

DRAFT AU DECLARATION ON ELECTIONS, DEMOCRACY AND GOVERNANCE

PREAMBLE

THE ASSEMBLY OF THE AFRICAN UNION:

REAFFIRMING the principles and objectives of the African Union enshrined in the Constitutive Act of the African Union, particularly Articles 3 and 4;

RECOGNIZING the contributions of the AU and other regional and sub regional organizations and institutions to the promotion, protection and consolidation of democracy in Africa;

RECALLING the Algiers Decision of July 1999 and the Lomé Declaration of July 2000 on the Framework for an OAU response to unconstitutional changes of government, which underpins the OAU's agenda of promoting and protecting democracy and democratic institutions in Africa;

REAFFIRMING the CSSDCA Solemn Declaration adopted by the Assembly of Heads of State and Government of the OAU in Lomé, Togo, in July 2000, which laid down a set of common values and principles for democratic governance and a mechanism to promote and protect democracy and the resolution of conflict;

RECALLING the Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa, agreed at the Head of the State and Government CSSDCA Conference July 2002, Durban, South Africa, which recognizes good governance, the unhindered exercise of and respect for human rights, the rejection of unconstitutional changes of government and transparent and credible elections are pre-requisite for sustainable peace and security as well as a necessary condition for economic development, cooperation and integration;

CONSCIOUS OF the socio-economic development programme of the African Union, the New Partnership of the African Union (NEPAD), and its Declaration on Democracy, Political, Economic and Corporate Governance in which Member States recommit themselves to the promotion of democracy and its core values of a just, honest, transparent, accountable and participatory government and probity in public life;

CONSCIOUS OF the importance of the Conference on Security, Stability, Development and Cooperation (CSSDCA) and New Partnership for Africa's Development (NEPAD), and the convergence and complementarity of their objectives in the realization of the principles and objectives of the Constitutive Act of the African Union

REAFFIRMING member state's commitment to the OAU Declaration on the Principles Governing Democratic Elections in Africa, adopted in Durban, South Africa, in July 2002, which articulates members states commitments and recognises the rights and

obligations under which democratic elections are conducted in conformity with the Constitutive Act of the African Union and the universally held principles of democracy;

TAKING INTO ACCOUNT that the Declaration on the Framework for an OAU Response to Unconstitutional Changes on Governments, adopted by the Assembly of Heads of State and Government of the OAU in Lomé, Togo in July 2000 expressed the determination to adopt a series of effective, timely, and expeditious procedures to ensure the promotion and defense of representative democracy, with due respect for the principle of nonintervention; and established a mechanism for collective action in the case of a sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically-elected government in any of the Organization's member states, thereby fulfilling a long-standing aspiration of the Continent to be able to respond rapidly and collectively in defense of democracy;

RECALLING the Memorandum of Understanding on Security Stability, Development and Cooperation in Africa, agreed at the Head of State and Government CSSDCA Conference July 2002, Durban South Africa, which recognises good governance, the unhindered exercise of and respect for human rights, the rejection of unconstitutional changes of government and transparent and credible elections are pre-requisite for sustainable peace and security as well as a necessary condition for economic development, cooperation and integration;

MINDFUL the protocol relating to the establishment of the Peace and Security Council of the African Union of 2003, which recognises that democracy and strong democratic institutions underpins sustainable security for the Continent.

BEARING IN MIND the importance of the Universal Declaration of Human Rights adopted in December 1948, as well as the International Covenant on Civil and Political Rights adopted in December 1966, which recognized the will of the people expressed through free and fair elections as the basis of the authority of government;

RECOGNISING the significance of the African Charter on Human and Peoples' Rights adopted in Nairobi, Kenya, in June 1981, which recognized the right of every citizen to participate freely in the government of his or her country whether directly or through democratically elected representatives;

RECOGNISING the importance of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which recognises that the participation of women in decision making at all levels free from discrimination strengthens the legitimacy of democratic institutions.

RECALLING the Cairo Agenda for Action adopted in Addis Ababa, Ethiopia, in 1995, which stressed the imperative of ensuring good governance through popular participation based on the respect for human rights and dignity, free and fair elections, as well as on the respect of the principles of freedom of the press, speech, association and conscience;

RECALLING FURTHER the Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the Political and Socio-economic Situation in Africa and the Fundamental Changes Taking Place in the World, adopted in Addis Ababa, Ethiopia, in July 1990 wherein OAU Member States undertook to continue with the democratization of African societies and the consolidation of the democratic institutions;

RESOLVE:

To adopt the following:

AFRICAN CHARTER ON ELECTIONS, DEMOCRACY AND GOVERNANCE

I. Democracy and the African Union System

Article 1

The peoples of Africa have a right to democracy and it is the obligation of its Governments and peoples actively to promote and defend it.

Democracy is essential for the stable, social, political, and economic development of the peoples of Africa .

Article 2

The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the African Union. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

Article 3

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

Article 4

Transparency in government activities, accountability, probity, and responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press, and freedom of association, and assembly are essential components of the exercise of democracy.

The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.

Article 5

The strengthening of political parties, parliaments, local governments, civil society and other institutions of political participation is a priority for democracy.

Special attention will be paid to the independence of the Electoral Commission, the problems associated with violence during election campaigns, and the transparent and equitable access to public resources, including the Media, for all political parties and candidates in the pre-election period.

Article 6

It is the right and responsibility of all citizens to participate in decisions relating to their own development and it is the responsibility of governments to create an enabling environment. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation, including enabling dialogue between governments and civil society strengthens democracy.

II. Democracy and Human Rights

Article 7

Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, and interdependence, embodied in the respective constitutions of states, and African and international human rights instruments.

Article 8

Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the African system for the promotion and protection of human rights in accordance with its established procedures.

Member states reaffirm their intention to strengthen and to comply with the African system for the protection of human rights for the consolidation of democracy in the Continent.

Article 9

The elimination of all forms of discrimination, especially those based on gender, ethnic and race discrimination as well as diverse forms of intolerance, the promotion, inclusion and protection of human rights of women, ethnic minorities, migrants, disabled, refugees and displaced persons or any other disenfranchised groups.

Respect for ethnic, cultural and religious diversity in Africa contribute to strengthening democracy and citizen participation.

Article 10

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adapted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace, enhancing the quality of life for workers and by promoting social policies in the Continent. .

III. Democracy, Sustainable Development, and Combating Poverty and Illiteracy, and Conflict

Article 11

Sustainable stability in Africa demands the establishment and strengthening of democratic structures and accountable and transparent governance based on the rule of law and the elimination of corruption.

Conflict is one of the most serious threats to democracy and development in Africa. The AU members commit themselves to promote peace, security and stability in their respective countries, regions and in the continent by fostering participatory political systems with well functioning inclusive institutions, by promoting solidarity with other countries and by supporting the conflict prevention and resolution initiatives that the AU may undertake.

Article 12

Poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy in Africa. The AU member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty and illiteracy, taking into account the different economic realities and conditions of the countries of the Continent . This shared commitment to address the problems associated with development and poverty also underscores the importance and the obligation to strengthen social awareness, cohesion and democracy.

Article 13

The promotion and observance of economic, social and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Continent .

Article 14

Member states agree to review periodically the actions adopted and carried out by the AU to promote dialogue, cooperation for integral development, and the fight against poverty, illiteracy in the Continent, and to take the appropriate measures to further these objectives.

Article 15

The principles of democracy and popular participation, equal opportunity and equitable access and transparent redistribution of resources for all people must underlie all development objectives and strategies;

Partnership, trust and transparency between leaders and citizens will be critical to ensure sustainable development, based on mutual responsibilities and a shared vision.

It is essential that the African states implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations.

Article 16

Education is key to strengthening democratic institutions, promoting the development of human potential, alleviating poverty and fostering greater understanding among African peoples. To achieve these ends, it is essential that a quality education be available to all, especially girls and women, rural inhabitants, minorities, disabled and other disfranchised groups.

IV. Strengthening and Protecting Democratic Institutions

Article 17

It is the obligation of member states to uphold the principles of democracy and to strengthen and protect democratic institutions. Strict adherence to these principles and the strengthening of democratic institutions reduces the risk of unconstitutional change. It is the responsibility of the African Union to support all efforts aimed at promoting adherence to these principles.

Article 18

When situation arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the AU Commission, at the behest of any member state, the Chair of the AU or the Commission itself, may

arrange for visits or other actions in order to analyze the situation. The AU Commission will submit a report to the Assembly, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening as agreed under the security and stability pillars of the CSSDCA Solemn Declaration. These decisions may include, but are not limited to the deployment of; diplomatic missions and good offices, mediators, peace monitors, peacekeepers, peacemakers and peace-enforcers.

Article 19

Based on the principles of the Constitutive Act of the AU and subject to its norms, and in accordance with the Declaration of Lomé, an unconstitutional interruption of the democratic order or an unconstitutional alternation of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the Assembly, the Executive Council, Permanent Representatives Committee, Specialized Technical Committees, Economic, Social and Cultural Council, Financial institutions of the AU, the specialized conferences, the commissions, working groups, and other bodies of the AU.

An unconstitutional change is recognised as;

- a military coup d'état against a democratically elected government;
- intervention by mercenaries to replace a democratically elected government;
- the replacement of democratically elected government by armed dissidents and rebels;
- or the refusal of an incumbent government to relinquish power to the winning party after free, fair and regular elections.

Article 20

In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state, the Chairperson of the Assembly or the Chairperson of the Peace and Security Council may request the immediate convocation of the Assembly to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

The Peace and Security Council, depending on the situation, may adopt decisions for the restoration of the democratic system and its strengthening as agreed under the security and stability pillars of the CSSDCA Solemn Declaration. These decisions may include, but are not limited to the deployment of; diplomatic missions and good offices, mediators, peace monitors, peacekeepers, peacemakers and peace-enforcers.

If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Peace and Security Council shall immediately convene a special session of the Assembly. The Assembly will adopt the decision it deems appropriate, including the undertaking of diplomatic initiatives, in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter.

The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process.

Article 21

When the special session of the Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the AU by an affirmative vote of two thirds of the member states in accordance with the Constitutive Act of the African Union . The suspension shall take effect immediately.

The suspended member state shall continue to fulfill its obligations to the AU, in particular its human rights obligations.

Notwithstanding the suspension of the member state, the AU will maintain diplomatic and other initiatives to restore democracy in that state.

Article 22

Once the situation that led to suspension has been resolved, any member state or the Chair of the Commission may propose to the Assembly that suspension be lifted. This decision shall require the vote of two thirds of the member states in accordance with Constitutive Act of the African Union. .

V. Democracy and Free and Fair Elections

Article 23

Member states are responsible for organizing, conducting, and ensuring free and fair electoral processes.

Member states, in the exercise of their sovereignty, may request that the African Union provide advisory services or assistance for strengthening and developing their electoral institutions and processes, including preliminary assessment, observation, monitoring and supervisory, or technical assistance missions for that purpose.

Article 24

AU missions in support of free and fair elections shall be carried out at the request of the member state concerned. To that end, the government or appropriate agency of that state and the Chair, or his or her deputies, of the Commission of the African Union shall enter into an agreement establishing the scope and type of electoral mission in question in accordance with AU guidelines. The member state shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral mission.

Electoral missions shall be carried out in accordance with the principles and norms of the AU governing democratic elections agreed in Durban, 2002. The AU shall ensure that these missions are effective and independent and, together with the member states, shall provide them with the necessary resources for that purpose. Electoral missions shall be conducted in a professional, objective, impartial, and transparent manner and with the appropriate technical expertise.

All electoral missions shall present a report on their activities in a timely manner to the Assembly through the Chair of the AU Commission.

Article 25

The electoral missions shall advise the AU Commission, if the necessary conditions and environment for free and fair elections as agreed in AU principles governing democratic elections have been satisfied.

The AU may, with the consent of the state concerned, send special advisory missions with a view to creating or improving said conditions.

VI. Promotion of a Democratic Culture

Article 26

The AU will continue to carry out programs and activities designed to promote democratic principles and practices and strengthen a democratic culture in Africa, bearing in mind that democracy is a way of life based on liberty, freedom of choice, freedom from want and fear and the enhancement of economic, social and cultural conditions for the peoples of Africa. The AU will consult and cooperate on an ongoing basis with member states and, where appropriate with civil society organizations working in those fields.

Article 27

The objective of the programs and activities will be to promote good governance, transparent and accountable administration, democratic values, and the strengthening of political institutions and civil society organizations. Special attention shall be given to the development of programs and activities for the education of children and youth as a means of ensuring the continuance of democratic values, including liberty and social justice.

Article 28

AU and its Member States shall create conditions for full and equal participation of women in the political structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.