

POLICY BRIEF

THE 10TH ANNIVERSARY OF THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

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November 2017

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1. BACKGROUND

The African Charter on Democracy Elections and Governance (ACDEG) was adopted on 30 January 2007 as the African Union's main normative instrument to set standards for better governance across the continent. It came into force in February 2012 after ratification by fifteen (15) States. As of September 2017, the Charter has been ratified by thirty (30) and signed by forty-five (45) out of fifty-five (55) States. The ACDEG is different from previous instruments as it combines, in a holistic manner, the key elements of democracy, human rights and governance. Its objectives are to enhance the quality of elections in Africa, promote human rights, strengthen the rule of law, improve political, economic and social governance, and address the recurrent issues relating to unconstitutional changes of government in the continent. The ACDEG has been the impetus for various policy and institutional initiatives at the level of the African Union (AU) and the Regional Economic Communities (RECs), and has become the yardstick upon which Member States' democratic governance progress is measured. One notable outcome from the Charter is the development of the African Governance Architecture (AGA), which is the overall political and institutional framework for promoting and strengthening democracy, good governance and human rights in Africa. AGA provides the platform through which different Organs and Institutions of the African Union support the implementation of the provisions of the Charter at the Member State level. While the ACDEG has led to changes in some Member States' approach to democracy and governance, in other Member States it has had limited impact. The level of acceptance and implementation of the ACDEG remains highly uneven, which constitutes one of the key challenges in making the Charter's objectives a reality across Africa

2. INITIATIVE

In 2017, the ACDEG celebrates the tenth and fifth anniversaries of its adoption and entry into force, respectively. These milestones offer an excellent opportunity to reflect on the instrument's past, present and future. Bringing together a group of distinguished scholars and practitioners, a Practitioner Dialogue on "The African Charter on Democracy, Elections and Governance: the Tenth Anniversary" was held at the Institute of Development Policy (IOB) of the University of Antwerp on 3 October 2017. The Practitioner Dialogue was jointly organized by IOB, the AU and the Centre for Human Rights Law at SOAS University of London.

The Dialogue focussed on the challenges and opportunities presented by the Charter and addressed a range of issues related to its implementation from different theoretical, empirical and country-specific perspectives. The event reached out to a variety of audiences including academics, practitioners and policy makers working in the area of democratization, governance, rule of law, human rights and development in Africa.

The Practitioner Dialogue welcomed contributions from senior officials of the African Union, members of the African Diplomatic Community, African Diaspora Scholars and African NGOs on the development and implementation of the ACDEG: first, in order to engage in the kind of conversation that is typically missing – but needed – between them; and second, to ensure that the publications resulting from this process reflect unique and rich scholarly as well as practitioner perspectives.

3. OUTPUT

The Practitioner Dialogue is part of a broader initiative to commemorate the ACDEG. The specific results of this project include the publication of **key peer-reviewed papers** in **two special issues of prestigious Africa focused journals**. The editorial boards of Africa Spectrum and the Journal of African Law have both confirmed their interest to organise a special issue on this topic. Based on these academic papers, a **policy brief** has been developed that synthesises different policy relevant conclusions. A draft of this policy paper formed the basis of the discussions during the Practitioner Dialogue. The Practitioner Dialogue provided space for a critical appraisal of the progresses, challenges and opportunities presented by the ACDEG and led to the development of critical policy recommendations that will support both the African Union and the Member States in adhering to the provisions of the ACDEG and in effect improving democracy, governance and human rights on the continent. This policy paper will be formally presented to the Office of the Commissioner for Political Affairs of the African Union Commission and to the Office of the AU Ambassador to the European Union.

4. STRUCTURE OF POLICY BRIEF

4.1. Areas

The recommendations in this policy brief covers different components of the Charter viz (i) Ratification Challenges of ACDEG; (ii) ACDEG as a Human Rights Instrument; (iii) ACDEG and Unconstitutional Changes of Government; (iv) the role of ACDEG in promoting and ensuring democratic governance; (v) thematic perspectives on ACDEG (incl. gender, migration, corruption); and (vi) ACDEG and monitoring the state of governance in Africa.

4.2. Objective

In teasing out the recommendations, this policy brief first identifies the core objective that underpins each recommendation. In other words, each objective underscores why the recommendation is important and points specifically to what will be achieved if the recommendation is implemented.

4.3. Proposed Activity

The proposed activities in the table are the set of activities that are imperative for the objectives and the recommendations to be achieved. The activities if implemented will significantly enhance the prospect of realising the objective of the recommendation.

4.4. Key Institutions/ stakeholder

Key institutions are those within and outside the African Union structure that would be directly responsible for implementing the activities. Institutions that are important for achieving the recommendations include the AU Assembly, Office of Legal Counsel, Standing Committees, Key departments, Member States, Civil Society Organisation amongst others.

4.5. Relevant Provision of ACDEG

The recommendation table also identified specifically the relevant provision(s) of the ACDEG that relates to each recommendation.

4.6. Rationale

The rationale answers the question why the recommendation is important, which is linked directly to the objective of the recommendation.

4.7. Source

Each of the recommendation is directly linked to a specific paper under consideration for inclusion in the special issues in the Journal of African Law and African Spectrum. The author(s) of each recommendation represent the source of the recommendation.

5. KEY RECOMMENDATIONS

Academics and practitioners who participated in the expert review workshop identified three broad areas of recommendations in addition to the specific recommendations in the table below.

1. Strengthening Coordination and Relationships between the African Union and Regional Economic Communities (RECs):

- AU and RECs should jointly plan implementation activities in a manner that will ensure that RECs as building blocks continue to follow up on agreed plans with Member States based on the principles of subsidiarity; and
- Decisions on sanctions, democratic support, and missions should be jointly coordinated and planned between AU and RECs to avoid conflicting positions, uncoordinated decision making and duplication of efforts.

2. State Reporting and Monitoring as provided in Article 49 of the ACDEG:

- The African Union should accelerate the operationalisation of State reporting mechanisms;
- The AU should develop and publicize ACDEG gender sensitive reporting guidelines; and
- The African Union should engage and encourage CSOs to advocate for compliance with State reporting obligations at the Member State level by providing alternative reports.

3. Awareness and Sensitization:

- The African Union should increase the awareness of the other democratic rights enshrined in the ACDEG and facilitate discussions that will expand the focus beyond Unconstitutional Changes of Government which has dominated the discourse and response on the Charter so far.
- Improve access of CSOs to allow for engagement in discourses on democratic rights and to popularise those rights.

Important Note

The purpose of the policy brief is not to represent a consensus document but to provide a list of policy options - a menu - which the AU and other institutions can choose from. The list of policy recommendations as a whole therefore does not represent the views of the institutions or individuals who participated in this process.

Policy Relevant Conclusions

Area	Objective	Recommendation	Proposed Activities	Key Institutions/ Stakeholder	Relevant Provision of ACDEG	Rationale	Source
Ratification Challenges	Achieve full continental accession to ACDEG	Ensure signature and ratification of ACDEG by all Member States Highlight the importance of ensuring the implementation of ACDEG	AU Assembly makes a decision to institutionalize “AU Treaty Signing Week” at all ordinary sessions of the Assembly During Treaty Signing week, provide technical assistance and awareness about the implications of signing/ ratifying ACDEG	AU Assembly; Office of the Legal Counsel, AUC; Standing Committee of Experts on the Ratification of OAU/AU treaties; Designated Officials and Representatives of Member States mandated to sign and deposit instruments of ratification	Art. 45 (b)	Full continental implementation of ACDEG is contingent on full continental ratification of ACDEG	Aleer and Iyanda
	Systematic review of the positions of AU member states on ratification of OAU/AU Treaties, including on ACDEG	Periodic review of political and technical factors hindering ratification of treaties Provide technical assistance to Member States	Organization of assessment missions to evaluate the factors impeding the ratification of AU treaties, including ACDEG Organisation of technical assistance missions about the implications on ratifying ACDEG and the drafting of implementing legislation and policies	Standing Committee of Experts on the Ratification of OAU/AU treaties; National Sectoral Committees; Office of the Legal Counsel, AUC	Art. 44 (2) (A) (b)	Insufficient knowledge of exact conditions in individual member states that prevent full ratification. Factors may include, lack of necessary bureaucratic coordination, lack of technical capacity to draft implementing policies and legislation, lack of trained personal to deal with ratification issues or administrative red tape.	Aleer and Iyanda
	Awareness raising about AU Treaties, including ACDEG	Improve knowledge of existence of different AU treaties, including ACDEG	Collaborative advocacy campaigns between CSOs; AUC and RECs to report on countries status of signature and ratification of ACDEG AU Liaison offices should be mandated to organize advocacy around ACDEG, which could include organising annually an event on the day of ratification in the State, party to the ACDEG, as an opportunity to popularize the Charter and to take stock of its implementation in the respective member state Encourage academic colleagues in Africa to join in on the debate around ACDEG	CSOs; AUC; RECs	Art. 44 (2) (B) (a)	There is a need to hold governments accountable about their action towards ratification of AU Treaties, including ACDEG	Academic Expert Seminar

Area	Objective	Recommendation	Proposed Activities	Key Institutions/ Stakeholder	Relevant Provision of ACDEG	Rationale	Source
Human Rights	Increase awareness about the rights enshrined in the ACDEG		<p>Disseminate ACDEG and related knowledge products</p> <p>Organise awareness campaigns</p> <p>Organise public debates on ACDEG</p> <p>Organise a commemoration day on ACDEG's entry into force and other events to disseminate the Charter</p>	State Parties; African Commission on Human and Peoples' Rights; CSOs; population	Art. 44 (1) (b)	<p>ACDEG is still little known in AU member states</p> <p>Signature and ratification alone do not guarantee that population and civil society know and will use the provisions of ACDEG</p>	Witt
	Foster citizen participation and direct engagement with the AU	Improve the accessibility of CSOs to the AU	<p>Establish national focal points of the AU</p> <p>Establish clear lines of communication between CSOs and individuals and the AU</p> <p>Civil society actors must raise awareness about the case APDH vs Cote d'Ivoire and about the possibility to invoke the Charter before the ACHPR as a human rights instrument</p> <p>Civil society actors and academics must engage in a more in-depth analysis of the possibilities and limitations of invoking the Charter before the African Court on Human and Peoples' Rights (or other courts): under what conditions can pro-democracy actors opt for this international judicial approach to enhance the implementation of the Charter</p>	<p>AU Commission; CSOs; ECOSOCC;</p> <p>African Court on Human and Peoples' Rights; African Commission on Human and Peoples' Rights</p>	Art. 2 (10); Art. 3 (7); Art. 45	The link between local civil society organisations and the AU is too weak. The conditions for active 'citizen participation' are lacking. There is a need for better institutionalised access points, that do not rely on personal relationships and contacts	Academic Expert Seminar

Area	Objective	Recommendation	Proposed Activities	Key Institutions/ Stakeholder	Relevant Provision of ACDEG	Rationale	Source
Unconstitutional Change of Government	Counter manipulation of constitutional and legal frameworks that infringe principles of democratic change of government	Expedite the process to develop guidelines on constitutional amendments	<p>Adopt a policy framework that outlines the procedural standards to evaluate processes intended to fundamentally change the means or limitations of accessing and maintaining state power (including presidential limits removal).</p> <p>Expand the mandate of electoral observation missions to observe processes leading up to important legislative or constitutional changes affecting the prolongation of executive tenure.</p>	Assembly; AUC; PSC	Art. 10 (2); Art. 18; Art. 23 (5)	The African continent has faced serious constitutional crises related to the modification of term limits. Without adopting a normative stance regarding the outcome of presidential term limit debates, the AU is in need of an appropriate test of the process that led to the removal or even (re) instatement of term limits. This process could be similar to the mechanisms put in place to observe elections in member states.	Prempeh and Wiebusch
	Address threats to the constitutional order from within	Clarify the meaning of Provision Art. 23 (5)	There is a need for academics and civil society actors to launch a debate on its meaning and to urge the AU PSC to develop a policy statement on this particular provision	Civil Society; PSC	Art. 23 (5)		Manirakiza
	Provide conceptual clarity between UCG and Popular Uprising	<p>Institutionalise the Recommendations of AU-HLP on Egypt</p> <p>Activate the PSC sub-committee on UCG's</p>	Organise a follow-up discussion to agree on the concept of popular uprising	AUC; PSC; Member States; African Commission on Human and Peoples' Rights	Art. 23	AU provide clarity on the interpretations of UCG vis-a-vis popular uprising	Dersso

Area	Objective	Recommendation	Proposed Activities	Key Institutions/ Stakeholder	Relevant Provision of ACDEG	Rationale	Source
Democratic governance	Improve coordination between AU and RECs on the implementation of the ACDEG	Expedite the process and finalise the draft framework on AU-RECs Cooperation Framework on the implementation of ACDEG principles	Organise regular consultations on ways to improve cooperation Organise temporary staff exchanges between AU and RECs Organise joint activities in terms of democratic governance assistance projects	AU; RECs	Art. 44	Develop synergistic relations between AU and RECs	Legler and Wiebusch
	Increase citizen participation and consultation in law making processes	Introduce a recourse option to existing mechanisms to enable citizens participation	Engage CSOs in information dissemination	State Parties; CSOs; AUC	Art. 27 (2) (9) Art. 44 Art. 49	Increased citizen participation in ACDEG processes towards improving democracy	Adu and Miamingi

Area	Objective	Recommendation	Proposed Activities	Key Institutions/ Stakeholder	Relevant Provision of ACDEG	Rationale	Source
Thematic Perspectives	State Parties shall adopt legislative and administrative measures to guarantee the rights of migrants	Develop regional benchmarks for the realisation of article 8(2) of the Charter		AU; Member States; African Commission on Human and Peoples' Rights	Art. 8 (2)		Adeola
	Platform for women rights engagement	AGA should provide gender based space for engagement on women's rights issues	Gender focused forum for women political engagement Involvement of non-state actors especially gender focused CSOs in state reporting process	AUC; CSOs; African Commission on Human and Peoples' Rights	Art. 2 (11); Art. 3 (6); Art. 8; Art. 29; Art. 49	Promote inclusive participation through ACDEG	Abdumelik and Belay

Area	Objective	Recommendation	Proposed Activities	Key Institutions/ Stakeholder	Relevant Provision of ACDEG	Rationale	Source
Monitoring the state of governance	Ensure independent monitoring and reporting on level of state compliance to provision of the Charter	Establish independent panel of expert	Set up an independent panel of experts to monitor and report to level of implementation of ACDEG in Member States Document cases of violations of the Charter including State sponsored violations	AUC (OLC and DPA)	Art. 49 (3)	Promote state accountability and implementation	Aniekwe and Tikum
	Provide remedial options to victims of violations of the Charter	Expand ACDEG sanctions beyond Chapter 8	Provide sanctions for violations of all provisions of ACDEG	AU Assembly; PSC	Art. 23 ; Art. 26	Promote adherence to provisions of the Charter Provide options for citizens to seek redress against state sponsored violations	Aniekwe and Tikum
	State reporting responsibility	Accelerate the operationalisation of state reporting and monitoring system Encourage CSO shadow reporting Ensure coordination and avoid duplication between all reporting obligations of States on different human rights instruments	Member State consultation through AGA on reporting responsibilities	AUC; CSO	Art. 49	Improve compliance with Charter obligations. Address the issue of multiplicity of AU treaties and charters, the coordination between all these instruments and the different responsible monitoring organs, incl. APRM, African Commission on Human and Peoples' Rights and the AU Advisory Board on Corruption.	Academic Expert Seminar / Practitioner Dialogue

6. CONTRIBUTING INSTITUTIONS

1. African Union Commission
2. African Court of Human and Peoples' Rights
3. African Commission Human and Peoples' Rights
4. African Peer Review Mechanism (APRM)
5. Office of the AU Ambassador to the European Union
6. International IDEA
7. UNDP
8. Open Society Foundations
9. Institute for Research and Policy Alternatives
10. European Commission, International Cooperation and Development (DEVCO)
11. 11-11-11
12. University of Ottawa
13. Peace Research Institute Frankfurt
14. University of Cape Coast
15. Institute of Development Policy (IOB), University of Antwerp
16. SOAS, University of London
17. United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS)
18. Universidad Iberoamericana Ciudad de México
19. University of Duisburg-Essen

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