

**THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE:
A NEW DAWN FOR THE ENTHRONEMENT OF LEGITIMATE GOVERNANCE IN
AFRICA?**

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May 2007

Introduction

In January 2007 the Assembly of Heads of State and Government of the African Union (the Assembly) adopted the African Charter on Democracy, Elections and Governance (the Charter) with the aim of reinforcing the commitment of member states of the African Union (AU) to democracy, development and peace.¹ This commitment has previously been expressed in various forms in other universal, continental and sub-regional international instruments to which all or some of the member states of the AU are parties. This essay examines the salient features of the Charter in comparison with the Protocol on Democracy and Good Governance adopted by the Economic Community of West African States (ECOWAS) in 2001 (the ECOWAS Protocol).²

The African Charter on Democracy, Elections and Governance

The transformation of the Organisation of African Unity (OAU) into the AU in 2000 completed the emergence of a new organisational focus for the continental body.³ In a departure from the OAU regime, African leaders used the AU Constitutive Act (AU Act) to record commitments to respect for democratic principles, human rights, the rule of law and good governance as well as a condemnation and rejection of unconstitutional changes of government and promotion of social justice to ensure balanced economic development.⁴ Article 4(h) of the AU Act was further expanded to empower the AU to intervene in a member state, including in the event of ‘a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council’.⁵ The AU also launched the New Partnership for African Development (NEPAD) in 2001 as a vehicle for regional development.⁶ As reflected in these events, Africa

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¹ For the justification and rationale of the Charter, see paragraph 4 of the explanatory notes of the Experts and Ministerial meeting on the draft African Charter on Democracy, Elections and Governance (Experts’ Explanatory note), (available at <http://www.africa-union.org/root/au/conferences/past/2006/april/pa/apr7/meeting.htm>) (accessed 22/3/2007).

² The full title of the ECOWAS Protocol is the Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, A/SP1/12/01, adopted in December 2001 and entered into force in 2005.

³ Beginning with the adoption of the African Charter in 1981, human rights became a central issue in the African continent. This was followed by several events all of which culminated in the adoption of the AU Constitutive Act and resulted in the change of organisational focus.

⁴ See generally art 4(h)(l)(m)(n)(o)(p) of the AU Act.

⁵ See the Protocol on Amendments to the Constitutive Act of the African Union, adopted in 2003. This Protocol is not in force, as it requires two-thirds ratification for it to come into force: as of March 2007, only 14 countries had done so.

⁶ Under NEPAD, African leaders recognised the importance of peace, security, democracy, good governance, human rights and sound economic management as conditions for sustainable development. The NEPAD Declaration was adopted in Abuja, Nigeria in October 2001 with so much promise for Africa as it engaged issues of governance through its African Peer Review Mechanism (APRM).

experienced a new wave of democratisation.⁷ But concerns at the sustainability of the changes led to initiatives that ultimately resulted in the adoption of the Charter. In April 2003, the AU, the Independent Electoral Commission of South Africa and the African Association of Electoral Authorities jointly hosted a conference on Elections, Democracy and Governance in Pretoria, South Africa. A Meeting of Government Experts held in Addis Ababa, Ethiopia in May 2004 further discussed the outcome of the Pretoria meeting and recommended the development of a Draft Charter on Democracy, Elections and Governance, based largely on existing commitments. The Charter is thus ‘a modest attempt to restate and reinforce commitments already made’ by African states.⁸

Substantive provisions

The Charter has four main areas of focus: democracy, human rights and rule of law; elections and democratic institutions; unconstitutional change of government and political, economic and social governance.. Its main objectives are to reinforce commitments to democracy, development and peace, based on principles similar to those in the AU Act and the ECOWAS Protocol.⁹

Democracy, human rights and rule of law

States agree that they ‘shall commit themselves’ to those principles and ‘shall recognise’ popular participation as a right of all people.¹⁰ Article 4(1) gives the impression that there is only a future duty on the states.¹¹ This is especially so when it is compared to the language of the ECOWAS Protocol.¹² The futuristic language of the Charter is abandoned in subsequent articles.

Article 5 obliges states to ensure constitutional rule and constitutional transfer of power.¹³ States are required to take appropriate measures to achieve this but no measures are recommended and any means may be employed to carry out this obligation. The ECOWAS Protocol demands constitutional transfer of power in member states but insists that ‘power must be through free, fair and transparent elections’.¹⁴ In fact article (1)(c) of the Protocol affirms ‘zero tolerance for unconstitutional accession to political power. The relative advantage this provision has over the Charter is that it makes a clear statement in favour of transparent elections as the foundation for constitutional rule.

⁷ Some commentators argue that this wave of democratisation in Africa is not deeply rooted since it was a reaction to external pressures and was always doomed to fail. See for eg EF Quashigah & OC Okafor, *Legitimate Governance in Africa*, Kluwer: The Hague (1999) 8.

⁸ See para 3 of the Experts’ Explanatory note.

⁹ See the Experts’ Explanatory note. The objectives of the Charter are as contained in art 2 of the Charter. Art 3 of the Charter contains the 11 principles in accordance with which the objectives may be carried out. See also art 4 of the AU Act and art 1 of the ECOWAS Protocol.

¹⁰ See art 4 of the Charter.

¹¹ However article 1 of the African Charter is couched in similar futuristic terms and that fact alone has not watered down the duty on States though it gives room for an argument that no immediate duty arises from these provisions.

¹² The principles in art 1 of the ECOWAS Protocol contain the commitments and obligations of the ECOWAS states.

¹³ Considering that article 20(1) of the African Charter recognises the right of ‘people’ to determine their political status, it is arguable that article 5 of the Charter is an extension of the right in the African Charter.

¹⁴ See art 1(b) and (c) of the ECOWAS Protocol.

Parties to the Charter also agree to guarantee the enjoyment of all human rights by their citizens and undertake to strengthen AU organs with rights promotion and protection mandates.¹⁵ The Protocol is more robust as it obliges states to guarantee rights contained in the African Charter and other international instruments without restricting rights to citizens of the state.¹⁶ However, article 8 guarantees rights of various minority groups in a manner more comprehensive than the provisions of the ECOWAS Protocol.¹⁷

Article 10 of the Charter imposes a duty on Parties to entrench supremacy of the constitution and requires that constitutional amendment be on the basis of national consensus. This is important when it is considered that frivolous constitutional amendments aimed at perpetuating the tenures of African leaders and their ruling parties seem to have replaced outright single party systems. For example in 2006, Nigeria experienced a failed attempt by the ruling Peoples Democratic Party to amend section 137(1)(b) of the 1999 Nigerian Constitution to allow for an additional term for out-going President Olusegun Obasanjo, who had already served the constitutionally approved two-four year terms. Uganda had experienced a constitutional amendment in 2005 to lift presidential term limits and allow President Yoweri Museveni to continue in office beyond the two terms allowed by the previous constitution. Similarly, the ZANU-PF in Zimbabwe manipulated the Constitution in 2000 to give President Robert Mugabe unrestricted access to power. The ECOWAS Protocol on its part makes a sweeping guarantee of the rule of law, but does not refer to constitutional amendments specifically.¹⁸

Elections and democratic institutions

In chapter 5 of the Charter,¹⁹ states undertake to develop frameworks for the establishment of a culture of democracy and peace.²⁰ No similar distinct duty exists in the ECOWAS Protocol.²¹ However, the Protocol enjoins states to use civil society organisations (CSOs) in public education and enlightenment aimed at peaceful elections.²² Considering that the state in Africa is hardly differentiated from the incumbent government, the ECOWAS regime in this regard is preferable as CSOs are more likely to give unbiased civic education.²³

¹⁵ See arts 6 and 7 of the Charter. The AU organs referred to in article 7 would exclude the African Commission on Human and Peoples Rights and the African Court on Human and Peoples' Rights as currently constituted because they are not organs of the AU.

¹⁶ The ECOWAS Protocol also makes such rights justiciable within the national systems offering itself as the legal basis for conferring jurisdiction in this respect in the event that such a legal basis is lacking in any ECOWAS member state. See art 1(h) of the ECOWAS Protocol.

¹⁷ The rights of the listed minority and/or vulnerable groups are guaranteed from an especially non-discriminatory perspective. See arts 1(g), 40, 41, 42 and 43 of the ECOWAS Protocol for the equivalent provisions.

¹⁸ See sec VII of the Protocol.

¹⁹ Arts 11 to 13.

²⁰ States further undertake to strengthen political institutions, promote civic education and create an environment for civil society participation.

²¹ Sec VI of the ECOWAS Protocol deals with issues of education, culture and religion. Art 29 of the Protocol recognizes education, culture and religion as essential for peace, stability and development in the member states.

²² See art 8 of the ECOWAS Protocol.

²³ See NP Nkwi 'Democratic governance in Africa: a decade of misconceptions' (2002) UNESCO Occasional papers, 10 on the lack of distinction between the state and incumbent governments in Africa.



Chapter 6 of the Charter requires states to institutionalise civilian control of the military and to punish unconstitutional overthrow of democratic governments.²⁴ The innovation here may be in article 14(3) which calls for inter-state cooperation to tackle impunity in this area. Again there is the challenge of sovereignty and more especially the room for abuse as ‘stronger states could use this as a ‘blank cheque’ for interference in the politics of other member states. Going further than the Charter, the ECOWAS Protocol devotes a section to the role of armed and security forces in a democracy.²⁵ The language of the Protocol seems also to place a duty directly on the armed institutions themselves, and suggests a subregional cooperation (that includes the ECOWAS institutions) for the achievement of non-partisan and human rights- conscious armed forces.²⁶

States are also obliged by the Charter to establish independent national democratic institutions for the protection of democracy.²⁷ The ECOWAS Protocol requires, more demandingly, that ‘bodies responsible for organising ... elections ’be independent, neutral and have the confidence of all the political actors’.²⁸ Though a more difficult benchmark, the requirement that national institutions enjoy the confidence of all political actors is essential for the validity of electoral processes. The Protocol also places emphasis on a reliable voters register.²⁹ In view of the importance of a comprehensive voters’ register to successful elections, this is a very vital provision. It is however lacking in the Charter.

By article 17 of the Charter, states re-affirm their commitments to hold regular, transparent, free and fair elections and lay down the conditions necessary for this. Article 17(4) requires national political stakeholders’ commitments to accept election results or to challenge results only through legal channels. On its part, the ECOWAS Protocol prohibits substantial modification of electoral laws six months before elections, except with the consent of a majority of political actors.³⁰ While requiring losing candidates and parties to concede defeats, it emphasises that the electoral process must be transparent and incumbent holders of state power must refrain from harassing defeated candidates.³¹ It is only where these standards are met that a moral obligation can accrue against losing parties and candidates to accept election results. The 2006 election in the Democratic Republic of Congo and the subsequent unrest is a clear example of the risk that states face where the opposition or losing parties lack faith in the election process. The ECOWAS Protocol also requires petitions relating to elections to be heard and disposed of as soon as practicable.

Both the Charter and the ECOWAS Protocol include articles relating to the provision of electoral assistance to states, but the ECOWAS Protocol is notably stronger. Both instruments provide for electoral assistance, electoral observer missions and exploratory missions.³²

²⁴ See art 14 of the Charter. The challenge in this regard is the means of carrying out this duty. Most African constitutions entrench constitutional rule and criminalize military coups d’etats (usually under criminal law) yet this fact alone has never deterred coupists.

²⁵ Sec IV comprising of arts 19 to 24 of the ECOWAS Protocol.

²⁶ Art 22 of the ECOWAS Protocol is especially important in this regard.

²⁷ See art 15 of the Charter. It should be noted that the right to participate under art 13 of the African Charter is sufficient ground for the establishment of national democratic institutions.

²⁸ See art 3 of the ECOWAS Protocol. Nkwi (n 23 above) suggests that electoral institutions must pass a ‘test of ignorance’.

²⁹ Arts 4, 5, and 6 of the ECOWAS Protocol contain elaborate provisions in this regard.

³⁰ Art 2 of the ECOWAS Protocol.

³¹ Arts 6, 7, 9 and 10 of the ECOWAS Protocol touch on the expected minimum standards for valid elections.

³² See arts 18 and 19 of the Charter as well as sec III of the ECOWAS Protocol.

However while the Charter requires states to invite the AU to send advisory missions and observer missions³³, under the ECOWAS regime provision of electoral assistance is at the request of the state concerned, while election monitoring is a decision of the Chairperson of the ECOWAS Commission.³⁴ Further, whereas the Charter requires the AU electoral observer missions to present a report to the Chairperson of the AU Commission within a reasonable time, the Protocol lays down detailed guidelines for ECOWAS Observer missions and requires a signed report to be submitted within 15 days of the completion of the assignment.³⁵ Similarly, while the Charter requires the Chairperson of the AU Commission to submit the report to the state party concerned within a reasonable time, the Protocol enjoins the Chairperson of the ECOWAS Commission to make his own observations and to forward it along with the report of the Observer mission to the Mediation and Security Council of ECOWAS for recommendations to be made to the state party concerned and/or all member states and for necessary measures to be taken.³⁶ The failure to specify a definite timeframe makes the Charter provision less desirable than the equivalent provision in article 18 of the Protocol.

The provision for forwarding the report of the mission along with necessary comments to all member states gives room for all states to learn from the experience of each state. It also provides a subtle enforcement opportunity in the sense that it can be a ‘naming and shaming’ device of some sort. The clause ‘and for measures to be taken, where necessary’ indicates that the report may be a basis for sanctions against the state party concerned if it is damning. This is a promise for constructive use of the findings that is lacking in the Charter.

The Protocol also allows for a fact-finding mission before elections in a member state, followed by an exploratory mission and finally the Observer/Supervisory mission so that ECOWAS is involved in the whole process of elections from preparations to announcement of results.³⁷ The Observer missions under the ECOWAS system is to remain in a country till elections results are announced. The assessment by the mission is expected to comprise both the mission’s own observations and statements by independent witness, both assessment being made from the point of view of the national electoral laws and the universal principles on electoral matters. It is also noteworthy that (probably in order to ensure independence of the mission), there is provision for staff of ECOWAS to precede the mission and to facilitate its work in the given state. This is not provided for in the Charter.

Unconstitutional change of government

Article 23 of the Charter identifies five situations that the AU considers as unconstitutional changes of government, including the refusal of incumbents to relinquish power after fair elections and the fraudulent amendment of constitutions. The ECOWAS Protocol proclaims ‘zero tolerance for power obtained or maintained by unconstitutional means’ but does not define what this means.³⁸ Article 25 of the Charter restrains perpetrators of unconstitutional

³³ See arts 18 and 19 of the Charter.

³⁴ With the transformation of the Executive Secretariat of ECOWAS into a Commission, the Executive Secretary of ECOWAS is now known as the Chairperson of the ECOWAS Commission.

³⁵ See art 17 of the ECOWAS Protocol on the detail guidelines for Observer missions.

³⁶ See art 21(4)(5) of the Charter for the AU regime on election missions.

³⁷ See art 16 of the ECOWAS Protocol. For eg, a fact-finding mission headed by Sir Dauda Jawara visited Nigeria on 1 February 2007 ahead of that country’s April general elections (see <http://news.ecowas.int/en/pressshow> (accessed 10/4/2007).

³⁸ Art 1(c) of the ECOWAS Protocol.

changes from participating in elections to restore democracy.³⁹ Preventing such perpetrators from contesting is very relevant considering the appetite they have for transforming themselves into democrats and legalizing their illegalities in the name of restoring democracy. The experiences of Burkina Faso and Togo are illustrative in this regard. President Blaise Compaoré has remained in power in Burkina Faso since 1987, first as a military ruler and then transforming himself to a civilian president through elections he conducted in 1991. Similarly, President Faure Eyadéma of Togo, who was installed by military fiat after the death of his father in 2005, has remained in office after winning elections held to transform him from a military installed leader to a democratic president. Following international pressure, Eyadéma briefly handed over power to an interim leader on 25 February 2005 till 3 May 2005 when he was sworn after elections held to ‘democratize’ him.

The provision for perpetrators to be tried before competent courts of the AU is innovative.⁴⁰ However, it raises the question of a proper forum as the AU currently lacks any judicial forum with criminal jurisdiction. A reading of the protocols establishing the African Court of Justice and the African Court on Human and Peoples’ Rights show that neither of these judicial institutions is competent to exercise jurisdiction in this regard. While it is not impossible for the AU to grant such a jurisdiction or establish an institution in the mould of the International Criminal Court, nothing in the present Charter or AU Act remotely suggests such an eventuality. In the absence of an appropriate forum and with no evidence of an intention to create one, it is not clear why such a provision was added to the Charter.

The Charter also imposes duty on states to refrain from harbouring perpetrators of unconstitutional changes of government.⁴¹ This provision is almost a direct challenge to article 1(l) of the ECOWAS Protocol, which grants privileges to former Heads of state without distinction to the manner they got into office. By offering ‘a special status including freedom of movement’ to former heads of state, the Protocol seems to be endorsing impunity. This is hardly surprising, when it is considered that West Africa has experienced the most military overthrows of democratic government. In fact most of the former military leaders have played major roles in the evolution of ECOWAS and they still constitute the bulk of the Community’s elders and eminent persons. Hence former Nigerian military rulers like General Yakubu Gowon, General Ibrahim Babangida and General Abdusallami Abubakar have at various times been engaged by ECOWAS in different roles.

Political, economic and social governance

In chapter 9 of the Charter, the states commit to advance political, economic and social governance. The sub-themes in this chapter are as diverse as they are numerous. Issues such as strengthening of parliamentary capacity and judicial sector reforms are lumped together with effective private and public sector management, fighting corruption and combating the spread of disease. These so-called commitments are so lacking in definition that they give the impression of unserious attachments to the Charter. Matters such as the role of women in the

³⁹ While it is not so stated expressly, it is arguable that this applies to participation as candidates and does not remove their rights to vote as current state practice relating to elections is to prevent certain categories of ex-convicts from contesting elections rather than preventing them from voting. In any case, the single vote of such individuals would have very little impact on the overall outcome of any election.

⁴⁰ See art 25(5). The problem with these provisions lies in the challenge in enforcement.

⁴¹ Art 25(8). In this regard, extradition treaties are advocated. This is very necessary to tackle the challenge of impunity in Africa.

institutionalisation of democracy are also contained in this part of the Charter.⁴² Social and economic rights that are largely untapped in the African Charter are reproduced in this chapter.⁴³ Other issues such as the decentralisation of power to local government and the need to integrate traditional rulers into the process of government are also brought to focus here.⁴⁴

The ECOWAS Protocol devotes three sections to the some of the issues covered by chapter 9 of the Charter.⁴⁵ The regimes are similar even though the Charter covers more ground and is more extensive than the Protocol.

Enforcement and implementation provisions

The proposed means to ensure implementation of the Charter leave much to be desired. The enforcement mechanism begins with articles 24 and 25, which invoke the powers of the AU Peace and Security Council (PSC) in situations disrupting democratic governance in member states.⁴⁶ They allows for diplomatic initiatives to restore democratic governance, failing which the PSC may suspend a state party from participating in AU activities.⁴⁷ The nature and types of diplomatic initiatives to be exhausted are not specified. There is also no indication as to which body is expected to initiate diplomatic efforts. The suspension of a state does not remove its obligations to the AU (especially in the area of human rights) and the AU is required to continue diplomatic contact aimed at restoring democratic governance.

Chapter 10 of the Charter contains the ‘mechanisms for application’. It divides the duty of application between individual states and the Commission of the African Union.⁴⁸ Article 44 places a duty of implementation on states by requiring them to initiate legislative, executive and administrative measures to conform national laws and policies to Charter duties. A duty of dissemination also lies with the states.

The Charter also puts a two-level duty of implementation on the Commission. At the continental level, the AU Commission is expected to develop a benchmark for states to comply with, facilitate the harmonisation of the policies and laws of state parties and make funds and technical assistance available from the Democracy and Electoral Assistance Fund and Unit (respectively) where such assistance is needed by states. The AU Commission is also charged with the responsibility of ensuring ‘that effect is given to decisions of the AU relating to unconstitutional changes of government’ -- yet the Charter is silent on how this is to be more effective than action by other organs of the AU.⁴⁹ At the regional level, the Commission is required to establish cooperation with the regional economic communities, to encourage ratification of, and adherence to the Charter and to designate focal points for

⁴² See art 29 of the Charter. Concerning women, the provisions are mere reproduction of more enforceable duties contained in the African Charter and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. See also art 18 of the African Charter.

⁴³ For eg environmental rights, and what may be termed a right to education are covered: articles 42 & 43.

⁴⁴ See arts 34 and 35 of the Charter.

⁴⁵ See secs V, VI, VIII of the ECOWAS Protocol.

⁴⁶ Art 24 of the Charter. The power to be exercised by the Peace and Security Protocol (Peace Protocol) is in accordance with the Protocol Establishing the Peace and Security Council (PSC).

⁴⁷ Art 25(1)(2)(3) of the Charter. This provision is in accordance with the provisions of art 30 of the AU Act and art 7(g) of the Protocol establishing the Peace and Security Council.

⁴⁸ It provides no role for the African Commission on Human and Peoples’ Rights, responsible for enforcement measures in relation to the ACHPR.

⁴⁹ Art 44(2)(A)(d).

coordination, evaluation and monitoring. The provisions do not show any serious potential for implementation beyond restating duties already imposed on the states.

Similarly to the African Charter on Human and Peoples' Rights (ACHPR), there appears to be room for submission of 'state reports' related to the Charter on Democracy.⁵⁰ Copies of the 'state reports' are to be submitted to the relevant organs of the AU for appropriate action. Reports are to be submitted after every two years from the date of the Charter's entry into force. The reference to relevant organs here would be to those in article 5 of the AU Act (as amended). These include the Assembly of the AU, the Executive Council, the Pan African Parliament, The Court of Justice, the Commission, the Permanent Representative Committee, the Specialised Technical Committees, the Economic, Social and Cultural Council, the Financial institutions and (by the virtue of the amendment to the AU Act) the Peace and Security Council. Of all these organs, only the Assembly has any strong potential for enforcement. The Pan African Parliament though competent, does not seem to have any means to implement the Charter. The competence of the Court of Justice may be stretched to cover this area but it is uncertain how a decision by the Court can be effectively enforced against a violating state. The Court is clearly incompetent to hear a matter of a criminal nature and cannot (as it currently stand) hear any criminal case against perpetrators of unconstitutional change of government. The Peace and Security Council's responsibilities in relation to the Charter are already laid out in art 25. Viewed as it is, the mechanism for application and implementation is weak. However, the Assembly is required to take appropriate measures on issues arising from the report on implementation submitted by the Commission.⁵¹ The lack of forum for the proposed trial of perpetrators of unconstitutional changes is another concern.⁵² Considering that this is a freestanding instrument, it is doubtful if the Charter can even form the basis of a communication under the individual complaint mechanism of the African Commission on Human and Peoples' Rights created by the African Charter, even though it could be argued that the entire Charter on Democracy is an elaboration of the right in article 13 of the ACHPR of every citizen 'to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law'.⁵³

For implementation of the ECOWAS Protocol, it is essential to read it along with ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacemaking and Security (ECOWAS Peace Protocol) as the Protocol is supplementary to that Protocol and provisions for implementation in the latter complement those contained in Chapter V of the former.⁵⁴ In the event of an unconstitutional overthrow of democratic

⁵⁰ See art 49 of the Charter.

⁵¹ Art 49(4) of the Charter. There is no clue as to what would be appropriate measures. The report is to be submitted by the AU Commission through the Executive Council. Interestingly, the African Charter on Human and Peoples' Rights also did not specify what body should examine the state reports it required to be prepared, and the African Commission on Human and Peoples' Rights itself proposed that it take the would be responsible for the examinations, a proposal endorsed by the Assembly.

⁵² See art 25(5) of the Charter. It is not suggested anywhere that any Protocols will be made or amended to cater for this situation. This leaves that provision completely 'lame'.

⁵³ See for eg the challenges of the African Charter on the Rights and Welfare of the Child in this regard.

⁵⁴ See art 44 of the ECOWAS Protocol. By article 26 of the ECOWAS Peace Protocol, the authority to initiate the enforcement mechanism may be exercised by the (ECOWAS) Authority, Mediation and Security Council, request of a Member state, the Executive Secretary (read Chairperson of Commission) or at the request of the AU or the UN. Four options may be used where there is need for application. These are recourse to Council of

governance or massive violation of human rights, ECOWAS may impose sanctions on state parties.⁵⁵ Sanctions range from refusal to support candidates of the violating state for international elective positions to suspension of the state party from ECOWAS decision-making bodies.⁵⁶ From the perspective of individual enforcement, the Protocol provided the basis for expanding the jurisdiction of the ECOWAS Court of Justice to include competence on complaints of human rights violations.⁵⁷ The Protocol gives room for the making of supplementary protocols to cater for mutual assistance in criminal matters and extradition.⁵⁸ No state reporting mechanism exists under the Protocol. Whereas the Charter places the duty of initiating implementation on the AU Commission, implementation of the Protocol effectively involves heads of states of ECOWAS member states through the Mediation and Security Council.⁵⁹

The ECOWAS Protocol has been put into effect a few times since it came into force.⁶⁰ In February 2005 ECOWAS imposed sanctions on Togo as a result of the undemocratic imposition of Faure Eyadéma as president by the Togolese military. The sanctions forced Mr. Eyadéma to hand over power to an interim president within the same month. The Protocol was also put into effect in May 2006 with the deployment of a fact-finding mission to assess security, social, humanitarian and political conditions in Guinea Bissau. Similar missions were sent to The Gambia in August 2006, Guinea in February 2007, Nigeria in April 2007 and Mali in April 2007.⁶¹ These missions and election monitoring devices of ECOWAS have not impacted so much on the standards of the elections as the missions have almost always endorsed the elections as substantially reflecting the will of the people of the given states. However, they have put some pressure on ECOWAS states to give an appearance of compliance with democratic standards. One bold exception to the practice of ECOWAS missions was the apparent condemnation of the April 2007 Nigerian elections, as the mission asserted the need for major electoral reforms in the country even though it had called for restraint by the opposition. The Protocol also prompted the endorsement in October 2006 of a Code of Conduct for Armed and Security forces in the region. Although much more is required for the Protocol to be heralded as a total success, these events suggest the existence of a political will for its application.

Elders, dispatch of fact-finding missions, political and mediation and (as a last measure) intervention by military action. See art 27 of the ECOWAS Peace Protocol.

⁵⁵ Art 45 of the ECOWAS Protocol. If this Protocol is read along with the ECOWAS Peace Protocol, sanctions may be preceded by other more peaceful and reconciliatory options as stated above.

⁵⁶ Art 45 of the ECOWAS Protocol may be interpreted to mean that while the state party is suspended from the decision-making bodies of ECOWAS, its membership is not suspended so that it may attend all non-decision-making fora.

⁵⁷ See art 39 of the Protocol on the basis of which the 2005 Supplementary Protocol of the ECOWAS Community Court of Justice was made.

⁵⁸ See art 44(2) of the Protocol. The closest the Charter comes in this regard, is to require state parties to encourage conclusion of bilateral extradition agreements and other legal instruments for mutual legal assistance.

⁵⁹ As compared to the ECOWAS Protocol, the AU regime creates room for bureaucratic worries. See art 8 of the ECOWAS Peace Protocol for the composition of the Mediation and Security Council.

⁶⁰ Records of how the Protocol has been applied can be found in <http://news.ecowas.int/en/pressshow>.

⁶¹ In this regard, ECOWAS has been actively involved in monitoring elections and has observed elections in Cape Verde, Bénin, Burkina Faso, The Gambia, Ghana, Guinea Bissau, Niger, Nigeria, Senegal and Togo. See ECOWAS Press Releases available at <http://news.ecowas.int/en/presseshow.php> (accessed 7/4/2007).



Conclusion

Considering the erstwhile largely non-binding nature of the commitments to democratic governance in Africa, the Charter is a positive development. It is the beginning of new expectations because democratic consolidation is only feasible with a people-leaders partnership.⁶² This is especially as democratic governance has been established as the foundation required for development in Africa. However, the commitment made in the Charter falls short of expectations in certain areas particularly in comparison with the Protocol. The internal mechanism for implementation also raises serious doubts on the real commitment of Africa's leaders. It is hoped that civil society in Africa will introduce innovations to ensure adherence to the ideals in the Charter. It is also hoped that regional economic communities will provide the much-needed building blocks for implementation of this Charter.

⁶² See Kofi Annan 'Africa's new spirit of democratic empowerment: Continent's sobering challenges' (speech presented as UN Secretary-General at the Harvard University's Kennedy School on 25/04/2002) available at <http://www.un.org/News/Press/docs/2002/sgsm8209.doc.htm> (accessed 22/3/2007).