



# Democracy-building in conflict-affected and fragile states: the role of the African Union





# DEMOCRACY-BUILDING IN CONFLICT-AFFECTED AND FRAGILE STATES: THE ROLE OF THE AFRICAN UNION

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*Khabele Matlosa*

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International IDEA  
Strömsborg  
SE-103 34, STOCKHOLM  
SWEDEN  
Tel: +46 8 698 37 00, fax: +46 8 20 24 22  
Email: [info@idea.int](mailto:info@idea.int), website: [www.idea.int](http://www.idea.int)

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## INTRODUCTION

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The African Union (AU) has made considerable strides in its efforts towards democracy promotion and peacebuilding since 2000, when it adopted its Constitutive Act. Unlike the 1963 treaty of its predecessor, the Organisation of African Unity (OAU), which embraced the doctrine of non-interference in the internal affairs of its member states, the AU's Constitutive Act brought about an interesting paradigm shift away from the doctrine of non-interference to one of non-indifference to human rights abuses within its member states. This shift emboldened the AU in its democracy-promotion and peacebuilding mandate, especially in fragile and conflict-affected states in Africa.

As a result, the AU has evolved a robust normative framework that has been instrumental in assisting most of its member states emerging from protracted war and violent conflict. Three parts of this framework are worth mentioning: (a) the 2003 African Peer Review Mechanism (APRM); (b) the 2006 African Union Post-Conflict and Reconstruction and Development (PCRD) policy framework; and (c) the 2013 African Development Bank's (AfDB) High-Level Panel report on fragile states.

To the extent that the APRM, PCRD and the AfDB report are conceptually intertwined, they are also complementary in terms of the kind of policy initiatives they encourage for African states to strive towards consolidated democratic governance and sustainable peace, both of which are critical for people-centred socio-economic development. So, the three formative frameworks are mutually reinforcing. Much more importantly, the real value of these normative frameworks does not lie in AU member states signing up to these norms alone. Instead, it is to be found in political commitment and policy reforms through domestication and effective implementation of these norms at the national level.

# 1. THE AFRICAN PEER REVIEW MECHANISM

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The New Partnership for Africa's Development (NEPAD) was launched in 2001 in Lusaka, Zambia, as a continental development blueprint for the AU. Other blueprints for Africa had been tried before, including the 1980 Lagos Plan of Action and Final Act of Lagos and the 1990 Treaty Establishing the African Economic Community (popularly known as the Abuja Treaty) (Rukato 2012: 91). As the current blueprint for African integration, the Abuja Treaty recognizes that peace and democracy are required for its full realization. Three of its principles are: (a) peaceful settlement of disputes among member states, active cooperation between neighbouring countries and the promotion of a peaceful environment as a prerequisite for economic development; (b) recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights; and (c) accountability, economic justice and popular participation in development (AU 1990: 4).

NEPAD evolved against the backdrop of the Lagos Plan and within the context of the Abuja Treaty as one of several programmes aimed at realizing the continental integration envisaged in that treaty. NEPAD was pioneered by five African states—Algeria, Egypt, Nigeria, Senegal and South Africa. Just like the Abuja Treaty, the primary NEPAD document states that conditions for Africa's development include peace, security, stability and democracy. Therefore, NEPAD's programming involves peace and security initiatives; a democracy and political governance initiative; an economic and corporate governance initiative; and subregional and regional approaches to development (NEPAD 2001; Rukato 2012). In addition, NEPAD prioritizes specific sectors, namely: infrastructure development; human-resource development; agriculture; the environment; culture; and science and technology (NEPAD 2001; Rukato 2012).

The NEPAD Declaration on Democracy, Political, Economic and Corporate Governance was adopted at the inaugural AU Summit in Durban, South Africa, in 2002. The declaration states: 'Africa faces challenges and the most urgent of these are the eradication of poverty and the fostering of socio-economic development, in particular, through democracy and good governance. It is to the achievement of these twin objectives that the NEPAD process is directed' (AU 2002: 3). The declaration further commits AU member states to work together in policy and action in pursuit of the following objectives: (a) democracy and good political governance; (b) economic management and governance; (c) corporate governance; and (d) socio-economic development.

Following the adoption of NEPAD, the APRM was set up as a mechanism for African states aiming to institutionalize and consolidate democratic governance (Jerome 2010; Jinadu 2010; Masterson, Busia and Jinadu 2010; UNECA 2011). AU member states have acceded to the mechanism with a view to fostering 'the adoption of policies, standards and

practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and enforcement of successful and best practice, including identification of deficiencies and assessing the needs for capacity building' (APRM Base Document 2003).

A country that accedes to the APRM commits itself to being periodically reviewed in terms of its policy frameworks, institutional architecture, systemic set-up and practices in the four areas outlined in the declaration. Upon acceding to the APRM, a country effectively commits itself to a continuous and periodic review that takes place every two to four years. In some instances, participating NEPAD heads of state and government could be driven by signs of an impending socio-economic or political crisis to call for a review in a given country 'in a spirit of helpfulness to the government concerned' (NEPAD Action Plans 2002: 10). So far, 35 African countries have acceded to the APRM by signing a memorandum of understanding.<sup>1</sup> Of these, 17 have already undergone governance self-assessment and peer review.<sup>2</sup>

Now, more than a decade into its existence, what have we learned from the APRM and its application at the national level? First, the fact that not all 54 AU member states have acceded to the APRM may be a demonstration of a mixed record of democratic and participatory governance in Africa, given that some countries are more advanced than others in their democratization efforts. Transformative and visionary leadership is required to accelerate accession to the APRM and reviews, as well as effective implementation of the national programmes of action (NPOAs) that emerge from APRM reviews.

Second, the APRM implementation process is painstakingly slow—compared to the United Nations Universal Peer Review, for instance. While the APRM started in 2003, only 17 countries have completed reviews. In contrast, the UN process started in 2008, and within its first four-year cycle (i.e. by 2011) all 192 UN member states had been reviewed (McMahon 2012). As Jerome (2010) aptly notes:

the slow pace in completing the review cycle, from developing the country self-assessment report to the peer review by the Heads of State and Government, has been particularly problematic. For example, Ghana and Rwanda each took ten months between the country support mission (CSM) and the CRM while Kenya took 14 months and South Africa eight months. These are countries that have succeeded in putting themselves on the fast track. However, that of Burkina Faso was 21 months, while Uganda and Nigeria took 24 months each between the CSM and CRM. There are also eight countries that have received CSMs, some as far back as 2004, but have not reached the review stage to date. (Jerome 2010: 23–24)

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<sup>1</sup> Algeria, Angola, Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Republic of the Congo, Djibouti, Egypt, Ethiopia, Equatorial Guinea, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda and Zambia.

<sup>2</sup> Algeria, Benin, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Sierra Leone, South Africa, Tanzania Uganda and Zambia.



Third, there is another two-pronged lesson that concerns the implementation of NPOAs. Reviewed countries have generally done poorly in ensuring effective implementation of NPOAs. For its part, the APRM Secretariat has not yet developed effective monitoring and evaluation instruments to assess how countries are doing in respect of implementation of the plans. Only recently has the NEPAD Planning and Coordinating Agency started the process of technical support for the effective implementation of NPOAs. While the agency was created to strengthen NEPAD's programme by transforming its secretariat into a more focused implementation body, allowing NEPAD to be integrated into the structures and processes of the AU, the initiative has not yet shown any clear results, mainly due to a lack of resources. In the majority of cases, governments do not allocate any resources for NPOA implementation in their national budget, assuming instead that external donors will provide the required resources, which, in reality, have not been forthcoming. The two main exceptions to this are Ghana and South Africa.

It is imperative that African countries depend solely on their own national budgets for implementation of NPOAs. Such a strategy would not only protect their national sovereignty and reduce their external dependence but would also help ensure national ownership of the APRM. In this regard, other countries could learn important lessons from Ghana and South Africa, where a considerable chunk of funds from the treasury is earmarked for NPOA implementation.

In order to ensure the professionalism and integrity of the whole process, a panel of eminent persons (or the APRM Panel) was set up in 2003. With members deliberately drawn from all the five sub-regions of the African Union, the panel's main functions are to (a) exercise oversight with respect to the APR process with a view to ensuring the independence, professionalism and integrity of that process; (b) recommend appropriate African institutions or individuals to conduct technical assessments and country reviews; (c) meet periodically to review and make objective assessments of country review reports submitted to it by the APRM Secretariat; (d) consider and approve recommendations contained in the country review reports submitted to it by the APRM Secretariat; and (e) present to the participating heads of state and government all country review reports with recommendations for consideration and adoption (NEPAD Secretariat 2002: 3).

## 2. THE AFRICAN UNION'S POST-CONFLICT RECONSTRUCTION AND DEVELOPMENT POLICY FRAMEWORK

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As illustrated above, the APRM addresses Africa's governance deficits. The mutually reinforcing links between democracy and peace on the continent are incontrovertible—democracy and peace are two sides of the same coin, and both are necessary conditions for sustainable human development in Africa.

One of the challenges to democracy promotion in Africa has been that of protracted violent conflicts and civil wars in some countries. Since the end of the Cold War, the number of interstate conflicts on the continent has decreased, while internal strife has been on the rise. It was in response to the latter problem that the AU developed the Post-Conflict Reconstruction and Development (PCRD) policy framework, inspired by the 2004 Solemn Declaration on the Common African Defence and Security Policy adopted in Sirte, Libya, and the 2005 African Post-Conflict Reconstruction Policy Framework of the New Partnership for Africa's Development. The Solemn Declaration on the Common African Defence and Security Policy identified various factors that account for intra-state conflicts in Africa, including:

‘war crimes, genocide and crimes against humanity; lack of respect for the sanctity of life, impunity, political assassinations, acts of terrorism and subversive activities; coups d'état and unconstitutional changes of government and situations which prevent or undermine the promotion of democratic institutions and structures, including the absence of rule of law, equitable social order, popular participation and good governance; improper conduct of electoral processes; lack of commitment by the parties to abide by the elections conducted in line with the laws of the country; absence of the promotion and protection of human and people's rights, individual and collective freedoms, equality of opportunity for all, including women, children and ethnic minorities; poverty and inequitable distribution of natural resources and corruption; and political, religious and ethnic extremism, as well as racism’.  
(AU 2004: 4)

The PCRD policy framework defines post-conflict reconstruction as a ‘complex system that provides for simultaneous short-, medium- and long-term programmes to prevent disputes from escalating, avoid relapse into violent conflict and to build and consolidate sustainable peace. Post-conflict reconstruction systems proceed through three broad phases namely the emergency phase, the transition phase and the development phase; however, they should not be understood as absolute, fixed, time-bound or having clear boundaries’ (NEPAD 2005: iv).

In July 2005, the Assembly of the AU Heads of State and Government adopted a decision for the development of the PCRDR policy framework with a view to preventing, managing and resolving the continent's protracted intra-state conflicts. This comprehensive peacebuilding policy framework aims to assist AU member states and the regional economic communities (RECs) in their efforts to ensure sustainable peace and socio-economic development within the overall goal of continental unity, integration and prosperity. The key objective of the PCRDR is to improve the timeliness, effectiveness, efficiency and coordination of activities in post-conflict countries and to lay the foundation for social justice and sustainable peace. It aims to consolidate peace and prevent a relapse into political violence, to help address the root causes of conflict, to encourage planning and implementation of post-conflict reconstruction activities and to enhance coordination among the diverse actors engaged in the PCRDR.

### ***THE PCRDR IN DETAIL: ITS SIX MAIN PILLARS***

The PCRDR has six main pillars, or constitutive elements:

1. Security
2. Political governance and transition
3. Human rights, justice and reconciliation
4. Humanitarian/emergency assistance
5. Reconstruction and socio-economic development,
6. Gender equality

The main objective of the security pillar is the creation of a secure and safe environment for conflict-affected states and their populations by re-establishing functioning state institutions and administrations across the geographic territory of each state (AU 2006: 8–11).

The pillar on political governance and transition is aimed at promoting inclusive politics and pluralism in a manner that makes a positive contribution to nation-building. To this end, it focuses on transforming leadership and society through the development of a collective national vision that delivers more cohesive and responsive systems of governance from the national to the local levels of society as a whole. It emphasizes the role of women with a view to ensuring gender equality in governance processes. The pillar also stresses the importance of governance processes that guarantee broad-based participation and leadership, as well as local ownership of those processes (AU 2006: 11–13).

The third pillar, on human rights, justice and reconciliation focuses on the protection and promotion of human rights because 'human rights abuses in the form of policies of marginalisation, identity-based discrimination and perceptions of injustice can trigger or perpetuate conflicts' (AU 2006: 14).

The fourth pillar on humanitarian/emergency assistance recognizes that the transition from war to peace entails dealing with enormous humanitarian challenges, which evolve through three phases—emergency relief, transition/recovery and development. This

requires addressing the human rights concerns of a wide range of population groups, including refugees, returnees, IDPs, ex-combatants and victims of human rights abuses, among others. Thus, the humanitarian response to post-conflict situations 'is a critical element in laying the foundations for full-fledged recovery, reconstruction and longer term socio-economic development' (AU 2006: 16).

The fifth pillar, reconstruction and socio-economic development, recognizes that peace and democracy in post-conflict situations ought to ultimately deliver sustainable socio-economic development. To this extent, all the other pillars of the PCRDR must contribute to socio-economic development. There is therefore a 'need for an integrated approach from . . . relief, rehabilitation to development. Activities should reorient . . . the war economy for peaceful ends, and promote reconstruction and modernisation of infrastructure and the economy. And because social and economic inequalities are often at the root of the causes of conflicts, sustainable peace must be based on fair and equitable distribution of resources' (AU 2006: 18).

The sixth pillar focuses on gender equality and recognizes that in violent conflict situations, men and women are affected disproportionately. Oftentimes, women and girls suffer more from violent conflict and civil wars than men and boys do. Theirs becomes a double jeopardy: already marginalized by a patriarchal ideology even in peacetime the situation for women and girls becomes even more aggravated during conflicts given that gender-based violence intensifies as protagonists consider rape as war by other means.

The predicament facing women in conflict situations is daunting. The PCRDR policy framework observes that '[w]omen are victims of sexual violence, abducted into sexual slavery, care for the sick and wounded, and are also armed combatants' (AU 2006: 20). In order to deal with this situation in post-conflict countries, the PCRDR policy framework provides that gender equality and women's empowerment should form part of the transformation of society. Women must participate in conflict prevention, management and resolution. Gender power relations must be transformed from the household level through the community up to the national level with a view to achieving gender equality. Both public institutions and the private sector should reorient their governance arrangements in such a way that they are also responsive to women's needs and ensure equal participation of women. Gender-sensitive budgeting ought to inform the national budget process (AU 2006: 20–21).

The PCRDR gave rise to the African Solidarity Initiative (ASI), a platform for sharing technical expertise and training but also a resource-mobilization vehicle for the implementation of the PCRDR's six pillars in cooperation with the AU member states, civil society and the private sector (AU 2012: 3).

### 3. THE AFRICAN DEVELOPMENT BANK'S REPORT ON FRAGILE STATES IN AFRICA

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The African Development Bank (AfDB) established its High-Level Panel on Fragile States in 2012, led by President Ellen Johnson Sirleaf of Liberia. The panel's report was adopted during the AU Summit of Heads of State and Government held in January 2014. Established at the behest of the AfDB president, Donald Kaberuka, this High-Level Panel was tasked with reviewing the likely sources of fragility and violent conflicts in Africa and with making appropriate recommendations as to how they should be tackled.

The High-Level Panel identified various drivers for fragility and violent conflicts in Africa and advanced appropriate policy recommendations. In broad terms, the panel's report proposed a two-pronged policy response to fragility and violent conflict: (a) mounting an effective policy response to the most disruptive economic, social and environmental pressures facing Africa; and (b) creating resilient states and societies that are able to manage those pressures (AfDB 2014: 5). The report concludes that 'this entails building interlocking institutions and partnerships at the community, state and regional levels' (AfDB 2014: 5).

The report identified the following 10 structural causes for state fragility and political violence in Africa:

1. poverty, inequality and exclusion;
2. misgovernance of natural resources;
3. environmental pressures and climate change;
4. urbanization and informal settlements;
5. the youth bulge;
6. political transitions;
7. history of instability;
8. organized crime;
9. mismanagement of diversity; and
10. poor service delivery.

In an effort to address some of the structural root causes of conflict and state fragility, the report suggested that AU member states carry out the following five key recommendations:

1. address the multidimensional challenges of youth unemployment;
1. provide direct support for private investment in isolated economies;
1. empower women as key actors in peacebuilding and state-building and in building livelihoods;
1. support economic aspects of justice security, including promoting human security in Africa's cities; and
2. building the capacity of the RECs to pursue regional solutions to the drivers of fragility such as natural resource management and the extractive industries (AfDB 2014: 30).

The following chapters focus on two major challenges facing the African continent today in its efforts towards democracy promotion and peacebuilding: election-related violent conflict and unconstitutional changes of government.

## 4. PREVENTION OF ELECTION-RELATED VIOLENT CONFLICTS

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An election constitutes a key ingredient of democracy. Thus, while elections have their own intrinsic value (citizens' choice of their leaders), they also have an instrumental value, namely that of building, nurturing and consolidating democratic governance, peace and political stability. It is widely accepted globally—including in Africa—that democratic and participatory governance, peace and security, as well as political stability, are all critical preconditions for sustainable human development. This is the link between elections and human development. This means that an election for an election's sake is an exercise in futility. An election should not be an end in itself; it should be a means to an end. That end is the transformation of society towards more open and pluralistic politics that allow citizens to participate in the choice of their leaders and the governance of national affairs. Despite this truism, the relationship between elections, on the one hand, and democracy and peace and security, on the other, is an intricate and tenuous one.

Under favourable conditions, well-organized, well-managed and well-timed elections can promote democracy, stability and peace and security by achieving the following objectives:

- legitimization of the political system and government;
- transfer of national trust to individuals and parties;
- providing for the orderly succession of governments;
- selection and recruitment of leaders;
- social mobilization and political education for the electorate;
- competition for state power;
- channelling political conflicts into procedures for their peaceful settlement;
- representation of the opinions and interests of the electorate;
- influencing public policy; and
- establishing an opposition capable of holding the government accountable.

Conversely, given that elections are, for all intents and purposes, a contest for state power, they constitute a political conflict (UNDP 2010; Matlosa Khadiagala and Shale 2010; IPI/AU 2010). That an election constitutes a conflict situation, in and of itself, is not a problem for Africa. What is a major problem for the continent is when such a conflict escalates into political violence with devastating socio-economic and political consequences. Depending on a country's socio-economic situation and on how its elections are managed, they can also undermine democratization processes and trigger

political violence leading to instability and lack of peace and security in the concerned country, which could also have a spillover effect into neighbouring countries. It goes without saying that when elections lead to political instability, thereby undermining peace and security, they, by extension, undermine the socio-economic development of the country concerned. Fundamentally, one of the major triggers of electoral violence on the African continent has been the mismanagement of socio-economic and politico-cultural diversity (UNDP and UNECA 2013: 79).

In 2014, there were 14 general elections in AU member states.<sup>3</sup> The African Union deployed election observation missions for all these elections with a view to ensuring their credibility and the legitimacy of their outcomes. These missions also made a modest contribution in terms of preventing electoral violence, which could have triggered instability with adverse effects for democratization, peace and security in the concerned countries. In 2015, a total of 17 elections were held in AU member states.<sup>4</sup> In addition, the African Union managed to deploy election observation missions to almost all these countries with the objective of ensuring democratic, credible and peaceful elections.

The African Union is not oblivious to the challenge posed by election-related political violence in Africa. It has a well-defined normative framework for the promotion of democratization, peace and security through the holding of regular, credible and transparent elections. The AU's 2000 Constitutive Act commits member states to 'democratic principles and institutions'. As part of its objectives, it espouses the promotion of peace, security and stability on the continent; the promotion of democratic principles and institutions, popular participation and good governance; and the promotion and protection of human and peoples' rights in accordance with the African Charter on Peoples' and Human Rights and other relevant human rights instruments (Constitutive Act of the AU 2000: 5–6).

The 2000 Conference on Security, Stability, Development and Cooperation (CSSDCA) commits AU member states to pursue peace and security, political stability, socio-economic development and regional/continental cooperation and integration. The declaration states that 'democracy, good governance, respect for human and peoples' rights and the rule of law are pre-requisites for the security, stability and development of the continent' (CSSDCA Solemn Declaration, 2000: article 9h).

Article 4 of the Protocol Establishing the Peace and Security Council has as one of its objectives to 'promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflicts' (article 3f). Two of the principles espoused by this protocol are 'peaceful settlement of disputes and conflicts' (article 4a) and 'early response to contain crisis situations so as to prevent them from developing into full-blown conflicts' (4b).

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<sup>3</sup> These were Algeria (April), Botswana (October), Comoros (November), Egypt (March), Guinea Bissau (April), Libya (February), Malawi (May), Mauritania (July), Mauritius (December), Mozambique (October), Namibia (November), Sao Tome and Principe (August), South Africa (May) and Tunisia (November/December).

<sup>4</sup> These are Benin (April), Burundi (May/June), Burkina Faso (November), Central African Republic (November), Chad (March), Comoros (January/February), Côte d'Ivoire (October), Egypt (May), Ethiopia (May), Guinea (November), Lesotho (February), Nigeria (February), Sudan (April), South Sudan (July), Tanzania (October), Togo (March) and Zambia (January).



The African Charter on Democracy, Elections and Governance, adopted by the heads of state and government in Addis Ababa, reinforces the commitment of AU member states to hold credible, transparent and legitimate elections that enhance democratic governance and, in the process, promote peace, security and political stability, all of which are critical prerequisites for socio-economic development. The charter builds on the 2002 OAU/AU Declaration on the Principle Governing Democratic Elections in Africa. The charter implores AU member states to strive to hold genuine and credible elections with legitimate and acceptable outcomes. To this end, it exhorts member states to:

- establish and strengthen independent and impartial national electoral bodies responsible for the management of elections;
- establish and strengthen national mechanisms that redress election-related disputes in a timely manner;
- ensure fair and equitable access by contesting parties and candidates to state-controlled media during elections;
- 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 must include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels.

It is evident that the African Union has the requisite norms and values for the promotion of democratization, peace and security through the prevention of election-related conflicts. Even the RECs, the building blocks of the AU, have similar norms specific to their own contexts. The major challenge facing both the AU and the RECs, however, is the gap that exists between the norms as an aspiration and their actual implementation at the national level of their member states, which need to muster all the political commitment necessary to ratify, domesticate and implement all their shared values relating to democracy, peace and security, including the prevention of election-related conflicts.

### ***THE ROOT CAUSES OF ELECTION-RELATED VIOLENT CONFLICTS***

The root causes of election-related conflicts that escalate into political violence can be grouped into three main categories: (a) fierce contestation over state power, especially in situations where winner-takes-all electoral systems exist; (b) mismanagement and politicization of identity or diversity, especially ethnicity, region and religion; and (c) structural socio-economic and political inequality propelled by poor distribution and mismanagement of the country's resources, including natural resources, among other causes. There are primarily two groups of causal factors for electoral violence in Africa. First, there are specific types of election-generated conflicts that emanate from each stage of the election cycle. Second, there are deep-seated structural causes or triggers that emanate from the political economy of the country concerned. These may include (but are not limited to) state fragility, poverty, inequality, unemployment and diversity management.

Election-related conflicts can occur at any one of these stages (i.e. before, during or after an election), and a comprehensive approach to prevention of electoral violence therefore has to take this reality into account. In the pre-election phase, for instance, issues such as the electoral system, the composition and role of the election management body, demarcation of electoral boundaries, voter registration and the management of the voter's roll can lead to contestation, which could lead to political violence if not handled with utmost caution. In the election phase, issues such as party campaigns, media access, intra-party and inter-party relations and results management can trigger a conflict. In the post-election phase, institutional and electoral reforms can become highly contested if they are not inclusive and transparent in both form and content.

Regarding conflicts related to the electoral cycle, the twin principles of procedural certainty and substantive uncertainty are at the very heart of the integrity of elections in Africa. Simply put, for elections to be credible and their outcomes legitimate, electoral rules, systems and regulations should be certain, well known and predictable, while the results should not be known in advance of polling. Results should be determined by the contest itself. Mozaffar elaborates on the paradoxical relationship between procedural certainty and substantive uncertainty:

Competitive elections are the quintessential manifestation of organized uncertainty in a democracy. The legitimacy of competitive elections rests on the institutionalization of procedural certainty to secure substantive uncertainty. Political actors will accept the uncertainty of outcomes in electoral competition if they are certain that the rules for organizing the competition will not pre-determine the outcomes. Electoral governance provides this procedural certainty.  
(Mozaffar 2002: 87)

A number of measures are important in ensuring the procedural certainty and substantive uncertainty throughout all three stages of the electoral cycle. These include the need to build relevant institutions, including impartial and independent election management bodies, and guaranteeing the roles of political parties and civil society organizations at all stages of the electoral cycle. In addition, elections promote peace and security where there is a culture of tolerance, regular political dialogue among key democracy stakeholders and public trust in democratic institutions. In particular, it is crucial that adequate political preparations be made before elections are held, especially in the process of building democracy and peace in post-conflict countries.

The AU's approach to election-related disputes and conflicts needs to be aligned with the electoral cycle and thus take a long-term approach. Besides a requisite constitutional and institutional framework that is a prerequisite for peaceful and credible elections throughout the electoral cycle, the timing of elections is crucial, especially in countries emerging from protracted and violent conflict. The issue of the timing of elections in post-conflict situations has generated intense debate globally and in Africa specifically. Two competing schools of thought have dominated this debate: those who are in favour of early elections and those who are opposed to them.

Proponents of early elections argue that such elections 'facilitate peace agreements, hasten democratization and ensure post-conflict stability' (Brancati 2011: 1). They further

argue that ‘early elections improve the country’s chances of consolidating democracy by strengthening the legitimacy of post-conflict governments. Failing to hold elections, in their view, could leave former combatants without a peaceful mechanism to influence politics and compel them to return to fighting instead. Even imperfect early elections, some scholars claim, can help consolidate democracy because they habituate politicians and voters to democratic routines and pave the way for cleaner elections in the future’ (Brancati 2011: 3). This approach is also advocated by various Western powers, which perceive early elections not only as a quick fix for Africa’s violent conflicts but also as a justification for terminating financial assistance and, thus, a justifiable exit strategy.

Opponents of early elections argue that such elections ‘can derail democratization and propel countries back on a path toward war’ (Brancati 2011: 4–5). They argue that elections in post-conflict states ‘ought to wait until some progress has been made in building effective political and administrative institutions. When countries democratize in settings lacking an independent judicial system, a competent bureaucracy, and free media, they claim, electoral politics becomes an exercise not in civic deliberation but in coercion, manipulation and nationalist, sectarian, or radical appeals’ (Brancati 2011: 5). According to this school of thought, it is doubtful that elections are the right formula for resolving the protracted conflicts in the Central African Republic and South Sudan.<sup>5</sup> It is possible that it is far too early to subject these two countries to elections this year. It may be the case that the focus needs to be on achieving meaningful peace in these countries, building democratic institutions, putting power-sharing measures in place and ensuring the effectiveness of the state administration before contemplating elections.

With respect to structural causes of election-related conflicts, the distribution of resources, including natural resources, in Africa is key. Although evidence abounds to suggest that many African economies are experiencing phenomenal growth, this growth has tended to be jobless, with elites benefiting at the expense of the majority of the population. Socio-economic inequality is deepening despite the so-called ‘Africa rising’ story. Poverty remains pervasive. Unemployment remains a major challenge. Marginalization of certain social groups, especially women, youth, people with disabilities and minorities, remains a major challenge. State fragility and the limited reach of the state administration in some countries, such as the Democratic Republic of the Congo (DRC) and the Central African Republic, constitute additional structural causes for election-related violence. In both these countries, the state is unable to exercise control over large swathes of territory, which does not bode well for peaceful elections. This problem is an indicator of state fragility.

Part of the explanation for the resurgence of terrorism and extremism as manifested by Boko Haram in West Africa, al-Qaeda in North Africa, the Lord’s Resistance Army in East and Central Africa and Al-Shabaab in East Africa can be found in socio-economic exclusion, marginalization and poverty. These extremist movements feed on this socio-economic situation to recruit young people to their cause. Thus, the fight against terrorism and extremism has to involve deliberate development strategies that address inequality, poverty and unemployment.

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<sup>5</sup> In fact, in February 2015, the Government of South Sudan postponed an election originally planned for 30 June of the same year, extending the mandate of the presidency and the national legislature by 2 years. The government tabled the extension in parliament, seeking to give peace a chance before an election was held. Once peace has been achieved and solidified, the Constitution will be amended and subjected to a referendum. General elections will follow the referendum.

Another factor that contributes to election-related political violence is the mismanagement of diversity in some African countries. Diversity, in and of itself, need not lead to adversity and become destructive. In fact, it is supposed to enrich democracy given that two of the many principles of democracy are pluralism and tolerance. People ought to be 'able to make cultural choices without penalty, without being excluded from other choices – for jobs, schooling, housing, healthcare, political voice and many other opportunities critical to human well-being' (UNDP 2004: 28). This is what the 2004 Human Development Report cogently called cultural liberty—the freedom to express one's identity without fear of reprisal. Under conditions of cultural liberty, diversity can be a resource for national unity and advancement of the state-building project in contemporary Africa. Unity is perfectly possible in diversity. The notion of unity in diversity is premised on 'the assumption that a successful nation is one that can pool together its diverse social intermixtures in a manner that builds on their richness and does not alienate any group' (Deng 2008: 43).

To date, the issue of socio-cultural diversity has presented a particular challenge to Africa, especially in relation to national unity and nation-building. This has been the case more so in post-conflict societies, and it becomes even more pronounced during elections. Although identity conflicts become even more violent during elections, they are not purely a phenomenon of elections per se (Matlosa and Zounmenou 2011: 147). There are other root causes of identity-based violence during and between elections that are pervasive in Africa today. This explains, in part, why diversity management is one of the major governance challenges for the continent. During the Extra-Ordinary Summit of APRM Forum of Heads of State and Government held in Cotonou, Benin, on 25–26 October 2008, a number of governance deficits emanating from the self-assessment and review of five pioneer APRM countries—Algeria, Ghana, Kenya, Rwanda and South Africa—were identified. Interestingly, both diversity management and elections featured among the major challenges for Africa's democratization, stability, peace and security.

### ***CONSEQUENCES OF ELECTION-RELATED CONFLICTS***

Election-related conflicts have various negative consequences that can be categorized according to their social, economic and political impact. Socially, electoral violence tends to disrupt the livelihoods of people living in affected communities, leading to massive displacement by way of refugees and internally displaced people. This can generate a humanitarian crisis that in turn can undermine the entire social fabric. Economically, electoral violence can adversely affect a country's economic advancement, as it may result in decreased foreign and domestic investment, a slowdown in economic growth and reduced public services. Politically, electoral violence undermines democratic institutions and the democratization process, peace and security, and political stability.

Election-related violence also affects the legitimacy of government both domestically and internationally. This could compromise both state administration in-country and foreign policy. It should be stressed that the adverse socio-economic and political impact of election-related conflicts has even more devastating effects on some marginalized and disadvantaged social groups such as women, youth, minorities and people with disabilities.

## **AFRICAN UNION POLICY RESPONSE TO ELECTION-RELATED CONFLICTS**

In July 2009, during the 13th Ordinary Session of the Assembly of Heads of State and Government held in Sirte, Libya, the AU adopted a report by its Panel of the Wise called *Election-Related Disputes and Political Violence: Strengthening the Role of the African Union in Preventing, Managing and Resolving Conflict*, which provides a comprehensive menu of strategies and approaches for the AU to adequately tackle election-related disputes and political violence. It emphasized that the AU, through its Panel of the Wise and other relevant organs, such as the AU Commission Department of Political Affairs, should address the root causes of electoral violence during the electoral cycle (election-related causes), as well as structural factors (systemic causes). It further highlighted the need for the AU to invest more resources in preventive measures and early warning and early response.

As part of deepening democracy and inculcating a culture of peace, Agenda 2063 offers both a vision and an action plan for Africa's long-term development that also deals with vexing problems around electoral violence. It is important that the Panel of the Wise have sufficient capacity to deal with the problem of election related violence. Furthermore, in order to tackle the problem of electoral violence by fusing election observation, on the one hand, and conflict prevention and mediation on the other, it is imperative that the African Governance Architecture (AGA) and the African Peace and Security Architecture (APSA) work in tandem.

The AGA is a mechanism developed by the AUC aimed at coordinating the work of all AU organs and institutions tasked with the AU's democracy and governance mandate. Its overall objective is to achieve governance, democracy and protection of human rights as reflected in the Constitutive Act of the AU and other AU instruments relating to governance and human rights. The added value of the AGA in efforts aimed at addressing Africa's governance challenges is in how it translates AU member states' commitment to democracy and governance as a shared value into concrete actions to support, complement and enhance the capacity of AU member states to consolidate and improve on their governance processes. The AGA aims to achieve this objective through consolidation and implementation. Specifically, it aims to formalize, consolidate and promote closer cooperation between AU organs/institutions and other stakeholders; establish a coordinating mechanism of regional and continental efforts for the domestication and implementation of the African Governance Agenda; and enhance the capacity of AU organs and institutions in the promotion, evaluation and monitoring of governance standards and trends. It operates through the African Governance Platform, which has five clusters: governance, democracy and elections, human rights and transitional justice, constitutionalism and rule of law, and humanitarian assistance. The AGA also facilitates coordination of the AU governance agenda with the RECs as the building blocks for continental integration. The AGA began operations in 2012.

The APSA is the coordinating mechanism for the AU in the implementation of its peace and security agenda in line with the AU Constitutive Act and the protocol establishing the Peace and Security Council (PSC). Its five main pillars are the PSC; the continental early-warning system; the African Standby Force (ASF); the Panel of the Wise; and the Peace Fund. As with the AGA, the APSA also facilitates coordination of the AU's peace and security agenda with the RECs as the building blocks of the union. While the

AGA is fairly new and still in its embryonic stage, the APSA is already in full operation, with the exception of the ASF, which is planned to come into force in 2015. In the meantime, the AU has devised two measures that may fill the void before the ASF is operational in the form of the African Solidarity Initiative, which is meant to help countries emerging from conflict avoid sliding into armed violence, and the African Capacity for Immediate Response to Crisis, which will facilitate deployment of military forces in crisis situations, avoiding the slow pace of reaction seen in Mali, which came following external intervention by France.

One important area where the AGA and the APSA could complement each other is that of election observation. As the AU begins to institutionalize its long-term election observation methodology, it may find it prudent in cases where elections show early signs of violence to combine pre-election assessments, long- and short-term election observation with conflict prevention and mediation through both the Panel of the Wise and the Forum of Former Heads of State and Government. This strategy worked well during the Kenyan elections in 2013, and it is therefore imperative that the AU replicate it in comparable situations across the continent.

One of the most innovative ways in which some countries have addressed the problem of violent conflicts, including those related to elections, is the establishment of solid and functional 'infrastructures for peace' (I4P) (Van Tongeren 2013). These institutions, platforms and networks conventionally take the form of national peace committees (NPCs) operating at the local, district or provincial and national levels and involving parties to a conflict, governments and civil society organizations (CSOs). NPCs mediate local conflicts and facilitate constructive dialogue among disputants often using inside mediators and largely relying on customary dispute resolution mechanisms, which have worked well in most post-conflict situations.

For instance, the 1991 Peace Accord in South Africa led to the establishment of 11 regional peace committees, 260 local peace committees and a national peace secretariat all of which played a critical role in ensuring that country's peaceful transition from Apartheid to majority rule. They played a key role in ensuring that the 1994 transitional election did not result in an all-out civil war in such a volatile situation, especially in the Kwazulu-Natal province (Van Tongeren 2013: 3).

In 1993 in Kenya, a group of women in Wajir established a local peace committee that succeeded in mediating conflicts among warring clans. This model was then duplicated throughout north-east Kenya. The success of this model 'attracted [the] attention of the government, which relied on the peace committees to mediate an agreement between the government and pastoralist clans of the region on the management of cattle rustling. The government then established an interim National Steering Committee on Peacebuilding and Conflict Management to coordinate the various grassroots peacebuilding initiatives' (Odendaal 2012: 43). Following the post-election violence in 2007, which claimed about 1,500 lives and led to more than half a million people being displaced (not to mention the enormous economic costs, including lost tourism revenue, low productivity and declining import-export business) various I4P mechanisms were used. For example, peace committees were strengthened, and the National Cohesion and Integration Commission was established. These organizations worked well in ensuring a peaceful constitutional referendum in 2010 and ultimately a peaceful general election on 4 March 2013.

Besides South Africa and Kenya, another country where I4P mechanisms have worked well is Ghana, which established a National Peace Council in 2011. The national council coordinates the work of peace councils established at the local and district levels. All these mechanisms help mediate local conflicts before they spiral out of control into violent conflicts. Ghana's I4P mechanism worked well in containing possible electoral violence following a tight election outcome in 2008 where the leading presidential candidate won by less than 1 per cent of the total votes cast. In order to ensure a peaceful contest during the election held in December 2012, seven political parties and independent presidential candidates signed the Kumasi Declaration on 27 November 2012 under the aegis of the National Peace Council. The general election was indeed conducted peacefully, with disputes channelled through the judiciary system, which finally upheld the election outcome in the latter part of 2013. Odendaal cautions that in designing NPCs, due regard has to be given to four main elements: (a) the nature of their mandate; (b) the clarity of their roles and functions; (c) the composition of their membership; and (d) their competence and technical expertise (Odendaal 2012: 40).



## 5. COMBATING UNCONSTITUTIONAL CHANGES OF GOVERNMENT

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Unless Africa's conflicts are addressed, none of the policy frameworks outlined in this Discussion Paper can be made sustainable. In this respect, it is encouraging that the AU's Assembly of Heads of State and Government held in May 2013 adopted the 50th-Anniversary Solemn Declaration, which committed AU member states to put an end to violent conflicts by 2020. One of the focal points of the overall goal of ending conflicts is concerned with the problem of unconstitutional changes of government (UCGs) on the continent.

The AU has adopted a comprehensive, robust and fairly strong normative framework against UCGs among its members. The framework is part of the AU's efforts to promote democratic governance and the rule of law throughout the continent. A key objective is protecting the voice of citizens in selecting their leaders, since a UCG subverts the choice of citizens. Another objective is to mitigate conflicts and promote human security, since a UCG often engenders enduring violent conflicts. The AU has also created its expansive normative framework against UCGs in order to encourage its 54 member states to move progressively away from the politics of the bullet and towards the politics of the ballot.

From the 1960s through to the 1980s, there were more military coups in Africa than regular elections. Since the 1990s, however, this trend has reversed. Nevertheless, while the problem of military coups has progressively given way to elected governments in the majority of African countries, other forms of unconstitutional change of government have continued to pose a challenge for the AU. These include rebellions and popular uprisings, among others. It is worth recalling that the 50th-Anniversary Solemn Declaration reiterated the AU's 'rejection of unconstitutional changes of government, including through any attempts to seize power by [force, instead recognizing] the right of our people to peacefully express their will against oppressive systems'.

### ***THE AFRICAN UNION'S POLICY RESPONSE TO UNCONSTITUTIONAL CHANGES OF GOVERNMENT***

It is useful to begin this section with an overview of the historical evolution of the OAU/AU normative framework on unconstitutional changes of government. On a global scale, the OAU's normative framework began to change dramatically in the direction of democracy promotion and taking a firm stance against UCGs in 1989, near the end of the Cold War, when the ideological bipolarity between the West and East finally ceased. In 1990, the OAU adopted its Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World. The declaration reaffirmed the organization's commitment to strengthening



democratic institutions, promoting popular participation and ensuring democratic transfers of power, and boldly stated the conviction of African leaders that ‘democracy and development should go together and should be mutually reinforcing’ (OAU 1990).

The centrality of democratic governance to the quest for continental integration and development remained a key theme in the Cairo Agenda for Action adopted in 1995. Again, African leaders re-emphasized their firm belief that ‘democracy, good governance, peace, security, stability, and justice are among the most essential factors in African socio-economic development. Without democracy and peace, development is not possible; and without development, peace is not durable’ (OAU 1995). The sequel to the Cairo Agenda for Action was the Algiers Declaration, adopted in 1999, in which African leaders expressed their appreciation for the expansion of democratic freedoms and entrenchment of democratic institutions and culture in various OAU member states (OAU 1999).

In July 2000, the OAU adopted the Solemn Declaration on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) and its clear-cut plan of action on how best to deepen democratic governance and build sustainable peace, security and stability on the continent. The CSSDCA proposed a set of four ‘calabashes’ (compartmentalized priority areas) for the OAU: (a) the security calabash (b) the stability calabash; (c) the development calabash; and (d) the cooperation calabash.

Building on the CSSDCA momentum, the adoption of the 2000 Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, in Lomé, Togo, was a historic development. While the previous OAU normative framework had broadly committed African leaders to democracy, peace and development as key pillars for continental integration, the 2000 Lomé Declaration set out, in clear terms, some of the elements that helped African leaders define the notion of unconstitutional changes of government, reiterated the organization’s rejection and condemnation of UCGs in Africa, and elaborated measures to be taken in cases of such occurrences.

In the Lomé Declaration the OAU elaborated, for the first time, a definition of an unconstitutional change of government that still applies today—although slightly broadened and updated. This definition includes the following four types of UCG: (a) military coups d’état against a democratically elected government; (b) intervention by mercenaries to replace a democratically elected government; (c) the replacement of a democratically elected government by armed dissident groups or rebel movements; and (d) an incumbent government’s refusal to relinquish power to the winning party after free, fair and regular elections (OAU 2000).

The Lomé Declaration comprised principles, a plan of action and an implementation mechanism that recognized democracy, the rule of law, human rights and good governance, among other issues. These principles were to be promoted by creating relevant institutions, organizing free and fair elections, promoting popular participation and laying down guidelines to facilitate the implementation of the decision regarding unconstitutional changes of government. The implementation strategy was to be monitored by a standing conference that would incorporate contributions from various sectors of African societies.

The CSSDCA Solemn Declaration, in its stability calabash, noting that stability requires that all states be guided by strict adherence to the rule of law, good governance, people's participation in public affairs, respect for human rights and fundamental freedoms, affirms that:

- (i) the executive, legislative and judicial branches of government must respect their national constitution and adhere to the provisions of the law;
- (ii) the active and genuine participation of citizens of every country in decision-making processes and in the conduct of public affairs must be fostered and facilitated;
- (iii) all rights and freedoms of citizens should be promoted and protected;
- (iv) there should be no hindrance to the promotion of political pluralism; and
- (v) terrorism, in all its manifestations, is inimical to stability.

In 2002, in Durban, South Africa, the Summit endorsed a memorandum of understanding on the CSSDCA, which spelled out key performance indicators with specific deadlines. Regarding the stability calabash, these indicators cover democratization and good governance, limits on the tenure of political officer holders, corruption, independent national electoral commissions, election observation, campaign finance reform, inclusive systems of governance and political parties.

Even more transformative developments happened in 2000, when the OAU itself was replaced by the AU following the 1999 Sirte Summit, which recommended a far-reaching restructuring of the continental body. The AU's founding treaty, the 2000 Constitutive Act (AU 2000), emphatically restated the union's strong rejection and condemnation of UCGs in all their manifestations and forms. Article 30 of the Constitutive Act provides that 'governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union' (AU 2000).

To ensure a more systematic and firm response to such situations, the AU established its Peace and Security Council during its inaugural summit in 2002 in Durban, South Africa. The PSC draws its mandate on UCGs from the 2002 Protocol Relating to the Establishment of the Peace and Security Council of the African Union. Some of the PSC's key objectives are as follows:

- to promote peace, security and stability in Africa in order to guarantee the protection of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable development;
- to anticipate and prevent conflicts. In circumstances where conflicts have occurred, the PSC will have the responsibility to undertake peacemaking and peace-building functions for the resolution of these conflicts;
- to promote and implement peace-building and post-conflict reconstruction activities to consolidate peace and prevent the resurgence of violence;
- to coordinate and harmonize continental efforts aimed at the prevention and combating of international terrorism in all its aspects;

- to develop a common defence policy for the Union in accordance with article 4(d) of the Constitutive Act; and
- to promote and encourage democratic practices, good governance and the rule of law, to protect human rights and fundamental freedoms, and to respect the sanctity of human life and international humanitarian law as part of efforts for preventing conflicts (AU 2002: 5).

The latest instrument in the AU's arsenal against UCGs is surely the African Charter on Democracy, Elections and Governance (ACDEG), which has a specific chapter focusing on UCGs. In fact, one of the primary drivers for the development and adoption of the ACDEG was the concerted condemnation and rejection of UCGs in Africa by AU member states.

The ACDEG also strengthened the definition of unconstitutional changes of government by adding a fifth component to the four categories articulated in the 2000 Lome Declaration, namely that '[a]ny amendment or revision of constitutions or legal instruments, which is an infringement on the principles of democratic change of government'. In broadening the definition of UCGs, this additional component sought to pre-empt the emerging spates of constitutional revisions that were undermining the spirit of constitutionalism, rule of law, public order and smooth/democratic transition of power. The ACDEG also devotes attention to concerns about UCGs and has a specific chapter on how the AU should respond to UCGs.

Since the promulgation of the UCG Framework the AU has suspended the membership and sanctioned the following countries: Côte d'Ivoire (2010), Central African Republic (2003), Egypt (2011–13), Guinea (2008), Madagascar (2002 and 2009), Mali (2012), Mauritania (2005 and 2009), Niger (2009), Sao Tome and Principe (2003) and Togo (2005). Sanctions have also been imposed on the secessionist leaders in Anjouan, Comoros. In all these cases, the AU interspersed diplomatic engagement with political and economic pressure to restore constitutional legality. Although the results of AU efforts have been mixed, relentless pressure from the AU, member states, RECs and the broader international community have been instrumental in the return to constitutionalism in most of these countries.

Steady progress on deepening the norm on UCGs has, however, been marked by selectivity, inconsistencies and variations in implementation of some of its aspects. For the most part, the AU has succeeded in galvanizing attention and mobilizing pressure in cases where violations of constitutional norms have been relatively straightforward, such as the military seizing power or where leaders have arbitrarily and flagrantly changed constitutions in defiance of popular will.

The provisions on unconstitutional changes of government remain a key plank in building the norms and standards that undergird the AU's peace, security, and governance architecture. Alongside these provisions, there have been remarkable strides made in democratization throughout Africa as seen in recent peaceful electoral transfers of power, the relinquishing of power by leaders and the widespread constitutional reforms that most countries have embarked upon to broaden pluralism and participation. All these changes point to the fact that while the AU remains at the forefront of the articulation of continental norms on democracy, questions of effective implementation of democratic ideals and ethos depend on member states.

## **TOWARDS A REDEFINITION OF UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA**

While it is both encouraging and gratifying that the AU has developed a strong and progressive normative framework against unconstitutional changes of government, a major challenge remains. The current normative framework—as comprehensive, robust and expansive as it may be—has not yet adequately addressed the problem of the popular uprisings that have recently been seen on the continent in Burkina Faso, Egypt, Libya and Tunisia. In July 2012 the AU Assembly adopted a decision requesting the AU Commission, in collaboration with the African Court on Human and People's Rights (AfCHPR), to 'prepare a study on the financial and structural implications resulting from the expansion of the jurisdiction of the African Court on Human and People's Rights and submit the study along with a Draft Protocol on Amendments to the Protocol to the Statute of the African Court on Human and People's Rights for consideration by the policy organs at the next summit slated for January 2013'.

In addition, the Assembly, in the above decision, stressed the need for the AU to adopt a definition of the crime of unconstitutional change of government and in this regard requested the Commission in collaboration with the AU Commission on International Law (AUCIL) and the AfCHPR to submit this definition for consideration by the policy organs in January 2013.'

Upon submission of the draft protocol and the study on the financial and structural implications, however, the Executive Council—the AU Assembly organ in charge of policy coordination—adopted a decision requesting that the Commission conduct a more thorough study, in collaboration with the PSC, on the issue of popular uprisings in all their dimensions and on the appropriate mechanism to decide on the legitimacy of such uprisings. On 5 July 2013, the PSC decided to devote one of its sessions later that same year to the consideration of lessons learned from all cases of UCGs in Africa, including the definition and status of popular uprisings or revolutions. The African Union Office of Legal Counsel, working closely with AUCIL and the AfCHPR, prepared a legal opinion on the definition of unconstitutional changes of government in light of popular uprisings in Africa. Instead of adopting this opinion, however, the AU policy organs referred the matter back to the PSC for finalization. Thus, presently, the African Union is still grappling with an appropriate redefinition of UCGs in the context of popular uprisings.

The popular uprisings that started in North Africa in January 2011 have had significant implications for strengthening the norms, principles and practices that undergird democracy and governance in Africa. These changes have also had a profound effect on the AU's provisions on UCGs. The convulsive transformations that toppled governments in Burkina Faso, Egypt, Libya and Tunisia demand some reflection that informs thinking about how to balance political reforms, the restoration of constitutional order and the expansion of popular legitimacy. All these are essential conditions for the promotion of democratic and participatory governance, peace, security and stability in Africa. The AU, through such institutions as the Panel of the Wise and the Africa Forum, is playing a critical role in preventive diplomacy aimed at averting UCGs.

Part of the dilemma surrounding the implementation of the UCG Framework is that, of the five provisions that constitute a UCG, the first three (military coups, mercenary

intervention and replacement of governments by armed dissidents) entail the forceful seizure of power against democratically elected governments. The last two provisions (refusal by incumbents to relinquish power and constitutional changes to extend the term of incumbents) relate to the failure of governments to adhere to a culture of constitutionalism and rule of law. Unlike the first three components, which have met with unambiguous condemnation from the AU because of the military element, the last two components remain contentious in garnering widespread consensus among AU member states. Because of this disjuncture, there is considerable room for acknowledgement of popular protests as vehicles for political change under circumstances where there are no apparent alternatives to achieve democratic outcomes. Acknowledging the place of popular civilian uprisings would be consistent with the general spirit of the Constitutive Act and other democracy promotion tenets that see popular legitimacy as the foundation for democracy and good governance.

While the AU, like other international actors, was unable to anticipate the developments in North Africa, it nonetheless reacted creatively. In other words, it exhibited the necessary flexibility, basing its action not on a literal and dogmatic interpretation of existing texts, but rather on the need to contribute to the attainment of its overall objective, namely, the consolidation of the ongoing democratization processes and peace-building efforts on the continent. Thus, at a meeting devoted to the situation in Tunisia on 15 January 2011, the PSC strongly condemned the excessive use of force against demonstrators, and appealed to political stakeholders to work together towards a peaceful and democratic transition that would allow the Tunisian people to choose their leaders through free, open, democratic and transparent elections. Presently, Tunisia has emerged as a relatively stronger democratic society in North Africa following its popular uprisings, as vividly demonstrated by the outcome of its recent elections in 2014.

Regarding Egypt, the PSC noted at a meeting on 16 February 2011 the deep aspirations of the Egyptian people to change and the opening of political space in order to be able to choose institutions that are truly representative and respectful of freedoms and human rights. It strongly condemned acts of violence against demonstrators. The PSC recognized the exceptional nature of the situation in Egypt, and took note of the decision of Hosni Mubarak to resign from his position as president of the republic and to surrender authority for the exercise of state power to the Supreme Council of the Armed Forces. Today, Egypt is still mired in spasms of violent conflict that undermine its democratization project and peace-building initiatives. It was partly as a result of this situation that the country's elections that were slated for March 2015 were postponed until a later, yet unknown, date.

Regarding Libya, the PSC, as early as 23 February 2011, expressed deep concern over the developments in the country, and strongly condemned the indiscriminate and excessive use of force and arms against peaceful demonstrators. It underscored the legitimacy of the aspirations of the Libyan people for democracy, political reform, justice and socio-economic development. At a meeting on 10 March 2011, at the level of heads of state and government, the PSC reiterated these positions, agreed on a road map for resolving the Libyan crisis and established a high-level ad hoc committee to assist in the speedy resolution of the crisis.

UN Security Council Resolution 1973 of March 2011 authorizing all necessary measures to protect civilians in Libya from pro-Gaddafi forces fundamentally altered prospects for a negotiated settlement, particularly when the intervention by the North Atlantic Treaty Organization (NATO) tilted towards military support for the opposition. On visits to Libya and in regional consultations, the AU High-Level Committee crafted a road map that included immediate cessation of hostilities, humanitarian aid to civilians in need and a negotiated solution to the conflict. But the road map could not garner support from key international actors. During a meeting of the PSC in Addis Ababa in late August 2011, the AU called for an immediate truce between the warring parties and the formation of an all-inclusive transitional government. The AU High-Level Committee meeting in early September 2011 in Pretoria reiterated this position, noting that the AU would work with various stakeholders, including the National Transitional Council (NTC), to establish an all-inclusive national government. On 20 September 2011, the AU finally recognized the NTC, stating that it was ready to help the NTC build an inclusive government. The war in Libya has not only destabilized the country, but it has also had a domino effect throughout the entire Saharo-Sahel region. Libya currently remains a country at war with itself.

## CONCLUSIONS AND RECOMMENDATIONS

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The conclusions and policy recommendations presented in this paper focus on two specific areas: (a) the prevention of election-related conflicts; and (b) unconstitutional changes of government in Africa.

### ***PREVENTION OF ELECTION-RELATED CONFLICTS***

It is important to adopt a nuanced view of elections. The conventional wisdom of perceiving elections in positivist terms has serious limitations. Elections are a double-edged sword. Under favourable conditions, elections can facilitate peace and democratization. Under unfavourable conditions, however, they can accentuate societal divisions, aggravating problems of political instability, insecurity and war and in the process undermining the democratization process. While electoral violence has been extremely costly to affected countries, evidence abounds suggesting that social groups that have borne much of the brunt are women, youth, minorities and people with disabilities.

The African Union, RECs and their individual member states have to invest more energy and resources into preventing electoral violence. This would be a prudent policy that could help avoid the various adverse consequences of electoral conflicts. A starting point towards a sustainable strategy for preventing electoral violence is the ratification, domestication and implementation of relevant AU shared-values instruments, including the African Charter on Democracy, Elections and Governance and similar instruments within the various RECs.

Broadly speaking, the recommendations advanced by the AU Panel of the Wise report in relation to a sustainable strategy for the prevention, management and resolution of election-related conflicts still remain relevant today. That report details far-reaching policy recommendations, which are clustered as follows:

- Risk-mapping, preventive and early-warning mechanisms;
- Electoral governance and administration;
- Coordination of electoral assistance;
- Post-election conflict transformation mechanisms;
- International cooperation and partnerships; and
- Strategic interventions by the Panel of the Wise (IPI/AU 2010: 63–74).

It is imperative that the AU, through the PSC and other relevant mechanisms, invests in early warning, preventive diplomacy and, where necessary, mediation. In this regard, the following strategies need to be considered:

1. Close and continuous monitoring of developments in all 17 countries as they prepare for elections;
2. Effective early warning of any signs of political instability in all these countries, which has to be accompanied by early response;
3. Putting in place a preventive diplomacy mechanism, including the dispatch of good-offices missions to countries exhibiting political challenges ahead of the polls and working in close collaboration with the RECs and other sub-regional mechanisms for preventive diplomacy;
4. Deployment of pre-election assessment missions aimed at providing an analytical assessment of the state of political and administrative readiness of these countries for elections; and
5. Deployment of long- and/or short-term AU election observation missions depending on the specific context of each AU member state.

### ***COMBATING UNCONSTITUTIONAL CHANGES OF GOVERNMENT***

The AU's main challenge is in how to deal with popular uprisings within the context of its existing normative framework on unconstitutional changes of government. To address this challenge, the AU must clearly and unambiguously redefine its policy on UCGs to take into account the new trend of popular uprisings as seen in North Africa and parts of West Africa, including the recent developments in Burkina Faso. In order to deal with this issue, it is imperative that member states sign, ratify and domesticate and implement all of the AU's shared-values instruments aimed at deepening democratic and participatory governance on the continent as elaborated in this paper. This is one fundamental way to prevent unconstitutional changes of government, and it is also an important mechanism to prevent popular uprisings against governments. With the current gap between norm-setting and norm implementation that exists, however, it is clear that the AU is still far from dealing with this problem. Therefore, more effort has to be invested in encouraging AU member states to implement agreed shared-values instruments, and especially the African Charter on Democracy, Elections and Governance.



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## ABOUT THE AUTHOR

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Khabele Matlosa is the Director for Political Affairs at the African Union Commission in Addis Ababa, Ethiopia. He was one of the experts who developed the Principles for Election Management, Monitoring and Observation in the Southern African Development Community. Between 2004 and 2006, he contributed to the drafting of the African Charter on Democracy, Elections and Governance, which African Union Heads of State and Government ultimately adopted in January 2007. A specialist on governance and conflict issues in Africa, Matlosa has researched and written widely on various governance and development themes including electoral system reform, political parties, regional security, conflict management, democracy and development, election observation and monitoring, regional integration and migration.

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International IDEA  
SE -103 34 Stockholm  
Sweden  
Phone + 46 8 698 37 00  
Fax + 46 8 20 24 22  
Email: [info@idea.int](mailto:info@idea.int)  
Website: <http://www.idea.int>