

Understanding the African Union and its Governance Agenda

African Governance Architecture and the Charter for Democracy Elections and Good Governance

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This background paper is part of a series on the Political Economy Dynamics of Regional Organisations (PEDRO). It was prepared in March 2017. In line with ECDPM's mission to inform and facilitate EU-Africa policy dialogue, and financed by the Federal Ministry for Economic Cooperation and Development, BMZ, the studies analyse key policy areas of seventeen regional organisations in Sub-Saharan Africa. In doing so they address three broad questions: What is the political traction of the organisations around different policy areas? What are the key member state interests in the regional agenda? What are the areas with most future traction for regional organisations to promote cooperation and integration around specific areas? The studies aim to advance thinking on how regional policies play out in practice, and ways to promote politically feasible and adaptive approaches to regional cooperation and integration. Further information can be found at www.ecdpm.org/pedro.

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1. Introduction

The promotion of democratic principles and good governance as stipulated in the AU's Constitutive Act required a number of new institutions, instruments and processes to be put into place in the early 2000s. This included the launch of the Pan-African Parliament (PAP), which aspired to become a fully-fledged legislative body, the African Peer Review Mechanism (APRM), a Court system as well as a Commission on Human and Peoples Rights. Following years of implementation as well as funding pressures, the necessity to link institutions and instruments became increasingly evident and led to the birth of the African Governance Architecture (AGA) in 2011. The subsequent entry into force of the African Charter on Democracy, Elections and Good Governance (ACDEG) has strengthened the legal basis of *some* areas of engagement of the AGA.

The AGA is a structure with several components. This report does not aim to review each component of the AGA comprehensively. Rather, it seeks to highlight and assess *some of the current* key areas of focus of the AGA. This report also provides an overview of the different components of the AGA before zooming into the role of the member states in shaping the governance agenda at the continental level.

This is a desk-based report, drawing on a limited number of interviews.

2. Assessing the political traction of the AU's AGA

“ [W]hile we have made tremendous progress, existential threats of democracy persist. This is the case in a number of African countries... These countries are witnessing the challenge of governance deficits, which remain at the root of the violent conflicts in that they tend to erupt from time to time. The current political crisis in Lesotho since the attempted coup in August 2014 is a vivid illustration of the need to further strengthen our work in addressing root causes of crisis on the Continent rather than responding to conflict incidences when they finally break out. This is the context within which the African Governance Architecture was established.” – Dr. Khabele Matlala, Director of Political Affairs, African Union Commission¹

The establishment of the AGA coincides with the rise in the number of so-called constitutional coups d'état (attempts to remain in power through amendments to the constitution by a sitting head of state) on the continent. This has inspired attempts by the AU to promote a “shared values agenda” in an attempt to promote common frameworks across countries in order to promote a common approach to governance. Most importantly, the AGA emerged as other governance institutions, established in the early 2000s, struggled to sustain a consistent engagement with the member states. The structures and the processes that were set up to support the implementation of the AGA agenda are briefly discussed in this section.

¹ The full interview with ECDPM is available on <http://ecdpm.org/great-insights/peacebuilding-statebuilding/african-unions-african-governance-architecture-linkages-african-peace-security-architecture/>.

2.1. the origins of the African Governance Architecture

The AU's Constitutive Act (2000), which formally established the organs² of the AU, sets as its objectives the promotion of "democratic principles and institutions, popular participation and good governance" as well as the protection of "human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments", among others³. To deliver on these objectives, new institutions were created, new processes launched and new normative instruments adopted. It is thus that the African Peer Review Mechanism (APRM), which conducted the assessment of political, economic, corporate and socio-economic policies in 17 African member states, came into being. A PAP was also established to provide a counter-balance to the Heads of States and Governments who have traditionally single-handedly steered the functioning of the Organisation of African Unity, the predecessor of the African Union. Most recently⁴ (June 2014), and after much debate, the PAP's mandate was extended to allow it to formulate model laws. Additionally, new, more stringent legal instruments were drafted by the African Union Commission and subsequently adopted, for instance the African Charter on Democracy, Elections and Good Governance (ACDEG). The ACDEG provides a stronger mandate to the AUC in the area of governance. It emphasises principles already enshrined in existing instruments – such as the rejection of unconstitutional changes of government – but it also goes further by, for instance, limiting presidential office terms to two terms or by making it mandatory for member states to establish independent election bodies.

However, the proliferation of instruments and institutions also posed a challenge of efficiency, effectiveness and coherence. Although components of a governance framework existed across the continent since 2002, their impact remained limited. It became necessary to maximise impact by linking these institutions, processes and instruments; in other words, ensuring that they function as an *architecture*. The framework was formally adopted by a Decision of the AU Assembly of Heads of States in 2011.

The AGA provides a platform for dialogue between the various stakeholders who are mandated to promote good governance and strengthen democracy in Africa⁵. It seeks to implement the African shared values which are contained in AU's Constitutive Act⁶ and the African Charter on Democracy, Elections and Governance (ACDEG)⁷. These shared values include *inter alia* human rights and the rule of law, democratic governance, constitutionalism, gender equality, youth empowerment, development, environmental protection, popular participation democratic elections and durable solutions to humanitarian crises. 'Shared values' as framed by the AU include the basic right to life, participation in governance, equality of persons, justice, adherence to the rule of law, sovereignty and the interdependence of states.

The objectives of the AGA were to accelerate the ratification, domestication, implementation and

² The Organs include: The Assembly of Heads of States and Governments, the Executive Council, the Pan-African Parliament, the Court of Justice and Human Rights; the African Union Commission, the Permanent Representatives Committee, the Specialised Technical Committees, the ECOSOCC. Additionally, specialised bodies such as the NPCA as well as the APRM Secretariat were also established.

³ Articles 3 (g) and 3(h) of the Constitutive Act of the African Union, 2000.

⁴ The African Union Meeting of Heads of State and Government adopted the Draft Protocol to the Constitutive Act of the African Union on the PAP, paying particular attention to Article 8 (1)(a) and 8(2) as revised. The meeting agreed that the PAP might exercise legislative powers on the subjects/areas that the Assembly has approved and or propose model laws in accordance with its Parliamentary mandate.

⁵ See African Governance Architecture webpage <http://aga-platform.org/index.php/aga-platform/2015-10-20-06-26-7>.

⁶ Constitutive Act of the African Union, 11 July 2000

⁷ African Charter on Democracy, Elections and Governance, adopted by the Eighth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, D 30 January 2007.

monitoring of African Shared values instruments; to deepen synergy, coordination, cooperation and harmonisation of shared values instruments among AU organs, institutions and regional economic communities (RECs) on democracy, governance, human rights and humanitarian affairs.; and to enhance the capacity of AU organs, institutions and RECs to support Member States to strengthen governance and consolidate democracy through implementation of shared values agenda. In addition, the AGA seeks to enhance popular participation and citizen engagement in attainment of democracy, governance and respect for human and peoples' rights; coordinate evaluation and reporting on implementation and compliance with AU norms on governance and democracy. AGA also aims to foster dialogue and share comparable lessons on trends, challenges, opportunities and prospects for improving governance and democracy among Member States; generate, manage and disseminate knowledge on African shared values agenda, good governance and democracy in Africa; facilitate joint engagement and deepen synergy with the African Peace and Security Architecture (APSA) in strategic interventions: preventive diplomacy, conflict prevention and post-conflict, reconstruction and development in Africa. These objectives remain relevant today.

The AGA pursues a broad scope of application and comprises four interrelated and dynamic components namely: norms and standards; institutions and stakeholders; mechanisms and processes of interaction; and the African Governance Facility (AGF). While some progress has been achieved on the first three components, the operationalisation of the AGF never materialised and the focus continues to be on three pillars.

2.2. Institutions and governance of AGA

Legal instruments

Constitutive Act

The AGA has foundations in the Constitutive Act in which African leaders were determined to “promote and protect human and people’s rights, consolidate democratic institutions and culture and ensure good governance and the rule of law”⁸. In addition the Constitutive Act sets as its objective the promotion of “democratic principles and institutions, popular participation and good governance” as well as the protection of “human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments”, among others⁹. To deliver on these objectives, new institutions were created, new processes launched and new normative instruments adopted.

African Charter on Democracy, Elections and Governance

The AGA is premised on AU legal instruments of shared values encompassing the promotion of sustainable democracy, governance and human rights in Africa. One such legal instrument is the ACDEG, which provides a stronger mandate to the African Union Commission (AUC) in the area of governance. The ACDEG has historical roots in earlier AU and Organisation of African Unity (OAU) documents including the 1999 Algiers Declaration on Unconstitutional Changes of Government, the 2000 Lome Declaration for an OAU Response to Unconstitutional Changes in 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 AU¹⁰.

The ACDEG emphasises principles already enshrined in existing instruments for example, the rejection of

⁸ Preamble of the Constitutive Act.

⁹ Articles 3 (g) and 3(h) of the Constitutive Act of the African Union, 2000.

¹⁰ Preamble of the ACDEG.

unconstitutional changes of government, but it also goes further by, for instance, limiting presidential office terms to two terms or by making it mandatory for member states to establish independent election bodies.

Although components of a governance framework existed across the continent since 2002, their impact remained limited. It became necessary to maximise impact by linking these institutions, processes and instruments; in other words ensuring that they function as *architecture*.

The ACDEG clearly condemns unconstitutional change of government and provides in article 25(5) a possible framework for international prosecution of people who forcefully take over government¹¹. It envisages sanctions in instances of refusal to relinquish power after an electoral defeat, and features provisions to deter practices that do not fall under conventional definitions of UCGs in the strictest sense, such as undue prolongation of government mandates.

It further restates the principle of transparency and accountability in government and provides for the independence of the judiciary. It reaffirms the primacy of the rule of law and calls on state parties to initiate appropriate measures, including legislative, executive and administrative actions to bring State Parties' national laws and regulations in conformity with the Charter.

Formal mechanisms for interaction

The African Governance Platform

The African Governance Platform (AGP) is the operating arm of the AGA and represents the 'space' that was created to facilitate the implementation of the AGA objectives. The AGP does not assume or duplicate the functions established by other policy organs, rather it provides a framework for interaction, active engagement, synthesis and convergence amongst them. The Platform is organised along five clusters, namely:

- Democracy (elections, parliaments and political parties)
- Governance (public service and administration, local governance and decentralisation)
- Human rights and transitional justice (norms and standards and redress mechanisms)
- Constitutionalism and rule of law (rejecting unconstitutional changes of government)
- Humanitarian assistance (free movement of persons, refugees, protection of civilians)

By bringing together different institutional actors, as well as non-state actors, the AGP aims at increasing synergies, coordination and lessons sharing between these different actors. Currently, the members operate autonomously, and the objective of the AGP is to facilitate the transition towards greater linkages between these actors, both institutionally and in terms of substance. The members of the AGP are: Peace and Security Council (PSC); African Court of Human and Peoples Rights (ACHPR), African Commission on Human and Peoples Rights; African Committee of Experts on the Rights and Welfare of the Child, African Peer Review Mechanism; Pan African Parliament; New Partnership for Africa's Development; African Union Commission on International Law, African Union Advisory Board on Corruption, Economic, Social and Cultural Council (ECOSOCC), Regional Economic Communities, Permanent Representatives Committee and Specialised Technical Committees¹².

The AGA Secretariat

The AGA Secretariat is housed in the Department of Political Affairs of the African Union Commission (AUC) and serves as the coordinating hub of the Platform. In 2014, the Secretariat opened up new frontiers for citizen engagement, including development of engagement standards and mobilisation of women, youth

¹¹ ACDEG, Article 25(5).

¹² Tissi & Aggad-Clerx (2014).

and civil society to meaningfully participate in democratic governance processes and agenda on the continent. The Secretariat has further deepened synergy, coordination and cooperation among AGP members; contributed to the generation of knowledge on good governance and democracy in Africa; set of guidelines for reporting on implementation and compliance¹³ with the African Charter on Democracy, Elections and Governance (ACDEG); as well as enhanced joint engagement in strategic interventions, including engagement with interdepartmental efforts towards preventive diplomacy, conflict prevention and post-conflict reconstruction and development in Africa.

Citizen and youth engagement

Driven by the AGA Secretariat, the AGA has taken a number of initiatives to promote the voice of civil society and especially the youth in the area of governance. The AGA Secretariat has in the last two years developed a Youth Engagement Strategy. The Strategy, currently being piloted aims, inter alia, to include “the inclusion of African youth and their views into high level AU discussions on democratic trends in Africa” and facilitate “qualitative youth engagement in the attainment of improved democratic governance and respect for human and peoples’ rights at the national, regional and continental levels”¹⁴.

2.3. Financing the AGA

The funding of the AGA as a framework originates from several sources, depending on the member institutions of the AGP. Funding of the *AGA Secretariat* is not assured through the AU budget. The Secretariat, which holds a coordinating function as well as a review function with respect to the ACDEG, was until 2016 almost fully funded by external donors. Indeed, the bulk of the funding is provided by international partners, with the German Development Cooperation (GIZ) being the largest of the funders, followed by the European Commission (EC), DIFD and International IDEA. In 2014, a decision was taken by the Permanent Representatives Committee (PRC) to increase the institutional AU funding to the AGA, from a budget of US\$90,000 in 2013 and 2014 to US\$500,000 in the budget of 2016¹⁵.

It is therefore not surprising that sustainable financing of the AGA has been cited as one of the key challenges to its effective implementation. This is particularly problematic considering the political nature of the work of the AGA. While external financing of the AGA has allowed the AUC to exercise some agency and push for the governance agenda, it did not reassure member states that continue to view the activities of the AGA with suspicion as will be discussed in the next section.

3. Understanding the political interests of AU member states in the AGA

3.1. The status of the AGA

The divergence between the AUC and the member states on the role of the AGA and its legal standing illustrates well how the AGA is viewed by African member states. Indeed, the AGA and its AGP were initially established as *informal coordinating* mechanism under the department of political affairs of the

¹³ The ACDEG obliges state parties to submit a two yearly report to the AUC on measures taken to implement the principles and commitments in the Charter.

¹⁴ African Union Commission (2015). AGA Citizen Engagement. <http://aga-platform.org/index.php/2015-10-20-06-26-8>.

¹⁵ Interview with (former) Head of AGA Secretariat, cited in Aggad et al. 'Acting Regionally in support of Governance and Peace and Security?' Internal document, ECDPM.

AUC. Formally, thus, the AGA is not part and parcel of the AU's 'policy organs' nor does it have a place in the decision making process. Subsequently, activities of the AGA's AGP are considered detached from the decision-making processes. While this position has been useful in providing the AGA Secretariat with the space to engage with a diversity of actors, especially non-state actors, it handicapped the AGP from engaging, as an actor through its Secretariat, in formal deliberations as is the case for instance with the African Peace and Security Architecture (APSA) structures. So far, the Department of Political Affairs, the host of the AGA Secretariat has engaged with the policy organs only on the AGA components that fall under it (e.g. elections). But it is yet to play a role in channelling the outcome of the AGP deliberations into the policy processes.

Attempts to give a place to the recommendations of the AGP in the formal processes of the AU received mixed reactions. In 2015, the first retreat between the AGA and the PRC took place in an attempt to give a formal place to the AGA in the AU's decision-making processes. In its conclusions, the retreat requested the "Department of Political Affairs to ensure adherence to the Peace and Security Council Decision requesting the Department attends and participates in PSC consultations and continues its regular briefings on the AU Commission's mandate *under its competence*" [emphasis added]¹⁶. This meant that the AGA continued to be viewed through its different components rather than an *architecture*.

The insistence on linking the AGA to the 'policy organs' has also been evident in two other areas. As noted above, the AGA Secretariat has played an important role in opening up the space for non-state actors to express their views on official platforms of the AU (e.g. the youth debates, technical meetings of the AGP, etc.). In an attempt to contain this space, the PRC "recalled the African Union's decisions on participation of Civil Society Organisations (CSOs) through the Economic, Social and Cultural Council (ECOSOCC) and thus called for compliance with these decisions"¹⁷. Similarly, concerned about the ambition to open up discussions on the compliance reports of member states to the ACDEG to a wider group of CSOs, the PRC also "emphasised that the State Reporting Guidelines on the African Charter on Democracy, Elections and Governance and Rules of Procedure of the AGA Platform must be subjected to processes and relevant Policy Organs of the AU including the Specialised Technical Committee on Justice and Legal Affairs in accordance with established rules and practices of the AU"¹⁸.

The formal status of the AGA and its AGP continues to be contested, notably by members of the AGP itself. Should the AGA function as a unit or should its components continue to function independently? For instance, the relationship between the AGA and the APRM, notably with respect to compliance monitoring, has long been a point of contention; although less prominent due to the weakness of the APRM until recently. Indeed, both the APRM Secretariat and the AGA Secretariat are now contesting the space in an attempt to position themselves as the lead actors in monitoring state compliance. Donor funding may create incentives that may explain this competition to be seen as the lead actor in order to ensure their survival.

3.2. Ratification of the ACDEG

With the transition from the AU to the OAU, member states recognised the need to address democracy deficits and lack of good governance amongst member states. With the launch of Agenda 2063¹⁹ the AU member states further strengthened their stated commitments to democracy and good governance. Aspiration 3 of Agenda 2063 aims for 'an Africa of good governance, democracy, respect for human rights

¹⁶ AUC (2015).

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ African Union, Agenda 2063.

and the rule of law²⁰.

As per March 2017, 45 African member states had signed up the ACDEG, of which 29 have ratified it²¹. Following its adoption in 2007, AU member states were initially very slow to ratify the ACDEG. This prompted a lengthy advocacy campaign by civil society - including Open Society Foundations' African Governance Monitoring and Advocacy Project (AfriMAP) to push for ratification in order to bring the ACDEG into force²². This campaign was successful in garnering 11 ratifications before 2011. There was a lot of skepticism about the ACDEG ratification campaign because the standards and values prescribed in the Charter posed an explicit challenge to the way politics was conducted in many African states.

The first country to ratify was Mauritania in July 2008 only to experience a military coup eight days later. This raised scepticism on whether the country was willing to adhere to the principles enshrined in the ACDEG. The second country was Ethiopia, which ratified the ACDEG in December 2009 and deposited its instruments of ratification in January 2009. This coincided with the adopted an oppressive NGO-regime which has been criticised as 'designed to strictly control and monitor civil society in an atmosphere of intolerance of the work of human rights defenders and civil society organisations'²³. Such events raised skepticism about the actual relevance of the ACDEG. Not surprisingly, four years after it was adopted only four countries had ratified it.

Although the pace of ratification significantly picked up in the last 2-3 years, a significant number of countries are yet to ratify and domesticate the instrument. The slow ratification of the ACDEG could be attributed to fact that ratification seemed likely to draw attention to lack of good governance in a country and expose it to criticism (see also previous section on the attempts of the PRC to incorporate parameters for the reviews). Countries were cautious when it came to the ACDEG. This meant that earlier tactics adopted by civil society - such as the naming and shaming in support of the ratification process of the Protocol on Women - could not be adopted in the case of the ACDEG. Consultations with AU member states that inclined towards ratifying the ACDEG revealed that logistical and knowledge constraints, rather than political hostility, were delaying ratification. Nevertheless, since the ACDEG came into force with the requisite 15 signatures, AU member states have ratified the treaty, albeit at a slow pace.

Looking at the 29 ratifications, it is a mix of both countries with electoral democracies like South Africa, Nigeria, Zambia, Nigeria and Ghana, Niger, Sierra Leone and Burkina Faso. But it might seem harder to explain how countries such as Cameroon, Chad, Rwanda and Guinea Bissau were among the early adopters, not to mention the first two countries to ratify--Ethiopia and Mauritania. Some of the latter countries have authoritative governments that are not always democratically open. Donor funding may provide the incentives to explain this competition as both try to position themselves as the lead actors in monitoring state compliance. It may be argued that there is benefit from ratifying the ACDEG as it covers a wide scope of governance issues including, democratic elections, and the prohibition of unconstitutional changes of government. Nevertheless, some countries hailed as being democratic, like Botswana, have not yet signed or ratified the ACDEG.

²⁰ African Union Commission. Agenda 2063, Aspiration 3.

²¹ Algeria, Benin, Burkina, Cameroon, Chad, Côte D'ivoire, Comoros, Djibouti, Ethiopia, Ghana, Guinea-Bissau, Guinea, Lesotho, Liberia, Mali, Malawi, Mauritania, Namibia, Nigeria, Niger, Rwanda, South Africa, the Sahrawi Arab Republic, Seychelles, Sierra Leone, South Sudan, Sudan, Togo, Zambia.

²² Akena (2012).

²³ Amnesty International (2009).

3.3. Implementation of the ACDEG and State Reporting

The ACDEG has three levels of application: the national level, continental level by the AUC, and the level of the regional economic communities. The ACDEG obliges state parties to initiate appropriate measures including legislative, executive and administrative actions to bring State Parties' national laws and regulations into conformity with the Charter. At the continental level ACDEG mandates the AUC to develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties. The ACDEG obligates state parties to submit a report (every two years) to the AUC on legislative or other measures taken to give effect to the principles and commitments in the Charter. To date, Togo is the only state party to have submitted its state report on the ACDEG in June 2016.

At the regional level the AUC should establish a framework for cooperation with Regional Economic Communities on the implementation of the principles of the Charter. The RECs are then committed to encourage member states to ratify or adhere to the ACDEG as well as designate focal points for coordination, evaluation and monitoring of commitments to the ACDEG. This tripartite application seeks to ensure good governance is supported not only at the continental level but filters down to the RECs and to the member states.

4. Areas with traction for regional cooperation - election monitoring

4.1. Election Monitoring and Observation

Electoral monitoring is an area for regional cooperation within the continent. The OAU endorsed election observation during its 64th Session of the Council of Ministers in July 1996, in Yaoundé, Cameroon. The session, in its deliberations on the Report of the Secretary General on the Process of Election Monitoring by the OAU, called for the OAU to assume greater responsibility in the democratisation process in Africa, including election observation.

The ACDEG entrenches a political culture of change of power based on holding regular, free, fair and transparent elections conducted by competent, independent and impartial national electoral bodies.²⁴ Election monitoring is essential to ensure elections are carried out freely and fairly to ensure peaceful election of leaders.

The AU has developed documents to address the standards of electoral monitoring. They include the OAU/AU Declaration on Principles Governing Democratic Elections in Africa²⁵ and the Guidelines for African Union Electoral Observation and Monitoring Missions. These guidelines enshrine free and fair elections conducted by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics. Through these documents, member states committed to establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters' registers. In addition, they committed to establishing impartial, all-inclusive, competent and accountable national electoral bodies and ensuring the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/other observers/monitors. These were progressive commitments taken by African

²⁴ Preamble of the ACDEG.

²⁵ African Union. 2002. Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII).

member states during the transition from the OAU to the AU. The ACDEG builds on these principles and explicitly provides for the “holding of regular, transparent free and fair election”²⁶.

Chapter 7 of the ACDEG deals specifically with democratic elections and reaffirms the commitments member states made in the Elections Declaration. Article 17 sets out four obligations for member states:

- 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 recognised 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.

These obligations act as a guide for member states to with the organisation of free and fair elections. The ACDEG allows members states to seek assistance from the AUC 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. This provision caters for countries that may not have the necessary finances to set up election observations as they can benefit from the expertise of the DEAU and its partners, notably the Electoral Institute of Southern Africa (EISA).

Between 1989 and 2013, the OAU/AU observed 423 elections in Africa²⁷. Election observation missions are largely regarded as a technical activity, though they operate within a political atmosphere²⁸. This is because in addition to undertaking a technical assessment of how an election process is managed²⁸, there is always the need for these missions to manage political tensions. As witnessed in numerous African countries (for example Kenya and Burundi) there is high correlation between elections and the outbreak of conflict. Thus the AU as a continental body has always approached election observation with a ‘preventive diplomacy’ approach to avert the possible outbreak of conflict²⁹.

Prior to the establishment of the DEAU in 2008, most of the electoral observers were mainly diplomats and priority was given to conflict prevention as opposed to technical observation³⁰. Under the DEAU, electoral observers are trained using AU election observation methodology, international and AU instruments on election observation, the code of conduct for election observers, and how to use an AU election observation checklist for gathering data³¹. Each African Union Election Observer Mission (AUEOM) comprises a technical team from the AUC African, the Pan-African Parliament and partner institutions. This approach underlines the AUEOM’s focus on the technical aspect of elections while retaining some level of diplomatic or political representation.

²⁶ ACDEG, Article 3(4).

²⁷ Aniekwe & Atuobi (2016). 25-44.

²⁸ Ibid, p. 32.

²⁹ Ibid.

³⁰ Ibid, p. 33.

³¹ Ibid.

The AUC has conducted observer missions in a number of countries. In 2016 the countries monitored include Ghana, Zambia, Uganda, Cape Verde, Côte d'Ivoire, and the Gambia.

At the invitation of the government of Ghana, former AUC Chairperson Dlamini Zuma authorised the deployment of an AUEOM to Ghana comprising four Core Team of election analysts and ten Long-Term Observers who were deployed on 22 October 2016, and forty Short-Term Observers (STOs) who arrived in the country on 29 November 2016. The AUEOM was led by Hifikepunye Pohamba, the former president of Namibia. Ghana is a signatory of the ACDEG, and offers an interesting case as it was the first African country to gain independence. The AUEOM preliminary statement on the presidential and parliamentary elections noted that despite some challenges encountered during the pre-election period, overall, the 2016 elections were conducted in a largely peaceful, transparent and credible manner³². The statement observed generally low women's participation as candidates, polling staff, party agents and citizen observers. It also recommended the use of quotas to increase female participation.

The AU also deployed an AUEOM comprising 40 observers to Côte d'Ivoire to monitor the legislative election of 18 December 2016. The country has been plagued by conflict following the presidential elections in 2010. These legislative elections follow the adoption of the new constitution which was promulgated on 8 November 2016. The AUEOM preliminary statement observed that unlike the 2011 legislative elections that were conducted in a post-conflict context, the 2016 elections were relatively calm.³³

³³ A positive achievement was the involvement of civil society in observing the electoral process. In 99.2% of the polling stations visited, observers did not find any irregularities. Although the participation of women as candidates was low, the observers noted that the women were mobilised as voters and as members of the polling staff. Security forces were present in 97% of the polling stations although their presence was discreet. The preliminary statement indicated a positive transition in the electoral process in Cote d'Ivoire compared to previous elections. For example, the African Court on Human and People's Rights found that Cote d'Ivoire had violated the ACDEG by appointing a partisan election monitoring body which lacked the necessary independence and impartiality, thereby violating citizens' rights to political participation and equal protection³⁴. The electoral body was composed of eight representatives of the ruling party and only four representatives of the political opposition and made decisions by simple majority. The ACHPR called upon the country to make the necessary steps to bring it in line with the Charter³⁵.

Although the AUC has been progressive in their monitoring, at times the views of RECs have conflicted with that of the AU. The Gambia is a case in point, where the Economic Community of West African States (ECOWAS) in 2011 declined to send missions to The Gambia stating that "intimidation, an unacceptable level of control of the electronic media by the party in power, the lack of neutrality of state and para-statal institutions, and an opposition and electorate cowed by repression and intimidation," make the playing field uneven³⁶. In contrast, the AU observer mission to The Gambia noted that the observers did not witness any activity that could compromise the credibility of the vote. At the time, former president Yahya Jammeh was running for a fourth term. In December 2016, both the ECOWAS and AUC sent observer missions to

³² African Union election observation mission to Ghana 2016 Presidential and Parliamentary elections: Preliminary Statement. Accra, 9 December 2016.

³³ Mission d'observation électorale de l'union africaine pour les élections législatives du 18 décembre 2016 en république de cote d'ivoire: Déclaration préliminaire. Abidjan, 20 December 2016.
<https://www.eisa.org.za/index.php/2016-ivory-coast-election-aeom-preliminary-statement/>

³⁴ See African Court of Human and Peoples Rights. 2016. Association pour la Protection des Droits de l'Homme v the Republic of Côte d'Ivoire. App No. 001/2014. Judgement of 18 November 2016.

³⁵ Ibid

³⁶ Clotley (2011).

the Gambia that saw “peaceful elections” and a change of president³⁷. ECOWAS was instrumental in the removal of former president Jammeh from power following his refusal to accept the election of Adama Barrow as the new president. RECs may follow a different decision logic in election monitoring and promoting democratic elections than the AU as such, as they are closer to the *action* and are likely to face the consequences of electoral processes that end in violence or instability. alongside the AU.

The AU has in the past also refused to monitor elections where it perceived that conditions for a free and fair election were not met. Following the election violence that erupted in April 2015 in Burundi following President Nkurunziza’s decision to run for a controversial third term, the AUC choose not to send its election observers. Former AUC Chairperson Dlamini Zuma is quoted as saying that the “necessary conditions are not met for the organisation of free, fair and transparent and credible elections..³⁸ the AU commission will not observe the local and parliamentary elections” scheduled for 29 June 2015. The AU has deployed missions to monitor the state of human rights in countries facing post-election violence. For example, the AU both human rights and military observers to Burundi.

The AU has been exemplary by deploying the first female observer mission to the parliamentary election on the Seychelles. This is a positive contribution to enhance the role of women in election observance in the continent.

As discussed, election monitoring is an area with traction within the AU. Effective pre-electoral monitoring can serve as an early conflict warning mechanism as it provides an overview of the state of play on the ground. Successful election monitoring also helps prevent the possibility of unconstitutional changes of government where an incumbent government refuses to relinquish power to the winning party or candidate after free, fair and regular elections. The ACDEG provides for sanctions for such conduct, and the African Peace and Security Council has sanctioned different member states.

4.2. AGA and the APRM

The ACDEG obliges members states to promote and deepen democratic governance by implementing the principles and core values of the APRM where applicable³⁹. The APRM was initiated in 2002 and established in 2003 by the AU in the framework of the implementation of the New Partnership on Africa’s Development (NEPAD). The objectives of the APRM are primarily to foster 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. This can be achieved through experience sharing and reinforcement of successful and best practices, including identifying deficiencies and assessment of requirements for capacity building. The APRM is an African initiative to assess the level of a country’s good governance based on four thematic areas: democratic and political governance; economic management and governance; socio-economic governance; corporate governance.

The AGP’s mandate to facilitate assessment, monitoring and evaluation of compliance with, and implementation of AU norms on governance and democracy and, in particular, review of state reports as envisaged by the ACDEG is closely related to the monitoring and evaluation mandate of the APRM. The difference between the AGA and APRM is that the former is premised on legally binding AU instruments while the latter is a voluntary mechanism by AU member states. However, reporting and reviews under the two processes could be complementary, with one driven by the countries (ACDEG reporting) while the

³⁷ Economic Community of West African States (2016).

³⁸ AU (2015b).

³⁹ ACDEG, Article 36.

other incorporates a variety of voices (APRM).

Kenya and South Africa have been the main supporters of the APRM. Kenya has played an active role in the APRM under the leadership of President Uhuru Kenyatta as President of the APR Forum. Kenya is the first country to have a second APRM review.

The AGA-APRM meeting held in March 2017 revealed the need for closer collaboration between the APRM on the one hand, and the AGA and African Peace and Security Architecture (APSA) platforms on the other.⁴⁰ A proposal was made for a joint APRM-AGA-APSA secretariat committee, that will meet quarterly to help coordinate and harmonise activities and operational tools within the context of AGA-APSA relationships and to avoid duplication of effort for the different mechanisms. This can be achieved for example by using APRM national structures and processes for AGA/APSA-related mandates. It is, however, too early to assess the effect of such proposal, especially that it is yet to be backed with a formal mandate from member states who may benefit from a fragmented approach to governance promotion and monitoring.

4.3. Structural conflict prevention: Interaction between AGA and APSA

The AGA interlinks and is complementary to the African Peace and Security Architecture (APSA). One of the specific objectives of the set out in the AGA Framework Document developed in June 2014, is to "facilitate joint engagement in preventive diplomacy, conflict prevention and post-conflict reconstruction and development in Africa"⁴¹. Thus both the AGA and APSA are supposed to address the structural root causes of crisis and conflict in Africa.

Over the years, and as a result of the close link between post-electoral crisis and stability, the AGA actors have been pushed to play a role in strengthening the governance-peace and security nexus, therefore following a trend embraced by Africa's sub-regions, notably ECOWAS. In its Summit of June 2015, the AU Assembly of Heads of States reiterated this narrative by appealing for 'stronger action in the area of conflict prevention, management and resolution, as well as in the area of peacebuilding and post-conflict reconstruction'. To this end, the Assembly stresses the critical importance of promoting good governance and respect for the rule of law, in keeping with the commitments made by member states within the framework of relevant AU instruments".⁴² It further mandated the AUC to "continue its efforts towards ensuring synergies and complementarity between the African Governance Architecture (AGA) and the African Peace and Security Architecture (APSA) and for establishing the AU Commission Interdepartmental Conflict Prevention Task Force" (IDTFCP).⁴³ The linkages between conflict and governance are thus clearly more explicitly referred to by the African Union.

The CSCPF outlines a comprehensive process and holistic framework which, *while cognisant of the importance of direct conflict prevention activities of the AU and the RECs*, which in practice remain the key focus of the member states, aims at strengthening those of structural conflict prevention with the purpose of steering the mainstreaming at continental level of a preventive action approach. Preventive action involves, simultaneously, a direct and operational focus of intervening before large-scale violence occurs as well as a structural, strategic focus of addressing the structural causes of conflict.

⁴⁰ The African Capacity Building Foundation (2017).

⁴¹ African Union, Africa Governance Architecture Framework, p. 3.

⁴² AU (2015a).

⁴³ Ibid.

The CSCPF will be rolled out through two tools, including the Country Structural Vulnerability Analysis (CSVA) and the Country Structural Vulnerability Mitigation Strategies (CSVMS).

Country Structural Vulnerability Analysis (CSVA)

The proposed voluntary CSVA reports are a precursor to strategising appropriate structural prevention initiatives; they would thus enable decision-makers to devise country-specific courses of conflict preventive peace-building, preventive development and preventive disarmament activities.

The CSVA is to be jointly undertaken by the AU and the RECs following a specific voluntary request by a member state. Focusing on structural dimensions, the CSVA will assess the levels of structural stability for any given country/region (stability here defined as sustainable economic development, democracy and respect for human rights, viable political structures and healthy environmental and social conditions, with the capacity to manage change without resort to conflicts).

The CSVA analysis would include reference to root causes of conflict, *inter alia*, related to (1) good governance, rule of law, democracy, human rights, corruption; (2) the security sector; (3) socio-economic development (including poverty alleviation, resource management, private sector); (4) environment and climate change; (5) gender and youth; (6) post-conflict peace-building including civil society (media, NGOs); as well as (7) transitional justice and reconciliation. The CSVA will therefore identify a set of key structural issues that require address. These are partly similar to the APRM indicators as the review of a country's democratic and political governance acts as an early warning system for possible conflict.

Country Structural Vulnerability Mitigation Strategies (CSVMS)

Having collaboratively developed the CSVA at the request of a member state, the AU and the RECs must develop on that basis a comprehensive structural prevention programme for the country concerned with clear and realistic objectives.

Preventive peacebuilding includes measures focused on preventing threats to core aspects of human security from causing conflict escalation. It can focus on the sectors of governance; human rights, societal stability and economic factors.

In practice, however, the role of the AGA members in the CSVA is yet to be tested as this involves a deeper engagement in domestic politics of the member states. Experiences from the implementation of the APRM could in this respect be critical in identifying the possible challenges to implementation and thus developing approaches to ensure the success of the CSVA beyond technical solutions.

5. Conclusion

Further strengthening and consolidating of AGA will inevitably face resistance by the member states as governance issues touch on the core of state functions. Furthermore, the strength of the AGA will depend on the strength of its different components as well as the role of the coordinating body.

Looking ahead, however, it would be important to build on the positive elements of the AGA. As noted above, the AGP, through the Secretariat, has provided a valuable space for non-state actors to engage on governance issues. Institutionalising the AGA further, or perhaps too quickly, might come at the detriment of its flexibility. Furthermore, it would be important to recognise openly the limits of the AGA. The AGP has registered important progress in monitoring ratification and domestication of the ACDEG; however, the implementation of the mechanism at the national level would need to rely on different actors and strategies.

Bibliography

African Union (AU). 2015a. *Decision on the Report of the Peace and Security Council on its Activities and The State of Peace and Security in Africa*. Assembly of the African Union. Doc.Assembly/AU/7(XXV). June 2015. (Last accessed on 15 June 2016). [http://www.au.int/en/sites/default/files/decisions/9664-assembly_au_dec_569 - 587_xxiv_e.pdf](http://www.au.int/en/sites/default/files/decisions/9664-assembly_au_dec_569_-_587_xxiv_e.pdf)

African Union (AU). 2015b. Communique: *The African union reiterates the imperative need for dialogue and consensus for a lasting solution to the crisis in Burundi and announces that it will not observe the elections scheduled for 29 June 2015*. 28 June 2015. Addis Ababa, Ethiopia. <http://www.peaceau.org/uploads/aucomm-burundi-28-06-2015.pdf>

African Union Commission (AUC). 2015. Outcome Document: AU Permanent Representatives Committee Consultations on the African Governance Architecture and the State Report Processes under the African Charter on Democracy Elections and Good Governance. 2-4 September. Unpublished.

Akena, A. 2012. *African Union: Mandating Democracy, one Ratification at a Time*. 3 July 2012. Open Societies Foundation. <https://www.opensocietyfoundations.org/voices/african-union-mandating-democracy-one-ratification-time>

Amnesty International. 2009. *Ethiopia parliament adopts repressive new NGO law*. 8 January 2009. <https://www.amnesty.org/en/latest/news/2009/01/ethiopian-parliament-adopts-repressive-new-ngo-law-20090108/>

Aniekwe C.C. & Atuobi S.M. 2016. *Two Decades of election observation by the African Union: A Review*. Journal of African Elections. DOI:10.20940/jae/2016/v15i1a2. <http://dSPACE.africaportal.org/jspui/bitstream/123456789/36248/1/JAE15.1Aniekwe.pdf?1>

Clotey P. 2011. *African Union Observers impressed with Gambia Election*. 23 November 2011. <http://www.voanews.com/a/african-union-observers-impressed-with-gambia-election--134467893/159238.html>.

Economic Community of West African States. 2016. *ECOWAS, African Union and UN Statement on the Gambian December 1 Presidential Elections*. 2 December 2016. <http://www.ecowas.int/ecowas-african-union-and-un-statement-on-the-gambian-december-1-presidential-election/>

The African Capacity Building Foundation. 2017. *Media Brief on the AGA-APRM Experts Meeting 5-6 March 2017*. <https://www.acbf-pact.org/media/news/media-brief-aga-aprm-experts-meeting-march-5-6-2017>.

Tissi, N. and F. Aggad - Clerx. 2014. *The Road Ahead for the African Governance Architecture: An Overview of Current Challenges and Possible Solutions*. (SIIA Occasional Paper No 174, February 2014). <http://ecdpm.org/publications/road-ahead-african-governance-architecture-overview-current-challenges-possible-solutions/>