization are abundant in the literature, comparative studies that set out to understand if and how political elites affect regime outcomes are not nearly as common. This is likely due to the nature of the proposed explanatory variables. While many of the structural variables discussed earlier are quantitative and easily accessible in a multitude of international databases, the task of understanding the role of political elites requires a whole other approach. Here we are dealing with qualitative variables that require in-depth study of the elites in the specific country under scrutiny. This might explain why there are fewer studies that compare the role of political elites and democratization, and why those that have been conducted include a smaller number of cases. However, with this said, some empirical studies have been conducted and a number of them are worth mentioning. Using the theoretical framework developed by Burton et al. (1992), thirteen Latin American and East European cases have been probed by contributors to the edited volume by Higley & Gunther (1992). While acknowledging the role of mass publics and political institutions in democratization processes, the authors find that for countries with a long history of political instability and/or authoritarian rule, a prerequisite for democratization is that political elites are in agreement about the rules of the political game; they accept the rules, and, to some extent, they are integrated with each other (Burton et al. 1992).

McFaul (2002) is interested in regime change in general, not necessarily change towards an emerging democracy, but also towards dictatorship, and he has studied transitions in the post-communist world. He challenges the idea that negotiated settlements between incumbents and the opposition are central for regime change. Instead, his findings lead him to conclude that
regime change – towards democracy or authoritarian forms of rule – comes about in situations in which the power-asymmetry between opposing parties is so substantial that the stronger side can force its ideological orientation on the weaker side (McFaul 2002: 212-214, 242-244).

Although he only focuses on explaining democratization in Sub-Saharan Africa, Bratton (2009) draws conclusions similar to those of Burton et al. (1992). After comparing a number of African countries, he concludes that structural as well as contingent explanations are needed in order to fully understand why certain countries in the region have been able to democratize while others have not. However, prominence is given to the latter. As regards countries in Sub-Saharan Africa, Bratton (2009: 349) makes a strong point that structural conditions such as ethnic diversity, colonial past and economic crisis have been common to nearly all African countries; hence, these factors alone cannot explain different democratization trajectories. He argues instead that it is the role of political elites, the resources they have at their disposal, how such resources have been used strategically and how confrontations among the ruling elite, the opposition and the military wing have played out that best explain regime outcome (Bratton 2009).

7.4 The way forward
As this chapter has illustrated, there are a number of different theoretical pathways one can chose in an effort to understand and explain democratization in a specific country. Based on propositions advanced by the various theoretical schools presented in this chapter, Table 7:1 (below) summarizes the variables and questions that will guide the empirical investigation in Chapter 8 and Chapter 9.
Table 7.1 Summary of theoretic postulates raised by the democratization literature

<table>
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<td>- Strong integration and wide differentiation?</td>
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<td>- Strong integration and narrow differentiation?</td>
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<td>- Weak integration and wide differentiation?</td>
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<td>Communication variables:</td>
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Chapter 8
Why does democracy fare better in Kenya than in Zimbabwe? A systematic comparison of structural and external variables

In order to improve our understanding about the underlying factors that explain the different trajectories of democratization in Kenya and Zimbabwe, we will systematically compare the two in this chapter and Chapter 9. The comparison is guided by the theoretical propositions presented in Table 7:1 at the end of Chapter 7. We begin with a comparison of structural variables in the two countries and then turn to a comparison of external ones. After each section, the findings will be summarized and reflections concerning differences between the cases will be presented. A comparison of actor-oriented variables will be the focus of Chapter 9.

8.1 Comparing Kenya and Zimbabwe: structural determinants

In this section, a number of structural factors in Kenya and Zimbabwe will be compared. The comparison is organized as follows. Socioeconomic variables will be considered first, including GDP/capita (expressed in current USD), industrialization (% of GDP), urbanization (% of total population), education (gross primary and secondary school enrolment ratio), life expectancy at birth (in years), and infant mortality (per 1000 live births). We then compare communication variables, including radios (percentage of population that owns radios), TVs (percentage of population that owns a TV set), and newspapers (percentage of population that has access to newspapers). The last cluster of structural variables that will be compared focuses on political cultural traits, including colonial legacy, ethnic fractionalization, religious fractionalization and trust in public institutions.

8.1.1 Socioeconomic variables

8.1.1.1 GDP per capita

Comparisons aimed at elucidating socioeconomic differences often start by looking more closely at the most standard measure of economic development: GDP/capita income. Hence, this is where our comparison will begin. We examine developments in five-year intervals.

As Figure 8:1 illustrates, GDP/capita income in Kenya and Zimbabwe steadily increased from 1960 until 1980. However, it is notable that Zimbabwe experienced greater growth than Kenya in almost every five-year interval over
this period, as can be seen in the figure. The two countries continued to develop similarly in the two decades that followed. From 1980 to 1985, GDP/capita incomes decreased in both countries, only to increase again in 1990. Both then declined again between 1990 and 1995. It is after this point that the greatest difference between the two countries can be observed. Since 1995, Kenya’s GDP/capita income has continued to increase in each five-year interval shown in Figure 8.1, reaching 862 USD in 2010. In Zimbabwe we see the opposite trend. Here, GDP/capita levels decreased from 1990 to 2005, shrinking about 120 USD in each five-year interval. Between 2005-2010, levels rose again, and GDP/capita was 788 USD in 2010.

According to the theoretical proposition concerning economic wealth and democratization discussed in Chapter 7, higher GDP/capita incomes are expected to correlate positively with democracy. The figures in the chart above speak for themselves; from 1960 to 1995 GDP/capita income was higher in Zimbabwe than Kenya. At certain points it was even 2-3 times higher than Kenya’s. Shrinking GDP/capita incomes in Zimbabwe from the beginning of the new century correlates with the “fast-track” land reform enforced by the Mugabe regime.90 The forced land redistributions that took place during 2000-2003 largely destroyed the commercial farming community and had a

severely negative impact on the Zimbabwean economy (Compagnon 2011: 181). As we see in the figure, however, the Zimbabwean economy has recovered somewhat; in 2010, the GDP/capita income difference between Kenya and Zimbabwe was a mere 74 USD.91

8.1.1.2 Industrialization and urbanization
Today, the Kenyan economy is no longer completely dominated by the agricultural sector, as was once the case. The service sector is now the greatest contributor to GDP (55 % of GDP), while the industrial sector accounts for about 17 % of the country’s GDP (WDI 2013). The Kenyan government has stated that its ambition is to industrialize the country further as a means to eradicate poverty and rapidly expand employment, and policy frameworks and different strategies have therefore been suggested for achieving this goal (e.g. Government of Kenya, Sessional paper no. 2 of 1996). Nonetheless, Kenyan industrialization has stagnated. Actually, it has even decreased since the mid 1990s (WDI 2013). According to Ronge & Nyangito (2010), this is due to a lack of strategies for simultaneously improving the agricultural sector, which a successful Kenyan industrial sector is dependent on. The low degree of industrialization also explains the low level of urbanization in Kenya. The relationship between these two processes is captured in Figure 8:2.

What about Zimbabwe? In 1990, Stoneman stated that: “Zimbabwe has the most highly developed industrial sector of Africa south of the Sahara, apart from South Africa” (Stoneman 1990: 245). That year, the industrial sector of the country amounted to 33 % of GDP. By 1992 the figure had reached 41 % (WDI 2013). The Zimbabwean economy, as opposed to Kenya’s, has never been dominated by a single sector. As early as 1965, when Rhodesia announced its Unilateral Declaration of Independence from Great Britain, the economy flourished and expanded (Carmody & Taylor 2003). This diversification has continued to the present day. In 2012, the agricultural sector in Zimbabwe accounted for 13.4 % of GDP, compared to 34.8 % for the industrial sector, and 51.7 % for the service sector (WDI 2013). Due to a higher

91 One could also chose to compare HDI levels instead of GDP per capita, since the HDI index combines indicators of life expectancy, education attainment and income into a composite development index (ranging from 0-1). The reason why the comparison of GDP per capita, education attainment and life expectancy rates are conducted separately in this chapter is in order to more clearly convey the differences and similarities between Kenya and Zimbabwe on these specific factors. Nevertheless, a historical comparison of HDI levels in Zimbabwe and Kenya has also been performed, and it showed that the two levels are quite similar. For example, in 1980 the Kenyan HDI level was 0.420, compared to Zimbabwe’s 0.366; in 1990 the Kenyan HDI level was 0.456, compared to Zimbabwe’s 0.425, and in 2005 the HDI in Kenya was 0.467, compared to Zimbabwe’s 0.347. In the last couple of years HDI has steadily increased in Kenya, and it was 0.509 in 2011, as compared to Zimbabwe’s score of 0.376 for the same year. Both countries are categorized as states with “low human development”, the lowest rung on the development ladder in the Human Development Index. For more information and details about additional years please see the United Nations Development Program, Human Development Reports: http://hdr.undp.org/en/

92 1968 for example, the agricultural sector amounted to 17.7 % of GDP, while the industrial and service sectors amounted to 29 % and 52 % respectively (WDI 2013).
degree of industrialization, urbanization in Zimbabwe has also progressed further than in Kenya. Figure 8:2 illustrates industrialization (% of GDP) and degree of urbanization (% of total population) in Zimbabwe and Kenya.

Figure 8:2  Industrialization and urbanization in Kenya & Zimbabwe 1965-2012

Based on the discussion above, we can conclude that our theoretical expectations have not been validated empirically. As far as industrialization and urbanization are concerned, the expectation based on theory is that higher degrees of industrialization and urbanization will correlate positively with democracy. Yet the data conveyed in Figure 8:2 indicate otherwise. Zimbabwe’s industrialization as a percentage of GDP is considerably higher than Kenya’s – 52 % compared to 17 % in 2012 – and, without interruption, has been substantially higher since 1965. It is notable that this situation has not changed, despite the Zimbabwean land reform in the early years of the new century. Urbanization and industrialization are commonly two sides of the same coin, the latter leading to the former, which is also in keeping with what we can see in Figure 8.2 – the degree of urbanization is much higher in Zimbabwe. 39 % of the Zimbabwean population lived in urban areas in 2012, compared to 24 % of the Kenyan population.

(Source: WDI 2013)
8.1.1.3 Education
Since 2003, primary education in Kenya is free of charge. In 2007, then-president Mwai Kibaki pledged that the same would also apply to secondary school. However, as a consequence of the 2003 reform, enrolment levels in primary school are high, which has overstretched the capacity of secondary schools in the country and made them unable to accept all students who have finished primary schooling. Figure 8:3 illustrates this challenge quite well. We can see that there is a considerable difference between the gross primary school enrolment ratio and the gross secondary school enrolment ratio. Even though the primary education ratio has increased since the 2003 reform, Figure 8:3 also shows that this ratio has been consistently high since the 1970s. The high percentage of Kenyans attending primary school since the country became independent likely explains the adult literacy rate of 87 %. At independence in 1980, the new Zimbabwean government identified two sectors of special concern in order to enhance social development. Education was one of these sectors, health the other. In order to ensure equal education opportunities for all, universal and compulsory primary education was implemented. Figure 8:3 illustrates that there was an upsurge in the enrolment ratio from 1980. As the data in the figure also illustrate, this tendency has spilled over to the number of pupils enrolled in secondary education; there is a huge leap from an enrolment ratio around 7-8 % in the 1970s to 49 % in 1988.

In contrast to Kenya, the Zimbabwean education system anticipated the need for additional secondary schools that would follow as a consequence of free and compulsory primary schooling. The number of secondary schools was therefore increased from 177 in 1979 to 694 in 1981, and to 1531 by 1997 (The Organization for Social Science Research in Eastern and Southern Africa, 2013). The expansion of the education sector in Zimbabwe is an impressive accomplishment of the government since independence. Nevertheless, the economic downturn from the turn of the century, climaxing in an inflation rate of 231 million per cent in 2008 (Berger 2008), affected all sectors of society, including education, and pupils are now dropping out of school at a worrisome rate. Despite this, however, adult literacy in Zimbabwe remained at 92 % in 2010.

93 Gross primary or secondary school enrollment ratio: The number of children enrolled in a level (primary or secondary), regardless of age, divided by the population of the age group that officially corresponds to the same level. This is a statistical measure used in the education sector and by the UN in its education index. As we can from the data in Figure 8:3, the gross enrollment ratio can exceed 100 % as a result of grade repetition and entry at ages younger or older than the typical age at that grade level.

94 In 2010.
As we see in Figure 8:3 above, gross secondary school enrolment data for Zimbabwe is available only up to 1997, while data for Kenya covers years up to 2009. In order to make the comparison as accurate as possible, we can turn our attention to the United Nations Children’s Fund (UNICEF), which also reports data on education in both countries. According to figures from UNICEF, which report net attendance ratio,\(^5\) primary school attendance for both male and female pupils during the period 2007-2011 is higher in Zimbabwe than in Kenya. The tendency is the same for secondary education, although the difference between the two countries is not as notable at this level of education. The figures are presented in Table 8:1.

\(^5\) **Net attendance ratio** is defined as the percentage of children in the official age group for primary school who do, in fact, attend primary school. These data come from national household surveys.
Let us reiterate the theoretical assumption of the structural school as regards education and democratization. We recall from Chapter 7 that the structural approach predicts that an educated citizenry will correlate positively with democracy. Comparing school enrolment data for Zimbabwe and Kenya, we see that primary school enrolment ratio and primary school net attendance are quite similar in the two countries, although Zimbabwe performs better than Kenya on the latter. Data comparing the secondary school enrolment ratio and secondary school net attendance is also quite similar, although, again, Zimbabwe slightly outperforms Kenya. The most striking result is perhaps the huge upswing in secondary school enrolment in Zimbabwe – from 7.7 % in 1980 (at independence) to 41.5 % in 1985. As far as adult literacy is concerned, again, the two countries have similar figures (87 % in Kenya compared to 92 % in Zimbabwe).

8.1.1.4 Infant mortality and life expectancy rates

As far as infant mortality and life expectancy rates are concerned, the two countries display very similar patterns. As shown in Figure 8:4, infant mortality rates in Kenya and Zimbabwe steadily declined from the 1960s to the 1990s, but then turned upwards again and returned to their 1980 levels. Infant mortality rates began to decline again from the turn of the century. The rate in Kenya in 2011 was 48 deaths per 1000 live births, while the figure for Zimbabwe was slightly lower – 43 deaths per 1000 live births.

Life expectancy rates show similar tendencies. As we can see in Figure 8:5, life expectancy at birth steadily increased in both countries from the 1960s to the mid 1980s, but then declined in both states. The decline was much more drastic in Zimbabwe, where rates plummeted from 61 years in 1985 to 45 years in 2000, as compared to Kenya, where the drop was from 59.5 years in 1985 to 52 years in 2000. After the decline in life expectancy in both countries in the late 1980s and beginning of the 1990s, Kenya and Zimbabwe have again experienced increasing life expectancy rates, although Kenya has been a bit more successful in this regard – reaching a life expectancy age of 57 in 2011, compared to 51 years in Zimbabwe.
Based on a structural theoretical perspective, we assume that higher life expectancy rates and lower infant mortality rates form part of the socioeconomic package that correlates positively with democracy. As described above, Kenya and Zimbabwe are not too different from each other when we compare the two countries on these measures. Still, as regards infant
mortality rates in particular, we see that since 1960 and in all five-year intervals since then, Zimbabwe has consistently had a lower infant mortality rate than Kenya. The same tendency holds for life expectancy in Zimbabwe up to 1990, at which point it declines dramatically. Thus, since 1990, Kenya has had a more positive performance on this specific variable.

8.1.2 Communication

Turning now to media proliferation, the Cross National Times Series Databank (Banks 2009) includes data about the percentage of a country’s population that has access to radio, TV and newspapers. In Figures 8:6, 8:7 and 8:8 we can see just how widespread access to these media outlets is in Kenya and Zimbabwe from 1965 to 1999 (radio and newspapers) and 1965 to 2003 (TVs).

Figure 8:6 shows that, today, people in Zimbabwe have greater access to radios than those in Kenya. Looking historically, we see that during the 1960s and 1970s the countries had quite similar access rates for this media outlet, while a larger segment of the Kenyan population had radios in the 1980s and early 1990s. During the last years of the 1990s, however, the percentage of the Zimbabwean population that owned radios increased considerably, reaching nearly 37 %, compared to Kenya’s 22 %.
Figure 8:6  Media proliferation – Radios (percentage of people who own a radio)

![Radio ownership over time graph]

(Source: Banks 2009)

Figure 8:7 displays the same pattern, although with starker differences. As the figure shows, since 1965 the percentage of people in Zimbabwe who own a TV set has been far higher than the percentage in Kenya. During the 1960s and 1970s, people in Zimbabwe had about 8-10 times greater access to TV sets than people in Kenya. It is really only since the beginning of the new century that the Kenyan population’s access to televisions has substantially improved. Even so, in 2003 the segment of the Zimbabwean population that owned TVs was still higher (35 %) than the percentage in Kenya (25 %).
Lastly, let us look at newspaper circulation in Kenya and Zimbabwe. Figure 8:8 shows that Zimbabweans have also had better access to this media outlet since the 1970s. By 1999, 2.1% of the Zimbabwean population had access to newspapers, while the figure for Kenya was only 0.8%.
As mentioned in Chapter 7, Teorell’s study (2010) showed that the extent of media proliferation was more important for preventing democratic backsliding than any of the socioeconomic elements of Lipset’s (1959) theory (economic wealth, industrialization, urbanization, education, life expectancy at birth and infant mortality). Thus, the theoretical assumption is that widespread access to radios, TVs and newspapers is beneficial for democratization. Based on the data presented in Figures 8:6, 8:7 and 8:8, we can conclude that the spread of all three media outlets is larger in Zimbabwe than Kenya – that is, a larger percentage of the Zimbabwean population has access to radios, TVs and newspapers. Hence, despite Teorell’s finding that media proliferation should be the single most significant factor preventing democratic backsliding, we have seen that the level of democracy is rising in Kenya (despite lower access to these media channels), while it has been decreasing in Zimbabwe (despite higher levels of access to these media channels).
8.1.3  **Political cultural traits**

Now that we have analysed socioeconomic and communication variables, we are ready to turn our attention to the final set of structural factors that are said to influence democratization: political cultural traits. In this section of the chapter we will examine colonial legacy and ethnic and religious fragmentation and then proceed to examine survey answers from the Afrobarometer in Kenya (2011) and in Zimbabwe (2012) in order to study issues concerning trust.

8.1.3.1  **Colonial legacy**

Both Kenya and Zimbabwe are former British colonies; Kenya was colonized during the period 1895-1963, Zimbabwe during 1888-1980. As noted in Chapter 7, the impacts of colonial legacy on democratization have been theorized to matter in a number of ways. *Who* the colonizing country was has been identified as important. Specifically, it has been argued that British colonialist were “better” at preparing their colonies for independence and democratization than other colonial powers were (Bernhard et al. 2004, Teorell 2010, Blondel 1972, Huntington 1984, Lipset et al. 1993). As also mentioned in Chapter 7, it is presumed that former British colonies inherited a Westminster form of government, which is believed to improve the prospects for democracy compared to a presidential system.

As regards these three factors, the following conclusions can be drawn in the cases of Zimbabwe and Kenya. First, as stated above, both were British colonies, so the answer to the question of *who* the colonizer was is the same for both. Second, in terms of “preparing” the colonies for independence and democracy, there are differences between Kenya and Zimbabwe. In Kenya, the first time the population was allowed to vote for members of parliament was in the general election of 1957, five years prior to independence. Whether or not this can be seen as sufficient “training” in democracy is very difficult to substantiate empirically. Zimbabwe, on the other hand, was something of a special case among the British dependencies, because it was a self-governing colony. However, despite the fact that, as expressed by Ndulo (2010:178), the country was governed under the “loosest of imperial supervision”, the indigenous population lived under the rule of the white settler minority, who were responsible for making and implementing laws. Hence, the fact that they lived in a self-governing colony does not seem to have done much to prepare and “train” indigenous Zimbabweans for post-independence democratization.

Third, the presumption that former British colonies were predisposed to adopt a Westminster form of government is not empirically supported in our two cases – neither Kenya nor Zimbabwe has done so, rather the contrary. Both countries are republics with strong powers vested in the executive.

The duration of colonial rule has also been theorized to matter – in particular that a longer period is beneficial for post-colonial democratization.
Comparing the duration of colonial rule in Kenya and Zimbabwe reveals that Zimbabwe was under British rule (no matter how “lose” it might have been) for a much longer period of time than Kenya: 92 years compared to 68. Evidently, however, this has not led to more democracy in Zimbabwe than Kenya. To reiterate another point that was raised in Chapter 7, it is very difficult to draw any kind of definite conclusion about the impact of colonialism on post-colonial democratization. We cannot know if, or how, former colonies would have democratized had they never been colonies.

8.1.3.2 Ethnic and religious fractionalization
The data about ethnic and religious fractionalization presented in Figure 8:9 come from Alesina et al. (2003). Fractionalization is measured with an index, where 1 is the highest possible score. The higher the score, the more ethnically and religiously fragmented the society is; the lower the score, the more homogenous it is.

Figure 8:9 Ethnic and religious fractionalization in Kenya and Zimbabwe

The fact that Kenya is an extremely ethnically fragmented country is clearly conveyed in the figure. Of the 194 countries that Alesina and his colleagues have been able to assemble data on, only seven surpass Kenya’s score of 0.858896. Based on the figure, we can confidently conclude that the country is much more ethnically heterogeneous than Zimbabwe. However, as far as

96 Cameroon, Chad, Democratic Republic of Congo (DRC), Congo, Liberia, Madagascar and Uganda (Alesina et al. 2003).
religious heterogeneity is concerned, Zimbabwe and Kenya are quite similar – looking at the right in the figure we see that Kenya is just slightly more heterogeneous.

Regarding religious composition, the absolute majority of Kenyans identify themselves as Christians (approximately 80%), about 10% are Muslim, 9% adhere to indigenous beliefs and about 1% are “others” (Nationalencyklopedin Kenya, 2013). In Zimbabwe, reconciling and fusing Christian beliefs with various indigenous ones is very common. The exact percentage of these fusions and mixes of various strands of Christianity and indigenous beliefs is unclear. Individually, however, Christianity and indigenous beliefs account for almost 100% of the population (80% and 20% respectively). 1% of the population is Muslim (Nationalencyklopedin Zimbabwe, 2013).

Theoretical propositions about the difficulties that ethnically and religiously fragmented societies face when trying to establish and sustain democratic systems of government are abundant in the scholarly literature. Ethnic and religious fragmentation is assumed to correlate negatively with democracy. This means that our theoretical knowledge would lead us to expect that democratization has a far smaller chance of succeeding in Kenya than Zimbabwe, due to the former’s extreme ethnic fragmentation. But this is not the case – Zimbabwe is a far more ethnically homogenous society, yet it is less democratic than Kenya.

8.1.3.3 Trust in public institutions
The survey answers from the Afrobarometer in Kenya (2011) and Zimbabwe (2012) are useful for looking into the question of level of trust in various public institutions in these two countries. Examples of questions asked in the surveys include:

- How much do you trust the president?
- How much do you trust the prime minister?
- How much do you trust the parliament?
- How much do you trust the police?
- How much do you trust the army?
- How much do you trust courts of law?

Comparing the survey answers from Kenya and Zimbabwe, we find both differences and similarities. The most striking difference by far is how the answers to almost all questions about trust in the Zimbabwean Afrobarometer clearly reveal an urban/rural divide,\(^7\) while this pattern is not at all present.

\(^7\) An example serves to illustrate the point. When asked how much one trusted ZANU-PF after the Inclusive Government, 31% of the rural population responded “A lot”, compared to only 12% of the urban population. This divide is found on almost every one of the 13 questions about trust in various public institutions and
in Kenya, in fact, rather the opposite is true. In question after question about trust in public institutions in the Kenyan Afrobarometer (2011), the responses of rural and urban populations are nearly identical. As regards questions about trust in the president, prime minister and parliament, it should be noted that since the latest Afrobarometer, Kenya has held presidential and general elections (March 2013), which resulted in a change in government, with Uhuru Kenyatta assuming the presidency. At the time when the survey was conducted, President Mwai Kibaki was still in office. Nevertheless, the figures are interesting because they say something about the level of confidence in the institutions as such, rather than just trust in the person holding office at the time of the survey. As far as trust in the president, prime minister, parliament and courts of law are concerned, the survey answers are quite similar in both countries, as can be seen in Figure 8:10 below.

**Figure 8:10 Trust in the President, Prime Minister, Parliament and Courts of Law (in percent)**

There are greater differences between the two countries as regards trust in the police, army and electoral commissions (the Zimbabwe Electoral Commission and the Independent Electoral and Boundaries Commission in Kenya). Figure 8:11 captures these differences well.

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provides a very good indication as to where in the country the government and opposition have their respective bases of support.

98 See questions 59A-I in the 2011 Afrobarometer for Kenya.
Our theoretical expectation is that high levels of trust in public institutions correlate positively with democracy. Even though there are some differences between the two countries – particularly in the questions reported in Figure 8:11 – which might help explain why democracy has fared much worse in Zimbabwe than in Kenya, the general pattern is that trust in various public institutions is very low in both countries. Some institutions seem to have greater problems with public trust deficiencies, but even those that are not at the “bottom of the barrel” as regards trust are not high performers when it comes to gaining the trust of the people.

8.2 Summary and concluding remarks – structural determinants

The aim of this section of the chapter has been to compare Kenya and Zimbabwe on a number of structural variables in order to map out differences that might offer an explanation as to why Kenya is presently democratizing, while the Zimbabwean democratization process stagnated after the finalization of the constitution building process in 2000 and has degenerated in the years since. As has been noted before, much of the democratization literature has given considerable attention to structural variables as the strongest and most reliable explanandum. Particular socioeconomic factors, levels of communication and political cultural traits are believed to be important, even significant, for democratization. Consequently, when comparing two (or more) countries we would expect that the country with better socioeconomic development, more widespread media proliferation and

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Figure 8:11 Trust in the police, army, electoral commission (in percent)
more “beneficial” political cultural traits would also have a better level of
democracy.

Bearing in mind the comparison of Kenya and Zimbabwe presented above,
we can quickly conclude that the differences between the two countries are not
very stark on many of the structural variables that have been investigated.
GDP/capita income is almost the same, although Kenya’s is 74 USD/capita
higher than Zimbabwe’s. The level of education is likewise very similar,
although the gross secondary school enrolment ratio is quite a lot better in
Zimbabwe than Kenya. However, if we consider only the net attendance ratio
for primary and secondary education, both countries have very similar figures.
Regarding adult literacy rates, the two countries are similar here as well – 87%
in Kenya and 92% in Zimbabwe. There is little difference in infant mortality
and life expectancy rates as well.

As far as socioeconomic variables are concerned, the main differences
between Kenya and Zimbabwe are levels of industrialization and
urbanization. As we have seen, Zimbabwe is far more industrially advanced
than Kenya. The industrial sector in Zimbabwe accounts for 52% of GDP,
while the figure for Kenya is only 17%. The Kenyan economy is still very agro-
based, whereas the industrial and service sectors in Zimbabwe are far more
developed and contribute more to the country’s economy that the agrarian
sector does. Hence, it appears that although Kenya and Zimbabwe are quite
similar on most of the socioeconomic variables, Zimbabwe does slightly better
on all variables discussed here, with the exception of GDP/capita income and
life expectancy rate. Moreover, the difference between the two countries on
these two variables is so small that it is difficult to imagine that it would make
a difference for the overall impact of socioeconomic factors on
democratization. This is an interesting finding because Kenya has a higher
level of democracy than Zimbabwe. Following the theoretical postulates
proposed by the structural school, we would have expected the opposite – that
is, that Zimbabwe would display higher levels of democracy because it has
more socioeconomic “prerequisites” in place. Yet we know that this is not the
case.

The same tendency can be seen when we compare media proliferation in
the two countries – the variable that Teorell (2010) found to be the most
significant for preventing democratic backsliding. As regards percentage of
the population with access to radios, the figures are quite similar in Kenya and
Zimbabwe although, again, Zimbabwe has a slightly higher rate. When it
comes to TV ownership, here too we find that a slightly larger segment of the
Zimbabwean population has access compared to the population in Kenyan.
Comparing newspaper circulation in the two countries, there is a noticeable
difference – 2.1% of the Zimbabwean population has access to daily
newspapers, compared to just 0.8% of the Kenyan population. Hence, just as
was the case with the socioeconomic variables, these findings run counter to
our theoretical expectations. Based on theory, we would expect radio, TV and newspaper access to be higher in Kenya. Clearly, however, the data tell another story.

Lastly, we have political cultural traits to consider. Also here we find both similarities and differences between the two countries. Starting with a similarity, both countries are former British colonies, so this factor alone cannot explain why democracy has fared better in Kenya than Zimbabwe. As regards ethnic fractionalization – a factor that the democratization literature commonly identifies as negative for the prospects for democracy – we found that Kenya is far more ethnically diverse than Zimbabwe. This too is a finding that runs counter to theoretical expectations derived from the structural school. When it comes to religious fractionalization, the data provided by Alesina et al. (2003) indicate that there are no major differences between the countries. Religious composition is also quite similar, with a clear majority of the two populations adhering to Christianity and/or indigenous beliefs.

As noted above, the countries have much in common as regards trust in public institutions. On a general level, it is low in both Kenya and Zimbabwe, albeit lower in the latter when it comes to trust in the army, police and national electoral commission.

Table 8:2. Summary of results on structural variables

<table>
<thead>
<tr>
<th>Variables</th>
<th>Kenya</th>
<th>Zimbabwe</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP per capita</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Industrialization</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Urbanization</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Education</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Life expectancy at birth</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Infant mortality</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Radios</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>TVs</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Newspapers</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Colonial legacy</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Ethnic fractionalization</td>
<td>Higher</td>
<td>Lower</td>
</tr>
<tr>
<td>Religious fractionalization</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Trust in public institutions</td>
<td>Similar</td>
<td>Similar</td>
</tr>
</tbody>
</table>
8.3 Comparing Kenya and Zimbabwe: external determinants

Now that we have taken a closer look at commonalities and differences between Kenya and Zimbabwe on a number of structural variables, we are ready to turn our attention to another set of factors, elements that lie outside the borders of the individual states. It is time to study impacts from abroad that might have influenced the different trajectories of democratization in the two countries. In this section of the chapter a number of external factors in Kenya and Zimbabwe will be compared. The comparison will be conducted as follows. We will first compare whether or not Western leverage plays a role in Kenya and Zimbabwe, and if it does, how it plays out. The analysis will be guided by the questions in Table 7:1 at the end of Chapter 7. We then move on to compare Kenya’s and Zimbabwe’s linkages to the West, paying attention to i) economic linkage, ii) geopolitical linkage, iii) social linkage, iv) communication linkage and v) transnational civil society linkage. It should be noted that an exhaustive account of Kenya and Zimbabwe’s foreign relations to the US and the EU will not be presented in this chapter, as it lies outside the scope and interest of the thesis. Rather, the aim is to point to the main commonalities and differences in their relationships based on the theoretical proposition that these relations might actually be influential for democratization.

8.3.1 Western leverage vis-à-vis Kenya & Zimbabwe

As stated earlier, Western leverage is theoretically assumed to be determined by three factors. The first is a country’s size and economic and military strength – weak states that have underdeveloped economies run a greater risk of having to yield to external pressure. The second is the geopolitical interests of Western states – countries in which Western states have considerable security or financial interests are less vulnerable to Western leverage related to demands about democratization. Lastly, Western leverage might be weaker in states that have access to political, economic and/or military support from another regional power (Levitsky & Way 2005: 21). An examination of Kenya and Zimbabwe’s relations with the West reveals how these factors play out. As established by Levitsky and Way (2005: 21-23), a large number of Sub-Saharan African states fall into the category of weak states – many of them have relatively underdeveloped economies, and Kenya and Zimbabwe are no exception. The data presented earlier in this chapter about GDP/capita levels, size of industrial and agricultural sectors, etc. show that both countries are undeniably economically weak.

The extent of Western leverage towards Kenya changed in the beginning of the 1990s. The end of the Cold War brought winds of change that reached the borders of that country. A tougher rhetorical tone from Western governments and donors demanded that Kenya democratize and respect human rights, and
this was followed up with actions. As a result, the Moi regime, which up to that point had ruled without any major interference from the outside world, was suddenly forced to deal with international pressure from the IMF and the US government to re-introduce multipartyism as a condition for continuing to receive financial aid (Press 2005, Whitaker 2008, Brown & Raddatz 2014). The regime succumbed to these demands, and, in 1991, the paragraph in the Kenyan constitution declaring that the country was a one-party state was eliminated and multipartyism was reintroduced.

The story of Zimbabwe reveals a different trajectory. The winds of post-Cold War change did not affect the political landscape of this country as it did in Kenya. Although Zimbabwe also has an underdeveloped economy, which would make it possible for Western donors and Western countries to condition aid disbursements on democratic development, the country has an advantage that Kenya does not – one of the other factors listed above which makes it possible to ignore Western demands: namely, the support of another regional power. The powerful regional player that has lent Robert Mugabe a helping hand is the South African government. In the words of Levitsky & Way (2005: 22): “South African assistance to Zimbabwe enabled the government of President Robert Mugabe to weather intense international democratizing pressure between 2000-2005”. As the quote indicates, it is not that Western donors and countries have not tried to pressure Zimbabwe to democratize. Indeed they have – particularly in the aftermath of the excessive state sponsored violence that has occurred after every presidential and general election since 2000. However, these efforts have been ineffective. Since 2002 the EU has repeatedly imposed financial sanctions on the Zimbabwean regime that freeze the assets of leaders in the ZANU-PF government. Members of the EU have also been prohibited from selling any supplies to Zimbabwe that the government can use to suppress its citizens (e.g. EU Council Regulation 310/2002, EU Council Regulation 314/2004, EU Commission Regulation 77/2009, European Union Restrictive Measures 2013). Ever since the flawed presidential elections in 2002 and the subsequent campaign of violence, the US has also imposed financial sanctions on members of the Zimbabwean government and has prohibited US citizens from engaging in any transactions in Zimbabwe that undermine democratic processes and institutions (e.g. U.S Department of State Public Notice 4068, U.S Department of State Public Notice 7552). Yet the Zimbabwean regime remains unaffected. In August of 2013, after local electoral observers once again questioned the fairness of the presidential election, Mugabe publicly lashed out against American and British-led companies saying, “They have companies here and we have not imposed sanctions against them, but time will come when we will say tit-for-tat. You hit me; I hit you. You impose this on me, I impose this on you” (Waterfield 2013).
As far as Western geopolitical security and economic interests are concerned, there is reason to study this aspect in more detail. However, as will be elaborated shortly, the empirical reality runs counter to our theoretical expectations, at least in the case of Kenya. We would anticipate that in countries where Western states have substantial security concerns, the West’s ability to strong-arm regimes to democratize is limited. The essence of the reasoning here is that Western governments are prepared to turn a blind eye to authoritarianism as long as they can be assured that, whatever their security concern may be, it is being handled by people within the authoritarian regime. But perhaps there is reason to believe that the situation would be handled differently by Western governments if security concerns were severe enough to actually affect Western countries at home or their citizens abroad. The terrorist attacks on the World Trade Center in New York and the Pentagon in Washington D.C. on September 11, 2001 was a defining moment that altered US foreign relations with many countries around the world. Kenya was one of these countries.

8.3.1.1 Kenya-US relations prior to, and after 9/11-2011

In August 1998, the US embassies in Nairobi (Kenya) and Dar es Salaam (Tanzania) were simultaneously bombed by members of the terrorist network Al-Qaeda. Approximately 300 people were killed and 5000 people injured. 240 of the deaths occurred in Nairobi (Windrem 2013, Cronin 2004, Aronson 2011). 12 Americans who worked at the Nairobi embassy were among the deceased. Shortly after this incident, Kenya joined the US Antiterrorism Assistance Program (ATA). The program is administered by the US State Department Bureau of Diplomatic Security and serves to promote foreign law enforcement through counterterrorism training and equipment grants. Over the next five years, in addition to its inclusion in the ATA program, the US government disbursed 42 million USD to Kenya to spend on health care, counselling and physical therapy for the victims of the attack. Four years later, in 2002, another terrorist attack occurred in Kenya. This time suicide bombers targeted an Israeli-owned hotel in Kikambala near Mombasa, killing 12 Kenyans and 3 Israeli citizens. Simultaneously, a missile was fired from the local airport and just missed its target – an Israeli airliner carrying 200 passengers (Whitaker 2008: 255). Yet again, in September 2013, al-Shabbab (Al Qaeda’s Somali based cell) performed a high profile terrorist attack against Westgate Shopping Mall in Nairobi, killing nearly 70 people and injuring 175. After the attack, US President Barack Obama personally called his Kenyan colleague to reaffirm continued US partnership (Brown & Raddatz 2014: 53, 55). Indeed, Kenya’s geographical location – flanking the Indian Ocean, bordering Somalia where al-Shabbab has been said to recruit members from Kenya to its organization, and its close proximity to the Middle East – combined with its neglected sea and land borders has made it a possible refuge...
for radical Islamist groups (Maclean et al. 2012, Aronson 2011: 121). Kenya’s friendly relations with the US, which stretch back to pre-colonial times, through the Cold War era and up to the present day, have made Kenya the US’s most important African partner in the “war on terror” (Aronson 2011, Whitaker 2008).

Since 9/11, the US has increased its support to Kenya as a means to battle terrorism on a global scale (Brown & Raddatz 2014: 49). The country became a recipient of the Regional Defence Counterterrorism Fellowship the year after the attacks on US soil. The fellowship offers military personnel from countries that are enrolled in the partnership free education at military institutions in the US. Moreover, Kenya received weaponry and other military assistance worth an estimated 1.6 million USD from the Pentagon in 2006 and an additional 2.7 million USD the following year from the State Department Foreign Military Sales Program. The Kenyan government has also been allowed to strike direct deals with American arms producers through the State Department’s Direct Commercial Sales Program (Volman 2008). The ATA program in Kenya is still in place, as it has been since the 1998 embassy bombing. It is now the largest ATA program on the African continent, with an annual budget of approximately 8 million USD (Aronson 2011, Volman 2008). The focus of the program is to secure Kenyan borders, both land and sea, and to this end, extensive training is carried out by members from ATA in conjunction with Kenyan partners on the ground in Kenya (United States Department of State Bureau of Diplomatic Security 2011).

In addition to military training, weaponry and other forms of military assistance, the US has also become involved in Kenyan anti-terrorism legislation. It is undeniably true that Kenyan legislation in this area is plagued by countless loopholes. Even so, US calls for stronger legislation has faced opposition in Kenya, primarily from human rights activists who worry about the implications of such legislation for civil liberties. A proposed draft of an anti-terrorism bill from 2005 never passed, and it was actually barely even discussed after several members of the Kenyan parliament stated that they would simply “block it” because it was associated with the US (Whitaker 2008: 260). Thus, cooperation between the two countries is not entirely free of conflict.

Another matter has also contributed to friction between the two countries. Since 2002, the US State Department has issued several travel warnings to its citizens about visiting Kenya. Tourism is the largest service industry in the country, and Americans have traditionally been among the largest groups of tourists, so travel warnings to US citizens have been a major blow to the Kenyan tourist sector (Aronson 2011: 124) When the first one was announced

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99 For example, seven individuals who were charged in connection to the Nairobi embassy bombing and the hotel bombing in Kikambala were released, even though several of them had admitted their involvement to the police (Whitaker 2008: 259).
in 2002, it was only addressed to US citizens living in Kenya, advising them to be attentive and cautious of potential terrorist attacks. As the threats became more explicit, the US State Department sharpened its recommendations. Thus, in 2003, it discouraged all non-essential travel to the country. In 2004, when threats became less overt again, the State Department’s recommendation changed too – this time Americans were advised to “evaluate their personal security situations in light of continuing terrorist threats” (Whitaker 2008: 261). After declining almost 28% in 2002, the tourism sector has recovered significantly since 2003. Nonetheless, the travel warnings have angered many Kenyans, who view the warnings as unjust because they are based on past terrorist attacks that they believe were directed towards Kenya precisely because of their friendly relations with the US (Whitaker 2008: 261).

Another source of tension between the two countries is linked to Kenya’s unwillingness to sign something called the Article 98 agreement. This is an agreement that the US presents to governments that are signatories of the International Criminal Court (ICC). The purpose of the agreement is to exempt US citizens from prosecution in the ICC for conduct taking place on the soil of these signatory countries (Lind & Howell 2008: 19, Aronson 2011). Kenya is a signatory and has thus been presented with an Article 98 agreement, but the country refused to sign it, and this resistance led to financial consequences. In 2005, the US suspended 7.8 million USD in aid to Kenya, and an additional 9.2 million USD was suspended the following year (Whitaker 2008: 262). Despite these actions by the US government, Kenya continued to refuse to sign. At the end of 2006, the US reversed its decision after recognizing that the withdrawal of financial resources, especially resources intended for counterterrorism training in Kenya, would, in fact, hinder America’s “war on terror” (Whitaker 2008, Aronson 2011).

In conclusion, it is fair to say that Kenya-US relations altered significantly after the 1998 embassy bombing in Nairobi, and even more so after the attacks on the US on 9/11. Even though relations between the two countries had been friendly for a long time prior to these specific events, Kenya did not matter much to the US before 1998. This has obviously changed, because the US government has come to appreciate that events that occur in Kenya may have

\[100^{th} \text{ On September 5th } 2013 \text{ the Kenyan parliament was the first legislative body in the world that voted in favor of withdrawing the country from the Rome Statute which established the ICC. However, a long process will be required before withdrawal can be finalized (BBC News, 2013-09-05, Esbjörnsson 2013a). Kenya decided to end its membership in the ICC because the ICC decided to go ahead with charges against President Uhuru Kenyatta and Vice President William Ruto (who were on opposing sides in the 2007 elections) concerning crimes against humanity in the aftermath of the 2007 elections that caused mass violence and left 1,133 people dead. According to Cheeseman et al. (2014: 8-9), the ICC charges against Ruto and Kenyatta have clearly put a wedge between Kenya and Western foreign powers in the sense that Ruto and Kenyatta have actually been able to capitalize on the prosecution directed at them. Specifically, they have been able to depict the ICC as a neo-colonial institution bent on threatening Kenyan sovereignty. Authors’ Brown & Raddatz (2014: 52) also support this view, underscoring that the ICC prosecution helped Kenyatta and Ruto portray the ICC as an “arm of Western powers” out to question Kenyan sovereignty. In December 2014, the prosecutor of the ICC dropped the charges against President Kenyatta due to lack of evidence (CNN 2014).} \]
consequences for US national security both at home (meaning on US soil) and abroad (towards US citizens). As a result, the US has altered its relations with Kenya enormously since the end of the 1990s.

It is possible to view the leverage that the US exerts over Kenya from at least two different perspectives. First, one can view the maintenance of good relations with Kenya from a geopolitical perspective. However, in this specific instance, US geopolitical interest spurs rather than constrains leverage on Kenya, which is contrary to Levitsky & Way’s (2005: 21) theory about how Western geopolitical interests in authoritarian or semi-authoritarian states will play out. Furthermore, it is by no means certain that the type of leverage exerted by the US on Kenya is beneficial for Kenyan democratization. It is quite possible, if not likely, that the main concern of the US is its own security rather than the advancement of democratization in Kenya. Thus, it does not appear to be farfetched to suggest that democracy takes a backseat to security when it comes to American involvement in Kenya.

The other way to view US leverage on Kenya is to keep in mind that Kenya is still a poor country with an underdeveloped economy, which makes it possible to use carrot-and-stick tactics when dealing with it. One could imagine that the increase in financial aid to various security branches, the military and poverty reduction measures, in combination with longstanding good relations with the US, provide ample incentive for the Kenyan government to oblige the US by becoming its number one partner in Africa on the “war on terror”. Undeniably, on the “stick” side of things, we have also seen that the US has not hesitated to withdraw financial and military assistance when the Kenyan government failed to conform to its wishes. Even US based aid donors use carrots and sticks to get Kenyan recipients to actively contribute to the “war on terror”. USAID, for example, requires beneficiaries of its grants to sign an “Anti-Terrorism Certificate” before it authorizes disbursements (Lind & Howell 2008). Whether or not exerting leverage in order to fight terrorism also achieves democracy is a difficult question to answer, even though many view security as an essential prerequisite for the establishment of democracy (Whitaker 2008).

8.3.1.2 Zimbabwe-Western relations
Contrary to Kenya, the ruling elite in Zimbabwe has alienated the West ever since independence in 1980. During his three-decade long rule, President Robert Mugabe has made it a habit to verbally accuse Great Britain of wanting to re-colonize Zimbabwe. Particularly former Prime Minister Tony Blair has been on the receiving end of harsh criticism and personal attacks (Lyman 2006). According to Mugabe, Zimbabwe is clearly being vilified by the West, and it is also clear that Great Britain, the US and the rest of the Western world are involved in a large-scale conspiracy against his country (BBC News 2005). Moreover, Western neo-colonial powers want to bring the country to the brink
of economic ruin, and it appears that they have succeeded in doing so. This is what the regime states publicly – turning the misery of the country, its 80% unemployment rate, drought, hyperinflation and widespread poverty into a Western induced scheme (Gavin 2007: 3, Lyman 2008). Lyman (2006: 10-11) reports that at one point, Harare-based newspapers loyal to the ruling regime even stated that the US and Great Britain control the weather – and this was the explanation as to why drought had struck Zimbabwe. Undeniably, Mugabe’s frequent rants about British evildoers have led to frosty relations between the two countries, although it has given him attention and sometimes even applause from African neighbours who have their own memories of colonialism. US – Zimbabwe relations also plummeted in 2005, when then US Secretary of State Condoleezza Rice identified Zimbabwe as an “outpost of tyranny”, along with other internationally recognized disreputable states such as Iran, Belarus, North Korea, Burma and Cuba (Lyman 2006). After the 2013 presidential elections in Zimbabwe, Mugabe addressed US President Barack Obama directly, saying, “Obama, Zimbabwe will never be another Chile” (AFP 2013).

Despite repeated verbal condemnations of the Mugabe regime from Western countries, international organizations, international NGO’s and intergovernmental organizations as well as financial sanctions directed at members of the government of Zimbabwe, the Mugabe regime has remained unaffected. There are two possible explanations for this. First, international response to the misconduct of the Zimbabwean regime have been more rhetorical than forceful, as has been noted by Lyman (2006: 11) and echoed by Gavin (2007: 10). Indeed, there is widespread outrage in all parts of the world when reports – for example those from HRW (2008, 2011) – reveal the degree and nature of state-sponsored violence directed against people loyal to the opposition, yet this sense of chock and disgust is not transformed into forceful action. An important question is why this is so.

Part of the explanation is simply that the landlocked country of Zimbabwe is not of strategic interest to the West, neither from a financial or from a security perspective. This reduces Western governments’ sense of urgency about the need to exert influence on Zimbabwe to democratize (Lyman 2006). Rather, the “Zimbabwe issue” has become a headache for its neighbour South Africa. As a matter of fact, former US President George W. Bush, during a visit to South Africa in 2003, underscored that they (the US) hoped that South Africa would take the lead in addressing the deteriorating situation in Zimbabwe (Lyman 2006). And undoubtedly, while the US, Great Britain and other Western countries might not have strategic interests at play in Zimbabwe, South Africa does. Because of the dire situation in Zimbabwe, approximately 3 million Zimbabweans (about 25% of the total population) have fled to South Africa (Gavin 2007: 8). It clearly lies in the national interest of the South African government to try to prevent Zimbabwe from collapsing
altogether, because such a development would likely lead to an even higher influx of Zimbabwean refugees into the country, which would, in turn, increase tensions and instability in the border regions (Gavin 2007: 11).

Also, while the West lacks strategic and economic interests and has little influence on Zimbabwe, South Africa has both interests and sources of influence. As will be elaborated with facts and figures in the next section, as regards economic linkages in particular, South Africa is by far Zimbabwe’s most significant trading partner and is also its most important supplier of electricity. And yet, in spite of this, South African talks with the Mugabe regime have been quite fruitless, and the reasons for this are manifold. Africa is a continent that still values its liberation leaders, despite the fact that some of them long ago lost sight of the values they once fought for. Thus, former South African President Thabo Mbeki, who was president when the US turned to South Africa to solve the Zimbabwean crisis in 2003, has been hesitant about criticizing a senior liberation hero (Gavin 2007: 11, Lyman 2006: 13). The same seems to be true of South Africa’s current president, Jacob Zuma. In addition, the opposition political party in Zimbabwe, the MDC, remains an inexperienced alternative to ZANU-PF, and South African leaders cannot be sure about what to expect from its neighbour if Mugabe is replaced by Tsvangirai. This is not the place to elaborate further on the reasons behind South Africa’s inaction when it comes to solving the Zimbabwean situation. Rather, our interest is in studying the relationship between Zimbabwe and Western countries, because it is theoretically hypothesized that a combination of leverage by and linkage to the West, primarily the US and the EU, is favourable for democratization. South Africa is not a Western country, and thus its relationship with Zimbabwe will not be developed further here.

In the comparison in this section, we have explored Kenya and Zimbabwe’s relationships with the West, with a particular focus on relations with the US, Great Britain and the EU. The aim has been to understand if there have been differences in the extent of leverage that these powerful players have tried to exert on Zimbabwe and Kenya to get them to democratize. Such differences have been identified, and at the end of the chapter they will be discussed in light of the various types of linkages that the two countries have to the Western world. Before that, however, we will turn our attention to examining exactly what linkages Kenya and Zimbabwe actually have to the West, focusing on economic, geopolitical, social, communication and transnational civil society linkages.

8.3.2 Economic linkage with the West: comparing Kenya and Zimbabwe

In this section of the chapter we are concerned with comparing Kenya and Zimbabwe’s economic linkages to the West, with a focus on aid disbursements, foreign direct investment and trade volumes.
8.3.2.1 Aid disbursements

The OECD collects data on aid disbursements to countries and regions all over the world. Its database allows us to see how much aid the US and Great Britain have given to Kenya and Zimbabwe. In the figures below, we have data from 1980 to 2011 presented in five-year intervals. As far as this specific aspect of economic linkage is concerned, we immediately see that there are differences between Kenya and Zimbabwe. Figure 8:12 presents US aid to both countries in 1980, 1985, 1990, 1995, 2000, 2005 and 2011.

Figure 8:12  US aid disbursements to Kenya and Zimbabwe (million USD)

Several observations can be made based on Figure 8:12. First, we can see that in all years covered by the figure, Kenya has received more US aid than Zimbabwe. In 1995 the difference was not too substantial, but by 2005 it was considerable, and even more so by 2011. It is also noteworthy that US aid to Kenya has increased a lot since the terrorist attacks in New York and Washington D.C. in 2001. Although not shown in the figure above, studying yearly OECD data of US aid disbursements to Kenya from 2001 and onwards reveals a clear trend of increasing disbursements. In 2001, Kenya received 43.4 million USD in aid from the US, compared to 102.4 million USD the following year. By 2006 US aid to Kenya had reached 282.4 million USD, and it increased further to 590.2 million USD in 2009. In 2011, Kenya received 715.4 million USD in aid from the US (OECD StatExtracts. Aid (ODA) disbursements to countries and regions [DAC2a]). Although the US has consistently given more financial aid to Kenya, Figure 8:12 calls attention to
the fact that disbursements to Zimbabwe have also increased markedly since 2006.

The two countries’ former colonial power, Great Britain, has also given larger aid grants to Kenya than Zimbabwe. During the five year intervals presented in Figure 8:13, Zimbabwe received more aid than Kenya on only two occasions, in 1980 and in 1995. In the other periods accounted for in the figure, British aid to Kenya has surpassed aid to Zimbabwe, sometimes quite significantly.

Figure 8:13  Great Britain aid disbursements to Kenya and Zimbabwe (million USD)

8.3.2.2 Foreign direct investment
As far as foreign direct investment (FDI) is concerned, it is difficult to determine to what extent, if any, this factor serves to enhance or impede democratization in Kenya and Zimbabwe. Figure 8:14 below shows that FDI flows into Zimbabwe were almost non-existent until mid-1990 after which they have fluctuated. The figure for 2011 was 4 % of GDP. Kenya has not been a favourite destination of FDI either, as the figure makes clear. Since 1985, FDI has fluctuated around 0.5-0.9 % of GDP, and was 0.99 % in 2011. If anything, one can conclude that on this particular aspect of economic linkage, the two countries are quite similar.
8.3.2.3 Trade volumes

It is more interesting to compare the two countries’ trade volumes and trade partners. As Figure 8:15 illustrates, trade volumes in both countries were quite similar during the 1980s and 1990s, after which they dropped in both cases, although significantly more in Zimbabwe. The aspect of these figures that is probably most interesting to call attention to is that during the years that the trade volume in Kenya was at its highest (1980-1985), the country was ruled as a one party-state under the Moi regime – thus, the country was not a multiparty democracy. This finding indicates that higher trade volumes can impede democratization, something that has been substantiated in previous research on democratization during the third wave (Teorell 2010, Li & Reuveny 2003, Rigobon & Rodrik 2005). Of course, it is necessary to be cautious about allowing extent of trade volumes to dominate an analysis of democratization at the expense of weighing in other factors as well.
If linkage to the West is believed to enhance democratization, we must know with whom the above trade volumes are being exchanged. Data from the World Trade Organization (WTO) can be used to describe exports by main destination and imports by main origin for both countries, and these are presented in Tables 8:3 and 8:4. As indicated earlier, neighbouring South Africa is by far Zimbabwe’s most significant trading partner, both for exports and imports. In 2011 the country exported goods to South Africa worth 67.2 million USD. Its 2011 exports to the EU were worth only 6.3 million USD. That same year, Zimbabwe imported goods from South Africa worth 56.2 million USD. Its imports from Kuwait were worth 9.3 million USD and from the US, 6.9 million USD. This can be contrasted with Kenya, whose main trading partner is the EU. In 2011, exports to the EU were valued at 23.9 million USD, followed by exports to neighbouring Uganda for 12.7 million USD. The same year, Kenya imported goods from the EU amounting to a value of 18.6 million USD.
Table 8.3. Breakdown in economy’s total exports (million USD), by main destination: Kenya & Zimbabwe (2011)

<table>
<thead>
<tr>
<th>Kenya</th>
<th>EU (27)</th>
<th>23.9</th>
<th>Zimbabwe</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Uganda</td>
<td>12.7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tanzania</td>
<td>8.1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>US</td>
<td>5.5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>UAE</td>
<td>4.6</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Zimbabwe</th>
<th>South Africa</th>
<th>67.2</th>
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<tbody>
<tr>
<td></td>
<td>EU (27)</td>
<td>6.3</td>
</tr>
<tr>
<td></td>
<td>UAE</td>
<td>5.9</td>
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<tr>
<td></td>
<td>China</td>
<td>5.3</td>
</tr>
<tr>
<td></td>
<td>Mozambique</td>
<td>3.7</td>
</tr>
</tbody>
</table>

(World Trade Organization, Statistics)

Table 8.4. Breakdown in economy’s total imports (million USD), by main origin: Kenya & Zimbabwe (2011)

<table>
<thead>
<tr>
<th>Kenya</th>
<th>EU (27)</th>
<th>18.6</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>China</td>
<td>12.6</td>
</tr>
<tr>
<td></td>
<td>UAE</td>
<td>12.1</td>
</tr>
<tr>
<td></td>
<td>India</td>
<td>10.8</td>
</tr>
<tr>
<td></td>
<td>South Africa</td>
<td>6.2</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Zimbabwe</th>
<th>South Africa</th>
<th>56.2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Kuwait</td>
<td>9.3</td>
</tr>
<tr>
<td></td>
<td>US</td>
<td>6.9</td>
</tr>
<tr>
<td></td>
<td>EU</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>China</td>
<td>4.3</td>
</tr>
</tbody>
</table>

(World Trade Organization, Statistics)

As part of our summary of this section, we should recall the theoretical expectation about economic linkage and democratization – it is assumed that higher economic linkage with the West will be positively correlated with democratization. Judging from the preceding discussion, as regards economic linkage to the West – in particular the US, EU and Great Britain – it seems as if the Kenyan linkage is stronger; its economy is more integrated with the economies of the West than Zimbabwe’s is. Trade flows between Kenya and the EU are substantial, both in terms of exports and imports, while Zimbabwe’s trade is primarily with South Africa. It is worth noting, however, that the period during which Kenyan trade volumes were at their highest coincides with the period when the country was a de facto one-party state under the rule of President Moi. As has also been illustrated above, both historically and today, Kenya receives more financial aid from the US and Great Britain than Zimbabwe does. In the comparison presented above, there were only a few occasions when financial aid to Zimbabwe surpassed the amounts granted to Kenya. As regards degree of FDI in the two countries, it is more difficult to draw direct conclusions other than that FDI levels have generally been low in both states, although they have increased in Zimbabwe since 2005.
Generally, as regards economic linkage, it appears that Kenya is somewhat more integrated with the Western economy, particularly when one considers its trade volumes with the EU. Therefore, one could say that considering this specific factor, the empirical reality conforms to the theoretical assumptions that greater linkage positively correlates with democratization. In the following section we will attempt to lay another piece of the linkage-puzzle by turning our attention to Kenya and Zimbabwe’s geopolitical linkages to the West, which include their ties to Western governments and Western-led alliances and organizations.

**8.3.3 Geopolitical linkage with the West: comparing Kenya and Zimbabwe**

Much about Kenya and Zimbabwe’s geopolitical linkages to the West has already been explored in this chapter, since the issue of geopolitical interest is also a factor that influences Western states’ ability and willingness to exert leverage on semi-authoritarian or authoritarian states to democratize. Thus, we already have a fairly good idea of how these two countries relate to and engage with Western governments – primarily as regards the US and Great Britain. As far as the US is concerned, it should be noted that, in general, prior to 2001, US security measures in Africa were not a prioritized area of concern. A report from the Pentagon in 1995 even states that the US does not have any security interests on the African continent:

“America’s security interests in Africa are very limited. At present we have no permanent or significant military presence anywhere in Africa: We have no bases; we have no combat forces; and we homeport no ships. We do desire access to facilities and material, which have been and might be especially important in the event of contingencies or evacuations. But ultimately we see very little traditional strategic interest in Africa”.

(Office of International Security Affairs, Department of Defence, 1995)

Needless to say, this position was re-evaluated in response to the events of 9/11. When it comes to Kenya in particular, we already know that the US changed the extent and nature of the relationship in the aftermath of the 1998 embassy bombing in Nairobi, and that relations between the two countries have deepened throughout the years, both as regards counter terrorism and military training, but also the amount of financial aid that Kenya receives from the US. Kenya is of geopolitical interest to the US, and, consequently, the geopolitical linkage is quite high, at least compared to Zimbabwe. Nevertheless, the question remains as to whether or not this geopolitical linkage is a contributing factor that explains democratization in Kenya, or if the country is democratizing in spite of the geopolitical linkage to the US. It should be kept in mind that relations have not been entirely trouble-free and that American involvement, though unsuccessful, in Kenyan anti-terrorism legislation does not support Kenya’s democratization process nor does
American efforts, though these too unsuccessful, concerning the signing of the Article 98 agreement enhance democratic procedures in Kenya.

As mentioned before, through its non-cooperative stance, through Mugabe’s regular angry outbursts towards the US and Great Britain, through its reluctance to halt the human rights abuses towards its own citizens, and by likening NATO to Al Qaida and the Taliban (The Zimbabwean 2011), Zimbabwe has completely alienated itself from the West. At the same time, the country has been able to maintain trade relations with South Africa, and, although its neighbour has been encouraged by the US to “handle” the Zimbabwean crisis, South Africa has silently tolerated Mugabe’s politics. Zimbabwe is a landlocked country in southern Africa, and thus has not showed any signs of being a potential refuge for radical Islamist groups. This is in contrast to Kenya, with its border towards the Indian Ocean and closeness to the Middle East. Thus, Zimbabwe has not been an area of strategic concern for the US in the way that Kenya has. In terms of geopolitics, Zimbabwe is a low-linkage country, while Kenya has a greater linkage to the West, mainly because of US strategic and security interests.

There are theoretical arguments in the democratization literature that posit that membership in a democratic regional organization can spur democratic development among member states, either because it leads to the diffusion of democratic norms among member states and/or because the organization in its entirety puts pressure on its members to adhere to democratic principles. However, it is difficult to determine if this has occurred in Kenya and Zimbabwe. Looking at these countries’ ties to Western-led organizations, we find no significant differences as to which associations they are members of. Both countries are represented in virtually the same organizations, from the WTO to the IAEA,\textsuperscript{101} the IBRD\textsuperscript{102} and the IMF. There are, however, two notable exceptions. First, while Kenya is a member of the Commonwealth of Nations, Zimbabwe’s membership was suspended in 2002 as a consequence of the flawed presidential elections of that year and the rampant violence that followed in its aftermath. In 2004, Zimbabwe withdrew completely from the organization. Second, in September 2013, the Kenyan parliament voted in favour of withdrawing from the ICC, in response to the ICC’s decision to move ahead with its trials against President Uhuru Kenyatta and Vice President William Ruto, both of whom were charged with crimes against humanity related to the severe post-election violence of 2007 (BBC News 2013). Though the prosecutor moved ahead with the trial against Ruto in the autumn of 2013, charges against President Kenyatta were dropped in December 2014 due to lack of evidence (CNN 2014). Zimbabwe, on the other hand, remains a member of the ICC.

\textsuperscript{101} The International Atomic Energy Agency
\textsuperscript{102} The International Bank for Reconstruction and Development
Looking first at the Commonwealth of Nations, it is not a democratic regional organization in the sense that “democracy promotion” is its prime objective. It is an intergovernmental organization whose aim is to promote networks of cooperation and development among its 54 member states, who are diverse as regards both wealth and democratic status – for example members include, on the one hand, Great Britain and Australia, and, on the other, Rwanda and Pakistan. Hence, to conclude that democracy has been diffused by Commonwealth countries to Kenya, while Zimbabwe’s lack of democratic improvement is a consequence of its non-membership is far too rash. In addition, it must be kept in mind that level of democracy started to decline in Zimbabwe even before the country was suspended from the Commonwealth. Turning to the other organization, the ICC, democracy promotion is not the purpose of this institution either. The ICC was established in order to end the impunity enjoyed by perpetrators of serious crimes of concern to the international community. Therefore, it would be wrong to assume that democratisation in Kenya and Zimbabwe would be significantly affected or influenced by membership or non-membership in the organization.

Having completed our analysis of Kenya and Zimbabwe’s economic and geopolitical linkages to the West, in the next section we focus on comparing their social linkages to the West.

8.3.4 Social linkage with the West: comparing Kenya and Zimbabwe

Social linkage with the West cannot, in itself, explain differing levels of democracy in Zimbabwe and Kenya, but it helps us explore yet another aspect of the external factors that we are interested in understanding more about. In this section we are concerned with comparing Kenya and Zimbabwe’s respective social linkages with the West, and we will focus on Western tourism, immigration by westerners and diaspora communities in the West. As we will see below, the differences between the two countries’ social linkages are not very substantial, but there are some worth mentioning.

8.3.4.1 Tourism

Kenya and Zimbabwe both attract a large number of visitors. In 2010, slightly over 1 million tourists visited Kenya, while well over 2 million visited Zimbabwe (Ministry of Tourism Kenya, Zimbabwe National Statistics Agency 2010). From which countries did these visitors come from?

Africa is the largest source of tourists to Zimbabwe – accounting for 83% of the total number of visitors in 2010, with visitors from Botswana, Mozambique, Swaziland and Zambia making up the largest groups that year. This is very different from Kenya, where European tourists accounted for 46.2% of the total tourist arrivals in 2010, 16% of whom were British. This can be
compared to the percentage of tourists visiting Zimbabwe who came from Europe in 2010 – which was only 8%. And the percentage of African tourists in Kenya was only 8.6%, compared to Zimbabwe’s 83% (Ministry of Tourism Kenya, Zimbabwe National Statistics Agency 2010). In short, regarding tourism as an aspect of social linkage, it seems that Kenya has a greater linkage with the West than Zimbabwe.

Tourism brings together people from different parts of the world, people with different cultures and different governing systems. The theoretical logic behind tourism (or rather tourism by Westerners) as a factor conducive to democratization springs from the idea that Westerners will bring new perspectives, ideas and norms to the country that they are visiting. Frequent contact with people from democratic countries might thus give rise to a critical mass that, in turn, will try to influence governance in their own country in the direction of a more democratic system. In Kenya and Zimbabwe, the data presented above show that while Zimbabwe attracts a higher number of tourists than Kenya in total (based on figures from 2010), Kenya attracts far more visitors from the West. Although we cannot attribute higher levels of democracy in Kenya solely to the fact that the country attracts more Western tourists than Zimbabwe, this factor enhances our understanding of Kenya’s overall linkage to the West.

8.3.4.2 Immigration

Immigration to Kenya and Zimbabwe as a percentage of the total population is fairly similar: 2% and 2.9% respectively in 2010. The most interesting thing to note here is that 32.9% of Kenyan immigrants were refugees, compared to only 1% of immigrants to Zimbabwe. Immigrants to Kenya primarily come from its bordering neighbours: Uganda, Tanzania, Sudan, Somalia and Ethiopia. Immigrants to Zimbabwe also primarily originate from neighbouring countries that share a border: Mozambique, Zambia, South Africa and Botswana. But they also come from close neighbour Malawi as well as from Great Britain, although immigration from the latter as well as from Europe in general has steadily declined since independence (World Bank 2011 a, World Bank 2011 b, Tevera & Zinyama 2002:7). Judging from this description, social linkage with the West based specifically on immigration is rather limited for both countries. Immigration rates are low and immigrants to both countries primarily originate from other African states.

As we can recall from Chapter 7, just as tourists from democratic parts of the world might influence less democratic regimes to democratize by bringing new ideas, perspectives and norms to a country, the theoretical mechanism concerning Western immigration is much the same. Thus, it is assumed that immigrants from democratic countries who change their permanent location of residence to live in non-democratic or less democratic states might give rise to and inspire new ideas among their new countrymen/women. Whether or
not this mechanism is at play in Kenya and Zimbabwe is difficult to determine, because neither of the countries are home to a substantial number of immigrants from Western countries, as is clear from the data presented above.

8.3.4.3 Diaspora communities
Comparing Kenya and Zimbabwe on this factor is difficult, because the size of the Zimbabwean diaspora community is unknown due to lack of documentation. There are no official statistics, and attempts to establish a national record with the financial assistance of the International Organization for Migration (IOM) have not been successful due to methodological disagreements among interested stakeholders. Although the figures are uncertain, IOM estimates that roughly 4 million Zimbabweans live in the diaspora, of which many are in South Africa (IOM 2010, Zimbabwe National Statistics Agency 2010). According to the Kenya High Commission, the Kenyan diaspora is estimated to include about 3 million people (the Kenya High Commission 2011). Much the same as with Western tourism and Western immigration, the theoretical proposition linking diaspora communities in Western countries to democratization is that diaspora communities are expected to have new experiences that might travel back to their countries of origin either by word-of-mouth or when people from the diaspora community return home to visit or live. Again, since we do not have proper information as to the number and whereabouts of the diaspora communities (particularly Zimbabwe’s), it is impossible to draw any conclusions as to whether or not this mechanism is at play in Kenya and Zimbabwe.

8.3.5 Communication linkage with the West: comparing Kenya and Zimbabwe
In this section of the chapter we will analyse and compare Kenya and Zimbabwe’s communication linkages with the West, focusing on Internet penetration and Western media penetration.
Since 1980, Freedom House has reported on press freedom for all countries and territories around the world and released annual reports. The 2012 report covered 197 individual countries and territories. Countries are assigned numerical ratings ranging from 0 (best) to 100 (worst) on the basis of a number of questions divided into three subcategories. Depending on the degree to which a country allows the free flow of information and news, a numerical rating is assigned and, on the basis of that rating, the media is classified as “free”, “partly free” or “not free”. Countries that score 0-30 are considered to have a “free” media; those with 31-60 have a “partly free” media, and those with a score of 61-100 have a media that is “not free”. One of the three specific subcategories of questions designed to capture how the free flow of information can be hampered by various forms of reprisal deal with issues
concerning the political environment of countries in particular. Some of these questions also give an indication of the possibilities foreign journalists – those from the West but also from other parts of the world – have to work without government interference.\textsuperscript{103} Other questions concern access to foreign newspapers, TV, radio broadcasts, websites and blogs. While it is impossible to divide the answers to the questions into a group having to do with “Western” channels and a group including all other countries, the information does provide an indication as to the overall situation as regards freedom of the press and communication.

In 2013 Zimbabwe’s press freedom score was 77 of 100; that is, its press was categorized as “not free”. In general, the situation for journalists in Zimbabwe is quite difficult, with a number of legislative acts making it nearly impossible to report on matters concerning the activities of the government without risk of imprisonment. In addition, the situation is all the more dire in light of widespread harassment – including verbal intimidation, arbitrary arrest, detention, physical attack, jailing and financial pressure – directed towards journalists by government officials, supporters of ZANU-PF and the police. Foreign journalists face even harsher restrictions than their Zimbabwean colleagues. First of all, attaining a visa in order to file stories about Zimbabwe from within the country is difficult. Secondly, correspondents based in Zimbabwe have frequently been refused accreditation, in addition to being threatened with lawsuits and deportation. In his book, Degrees in Violence: Robert Mugabe and the Struggle for Power in Zimbabwe (2002), David Blair, journalist and local Zimbabwe correspondent for the British newspaper Daily Telegraph from 1999 to 2001, describes in thorough detail the trials and tribulations of working as a reporter in Zimbabwe. Blair was deported by the Mugabe government in June 2001. In 2001, CNN, BBC, Fox News and ABC were also banned from working in Zimbabwe – restrictions that lasted for 8 years, until 2009, when BBC and CNN were again allowed to report from the country (Plunkett & Holmwood 2009, Dade 2009). However, the deportation of foreign journalists has continued to be a feature of the Zimbabwean media landscape; in 2012, the treatment of photojournalist Robin Hammond from New Zealand got considerable attention. He was detained by the police and then deported from the country after attempting to write a report on Zimbabwean migration to neighbouring South Africa (Freedom House, Freedom of the Press, Zimbabwe 2012).

Hence, Western media penetration in Zimbabwe is very limited, at least through traditional media outlets. The government controls two of the main daily newspapers – The Herald, which Blair (2002) refers to as Mugabe’s propaganda broadsheet, and The Chronicle. There are a few other newspapers

\textsuperscript{103} For a much more detailed account of the methodology, see http://www.freedomhouse.org/report/freedom-press-2013/methodology
that are considered to be neutral (NewsDay, Standard, and the Zimbabwe Independent), and one paper (The Daily News) whose views are generally the same as those of the MDC. In the beginning of 2012, the Zimbabwe Media Commission (ZMC) issued an order banning the distribution of unregistered foreign papers, which ought to imply that papers from Western states are now even more difficult for the Zimbabwean populace to gain access to. However, online versions of these foreign papers are not to be affected by the ban (Freedom House, Freedom of the Press, Zimbabwe 2012). Notwithstanding the difficulties faced by traditional media outlets, the Internet is still relatively free from government interference in Zimbabwe, although there are indications suggesting that this might be changing. In 2011 a person was arrested and imprisoned for a comment that he had posted on Facebook. That same year, a survey conducted by the Zimbabwe All Media Products and Services (ZAMPS) found that, in fact, Facebook was the most popular website among Zimbabwean Internet users (Freedom House, Freedom of the Net, Zimbabwe 2013). With a growing number of Zimbabweans leaving their country due to the difficult economic and political situation, interest in Internet usage has grown, because it is an easier and much cheaper way for those still living in Zimbabwe to maintain contact with their relatives now living in other countries. These contacts with relatives via the Internet might be one of the ways through which Zimbabweans learn about the outside world, and it can also be assumed that those who have access to the Internet also use it to read about incidents and developments in their own country in reports found in online papers, perhaps papers from Western countries. Independent news websites from abroad that report on Zimbabwe have also emerged as a new form of important and complementary media outlet for those who have Internet access. Even though Internet usage has increased in the past few years, Internet penetration in 2011 reached only a mere 16 %, and in 2012 it had only increased to 17 %. In addition, usage is concentrated in urban areas. Poor infrastructure has left the rural areas almost entirely without Internet access.

In 2013, Kenya’s press freedom score was 53 out of 100; that is, it had a “partly free” press. In stark contrast to the situation in Zimbabwe, the Kenyan media is vibrant and provides critical reports of government activities. As reported in Freedom House’s Freedom of the Press report for Kenya in 2013, the constitution of 2010 opened the possibility for new legislation, which has improved freedom of expression and freedom of the press.

Despite progress, however, Kenya has not completely rid itself of biased reporting. This became apparent in the run up to the 2013 presidential elections, when most of the major daily newspapers noticeably sided with different political parties. As far as Western media penetration is concerned, here, too, there is considerable difference from Zimbabwe. International news media is widely accessible in Kenya, including the BBC and Radio France.
Internationale. Furthermore, Internet usage in Kenya is the most extensive in all of East Africa; in 2012, Internet penetration was 32%, which is almost twice as high as in Zimbabwe (Freedom House, Freedom of the Press, Kenya 2012). Internet speed in Kenya is also very high; after Ghana, Kenya has the fastest Internet on the entire African continent. However, as is true in Zimbabwe, there is a vast difference in Internet access in urban as opposed to rural areas – access in urban areas is about three times as high as in the countryside. The government is working to eliminate this divide, introducing so called “digital villages” in rural areas – small access sites similar to Internet cafés which have a number of computers hooked up to the Internet (Freedom House, Freedom of the Net, Kenya 2012). As in Zimbabwe, it is difficult to know exactly what the surfing habits of the 32% Internet users are, but Freedom House’s 2012 “Freedom of the Net” report for Kenya states that the websites of the BBC and US based CNN, in addition to Kenya’s Daily Nations newspaper, are the most frequently accessed online news channels (Freedom House, Freedom of the Net, Kenya 2012). The Kenyan population also has unhindered access to Facebook, YouTube and Blogger (a blog hosting site), all of which rank among the ten most popular Internet sites in Kenya.

It might be useful at this point to remind ourselves of the theoretical mechanisms that connect high communication linkage with the West to democracy. The assumption is that individuals who use the Internet will be exposed to new ideas and influences which, in turn, might lead to demands for democracy at home. The same theoretical logic applies to Western media penetration – that is, that non-domestic media outlets will expose citizens to news from the outside world, as well as to news about their own country from the outside world, both of which might spur demands for democratization. The comparison of Zimbabwe and Kenya’s communication linkages with the West as measured by Internet and Western media penetration, clearly show that the Kenyan communication linkage is more substantial than Zimbabwe’s. Internet penetration is much lower in Zimbabwe, and, in addition, it is almost exclusively concentrated in the urban areas of the country. Even though the Internet has thus far been largely spared government interference, the imprisonment of an individual based on a comment made on Facebook indicates that this might be changing. The Mugabe regime has also consistently sought to make it difficult for domestic and foreign journalists to operate in the country, and they have been successful, which has direct bearing on whether and how the free flow of information is able to reach the citizenry. The banning of several Western media channels for almost a decade at the beginning of the century has also contributed to Zimbabwe’s low communication linkage with the West.

Kenya, on the other hand, is much more connected – literary. Internet usage is the highest in East Africa, and Internet speed is the second fastest on the entire continent. In trying to come to terms with the urban/rural divide in
Internet access, the government has also initiated projects establishing the “digital villages” described above in rural areas in order to improve access. It is interesting to note that the Kenyan population’s poor access to radio, TV and newspaper circulation per capita compared to Zimbabwe’s – which we explored earlier in this chapter – seems to be mitigated by the high percentage of Kenyans who have access to the Internet, where they can read newspapers online. Hence, in terms of the theoretical proposition that a high communication linkage with the West is positively related to democratization, the empirical comparison between Kenya and Zimbabwe presented here indicates that there might be a correlation that, in conjunction with other possible explanatory factors, can contribute to improving our understanding of why democracy has fared better in Kenya than in Zimbabwe.

8.3.6 Transnational civil society linkage with the West: comparing Kenya and Zimbabwe

In this section of the chapter we compare Kenya’s and Zimbabwe’s transnational civil society linkages with the West. Developing an overview and up-to-date understanding about which international networks and international NGOs a particular country is involved in is not as easy as one might expect. Nor is finding out which international NGOs are currently conducting work in particular countries. This is because we lack updated directories that cover these matters. Therefore, in order to develop an understanding of the extent of Kenya and Zimbabwe’s transnational civil society linkages, we will rely on studying, comparing and analysing their association with the UN and, more specifically, with the Economic and Social Council (ECOSOC). For a long time, the United Nations has recognized the importance of strengthening its cooperation with NGOs, because such organizations have proven to be vital in terms of disseminating information, raising awareness, conducting development education, and, among other things, contributing technical expertise. ECOSOC has, in turn, always been the natural point of entry for NGOs into the UN system, because it is the only UN body that has a formal framework for NGO participation.

To compare Kenya and Zimbabwe’s transnational civil society linkages with the West, we can study the number of Kenyan and Zimbabwean NGOs that have consultative status with ECOSOC. According to ECOSOC resolution 1996/31:

“…Consultative arrangements are to be made, on the one hand, for the purpose of enabling the Council or one of its bodies to secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made, and, on the other hand, to enable international, regional, sub-regional and national organizations that represent important elements of public opinion to express their views”.
Thus, ECOSOC has an opportunity to benefit from the valuable expertise that NGOs with consultative status have, and the NGOs, in turn, have an opportunity to influence the work of the Council by expressing their views on specific matters. NGOs with consultative status to the ECOSOC can help monitor and implement international agreements, serve as early warning agents, provide expert analysis on issues that they have direct field experience with and raise public awareness about various relevant issues. In return, ECOSOC offers consultative NGOs a forum through which they can both reach a worldwide audience and have a real impact on the ECOSOC agenda. By virtue of their consultative status, these NGOs are allowed to attend various international conferences and events and, at such events, to make oral and written statements. They are also granted security passes, which gives them access to all United Nations premises, including restaurants and lounge areas. This is not unimportant, in fact, quite the opposite. It is during these more causal encounters, so to speak, that the members of various NGOs are able to approach delegates in order to network and lobby about their specific views on any number of issues (ECOSOC 2011). As this discussion indicates, NGO consultative status with ECOSOC captures, at least to some extent, the level of transnational civil society linkage a country has.

When we compare the number of Kenyan and Zimbabwean NGOs that have consultative status in ECOSOC, we see that there is a notable difference. While there are nine Kenyan NGOs with consultative status,¹⁰⁴ as of September 1, 2012, only one Zimbabwean NGO had such status - “Women in Law and Development in Africa”. The Zimbabwean NGO “Women’s Action Group” also held consultative status, but the organization failed to submit the required quadrennial report to ECOSOC, so its status was revoked and is currently suspended (ECOSOC 2012).

In Chapter 7 it was explained that the theoretical assumption concerning transnational civil society linkage and democratization is that more intimate transnational civil society ties are expected to correlate positively with democratization. Based on the discussion above, we can conclude that Kenyan NGOs have an advantage compared to their Zimbabwean counterparts as regards both connecting with consultative NGOs from other nations – both Western and non-Western – and influencing the ECOSOC agenda. This indicates that the Kenyan transnational civil society linkage with the West is higher than Zimbabwe’s. Nevertheless, one should be hesitant about drawing any conclusions about this specific factor’s ability to account for the difference in democratic status of Kenya and Zimbabwe. It is true that Kenya has nine NGOs with consultative status in ECOSOC, compared to only one for

Zimbabwe, but nine organizations are not very many either, and to attribute democratization in Kenya to the activities of these nine NGOs would be far too speculative.

8.4 Summary and concluding remarks – external determinants

The aim of this part of the chapter has been to compare Kenya and Zimbabwe on a number of external factors that are theoretically argued to affect democratization. Having done so, we can now add another piece to the larger puzzle of democratization in these two countries. Previous sections of the chapter have already provided us with a good understanding about how the two countries compare to each other on a number of structural variables that are also theoretically assumed to affect democratization. Hence, a fuller – albeit not yet complete – picture as to why Kenya is presently democratizing while Zimbabwe is not is starting to emerge.

The comparison of external determinants started with an exploration of Western leverage, particularly that of the US, Great Britain and the EU, vis-à-vis Kenya and Zimbabwe. Let us recall the theoretical assumptions discussed in Chapter 7. Western leverage over authoritarian or semi-authoritarian states in the post-Cold War era is theorized as being determined by three factors. The first factor is the country’s size and economic and military strength. The assumption here is that weaker countries will be under more pressure to conform to Western demands to democratize than rich and powerful countries. The second factor concerns the competing geopolitical interest of Western states, and here we assume that countries in which Western states have considerable security and/or financial interests will be less vulnerable to Western pressure to democratize. The third factor concerns the existence of other powerful regional players. Here we assume that if such regional players exist, individual countries can turn to them for financial and military assistance, which will, in turn, reduce Western leverage.

One of the main differences between Kenya and Zimbabwe that has been identified in our examination of external determinants is Western geopolitical interests – Western geopolitical interests are a fact in Kenya, whereas they seem to be non-existent in Zimbabwe. While the theoretical assumption about geopolitical interest is that countries in which Western states have considerable security and financial interests will be less vulnerable to Western leverage, the empirical reality runs counter to this in Kenya. As has been described earlier, the US exercises quite extensive leverage, and when the Kenyan government does not bow to its wishes, consequences in the form of withdrawal of financial support follow. The fact that Kenya is also an economically weak country that does not seem to have a particular regional power that can lend it a helping hand financially or military, means that this is a need that is wide open for the US to exploit. However, the question of
whether or not US leverage on Kenya is beneficial in terms of helping Kenya
to democratize remains to be answered. American attempts to dictate
domestic anti-terror legislation in Kenya, as well as American insistence that
the Kenyan government sign the _Article 98 agreement_ seems to reveal
another agenda than pushing Kenya in a more democratic direction.

Turning to Zimbabwe, although it is also an economically weak country, it
has a strong regional power in its corner that it has been able to lean on. South
African support, often times covert, has made it possible for the Mugabe
regime to remain unaffected by democratization demands from the West. At
the same time, these Western demands have been more rhetorical than
influential and forceful (notwithstanding a number of financial sanctions
directed towards Mugabe and his entourage). This is likely a consequence of
Western countries’ lack of strategic interest in Zimbabwe, both financially and
in terms of security.

Hence, it appears as if some of the theoretical arguments put forth by
Levitsky and Way (2005, 2010) about Western leverage have found empirical
support in our cases, while others have not. As was also discussed in Chapter
7, the extent of leverage is only expected to be effective if it is simultaneously
accompanied by extensive _linkage_ to the West. In other words, hard power
and bullying techniques will not push authoritarian regimes towards
democratization if they are not complemented by various softer forms of
power expressed in relationships between such regimes and the West.

Therefore, as part of the comparison of external determinants, we went on
to study Zimbabwe and Kenya’s economic, geopolitical, social,
communication and transnational civil society _linkages_ with the West. Here
we were interested in examining whether or not the theoretical propositions
that higher linkage is beneficial for democratization would be borne out in an
empirical comparison between Kenya and Zimbabwe on all five types of
linkages. We were able to identify some differences in the analysis. As regards
economic linkage, we discovered that Kenya’s linkage is stronger than
Zimbabwe’s, particularly if one focuses on Kenya’s trade volumes with the EU,
which are substantial. This can be compared to Zimbabwe’s trade, which is
primarily with South Africa. Kenya also receives much more financial aid from
Great Britain, and even more from the US, than Zimbabwe does. As far as FDI
is concerned, the difference between the two countries is not very large.

Turning to geopolitical linkage, here, too, Kenya’s linkage seems to be
higher than that of Zimbabwe. The 1998 bombing of the American embassy in
Nairobi altered the extent and nature of US-Kenyan relations, which have
been even further deepened in the aftermath of 9/11. As America’s primary
partner in the “war on terror” on the African continent, Kenya has received
plenty of attention from the US since 2001. This has been expressed in a
number of ways: through a massive increase in financial aid, military
assistance, and the evolution of military capacity in Kenya, and even American
involvement in, or at least attempted involvement in, Kenya’s anti-terror legislation. The country’s geographical location makes it a geopolitical interest of the US. Its closeness to the Middle East and Somalia appears to have made it a refuge for radical Islamists, which the US seems to interpret as something that can directly endanger its security at home and citizens abroad. The question raised earlier in this chapter, however, is whether geopolitical linkage of this sort actually helps Kenya to democratize, or if Kenya is democratizing in spite of its high geopolitical linkage with the US. On the other hand, Zimbabwe, a landlocked country in the south of Africa, appears to be of almost zero geopolitical interest to the West. And this does not seem to bother the regime one bit; it has done pretty much everything possible to alienate itself from the British and American “evildoers”.

Social linkage with the West is quite similar for both countries. The main difference here concerns the number and country of origin of tourists visiting Kenya and Zimbabwe. While Zimbabwe hosted about twice as many tourists as Kenya in 2010, the bulk of its visitors came from neighbouring countries, whereas the lion’s share of tourists to Kenya came from Europe. Although it is a theoretical possibility that tourism from Western states might positively contribute to democratization, it is too farfetched to attribute much importance to this specific aspect as an explanation as to why democracy fares better in Kenya than in Zimbabwe. We still do not know if or to what extent tourists from Western countries actually interact with the domestic population, which is a precondition for the exchange of ideas and the “diffusion” of norms.

On the other hand, the extent of the communication linkage to the West might give us a better understanding of the differing trajectories of democratization in the two countries. Here, again, Kenya’s linkage is higher – even much higher – than Zimbabwe’s. Internet penetration in Zimbabwe is still fairly low, and it is very concentrated to urban areas, whereas Internet penetration in Kenya is much higher; Internet speed is faster, and the Internet is at least starting to spread to rural areas as well. While it can be recalled that per capita access to radios, TVs and newspapers is low in Kenya, people with Internet access are at least able to surf the websites of daily newspapers online. Given Teorell’s (2010) finding that media proliferation (among the structural variables explored earlier in this chapter) significantly matters as a barrier to democratic backsliding, it is interesting to note that Kenyan citizens are making up for the lack of traditional media outlets by accessing news about the world and their own country through alternative media. Zimbabwean communication linkage with the West, on the other hand, is much more limited compared to Kenya. The near decade long ban against the BBC, CNN and other Western media broadcast corporations in the beginning of the 2000s naturally contributed to this. Although CNN and the BCC have been allowed back into the country, the situation for foreign journalists is
particularly difficult, at times even making it gruesome to work in Zimbabwe. With the constant threat of deportation looming large, one would imagine that self-censorship is common. In addition, given the 2012 order from the Zimbabwe Media Commission banning the distribution of unregistered foreign papers, it is likely that Western media penetration in Zimbabwe will suffer even more.

The final comparison presented in this section about the two countries’ linkages to the West was about transnational civil society linkage. On this factor, we have seen that the Kenyan linkage is higher than that of Zimbabwe. Nine Kenyan NGOs have consultative status in ECOSOC, compared to only one for Zimbabwe. However, as also discussed briefly above, one should be hesitant about drawing any major conclusions about democratization processes in Kenya and Zimbabwe based solely on this point of comparison. First of all, it is true that nine NGOs compared to one is a considerable difference, but, at the same time, nine NGOs are not very many given the total number of NGOs with consultative status in ECOSOC – which is about 3,400 (ECOSOC 2011). Second, it is difficult to know the extent of the relationship that these NGOs (the Kenyan and the Zimbabwean alike) have established with NGOs from Western countries in ECOSOC and other international conference forums where they gather. In other words, the extent of linkage beyond the simple number of NGOs in ECOSOC is difficult to determine.

Table 8:5. Summary of results of comparison of external variables

<table>
<thead>
<tr>
<th>Variables</th>
<th>Kenya</th>
<th>Zimbabwe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western leverage:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are the countries economically weak states, which makes them vulnerable to Western demands to democratize?</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Do the US and EU have geopolitical interests in the countries, which makes them less vulnerable to demands to democratize?</td>
<td>Geopolitical interests are a fact, but such interests are spur rather than inhibit Western leverage.</td>
<td>No geopolitical interests.</td>
</tr>
<tr>
<td>Do the countries have access to political, economic and/or military support from another regional power, which makes it possible to curb Western demands to democratize?</td>
<td>No</td>
<td>Yes (South Africa)</td>
</tr>
<tr>
<td>Linkage to the West:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic linkage</td>
<td>Higher</td>
<td>Lower</td>
</tr>
<tr>
<td>Geopolitical linkage</td>
<td>Higher</td>
<td>Lower</td>
</tr>
<tr>
<td>Social linkage</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>Communication linkage</td>
<td>Higher</td>
<td>Lower</td>
</tr>
<tr>
<td>Transnational civil society linkage</td>
<td>Higher</td>
<td>Lower</td>
</tr>
</tbody>
</table>
We are now ready to direct our attention to a comparison of the role of political elites in Kenya and Zimbabwe in order to see how this factor plays out compared to the ones investigated in this chapter. The comparison of political elites and their actions ought to provide us with additional information as to the accuracy of previous scholarly work (Cheeseman & Tendi 2010, Cheeseman 2011, Mapuva 2010, Eaglestone 2013, Ikejiaku & Dauda 2011) that has argued that the role of political elites is fundamental for our understanding of democratization in Kenya and Zimbabwe. This will be the focus of the next chapter.
Chapter 9
Why does democracy fare better in Kenya than in Zimbabwe? A systematic comparison of elite cooperation

Having compared Kenya and Zimbabwe on a considerable number of structural and external factors that are theoretically argued to influence democratization, this chapter sets out to compare the role of political elites in the two countries. We can recall from Chapter 7 the theoretical propositions advanced by Burton et al. (1992), Burton & Higley (2001) and Cheeseman (2011), all of which emphasize elite cohesion as vital for democratization. Though Burton et al. (1992: 13) suggest that elite cohesion can occur in one of two ways, either by elite settlements or elite convergence, the authors are still not specific as to why elite settlements/elite convergence occur in some societies but fail to materialize in others. Cheeseman (2011), in turn, proposes that elite cohesion is dependent on the history of cooperation between political leaders and the history of violence in a country. Therefore, this chapter will start by comparing Kenya and Zimbabwe on these two factors. After conducting this comparison, we will be able to determine which of the subtypes of united and disunited elites best describes the elites in these countries.105 We will then move on to discuss potential signs of elite transformation, from disunited to united elites, in both countries. The chapter ends with a discussion of the main findings of Chapter 8 in light of the results of this chapter, and presents an overall assessment as to the main factor or factors that explain the different trajectories of democratization in Kenya and Zimbabwe.

9.1 The history of elite cooperation – a comparison between Kenya and Zimbabwe

As was highlighted in the historical overview of constitution making in Kenya, for a long time, the political landscape of the country was dominated by a single political party. KANU established itself as the leading political party in the early 1960s, won the first elections at independence in 1963 and further consolidated its supremacy when Kenya became a de jure one-party state through the 1982 amendment of the constitution (Lumumba 2009: 16). Prior to the adoption of the 1982 amendment, Kenya’s political elite had a history of fairly cohesive cohabitation. A tradition of political elites working together has characterized Kenyan politics all the way back to the pre-colonial era.

105 These subtypes were presented in Chapter 7 and are drawn from the scholarly contributions of Burton & Higley (2001).
Kenya’s first political organization was established in 1919,\textsuperscript{106} while the country was still under British rule – a pan-tribal political association in which leadership was shared among members of Kikuyu, Luo, Kambe and the Luhiya (Ajulu 2002). Post-colonial politics in Kenya have also been characterized by a remarkably high degree of elite cohesion. The de facto one-party state led by the first Kenyan president, Jomo Kenyatta, was – somewhat paradoxically – a relatively inclusive regime (Cheeseman 2011: 341).

From the beginning of its dominance as governing party and extending through the era of de jure one-party state, KANU has remained a multi-ethnic coalition. This is important to bear in mind due to the high level of ethnic heterogeneity characteristic of Kenya, as highlighted in the previous chapter. The country is home to nearly 40 different ethnic groups, of which five are larger than the rest – each constituting more than 10% of the total population (Hulterström 2004: 25, Ajulu 2002: 253).\textsuperscript{107} As pointed out by Hulterström (2004: 102-103), who has studied the ethnic make-up of the leadership of Kenyan political parties at the end of the 1990s, KANU stands out from the rest of the parties as an affiliation with an ethnically representative leadership which manages to reflect the ethnic heterogeneity of the society as a whole.

During President Jomo Kenyatta’s rule, KANU’s pre-eminence was maintained mainly through a high level of elite consensus, which rested on a system created to guarantee all ethnic groups a share of the “fruits of independence” in return for their allegiance to the dominant party (Cheeseman & Tendi 2010: 206-208). KANU became more exclusionary under the leadership of Daniel arap Moi from 1978 to the beginning of the 1990s, in particular behaving much more discriminatorily towards party members and Kenyans in general who did not belong to the same ethnic group as Moi (the Kalenjin). However, the re-emergence of multipartyism in 1991 made KANU and the other political parties acutely aware of the fact that the ethnic heterogeneity of the country required them to moderate their policies as well as their rhetoric in order to appeal to a larger segment of the population than merely those belonging to their own ethnic group.

Realizing that electoral victory was dependent on cooperation with political elites from other ethnic groups in order to reach out to an electorate that is heterogeneous, rather than simply made up of one’s own ethnic brethren, Kenyan political elites flooded the landscape with numerous political coalitions between 1992-2007.\textsuperscript{108} This upsurge of coalition building over a period of almost one and a half decades has meant that most of Kenya’s political leaders have been colleagues with one another at some point or

\textsuperscript{106} The East African Association (EAA)
\textsuperscript{107} The Kikuyu (21%), Luhya (14%), Luo (12%), Kalenjin (12%) and Kamba (11%).
\textsuperscript{108} Since 2007 a number of legislative acts concerning political party formation and registration have been adopted, which has resulted in a considerable decrease in the number of political parties. Examples include “The Political Parties Act” of 2007 (revised in 2009) and “The Political Parties Bill” from 2011.
another (Cheeseman 2011: 341). As Mueller (2011: 104) puts it: “Kenyan political parties are barely distinguishable in terms of ideology, programs, platforms or organization. Many are no more than changing sets of ethnic coalitions.” To be sure, when one studies the abundance of political parties in Kenya, it quickly becomes apparent that they are a wealth of multi-ethnic coalitions formed primarily to gain power.\(^{109}\) When they are not successful in achieving this objective, they either break down entirely and disappear from the political landscape, re-emerge in some other constellation, or merge with one or more political parties that were also unsuccessful in the elections in order to create a new party. Let us briefly look at past elections in Kenya to see how this pattern has played out.

In the run up to the 2002 presidential elections, the National Alliance Party of Kenya (NAPK) joined forces with the Liberal Democratic Party (LPD) and together they formed the National Alliance of Rainbow Coalition (NARC). NARC was successful in winning the elections, and for the first time since independence, KANU rule was broken and Mwai Kibaki from NARC took over the office of the presidency. The alliance lasted only three years, before splitting up as a result of internal differences concerning the constitution making process. LDP left the government and joined forces with KANU (who had been its main rival in the 2002 elections). Together they formed the Orange Democratic Movement (ODM). Members of NARC who were still loyal to President Kibaki created, in turn, a new political party, NARC-Kenya, which made the original NARC nothing more than an empty shell. In 2007, just a few months prior to the presidential election, Kibaki announced that he would run for president as part of the newly formed coalition Party of National Unity (PNU). KANU broke away from the main opposition party, the ODM, and – together with a number of other political parties, including the Kibaki loyal NARC-Kenya – joined PNU. Kibaki claimed victory in the 2007 elections, while the ODM suspected electoral manipulation, and the violent inter-ethnic clashes that followed resulted in the death of 1,133 Kenyans (The Commission of Inquiry on Post Election violence 2008: 383). The conciliation efforts of former General Secretary of the United Nations Kofi Annan prompted the leadership on both sides, Kibaki for the PNU and Raila Odinga for the ODM, to agree to form a power-sharing government in 2008 under the “National Accord and Reconciliation Act”. It is noteworthy that Kenya’s current vice president (since 2013), William Ruto, sought the ODM’s nomination to be the party’s presidential candidate in the 2007 elections,\(^{110}\) while the current president (also since 2013), Uhuru Kenyatta (son of Kenyan’s first president, Jomo Kenyatta), is a member of KANU, which was part of PNU. Thus, these two were on opposing sides in the

\(^{109}\) In 2007, 160 political parties were registered. The number declined to 24 in 2012.

\(^{110}\) In the end, however, Raila Odinga won the nomination (Hornsby 2013: 749).
2007 elections. In the run up to the 2013 presidential elections, Kenyatta and Ruto announced that they would join forces in yet a new coalition named *Jubilee Alliance*. Only months before the 2013 elections, Kenyatta explained the move as, “We are uniting for the sake of the people of Kenya” (BBC News 2012). The result of the 2013 elections was a victory for the *Jubilee Alliance*, and in April 2013 Kenyatta was inaugurated as the fourth president of his country, and it was announced that Ruto was to be his vice president.

Whether or not this elite “musical chairs”, as Cheeseman & Tendi (2010: 213) call it, is desirable is a question beyond the scope of the research presented here. However, what it tells us is that the members of the various political parties and alliance formations in Kenya have become accustomed to working together and have also created expectations as to the circumstances under which cooperation works and when it does not. Hence, insofar as a history of elite cooperation is an important prerequisite for and determinant of elite cohesion, we can conclude that Kenya meets this prerequisite – since independence, a culture of cooperation among political elites has been established, albeit primarily for the purpose of enhancing and securing the interests of one’s own ethnic group.

Turning to Zimbabwe, elite cohesion is by and large non-existent. In contrast to Kenya, Zimbabwe has never been a de jure one-party state, but the forced merger of ZAPU into ZANU in 1987 turned the country into a de facto one. ZANU (ZANU-PF after the merger) has governed Zimbabwe since 1980. While Kenyan President Jomo Kenyatta reached out to other political parties with different bases of ethnic support than his own during his presidency, albeit mainly to safeguard KANU supremacy, Robert Mugabe has never followed this course of action. Quite the contrary.

The actions and strategies of Robert Mugabe and his ZANU-PF must be understood in light of the party’s nearly complete identification with the liberation struggle, and, as winners of the struggle, the party’s sense of responsibility to guarantee continued Zimbabwean sovereignty. Mugabe himself has made it his duty to fend off opposition to ZANU-PF from the outside as well as within his own ranks – as of 1987 all opposition has been labelled as treason (Bratton & Masunungure 2011, Compagnon 2011: 9). With ZAPU out of the way, ZANU-PF did not face any real political challenge until the turn of the century, when the MDC headed by Morgan Tsvangirai arose on the country’s political stage. ZANU-PF’s quest for complete authority disguised under the pretext of creating and upholding a socialist state has made it relentless when it comes to its treatment of the MDC (Compagnon 2011: 8-9). Unlike in Kenya, there have been no attempts to make the opposition work with the ruling party instead of against it, rather, Robert Mugabe has opted for repression as an alternative to seeking common ground and consensus (Cheeseman & Tendi 2010: 215). Violent forms of suppression in the run up to and after the 2000, 2002, 2005 and 2008 elections bear
witness to the techniques used in order to keep the opposition in a constant state of fear, and they will be discussed further in the next section when we discuss the history of violence in the country (HRW 2008, HRW 2011).

As discussed in Chapter 6, the violent turmoil following the 2008 presidential elections eventually resulted in a power-sharing agreement between ZANU-PF and the two MDC-formations (MDC-T and MDC-M) in September 2008. The agreement was brokered by the Southern African Development Community, headed by then-president of South Africa, Thabo Mbeki, during his very last days in office.\textsuperscript{111} In the summer months prior to signing the agreement, the AU and the UN were also involved in facilitating the process at the request of Tsvangirai. With assistance of these organizations, a Memorandum of Understanding (MoU) was agreed upon in July 2008, at which point the three factions agreed to further negotiate the specific powers and composition of the Government of National Unity (GNU). With absolutely no history of cooperation and diametrically opposing views as to exactly how power was to be shared, Tsvangirai and Mugabe bickered about the role and power of the president vis-à-vis the prime minister. The rift between the two MDC formations also benefitted Mugabe, as he was able to capitalize on the huge mistrust of MDC-M towards MDC-T. Secret meetings were held in parliament, in violation of the MoU, with the silent support of Mbeki and MDC-M, at which point Mugabe tried to settle the balance of power by electing leaders to the body. Also in violation of the MoU, he went on to select a number of provincial governors, making sure to save two seats for candidates of MDC-M in order to secure their support. In order to further widen the gap between the two MDC-formations, Mugabe also declared his support for the MDC-M candidate as Speaker of the House of Assembly. However, Mugabe’s attempt to fully exclude MDC-T from the agreed upon tripartite power-sharing deal failed when MPs from MDC-M went against their own party and voted for a MDC-T candidate as the Speaker of the House of Assembly (Compagnon 2011). With MDC-T strengthened, negotiations continued, and, in the end, they were finalized in the GPA. The GPA is a comprehensive agreement covering substantive matters including the restoration of economic stability, the writing of a new constitution, the land question, securing free political activity and a number of other issues (GPA 2008). However, due to Mugabe’s enduring reluctance to enter into any sort of agreement with the opposition, the new cabinet was not sworn in until February 2009. The GPA also established that Robert Mugabe would continue to hold the office of the presidency; that a new post of prime minister would be established and occupied by Tsvangirai, and that two deputy prime ministers would be elected, one from MDC-T and one from MDC-M. The cabinet seats were also to be divided up among the three factions. Although

\textsuperscript{111} The name of the agreement is the Global Political Agreement (GPA)
the GPA stated that the members of the cabinet were to make decisions by consensus (GPA 2008), there was nothing in the agreement that clearly stated how disagreements among the factions would be resolved if consensus could not be reached, other than that SADC would act as the overall guarantor of the agreement.

The five years during which Zimbabwe was governed under the GPA – up to the 2013 general and presidential elections – did not stimulate elite cohesion; rather, governing in the power-sharing constellation was cumbersome, because much of the executive power remained in the hands of Mugabe, including the entire security apparatus, which – since 2000 – has been used against the opposition (Cheeseman & Tendi 2010: 220). Furthermore, as highlighted by HRW (2013a), four years after the signing of the GPA, there had been very little progress in implementing many of the key aspects of the document, particularly in terms of addressing the culture of impunity and ending the on-going political violence. HRW also noted that ZANU-PF continued to block attempts by the MDC formations to amend existing laws in order to bring them into line with the text of the GPA.

On June 13, 2013, in violation of the GPA, Mugabe used a presidential decree to announce that elections would be held on July 31 of that year. Even though Tsvangirai loudly and publically reacted against this decision and SADC expressed their concern (Smith 2013, Esbjörnsson 2013b), general and presidential elections were carried out in accordance with the presidential decree. They were the first elections held after the adoption of the new constitution earlier that same year. The election results ended in victory for Mugabe; he won a seventh term in office, with 61 % of the vote compared to Prime Minister Tsvangirai’s 34 % (Zimbabwe Electoral Commission 2013). Tsvangirai called the elections a “huge farce” and said that the presidential results were “null and void” (BBC News 2013a). The Zimbabwe Election Support Network (ZESN), the largest group of domestic electoral observers, concluded that the vote was compromised, claiming that up to one million of the country’s 6,4 million qualified voters were prevented from casting their votes (BBC News 2013a). Nevertheless, election observers from the AU and SADC deemed the elections to have been free and peaceful (although they refrained from calling them “fair”), and, while they acknowledged that some irregularities had occurred, they concluded that they were not relevant as far as the outcome of the vote was concerned. The head of the SADC mission even stated that, “in democracy we not only vote, not only campaign, but accept the hard facts, particularly the outcome” (BBC News 2013b). Mugabe was inaugurated as president on August 22, 2013.

9.1.1 Ideology versus ethnicity
The foregoing discussion of the history of elite cooperation in Kenya and Zimbabwe inevitably raises the question of “why?” Why is there a history of
elite cooperation in Kenya but no such history in Zimbabwe? Clearly this is a complex and multifaceted question. However, one relevant observation has to do with the main conflict dimension in the political life of each of these two countries. As regards this, we find a difference between the two – the role of ideology versus ethnicity in politics.

One of the main differences between Kenya and Zimbabwe is the role of ethnicity in society and the extent to which it has been politicized. As already highlighted above, political parties in Kenya appear to be marriages of necessity, which are quickly followed by divorce and re-marriage with another partner or partners in response to election failure. The ease with which new political parties are formed, even as late as a few months prior to elections, and the ease with which former political adversaries create alliances in time for upcoming elections, strengthens the credibility of the observations made by Ajulu (2002), Mueller (2008, 2011) and Nasong’o (2001), that ideology has almost no significance in Kenyan politics. Rather, the political game is perceived as a zero-sum ethnic battle in which the prize is the economic resources of the country. Since institutions have historically been weak and continue to be so, voting for a fellow member of one’s ethnic group has become the surest way to ensure that one’s own group gets access to public goods (or at least this is the widespread perception) (Hulterström 2004). This is not to suggest that Kenyans never vote in accordance with their policy interests; it would be an oversimplification to claim that ethnic identity alone determines individuals’ voting behaviour (Bratton & Kimenyi 2008). However, Bratton & Kimenyi’s (2008) study illustrates that even though Kenyans do not primarily identify themselves as being “Luo”, “Kalenjin”, “Kikuyu”, etc., but instead tend to link their identity to their occupation and social class, they are much more likely to link the identity of others to their ethnicity. The survey conducted by Bratton & Kimenyi reveals that interethnic trust is a commodity that is in short supply in Kenyan society. There is a widespread belief among the Kenyan populace that their “co-nationals are prone to organize politically along exclusive ethnic lines and to govern in discriminatory fashion” (Bratton & Kimenyi 2008: 276). This explains why politics is considered a zero-sum game in Kenya – a member of the “wrong” ethnic group in the post of president is viewed as detrimental for one’s own interests, because the president is regarded as a personal distributor of various public goods (Mueller 2008). This, in turn, encourages politicians to take advantage of this sense of urgency among the people, forming and reforming alliances with each other without any clear programmatic platform, but rather based on ethnic calculations as to which alliance formation is most likely to mobilize the largest portion of votes on election day (Mueller 2008). So, while ethnicity is the most salient dividing line in politics, and, to a very large extent, is driven by a “it’s-our-time-to-eat” logic, political leaders from various groups do not have any difficulty working with each other in various alliances for the sake of winning.
Whether or not members of the electorate are rewarded in accordance with their perceptions is, however, a different matter. As noted by Kasara (2007: 159), it is not at all certain that political leaders, once elected, exclusively and/or continuously extend patronage to members of their own ethnic group in particular. It may even be the case that, for example, co-ethnics are taxed harder than non co-ethnics (Kasara 2007), because political leaders can count on the electoral support of their fellow co-ethnics regardless. Moreover, from the point of view of the individual who is casting the vote, voting for a presidential candidate from the same ethnic group as oneself might often be a defensive strategy motivated by fear as to what could happen to one’s ethnic group if a member of another ethnic group wins. According to Mueller (2008: 201), the voting pattern of the 2007 elections reveals this tendency quite well, as the electorate, to a large extent, voted against broad-based ethnic coalitions rather than in favour of any particular one, while political alliance-building in the run up to the elections was as much about which ethnic groups should not acquire power and control over the state’s resources as about which groups would.

Zimbabwe, as opposed to Kenya, was born out of a liberation war that lasted from 1964 to 1979. During the last years of the liberation struggle, ZANU-PF adopted Marxism-Leninism as its official ideology and announced 1979 as the year of the “Gore Gukurahundi” (the Year of the Storm) – a revolution that would wipe away the white settler minority, its supporters and, finally, the capitalist system, thus ushering in a new political and socio-economic order (Sithole & Makumbe 1997). As explained by Compagnon (211: 3), the belief that the Zimbabwean liberation war was a just and legitimate struggle made the scholarship of the time somewhat blind to the techniques that Mugabe was using to secure victory. Likewise, the autocratic tendencies that started to emerge in the beginning of the 1980s were overshadowed by the news of initial success in social and economic spheres. However, the early achievements were soon reversed when inflation hit the country in 1983 (Compagnon 2011: 3). The insistence on retaining a Marxist-Leninist language soon developed into nothing more than empty rhetoric aimed at holding on to power. Likewise, the credibility of the ZANU-PF elite as some sort of champion of socialism was severely weakened when individuals within the party started to accumulate capital themselves (Compagnon 2011: 4-5, Sithole & Makumbe 1997).

As members of the winning side in the war of liberation, ZANU-PF articulated and continues to articulate the political discourse of Zimbabwe around an ideology of national liberation (Compagnon 2011: 2-3). In the view of the ruling party, it is politically legitimate that they rule forever, because they liberated the country from British rule – i.e. they see their eternal rule as natural and uncontroversial (Bratton & Masunungure 2008: 43, Raftopoulos 2006, Compagnon 2011). It is true that nationalism had a unifying effect on the
Zimbabwean population during the long liberation struggle, but it also planted a seed of intolerance against political opposition which has lived on ever since (Bratton & Masunungure 2008). The signs were already there during the war and in its immediate aftermath. The two nationalist formations, ZANU and ZAPU, and their respective armed wings, ZANLA and ZIPRA, were unable to agree and unite during the course of the war against Ian Smith’s Rhodesian government. Instead, they operated separately, and at times against each other. While there is broad scholarly agreement concerning the prominent status of ethnicity in Kenyan politics (Cheeseman & Tendi 2010, Mueller 2008, Mueller 2011, Bratton & Kimenyi 2008, Ajulu 2002, Hulterström 2004), scholars who have devoted attention to understanding the political life of Zimbabwe do not agree about the role of ethnicity there. Moore (1990), for example, argues that conflict both between ZANU and ZAPU as well as among members of the separate factions was ideological in character, and that the main conflict was between radicals and reformists rather than between the two main ethnic groups, the Shona (82%) and the Ndebele (14%). Bratton & Masunungure (2008) appear to agree with this, but argue that the “struggle within the struggle” served to deepen the ethnic split between the two main ethnic groups as well as within them. Cheeseman & Tendi (2010) and Cameron & Dorman (2009) also contend that, in contrast to Kenya, politics in Zimbabwe has revolved around issues of class and geography, with the rural/urban divide being the most salient. Compagnon (2011), on the other hand, sees ethnic antagonism between the Shona and the Ndebele as the main factor that divided the liberation struggle, and the primary factor that has continued to divide politics in the country up to the present. He argues that, at least in the 1970s, fighting between the leadership of ZANU and ZAPU was mainly a conflict between various political entrepreneurs; ideological differences were fairly non-existent, although ZANU used Marxist-Leninist discourse for legitimization purposes. The truth about the driving forces in Zimbabwean politics during the liberation war and the impact they had in the post-independent period likely lies somewhere in between these various interpretations. What is certain, however, is that the nationalist rhetoric and nationalist agenda is still at the forefront and continues to be used by ZANU-PF.

Since independence, ZANU-PF has been able to hold on to power by continuously depicting an on-going state of emergency in which the Zimbabwean nation is under threat from both domestic forces such as internal opposition, white-farm land owners and local “sell outs”, and external forces including Western powers, imperialists, “imperialist stooges” and colonialists (Cheeseman & Tendi 2010: 215, Bracking 2005: 346, Bratton & Masunungure 2008: 43-46, Sachikonye 2011: 40-44). In the rhetoric used by the party, not only are ZANU-PF the only legitimate rulers of the country, they are also the only ones competent enough to do it. The forcefulness and persuasiveness of
this argument rendered the few opposition parties that emerged during the 1990s irrelevant and unsuccessful in terms of challenging ZANU-PF hegemony. In addition, instead of focusing on political issues that needed to be addressed, they bickered between and among themselves, much to the amusement of Mugabe and fellow ZANU-PF members (Raftopoulos 2006). As mentioned earlier, it was not until the very end of the 1990s that the political landscape of Zimbabwe altered dramatically as a result of the formation of the MDC – a political party that was created in response to labour struggles, constitutional politics and human rights violations. The party was able to gain support from the white commercial farming sector and from a broad array of Zimbabweans who are increasingly disillusioned with the political and economic situation in the country, and it has continued to maintain this support since it split into two newer formations (MDC-M & MDC-T) (Raftopoulos 2006). Running on a political platform based on ideas of economic reform, constitutionalism and political rights, the MDC have, in all elections since 2000, challenged ZANU-PF by expanding the political discourse beyond nationalism and national liberation.

It is quite clear that there is a difference between Kenya and Zimbabwe as regards the driving force in political life. While Kenyan politics is ethnicized, nationalist ideology plays a more noticeable role in Zimbabwean politics. Presumably, elite cooperation should have a better chance of succeeding if ideological differences are either non-existent or, at least, not too large. If political elites from different political affiliations do not agree on fundamental issues about how best to organize society and how institutions should be designed, then cooperation among them would appear to be an impossible option. On the other hand, if one subtracts ideology from the equation and considers a situation in which the grab for power takes precedence over everything else, then cooperation will appear to be a viable option if it actually helps one attain power. This might, at least in part, explain the history of elite cooperation in Kenya and the lack of it in Zimbabwe.

This section of the chapter has shown that the history of elite cooperation is very different in Zimbabwe and Kenya – the countries have had quite different trajectories. While a history of elite cooperation exists in Kenya, Zimbabwe has no such history. Even prior to independence, and continuing up to the present day, political elite cooperation in Kenya has been fairly high. Although it is important not to paint a false picture of reality with no intra-elite fighting and full cohesiveness, it is important to call attention to the findings described above, because it can enhance our understanding of democratization in Kenya. Of course, the situation in Kenya is even easier to see when we compare it to Zimbabwe. This is not to say that the absence of elite cooperation in Zimbabwe is the sole explanatory factor that sheds light on why democracy has fared worse there than in Kenya, but it does contribute to increasing our knowledge about the potential importance of elite
cooperation in democratization processes. In the next section of the chapter we will compare the other factor that, together with the history of elite cooperation, is believed to determine elite cohesion and, by extension, democratization – namely the history of violence in Kenya and Zimbabwe.

9.2 The history of violence – a comparison between Kenya and Zimbabwe

This section of the chapter will begin with a description of the history of violence in Kenya.\footnote{When referring to violence in this section, we are concerned with political violence. As discussed thoroughly by Mars (1975) and Hansen (2009), “political violence” is a notoriously difficult concept, and scholarly agreement concerning its meaning is hard to achieve. The term has often been criticized as being too all-encompassing to be of any use and as simply too vague and indistinct in comparison to other forms of violence (e.g. economic violence and social violence). This is not the place to get into a detailed discussion about the concept, but a definition is warranted. Here, “political violence” is defined with the help of Moser (2001), who describes political violence as, “the commission of violent acts motivated by a desire, conscious or unconscious, to obtain or maintain political power” (Moser 2001: 36). Hence, violent acts in the pursuit of attaining or maintaining power is at the core of the concept, and whether or not the perpetrators of such acts are successful in achieving their aim is irrelevant. Political violence includes acts such as political assassinations, armed conflict between political parties, rape and sexual abuse as a political act (Moser 2001: 36).} The discussion will be organized chronologically starting with the governing period of Jomo Kenyatta and continuing with the periods of Daniel arap Moi, Mwai Kibaki and Uhuru Kenyatta, in that order. The discussion of how the history of violence in Zimbabwe has evolved will be also proceed chronologically, but will focus on the first decade of independence and then the periods around the elections of 2000, 2002, 2005, 2008 and 2013. This is because there has been no alternation of power in the country since independence, and also because elections in Zimbabwe during the 2000s have been accompanied by high levels of violence (Redress Trust 2004).

Much of the recent literature on political violence in Kenya is quite naturally focused on the events that unfolded after the presidential elections of December 27-28, 2007, which left 300,000 people displaced and 1,133 dead (e.g. Anderson & Lochery 2008, Mueller 2011, Gibson & Long 2009, Dercon & Gutiérrez-Romero 2012, Cheeseman 2008). As Mueller (2011: 101) calls attention to, the events of 2007 caught many off guard, because Kenya’s transition towards democracy was believed to be fairly secure after the peaceful elections of 2002 and the subsequent referendum on the constitution in 2005. Even though the government faced defeat in 2005, when the constitutional draft was rejected by the people, it did not contest its loss, and this was perceived by many as yet another step towards a full transition to democracy. However, given the history of political violence in the country, particularly from the 1990s and onwards, it is not unreasonable to express doubt about how unexpected the occurrences of 2007 really were. A few words concerning political violence in Kenya under colonial rule and during Jomo Kenyatta’s regime (1963-1978) are, however, also warranted, mainly in order
to call attention to differences in how political violence has been exercised historically.

### 9.2.1 Political violence during the colonial era and Jomo Kenyatta’s rule

Political violence has played out in different ways throughout Kenya’s history. At the end of the 1880s, when the Sultan of Zanzibar granted the British East Africa Company (BEAC) concessional rights to the Kenyan coast, a Kikuyu leader was kidnapped and assassinated by the British after having torched a BEAC official’s house (Hansen 2009). Clashes between the indigenous population and the colonizers continued in response to the latter’s domination of economic resources and political power. Violent means were used by both sides for the purpose of securing various political objectives, something that was most evident during the Mau Mau rebellion from 1952 to 1960. Although it would be incorrect to say that the coming of independence meant a complete break with political violence in Kenya, state sponsored acts of violence were not perpetrated on a systematic basis during the rule of Jomo Kenyatta. During this period, there were episodes in which state security forces were suspected of having been involved in the assassinations of both oppositional politicians and politicians within Kenyatta’s own ranks, but most of the irregularities during Kenyatta’s rule were along the lines of harassment, obstructing meetings of the opposition and other actions of such nature. When Kenyatta passed away and was succeeded by Daniel arap Moi in 1978, the extent and character of political violence in Kenya changed, taking a turn for the worse. In the following section we will explore the reasons behind this development and also how political violence was exercised during Moi’s regime (1978-2002).

### 9.2.2 Political violence under Daniel arap Moi

The coming to power of a new president had consequences for repression and violent action towards members of the opposition. There are a number of reasons that explain the change. To begin with, the new president did not have the same resources at his disposal that Kenyatta had once had — resources that he could use to reward his supporters (e.g. land to be distributed, jobs in the civil service sector to be doled out, etc.) (Mueller 2008). Secondly, Moi was the target of an attempted coup d’état in 1982. The action was yet another effort by the Kikuyu elite to keep Moi, a member of the Kalenjin ethnic group, away from power. Moi’s response to this failed effort was to amend the constitution in order to make KANU the only legal political party in the country. In conjunction with this manoeuvre to deny the political opposition any legal space to operate in, his ruling style also changed dramatically. Starting in the beginning of the 1980s, arbitrary detentions without trial, torture and branding opponents as dissenters became common practice,
which, in turn, spurred the opposition movement to demand democratization even more forcefully (The Commission of Inquiry on Post Election Violence 2008).

Over the years, civil society organizations joined the opposition in demanding democratic reforms. In the beginning of the 1990s, international pressure was also put on the Moi regime to reintroduce multipartyism, and eventually, although reluctantly, this led the president to strike the paragraph in the constitution that declared Kenya a one-party state. However, this did not imply that the regime had any intention of actually relinquishing power, which it would have to do if it suffered electoral defeat in the elections scheduled for 1992. With the aim of securing electoral victory, the regime started employing a variety of tactics, many of which were of a violent character (Widner 1994, Hansen 2009, Brown 2004 The Commission of Inquiry on Post Election Violence 2008). In an article in 2001 on human rights abuses during the Moi presidency, Adarand & Munyae (2001) even suggested that some of the worst human rights abuses in the history of independent Kenya were conducted during the period 1989-1991. Even though he had bowed to international demands to reintroduce multipartyism, Moi accused opposition politicians that welcomed the emergence of pluralism of treason and, on those grounds, justified putting them behind bars and keeping them there. There was little possibility of a fair trial for Moi’s opponents, who were jailed solely because they were supporters of multiparty elections. Clergymen, solicitors, human rights supporters and others who supported democratic reforms were also regularly harassed and arrested (Adarand & Munyae 2001, Brown 2004, The Commission of Inquiry on Post Election violence 2008).

Reports covering the 1992 elections revealed that influential individuals in the government had condoned and, in some instances, even organized and employed violent gangs to frighten voters in opposition districts (HRW 1993, National Council of Churches of Kenya 1992, The Commission of Inquiry on Post Election violence 2008). Moreover, Moi called on his ethnic brethren, the so-called “Kalenjin warriors”, to murder and displace opposition voters from other ethnic groups, most of whom belonged to the Luo, Luhya and Kikuyu groups (Mueller 2011: 103, Hansen 2009). The same strategy was employed in the 1997 elections. Despite the death and devastation caused by these methods in the 1992 and 1997 elections, no individual was ever tried and punished for the crimes (Hansen 2009, The Commission of Inquiry on Post Election violence 2008). As a result, a culture of impunity soon developed. The violent mobs, in turn, provided fertile soil for the formation of other, similar gangs, which is exactly what happened. As Mueller suggests (2011: 103), the use of extra state forces for the purpose of maintaining power has had both short-term and long-term implications. One of the short-term effects was that Moi managed to secure electoral victory in the 1992 and 1997 elections. The long term effects include that the use of violence in pursuit of
presidential and parliamentary power became an institutionalized feature of the political landscape, and the violent groups that were nourished and supported – indirectly or directly – by the Moi regime became self-sufficient and proliferated into even more gangs, which continued to operate into the new millennium (the Commission of Inquiry on Post Election violence 2008: 21-28).

These violent mobs are not homogenous as far as their activities are concerned – some are engaged in various forms of coercion; others operate on a more ad-hoc basis; some appear to have connections to the police force and politicians, and yet others appear to be ethnic militias – for example, the Mungiki, a group composed of members of the Kikuyu. This is a group that has made brutal methods its trademark – for example, beheadings, chopping off legs and other mafia-style murders of members of other ethnic groups. After first establishing their organization in the Kenyan highlands, since the end of the 1990s the Mungiki have moved their shady business into Nairobi, where they exert coercion in various ways, and the government has been unable to control the group’s members (Gettleman 2007, McCrummen 2007, Childress 2008, Hansen 2009). In an interview in the Wall Street Journal, a former member of the gang stated that “the Mungiki are just like another government in Kenya”, and then admitted that, “I fear the Mungiki more than the government” (Childress 2008). This is quite interesting, because neither the Mungiki, nor any of the other gangs that formed in the beginning of the 1990s, aspire to topple the government in Nairobi, and the same is true of their “spin-offs”. Rather, it appears that the use of violence is driven by the desire for economic gains. Nonetheless, many of the activities undertaken by the Mungiki are politically motivated. For instance, the gang directs many of its actions toward what it perceives to be the political opponents of the Kikuyu. Furthermore, there appears to be good reason to believe that the gang enjoys financial as well as moral support from members of Kenya’s parliament (Hanson 2009: 4), which has made it possible for politicians to utilize the “services” of the gangs both during election campaigns and after them. Because of fear and/or as a result of the fact that politicians have a history of supporting these gangs – and perhaps some continue to do so – there are no political leadership efforts aimed at developing a strategy about how to respond to the current state of affairs. Consequently, the Mungiki and other gangs have been able to continue to operate in a business-as-usual fashion without much interference from the government. Hence, what started off as an effort by President Moi to remain in power has transformed into a situation that, in its very essence, is detrimental to state authority. At times, the government is not able to control all of its territory, and its position as the legitimate authority of the use of force has also been undermined on several occasions by the violent acts of the gangs (The Commission of Inquiry on Post Election violence 2008: 21-28).
9.2.3 Political violence under Mwai Kibaki

Gangs and militias continued to multiply throughout the period of President Moi’s rule, and the institutionalization of extra-state violence therefore became even more entrenched. This development persisted and even grew stronger in the run up to the 2002 elections, in which NARC candidate Mwai Kibaki won the presidency. During this election, there was an even higher number of violent mobs capable of acting, and they were employed for the purpose of securing various political interests more extensively than was the case during Moi’s era of rule. Groups like the Mungiki, but also new gangs such as the Kamjesh, Jeshi la Mzee, Sungu Sungu and the Baghdad Boys appeared on the scene for the first time and established their presence, and they were available to use again in the 2007 elections, when the exercise of political violence culminated at unprecedented levels.

The character of the outbreak of violence in the aftermath of the 2007 elections was distinct from previous incidents of political violence that had occurred in Kenya in connection to elections after the reintroduction of multipartyism in the early 1990s. First, the violence was deadly on an unprecedented scale – 1,133 Kenyans lost their lives as a result of post-election violence. Secondly, the geographical spread of the violence was nearly all-encompassing, with only two provinces left untouched by the turmoil. Thirdly, unlike earlier incidents of electoral violence, most of the violence followed the election rather than preceded it (The Commission of Inquiry on Post Election violence 2008: vii).

The actual day of the election unfolded without any major incidents of violence. Observers even deemed the voting process to have been well-organized (Gibson & Long 2009). It was when the Electoral Commission of Kenya (ECK) delayed the announcement of the winner of the presidency that unrest erupted throughout the country. When the ECK finally revealed the outcome, declaring PNU candidate Mwai Kibaki to be the winner by a mere 2% margin, supporters of ODM candidate Raila Odinga accused the electoral commission of having rigged the election.113 Within hours of the announcement, violent interethnic clashes began raging throughout the country. In parts of Nairobi, the Rift Valley, the coast and the western provinces, members primarily of the Kikuyu were targeted due to of their perceived support of Kibaki (a Kikuyu himself), while in other parts of Nairobi and in the central provinces of the country, members of the Lou group were specifically targeted because of their perceived support for Odinga (himself a

113 The EU and the International Republican Institute wrote in their final election observation reports that the elections were indeed flawed, and that irregularities occurred once the counting of the vote began (see European Union (2008) ‘Final Report: General Elections 27 December 2007’ and International Republican Institute (2008) ‘Kenya’s 2007 presidential, parliamentary and local elections’. The Independent Review Commission, which was created to examine the December 2007 elections from various perspectives, also described essential flaws in the counting process (Independent Review Commission).
Lou). The violence continued for several weeks, after which the “National Accord and Reconciliation Act” was brokered, and the government of unity was formed by the PNU and the ODM. The settlement also included the appointment of a number of commissions, one of which was the Commission of Inquiry on Post Election Violence (CIPEV), whose job was to investigate the facts and circumstances surrounding the 2007 election violence and the conduct of state security agencies in their handling of it. The Independent Review Commission was another commission that was to be created. The purpose of this commission was to examine the 2007 elections from various perspectives.

Although the extent and exact nature of the involvement of various Kenyan state agencies in the post-election violence remains a matter of dispute (Hansen 2009), CIPEV pointed out that the police, in particular, remained passive bystanders, either because they were unable or unwilling to halt the atrocities (CIPEV 2008). The pages of the final report of CIPEV are also filled with examples of members of the police using excessive violence, particularly using firearms, which caused many of the total number of causalities (CIPEV 2008: pp. 384). Perhaps equally alarming is another one of CIPEV’s findings, which is worth quoting at length:

“The Commission could find little or no evidence to indicate that the Government, either as an entity, or through individual politicians moved to prevent or ameliorate the tensions leading up to the elections. In fact there is strong evidence that indeed the actions of some senior duty bearers exacerbated tensions and violence through the misuse of executive power and authority”

(CIPEV 2008: 373)

After scrutinizing individual entities within the Kenya Security Intelligence Machinery (KISM) and acknowledging that, in particular, the military and the National Security Intelligence Service (NSIS) had planned for the elections and had established preparedness plans and assured service delivery on the ground, CIPEV goes on to state that:

“Weakness exposed by the very nature of the post-election violence however mitigated these positives. Key amongst these was the lack of leadership provided by the Cabinet Security Committee and its co-opted members. This committee is the highest level component of Kenya’s Security Intelligence Machinery yet the Commission could find no evidence that it operated at all let alone effectively in the lead up to and during the elections. It is expected that these senior members of the government would demonstrate leadership and decisiveness in addressing the issues they must have been aware of during the build up to the 2007 general elections. The Commission can only speculate that individual members were more concerned about their personal political situation during the campaigning and polling period”

(CIPEV 2008: 373)

In one of its concluding remarks, CIPEV also points out that the institutionalization of violence that was established during the 1990s under
the Moi regime, and the frequent use of violent mobs to pursue political ends had created favourable conditions for political leaders to activate both these gangs and new ones for their own purposes in the run up to and aftermath of the 2007 elections (CIPEV 2008: xiii)

9.2.4 Political violence under Uhuru Kenyatta

After five years of governing the country through a PNU-ODM coalition, it was announced that elections would be held on March 4, 2013, the first since the violence of 2007, and also the first elections under the new constitution. Not surprisingly, many inside and outside Kenya worried that the 2013 elections would see a repeat of the mayhem of 2007/2008. Fear was even greater due to the near complete impunity enjoyed by perpetrators of the murders and rapes that were conducted in connection to the 2007 elections; these perpetrators were still out there, thus perhaps capable of committing similar crimes again. Some of these fears turned out to be legitimate causes of concern. In 2012 and the early months of 2013, inter-communal fighting in parts of the country claimed about 480 lives and displaced almost 120,000 people (HRW 2013b). Nevertheless, despite clashes before polling day, the 2013 elections turned out to be the most peaceful since the reintroduction of multipartyism in the early 1990s (International Crisis Group 2013). As mentioned earlier, Uhuru Kenyatta and William Ruto, through their newly formed Jubilee Alliance, were able to claim victory. Although the results were contested by the main rival contender for the presidential post, former Prime Minister Raila Odinga (this time as part of yet another newly formed coalition, Coalition for Reforms and Democracy), the Supreme Court validated the results, which were subsequently respected by the defeated parties.

A number of factors contributed to making the 2013 elections an event free from numerous and widespread acts of political violence. To begin with, there was an overall consensus among the political elites and the population at large not to repeat the events of 2007/2008 (International Crisis Group 2013). Peace committees collaborated with the security and media sectors of the country to try to reduce tensions, and international pressure to avoid a repeat of the 2007/2008 turmoil was pervasive. In addition, a vigorous and determined civil society was adamant in campaigning for a peaceful election. All of these initiatives helped move Kenya along a path towards non-violent elections. However, it should also be mentioned that, in addition to the vigorous efforts of various stakeholders to ensure that the elections were peaceful, an unfortunate development was that open discussions on topics that could endanger the holding of non-violent elections were avoided and, in some cases, prohibited. For example, political candidates were ordered to abstain from talking about historically sensitive issues, such as the land question, and the Kenyan media also changed its rhetoric and, to some extent, employed self-censorship (for example by not broadcasting demonstrations
prior to and in the aftermath of the elections) (International Crisis Group 2013).

9.2.5 Elite cooperation despite political violence, why?

Despite the fact that all political parties have suffered from the effects of political violence directed towards their party members and/or supporters since the reintroduction of multipartyism in late 1991, Kenyan political elites have chosen to continue to cooperate with each other. The Government of National Unity that was formed as a response to the violent aftermath of the 2007 elections is an example of this, perhaps even an extraordinary one. The fact that Uhuru Kenyatta, current president since March 2013, and his vice president, William Ruto, were on opposite sides during the 2007 election, yet succeeded in joining in a new coalition in time for the 2013 vote, also demonstrates that collaboration is still being exercised among the political elites. Undeniably, the events that unfolded in late December 2007 and the following months could very well have brought future cooperation between members of the various political factions to a screaming halt, yet this has not turned out to be the case. Nic Cheeseman (2011) argues that this fact can be explained by the high “distribution” of violence in Kenya – i.e. no single party has a monopoly on victimhood; rather, all parties have committed, and maintain the ability to commit, atrocities. When the distribution of violence is high, as it is in Kenya, elite cohesion and willingness to cooperate is also high. The logic behind the link between high distribution of violence and enhanced elite cohesion is rather straightforward: when all parties have been involved in committing atrocities, it is likely that all parties will also have a shared interest in escaping prosecution for past crimes, which, in turn, encourages cooperation to ensure that such prosecution does not occur (Cheeseman 2011: 342). On the other hand, where the distribution of violence is low, where one party is the perpetrator of violence while the other party or parties have monopoly on victimhood, elite cohesion is low, because there is no incentive for those who are victims of atrocities to cooperate for the purpose of avoiding persecution, rather, the opposite is true. As will become clear in the next section of the chapter, where we turn our attention to political violence in Zimbabwe, the distribution of violence in that country is very different to that in Kenya.

9.2.6 The history of political violence – Zimbabwe

“Political intimidation is another thread of continuity connecting Zimbabwe’s preindependence and postindependence eras”

(Bratton & Masunungure 2008: 50)

The use of violence to achieve political ends was practiced in Zimbabwe well before independence was won in 1980. In 1889 the British Government
granted a Royal Charter allowing Cecile Rhodes to establish the BSA.\cite{note114} The BSA was authorized, in turn, to exploit the economic resources of present-day Zimbabwe (\textit{Southern Rhodesia} at the time) and to establish its own invasion force (Ndlovu-Gatsheni 2009: 46). Soon after, hostilities broke out between the Ndebele and the BSA, which was followed by the Ndebele and Shona uprisings in 1896-1897. Despite domestic struggles, the territory remained under BSA administration until 1923, when its mandate expired (Ndulo 2010: 177). After that, Southern Rhodesia became a British colony. Fighting continued and culminated in a liberation struggle between Ian Smith’s Rhodesian Government and the armed wings of ZANU and ZAPU that lasted fifteen years (1964-1979)\cite{note115}. Because Zimbabwe was born out of a fight for liberation, from the perspective of the ruling elite, the use of political violence has undeniably been proven to be effective, and, for this reason, violent political acts have continued to be employed in order to combat real and imagined threats (Bratton & Masunungure 2008: 50). In addition, the extent and character of such violent acts greatly surpass those in Kenya, and they have steadily increased since the turn of the century. Indeed, as noted by Compagnon (2011) and Sachikonye (2011), the magnitude of regime-induced violence has fluctuated over the years since independence in 1980, but it has nevertheless always been a fundamental part of Zimbabwean politics. The regime’s unwillingness to ensure that perpetrators of violence – youth militia, war veterans, or just plain ZANU-PF supporters – be brought to justice has also been persistent, and hence a culture of impunity has been allowed to take root in the country (HRW 2011).

\section*{9.2.7 Political violence during the 1980s-1990s}

A couple of years after independence President Mugabe launched the Gukurahundi campaign (1982-1984) in Matabeleland, the purpose of which was to wipe out the membership base of the sole oppositional party, ZAPU, so that its leadership would have no choice but to either completely vanish from the political landscape or merge into ZANU. The second route was eventually “chosen”. The Gukurahundi campaign brought with it a reign of terror in the ZAPU stronghold, Matabeleland, involving the extreme use of torture, systematic use of rape and the destruction of huts, crops and cattle by the North Korean trained Fifth Brigade, the Central Intelligence Organization (CIO) and youth militia (Amnesty International 2000, Compagnon 2011). About 20,000 people lost their lives during this purge. An amnesty was

\begin{itemize}
\item \cite{note114} British South Africa Company
\item \cite{note115} For an insightful discussion of Zimbabwe’s history from the pre-colonial era to 2008, see Raftopoulos, B. & Mlambo, A. S. (2009), (ed). \textit{Becoming Zimbabwe: A history from the pre-colonial period to 2008}. Weaver Press: Harare. For a detailed account of the liberation fight, the chapter by Mtisi et al. (2009) in this anthology is particularly useful. Also Richard Bourne’s (2011) \textit{Catastrophe: What went wrong in Zimbabwe?} (London: Zed Books) is a good read on the liberation struggle, particularly chapter 3.
\end{itemize}
declared in 1988, so no one was ever prosecuted for these deaths, nor for any of the other atrocities committed during the violent campaign (Amnesty International 2000, Cheeseman & Tendi 2010: 215, Compagnon 2011: 49, Sachikonye 2011). Considering the methods through which Mugabe ensured the elimination of ZAPU in the beginning of the 1980s and the extreme lengths he was prepared to go to in order to accomplish his goal, it is clear that the pattern for responding to any form of opposition was established nearly 20 years before the MDC was formed (Compagnon 2011: 51).

It is not surprising that the memory of the Gukurahundi campaign is still very much alive in Matabeleland, since most residents were affected in one way or another. Moreover, the regime continues to make reference to the incidents that occurred during Gukurahundi in order to instil a sense of fear among the population, especially when elections are on the horizon (Compagnon 2011: 50). For example, prior to the 1990 elections, officials within ZANU-PF stated that civil war would revisit Matabeleland if its residents voted for any of the political parties among the opposition (Compagnon 2011: 50). This type of outspoken threat, together with a more subtly communicated threat discourse and manifest actions of violence, characterized the style of rule in Zimbabwe during the first two decades of independence.

In the 1985 elections, what was left of the former ZAPU base of support was the primary target of violence, while in the following election, in 1990, violence was directed towards the opposition political party Zimbabwe unity Movement (ZUM). In the 1995 elections, it was directed at The Forum Party of Zimbabwe (FPZ), ZUM and Zimbabwe African National Union – Ndonga (ZANU-Ndonga). Hence, whenever it has feared that the opposition might challenge its power, ZANU-PF has turned to violent means in order to restore status quo. Judging by the pattern of violence since the 2000 elections, it is evident that the greater the opportunities for the opposition to actually gain power in Zimbabwe, the greater the oppression from the incumbent government. The rise of the MDC has simultaneously led to an intensification of election violence, a development that the 2000 referendum on the constitution and the general elections of 2002, 2005 and 2008 amply show (HRW 2011, Sachikonye 2011).

9.2.8 The 2000 referendum on the constitution and the 2000 general elections
The first round of participatory constitution building in Zimbabwe took place in 1999-2000 and was finalized in a referendum in February 2000. As already stated in Chapter 6, the draft was rejected by the Zimbabwean voters. This was the first time since independence that ZANU-PF was publicly defeated, and the violent response that followed clearly showed that the regime was not pleased with the outcome. Because the referendum preceded general elections
in Zimbabwe by only a few months, Mugabe understood that the “No” vote on the constitution was a victory not only for the NCA, but also for the MDC, and thus clearly signified that the opposition would pose a real challenge in the election planned for the summer.

In a report from 2000, Amnesty International writes that in the months following the constitutional referendum and leading up to the parliamentary elections in June of that year, there is evidence that the government of Zimbabwe initiated, or acquiesced in the perpetration of, serious human rights violations. The same report concludes that there appears to have been a deliberate and well developed plan of systematic human rights violations designed to terrorize supporters of the opposition (Amnesty International 2000). The report states that supporters of the MDC were visited in their homes by ZANU-PF followers who accused them of joining a political party that wanted to “give Zimbabwe back to the whites”, after which they were beaten for hours with machetes, batons and axe handles (Amnesty International, 2000). In another incident, a MDC candidate for the Kwe Kwe constituency barely escaped being torched when ZANU-PF supporters poured petrol over him (Amnesty International 2000). Accounts of petrol bombs flying through the windows of MDC followers’ homes and into cars of MDC supporters; abductions; beatings on hands, backs, buttocks, and soles of the feet, and murders are also included in the report - incidents in which the Zimbabwean police never intervened to help those exposed to violent acts. According to the testimonies of some of the victims, police officers were sometimes as close as 50 meters away, with a clear view as to what was going on, and yet the law enforcers choose to watch rather than intervene (Amnesty International 2000).

Acts of political violence also occurred in the aftermath of the general elections in June, this time related to the government-led fast-track land reform program, the aim of which was to reallocate land from white commercial farmers to landless poor and middle-income people from the black community without compensation to the former. The reform officially started in July 2000 and went on until 2003. Having found itself in a situation in which it had actually been seriously challenged for the very first time since independence, ZANU-PF needed to take measures in order to assure the future loyalty of various key actors. The war veterans’ society was identified as such a key actor.

The Zimbabwean liberation struggle involved about 60,000 male and female guerrilla fighters, 20,000 of which were included in the national army after independence. The remaining 40,000 were given a small pension, but not much additional assistance in order to help them return to a normal life after the war. Because of this, the War Veterans Association (WVA) came into existence towards the end of the 1980s, bringing together former combatants from both ZANLA and ZIPRA to lobby for more government assistance.
Although ZANU-PF negotiated with WVA, many of the pledges that the government made concerning the dispensing of economic compensation were never honoured, because of the deteriorating economic situation in the country. If we fast-forward to 2000, we can see that by implementing the fast-track land reform program, the regime saw an opportunity to promote two objectives at the same time: the war veterans belonged to the specific group that was to receive land, which would satisfy them because they would acquire arable land (and, more importantly, secure their loyalty to the regime), while at the same time, the white commercial farm owners – the majority of whom where MDC supporters – would pay for their support for the opposition by the loss of their livelihood. In some instances, these MDC supporters/white commercial farm owners paid an even higher cost than merely losing their means of supporting themselves – i.e. at times, severe violence, - and in some instances even death – accompanied these land appropriations which, for the most part, were carried out by the war veterans and youth militia with support from members of the Zimbabwe Defense Force (Compagnon 2011, HRW 2002).

9.2.9 The 2002 presidential elections
Just like the 2000 general elections, the 2002 presidential elections were marred by violence. Reports about the elections by the Norwegian Resource Bank for Democracy and Human Rights (NORDEM) and the Commonwealth Observer Group describe a deliberate and state-sponsored campaign of violence and intimidation directed towards the MDC and its supporters (Commonwealth Observer Group 2002, Vollan 2002). The report by Vollan on behalf of NORDEM (Vollan 2002) also describes incidents in which MDC supporters were at fault, but goes on to conclude that the absolute majority of violent acts were directed against the opposition party. The state security forces, especially the police and the CIO, were also found to have acted in a partisan manner. These actors failed to respond to or to investigate reported incidents of violence, murder and torture directed towards MDC supporters. The police and the CIO also appear to have worked in a manner that suggests collaboration in pursuit of a common goal (Vollan 2002: 8).

A few weeks prior to the elections, a group of 1000 ZANU-PF youths ran through the central business district of Harare - in full view of Commonwealth election observers - armed with bats which were used to attack MDC offices and individuals that they suspected of being MDC supporters (Commonwealth Observer Group 2002: 28). A couple of days after this particular incident, 200 youths attacked MDC offices in Kwe Kwe during a workshop arranged by South African election observers. None of the external observers were harmed, but a number MDC officials were injured and subsequently hospitalized. Members from the Commonwealth Observer group also witnessed MDC followers being attacked by ZANU-PF supporters
as they were leaving a rally meeting just a few days before the elections. During their stay in Zimbabwe, the observer mission reported that it had encountered numerous victims of politically motivated violence who had bruises and scars from axe-handles all over their bodies (Commonwealth Observer Group 2002: 28). The Commonwealth observer group also received several complaints concerning violent activities by what appeared to be a paramilitary youth group trained by the Zimbabwean government as part of an initiative called a “National Youth Training Programme”. According to the observer group, it appeared that in the run up to the 2002 elections, the key perpetrators of politically motivated violence, intimidation and kidnapping were youth militia. These young people were most frequently spotted after dark; dressed in uniforms, they would set up roadblocks, harass MDC followers and seize national identity cards from people suspected of voting for the MDC, thus preventing them from being able to cast their vote on election day (Commonwealth Observer Group 2002: 29).

The 2002 elections were also the occasion on which the military of Zimbabwe became openly political for the first time. Two months before the election, the Commander of the Zimbabwe Defence Forces at the time, Vitalis Zvinavashe, issued a statement, saying, “We wish to make it very clear to all Zimbabwean citizens that the security organizations will only stand in support of those political leaders that will pursue Zimbabwean values, traditions and beliefs for thousands of lives lost in pursuit of Zimbabwe’s hard-won independence. We would therefore not accept, let alone support or salute anyone with a different agenda that threatens the very existence of our sovereignty, our country and our people” (CNN 2002). Zvinavashe also made it official that the military would only support a political leader who had war credentials from the independence struggle, thus effectively dismissing MDC leader Morgan Tsvangirai, who lacks such qualifications (BBC News 2002).

Once again, the post-election period was very violent, marked by what appeared to be systematic and strategically planned acts of retribution directed against individuals who had voted for the MDC, with women and young girls being particularly targeted. Gang rapes and acts of torture that targeted the genital areas of women were committed by ZANU-PF militias, police and state-security forces as punishment for their support of the opposition. Girls, some reportedly as young as twelve years old, were raped publicly for the dual purpose of maximizing embarrassment and teaching the entire community a “lesson” as to what would happen if one sided with the MDC (Compagnon 2011: 60-61).

9.2.10 The 2005 general elections
Although many commentators agree that the 2005 general elections were conducted in a more peaceful environment than the ones in 2000 and 2002 (Vollan 2005, SADC 2005, Andrews & Morgan 2005), it is still wise not to be
overly optimistic concerning the level of political violence that surrounded the event. First, this time around, the government of Zimbabwe was not as generous in extending invitations to electoral observers from other countries. The 2005 general elections were only observed on sight by friendly organizations and governments (Andrews & Morgan 2005). There were no official observer teams from the EU, the US or the Commonwealth. Others who were not invited included the Electoral Institute of Southern Africa and the Congress of South African Trade Unions (COSATU), the latter of which had been highly critical of Mugabe’s government. COSATU members were even banned from taking part in other observer teams. SADC, on the other hand, was extended an invitation by Mugabe to oversee the elections (HRW 2005).

SADC’s election observer report extended congratulations to the people of Zimbabwe for the achievement of a “peaceful, credible, well-managed and transparent election” (SADC 2005). The report also stated that SADC was impressed by the orderliness and patience of voters at the polling stations, and that the voters had been able to express their preference “peacefully, freely and unhindered” (SADC 2005). Although the organization reported that it received a few complaints from the main opposition party concerning intimidation, use of food as a political tool, unlawful arrests and other things of a similar nature, it was the conclusion of the observers that none of the incidents compromised the will of the Zimbabwean people at large (SADC 2005). In another report from that year, HRW (2005) voiced a word of caution, stating that: “it is imperative that SADC electoral observers and others do not assess whether the March 31 elections are free and fair only on the basis of observations of the final weeks of elections. They must also take into account the effects of the past five years of violence, recent reports of intimidation, continuing electoral irregularities and the use of restrictive legislation” (HRW 2005). The Redress Trust (2005) also wrote in a report in 2005 that the legacy of political violence in Zimbabwe had scarred the country in such a fundamental way that what electoral observers might fail to see was the cumulative result of the events of past years, which had caused widespread fear and a sense of hopelessness among the supporters of the opposition party. International Crisis Group (2005) stated that by “any objective standard, the election was neither free nor fair”. In its report, the organization went on to say that it appeared as if the Mugabe regime approached the 2005 elections with a dual agenda, the first of which was to make sure that the government could control the outcome of the election. The second was to do so in a more sophisticated manner, so that international observers would deem the elections fair (International Crisis Group 2005). Although election day proceeded in a relatively more peaceful manner compared to the two previous elections, “post-election witch-hunting”, in the words of Sachikonye (2011: 19), nevertheless took place after the elections. The familiar acts of retribution
were once again inflicted upon communities that had supported the MDC. Moreover, the police, together with the army, initiated Operation Murambatsvina (Operation Restore Order) – a campaign supposedly intended to remove criminal elements and other “illegal structures” in the cities, where, conveniently for the purpose of the operation, the main support base of the MDC lived. Operation Murambatsvina left about 700,000 people homeless and impoverished (HRW 2008, Compagnon 2011:63). A total of 2.4 million people were effected in one way or the other, including 500,000 children who were forced out of school or had their schooling interrupted (Compagnon 2011:63).

While the Zimbabwean people were in the process of recuperating from Operation Murambatsvina, the government implemented constitutional amendment no. 17 in August 2005. Among other things, the amendment served to reinstate the Senate as part of the political system. The official justification for the reintroduction was that while the old Senate was not founded on democratic principles – because reserved seats for the white minority population was entrenched in the constitution of 1980 – the new Senate would reinforce democratization in the country, because senators would be elected by universal suffrage through a first-past-the-post-system. However, electoral fatigue following the general elections earlier in the year as well as the violent aftermath resulted in minimal public interest for the Senate elections – voter turnout was only 19.5 % (Chiroro 2005). The reason for calling attention to the Senate elections here is because, although they did not seem to matter much to the Zimbabwean people, the question of how to handle the elections caused a split in the MDC, which resulted in the party breaking into two separate factions. While the president of the party, Morgan Tsvangirai argued that the party should boycott the elections, MDC secretary general Welshman Ncube contended that the party should participate, and he was successful in convincing 26 MDC candidates to run for office. The inability of the MDC to form a united front was the deathblow for the party, which disintegrated into MDC-T, headed by Tsvangirai, and MDC-M, headed by Ncube (Chiroro 2005), who was subsequently replaced by Arthur Mutambara in 2006.

### 9.2.11 The 2008 presidential, parliamentary and local council elections

The 2008 elections in Zimbabwe were historical in the sense that, for the first time since independence in 1980, ZANU-PF, lost its majority in the National Assembly and Mugabe himself lost the first round of the presidential election. When the Zimbabwean Election Commission (ZEC), finally announced the

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116 When Zimbabwe gained independence in 1980, the Lancaster House constitution introduced a bicameral system of government. However, through constitutional amendment no. 9 in 1989, the Senate was abolished in favor of a single chamber.
results of the vote more than a month after election day, it was clear that MDC-T presidential candidate Morgan Tsvangirai had won the first round, gaining 47.9% of the vote compared to 43.2% for Mugabe. However, since neither of the candidates had received an absolute majority of the votes, run-off elections were scheduled for June (EISA 2008, HRW 2008).

The release of the election results threw ZANU-PF into chaos; although they had suspected that the economic crisis in the country would turn the elections into a tough contest, the party had not suspected that the MDC would be capable of garnering as much support as they actually did in what had traditionally been ZANU-PF strongholds. The party’s response was furious, and the subsequent state-sponsored brutality far exceeded prior levels of violence in connection with the 2000, 2002 and 2005 elections (International Crisis Group 2008, HRW 2008, Solidarity Peace Trust 2008).

Following the announcement of the election results, a new campaign of violence was initiated: *Operation Makavhoterapapi* (Operation Where did You Put Your Vote?). The operation was coordinated under the authority and command of the government’s Joint Operation Command (JOC) (HRW 2008, Solidarity Peace Trust 2008, Cheeseman & Tendi 2010: 218). Makavhoterapapi was mostly carried out at the night and targeted journalists, political activists, union leaders, polling agents, and – in particular – MDC supporters, and it involved beatings and torture. Teachers were also a particularly exposed group during the campaign, many of whom were tortured and told that, as civil servants, they should neither spread “wrong” ideas nor hold a different political view than that of the government (Compagnon 2011: 60, Sachikonye 2011: 41, Solidarity Peace Trust 2008: 43). Operation Makavhoterapapi also included the extensive burning down of huts, the objective of which was to disenfranchising MDC supporters and thus prevent them from voting in the presidential run-off elections in June - if they could not return to their registered addresses before the elections, then they would not be allowed to cast their votes (Solidarity Peace Trust 2008, International Crisis Group 2008). As part of the operation, “base camps”, “military camps” and “war veteran camps” were also established across the country, and MDC-supporters were rounded up and brought to the camps, where they were then tortured by members of the CIO, war veterans and ZANU-PF supporters, not seldom by mutilation (HRW 2008, Solidarity Peace Trust 2008). So called “re-education” meetings were also a feature of the campaign, during which some of the worst reported acts of violence during the Makavhoterapapi campaign took place. The national army played a crucial role in the organizing of these meetings, calling upon chiefs and headsmen in the villages to summon their people to attend. When all members of the village were assembled, suspected supporters of the MDC were tortured and beaten in front of the crowd, after which all villagers were given a bullet to hold in their hand. Once everyone had a bullet, a soldier would say:
“If you vote for the MDC in the presidential runoff election, you have seen the bullets, we have enough for each one of you, so beware”

(HRW 2008: 35)

The nature and extent of violent acts directed towards supporters and members of the MDC eventually led Tsvangirai to decide to withdraw from the presidential run-off election. Five days before the election, he made the decision public, saying that he would no longer participate in “this violent, illegitimate sham of an election process” (The Guardian 2008). This left Mugabe as the only active contender, and he was thus victorious in the vote on June 28. Immediately afterwards he was inaugurated as president. Two days later he attended the AU Summit in Egypt, at which point the member states agreed that they could not ignore the controversies that had surrounded the 2008 elections. Hence, they gave Thabo Mbeki, working through SADC, a mandate to mediate between ZANU-PF and the two MDC formations in order to solve the crisis. As mentioned earlier, these negotiations eventually resulted in the signing of the GPA in September and the establishment of the inclusive government five months later (Dzinesa & Zambara 2011).

9.2.12 The 2013 referendum on the constitution and the 2013 presidential, parliamentary and local council elections

The March 2013 referendum on the constitution proceeded without any major incidents of political violence, at least compared to the 2000, 2002, 2005 and 2008 elections. The fact that both MDC formations as well as ZANU-PF stood by the draft and supported a “Yes” vote likely explains the much lower frequency of violent acts this time, as compared to previous general and presidential elections and the referendum on the constitution in 2000. Nevertheless, as mentioned in Chapter 6, not all stakeholders in the country supported the constitutional draft, and, consequently, there were reported incidents of crackdowns on civil society organizations that did not stand by the document (Vollan 2013). By and large, however, the 2013 constitutional referendum was a peaceful event in which 94.5% of Zimbabwean voters expressed their support for the new constitution (Vollan 2013, Darnolf 2013).

As mentioned earlier, following the referendum on the constitution in March, Mugabe announced that general, presidential and local council elections would be held in July of that same year. Although the level of physical violence was reportedly low before and after the voting, there is still reason to believe that retributive acts were directed towards MDC supporters in the post-election period, particularly those residing in the countryside, where media coverage was very low (Moyo 2013). This observation is supported by ZESN in their publication covering the 2013 elections, where they documented a number of human rights violations in the aftermath of the elections that were directed towards electoral observers and MDC supporters by ZANU-PF followers (Zimbabwe Election Support Network 2013).
ZESN (2013) also state that the severe nature of the post-election violence of 2008 might have had psychological consequences with lasting impacts, ones that persist long after the events of that year and that even today continue to influence former victims of assault. The ZESN report argued that this makes it necessary to adopt a wider focus, rather than to narrowly concentrate on physical attacks, despite the fact that such attacks are easier to quantify numerically (Zimbabwe Election Support Network 2013). Nevertheless, in comparison to the 2000, 2002, 2005 and particularly 2008 elections, voting day in March 2013 and election day in July 2013 were relatively more peaceful events than previous occasions of voting in the new century.

9.2.13 Low distribution of violence, low level of elite cohesion

The accounts of political violence in Zimbabwe that have been described on the foregoing pages paint a fairly gloomy, even brutal, picture of the state of affairs in the country. It appears evident that political violence has become an entrenched part of the political system of the country. Earlier in this chapter we devoted attention to the history of violence in Kenya, and in stark contrast to how political violence has played out in that country, we can see that the distribution of violence in Zimbabwe is low, and has been so continuously since independence. This means that, in contrast with the situation in Kenyan, to an overwhelming degree, violence in Zimbabwe is being committed by a single party – ZANU-PF. As a consequence, this implies that victimhood is reserved for a single party as well – in this case, the MDC formations and their supporters. Considering that the distribution of violence is as low as it is, there is obviously little, if any, incentive for the political elites of the opposition camp to cooperate with the political elites in ZANU-PF. Undeniably, it makes no sense for the MDC leadership to form alliances or cooperate with the perpetrators of violence in order to cover up and provide amnesty for state-security agents and party officials who have committed atrocities directed towards them and their supporters. Rather, the situation is quite the opposite. The MDC leadership clearly has a vested interest in making sure that human rights violations committed by ZANU-PF are acknowledged, brought out into the light and ultimately handled by the legal system. Needless to say, as a consequence of these diametrically opposing positions about how to deal with the issue of impunity, elite cohesion is very low in Zimbabwe. Furthermore, as was highlighted earlier, the two main political factions in Zimbabwe are far apart from each other when it comes ideological convictions concerning how the country should be governed. Even setting aside the extreme level of violence, the differing ideological positions of ZANU-PF and the MDC formations would still be an obstacle that the political elites would have to overcome in order for cooperation to occur.
9.3 United or disunited elites?

Up to this point, this chapter has been devoted to an examination of both the history of elite cooperation and the history of violence in Kenya and Zimbabwe. Based on the knowledge we now have, we are ready to discuss the question of what political elite type we are dealing with in each of the countries. Returning to the theoretical propositions raised in Chapter 7, we can recall Burton & Higley's (2001) discussion concerning united and disunited elites. The former implies that political elites are able to reach agreement on important issues and have developed codes of conduct which makes their interaction patterns fairly straightforward and predictable, while the latter implies that political elites are not able to agree on fundamental issues, are distant from each other and do not communicate across groups, all of which makes their relationships and patterns of interaction quite unpredictable.

The above description of the history of elite cooperation and political violence allows us to conclude that, on a principle level, the political elites of Kenya give the impression of being a united elite, while the political elites of Zimbabwe display strong tendencies reminiscent of a disunited elite. As regards the specific subtypes of united and disunited elites, although we should keep in mind that they are ideal types and that actual political elites will not completely conform to them, it is helpful to use the subtypes, because they aid us in understanding how the elites in these two countries have wandered from one subtype to the other depending on the interactions of the political elites.

Table 9.1. Subtypes of united and disunited elites

| Differentiation | Strong | Weak |窄 |
|-----------------|--------|------|---|------|
| Wide            | • Kenya since 2002? | • Kenya under the leadership of Jomo Kenyatta |
| Narrow          | • Kenya under the leadership of Daniel arap Moi | • Zimbabwe since independence in 1980 |

In the upper right corner of Table 9:1 we have the subtype “strong integration and narrow differentiation”, which is one form of a united elite (although it is a less united form than “strong integration and wide differentiation”). As discussed in Chapter 7, characteristics of this specific subtype include: elites who belong to a single party which controls the state; elites who are well integrated with each other, although it is the top leaders in the party who are
the central nodes of the network; there is almost no differentiation as far as organizational diversity is concerned, and elites are united, but it is an enforced form of unity. Kenya under the leadership of the first independence president, Jomo Kenyatta, can illustrate this specific subtype. As described earlier in this chapter, for a long time, the political landscape of Kenya was dominated by one political party, KANU. The main rival party, KADU was merged into KANU in the early 1960s, which further contributed to the party’s dominance. During the Kenyatta regime, the political elites were strongly integrated with each other within the party, but even more importantly, the KANU leadership of this period was also integrated with the leadership of other political (and ethnic) affiliations. The purpose of this was to secure these political parties’ allegiance to KANU. This strongly contrasts with the manner in which elite cooperation played out during Daniel arap Moi’s presidential era in Kenya. In fact, when studying the history of elite cooperation and the history of violence in Kenya, we see that, in terms of the subtypes in Table 9:1, from Kenyatta’s regime to that of Moi’s, the country shifted from “strong integration and narrow differentiation” to “weak integration and narrow differentiation” the lower right corner – which is a form of disunited elite. It seems useful to review the features of this subtype as well: elite groups are grouped in two or three clearly separate and well-organized factions, each of which opposes the other or others; elites do not engage in communication with each other, so integration is thus non-existent; elites do not agree about the rules of the political game; power-struggles have a violent character, and, finally, one faction usually dominates the coercive capacities of the state and uses them to harm its opponents. As we can recall, by the time that Moi succeeded Kenyatta, the kind of resources necessary to maintain the allegiance of other political parties were no longer available. Furthermore, the attempted coup d’état in 1982 encouraged Moi to employ exclusionary politics vis-à-vis other political affiliations, and as a consequence, he pushed them even further away from the KANU leadership, thus severely diminishing the extent of elite integration. Due to the 1982 constitutional amendment that declared Kenya a one-party state, in effect, political differentiation ceased to exist, while integration, as mentioned, was abandoned.

In the same subtype group, “weak integration and narrow differentiation”, we can also locate Zimbabwe since independence in 1980. One almost wonders if Burton & Higley (2001) had the Zimbabwean case in mind when they developed this specific subtype of a disunited elite, because the description of the ideal type conforms quite neatly to the Zimbabwean situation. The political elites are indeed grouped into a few separate and well organized factions that oppose each other. The latter characteristic, “well-organized”, describes the situation in Zimbabwe after the formation of the MDC in 2000. As we can recall, opposition political parties before the existence of MDC were either merged into ZANU-PF (as was the case with
ZAPU) or “handled” after elections in the 1980s and 1990s, such that they were effectively eliminated from the political map. The opposition parties that emerged during the 1990s were so poorly organized that they posed no challenge at all to ZANU-PF hegemony. Since the emergence of the MDC, the ruling party has employed force in an attempt to eliminate the party and subjugate its members and supporters, so there is naturally limited communication between the political leadership of the two MDC formations and the Mugabe regime – which renders elite integration non-existent. In accordance with the ideal type, an excessive use of force against its opponents is also a strategy employed by a dominant party that is in control of the coercive capacities of the state apparatus. Undeniably, the many accounts of political violence in Zimbabwe that have been described in this chapter provide sufficient documentation that such state-sponsored violence is being exercised against the opposition.

In the upper left corner of the table we have the subtype “strong integration and wide differentiation”, which is the most united elite type of the four. In this box we have “Kenya since 2002?”. The question mark is an indication that political elite relationships, as they have evolved since KANU rule was broken in 2002 and up to the present day, do not entirely conform to the subtype. It is useful to reiterate the specifics of this subtype as well. Elites have developed multiple networks of communication, signifying strong integration among many different political parties; elites agree on the rules of the political game; political elites view each other as legitimate players and the political game as a positive-sum bargaining exercise, and elite cooperation occurs on a voluntary basis. There are quite a few objections that can be raised as to the extent of elite integration and political party differentiation in Kenya, even though – on the basis of the foregoing account of the history of elite cooperation – one would, perhaps without much hesitation, be inclined to classify the political leadership of the country as an example of this specific subtype in Table 9:1. It is true that there has been an eruption of political party formation in Kenya since the reintroduction of multiparty elections in late 1991; however, whether or not there has been basic agreement between elite groups since then concerning the rules of the political game is debatable. Also, even though the upsurge of political activity would seem to indicate that the political elites are differentiated in various political formations, some more socially and ethnically heterogonous than others, we should still remember that, most often, these political parties appear to be multi-ethnic alliances formed for the purpose of winning elections rather than for the purpose of formulating ideological platforms for future policies. In this regard, we might want to recall, in particular, the description of the political party and alliance formations that preceded the 2002 and 2007 Kenyan presidential elections, which was presented in a previous section of this chapter.
Political elites in this specific subtype are also envisioned to view each other as legitimate players and the political game as a positive-sum bargaining exercise, neither of which is entirely true in present day Kenya. It appears as if political elites from different political camps view each other as legitimate players when there is something to gain from working together, at which point alliances are formed. On the other hand, as mentioned earlier, politics is perceived more as a zero-sum game than a positive-sum bargaining exercise, with the most important goal being to make sure that a member from the “wrong” ethnic group does not end up in the post of president. In fact, Kenya since 2002 is quite difficult to place into any of the proposed subtypes of united or disunited elite, albeit the “strong integration, wide differentiation” subtype appears to be the least inaccurate option. The political elite relationships in Kenya are actually quite puzzling, because even though there is wide differentiation and fairly strong integration, elites are only integrated with each other to the extent that rational calculations persuade them that cooperation is the best option in order to advance their own particular interests. This undeniably leads to what Cheeseman (2011) refers to as a “politics of collusion”, where unholy alliances form a natural part of political life and government appears to work effectively (and in some areas actually does), although, in reality, it is dysfunctional. Kenya’s ability to successfully complete its second round of constitution building while, at the same time, failing to demobilize violent gangs in Nairobi and in the rest of the country is an example of this puzzling conundrum (Cheeseman 2011: 343-344).

9.3.1 Signs of elite transformation?
Let us revisit the theoretical insights of Burton et al. (1992) regarding political elite transformations that were presented in Chapter 7. According to their theoretical framework, once established, a political elite group tends to persist, as do the governing techniques associated with that particular elite group. The status quo persists until a severe crisis occurs, at which point there is a window of opportunity for elite transformations. On the basis of the analysis presented in this chapter, we know that crises of such severity have occurred in both Kenya and Zimbabwe – in the former after the 2007 elections and in the latter after the elections of 2008. The theoretical propositions proposed by Burton et al. (1992: 13) also suggest that elite transformation from a disunited to a united elite can take one of two forms: through elite settlements or via elite convergence. What we are interested in here is to determine whether there are any tendencies towards elite transformations – via either one of the two routes – in these two countries.

To begin with, we can rather quickly acknowledge that elite convergence has not taken place in either Kenya or in Zimbabwe. From Chapter 7, we know that elite convergence occurs when political elites from different factions realize that by forming broad electoral coalitions, they stand a good chance of
mobilizing a substantial and reliable part of the electorate, and, by doing so, they can win elections not only once, but repeatedly. Based on the preceding account of political party formation and party hopping in Kenya, it seems instinctive to believe that elite convergence has occurred. However, we should bear in mind that although rational calculations appear to underpin much of coalition and alliance making in the country, there is no evidence that such alliances and coalitions repeatedly win elections. Rather the opposite is true. Even when coalitions win, for example as NARC did in 2002, they break down before the next round of general elections. It seems almost unnecessary to point out that there is no sign whatsoever of any form of elite convergence in Zimbabwe. In this country, we have seen no alliance-making endeavours that include the main rival parties, ZANU-PF and either one of the two MDC-formations. When we turn our attention to elite settlements, on the other hand, at least at first glance, the trajectories of both countries indicate that there might perhaps be some tendencies pushing in the direction of such agreements – yet the true nature of these settlements is difficult to determine, because it has been the efforts of international mediators that have impelled the parties to form elite settlements, rather than initiatives from the parties themselves. This is a matter than we should explore a bit further.

As mentioned earlier, in response to large-scale political crises, both Kenya and Zimbabwe formed governments of national unity in 2008. In essence, these were power-sharing arrangements. In the case of Zimbabwe, ZANU-PF and the two MDC formations were included; in Kenya the ODM and the PNU were included. Now, according to our theoretical understanding, elite settlements are envisioned to occur when conflicting elite groups unexpectedly sit down with the explicit agenda of trying to rearrange their relationship in an effort to find institutional mechanisms to achieve this aim (i.e. settlement). Historically, elite settlements have also been more likely to occur when various factions have experienced substantial losses during the crisis, because this tends to make divided elites more willing to seek compromise than they traditionally are during normal circumstances. Turning our attention to the two cases, we can conclude that the events that unfolded after the elections in Kenyan in 2007 and in Zimbabwe in 2008 were sufficiently severe to prompt a response. However, also as a consequence of the severity of the atrocities committed, the parties were not able to negotiate settlements on their own. Instead, international mediation turned out to be necessary – SADC, with lead mediator Thabo Mbeki, for settling the dispute between ZANU-PF and the two MDC formations, and, on behalf of the African Union’s Panel of Eminent African Persons, former Secretary of the United Nations Kofi Annan to mediate between the ODM and the PNU in Kenya. In both cases, a settlement between the political elites was eventually reached in 2008 – the “Global Political Agreement” in Zimbabwe and the “National Accord and Reconciliation Act” in Kenya.
Nonetheless, it is worth pondering whether or not these agreements reflect true elite settlements, insofar as they were not prompted and agreed upon without outside interference. On the other hand, the willingness to enter into negotiations and then reach a final agreement can be construed as a signal of willingness on the part of the parties to settle the dispute. Even so, it is the willingness and ability of the parties to respect the settlement, with all that this requires as regards rearranging their relationships, that reveals to what extent, if at all, the parties are serious about doing just so – that is, about rearranging their relationship and transforming from a disunited to a united elite. On the basis of this, it would be wrong to speak of an elite settlement in the case of Zimbabwe, because ZANU-PF violated the MoU that preceded the GPA on several occasions. Moreover, during the five years that Zimbabwe was governed under the GPA, ZANU-PF was found guilty of breaching the agreement by not allowing the MDC formations to bring existing laws into accordance with the agreement. Here it is also important to recall the announcement made by the Zimbabwean Defence Force in 2002 – that the military of Zimbabwe would only act to support political leaders who had participated in the liberation struggle. On the basis of this declaration, it can be concluded that any form of power-sharing arrangement between ZANU-PF and the MDC formation would undeniably be regarded as unacceptable and unworthy of respecting. The Kenyan military, on the other hand, has not had the same role as its counterpart in Zimbabwe; the military in Kenya has been excluded from the political realm, which might be part of the explanation as to why elite settlements – past and present – have been more commonplace there than in Zimbabwe. Despite the fact that the use of violent mobs for political purposes has occurred in Kenya, it should be remembered that violent gangs do not form part of the national security apparatus, and that the use of such gangs has not been limited to one Kenyan political party, rather, many have used them. This is different from the situation in Zimbabwe, where the military has been directly involved in perpetrating acts of violence, and where the perpetrator is one actor (ZANU-PF) and the victim is another (MDC). Following the theoretical proposition mentioned above, this circumstance also (somewhat paradoxically) favours elite agreement in Kenya: all sides endured substantial losses during the crisis, and this fact makes elite cooperation more likely. Moreover, the history of elite cooperation in Kenya has already established a track record of bargaining and coexistence, which appears to help Kenyan political elites to go farther and join together in elite settlements, while such a history is not only missing in Zimbabwe, but rather has been made impossible by the excessive use of violence by a single party against the other.

The role of ethnicity versus ideology in politics also plays into all of this, because elite cooperation is undeniably hampered by the use of severe political violence in Zimbabwe, but perhaps also because the two main factions stand
far apart in terms of their political ideologies. In Kenya, on the other hand, all perpetrators of former acts of violence have a joint vested interest in collaboration in order to avoid prosecution. In addition to this, they rather easily agree to collaborate with each other, because ideological differences do not appear to be factored in when new alliances are formed.

All of this undeniably raises some interesting questions. Could it be that the high distribution of violence in Kenya actually contributes to politicians’ engagement in elite settlements? Could it be that alliance formation is currently being undertaken as a response to the sordid past that nearly all political parties have, thus making elite settlements a good means of avoiding possible prosecution? If so, it would seem that the empirical findings of this chapter indicate that democratization in Kenya appears to have been instigated partially for the “wrong” reasons, theoretically. Political elites are undeniably engaging in alliance making, bargaining and compromising, which, in turn, is driving them towards being a united elite. But on the other hand, the causal mechanisms that inspire and/or motivate the coming together in alliances appears, at least partially, to be the high distribution of perpetrating violence, which is a factor that is not mentioned by democratization theories that focus on elite behaviour. We see democratic progress, but it comes about through patronage and calculations as to how to avoid prosecution for past crimes. The Jubilee Alliance, which brought together former adversaries William Ruto and Uhuru Kenyatta, was formed in December 2012, just three months prior to the first general and presidential elections after the disputed events in 2007, and 11 months after the ICC ordered both of them to stand trial for crimes against humanity in connection with the 2007/2008 election violence. Hence, although there are elite settlements being forged, and although Kenya is showing progress in terms of democratization, it seems appropriate to ask if the underlying motivations that have spurred elite settlements are sustainable in the long term. Undeniably, unholy alliances for the dual purpose of securing the interests of one’s ethnic brethren and ensuring that one is able to dodge legitimate prosecution for crimes committed provides a shaky ground for long term democratization.
Table 9.2. Summary of results of comparison of elite cooperation

<table>
<thead>
<tr>
<th>Variables</th>
<th>Kenya</th>
<th>Zimbabwe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elite cohesion</td>
<td></td>
<td>By and large, non-existent</td>
</tr>
<tr>
<td>• History of elite cooperation</td>
<td>Higher</td>
<td>Absent</td>
</tr>
<tr>
<td>• History of violence</td>
<td>Higher</td>
<td>Higher</td>
</tr>
<tr>
<td></td>
<td>Lower</td>
<td></td>
</tr>
<tr>
<td>United/Disunited elites</td>
<td>Depends on time period; fairly united under Jomo Kenyatta, presumably even more united from 2002 to the present (2014), disunited under Daniel arap Moi.</td>
<td>Disunited</td>
</tr>
<tr>
<td>Elite transformation</td>
<td>Signs of elite transformation through elite settlements</td>
<td>No real signs of elite transformation, neither through elite settlements nor via elite convergence</td>
</tr>
</tbody>
</table>

Taking into account the results of the comparison between Kenya and Zimbabwe in the previous chapter, we can conclude that there appears to be support for the elite explanation as regards understanding the different trajectories of democracy that these two countries have taken. The comparison of structural variables clearly showed that these factors have low explanatory value as to why Kenya is democratizing while Zimbabwe is experiencing the reverse. As to the external variables and Western leverage specifically, although the West (US) exerts more leverage on Kenya than on Zimbabwe, it appears that the country is democratizing in spite of this, not because of it. Both states are low-linkage countries as well, but here it should be acknowledged that, compared to Zimbabwe, Kenya has stronger economic as well as communication ties with the West. Though democratization in Kenya cannot solely be attributed to these economic and communication linkages, it is possible that these factors have some explanatory value, at least in combination with the findings of this chapter. In light of the enormous differences as regards political elite relationships and how the Kenyan and Zimbabwean elites have or have not been able to cooperate with each other, it appears, however, that an actor-oriented perspective offers the best explanation of the different trajectories. In the final chapter of the thesis, we turn to a discussion of what these results can imply for the participation-hypothesis.
Chapter 10
From public participation to elites: conclusions and implications for the participation-hypothesis

10.1 Summarizing the results
It is now time to summarize the results. Let us therefore begin by recalling the overarching purpose of this study: to scrutinize the participation-hypothesis, to critically examine a hypothesis which is found in the peacebuilding literature. This hypothesis suggests that public participation in constitution building processes leads to higher levels of democracy. In the post-Cold War world, where the prevailing normative conviction is that democracy is fundamental for sustainable peace, participatory constitution building processes have emerged as one of many peacebuilding initiatives aimed at promoting democracy and thus securing long-lasting peace. The chain of events underlying the hypothesis is really not more complex than that: public participation in constitution building brings democracy, which brings peace. At least, this is what the proponents of the participation-hypothesis expect.

In the course of the study, systematic comparisons both within and between cases have been conducted – first on a relatively large number of cases and then on a small number of cases – in order to answer the following three research questions.

1) How can participatory constitution building processes be classified?
2) Does participation in constitution building processes lead to higher levels of democracy?
3) If not participation in constitution building processes, what then causes higher levels of democracy?

Let us now review the main findings.

10.1.1 Participatory processes can be false, symbolic, limited, consultative or substantial
At the beginning of this thesis it was established that the existing scholarly research on participatory constitution building processes treats cases of participatory constitution building in a binary way – all of them are simply “participatory”, in contrast to other cases, which are not. No definition of what “participation” actually means nor any distinctions that acknowledge that such participation is carried out in numerous different ways is attempted in earlier work. Simply put, the literature lacks analytical sharpness. But why is this a problem? It is a problem because it is asserted that public participation
in constitution building is valuable because it leads to higher levels of
democracy after the completion of the process. In order for this claim to be
empirically analysed, then we must know i) what participation is, and ii) how
it can be operationalized. And this, in turn, requires that knowledge-gaps in
earlier work be addressed. This has been done in this thesis. To start with, it
was established that participation must imply influence over the decisions
being made. After this, an analytical framework for separating participatory
constitution building processes into different types of participation was
developed. The analytical strategy developed in this study is a contribution to
this specific field of research, and the hope is that it will be useful for scholars
who want to analyse how public participation has been formed and carried out
in future constitution building processes.

With the help of the analytical framework, a classification scheme based on
systematic empirical probing of twenty cases was presented in Chapter 4.
What did this scheme tell us? First, it clearly showed that participatory
constitution building processes are not homogenous. Indeed, there are
differences among the cases as regards how much influence participants were
granted. The scheme revealed that, as regards the initiators of the process:

- National elites (political or military) were the initiators in 11 of 20 cases.
- Civil society organizations were the initiators in 3 of 20 cases.
- Political elites from the ruling party, military elites, political parties in
  the opposition and civil society organizations were the initiators in 2 of
  20 cases.
- Outside actors were the initiators in 4 of the cases.

The classification scheme also enabled us to determine that the initiators were
able (or willing) to communicate with the public (or inform the public) about
the constitution building process in different ways. Some of these
communication strategies were more concerned with creating a *sense* of
participation for the public, as opposed to creating avenues for actual
participation, while others were more thoroughly organized for the purpose of
enabling participation. The classification scheme showed us that:

- In 5 of the 20 cases, a one-way model of communication was
  established.
- In 7 of the 20 cases, there was a two-way model of communication.
- In 4 of the 20 cases, a two-way model of communication with proactive
  integrated measures was used.
- In 4 of the cases, the communication strategy was one of consultation.

Using the classification scheme, we also discovered that there was variation in
the cases as regards whether or not all groups and political parties were
allowed to participate and whether they actually did so. The classification scheme revealed that:

- In 9 of the 20 cases, the process was open for all groups and political parties, and all groups/political parties interested in participating did so.
- In 5 of the cases, certain groups and political parties were banned from participation.
- In 6 of the cases, the process was open to all groups and political parties, but some of them voluntarily chose to boycott the process.

Finally, the classification scheme also allowed us to identify where final authority over the constitutional document was located in the different cases. The scheme showed that:

- In 2 of the 20 cases, final authority was vested in the hands of an appointed body or in the hands of the executive.
- In 11 of the 20 cases, final authority was indirectly vested in the hands of the people.
- In 7 of the cases, final authority was directly placed in the hands of the people through a referendum.

This study has developed a typology of participation in constitution building processes for the purpose of showing that there are differences among cases. The five types that have been referred to throughout the thesis are: false participation, symbolic participation, limited participation, consultative participation and substantial participation. This typology captures a progression of influence for participants from the first participation type to the last, and it also makes it clear as to why cases are categorized as different types of participation. Based on who the initiators of the process were, how forms of communication were constructed, how inclusive the process was and where final authority over the constitution was located, a qualitative assessment was conducted in order to place each case into the most appropriate participation-type. The empirical results showed that:

- 4 of the 20 cases were instances of false participation.
- 3 of the 20 cases were instances of symbolic participation.
- 6 of the 20 cases were instances of limited participation.
- 3 of the 20 cases were instances of consultative participation.
- 4 of the 20 cases were instances of substantial participation.

The systematic analysis of how participation was structured in the different cases has made it increasingly clear that participation is, in fact, a complex
phenomenon that is affected by various factors. This complexity has not been acknowledged previously in the body of research particularly concerned with constitution building, which likely explains why the notion of “participation” has been – and continues to be – treated as if it were the same phenomenon regardless of where it takes place. However, the analytical framework developed in this thesis provides scholars and practitioners working in the field with a tool, an instrument that can be used to make distinctions among different cases of this specific type of peacebuilding initiative. Using the framework to examine actual practices in 20 cases – rather than our ideas, writings and hopes about them – has revealed that “participation” is exercised in different ways, and that these differences imply very different levels of influence for those involved.

It is well known that participation is a normative ideal in political philosophy. The writings of Rousseau and J.S Mill have inspired contemporary participatory theorists, and as the diffusion of these ideas about the benefits of participation has brought them into contact with the development agenda, they have also inspired the peacebuilding literature, which, in turn, has affected actual practices, which has then linked back to the literature. The peacebuilding literature has recommended a number of initiatives that are either linked to or underpinned by the idea of participation. Today, both in written sources about peacebuilding processes and actual practices of them, we frequently find buzzwords such as “bottom-up”, “peacebuilding from below”, “local ownership”, “grassroots peacebuilding” etc. Whether or not these normative claims are empirically supported on a general level lies beyond the scope of this thesis. However, as regards constitution building in particular, the fact that participation has not been approached analytically in a sharp and distinct way has created an overly optimistic view of what public participation in constitution building processes can achieve.

When we approach constitution building processes analytically instead, as proposed in this study, we are able to produce a much fairer assessment of just how “participatory” a specific constitution building process has been. By choosing this approach, we are able to subject the participation-hypothesis to a real investigation. In doing so we should include many cases, as has been done in this thesis. This is important because the participation-hypothesis is currently supported by single case studies at best, and by a “hunch” that participation matters at worst. Therefore, in order to fairly assess the participation-hypothesis, this dissertation included both cases of participatory constitution building processes and cases of non-participation, and looked for patterns that could be revealed by studying a relatively large number of cases.
10.1.2 There is no relationship between participatory constitution building processes and higher levels of democracy

So what empirical patterns did the comparison of forty-eight cases reveal to us? As we can recall, the democracy levels of all cases (the twenty participatory cases and the twenty-eight cases of non-participation) were probed on three different occasions. Specifically, each case was examined five years prior to the commencement of the process (five years before the enactment of the new constitution for the cases of non-participation), at the time of the first elections following the process (enactment, for the cases of non-participation) and at the time of the second elections following the process (enactment, for the cases of non-participation). The findings of this within-case comparison revealed that:

- In 10 of the 48 cases, democracy levels continuously deteriorated from the first to the third point of measurement.
- In 11 of 48 cases, something that we called the “first election effect” was observed. This means that democracy levels had improved at the time of the first elections following the completion of the process/enactment, but had declined by the time of the second elections.
- In 24 of 48 cases, we observed a continuous democratic improvement from the first to the third point of measurement.
- In 3 of the 48 cases, we observed no change on the three separate measurement points.

In the next step, we separated the cases of non-participation from the twenty cases of participation. The purpose of doing so was to determine whether or not cases of non-participation were overrepresented among the cases that exhibited a continuous democratic downturn, and if cases that had involved participation were overrepresented among the ones that displayed continuous democratic improvement. We also wanted to learn more about the cases that displayed the first election effect. Were these cases of non-participation or cases of participation? The analysis of the forty-eight cases separated into the two sub-groups of participation and non-participation revealed the following:

- Participatory cases: 5 of the 20 cases exhibited continuous democratic downturn, 8 of them exhibited continuous democratic improvement, 7 exhibited the first election effect.
- Non-participation: 6 of the 28 cases exhibited continuous democratic downturn, 16 of the 28 cases exhibited continuous democratic improvement, 3 of the cases exhibited the first election effect and 3 of the cases exhibited no change on the three separate measurement points of their democracy levels.
Given that the seven participatory cases that experienced the first election effect still showed improved democracy levels compared to their pre-process levels, the results suggest that 15 out of 20 participatory cases ended up improving their democracy levels. This could be interpreted as encouraging news for the participation hypothesis and its supporters. However, in drawing conclusions about this, two additional observations ought to be considered. The first is that more than half of the cases of non-participation also ended up continuously improving their democracy levels. The second is that, while 15 of the 20 participatory cases showed improvement in their levels of democracy, this finding makes no distinctions between these cases – i.e. it does not take into consideration that these cases, in fact, represent different types of participation. A much more complex picture emerged when we added the different types of participation to the analysis and considered mean democracy levels at an aggregate level as well as for each individual case.

Did participation in constitution building result in higher levels of democracy? Not necessarily. The most surprising finding was that all cases of false participation showed improved democracy ratings when their levels before and after the constitution building process were compared. These were cases in which participation was, as the word “false” suggests, rather empty – with very little or no possibility for public influence. Another striking finding was that some cases of limited participation and substantial participation did not lead to improved levels of democracy; rather their scores fell to even lower levels than before the process commenced.

These findings run directly counter to the predictions of the participation-hypothesis. Moreover, the results are robust – the findings are the same when the democracy data is measured using another index (Polity IV) and when the time period of the study is extended up to present day. If anything, taking these measures into consideration puts the participation-hypothesis in an even more problematic light, because one case of symbolic participation and one case of limited participation saw their democracy rates plummet in the last decade. From the perspective of the participation-hypothesis, what has been especially challenging is that similar participatory processes have led to both democratic improvement and democratic decline. In order to explain this development, and for the purpose of facilitating a discussion about the limitations of the participation-hypothesis, Kenya and Zimbabwe were chosen for intense, systematic and comparative scrutiny in the second part of the thesis.

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117 In fact, 19 out of 28 cases of non-participation have managed to improve their democracy scores after the enactment of the new constitution, because the three cases of non-participation that reveal the first election effect (DRC, Paraguay and Georgia) also see improvement in their individual democracy levels, despite the fact that there is a minor drop between the second and third measurement point.
10.1.3 The drivers of democratization can be numerous; in Kenya and Zimbabwe, political elites matter

What did the comparison of Kenya and Zimbabwe tell us? On a general level, one can say that the comparison led to an increased understanding of the drivers of democratization and, consequently, to the conclusion that the participation-hypothesis must be informed by insights drawn from the democratization literature. Before discussing this issue further, let us very briefly review the constitution building processes of these two cases.

The constitution building processes in Kenya and Zimbabwe were indeed very similar. Both countries conducted participatory constitution building processes not just once, but twice, and both were done during roughly the same time period. In this thesis, both of the cases have been categorized as cases of substantial participation, i.e. the participation-type in which participants have the most far-reaching degree of influence. In both cases, the initiators of the process in the first round of constitution building were civil society organizations, and in the second round, political elites. The forms of communication were also very similar in the two countries. Extensive measures were taken in order to prepare the Kenyan and Zimbabwean populations to participate, and many channels for feedback were created. The cases were also similar to each other on degree of inclusion. In both countries and both times, participation was open to all segments of the population and all political parties; however, not everyone choose to participate. In Zimbabwe, the civil society organization that initiated the first process and was an important player in the second process (the NCA), nonetheless choose to boycott the government-led constitution building initiative during both processes. In Kenya, a number of ministers walked out of the proceedings of the National Constitutional Conference during the first round of constitution building; thus, a boycott of sorts was also part of the Kenyan process. As regards final authority, both countries, both times, allowed their populations to have final say over the constitutional draft through a referendum. So, again, the processes were very similar. However, the outcomes as far as democracy levels are concerned were different. Since public participation, therefore, cannot be the sole explanation for diverse levels of democracy, we were motivated to investigate the question of what other factors might help us understand the different trajectories of democracy that these two countries have taken.

This led to an exploration of the vast democratization literature, where we identified three different schools of thought: structural theories, external theories and actor-oriented theories. Scholars who adhere to these different schools stress different factors as the most essential for explaining democratization or the lack of it. However, when it comes to understanding what has led to the different trajectories in Kenya and Zimbabwe in particular, there appears to be growing consensus that political elites are the key.
Scholars have proposed that by studying their actions, we will develop a better understanding as to why Kenya is democratizing while Zimbabwe is not. In line with the scrutinizing ambitions of this dissertation, systematic comparisons were therefore conducted in order to identify clues that might challenge this consensus. In Chapter 8, comprehensive comparisons of Kenya and Zimbabwe on numerous structural and external dimensions were conducted using data from many different sources, something that has not been done in previous research focused specifically on these two cases. The results of these comparisons strongly indicate support for the elite-explanation. It appears that political elites – in particular their actions and especially their ability to cooperate with each other – have strong explanatory value when it comes to understanding the different paths of democratization taken by Kenya and Zimbabwe. The question is what these findings imply for participation in constitution building more generally.

10.2 Bringing the pieces together
The comparisons conducted in both the first and second part of the thesis strongly indicate that:

- **The participation-hypothesis needs to be qualified.**

The current, overly simplified formulation of the hypothesis of public participation in constitution building – i.e., that participation alone results in higher levels of democracy – does not survive closer empirical scrutiny. It is a myth. We now know this. During the course of this study, it is has become increasingly clear that the hypothesis does not find empirical support because it is rooted in a narrow – not to mention incorrect – understanding of the factors that underlie democratization. The results of the study also prompt a discussion about the clear limitations of a hypothesis formulation that is as unproblematised as the one we find in the participation-hypothesis. The hypothesis says nothing about variables that can impact on the level of democracy other than, or in conjunction with, participation in constitution building. Considering that supporters of the approach promote it because of its perceived effects on democracy levels, the hypothesis quite clearly needs to be informed by insights from the democratization literature. To be sure, democratization is not a one-piece jigsaw puzzle. This is something that must be recognized in the broader peacebuilding literature in order to counterbalance false and overly simplistic views about what promotes and strengthens democracy. This is especially important in light of the fact that many of the propositions that we find in this literature tend to work their way into actual peacebuilding policies.

But does this suggest that participation in constitution building should be abandoned entirely? It clearly does not lead to the proposed outcome, so why
not just toss it into the peacebuilding trash-bin on the grounds that it is a strategy that simply proved not to work? Perhaps this is a valid suggestion. On the other hand, a number of objections can be raised against proposing a complete abandonment of participatory constitution building. To begin with, at this point in time, such a suggestion would be far too rash. Several aspects of participatory processes remain unknown and deserve analysis. Though we cannot and should not propose a definitive alternative hypothesis formulation/formulations here, it is nonetheless essential that scholars as well as practitioners who support public participation take into account the many factors that come into play in democratization processes and start to contemplate the circumstances in which participation may work in favour of democratization. Also, although “participation” appears to be at the heart of many peacebuilding initiatives today, this study has shown that there is much to be gained from a more sophisticated understanding of participation. Thus, just as the participation-hypothesis must be informed by the democratization literature, an analytical approach to “participation” encourages a discussion about whether certain types of participation are more favourable for increased levels of democracy.

There is also another reason why we should be wary about being overly quick to abandon participatory processes. Although it is true that the findings of this study indicate that there is no relationship between public participation in constitution building and increased levels of democracy, advocates of the approach have suggested a number of other possible benefits of participation – e.g. to promote legitimacy, build social capital, reconcile former adversaries, educational virtues, etc. Many of these have not been empirically investigated yet, and this research gap ought to be addressed. This will provide us with a fuller understanding of the supposed rewards of participation, something that is necessary before we can suggest abandoning public participation in these types of processes.

Adding to these considerations, it is also worthwhile to remember that participation in political decision-making is a normative ideal with a long tradition, with proponents who consistently stress that participation cultivates individuals and, by doing so, impacts positively on the communities that they live in. The notion of public participation in constitution building and other areas of political life is probably appealing to most of us because it involves a great aspect of learning. We learn to participate; we learn to develop into tolerant and informed citizens. And as our individual qualities improve, we expect that these improvements will spill over to our societies as a whole.

Whether or not the potential benefits of participation on an individual level can actually spill over and thus also influence the system level is an issue that requires both more theorizing and empirical probing before we can say whether or not it is true. Meanwhile, instead of being discouraged by the results of the research conducted in this dissertation, we should use it to
trigger creative thinking about whether or not it is possible to qualify the participation-hypothesis, and, if so, how. Here, there is room for numerous possibilities, ideas, suggestions and speculations. However, certain conclusions can nevertheless already be drawn based on the findings of this study.

To begin with, what may intuitively appear to be a contradiction can provide us with an avenue by which participation can strengthen democracy at the macro level. That is, when political elite cooperation and consensus precedes public participation, it is possible that the prospects for strengthening democracy may be enhanced. The Kenyan and South African cases indicate this, although the Kenyan elites – in contrast to their South African counterparts – did not specifically sit down to negotiate the fundamentals of the constitution; rather, a history of cooperation had already been established long prior to the 2001-2005 constitution building process.

The significant role of political elites inevitably raises questions about sequencing. The South African case indicates that there is a rational for gradually opening up the process for public participation, rather than designing a process which is fully inclusive from the very beginning. Allowing political elites to agree on some of the most pressing/sensitive issues before engaging the public might also lead to a more focused discussion once people are invited into the process, and it can also serve to manage people’s expectations and direct them towards areas of the document that they are actually allowed to influence through participation.

However, when considering elite negotiations as a first step in a participatory constitution building process, the circumstances that characterize particularly post-conflict and transitioning states must be kept in mind. In these societies, the level of trust towards political elites is generally low. If political pacts on contentious constitutional issues are to be regarded as legitimate by the people, then those who strike the deals must be seen as legitimate players in the first place. Hence, it is worthwhile to explore different kinds of constitution making bodies that can ensure the representation of a majority of political factions. This is necessary to at least mitigate the risk that a few powerful players dominate the constitutional negotiations, which can lead to a loss of legitimacy in the eyes of the public. In this context it is worthwhile recalling the composition of the Kenyan National Constitutional Conference, one of the constitution-making bodies that was used during the country’s 2001-2005 process. This body included all members of the National Assembly, all registered political parties in the country, as well as NGOs, trade unions, representatives from religious organizations and a number of civil society organizations.

Second, for participation to work in favour of any positive outcome – whether on the individual or system level – certain circumstances in the country where the process is taking place appear to be important. In some of
the post-conflict states included in this study, e.g. Afghanistan and Iraq, the process of writing a new constitution commenced while violence was still ongoing and widespread. Thus, the environment was not safe, which made it difficult, and perhaps even life-threatening, for people to engage in the process in any meaningful way. Also, even if impediments to participation due to the threat of physical violence are absent, some institutional fundamentals seem to be necessary. Clearly, it must be legal for people to express their opinions. Interestingly, this signals that some democratic standards must already exist if participation is to lead to any positive outcome, whether it is increasing levels of democracy, reconciliation, conflict resolution or something else. This seems to lead us back to the issue of sequencing again. If transitions from war and authoritarian rule can be regarded as continuous processes, it is worthwhile to empirically probe whether public participation is more likely to work if it is introduced somewhere along the continuum when conditions are more favourable. This is an issue that certainly deserves further study.

Third, this study has devoted much attention to the issue of communicating the process to the citizenry and whether and how people have been prepared to participate. Though this might be seen as a banal conclusion, it is very much worth emphasizing that if people are going to be able to participate meaningfully in any type of decision-making, they must first understand the issues to be decided, and the environment must allow the free flow of information both to citizens and from citizens. As pointed out above with regard to the legal right to express an opinion, this prerequisite also suggests that perhaps some democratic standards and procedures must first be in place before the commencement of a participatory process. As regards the extent, design and timing of constitutional education programs, this is something that has varied extensively across the cases included in this study, which also explains why people in different countries have been more or less prepared to participate. As regards this specific issue, more empirical effort should be devoted to comparing and analysing different types of constitutional education programs introduced at different junctures in the process. This will make it possible to better understand the approach/approaches that are the most conducive for preparing people to participate.

The results presented in this study reveal the limitations of the participation-hypothesis, and raise the question of how this idea has been able to garner so much support from the research community and among practitioners in the field, despite a lack of empirical evidence to support it. The South African success story is likely a big part of the explanation. Actually it would probably not be too rash of a statement to suggest that the participation-hypothesis has been, and continuous to be, nourished by this single case. As the results in Chapter 5 made clear, democracy levels in South Africa improved remarkably after the process of constitution building. To
succeed in improving democracy ratings from 5.5 to 1.5 on Freedom House’s 7 point scale during the course of only one decade is an extraordinary achievement. Perhaps even more notable is the fact that the country has been able to keep its score at around 1.5 – 2 ever since. And there is no question that the South African constitution building process has gained plenty of attention from the research community – countless case studies have been conducted on the participatory elements of the process. Moreover, the case is frequently pointed to as an example that other countries that are conducting – or thinking about conducting – a participatory constitution building process should follow.

It is clear that the South African case was impressive in terms of how the people were able to get involved in the process; there is no denying this fact. Nonetheless, in the idealized, fairy-tale story that has developed around this specific process, it is often “forgotten” – or at least not mentioned – that the participatory elements of the process were preceded by elite negotiations on the highest political level. As already mentioned, after South African political elites had reached consensus on a number of contentious constitutional issues, the South African population at large was invited to participate, and even when the people had done so, final authority over the content of the constitution was still not directly vested in their hands. The fact that there was political elite agreement in the South African case is anything but insignificant, particularly in light of the results of the comparative case studies conducted in the second part of this thesis, namely that:

- **Political elites have a pivotal role when it comes to democratization.**

By now we are well aware that there are different schools of thought about what explains the emergence and enhancement democracy. By closely studying the two cases of Zimbabwe and Kenya, we have come to understand that whether or not political elites are willing and able to cooperate with each other has substantial bearing on the extent to which, if at all, democratization takes place. Based on systematic empirical investigation of these two cases, it appears that political will is a necessary ingredient for democratization to occur. Those in power must be interested in and committed to the idea of developing a democratic society. Without this commitment from political elites, democratization will not occur, regardless of how well-designed a constitution building process is or how much public influence is allowed during the process.

At this point, a valid objection may be raised; namely, how far can we generalize the importance of political elites based on only two cases? The answer, of course, is not too far. We must be cautious to avoid claiming that political elites are the single most important factor for democratization in all
countries. Nonetheless, this study has called attention to the fact that our understanding of democratization processes in different countries and contexts will benefit by “bringing the actors back into” the analysis. Since Lipset’s ground-breaking work in the late 1950s, structural factors have been given great prominence in scholarly work. As Bratton & van de Walle (1997: 21) have pointed out, structural explanations represent the orthodox view in much of the contemporary political science literature that is specifically concerned with democratization. However, the comparison of Kenya and Zimbabwe reveals that, in these two cases, structural explanations do not suffice. On the contrary, in these cases they have no explanatory value. And it is difficult to imagine that the actions of political elites and their ability to cooperate only has an impact on democratization in Kenya and Zimbabwe. Surely this is a factor that is worth empirically probing in other countries that are also struggling in their efforts to democratize.

But how does political elite cooperation come about? According to the theoretical contributions of Cheeseman (2011), elite cooperation depends on whether or not there is a history of such cooperation and whether there is a history of violence between political adversaries. In particular, it is proposed that a history of elite cooperation combined with history free from violence among political adversaries enhances the likelihood of the formation of a united elite. A united elite is, in turn, vital for democratization. The systematic comparison of Kenya and Zimbabwe shows that cooperation occurs when it produces mutual benefits, or when elites at least acknowledge that there might be mutual benefits from cooperating with each other. But just because there is no prior history of elite cooperation in a country, we should be wary of concluding that the outlook for future cooperation is bleak for all eternity. Here, the Kenyan example offers valuable insights. Undeniably, it is possible and even likely that political elites in Kenya have become accustomed to cooperating with each other simply because they have done so for such a long time. However, it is also likely that Kenyan elites are able to cooperate with each other because the political landscape of the country is as dynamic as it is. Since the (re)introduction of multipartyism in Kenya in the beginning of the 1990s, new political players are constantly being added to the political game. Alliances break down and resurface in other constellations with different leaders, or they remain partly the same but have a different political leader. Hence, political parties or coalitions that have not been able to cooperate in the past might still be able to do so once the leadership of the parties’ changes.

This can be compared to the situation in Zimbabwe, which offers a political scene that is anything but dynamic. Mugabe has reigned on his throne for 35 years, and the opposition has become almost synonymous with Morgan Tsvangirai’s name. The relations among the elite are too tainted; too much has happened, and too many severe violations of fundamental human rights have been committed for elite cooperation to occur as long as Mugabe, in particular,
remains part of the political leadership of Zimbabwe. Also, at this stage, even if Tsvangirai were to cooperate with Mugabe, it is likely that MDC supporters would consider him an illegitimate leader. Hence, if political cooperation is to have a viable chance of occurring in Zimbabwe, what is needed is for the political leadership of ZANU-PF, and perhaps also the leaders of the two MDC formations, to change. It can be mentioned in this context that, in late 2014, 91 year old Mugabe appointed his successor when naming Emmerson Mnangagwa as vice president (The Guardian 2014). For the time being, however, Mugabe is still in control, and there has been no statement to the effect that he has plans to leave.

To argue that elite cooperation in Kenya has occurred due to the dynamic playing field of the political landscape evades a line of reasoning that suggests that the sole reason that Kenya is on the path to higher levels of democracy is because most of the political elites in the country have been involved in acts of political violence towards each other, which now makes cooperation a course of action undertaken for the sake of dodging prosecution. Although this is part of the explanation as to why political elites are engaging in political bargaining and coalition building, to attribute Kenyan democratization exclusively to political violence appears quite controversial, to say the very least. Also, if this were the case, then we would have to conclude that democracy is being built on a house of cards and will inevitably come tumbling down sooner or later.

In the course of writing this thesis, it has not only become clear that the participation-hypothesis does not hold up to closer empirical scrutiny and that political elite cooperation has the potential to be decisive for democratization, it has also become increasingly clear that there is an incoherence between what proponents of participatory processes believe brings about democratization and what democratization scholars identify as the critical factors. The findings of this thesis strongly suggest that:

- **The peacebuilding and the democratization literatures must be brought together.**

The former body of literature speaks about the importance of creating democratic systems of government in post-conflict and transitioning states, but the propositions about how to achieve this are not even remotely anchored in the broader democratization literature that is specifically concerned with this very matter. How is it that the participation-hypothesis is not at all informed by theoretical insights derived from various schools of thought in the democratization literature? Why is it completely and utterly detached from this body of research? In order to understand this, we must acknowledge the context in which the participation-hypothesis was formulated.

The breakdown of the Soviet Union and the end of the Cold War led to great optimism around the globe concerning the future prospects of
democratization in authoritarian states. Francis Fukuyama’s *The End of History and the Last Man* (1992) captures this spirit quite well – a firm belief in the liberal form of democratic government as the only and final form of government. The end of the Cold War also produced great hopefulness concerning the future possibility of the UN to exercise its mandate in such a way as to actually be able to ensure international peace and security. Before the early 1990s, “peacebuilding” was not an established term in the sense that it is today – a word with numerous initiatives attached to its name, initiatives that include activities ranging from truth and reconciliation commissions to constitution building processes. In this flurry of post-Cold War optimism however, dots that should have been connected were not. The peacebuilding literature, in which the participation-hypothesis has its roots, and the democratization literature were two such areas that were not and still have not been sufficiently brought together. Simply put, these two strands of literature do not speak to each other. A full 12 years ago, Call & Cook (2003: 136) captured this problem well when they stated that:

“The post conflict peacebuilding community and the democratization communities have enjoyed remarkably little dialogue. The recent peacebuilding literature, for instance, has not engaged some of the difficult questions posed by research on democratization and governance. Much of that research emphasizes structural preconditions for statehood and democracy that fall beyond the short-term control of policymakers”.

(Call & Cook 2003: 136)

In relation to the participation-hypothesis, this could not be more accurate. Here we have a hypothesis that fails to take into consideration any of the structural factors that are said to be prerequisites for democratization, nor does it consider individual countries’ relations with the outside world as a significant factor for democratization. And, in addition to these blind spots, it does not consider the likelihood that political elites and their relationships with each other might impact on democratization processes. Although there might very well be a peacebuilding-democratization nexus, the theories and practices of the former have not recognized it, and they would, in fact, benefit greatly if they were informed by the theories and empirical evidence of the latter. The democratization literature has developed over the course of centuries and is thus rich in both theoretical and empirical studies, while the peacebuilding literature is still something of a novelty. Given that the evolving norm of the international community is that peace is achieved through democratization, scholars and practitioners in the peacebuilding and democratization fields must come together. In this thesis, these two strands of literature have been introduced to each other in a way that signals the merits of emphasizing the role of political elites and elite cooperation when seeking to understand the prospects for democratization. Of course, further research
is needed in order to integrate the two fields for the benefit of promoting the overarching peacebuilding agenda, which is to secure sustainable peace.

10.3 Concluding remarks and future research

The unprecedented, worldwide increase in constitutional activity since the beginning of the 1990s indicates that substantial reforms or complete overhauls of existing constitutions will continue in the foreseeable future. This is particularly probable in post-conflict settings as a means to try to break with the past and start anew. For the time being, public participation – in one form or another – in the making of these foundational documents appears to be a trend that is here to stay. The spread of the Internet and the use of various social media are connecting people around the globe in ways that were unconceivable only thirty years ago. This means that people in transitioning and post-conflict societies are quite well aware of the fact that ordinary men and women in other countries have been allowed to take part in the building of their constitutions. By extension, this inspires them to demand to be included in their own country’s process. During the past few years, we have witnessed how people in the Arab spring countries have voiced demands to be involved in the constitution drafting process. Although the Tunisian people were successful in their aspirations, the general public in Egypt, Morocco, Libya and Jordan saw themselves being shut out of involvement. In addition to demands for participation being spread by “word of mouth”, supporters of participation in constitution building processes are also aiming for and working towards the establishment of a legal right to participation. If their efforts are successful, an increase in these types of processes can be expected. This makes it even more relevant to continue conducting comparative research on participatory constitution building. We must do this because these efforts will gradually increase our understanding of different types of participatory processes and their effects on different outcomes. This study has provided the first piece in this broader research agenda. So the question to be addressed is, where do we go from here?

Now that an analytical strategy for differentiating participatory constitution building processes has been developed, future research projects can include a larger number of cases in their analysis. Indeed, if a method for classifying cases as more or less participatory had already been developed in previous research, then the research design of this study would likely have been quite different. For example, one possibility would have been to focus on the post-Cold War period and include all cases of constitution writing after violent conflict/severe institutional crisis/transition from authoritarian rule, and to treat the question of whether or not cases had been participatory as an empirical matter. This is different than the approach taken here, which was to analyse the participation-hypothesis by examining cases that previous research has classified as having conducted “participatory processes”. Before
now, however, no such strategy for differentiating participatory constitution building processes had been established. Thus, when the research for this thesis was initiated, the premises upon which cases would be categorized as different types of participation were far from clear, and it proved necessary to combine a deductive-inductive approach to develop an analytical framework for this purpose. Moving back and forth between theory and the empirical material was a feasible course of action when the number of empirical cases in focus was limited to twenty. However, it would have been impossible had the number of cases been considerably larger. Now, however, when a method for distinguishing different types of participation in constitution building has been established, it is easier to include a larger number of cases in future projects, because we have a better idea as to which factors to look for when we analyse the extent of public participation in constitution building processes. It is the hope of this study that the contributions made here will facilitate such future research endeavours. As we move ahead and continue conducting research in this field, two paths in particular ought to be pursued.

To begin with, supporters of participatory constitution building processes advance a number of reasons other than increased democracy levels at the macro level as to why people should be allowed to participate. Empirical questions that deserve our attention include: whether or not participatory processes lead people to view the constitution as a more legitimate document, whether or not participatory processes make people more knowledgeable about their constitutional rights, whether or not participatory processes help build social capital in war-torn states and whether or not participatory processes help reconcile former adversaries of conflict. In addressing these questions, it is worthwhile to explore whether different types of participation affect these different outcomes in various ways. By expanding the research agenda to also include the comparative study of these issues, we will attain a more complete understanding of the effects of participatory processes.

Second, the findings presented in this study encourage future research that expands our knowledge as to the circumstances under which public participation in constitution building can work in favour of democratization. In this study, the 20 constitution building processes of interest to this thesis have been studied by learning about the different rules of procedure used in the cases and about the different environments in which the processes took place. The results indicate that it is worthwhile to consider whether different types of participation can lead to increased levels of democracy if certain prior conditions are already in place and/or if public involvement is introduced at specific stages of the process. To phrase it differently, future research might want to explore both the question of the conditions under which public participation can work in favour of democratization as well as the question of whether and how public participation in the process should be sequenced.
A number of factors have turned out to be important in some of the cases studied in this thesis, including broadly inclusive constitution making bodies with representatives from a majority of political parties and other stakeholders; political elite cooperation and consensus on sensitive constitutional issues; a safe environment not plagued by deadly violence; an environment that acknowledges and upholds freedom of expression and allows for the free flow of information, and constitutional education programs. Therefore, more research should be devoted to understanding whether some or all of these are actually prerequisites that should be in place before public participation is introduced into the process. Having said this, however, it should not be taken to mean that there is a formula “out there” waiting to be discovered that will tell us exactly how to design constitution building processes with elements of public involvement that will benefit democratization. Given that the participation-hypothesis has endured much criticism in this chapter because of its limitations as regards taking into account other factors that matter for strengthening democracy, it would seem misguided to end this study by claiming that there is a specific set of conditions and a specific chain of sequencing that applies for all contexts. However, it is not ill-advised to start contemplating the factors mentioned above as part of the next step in the research conducted in this study, and to include many cases as we move forward, in the hope that, by doing so, we will be able to discover patterns that can advance our knowledge about whether and how public participation can work in favour of democratization.
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APPENDIX 1

Afghanistan

Initiators of the process: The Bonn Agreement of December 2001 established the legal framework for constitutional reform in Afghanistan. Under UN auspices, the agreement was entered into by four Afghan political groups. One of the main features of the Bonn Agreement was a timetable of eighteen months for the drafting of the new constitution. A Special Representative of the Secretary General was appointed with authority to “monitor and assist in the implementation of all aspects of the Bonn Agreement” (Branch 2005: 10).

Forms of communication: Hamid Karzai, Afghan president at the time, appointed a Drafting Committee to draft the document, which was largely done behind closed doors. Karzai then appointed a Constitutional Commission to, among other things, inform the public about the constitution making process, conduct public consultations throughout the country and educate the public on the draft constitution. The commission had one month to educate the entire population on constitutional issues. Poor infrastructure, the high illiteracy rate, and the vast obstacles of reaching women and the disabled made it impossible to manage the task of constitutional education within the timeframe.

Degree of inclusion: The Taliban were excluded from participation in the constitution building process.

Final authority: Final authority over the content of the constitution was ultimately vested in the hands of the president and his cabinet, though the Constitutional Loya Jirga had formal authority of approval. The input that had been provided by the public during the consultation phase of the process was not given any consideration when substantial alterations were made to the draft by the executive.


Albania

Initiators of the process: In 1997, Albania’s parliament approved Declaration 339. The document provided a general framework for the drafting of the new constitution, established rules of procedure for the constitution building process and clearly stipulated that public participation was to form part of the process.

Forms of communication: During a nine-month period, ACCAPP and the Ministry of Institutional Reform joined forces in creating avenues for public participation. The structure of the process was divided into two phases. Public input into drafting the document constituted the first phase, and review and comments by the public on the proposed draft was assigned to the second phase. Prior to these stages, the initiators of the process realized that in order for the citizenry to be able to contribute with informed input, education on constitutional matters was required. To this end, ACCAPP, the Constitutional Commission, and a multitude of non-governmental organizations created numerous civic education activities with a focus on constitutional matters. Issue forums were established, seminars, television broadcasts, telephone call-ins, radio programs, newspaper serials on constitutional issues and essay writing contests were organized.

Degree of inclusion: The Albanian constitution building process was open to all political parties and all segments of the population. However, the Democratic Party in Albania initiated a boycott campaign in the autumn of 1997 that lasted throughout most of the constitution building process.
Final authority: The fate of the constitution was directly vested in the hands of the Albanian people through a referendum.


Bolivia

Please see Chapter 4, which provides a discussion of the Bolivian constitution building process that follows the same structure as those presented in this Appendix (i.e. Initiators of the process, Forms of communication, Degree of inclusion, Final authority).

Brazil

Initiators of the process: The Brazilian transition from military to civilian rule was not actually initiated by segments of civil society, which is otherwise quite common. Rather, it was the military regime itself that initiated the change. By gradually adjusting dictatorial governing structures, the president steered Brazil on a path towards democratization starting in 1974 and culminating in the constitution building process that lasted from 1985 to 1987.

Forms of communication: The rules of procedure of the Brazilian constitution building process allowed civic society organizations and ordinary citizens to propose constitutional suggestions to the sub-committees of the Constitutional Assembly. During the initial sessions of the assembly, nearly 12,000 proposals from civic society affiliations and individual citizens were collected and reviewed, after which the sub-committees held 182 public hearings for the purpose of verifying the suggestions that had been submitted with their senders. Once the individuals and civil society organizations had confirmed that their submissions had been properly understood, the sub-committees began to the draft sections of the constitution that were related to their specific areas of responsibility. The efforts of the Constitutional Assembly to include the Brazilian population were successful – approximately 61,000 amendments to the assembly’s draft constitution were proposed by the people. The assembly’s rules of procedure also introduced a unique feature into the Brazilian process called the “popular amendment”, which made it possible for individuals and citizen initiatives to propose propositions that the entire Constitutional Assembly had to listen to, not just specific sub-committees. In order to offer a popular amendment and receive the attention of the full assembly, a proposal had to have at least 30,000 signatures from voters and had to be organized by no less than three legal entities that could ensure the authenticity of the signatures. 122 popular amendments were proposed during the course of the process, some of which garnered more than 1 million signatures. The use of mass media also contributed in involving the public in the process, although television shows, newspaper articles, etc. were mainly targeted towards keeping the people informed about the process.

Degree of inclusion: Participation in the Brazilian constitution building process was open to all segments of society and political parties; there was no banning of any particular groups and no societal segments/political parties voluntarily chose to boycott the process.

Final authority: The Constitutional Assembly, which had been directly elected by the Brazilian people, voted on the draft constitution in September 1998 and promulgated the document one month later. Final authority was thus indirectly vested in the hands of the people.

Colombia

Please see Chapter 4, where an exploration of the Colombian constitution building process is presented which follows the same structure as the Appendix (Initiators of the process, Forms of communication, Degree of inclusion, Final authority).

East Timor

Initiators of the process: Through UN Security Council Resolution 1272, the United Nations Transitional Administration in East Timor (UNTAET) was established. UNTAET Regulation 2001/2, “On the election of a Constituent Assembly to prepare a constitution for an independent and democratic East Timor”, in turn, provided the legal framework for East Timor to initiate its constitution building process (UNTAET Reg.2001/2). The Regulation also established a timeframe of 90 days for the process. Despite calls from local NGO’s to appoint a broad inclusive Constitutional Commission to draft the constitution rather than a Constituent Assembly, UNTAET stood by its decision and the proposed time frame.

Forms of communication: The rushed process left very little time for genuine participation. Civic education was carried out by UNTAET, but it did not involve education on constitutional issues. When the “participatory” phase of the process started, people were therefore not very well equipped to be able to participate. The opportunity for the public to comment on the proposed draft was also severely circumscribed, as it was published in Portuguese, which only 10% of the population reads and speaks.

Degree of inclusion: All groups and political parties who wanted to engage in the process were welcome to do so; no one was banned from the process.

Final authority: Final authority over the constitutional document was indirectly vested in the hands of the people. The East Timorese voted for members of a Constituent Assembly, which, in turn, produced as well as voted on the document.


Eritrea

Initiators of the process: Two years after the Eritrean victory over the Ethiopian military occupation, the Eritrean transitional government arranged an internationally observed referendum in which Eritreans were asked whether they wanted to be completely independent from Ethiopia or if they preferred to remain associated with the former occupation power. The outcome of the plebiscite confirmed the military victory and also served to reveal the intention of the government to guide the country on a path towards democratization. To this end, in connection to the outcome of the referendum, the government also passed a proclamation in which it was decided that a Constitutional Commission would be established and the Eritrean people would be able to participate actively in the making of a new constitution for the country (Proclamation no.55/1994).

Forms of communication: Proclamation 55/1994 explicated details on how the Eritrean people were to be involved in the creation of the new constitution. Among other things, the Constitutional Commission was to: i) organize and manage a wide-ranging and all-embracing national debate and an education campaign with public seminars and a lecture series on constitutional principles and practice, ii) organize and conduct – or to cause to be organized and conducted by the appropriate bodies – seminars, symposia, educational lectures and discussions on constitutional principles and practices. These efforts were to be done through the mass media and to be aimed at educational and civic establishments as well as other appropriate institutions. The ambition of
the Constitutional Commission was manifest in extensive programs to reach the public in order
to secure their participation in the constitution building process. Over a period of three years,
Eritreans within the borders of the country as well as the diaspora community were involved in
the process, which was intended to allow the commission to fulfil its duty, which was to produce
a draft constitution that reflected public opinion as much as possible. Constitutional education
programs were held in all languages spoken in the country. Measures for reaching the illiterate
were also taken, as were non-traditional forms of outreach, among other things conveying the
principles of constitutionalism through puppet shows, poetry session and storytelling
arrangements. Questionnaires, contests and debates on the radio and television were also part of
the civic education programs, which reached approximately 500,000 people out of a population
of 4.5 million. Members of the commission, together with 400 specially qualified instructors,
carried out these civic and constitutional education programs and gathered submissions from
people in villages as well as in urban areas (Benomar 2003: 12). In addition to this, and for the
purpose of situating the national constitution building process into a wider context, several
international human rights instruments were translated to Arabic and Tigrinya (The Universal
Declaration of Human Rights and the Convention on the Rights of the Child, among others)
(Selassie 2010: 67). In total, the commission and the surrounding administration held 157 public
meetings at various places within Eritrea, involving over 110 000 participants. An additional 11
000 diaspora citizens from 16 locations also participated in the process.

**Degree of inclusion:** All groups and political parties who wished to engage in the process were
welcome to do so; no one was banned from the process.

**Final authority:** The Constituent Assembly had final authority over the document. Final authority
was hence indirectly vested in the hands of the people.

The description of the Eritrean constitution building process is based on the following sources: 1)
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**Ethiopia**

**Initiators of the process:** The roots of the current Ethiopian constitution are in the “Transitional
Charter”, which served as an interim constitution in Ethiopia during 1991-1995. At the “London
Talks”, convened by the United States in London in May 1991, the *Ethiopian People’s Democratic
and Revolutionary Front* (EPDRF) and the *Oromo Liberation Front* (OLF) jointly discussed the
transfer of power during the transitional period.

**Forms of communication:** During the transitional period, a Constitutional Drafting Commission
was established. This body had as its mandate to draft and prepare a constitution; conduct
educational discussions, seminars and symposiums on constitutional issues; organize and
conduct public discussion on the draft constitution; publicize and publicly distribute the draft
constitution, provide explanations about the draft constitution and respond to public inquiries;
compile the comments of public actors on the draft constitution; incorporate public comments in
the final draft constitution, and other related tasks. The Commission went about its work in
mainly two phases: civic education followed by public consultation. For the duration of the civic
education phase, the Commission distributed information about the role of constitution building
in a democratic system of government. The state media was used to educate the public and to
inspire discussion on topics of constitutionalism and constitutional law. When the consultation
phase of the process started, the Commission published and presented a series of key issues
concerning the constitution on which the public was consulted and responses encouraged. The
Commission organized public hearings throughout all regions of the country to collect the views
of the people, after which they were compiled and reviewed. After taking into account the feedback
of the people, in autumn of 1994 the Commission drafted and submitted a draft constitution to
the Council of Representatives. Once this draft was adopted by the Council of Representatives,
the Commission again presented the text to the public for discussion and consultation, after which it was submitted to the Constituent Assembly for ratification.

**Degree of inclusion:** The Ethiopian constitution building process was open for all political parties and segments of the population to participate. In mid-1992, however, the OLF withdrew its participation from the process.

**Final authority:** Final authority over the constitutional document was indirectly vested in the hands of the Ethiopian people. The popularly elected Constituent Assembly was vested with final authority.


**Fiji**

**Initiators of the process:** In order to come to terms with institutionalized imbalances between the two main ethnic groups in Fiji (the indigenous Fijians and the Indo-Fijians), a Commission of Inquiry was formed in 1993 for the purpose of reviewing the constitution. The initiators of the process were political elites from both camps, who, in addition to wanting to address the issue of inequity between groups, were motivated to promote constitutional reform due to the fact that the Fijian economy was suffering because only the Indo-Fijians were involved in the formal economy of the country. In addition, the World Bank stressed the importance of a constitution-making process and the formulation of a constitution that would be acceptable for all groups in the country as a prerequisite for economic growth. Fiji’s largest aid donors, the United States, New Zealand and Australia also pressured the country to reform the 1990 constitution. Thus, initiators of the process were elites within the government as well as the opposition, but the two sides had different opinions as to the extent of constitutional reform. While the government wanted a review of the constitution, it also wanted the document to retain indigenous Fijian primacy; the opposition, however, wanted a complete reform of the constitution, in which principles of national unity and fairness would be prioritized. The differing of opinions regarding this question undoubtedly effected the structure of the entire constitution building process and the extent of influence that these actors were ready to grant the people through the process of participation.

**Forms of communication:** The Commission’s mission ultimately reflected a compromise between the wishes of the government and the opposition, although the government’s ambition to safeguard the interests of the indigenous Fijians was observed. The Commission was to take into consideration the “rights, interests and concerns of the indigenous Fijian and Rotuman people”. The overall task of the Commission was to arrange public hearings in order to collect input from all segments of society concerning constitutional issues and, thereafter, to “suggest how the provisions of the 1990 constitution could be improved upon to meet the needs of Fiji as a multi-ethnic and multicultural society” (Lal 2002: 269). The all-male Commission consisted of one indigenous Fijian nominated by the government, one Indo-Fijian nominated by the opposition and one independent international chair approved and accepted by both ethnic groups as a neutral actor. The meagre size of the Commission caused challenges; because it was so small, it had limited resources to conduct a comprehensive series of public hearings throughout the country, something that more resources would have made possible. Insufficient resources also meant that the organizational aspects of the Commission’s countrywide trip left much to desire. From the capital of Suva, it was announced that the Commission would be in a certain village or town on a certain day, and that it would convene in a town hall, a courtroom, etc. in order to...
receive public views. There was, however, no local organization that could communicate the message and prepare the citizens for participation. In addition, constitutional education programs were not part of the Commission’s mandate, and, therefore, such programs were left out of the process. Furthermore, the draft constitution was only published in English, and not in either of the two other national languages of the country (Fijian and Fiji Hindi).

Degree of inclusion: All groups and political parties who wished to engage in the process were welcome to do so; no one was banned from the process.

Final authority: The main responsibility of negotiating and establishing the final text of the document rested with an all-party Joint Parliamentary Select Committee, which conducted most of its work behind closed doors. However, final approval was vested in the Fijian parliament, and, thus, final authority was indirectly placed in the hands of the people.


Guatemala

Initiators of the process: The Guatemalan constitution building process is somewhat special, as it was initiated through a peace process that lasted from 1987 to 1996. The parties to the conflict and the Guatemalan Civil Society Assembly (ASC), an umbrella organization for the country’s civil societies, negotiated fourteen peace accords, and during the process also agreed upon the fundamentals for a constitutional reform proposal. Hence, a broad array of actors initiated the Guatemalan constitution building process.

Forms of communication: Though Guatemalans were not active participants in the constitution building process in terms of sitting at the negotiation table, their opinions were nonetheless listened to, because members of the ASC consulted with their respective organizations before and after negotiations. At the time of the signing the final peace accord, the parties also decided that all reform proposals collected throughout the nine years of dialogue would be discussed in Constitutional Commissions. The Commissions’ task was to then prepare a draft for a final constitution. The members of the Constitutional Commission were appointed, and they included national experts within different fields as well as members from the ASC who had previously engaged in the peace negotiations. The Commissions prepared a draft of the constitution and decided that, once ratified in Congress, it would be put to popular referendum. However, the Guatemalan Congress did not agree with the proposals, and therefore revised the draft by adding a substantial number of new provisions, which made it very difficult for the public to understand. No public education about the constitution was carried out, although voter education was.

Degree of inclusion: All groups and political parties who wished to engage in the process were welcome to do so; no one was banned from the process.

Final authority: Final authority over the constitutional document was directly vested in the hands of the Guatemalan people through a popular referendum in which they expressed their opinion.

Iraq

Initiators of the process: Though Iraqi elites drafted the country’s constitution, the drafting exercise was conducted under intense and public US pressure, as well as under a timetable decided by the US and subsequently enforced by the UN. Hence, outside actors, in this case primarily the US, were influential players in the Iraqi constitution building process, because they determined the shape of the process.

Forms of communication: The timespan of a mere nine months for finalizing the constitution building process made it difficult to involve the Iraqi people in the making of their constitution. Some efforts were made, but the main initiative came too late in the process to allow any public influence over the document. An “Outreach Unit” was created in June of 2005 for the purpose of securing public participation in the process. Its task was to disseminate constitutional information to the public, receive and analyse public response and report back to the National Assembly. The National Assembly, in turn, was to form a Constitutional Drafting Committee composed of some of its members, which would be tasked with the drafting. However, the Outreach Unit was understaffed, lacked logistical support and was not operable until late July 2005. Given that the entire process was scheduled to be finalized by October of that same year, the work of the Outreach Unit was understandably constrained by the deadline. Due to time constraints, constitutional education programs were not carried either, which made it even more difficult for ordinary Iraqi citizens to engage in the process. By August 10, the Outreach Unit had gathered 126,000 submissions, none of which were from the Sunni-Arab or Kurdish regions of the country. Five days later, 150,000 submissions had reached the Unit, of which 20,000 had come from Kurdish regions and 10,000 from Sunni-Arab regions. Although quantitative indicators such as these say very little about the actual impact that the submissions had on the final document, it is still interesting to note that the number of submissions increased quite substantially in only five days’ time. Unfortunately, due to the fixed deadline of the process, the Outreach Unit was not able to inform the Constitutional Drafting Committee about the views of the public before the deadline. Hence, the submissions from Iraqis who participated in the process never even reached their final destination, and, consequently, public participation in the Iraqi constitution building process had no effect on the final draft.

Degree of inclusion: Members of Saddam Hussein’s former Baath Party were excluded from participation in the constitution building process.

Final authority: Final authority on the adoption of the constitution was directly vested in the hands of the Iraqi people through a popular referendum.


Kenya

Please refer to Chapter 6, where detailed accounts of the Kenyan constitution building processes (2001-2005, 2009-2010) are provided on the basis of the same structure as used in this Appendix (Initiators of the process, Forms of communication, Degree of inclusion, Final authority).

Kosovo

Please refer to Chapter 4 where an exploration of the constitution building process in Kosovo can be found. It is organized according to the same structure as the cases in this Appendix (Initiators of the process, Forms of communication, Degree of inclusion, Final authority).
Nicaragua

Initiators of the process: The initiators of the Nicaraguan constitution building process (1985-1987) were national political elites; more specifically, the political leadership of the Frente Sandinista de Liberación Nacional (FSLN).

Forms of communication: A Constituent Assembly was directly elected by the people, and 22 members of it were indirectly selected to serve as a Constitutional Commission. The Commission was tasked with drafting a preliminary text of the constitution and soliciting public input from various groups in civil society by inviting them to appear before the Commission. When its task was completed, the draft was sent to the Constituent Assembly, which then distributed it to the public throughout the country. Further discussions were organized with the Nicaraguan people, mainly through town hall meetings, with the draft constitution as the point of departure in order to acquire additional input about the draft. When these meetings were completed, the Constituent Assembly appointed a twenty member “Commission Dictaminadora” whose task was to review the input that had been received on the first draft of the constitution and propose a second draft. The second draft was then sent back to the Constituent Assembly, where it was discussed and finally approved. Constitutional education programs were not offered to Nicaraguans, but education on electoral procedures was disseminated before the elections to the Constituent Assembly.

Degree of inclusion: The “Coordinadora” who represented the business sector in the Nicaraguan constitution building process decided to boycott the elections to the Constituent Assembly and were thus absent from the constitution building exercise.

Final authority: The Nicaraguan people directly elected members to the Constituent Assembly, and this body approved the final document. Hence, final authority over the constitutional document was indirectly vested in the hands of the Nicaraguans.


Nigeria

Initiators of the process: The 1999 Nigerian constitution building process was initiated by the military (at the time, General Abubakar was president of the country).

Forms of communication: A timespan of two months to carry out and finalize the constitution building process made it almost impossible to include Nigeria’s large population of 115 million people (1999 estimation). The Nigerian military appeared to be interested in soliciting the views of the Nigerian people, as long as these views expressed support for a strong military branch with considerable power. Constitutional suggestions on other topics and proposals that implied less power for the military were not of interest. Furthermore, the Committee in charge of writing the constitution did not engage the opposition or civil society organizations and, moreover, it chose a posh hotel in the capital of Abuja as the venue for people to come and propose constitutional submissions. This made it impossible for most Nigerians to participate.

Degree of inclusion: The CDCC (Constitution Debate Coordinating Committee which was handpicked by General Abubakar) did not engage the Nigerian opposition, for example the National Democratic Coalition, the United Action for Democracy and the Joint Action Committee of Nigeria. Rather, these were completely sidestepped in the process.

Final authority: Final authority over the constitution was vested in the hands of the executive.


Rwanda

Initiators of the process: As stipulated by the Arusha Peace Agreement (signed and entered into by the Rwandan government and the rebel group Rwandan Patriotic Front), a Rwandan Constitutional Commission was established in 2000. Hence, national elites were the initiators of constitutional reform in Rwanda.

Forms of communication: The Legal and Constitutional Commission (LCC) was the body in charge of drafting the new constitution. The 12 member commission developed a strategic action plan for engaging the Rwandan citizenry in the writing of the new constitution. Among other things, the Commission set out to educate the population about the constitution, consult the population on the content of the constitution and write a draft constitution. Citizens were indeed able to participate in public meetings with the commissioners; they were able to fill out questionnaires prepared by the Commission, and they were also able to propose individual submissions to the Commission. However, it appears that the Commission was mainly interested in providing the people with information about the process and the constitution – i.e. there was “little deliberation by the public of that information, and when the public did deliberate, the LCC rarely responded” (Banks 2008: 1068).

Degree of inclusion: None of the political forces (mainly Hutu political parties) who had actively engaged in the genocide were invited to take part in the LCC, whose mandate was to draft the new constitution for the country.

Final authority: Final authority over the adoption of the constitution was directly vested in the hands of the Rwandan people through a popular referendum.


South Africa

Initiators of the process: The constitution building process in South Africa was initiated by national elites. The process leading up to the adoption of the new constitution in 1996 was a result of intense bargaining and negotiations between the African National Congress (ANC) and the National Party (NP).

Forms of communication: The South African constitution building process was a two-step endeavour. During the first stage, negotiations between all major political parties produced an interim constitution with guidelines for the transitional period from the system of apartheid to a democratic order. The interim constitution was to guide the political life of the country while a permanent constitution was being drafted, and it was to be replaced by the adoption of the new one. Eventually, talks between the main players resulted in an agreement covering thirty-four “constitutional principles”. These were included in the interim constitution and were also required to be incorporated in the final constitution. In the second stage of the process, a popularly elected Constitutional Assembly was established to create and adopt a final constitution. Although the mandate of the assembly granted it sole responsibility to formulate the constitution on its own, its members were convinced that public involvement in the process was necessary to assure the legitimacy of the final product. An additional mechanism was inserted into the formal rules of procedure: a Constitutional Court was created that, in addition to its ordinary tasks, was mandated to oversee the final document to ensure that it conformed to the thirty-four principles that had been agreed upon during the first stage of the process. A Constitutional Committee drawn from the members of the Constitutional Assembly was established after elections in April 1994. The Commission envisioned three broad phases for the
entire process. The first step would involve the participation of the public and the writing of a draft text. In the second stage, the draft would be published and circulated for further input from the people. During the final stage, the constitution would be negotiated and adopted by the Constitutional Assembly. Because they were aware of the fact that a large portion of the South African public was composed of illiterate rural residents with no access to electronic media, the members of the assembly understood the importance of education programs to raise consciousness about these issues. The Commission agreed that the best approach would be to carry out constitutional education before soliciting public input, and to continue with education programs during the second stage of the process as well. During the first phase of the public participation program, a media campaign was launched. Other measures included advertisements on television and radio and in local newspapers. The Assembly ordered a national survey to assess the impact of the media campaign, the results of which showed that 65% of all adult South Africans had been reached by the campaign. However, it also showed that the public was dubious about the intention of the Assembly to really take their input into account. The survey also indicated the continued need for education programs. To this end, and for the purpose of ensuring the process’ credibility in the eyes of the public, the Constitutional Assembly created additional measures for communication. A newsletter, television program, radio program, website and a talk-line – all of which were entitled “Constitution Talks” – were launched. The newsletter provided exhaustive information about the constitution building process and 100,000 copies were distributed every fortnight through taxi ranks. Another 60,000 copies were sent to subscribers. The set-up of the television shows was designed so that members of civil society could question assembly members from different political parties about their views on human rights, separation of powers, etc. Because many South Africans did not have a television or computer, the radio was one of the most important and effective mediums for public outreach. The assembly cooperated with the South African Broadcasting Corporation and launched a weekly radio program that was broadcasted on eight different stations in eight different languages. These radio programs reached approximately ten million South Africans each week. The communication process during the first phase of the public participation program was also structured to enable the public to provide feedback. The assembly arranged public hearings, public meetings and participatory workshops in order to solicit submissions from the people. All oral submissions were recorded and subsequently translated for the members of the assembly to take into consideration. In absolute numbers, a total of 20,549 people and representatives from 717 civil society organizations attended the public meetings. By the end, 2 million submissions had been written by the South African public and sent to the Assembly. Over 4.5 million copies of the working draft were distributed across the country; the media campaign continued, and now also included a booklet titled “Constitutions, democracy and a Summary of the Working Draft”, which contained information about constitutions and the constitution building process. For the second time, the public was invited to share their comments and views, this time on the provisions in the working draft. 250,000 submissions were collected during this second stage. Once the submissions were reviewed, the Assembly prepared a revised edition of the draft. A copy of the revised draft was subsequently sent to each person who had made a submission. As stipulated in the rules of procedure, after it had been approved by the Constitutional Assembly, the negotiated working draft was sent to the Constitutional Court, so that it could verify that it corresponded to the thirty-four constitutional principles. The court ruled that the draft did not fully comply with all of them, so it was referred back to the assembly for revision. It was subsequently revised by the Constitutional Assembly, and sent back to the Constitutional Court, which certified that the amended text was in keeping with the 34 mandatory principles.

Degree of inclusion: All political groups and segments of the population were invited to express their views, and no group voluntarily boycotted the invitation to take part in the making of a new constitution.

Final authority: The constitution was adopted and promulgated by the Constitutional Assembly in 1996. Hence, final authority over the document was indirectly vested in the hands of the South African population.

Thailand

Initiators of the process: The Democratic Party in Thailand won the general elections of 1992, and afterwards the party announced that it would seek to reform the Thai political system to make it more transparent and accountable. Internal debate within the party and external pressure from civil society eventually resulted in the establishment of the Committee of Democratic Development in 1994. The Committee issued a number of reports concerning how the political system should be reformed to promote transparency and accountability. However, the Democratic Party government fell apart, and the process stagnated. In 1996, the New Aspiration Party won the elections, and it formed a coalition government with Chavalit Yongchaiyudh as prime minister. The coalition decided to establish a Constitutional Drafting Assembly to continue the work that had been initiated by the Democratic Party in 1992.

Forms of communication: A 99 member Constitution Drafting Assembly (CDA) was indirectly elected to represent a cross-section of Thai society. The CDA had a specific mandate to reform the political process, not just to redistribute power among elites. The CDA was also required to adopt a participatory approach to ensure public input in the development of the constitution. Once the CDA members had been elected, they returned to their home provinces and, together with civic groups, conducted a series of public hearings during February-March 1997. However, no constitutional education programs were offered to the Thai people in the period before consultations began. After public hearings had been held, the CDA gathered in Bangkok and prepared a first draft of the constitution. This draft was subsequently disseminated by the media. This was followed by additional public hearings organized by the CDA’s “Constitution Scrutiny Committee” for the purpose of gathering views from the public on the draft constitution. The draft was then revised by the CDA, after which it was submitted to the National Assembly for discussion.

Degree of inclusion: All groups and political parties who wished to engage in the process were welcome to do so; no one was banned from the process.

Final authority: Final authority as to the adoption of the constitution was indirectly vested in the hands of the Thai people


Uganda

Initiators of the process: Immediately after it took power, the National Resistance Movement (NRM) government declared that Uganda would embark on a constitution building process that would produce a new constitution made by the people of Uganda.

Forms of communication: A Ministry for Constitutional Affairs was established, among other things, to research contemporary constitution making by travelling to other countries and learning about how they were developing modern constitutions. Following this, a 21-member Constitutional Commission was established in 1988. The members of the Constitutional Commission were appointed by the president in consultation with the minister of constitutional affairs. The Commission’s task was to review the old constitution and prepare a new one. The commissioners agreed that it was vitally important that the Ugandan people be the main agenda
setters behind the new document. Therefore, the Commission organized two-day seminars throughout all 34 districts of the country in order to develop a constitutional agenda that was based on input from the “grassroots”. Over an entire year, constitutional education programs were carried out on a nationwide scale; in all of Uganda’s 890 sub-counties, constitutional materials were disseminated. After that, for another full year, submissions about the constitution were gathered from the public in all parts of the country. By the end of this process, the Commission had received well over 25,500 written memoranda, reports and oral submissions from a cross-section of Ugandans. Once all of the documents had been translated from local languages, read and digested by the Commission in its entirety, the drafting began.

**Degree of inclusion:** The constitution building process was not fully inclusive. Although politicians could engage in the process in their capacity as Ugandan citizens, they were not allowed to engage as representatives of a political party, because political parties were banned from participating.

**Final authority:** Final authority over the adoption of the constitution was indirectly vested in the hands of the Ugandan people. A Constitutional Assembly was directly elected (214 of its 284 members were directly elected by the people), which, in turn, deliberated and approved the constitution.

The description of the Ugandan constitution building process is based on the following sources:

**Zimbabwe**

Please see Chapter 6 for a detailed account of the Zimbabwean constitution building processes (2001-2005, 2009-2010) that follows the structure of the cases presented in this Appendix (Initiators of the process, Forms of communication, Degree of inclusion, Final authority).
## APPENDIX 2

Results of the repeated measures ANOVA test.

### Repeated measures Anova

<table>
<thead>
<tr>
<th>Between Countries</th>
<th>Df</th>
<th>Sum Sq</th>
<th>Mean Sq</th>
<th>F value</th>
<th>P value</th>
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<tbody>
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<td>1.347</td>
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<td>0.730</td>
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<td>0.081</td>
<td>0.019</td>
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<td>0.705</td>
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<td>Residuals</td>
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<td>4.245</td>
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<thead>
<tr>
<th>Within countries</th>
<th>Df</th>
<th>Sum Sq</th>
<th>Mean Sq</th>
<th>F value</th>
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<td>21.965</td>
<td>1.97e-08 ***</td>
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<td>0.846</td>
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</table>
APPENDIX 3

Mean democracy values; data from the Polity IV project.