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2017

https://hdl.handle.net/10539/24808

Jena, Gillian Runyararo (2017) Contemplations on the implementation of the African charter on democracy, elections and governance: fostering elections and democratic institutions in Ethopia and Lesotho, <https://hdl.handle.net/10539/24808>

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AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

PREAMBLE

We, the Member States of the African Union (AU);

Inspired by the objectives and principles enshrined in the Constitutive Act of the African Union, particularly Articles 3 and 4, which emphasise the significance of good governance, popular participation, the rule of law and human rights;

Recognising the contributions of the African Union and Regional Economic Communities to the promotion, nurturing, strengthening and consolidation of democracy and governance;

Reaffirming our collective will to work relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries;

Guided by our common mission to strengthen and consolidate institutions for good governance, continental unity and solidarity;

Committed to promote the universal values and principles of democracy, good governance, human rights and the right to development;

Cognizant of the historical and cultural conditions in Africa;

Seeking to entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies;

Concerned about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa;

Determined to promote and strengthen good governance through the institutionalization of transparency, accountability and participatory democracy;

Convinced of the need to enhance the election observation missions in the role they play, particularly as they are an important contributory factor to ensuring the regularity, transparency and credibility of elections;

Desirous to enhance the relevant Declarations and Decisions of the OAU/AU (including the 1990 Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, the 1995 Cairo Agenda for the Re-launch of Africa's Economic and Social Development, the 1999 Algiers Declaration on Unconstitutional Changes of Government, the 2000

Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, the 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa, the 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union);

Committed to implementing Decision EX.CL/Dec.31(III) adopted in Maputo, Mozambique, in July 2003 and Decision EX.CL/124(V) adopted in Addis Ababa, Ethiopia, in May 2004 respectively, by the adoption of an African Charter on Democracy, Elections and Governance;

HAVE AGREED AS FOLLOWS:

Chapter 1
Definitions

Article 1

In this Charter, unless otherwise stated, the following expressions shall have the following meaning:

"AU" means the African Union;
"African Human Rights Commission" means the African Commission on Human and Peoples' Rights;
"African Peer Review Mechanism" APRM means the African Peer Review Mechanism;
"Assembly" means the Assembly of Heads of State and Government of the African Union;
"Commission" means the Commission of the Union;
"Constitutive Act" means the Constitutive Act of the Union;
"Charter" means the African Charter on Democracy, Elections and Governance;
"Member States" means the Member States of the African Union;
"National Electoral Body" means a competent authority, established by the relevant legal instruments of a State Party, responsible for organizing and supervising elections;
"NEPAD" means the New Partnership for Africa's Development;
"Peace and Security Council" means the Peace and Security Council of the African Union;
"Regional Economic Communities" means the regional integration blocs of the African Union;
"State Party" means any Member State of the African Union which has ratified or acceded to this Charter and deposited the instruments for ratification or accession with the Chairperson of the African Union Commission;
"Union" means the African Union.

Chapter 2
Objectives

Article 2

The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties;
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

Chapter 3
Principles

Article 3

State Parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles;

2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;

3. Promotion of a system of government that is representative;

4. Holding of regular, transparent, free and fair elections;

5. Separation of powers;

6. Promotion of gender equality in public and private institutions;

7. Effective participation of citizens in democratic and development processes and in governance of public affairs;

8. Transparency and fairness in the management of public affairs;

9. Condemnation and rejection of acts of corruption, related offenses and impunity;

10. Condemnation and total rejection of unconstitutional changes of government;

11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

Chapter 4
Democracy, Rule of Law and Human Rights

Article 4

1. State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.

2. State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.

Article 5

State Parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power.

Article 6

State Parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility.

Article 7

State Parties shall take all necessary measures to strengthen the Organs of the Union that are mandated to promote and protect human rights and to fight impunity and endow them with the necessary resources.

Article 8

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.

2. State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.

3. State Parties shall respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

Article 9

State Parties undertake to design and implement social and economic policies and programmes that promote sustainable development and human security.

Article 10

1. State Parties shall entrench the principle of the supremacy of the constitution in the political organization of the State.

2. State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.

3. State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society.

Chapter 5
The Culture of Democracy and Peace

Article 11

The State Parties undertake to develop the necessary legislative and policy frameworks to establish and strengthen a culture of democracy and peace.

Article 12

State Parties undertake to implement programmes and carry out activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace.

To this end, State Parties shall:

1. Promote good governance by ensuring transparent and accountable administration.
2. Strengthen political institutions to entrench a culture of democracy and peace.
3. Create conducive conditions for civil society organizations to exist and operate within the law.
4. Integrate civic education in their educational curricula and develop appropriate programmes and activities.

Article 13

State Parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace.

Chapter 6
Democratic Institutions

Article 14

1. State Parties shall strengthen and institutionalize constitutional civilian control over the armed and security forces to ensure the consolidation of democracy and constitutional order.

2. State Parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.

3. State Parties shall cooperate with each other to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.

Article 15

1. State Parties shall establish public institutions that promote and support democracy and constitutional order.

2. State Parties shall ensure that the independence or autonomy of the said institutions is guaranteed by the constitution.

3. State Parties shall ensure that these institutions are accountable to competent national organs.

4. State Parties shall provide the above-mentioned institutions with resources to perform their assigned missions efficiently and effectively.

Article 16

State Parties shall cooperate at regional and continental levels in building and consolidating democracy through exchange of experiences.

Chapter 7
Democratic Elections

Article 17

State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa.

To this end, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.

Article 18

1. State Parties may request the Commission, through the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund, to provide advisory services or assistance for strengthening and developing their electoral institutions and processes.

2. The Commission may at any time, in consultation with the State Party concerned, send special advisory missions to provide assistance to that State Party for strengthening its electoral institutions and processes.

Article 19

1. Each State Party shall inform the Commission of scheduled elections and invite it to send an electoral observer mission.

2. Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.

Article 20

The Chairperson of the Commission shall first send an exploratory mission during the period prior to elections. This mission shall obtain any useful information and documentation, and brief the Chairperson, stating whether the necessary conditions have been established and if the environment is conducive to the holding of transparent, free and fair elections in conformity with the principles of the Union governing democratic elections.

Article 21

1. The Commission shall ensure that these missions are independent and shall provide them with the necessary resources for that purpose.

2. Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring, drawn from continental and national institutions such as, but not limited to, the Pan-African Parliament, national electoral bodies, national legislatures and eminent persons taking due cognizance of the principles of regional representation and gender equality.

3. Electoral observer missions shall be conducted in an objective, impartial and transparent manner.

4. All electoral observer missions shall present the report of their activities to the Chairperson of the Commission within a reasonable time.

5. A copy of the report shall be submitted to the State Party concerned within a reasonable time.

Article 22

State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.

Chapter 8
Sanctions in Cases of Unconstitutional Changes of Government

Article 23

State Parties agree that the use of, *inter alia,* the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'Etat against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or

5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

Article 24

When a situation arises in a State Party that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order in accordance with relevant provisions of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, hereinafter referred to as the Protocol.

Article 25

1. When the Peace and Security Council observes that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of articles 30 of the Constitutive Act and 7 (g) of the Protocol. The suspension shall take effect immediately.

2. However, the suspended State Party shall continue to fulfill its obligations to the Union, in particular with regard to those relating to respect of human rights.

3. Notwithstanding the suspension of the State Party, the Union shall maintain diplomatic contacts and take any initiatives to restore democracy in that State Party.

4. The perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State.

5. Perpetrators of unconstitutional change of government may also be tried before the competent court of the Union.

6. The Assembly shall impose sanctions on any Member State that is proved to have instigated or supported unconstitutional change of government in another state in conformity with Article 23 of the Constitutive Act.

7. The Assembly may decide to apply other forms of sanctions on perpetrators of unconstitutional change of government including punitive economic measures.

8. State Parties shall not harbour or give sanctuary to perpetrators of unconstitutional changes of government.

9. State Parties shall bring to justice the perpetrators of unconstitutional changes of government or take necessary steps to effect their extradition.

10. State Parties shall encourage conclusion of bilateral extradition agreements as well as the adoption of legal instruments on extradition and mutual legal assistance.

Article 26

The Peace and Security Council shall lift sanctions once the situation that led to the suspension is resolved.

Chapter 9
Political, Economic and Social Governance

Article 27

In order to advance political, economic and social governance, State Parties shall commit themselves to:

1. Strengthening the capacity of parliaments and legally recognised political parties to perform their core functions;
2. Fostering popular participation and partnership with civil society organizations;
3. Undertaking regular reforms of the legal and justice systems;
4. Improving public sector management;
5. Improving efficiency and effectiveness of public services and combating corruption;
6. Promoting the development of the private sector through, inter alia, enabling legislative and regulatory framework;
7. Development and utilisation of information and communication technologies;
8. Promoting freedom of expression, in particular freedom of the press and fostering a professional media;
9. Harnessing the democratic values of the traditional institutions; and
10. Preventing the spread and combating the impact of diseases such as Malaria, Tuberculosis, HIV/AIDS, Ebola fever, and Avian Flu.

Article 28

State Parties shall ensure and promote strong partnerships and dialogue between government, civil society and private sector.

Article 29

1. State Parties shall recognize the crucial role of women in development and strengthening of democracy.

2. State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.

3. State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures.

Article 30

State Parties shall promote citizen participation in the development process through appropriate structures.

Article 31

1. State Parties shall promote participation of social groups with special needs, including the Youth and people with disabilities, in the governance process.

2. State Parties shall ensure systematic and comprehensive civic education in order to encourage full participation of social groups with special needs in democracy and development processes.

Article 32

State Parties shall strive to institutionalize good political governance through:

1. Accountable, efficient and effective public administration;
2. Strengthening the functioning and effectiveness of parliaments;
3. An independent judiciary;
4. Relevant reforms of public institutions including the security sector;
5. Harmonious relationships in society including civil-military relations;
6. Consolidating sustainable multiparty political systems;

7. Organising regular, free and fair elections; and
8. Entrenching and respecting the principle of the rule of law.

Article 33

State Parties shall institutionalize good economic and corporate governance through, inter alia:

1. Effective and efficient public sector management;
2. Promoting transparency in public finance management;
3. Preventing and combating corruption and related offences;
4. Efficient management of public debt;
5. Prudent and sustainable utilization of public resources;
6. Equitable allocation of the nation's wealth and natural resources;
7. Poverty alleviation;
8. Enabling legislative and regulatory framework for private sector development;
9. Providing a conducive environment for foreign capital inflows;
10. Developing tax policies that encourage investment;
11. Preventing and combating crime;
12. Elaborating and implementing economic development strategies including private-public sector partnerships;
13. An efficient and effective tax system premised upon transparency and accountability.

Article 34

State Parties shall decentralize power to democratically elected local authorities as provided in national laws.

Article 35

Given the enduring and vital role of traditional authorities, particularly in rural communities, the State Parties shall strive to find appropriate ways and means to increase their integration and effectiveness within the larger democratic system.

Article 36

State Parties shall promote and deepen democratic governance by implementing the principles and core values of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance and, where applicable, the African Peer Review Mechanism (APRM).

Article 37

State Parties shall pursue sustainable development and human security through achievement of NEPAD objectives and the United Nations Millennium Development Goals (MDGs).

Article 38

1. State Parties shall promote peace, security and stability in their respective countries, regions and in the continent by fostering participatory political systems with well-functioning and, if need be, inclusive institutions;

2. State Parties shall promote solidarity amongst Member States and support the conflict prevention and resolution initiatives that the Union may undertake in conformity with the Protocol establishing the Peace and Security Council.

Article 39

State Parties shall promote a culture of respect, compromise, consensus and tolerance as a means to mitigate conflicts, promote political stability and security, and to harness the creative energies of the African peoples.

Article 40

State Parties shall adopt and implement policies, strategies and programmes required to generate productive employment, mitigate the impact of diseases and alleviate poverty and eradicate extreme poverty and illiteracy.

Article 41

State Parties shall undertake to provide and enable access to basic social services to the people.

Article 42

State Parties shall implement policies and strategies to protect the environment to achieve sustainable development for the benefit of the present and future generations. In this regard, State Parties are encouraged to accede to the relevant treaties and other international legal instruments.

Article 43

1. State Parties shall endeavour to provide free and compulsory basic education to all, especially girls, rural inhabitants, minorities, people with disabilities and other marginalized social groups.

2. In addition, State Parties shall ensure the literacy of citizens above compulsory school age, particularly women, rural inhabitants, minorities, people with disabilities, and other marginalized social groups.

Chapter 10
Mechanisms for Application

Article 44

To give effect to the commitments contained in this Charter:

1. Individual State Party Level

State Parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:

(a) State Parties shall initiate appropriate measures including legislative, executive and administrative actions to bring State Parties' national laws and regulations into conformity with this Charter;
(b) State Parties shall take all necessary measures in accordance with constitutional provisions and procedures to ensure the wider dissemination of the Charter and all relevant legislation as may be necessary for the implementation of its fundamental principles;
(c) State Parties shall promote political will as a necessary condition for the attainment of the goals set forth in this Charter;
(d) State Parties shall incorporate the commitments and principles of the Charter in their national policies and strategies.

2. Commission Level

A. At Continental Level

(a) The Commission shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties;

(b) The Commission shall promote the creation of favourable conditions for democratic governance in the African

Continent, in particular by facilitating the harmonization of policies and laws of State Parties;

(c) The Commission shall take the necessary measures to ensure that the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund provide the needed assistance and resources to State Parties in support of electoral processes;

(d) The Commission shall ensure that effect is given to the decisions of the Union in regard to unconstitutional change of government on the Continent.

B. At Regional Level

The Commission shall establish a framework for cooperation with Regional Economic Communities on the implementation of the principles of the Charter. In this regard, it shall commit the Regional Economic Communities (RECs) to:

a) Encourage Member States to ratify or adhere to this Charter.

b) Designate focal points for coordination, evaluation and monitoring of the implementation of the commitments and principles enshrined in this Charter in order to ensure massive participation of stakeholders, particularly civil society organizations, in the process.

Article 45

The Commission shall:

(a) Act as the central coordinating structure for the implementation of this Charter;

(b) Assist State Parties in implementing the Charter;

(c) Coordinate evaluation on implementation of the Charter with other key organs of the Union including the Pan-African Parliament, the Peace and Security Council, the African Human Rights Commission, the African Court of Justice and Human Rights, the Economic, Social and Cultural Council, the Regional Economic Communities and appropriate national- level structures.

Chapter 11
Final Clauses

Article 46

In conformity with applicable provisions of the Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, the Assembly and the Peace and Security Council shall determine the appropriate measures to be imposed on any State Party that violates this Charter.

Article 47

1. This Charter shall be open for signature, ratification and accession by Member States of the Union in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 48

This Charter shall enter into force thirty (30) days after the deposit of fifteen (15) Instruments of Ratification.

Article 49

1. State Parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter;

2. A copy of the report shall be submitted to the relevant organs of the Union for appropriate action within their respective mandates;

3. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesized report on the implementation of the Charter;

4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.

Article 50

1. Any State Party may submit proposals for the amendment or revision of this Charter;

2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to State Parties within thirty (30) days of receipt thereof;

3. The Assembly, upon the advice of the Executive Council, shall examine these proposals at its session following notification, provided all State Parties have been notified at least three (3) months before the beginning of the session;

4. The Assembly shall adopt amendments or revisions by consensus or failing which, by two-thirds majority;

5. The amendments or revisions shall enter into force when approved by two-thirds majority of State Parties.

Article 51

1. The Chairperson of the Commission shall be the depository of this Charter;

2. The Chairperson of the Commission shall inform all Member States of the signature, ratification, accession, entry into force, reservations, requests for amendments and approvals thereof;

3. Upon entry into force of this Charter, the Chairperson of the Commission shall register it with the Secretary General of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Article 52

None of the provisions of the present Charter shall affect more favourable provisions relating to democracy, elections and governance contained in the national legislation of State Parties or in any other regional, continental or international conventions or agreements applicable in these State Parties.

Article 53

This Charter, drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies of same to all Member States and the United Nations General Secretariat.

ADOPTED BY THE EIGHTH ORDINARY SESSION OF THE ASSEMBLY, HELD IN ADDIS ABABA, ETHIOPIA, 30 JANUARY 2007

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