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DRAFT REPORT OF THE PANEL OF THE WISE
ON STRENGTHENING THE ROLE OF THE AFRICAN UNION
IN THE PREVENTION, MANAGEMENT AND RESOLUTION OF
ELECTION-RELATED DISPUTES AND VIOLENT CONFLICTS IN AFRICA

At its 10th Ordinary Session held in Addis Ababa, from 31 January to 2 February 2008, the Assembly of the Union adopted decision Assembly/AU/Dec. 187(X) on the situation in Kenya following the presidential election of 27 December 2007. In that decision, the Assembly, *inter alia*, stressed the need to initiate a collective reflection on the challenges linked to the tension and disputes that often characterize electoral processes in Africa, including the strengthening of African capacity at national, regional and continental levels to observe and monitor elections. At its 109th and 115th meetings held on 21 January and 14 March 2008, respectively, and devoted to the situation in Kenya, the AU Peace and Security Council also stressed the need to initiate such a reflection.

In response to these decisions, and as part of its work programme for 2008 as endorsed at its 3rd meeting held on 18 February 2008, the Panel of the Wise decided to devote that year's reflection on a thematic issue relevant to conflict prevention specifically problem of election-related conflicts. Subsequently, the Commission put together a team of consultants to prepare a report on the subject that would form the basis for the recommendations that the Panel intends to submit to the Assembly of the Union. The main terms of reference for the work that culminated in this report included the following:

- review issues of elections and electoral practices in the context of the democratization processes initiated in the 1990s, with particular attention to political violence and electoral disputes;
- assess the causes, manifestations, and impact of electoral disputes on the democratization processes in Africa;
- review issues such as the technical capacity of electoral organs, the composition, independence and funding of electoral commissions, and other similar organs, the demarcation of electoral areas, the registration of voters, campaigns, political party financing, access to media, and their impact on the conduct of elections;
- examine the role and contribution of international observers on electoral processes in Africa, including observers from outside the continent;
- review relevant AU instruments on elections, democratization, and good governance, and evaluate their impact on the efforts aimed at improving the conduct of elections and democratisation in Africa;
- make concrete proposals on how the AU can more effectively address electoral related-disputes and conflicts, including through long-term and operational prevention strategies, as well as on the enhancement of the African capacity to observe elections at national, regional, and continental levels.

In achieving the above TORs, the consultants met with officials and staff of the AU Commission, as well as with representatives of the UN and the European Union involved in election related matters.

At its third meeting, held in Algiers, Algeria, from 12 to 14 October 2008, the Panel of the Wise requested the Commission to convene a workshop in Nairobi to review the report prepared by the team of consultants. This workshop took place from 26 to 27 December 2008, and was attended by members of the AU Panel of the Wise, representatives of the Regional Economic Communities (RECs), African think tanks and civil society organizations, as well as the United Nations, the European Union and other stakeholders. The representatives of the Chair of the Union and the Chair of the PSC for the month of November 2008 also attended the meeting. The workshop was addressed by the Kenyan Minister for Foreign Affairs who seized the opportunity to expound on the Kenyan experience following the December 2007 General Elections. The Minister stated that the issue of election-related conflicts was so crucial to the future of the democratization processes in the continent that it required the active involvement of all concerned.

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LIST OF ABBREVIATIONS

AAEA: African Association of Electoral Authorities
APRM: African Peer Review Mechanism
AU: African Union
AUC: African Union Commission
CBOs: Community-Based Organisations
CEWS: Continental Early Warning System
CSOs: Civil Society Organisations
CSSDCA: Conference on Security, Stability, Development and Cooperation in Africa
DEAF: Democracy and Electoral Assistance Fund
DEAU: Democracy and Electoral Assistance Unit
ECF: Electoral Commissions Forum of the SADC Countries
ECOWAS: Economic Community of West African States
EISA: Electoral Institute of Southern Africa
EMBs: Election Management Bodies
PAP: Pan-African Parliament
PCRD: Post-Conflict Reconstruction and Development
PSC: Peace and Security Council
OAU: Organisation for African Unity
NEPAD: New Partnership for Africa's Development
MOU: Memorandum of Understanding
RECs: Regional Economic Communities
SADC: Southern African Development Community
TORs: Terms of Reference

EXECUTIVE SUMMARY

Elections are the hallmark of representative democracy, allowing people's regular input and voice in choices about leaders and policy programs. Yet they are also competitive processes, unleashing conflict and tensions that, if not constructively managed, could potentially destabilize the fabric of states and societies. Since the new wave of democratization in Africa in the early 1990s, elections have become a core ingredient of popular participation in the governance process. At the same time, elections have spawned conflicts and violence and scrambled ethnic and regional alliances that sometimes threaten the social order, economic development, and efforts to strengthen regional integration. With the steady decline of some of the causes of African conflicts, elections have emerged as one of the major sources of conflicts across Africa. The challenges occasioned by election-related conflicts and political violence underscore the importance of building institutions that balance competition with order, participation with stability, and contestation with consensus.

In recognition of the escalation of election-related conflicts and political violence, the Panel of the Wise decided to reflect judiciously on mechanisms and modalities of ensuring that elections contribute to sustainable democratic governance and peace through pro-active strategies aimed at preventing, managing, and resolving election-related conflicts and redressing political violence. This task was considered even more significant because since the late 1980s, the AU and its predecessor, the Organization of African Unity (OAU), have expended considerable resources and energies in the articulation, elaboration, and implementation of various principles and protocols on the fundamentals and foundations of democratic governance and peace. At this decisive phase of Africa's democratization, election-related conflicts and political violence retard the gains made by the OAU/AU thus far in their various efforts towards building a democratic and peaceful Africa. This report seeks to address measures to pre-empt election-related conflicts and political violence against the backdrop of the progress in institution-building on democratic governance, peace, and security by the OAU/AU.

This report outlines the record of Africa's democratization since the 1990s, pointing to the major milestones in building pluralism, participation, and accountability. The background is instructive in highlighting the significance of democratization processes in enhancing stability in Africa. It also reviews the causes and consequences of electoral violence and political conflicts over the years. In examining the various attempts by the AU to construct a wide range of protocols and principles that have solidified and domesticated democratic practices and patterns, the report seeks to emphasize the progress Africa has made with regard to the evolution of mechanisms for orderly participation and political inclusiveness. The conclusions and recommendations reiterate the significance of African ownership of African electoral challenges by constructing more robust electoral governance and administration systems. The report also suggests the importance of the Panel of the Wise to work collaboratively with other AU institutions and Regional Economic Communities (RECs) to find new approaches to mitigate election-related conflicts and political violence.

The main recommendations in this report proceed from three assumptions. First, marked progress has been realized in enshrining democratic standards, rules, and best practices pertaining to the conduct and organization of free and fair elections in Africa. Second, continental reform initiatives such as the African Peer Review

Mechanisms (APRM) have recently acknowledged that gaps and loopholes do exist in Africa's electoral architecture and mechanisms that need to be addressed in order to boost their efficacy and legitimacy. Third, since not all elections in Africa lead to political violence and conflicts, it is important for intervention mechanisms to be tailored toward countries where elections may exacerbate violence. In managing future instances of political and electoral violence, external actors, particularly the AU, RECS, and international partners need to craft measures that prioritize countries that are prone to problematic elections. The recommendations are, therefore, grouped under six clusters: (a) Preventive diplomacy and Early Warning Mechanisms; (b) Electoral Governance and Administration; (c) AU Coordination and Electoral Assistance; (d) Post-Election Conflict Transformation Mechanisms; (e) AU's coordination of Electoral Assistance; and International Cooperation and Partnerships; and (f) the Strategic Interventions by the Panel of the Wise.

Cluster I: Preventive and Early Warning Mechanisms

It is critical for all institutions of the AU to invest in preventive and early warning mechanisms geared toward countries that have a history of electoral violence or reveal signs of erupting into conflicts because of competition occasioned by political contestation and elections. The wealth of socioeconomic and political information on African countries generated by the APRM, the AU Situation Room, academic and policy research, and media reports should form part of the collective knowledge that informs decisions about potential electoral hotspots. In the face of severe constraints on resources, it is important for the AU to evolve strategic interventions measures that focus on countries in need. Since the Panel of the Wise is a critical pillar in the AU's conflict preventive repertoire, it is well-positioned to provide a leadership role in developing early warning mechanisms to forestall electoral violence.

Cluster II: Electoral Governance and Administration

Electoral governance and administration are embedded in wider constitutional rules that define and delineate political competition over state power in each AU member state. These rules are, in turn, influenced by the social, cultural, demographic matrixes that characterize various African countries. Recent experiences in electoral violence and political conflict reflect unresolved questions of constitutional design arrangements among Africa's diverse societies. While Africa's electoral systems should reflect regional, ethnic, and demographic needs and variations, the pattern of high stake winner-takes-all electoral systems seem to be one of the major causes of violence and political instability. Africa should make deliberate efforts to progressively and creatively move towards electoral systems that broaden representation, recognize diversity, respect equity, and respecting majority rule, while at the same time protecting minority rights. In the recent past, a trend of post-electoral crisis power-sharing arrangements has been on the ascendancy. There is a sense in which issues of justice and peace-building could justify this trend in some instances. However, there is a serious concern that if this trend is not well managed, it may spiral out of control and become a political tool abused for manipulation of the democratic process and the annulment of the people's democratic vote during elections. If this be the case, then an undesirable development is likely to be the decline of public trust in democratic institutions and elections which may lead to withdrawal of people's participation in the democratic process and especially in elections manifested by low voter turn out,

among others. There is need for sturdy constitutional, institutional and legal frameworks to build a firm foundation for electoral governance and administration.

Cluster III: AU's Coordination of Electoral Assistance

The involvement of the OAU/AU in elections, mainly through observation is traceable to the early 1990s. Between 1990 and 2008, the OAU/AU has observed about 200 elections throughout the continent. This is a commendable record by all indications. Although the AU continues to observe elections, the process itself has to be deliberately professionalised. It has to be more technical and less political and diplomatic. To this end, a lot of assistance has to be given to the AU Department of Political Affairs, through its Electoral Assistance Unit, to coordinate elections more efficiently and effectively. The Electoral Assistance Unit, working in concert with the Electoral Assistance Trust Fund, could change the electoral landscape in Africa in such a way that it promotes political stability, peace, democracy and good governance.

Cluster IV: Post-Election Conflict Transformation Mechanisms

The AU and RECs have a wide array of institutions with the competence to manage post-electoral crises in a timely fashion. The most significant question is when and how the AU can mobilize the various institutional energies to make a difference in countries convulsed by electoral violence. The roles of these institutions hinge on their preparedness and their ability to coordinate with each other in transforming violent and uncertain post-electoral contexts into peaceful, fair and just outcomes that respect democratic norms. There are also lessons from the Kenya and Zimbabwe cases on how the AU should coordinate diverse intervention mechanisms in post-election conflict transformation.

Cluster V: International Cooperation and Partnerships

International actors constitute a vital part of electoral management in Africa by mobilising funds, administrative and technical expertise, as well as the sharing of lessons of experience in democracy building efforts. As wide-scale electoral violence becomes a core issue on the African landscape, bilateral and multilateral state and non-state actors will become even more critical at each phase of the electoral cycle in terms of funding and technical assistance.

Cluster VI: Strategic Interventions by the Panel of the Wise

As a new institution endowed with the moral authority and press suasion, the Panel of the Wise is in a strategic vantage point to use its eminent position, mediation, and negotiation skills to prevent, manage, and resolve electoral conflicts on its own and through other AU structures and instruments. The small composition of its membership allows sufficient flexibility to rapidly intervene at all phases of the electoral process, particularly where crises are anticipated. The Panel's personal and professional attributes afford it wide latitude to carve a niche in electoral peacemaking and conflict prevention.

The Panel should also be capacitated in the medium-to-long-run with the technical and financial resources to sustain good offices, advisory, assessment, and technical missions. The technical back-up for the Panel's conflict management work should be provided jointly by the Department of Peace and Security and the Department of Political Affairs. The Secretariat of the Panel should be further strengthened and be in a position to link the Panel's interventions strategically to those of the two Departments relating to prevention, management and resolution of election-related conflicts. Through the burgeoning numbers of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives. Working closely with the AU and sub-regional Early Warning Mechanisms, the Panel should be periodically appraised of electoral events that may lead to violence and conflict so that it can play a role in preventing them.

The Panel can be deployed in two critical stages of elections namely the pre-voting stage, with focus on preventive diplomacy, and early warning and the post-voting stage, with focus primarily on mediation. In its interventions in the prevention, management and resolution of election-related conflicts, the Panel of the Wise should work in close collaboration with other key AU organs and other existing forums of former heads of states in Africa.

I. INTRODUCTION

1. The 2000 Constitutive Act of the African Union (AU) commits AU member states to democratic governance. The Act declares that the Union “shall promote democratic principles and institutions” (Article 3g). Various other AU documents emphasize that democracy guarantees the protection of human rights, the right to development, as well as peace and security. The commitment of the AU to democracy, peace and security is articulated in the 2002 Memorandum of Understanding on Security, Stability, Development, and Cooperation and the 2007 African Charter on Democracy, Elections and Governance. As part of its commitment to promote democratic governance, peace and security, the AU Member States have institutionalized the practice of holding regular elections. Although holding elections is important, there is also need for electoral processes to be underpinned by the culture of transparent and credible elections. The 2002 OAU/AU Declaration on the Principles Governing Democratic Elections in Africa emphasizes that “transparent and credible elections play a crucial role in ensuring the fundamental and universal right to democratic and participatory government” (AU, 2002).

2. The AU further recognizes that there is no direct link between elections and democratization, peace and security. In other words, some elections build democratic governance and prosperity of the citizens. In other instances, ill-timed and ill-prepared elections may undermine democracy, generate political instability that reverse development gains. In some countries, elections have helped build solid foundations for democratic governance, but in others, they have led to contested results and violent conflict among political actors. Several AU documents acknowledge the risk associated with elections and have noted the violence and instability resulting from disputed elections. The efforts to consolidate democracy are compromised when results are disputed and when such disputes escalate into political violence.

3. It is important to note that while elections are pivotal to the democratic process, they do not invariably make democracy; neither do they ensure peace and security. For elections to enhance democracy, there is need for building relevant institutions, including impartial and independent election management bodies (EMBs) and guaranteeing the roles of political parties and civil society organizations in all stages of the electoral cycle¹. In addition, elections promote peace and security where there is a culture of tolerance, regular political dialogue among key democracy stakeholders, and public trust of democratic institutions. In particular, it is crucial that adequate political preparations are made before elections are held, especially in the process of building democracy and peace in post-conflict countries.

4. Given all these factors, the AU’s approach to election-related disputes and conflicts needs to be aligned to the electoral cycle and in that way take a long-term approach. The full electoral cycle is depicted in figure 1 below.

¹ The eight key elements of the electoral cycle include the following: Legal framework; Electoral planning and implementation; Training and education; Voter registration; Election campaign; Voting operations and election day; Verification of election results and; Post-election processes.

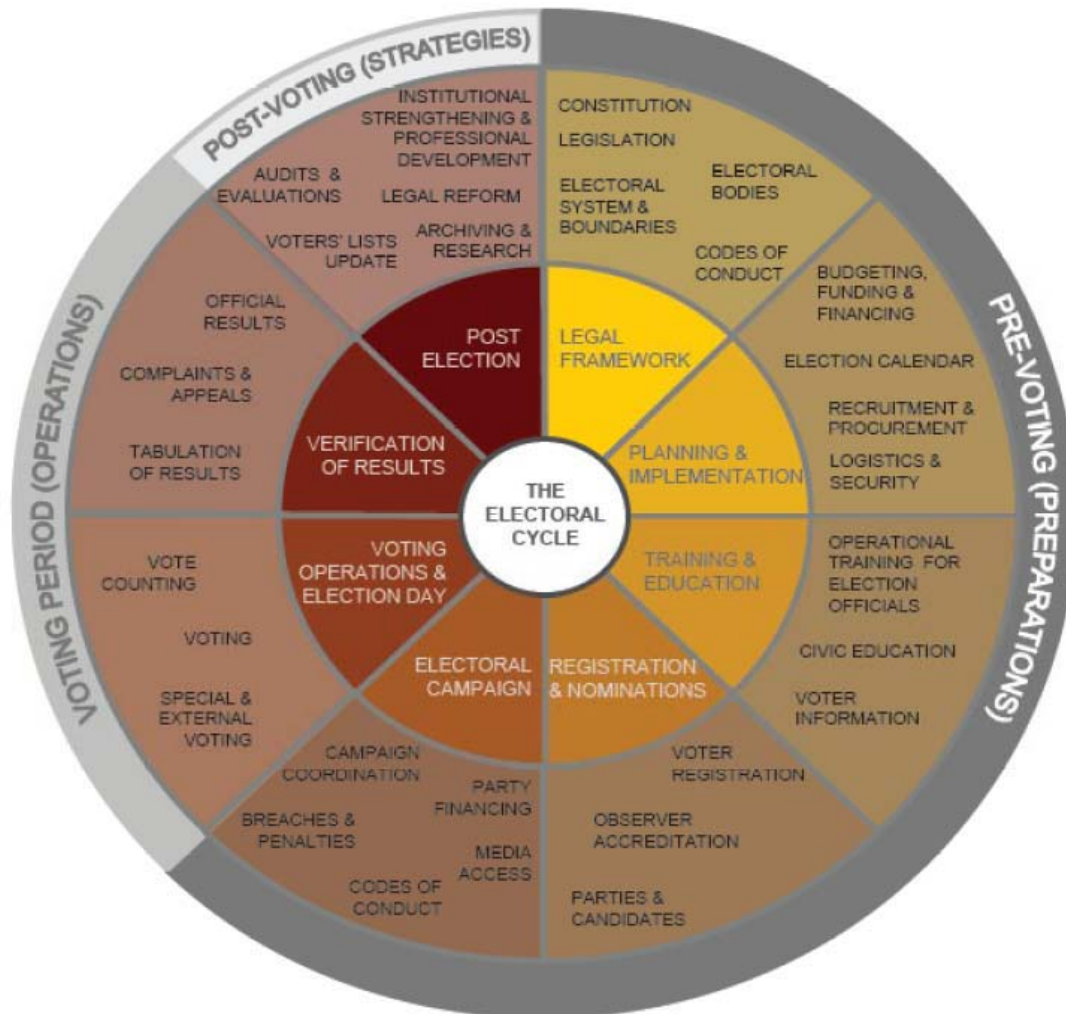


Figure 1: Electoral Cycle

5. From the electoral cycle perspective, the AU should emphasise conflict prevention and preventive diplomacy prior to elections. In addition to the current work being done by Political Affairs Department, the AU needs to do more in the pre-election phase to pre-empt election-related conflicts through conflict management, resolution and transformation. Currently, the AU tends to focus mainly on election monitoring and observation during elections to ascertain how free and fair the electoral processes are. During the post-election phase, the AU often focuses on mediation especially if an election leads to a contested result and political violence. Even in most of these cases, the AU does not take the leadership role; instead, it defers overwhelmingly to the RECs.

6. Following the post-election crisis in Kenya in December 2007, the Assembly of the Union and the Peace and Security Council saw the need to conduct a study on election-related disputes. Toward this end, the Panel of the Wise was mandated to initiate reflections on strategies and measures to mitigate electoral violence. In its advisory role, the Panel of the Wise was asked to inform the Peace and Security

Commission and the Chairperson of the AU Commission (AUC) on findings to prevent, manage, and resolve election-related conflicts. Thus, as part of its 2008 programme, the Panel of the Wise commissioned this study on election-related crises and tensions to contribute to conflict prevention on the continent. The main purpose of this study is to improve Africa's capacity to deal with these challenges, including the strengthening of the AU capacity to observe elections at national, regional, and continental levels.

II. DEMOCRATISATION PROCESS AND ELECTIONS IN AFRICA: PROGRESS, PROBLEMS AND PROSPECTS

7. The wave of democratization in Africa since the late 1980s and early 1990s stemmed from the confluence of circumstances and events. After years of military dictatorships and one-party governments, there was growing mass pressure for increased participation and accountability as part of a new momentum for political renewal. Equally significant, the end of the cold war unleashed external pressures for democratization that were decisive in supporting the process of change. The coincidence of these factors produced the much-heralded "second liberation" that marked a significant chapter in Africa's political rejuvenation. Almost 20 years after the inauguration of political pluralism, Africa has made remarkable progress in instituting the core principles and practices of democratic governance, with regular elections becoming routine and widespread, and leadership successions and rotations occurring more frequently than before. Although elections and leadership changes signify the steady growth of democracy, obstacles to consolidation remain. As the incidences of electoral violence that have accompanied recent elections in some African countries have demonstrated, the consolidation and sustainability of democracy depend on the construction of sturdy rules and structures of political competition.

8. The groundswell of internal and external pressures since the past couple of decades compelled African leaders to organize national conferences and other forums that facilitated the succession from authoritarian to elected governments. In most Francophone African countries, national sovereign conferences helped produce the transitional mechanisms that jumpstarted political pluralism and shaped the socio-political environment for political competition. In most Anglophone African countries, there were limited changes to the existing constitutional structures that permitted the inauguration of political pluralism. Since the onset of pluralism, elections became the critical elements in the process of change by expressing popular will, engendering leadership changes, and providing legitimacy to elected governments. Not only did elections enable people to choose their representatives, but they also constituted the most important facet in redefining the reciprocal relations between governments and the people.

9. Between 1989 and 1994, 38 African countries held competitive elections, while another 11 states followed suit and held founding elections between 1995 and 1997. In the same period, 16 countries held second elections. The founding elections of the early 1990s produced vital breakthroughs that started the gradual liberalization of politics and expansion of civil liberties. The first phase of Africa's democratic transitions led to three distinctive patterns. First, in some countries opposition parties in alliance with a vibrant civil society campaigned for fundamental reforms that made a difference in the emergence of new leaders through competitive elections. In the

second pattern, although opposition groups led the initiative for reforms in the political system, ruling parties either scuttled these reforms or watered them down. Most of the ruling parties ended up winning the subsequent elections. In the third pattern, democratic pressures ignited deep-seated ethnic divisions that led to civil wars.

10. The early phase of the democratic transitions was characterized by the slow growth of political parties with organizational programs and unity of purpose. Parties are essential to democratization because they are the core institutions of participation, lending meaning to competition, and offering alternative visions and perspectives to the electorate. Throughout Africa, there has been a strengthening of democratic norms and practices where political parties have emerged with coherent policies grounded in popular support. After many years in which parties had been proscribed, it took a long time for political parties in most countries to regain strength and stature. Organizing political parties was also compounded by heightened ethnic and regional stakes produced by the democratic processes, raising profound questions about political stability in some countries.

11. By the late 1990s, although elections and multiparty competition had become internalized, there were renewed debates across countries about the need to revamp the rules that governed political competition, particularly in creating constitutional structures that reflected the reality of democratic transitions. The agitation for constitutional and electoral reforms grew from the recognition that since most of the democratic breakthroughs of the 1990s had been hastily organized, most African countries had had precious little time to institutionalize sound procedures for popular government. Furthermore, even though elections had become central instruments for political transformations, there had been little attention paid to building sturdy rules and institutions that would enhance organized and predictable competition. The impetus for reforms in electoral rules led to the search for competent, autonomous, and non-partisan electoral bodies to administer the conduct of elections. Part of these campaigns entailed the search for more autonomous, impartial and transparent EMBs. In addition to electoral reforms, constitutional reform movements focused on changes in the broader institutional environment supportive of meaningful and competitive elections. These campaigns recognized that democracy involves much more than just elections hence the necessity of robust civil society, effective and independent legislatures, and impartial judiciaries.

12. The experiences of electoral reforms and other constitutional changes varied across the continent, reflecting the strength of reform movements, the willingness of authorities to concede to such reforms, and the political stakes coalescing around constitutional change. But in general, electoral and constitutional reforms since the late 1990s yielded three outcomes. First, because of ethnic fragmentation and elite conflicts, some countries did not make significant progress in altering the rules that determine competitive politics; instead, despite widespread clamour for constitutional change, these countries have witnessed stalemates in the dialogue on rules that would underwrite multiparty politics. These countries continue to be characterized by considerable strife and political uncertainty. Second, some countries have instituted far-reaching electoral and constitutional reforms that have stabilized multiparty politics and liberalized the wider social and political environment. In most of these countries, national leaders have been selected consistently through public, competitive, free and fair elections that have also been peaceful.

13. In between these two extremes are countries that are struggling to build participatory democracies on the basis of unreformed and undefined institutions. In the latter cases, constructing new rules has faced formidable challenges, largely because of the prevalence of enormous constraints on the effective participation of parties. In addition, some of these countries have had reversals in the democratic reforms, which made it difficult to expand political space.

14. Despite these diverse experiences, most African countries have had an average of three elections since the onset of pluralism, underscoring the considerable movement on the democratization front. Repeating cycles of elections has been one of the greatest achievements of democratization, producing a spiral of self-reinforcement. In the hostile socio-economic conditions prevalent in many African countries, the growth of democracy has defied the pessimistic scenarios which doubted the possibilities of positive political change in Africa. Democracy has flourished in countries where there has been alternation among major parties and where opposition parties have had the opportunity to govern. These countries have also evidenced high levels of confidence in the credibility of electoral rules and the deepening of institutions that complement and underwrite stable competition. More important, these countries have become models of durable democracy whose experiences have been transmitted in Africa's various sub-regions. In other countries, the dominant party system, whereby only one single party continued to govern unimpeded, where opposition parties remain on the margins of power, and where, in some instances, intolerance and animosities pervade most social aspects of life, has persisted.

15. The other critical trend in the democratization process since the late 1980s and early 1990s has been the remarkable recovery of countries that were formerly engulfed in civil wars. International efforts in war-torn nations through negotiated constitutional compromises steadily created conditions for the emergence of vigorous democratic experiments that reversed years of state collapse and defied the popular myths of chaotic Africa. In addition to learning from the previous experiences that produced civil wars, these countries have benefitted from the resources the international community devoted to the construction of stable constitutional rules prior to elections, the management of electoral processes, and a host of economic and social support programs to consolidate the gains from democracy. Although they are still relatively tentative in their democratic experiments and face obstacles to institutional regeneration, the dramatic recovery of former war-torn countries is a milestone in the annals of democratization on the continent. These successful stories of democratic recovery are also instructive to countries that continue to face endemic political conflicts and structural violence.

16. Almost two decades into the democratic transitions, the progress in Africa is far from uniform, but there is widespread recognition that almost everywhere, democracy is a process and not an event and the key element in building democratic culture in Africa is anchoring the ongoing practices in clear procedures and strong institutions supported by assertive countervailing groups in civil society. The widespread reforms in electoral processes in Africa have yielded a remarkable convergence about fair and transparent rules to conduct and organize elections. This continental convergence is witnessed in the proliferation of EMBs that are functional and financed through national treasuries. There has also been recognition that well-endowed EMBs are the

firewalls against manipulation and other egregious practices that reduce the credibility of elections and cause violence. Likewise, the growing culture of election monitoring and observation by local and international actors has been important in contributing to the credibility and transparency of electoral processes. As many African countries have held successful elections that have led to changes in power and enhanced democratic accountability, there has been a healthy trend toward consolidation.

17. It is within this context that presidential term limits, most often two terms, became a common feature of democratic constitutions adopted in the 1990s. As a result, a number of Presidents stood down after having completed their two terms in office. In other cases, ruling parties made decisions to abolish or extend presidential tenure on the ground that such constitutional provisions artificially limit the democratic choice of citizens. While some of the countries that embarked on this process have successfully carried out the required constitutional reforms, others have failed because of a strong domestic backlash.

18. As democratic norms and patterns have become domesticated across Africa, there is an emerging consensus that electoral competition has generated multiplier effects that have spilled over into other facets of society. Elections and electoral competition have contributed to the liberalization of society by endowing the citizens with more voice and capacity to contest their civil and political liberties. Countries that have held elections have also witnessed the expansion of press freedoms, more citizen demands for accountability, and the flourishing of a wide array of organizations supportive of democracy. These positive spill-over effects have, in turn, enhanced the legitimacy of leaders and the reciprocity between the governors and governed. The emerging democratic culture is boosted by large scale surveys throughout Africa that reveal that people overwhelmingly support democracy and reject authoritarian rule.

19. The strides made in deepening democracy are threatened by the emergence of elections that are contested violently and by the return of militaries to power in some parts of Africa. Despite AU provisions against forcible seizure of power and the denunciation of military coups, over the last three years, there has been a resurgence of militarism and military rule in countries. In some instances, militaries have intervened to take advantage of disarray within civilian institutions, particularly divisions among civilian leaders on key national issues. In others, militaries have taken power ostensibly to prevent their countries from descending into chaos and civil violence following major leadership transitions. Generally, the rise of military regimes is a symptom of failures to solidify civil-military relations that are underpinned by democratic ethos of civilian control of national governance. It is also an illustration of either the fragility or decay of the democratic institutions which are therefore dysfunctional. Building and solidifying democratic institutions and inculcating a culture of democracy and peace will go a long way in reversing this ominous phenomenon of militarism.

III. ELECTION-RELATED CONFLICTS AND POLITICAL VIOLENCE: CAUSES AND CONSEQUENCES

20. Electoral conflicts and political violence have featured in Africa's democratization, signalling weaknesses in the governance of elections, the rules of orderly political competition, and lack of impartial judiciaries to interpret and adjudicate

electoral disputes. The challenges of electoral conflicts and political violence reflect the transitional teething problems associated with managing elections and building institutions of competition that are widely accepted by winners and losers. In other instances, electoral conflicts and political violence arise, in part, from reactions of groups that have been deliberately disadvantaged and disempowered by their opponents. Claims about the deliberate subversion of the ends of electoral and democratic processes are always invoked by losers who then seek redress in violence. Although certain levels of violence frequently occur at different stages of the electoral process in Africa, the upsurge of electoral contestations that lead to large-scale violence is an emerging issue of policy concern. Elections that end in widespread conflict and violence that result in loss of lives and destruction of property raise questions about election management and administration, but also about the long-term impact on the consolidation of political competition.

21. In general, all forms of violent electoral conflicts that, at any stage of the electoral cycle, arise from differences in views, opinions, and practices could be considered as electoral violence. As one form of political conflict, electoral violence typically occurs when groups and parties use force to intimidate opponents to affect the electoral process and outcomes unduly in their own favour. At heart, electoral violence fractures political competition and impedes or criminalises political dissent. The use of threats and intimidation during voter registration may disenfranchise part of the population, while assaults and assassinations during the election campaign may force political contenders to boycott the elections. In some circumstances, parties may use forms of electoral violence to seize power and extinguish the democratic process altogether. Electoral conflicts and political violence also occur in the aftermath of contested elections where groups or parties use violence to contest the legitimacy of outcomes or alter it completely. Both localized and national forms of electoral violence adversely affect social stability and, if not properly managed, could, in combination with other conflict fissures, lead to anarchy and civil wars.

22. In the incipient phase of democratization in Africa in the late 1980s, political and electoral violence was caused by the determination of ruling parties under siege from emerging opposition parties to hang onto power. In this fragile era of democratization, dominant parties accustomed to occupying the political space hardly countenanced the power and legitimacy of opposition forces. Violence often occurred during the elections, particularly as competing parties sought to mobilize constituencies using all available means. Facing intense pressures from new and untested political parties, some of the ruling parties resorted to political violence aimed at subverting the electoral process and outcomes. They also deployed partisan state institutions, particularly the military, paramilitary and police forces against opposition groups. Political and electoral violence organized by ruling parties included forceful dispersals of political rallies, beating, assault, arbitrary detention of leaders and followers, torture, murder, and wanton destruction of property. Furthermore, blatant manipulation of the electoral process, including vote buying, intimidation of voters, rigging and destruction of ballot boxes became part of the repertoire of violence for parties determined to deny their opponents of the opportunity to take power. Similarly, opposition parties and groups, invoking the language of fairness and seeking to undo years of authoritarianism, also engaged in forms of violence such as violent street demonstrations, arson, and destruction of property, to counter state-instigated violence.

23. The patterns of electoral violence that characterized the electioneering process often persisted into the post-electoral phase, particularly where losing parties challenged the legitimacy of winners. In some of the elections in the mid-1990s, losing parties challenged the results through mass demonstrations, destruction of property, threats and intimidation of opponents, and work stoppages. These events, in turn, elicited violent responses by regimes that sought to restore order, peace, and security. In some cases, the spiral of violence throughout the electoral cycle forced opposition groups to boycott the elections, especially in circumstances where organized violence by ruling parties succeeded in curtailing the organizational abilities of weak and fledgling parties.

24. Although the reluctance by ruling parties to accept legitimate political competition and pluralism dominated the initial democratic transition, deep ethnic and regional cleavages in most African countries also contributed to political and electoral violence by amplifying the stakes of competition. In ethnically divided societies, the costs involved in losing or winning elections are sometimes fundamental to the well-being of entire communities. With the politicization of communal or ethnic identities, winning an election can be a matter of survival in the eyes of the parties competing for power. Electoral violence in Africa has occurred where the uncertainties of electoral outcomes have aggravated communal, ethnic, and religious conflicts. The most common element of this dynamic is where politicians mobilize support from ethnic and regional constituencies to win elections without attempts to reach out to other groups. The most publicized cases of electoral violence in Africa entailed elites from different ethnic groups appealing to sectarian and partisan interests, transforming elections into zero-sum contests. These patterns of mobilization, in turn, invited violent reactions from competing ethnic and regional groups, igniting violence during and after the elections.

25. In extreme instances, electoral violence took the forms of ethnic cleansing, balkanization, sabotage, evictions, and mass displacements. The results were ethnic and regional disenfranchisement that deprived and denied opposition challengers the minimum conditions for effective participation. In some countries, the patterns of political marginalization and disenfranchisement continued in the post-electoral phase where whole groups and communities were economically disenfranchised because of their support for losing parties, intensifying political exclusion and alienation.

26. One of the outcomes of the political and electoral conflicts of the 1990s was the incremental militarization of society as aggrieved and marginalized groups in some countries resorted to arms to protect themselves against violence perpetrated by opposition groups. Although in some African countries, militarization of large segments of society was a consequence of years of civil wars, there are countries where election-related violence invariably generated defensive militarization that continued to have an impact on subsequent elections. Where militarization coincided with economic and political marginalization, there emerged in some countries an infrastructure of violent dissent. Initially used in the first phase of electoral and political competition, armed militias and violent youths have gradually mutated into strong organizational structures that have perpetrated violence during elections and beyond. In some countries, the militarization of the youth coincides with the dramatic increase in poverty leading to a class of economically disenfranchised people who can be used to perpetrate political and electoral violence.

27. In societies democratizing soon after civil wars, elections have frequently descended into military confrontation between armed factions. Electoral competition in conditions of political instability leads some parties to use political violence as an alternative to accepting electoral defeat. This is more so where there have been insufficient or weakly-implemented programs of demobilization, demilitarization and reintegration. In some post-conflict contexts, elections exacerbate existing conflicts and harden conflict-related alliances, leading to incidences of violence. It is for this reason that discussions of elections in post-conflict environments focus on questions of timing and supervision: sometimes, elections that are held too early without strong international supervision can produce results that may extend the conflict rather than resolve it. However, as most of the countries recovering from civil wars in Africa have shown, post-conflict elections that are managed by the deployment of international resources may help to diffuse existing conflicts, creating lasting institutions for conflict management.

28. The momentum for electoral and constitutional reforms since the late 1990s arose from widespread desire for structures that would stabilize political competition, manage the fissures of ethnicity and regionalism, and enhance transparency, predictability, and impartiality of electoral governance and administration. Some of the constitutional reforms dealt with changes in the electoral systems to mitigate the winner-take-all systems that deprived losing parties of electoral representation. Other reforms touched on boosting the independence and effectiveness of EMBs, endowing them with the capacity and autonomy to be impartial players. The priority accorded to impartial and effective electoral management systems stemmed primarily from the fact that people disappointed with election results are always likely to contest electoral outcomes in violent ways. Furthermore, to lessen electoral violence and increase mutual confidence, some of the key reforms across Africa involved the initiation of codes of conduct that govern competition among parties. Where political parties used violence and intimidation to promote sectarian ends, codes of conduct seek to enjoin them to observe a core set of civic principles and norms.

29. Beyond changes to improve the quality of electoral management to reduce violence and conflicts, some African countries launched fundamental constitutional changes to facilitate level playing fields. In a number of AU member states, such reform measures have included: abolishing restrictions to the formation of political parties; financing of political parties; reforms to reduce the control by incumbents of information and enable equal access to vital media organs; expansion of the voice of civil society and other stakeholders around political questions; and boosting the capacity of the judiciary to help adjudicate and resolve election disputes. All these reform measures notwithstanding, electoral playing fields are often uneven as ruling parties enjoy political advantage over opposition parties leading to contested electoral outcomes. But, in some countries, constitution-making also occasioned high levels of political violence during the process and the subsequent constitutional referenda. Like elections, constitutional referenda to establish rules of competition have faced violent reactions from parties and groups in and out of government to put limits on pluralism and marginalize opponents. For the most part, constitution-making became highly contested and conflict-ridden where contesting groups and constituencies failed to agree on new power-sharing rules.

30. Similarly, violence and political conflicts have arisen from bids by incumbent governments and leaders to change existing constitutional rules to extend their terms in office or reformulate rules to favour certain succession candidates. Changes in term limits in some African countries since the early 2000 have led to conflicts, dividing societies and worsening political tensions, with aggrieved parties using or threatening to use violence to defend the status quo. In these countries, the consequences of conflicts over term limits have invariably affected electoral processes with incumbents attempting to use elections to legitimate such changes while the challengers scramble to prevent such outcomes. In a number of instances, contests over constitutional arrangements and term limits have been violent or foreshadowed the onset of widespread electoral violence.

31. Where electoral and constitutional rules have been established, violence occurs because of either the wilful change of established rules or organizational deficiencies in the administration of these rules. Countries that have witnessed electoral violence have frequently been characterized by high levels of contestation of the legitimacy of previous election outcomes, particularly by losing parties. Frustration with flawed elections boils into violence particularly where there has been a pattern of selective use of the law to exclude political rivals and suppress the common will. The new outbursts of electoral violence are reminiscent of the incipient phase of Africa's democratization, where the electoral rules for multiparty competition have not been widely accepted and where strong parties with long-standing dominance of the political process cannot countenance defeat. In these instances, opposition groups that have never had a chance to govern perceive elections as the vehicles to ascend to power, while the incumbents see elections as means to legitimate their continued rule.

32. Electoral violence everywhere imperils democracy by distorting normal mechanisms of political competition but, more fundamentally, increasing mass apathy and alienation toward politics. In the circumstance where African countries have made significant progress in building pluralism, the growing incidents of electoral violence have dampened the impetus for democratic consolidation. In some countries that had witnessed a history of inter-ethnic coexistence and amity, violent skirmishes resulting from poorly administered elections have resurrected societal fault-lines, casting doubt on the patterns of state-building and national harmony.

33. There is also growing concern that in recent outcomes of contested elections, the international community has expeditiously prescribed negotiated arrangements to stabilize volatile situations. Although it is understandable why national and international actors would move precipitously to forestall the destabilization of national institutions that comes with the upsurge of electoral violence, wholesale prescriptions of power-sharing arrangements and institutions may weaken the trend toward building competitive rules that clearly define losers and winners. Power sharing arrangements that create broad-based governing coalitions after violent electoral processes may reward parties that intimidate opponents through violent means. They may also potentially undermine democratic values by making a mockery of the essence of electoral competition. Moreover, post-electoral power-sharing institutions may end up being brittle solutions that, although checking violence, create divided and dysfunctional governments that may worsen governance. For partners in the emerging power-sharing arrangements, the challenge is to seize the momentary

opportunities opened up by periods of relative stability to craft enduring rules that preempt the resurgence of electoral violence.

IV. RELEVANT AU INSTRUMENTS ON PEACE, DEMOCRACY AND CREDIBLE ELECTIONS

34. The African Union (AU) is firmly committed to peace and democratic governance in Africa. To this end, the 53 member states of the AU have adopted relevant instruments relating to peace, democracy and credible elections. This chapter of the report examines these instruments as enunciated in various official AU documents. The first part discusses the AU commitments relating broadly to democratic governance, peace and security. The second part focuses specifically on AU declarations relating to the holding of credible democratic elections. The conclusion highlights the remaining challenges that require strategic policy responses from the AU.

i) KEY AU INSTRUMENTS ON DEMOCRACY, PEACE AND SECURITY

a) The Constitutive Act

35. The 2000 Constitutive Act of the African Union is the principal instrument, and the founding treaty, that commits member states to democratic, representative, and responsive governance under conditions of peace and stability. Articles 3 and 4 of the Constitutive Act enunciate the key objectives and principles of the AU respectively. The principal plank of these two Articles is the unequivocal embrace of popularly elected governments and outright rejection and condemnation of unconstitutional changes of government in line with the 2000 Lome Declaration. In these two Articles, the AU upholds the basic democratic principle that elections are a legitimate method of transfer of power and the only democratic manner of expressing popular sovereignty in a representative democracy. The Constitutive Act also recognizes that sustainable democratic governance in Africa requires political stability, peace and security in conformity with the 2002 Protocol Relating to the Establishment of the Peace and Security Council of the African Union. Without political stability, peace and security, democracy is likely to be compromised and socio-economic development will not be achieved. Cognizant of this challenge, the main objectives of the AU, as enshrined in the Constitutive Act, include the:

- promotion of peace, security and stability on the continent;
- promotion of democratic principles and institutions, popular participation and good governance; and
- promotion and protection of human and peoples' rights in accordance with the African Charter on Peoples' and Human Rights and other relevant human rights instruments (Constitutive Act of the AU, 2000:5-6).

36. The above objectives demonstrate the evolving AU peace, democracy and human rights architecture in Africa. They are complemented by a set of clear principles that guide the Union as articulated in Article 4. These include the following:

- respect for democratic principles, human rights and the rule of law and good governance;

- respect for the sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism and subversive activities; and
- condemnation and rejection of unconstitutional changes of government (Constitutive Act of the AU 2000:7).

37. Various other AU documents² have reinforced its commitment to building a democratic, stable, peaceful and prosperous Africa.

b) Conference on Security, Stability, Development and Cooperation (CSSDCA)

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

- the peaceful resolution of disputes needs to place emphasis on seeking African solutions to African problems;
- the prevention, management and resolution of conflicts provide the enabling environment for peace, security, stability and development to flourish; and
- the responsibility for security, stability and socio-economic development of the continent lies primarily with African States (CSSDCA Solemn Declaration, 2000, Articles 9d, 9e and 9f).

39. During the AU Summit of Heads of State and Government held in 2002 in Durban South Africa, the Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa was adopted with a view to giving effect to the 2000 CSSDCA Solemn Declaration. The MoU defines clearly how AU member states should pursue the key objectives of security, stability, development, and cooperation. It also outlines a plan for achieving the set objectives and identifies performance indicators with time-frames. The MoU exhorts the AU member states to:

² These documents include the 1981 African Charter on Human and Peoples’ Rights; the 1990 African Charter for Popular Participation in Development; the 1990 Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World; the 1991 Treaty Establishing the African Economic Community; the 1995 Cairo Agenda for Action; the 1999 Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights in Africa; the 2000 Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government; the 2000 Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament; the 2000 Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration; the 2002 Memorandum of Understanding of Security, Stability, Development and Cooperation in Africa (CSSDCA); the 2002 Declaration on Democracy, Political, Economic and Corporate Governance of the New Partnership for Africa’s Development (NEPAD) which, among other things, provides for the establishment of the African Peer Review Mechanism (APRM) which is an innovative instrument for promoting democratic governance in Africa; the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; the 2003 African Union Convention on Preventing and Combating Corruption; the 2004 Protocol Relating to the Establishment of the Peace and Security Council of the African Union; the 2007 African Charter on Democracy, Elections and Governance.

- adhere to the fundamental tenets of a plural democratic society.... These include promulgated constitution with a Bill of Rights' provision; free and fair elections at constitutionally stipulated intervals; multiparty political systems; separation of powers; an independent judiciary, a free press and freedom of expression and assembly; effective military subordination to civilian authority; and accountability and popular participation in governance;
- uphold the principle of constitutionalism so that the political class and civil society at all levels commit to abiding by and respecting the provisions of the constitutions of their states;
- accept the necessity for the significant improvement in the African electoral process including the establishment of truly independent national electoral commissions and other appropriate mechanisms to ensure transparency, fairness and credibility of elections;
- observance, protection and promotion of the human rights of all Africans;
- speedy establishment of the African Court on Human and Peoples' Rights;
- strengthen, improve and practice good governance in public and private domains in Africa to ensure adherence to the rule of law, strict accountability by all and transparency in public affairs (Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa, 2002, Articles II(o), II(p), II(r), II(s), II(t)).

40. The MoU goes beyond declaration and spells out clear performance indicators and time-frames for achievement of set objectives. Firstly, on security, the MoU exhorted member states, among other things, to establish national institutions or mechanisms for prevention, management and resolution of conflicts with active participation of civil society organizations and community based organizations (CBOs) by 2004. Secondly, with respect to stability, the MoU emphasized the achievement of the following objectives:

- adoption, by 2004, of constitutions and bill of rights provision, free and fair elections, an independent judiciary, freedom of expression and subordination of the military to legitimate civilian authority, rejection of unconstitutional changes of government and implementation of these principles by 2005;
- adoption by 2005 of a commonly provided Code of Conduct for Political Office Holders that stipulates, among others, a limitation on the tenure of elected political office holders based on periodic renewal of mandates and governments should scrupulously abide by it;
- establishment by 2003, where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent election in all African countries;
- adoption and standardization, by 2003, of guidelines for independent and effective observation of elections in AU member states, with the provision of an effective electoral assistance unit within the AUC which should include provision for strengthening civil society and local monitoring groups in individual African countries aimed at ensuring free and fair elections and the reports of the AU observer missions should be made public;
- adoption by 2004, where it does not exist, of enabling legislation on the formation and operation of political parties to ensure that such parties are not

- formed and operated on the basis of ethnic, religious, sectarian, regional or racial extremism and establish a threshold of voter support as criteria for public funding, without compromising freedom of association and the principle of multi-party democracy;
- taking measures, by 2005, to promote gender equality and ensure equal representation of men and women in all national, regional, and continental institutions as well as the elimination of all laws that discriminate against women in African countries; AU member states should also adopt, sign and ratify the Protocol to the African Charter Relating to the Rights of Women in Africa as well as other instruments to promote and protect the rights of women;

c) The African Charter on Democracy, Elections and Governance

41. The 2002 AU summit in Durban did not only set a momentum for advancing democratization through the adoption of the NEPAD Declaration on Democracy and the adoption of the African Peer Review Mechanism (APRM), but it further triggered enthusiasm for the development of the African Charter on Democracy. This enthusiasm informed the organization of a continental conference co-hosted by the Independent Electoral Commission of South Africa, the African Association of Electoral Authorities and the African Union Commission in Pretoria, South Africa on 7-10 April 2003 under the theme “Elections, Democracy and Governance: Strengthening African Initiatives”. The final statement³ adopted by the Conference exhorted African states to expand the frontiers of democratization. A year after this Conference, the 2004 Summit of the AU Heads of State and Government held in Maputo, Mozambique, considered the draft Declaration on Elections, Democracy and Governance and mandated the AUC to transform this declaration into a Charter. The AU decision to develop an African Democracy Charter was further reiterated during the Council of Ministers meeting held in Addis Ababa in May 2004. It took the AUC about three years (2004-2007) to develop the African Charter on Democracy, Elections and Governance which is the most comprehensive commitment by the Union to date towards deepening and consolidating democratic governance in Africa.

³ Participants to the conference expressed their collective support to the ideals of the AU and NEPAD aimed at ensuring the promotion of good governance and strengthening of democratization, including delivery of free, fair and credible elections in Africa. The conference statement that was adopted at the end of the conference emphasized the following constitutional and legal frameworks for strengthening democracy in Africa: (a) constitutions and legal frameworks should entrench democratic values and institutions to promote and strengthen constitutionalism and good governance; (b) constitutions and legal frameworks should provide for all basic human rights, freedoms and obligations as enshrined in relevant United Nations instruments and the African Charter on Human and Peoples’ Rights; (c) constitutions and legal frameworks should determine the tenure and number of terms that a head of state and government can stand for elections; (d) constitutions and legal frameworks should provide political pluralism and freedoms of association, assembly and expression to promote free political activity; (e) constitutions and legal frameworks should provide for establishment of independent election management bodies and independent institutions that support and entrench democracy such as national human rights commissions, anti-corruption bodies and independent judiciaries; (f) constitutions and legal frameworks should regulate the calling of elections allowing for sufficient time for proper preparations. A period of not less than 45 days and not more than 90 days within which to prepare for elections should be the norm; (g) constitutions and legal frameworks should promote accountability of elected representatives.

42. The African Charter on Democracy, Elections and Governance was adopted during the 8th Ordinary Session of the Assembly of the Union convened in Addis Ababa on 30th January 2007. The adoption was a culmination of various meetings of government, independent, and legal experts which debated and refined its various drafts between 2004 and 2006. The evolution of the Charter was, therefore, an inclusive process ensuring that as many key stakeholders as possible had an input during the development of this historic document meant to set Africa on a sustainable path of democracy, constitutionalism, rule of law, and human rights. The Charter is most comprehensive human rights and democracy instrument in Africa.

43. By the beginning of 2009, the Charter on Democracy, Elections and Governance had been signed by 24 Member States of the African Union, as follows:

- Benin
- Burkina Faso
- Burundi
- Central African Republic
- Congo-Brazzaville
- Djibouti
- DRC
- Ethiopia
- The Gambia
- Ghana
- Guinea-Bissau
- Kenya
- Liberia
- Mali
- Mauritania
- Mauritius
- Namibia
- Nigeria
- Niger
- Rwanda
- Sierra Leone
- Sudan
- Swaziland
- Togo

44. The signatories of the Charter have been slow to ratify it. So far, it has only been ratified by Mauritania and Ethiopia. This means that another 13 states still have to ratify the Charter before it will become a legally binding document. More efforts need to be made on the signatories, and all the other Member States, to ratify the Charter as soon as possible, so that the threshold of 15 states will be reached and the Charter will then become properly binding.

45. Between 2007 and 2008, the Department of Political Affairs embarked upon a popularization programme aimed at imploring states to sign and ratify the Charter. The principal objectives of these popularization workshops, which involved all the five African sub-regions, were to:

- sensitise decision makers and other stakeholders on the value and contents of the Charter;
- develop common perspectives on how Charter ratification can contribute towards improving governance in each region;
- build an understanding of the role of different actors in the ratification process;
- share insights on the various ratification procedures applied by AU member states;
- establish a common perspective on the actions that would be taken at sub-regional and state levels to ensure that the Charter is ratified; and
- contribute towards the overall continental framework for action on the popularization, ratification and application of the Charter.

46. The Charter derives its authority and legitimacy from the Constitutive Act of the African Union in particular articles 3 and 4 which commit member states to participatory democracy, constitutionalism, rule of law, human rights, peace and security as well as sustainable human development in Africa. It builds on previous

commitments to democratic governance enunciated through numerous declarations, decisions, and instruments (see footnote 2 above).

47. The Charter, therefore, consolidates the above commitments of the AU member states towards democratic governance and brings together these noble declarations into a single solidified treaty with legally binding commitments. It serves as a consolidated point of reference for all the AU efforts aimed at enhancing the overall state of democracy, elections and governance throughout the continent. Through the adoption of the Charter in January 2007, African countries have committed themselves to an established set of common standards, principles and guidelines for participatory democracy, credible elections and good governance and in the process holding each other accountable for their actions and inactions.

48. More specifically, the Charter emanated from the long-standing concern of AU member states with unconstitutional changes of government and the consequent political instability, insecurity, and violent conflict. The unconstitutional changes of government had become one of the major destabilising factors in Africa reversing democratic gains and threatening socio-economic development. Article 23 of the Charter provides that the following means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

- any putsch or coup d'état against a democratically elected government;
- any intervention by mercenaries to replace a democratically elected government;
- any replacement of a democratically elected government by armed dissidents or rebels;
- any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
- any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

49. Drawing from the 2000 Lome Declaration, the AU Constitutive Act and the above article of the Charter, there is a commitment on the part of the member states to jettison the culture of unconstitutional changes of government. Military coups have been met with punitive measures by the AU through the Peace and Security Council, such as the military coup in Mauritania that led the AU to suspend the country from the AU and the launching of diplomatic efforts to restore democracy, peace and security. AU member states are now more committed than ever before to promoting and strengthening democratic governance through citizen participation, transparency, accountability, rule of law, gender equality, decentralization, human development, eradication of poverty and credible elections.

50. The African Charter on Democracy, Elections and Governance, reinforces the commitment of AU member states to hold credible, transparent and legitimate elections that enhance democratic governance and in the process promoting peace, security and political stability all of which are critical pre-requisites for socio-economic development. The Charter implores AU member states to strive towards holding

genuine and credible elections with legitimate and acceptable outcomes. To this end, the Charter exhorts member states to:

- establish and strengthen independent and impartial national electoral bodies responsible for the management of elections;
- establish and strengthen national mechanisms that redress election-related disputes in a timely manner;
- ensure fair and equitable access by contesting parties and candidates to state controlled media during elections;
- ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels.

51. One of the factors that propel political tension around election is misunderstanding among political players around the electoral contest and its rules and their application. This situation leads to mistrust and mutual suspicion among the key players. Erroneously, political players tend to perceive elections as a zero-sum game in which a winner takes all and the loser loses everything. Elections are supposed to be perceived as a positive-sum game in which both the winners and losers accept the outcome and feel bound to cooperate in the governance process following the poll. It is for this reason, among others, that the Charter encourages systematic and regular dialogue among key political players. Article 13 of the Charter provides that “state parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace”. The adoption of the Charter by the AU is a significant step in the right direction. Experience has shown that while the adoption of progressive peace, security and democracy declarations is easy, it is more difficult to translate these instruments into legal frameworks and policy practice. It is, therefore, incumbent upon the AU Member States to sign, ratify, and domesticate the Charter. Concrete steps towards achieving the goals and objectives of the CSSDCA and the Democracy Charter will go a long way in building peace and promoting democratic governance in Africa.

ii) KEY AU INSTRUMENTS ON CREDIBLE ELECTIONS

52. This above section has elaborated the various key AU instruments on democracy, peace and security in Africa. The following section focuses on key AU instruments dealing with credible elections. Almost all the above-mentioned AU instruments on democratic governance cover aspects of elections emphasizing the value of elections to democracy, peace, and political stability. In addition, there are specific instruments that outline the AU commitment to holding credible, transparent, and legitimate elections. These instruments are important because experience has shown that the mere act of holding regular election, while good in and of itself may not be enough as an indicator of ‘democraticness’ of a country. In a word, elections alone do not always promote democracy, peace and political stability. There is dire need to emphasise the quality of these elections to democracy, political stability and peace. While in a majority of countries, elections lead to democratization, stability, peace and security, in others they have triggered political instability, violence and war.. The AU

member states need to create a climate in which elections are a political asset rather than a liability to democratic governance, peace, and security.

53. It is, therefore, becoming clear that while the holding of regular elections is a critical indicator of progress on democracy in Africa, the regularity and frequency of elections on its own is inadequate as a measure of democratic advancement. Besides regularity and frequency, there is need to ensure that the election process itself is transparent, all-inclusive, consultative, impartially managed and credible. The outcome must also be acceptable, legitimate, and collectively owned by all key stakeholders. The rules of the game must be known and widely accepted by all the stakeholders. The results of elections must not be known in advance. Knowing the procedures well and not knowing the results in advance is what some have referred to as procedural certainty and substantive uncertainty. According to some scholars, in order to ensure the quality of elections, electoral governance must be predicated upon procedural legitimacy and certainty, while at the same time guaranteeing substantive uncertainty. As they aptly opine.

“The close association between procedural legitimacy and substantive uncertainty poses the paradoxical challenge “institutionalizing uncertainty” (...). The paradox is that substantive uncertainty requires procedural certainty. It is this paradox that defines the central task of electoral governance: organizing electoral uncertainty by providing institutional certainty. Distinguishing between substantive and procedural uncertainty enables a more nuanced understanding of variations in political actors’ risk-aversion. Authoritarian and democratic actors, for instance, exhibit different attitudes towards uncertainty. While the former attempt to reduce the uncertainty of outcomes, the latter attempt to reduce the uncertainty of institutional rules”.

54. Democracy scholars and activists alike agree that if electoral governance is to be adequately democratized, there is dire need for institutionalisation of procedural certainty and substantive uncertainty. It is under conditions of transparency of the rules and procedures and uncertainty of election results that elections are most likely to produce legitimate and acceptable outcomes. To this end, the AU has invested considerable efforts in developing norms, standards, principles, and guidelines governing elections in Africa in the recent past. The two key ones are: (a) OAU/AU Declaration Governing Democratic Elections in Africa, July 2002; and (b) Guidelines for African Union Electoral Observation and Monitoring Missions, July 2002;

d) The OAU/AU Declaration Governing Democratic Elections in Africa

55. The OAU/AU Declaration was adopted during the Heads of State and Government Summit held in Durban in 2002. Through the Declaration, AU member states accepted the reality that (a) democratic elections are the basis of the authority of any representative government; (b) regular elections constitute a key element of the democratization process and therefore are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development; and (c) the holding of democratic elections is an important dimension in conflict prevention, management and resolution. The Declaration further commits AU member states to elections that are conducted:

- freely and fairly;
- under democratic constitutions and in compliance with supportive legal instruments;
- under a system of separation of powers that ensures in particular the independence of the judiciary;
- at regular intervals, as provided for in National Constitutions; and
- by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

e) **The Guidelines for African Union Electoral Observation and Monitoring Missions**

56. The Guidelines for African Union Electoral Observation and Monitoring Missions were also adopted in Durban during the Summit of Heads of State and Government of 2002. The guidelines are meant to facilitate the implementation of some of the key aspects of the Declaration Governing Democratic Elections in Africa. Through the guidelines, AU Member States recognize that electoral observation and monitoring have “become an integral part of the democratic and electoral processes in Africa. International, regional and national observers have come to play important roles enhancing the transparency and credibility of elections and democratic governance and the acceptance of election results throughout the continent. Electoral observation and monitoring missions can also play key roles in diminishing conflicts before, during, and after elections” (AU, 2002b:1). Prior to sending a full-fledged mission, the AU dispatches an assessment team to a country holding elections. It is upon the assessment by this pre-election mission that will advise on the nature and mandate of the AU electoral mission. Such a mission could then take one or more of the following forms: (a) observation; (b) monitoring; (c) mediation; (d) technical assistance; and/or (e) supervision and Audit.

57. The AU dispatches Election Observation and Monitoring Missions to observe elections organized by member states provided an invitation to observe elections is received two months ahead of the poll. With a view to ascertaining conditions for electoral contest and the degree to which there exists a level playing field, AU observers investigate the extent to which an election conforms to the AU Declaration on Principles Governing Democratic Elections⁴. The invitation by AU member states to

⁴ In accordance with the Guidelines for AU Electoral Observation and Monitoring Missions, some of the key issues that AU missions investigate include (i) does the constitution and legal framework guarantee fundamental freedoms and human rights?; (ii) is the electoral system premised on the right to freedom of association and enables people to advance this right through the formation of political parties for the purpose of electoral competition?; (iii) is the electoral commission independent and impartial, and exercise its powers and perform its functions without fear, favor or prejudice?; (iv) are rights of observers guaranteed?; (v) is it likely that the security forces will maintain a neutral role in the provision of election security?; (vi) is the situation in the country generally peaceful or is there political violence?; (vii) are there clearly articulated rules for political party funding to be respected by all parties and candidates?; (viii) is voter education provided in a non-partisan, independent and coordinated manner throughout the whole country? (ix) Will there be equitable use or access to public resources for election campaign?; (x) is the registration of voters undertaken without discrimination on the basis of gender, race, religion, region or ethnicity?; (xi)

the AUC to observe elections still remains a contentious issue. The dilemma here is as follows (a) should the AU simply prepare a calendar of forthcoming elections in a particular year and make plans to observe such polls? Or (b) should the AU still leave the decision whether or not to observe an election to individual states?

58. The Constitutive Act of the AU is an unequivocal statement of its commitment to peace and democratic governance. All the 53 members of the AU have signed and ratified the Constitutive Act as a clear sign of their commitment to implementing its core objectives and principles as enshrined in articles 3 & 4. The spirit of the Constitutive Act is reinforced by other documents and initiatives that demonstrate the AU's firm conviction that democratic governance is a critical condition for democracy, peace and development. It is within this framework that the significance of such initiatives as the CSSDCA and the African Charter on Democracy, Elections and Governance should be understood. These initiatives have been adopted by the AU and it is, therefore, imperative that AU member states translate the democratic principles enshrined in the CSSDCA and the African Charter on Democracy, Elections and Governance into practice.

59. In relation to elections specifically, the AU also recognizes that depending on how they are organised as well as the nature of the political landscape in which they are organized, elections could either enhance democratic governance, peace, security and political stability or undermine democracy and development by fuelling violent conflicts and destabilizing political systems. This is why the progress towards institutionalized democracy and sustainable peace can no longer be measured merely by the regularity of elections without due consideration of the quality of these elections. It was this concern with balancing the regularity and quality of elections that prompted the AU to adopt the Declaration on the Principles Governing Democratic Elections in Africa and the Guidelines for AU Electoral Observation and Monitoring Mission in 2002.

60. Despite the adoption of the various principles, protocols, and declarations on democracy, the AU still faces enormous challenges in its efforts to promote democratic governance and credible elections. These include the following:

- The AU's agenda in building and promoting democratic governance, peace and credible elections is well-defined and anchored on the Constitutive Act, but there has not been appreciable movement towards implementation at national, sub-regional and continental level;
- The lack of implementation of the AU agenda on democratic governance and peace creates a gap between its declarations and the political practices of member states. This leads to lack of congruence between agreed principles and government policies and actions;
- Until all AU member states embrace the various democracy initiatives including the CSSDCA, NEPAD, APRM and the African Charter on Democracy, Elections and Governance, these instruments will not nurture and consolidate democracy, peace, stability and constructive management of conflicts;

does an independent media authority responsible for monitoring and regulating the media to allow equitable access to the public media by all parties and candidates?

- The extent to which the Declaration on Principles Governing Democratic Elections in Africa are stringently adhered to by all AU member states still remains contentious. For instance some AU member states invite the AU to observe their elections, while other do not, pointing to inconsistency in the application of the Declaration;
- The AU election observation and monitoring missions exhibit gaps in their capacity and rigour in playing their expected roles with efficiency and effectiveness. This problem needs urgent attention in view of the various elections that the AU intends to observe in 2009;
- One of the major contentious issues that has also contributed to the emergence of protracted violent conflicts following elections in Africa relates to the nature and role of EMBs due, in large measure, to the perception that they lack impartiality and independence and that they do not execute their mandates with professionalism and integrity.

V. THE ROLE OF THE AU IN THE PREVENTION, MANAGEMENT AND RESOLUTION OF ELECTION-RELATED CONFLICTS AND POLITICAL VIOLENCE

61. The AU has put in place various organs and structures whose mandate includes the prevention, management, and resolution of conflicts including election-related disputes. Conflict prevention and preventive diplomacy apply to situations where the conflict is still in its embryonic stage and measures are taken to contain its escalation. Conflict management applies when a conflict has already occurred and is beginning to escalate, but measures are put in place to reduce the intensity of violence associated with such conflict. Conflict resolution applies in a situation where a conflict situation is transformed into peace-building through, for instance, post-conflict reconstruction and development programmes. It is important to appreciate these three dimensions of dealing with conflict because election-related conflicts are not only confined to polling day or voting stage of the electoral process. Election-related conflicts may occur in all the phases of the election cycle namely (a) pre-voting stage, (b) voting stage and (c) post-voting stage. This suggests that any strategy that aims at effectively dealing with electoral conflicts should be more long-term, than short-term, and should be more systematically planned than being reactive and ad-hoc. It is imperative that the AU invests adequate resources in dealing with pre-election root-causes of conflict so that disputes are dealt with well in advance of elections, while also positioning itself strategically to pre-empt conflicts during and after the elections.

(i) THE AU FRAMEWORK AND APPROACH REGARDING ELECTION-RELATED CONFLICTS

62. The AU framework and approach to election-related conflicts is five-pronged namely (a) Early Warning and Preventive Diplomacy; (b) Election Observation and Monitoring; (c) Post-Election Mediation; (d) Technical and Governance Assistance; and (e) the Post-Conflict Reconstruction and Development (PCRD).

a) Early Warning System and Preventive Diplomacy

63. The early warning system is crucial in efforts to pre-empt election-related conflicts. Early signs of political tension in a country ought to be detected allowing the AU to intervene rapidly to forestall political crisis through preventive diplomacy. This is crucial because the root causes of election-related conflicts are often traceable to

already existing socio-economic and political tensions within countries which tend to get accentuated during elections. For instance, in some African countries, elections may lead to conflict and political violence due to acute socio-economic inequality, politicized ethnic, religious or racial diversity. In others, elections may trigger violent conflict because there are deep-seated political tensions among the political contestants, especially political parties themselves, with adverse repercussions for peace, security and political stability. It is in this context that pre-election fact-finding missions and pre-election assessment missions by the AU to countries holding an election are important.

64. As part of preventive diplomacy, the Peace and Security Council (PSC) and the Department of Peace and Security of the AU need to play a much more pro-active role than is presently the case. For its part, the PSC has to more effectively operationalise the Continental Early Warning System (CEWS) and facilitate timely and strategic intervention by the Panel of the Wise.

b) Continental Early Warning System (CEWS)

65. Article 12 of the Protocol Relating to the Establishment of the Peace and Security Council of the AU provides for the establishment of the Continental Early Warning System whose primary purpose is the “provision of timely advice on potential conflicts and threats to peace and security to enable the development of appropriate response strategies to prevent or resolve conflicts in Africa” (Framework for the Operationalisation of the CEWS, 2006:2). The CEWS consists of:

- An observation and monitoring centre known as “The Situation Room”, located at the Conflict Management Directorate of the Union, and responsible for data collection and analysis on the basis of an appropriate early warning indicators module (Protocol Relating to the Establishment of the Peace and Security Council of the AU, Article 12a); and
- Observation and monitoring units of the Regional Mechanisms to be linked directly through appropriate means of communications to the Situation Room, and which shall collect and process data at their level and transmit the same to the Situation Room (Protocol Relating to the Establishment of the Peace and Security Council of the AU, Article 12b)

66. Since 2006, sustained efforts have been made to operationalize the CEWS. However, much more needs to be done to ensure that the CEWS effectively deals with election-related conflicts. During the brainstorming retreat between the AU and the Regional Mechanisms for Conflict Prevention, Management and Resolution held in Algiers, Algeria, on 5-6 January 2008, participants raised a concern about the resurgence of election-related conflict and political violence in the recent past. The Declaration emanating from this retreat aptly states that “this situation has not only the potential of endangering stability, but also that of undermining the democratic processes initiated in the continent in accordance with relevant OAU/AU instruments” (Declaration of the Brainstorming Retreat Between the African Union and the Regional Mechanisms for Conflict Prevention, Management and Resolution, 2008:3). In order to deal with pre-election tension and avoid escalation of conflict into outright violence, the Declaration recommends that the PSC should:

- Improve monitoring of potential developments in the countries concerned during the pre-election phase, including through the early warning systems;
- Strengthen election observation by deploying missions with adequate strength ahead of the election, with a view to having a more comprehensive view of the situation and making, if need be, recommendations to the stakeholders to guarantee the transparency of the electoral process;
- Effectively combine the resources of the AU and the competent regional organizations, including the deployment of joint evaluation and electoral observation missions;
- Undertake, whenever required, preventive deployments of peace support operations; and
- Ensure that Africa, through the missions deployed on the ground, is in a position to speak with one voice, with the necessary authority and objectivity, on the transparency of the electoral processes and ensure that these processes are fully owned by Africa (Declaration of the Brainstorming Retreat Between the African Union and the Regional Mechanisms for Conflict Prevention, Management and Resolution, 2008:3-4).

67. The challenge for containing electoral conflicts in Africa is not merely confined to early warning in terms of information gathering and analysis. It extends further to timely and effective interventions. This is where the Panel of the Wise becomes extremely strategic and relevant.

c) The Panel of the Wise

68. Article 12 of the Protocol Relating to the Establishment of the Peace and Security Council of the AU provides for the establishment the Panel of the Wise as a structure meant to provide strategic support to the PSC and the Chairperson of the AUC in areas of conflict prevention, management, and resolution. Comprising five respected African personalities of high integrity and independence with an outstanding contribution to peace, security and development in Africa, selected by the Chairperson after consultations with member states concerned, the Panel primarily advises the PSC and AUC Chairperson on issues relating to the promotion and protection of peace and security in Africa. It undertakes activities aimed at supporting the efforts of the PSC and the AUC Chairperson in the implementation of the AU peace and security architecture and pronounces itself on any issue pertaining to the promotion of peace and security. According to the Modalities for the Functioning of the Panel of the Wise adopted by the PSC on 12 November 2007, the overall mandate of the Panel is as follows:

- Advise the PSC and/or the Chairperson of the Commission on all matters within their respective competencies pertaining to the promotion and maintenance of peace, security and stability in Africa;
- Facilitate the establishment of channels of communication between the Council and the Chairperson of the Commission, on one hand, and parties engaged in a dispute, on the other hand, in order to prevent such disputes from escalating into conflict;

- Carry out fact-finding missions as an instrument of conflict prevention in countries and/or regions where the Panel considers there is a danger of conflict either breaking out or seriously escalating;
- Conduct shuttle diplomacy between parties to a conflict in cases where parties are not ready to engage in formal talks;
- Encourage parties, where appropriate, to engage in political dialogue, adopt confidence-building measures, and carry out reconciliation processes, and facilitate such efforts, where appropriate;
- Assist and advise mediation teams engaged in formal negotiations;
- Assist and advise parties on how to resolve disputes related to implementation of peace agreements; and
- Develop and recommend ideas and proposals that can contribute to promoting peace, security and stability on the continent (Modalities for the Functioning of the Panel of the Wise adopted by the PSC on 12 November 2007).

69. To deal with key challenges facing peace and security, the Panel has adopted a strategy of focusing on a key thematic area of reflection relevant to conflict prevention per year that will inform most of its strategic interventions. During its second meeting held in Addis Ababa on 17 July 2008, the Panel exchanged views on peace and security landscape in the continent highlighting the main challenges. On the basis of these deliberations, the Panel decided that the key thematic area of reflection for 2008 is the prevention, management and resolution of election-related conflicts and tension.

70. The Panel of the Wise is strategically positioned to play a meaningful role in assisting the PSC and the Chairperson of the AUC to use preventive diplomacy in forestalling election-related disputes with a view to containing political tensions from escalating into outright violence.

71. The AU needs to strengthen further its intervention strategies to ensure that election-related conflicts are resolved amicably and in this regard recognizing the central role of the Department of Political Affairs through its Democracy and Electoral Assistance Unit and the Peace and Security Department through the Panel of the Wise. The early warning mechanism must be used more effectively to assess pre-election environment with a view to make a determination that an election will not lead to violence and political instability. AU pre-election assessment missions and the Panel of the Wise should be used strategically to pre-empt pre-election conflicts.

72. As part of its preventive diplomacy role, the Panel of the Wise should play a distinctive role in dealing with election disputes. Depending on the conflict situations of AU Member States holding elections, the Panel of the Wise could play an important role in the prevention, management and resolution of election-related conflicts through the following interventions:

- fact-finding missions;
- good offices missions;
- undertaking and/or supporting AU mediation initiatives;
- providing assistance and advice to national reconciliation efforts aimed at resolving disputes and restoring political stability;

- supporting the Chairperson and the PSC in their effort to prevent, manage and resolve election-related conflicts by issuing communiqués on current conflict situations, offering advice on specific conflict situations and submitting recommendations to the Chairperson and the PSC on appropriate course of action for a resolution of a specific election-related political impasse

(ii) ELECTION OBSERVATION AND MONITORING

73. Election observation and monitoring plays an important role in ensuring the credibility of elections, transparency, and integrity of the electoral process and legitimacy of the outcome by key electoral stakeholders. To this end, election observation and monitoring constitutes part of the tools for conflict prevention, management and resolution in countries holding elections, and especially countries experiencing, and/or emerging from, violent conflicts.

74. Election observation refers to information gathering or on-site fact-finding aimed at assessing the credibility, the legitimacy and transparency of the electoral process. It is often carried out by external agencies, which are not entitled to intervene in the voting and counting operations. Monitoring refers to information gathering, examination, and evaluation of the electoral process often carried out by national civil society agencies which are also able to interfere and correct identified deficiencies in election management, without unduly interfering with the election administration, which is the sole jurisdiction of the election management body.

75. The African Union has developed a framework for election observation and monitoring which has been used since 2002. This framework includes (a) the 2002 Declaration on the Principles Governing Democratic Elections in Africa; (b) the 2002 Guidelines for Election Observation and Monitoring Missions; and the 2007 African Charter on Democracy, Elections and Governance. All election observer missions of the AUC and the Pan-African Parliament are guided by these three instruments. Regional Economic Communities (RECs) have also developed their own norms, standards and guidelines for election observation such as the Principles and Guidelines Governing Democratic Elections adopted by the Southern African Development Community (SADC) in 2004⁵. As early as 2001, the Economic Community of the West African States (ECOWAS) adopted the Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and

⁵ The principles commit SADC member states to the following best practices in election management and democracy building: (a) full participation of the citizens in the political process; (b) Freedom of association; (c) Political tolerance; (d) Regular intervals for elections as provided for by the respective National Constitutions; (e) Equal opportunity for all political parties to access the state media; (f) Equal opportunity to exercise the right to vote and be voted for; (g) Independence of the judiciary and impartiality of the electoral institutions; (h) Voter education; (i) Acceptance and respect of the election results by political parties proclaimed to have been free and fair by competent National Authorities in accordance with the law of the land; and (j) Challenge of the election results as provided for in the law of the land.

Security which aims to ensure that member states entrench democratic culture and practices under conditions of political stability⁶.

76. Since the 1990s, the AUC has observed close to 200 elections in a majority of the 53 Member states through the coordination of the Department of Political Affairs. It should be noted that all AU observation and monitoring missions are dependent upon a formal invitation by the country holding an election which must reach the AUC at least two months before the election day. This essentially means that whether the AU observes an election is the sole discretion of the Member State concerned. If the Member State does not invite the AU, then the AU has no obligation and responsibility to send observers. It is important to question whether the AU should observe all elections in Africa or whether it should retain this invitational approach to election observation.

77. In accordance with provisions of the African Charter on Democracy, Elections and Governance, upon receiving a formal invitation from an AU member state, the Chairperson of the Commission shall “send an exploratory mission during the period prior to elections. This mission shall obtain any useful information and documentation, and brief the Chairperson, stating whether the necessary conditions have been established and if the environment is conducive to the holding of transparent, free and fair elections in conformity with the principles of the Union governing democratic elections” (Article 20).

78. The pre-election assessment team assesses the political landscape and other technical aspects of the election in advance of polling day and through its report, advises the Chairperson of the Commission on the scope and mandate of the AU mission. The scope may include one or a combination of the following:

- Observation, which involves gathering information and making an informed judgement;
- Monitoring, which involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedure are being violated or ignored;
- Mediation, that is third-party intervention in electoral disputes, directed at assisting disputants to find mutually acceptable outcomes and solutions to the electoral disputes;
- Technical Assistance, which generally takes the form of technical support and advice to the Electoral Commission; and
- Supervision and Audit, which involves the process of certifying the validity of all or some of the steps in election processes either prior to or after the election

⁶ The Protocol provides that, among others, (a) the preparation and conduct of elections and announcement of results shall be done in a transparent manner; (b) adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of elections and announcement of results; (c) the party and/ or candidate who loses the elections shall concede defeat to the political party and/or candidate finally declared winner, following the guidelines and within the deadline stipulated by law; (d) all holders of power at all levels shall refrain from acts of intimidation or harassment against defeated candidates or their supporters; and (e) the use of arms to disperse non-violent meetings or demonstrations shall be forbidden. Whenever a demonstration becomes violent, only the use of minimal and/or proportionate force shall be authorized.

has taken place (Guidelines for AU Electoral Observation and Monitoring Missions, 2002:6).

79. Of all the five possible mandates of the AU missions, only the first one (i.e. observation) has now become an entrenched norm, although this is still dependent upon an invitation and thus not compulsory on Member States. Only recently has the AU begun a process of mediation in election-related disputes (e.g. Kenya in 2008) with encouraging results. The other three aspects of AU missions as envisaged in the AU Guidelines (namely, monitoring, technical assistance and supervision and audit) have not yet been implemented in any systematic fashion. Now that the Department of Political Affairs has established the Democracy and Electoral Assistance Unit (DEAU)⁷ and the Democracy and Electoral Assistance Fund (DEAF)⁸, the AU should strive to implement all the five aspects of its electoral missions as envisioned in the 2002 Guidelines for AU Electoral Observation and Monitoring Missions.

80. Prior to sending an election observation mission, the AU must ensure that it has:

- Adequate lead-time for preparations;
- Availability of essential planning information;
- Availability of professional expertise; and
- Financial and other resources (Guidelines for AU Electoral Observation and Monitoring Missions, 2002:3).

81. In observing elections, AU missions aim to promote the integrity of the electoral process and legitimacy of its outcome by investigating the extent of the level playing field for all the contestants (mainly political parties). Some of the key questions that the missions aim to determine include whether the general political situation in a country is peaceful or marked by political tension. If the political situation is characterized by political tension, the mission has to assess the role of security forces in maintaining neutrality and impartiality. It is the duty of the missions to defuse political tension and promote peaceful elections. This is why the Guidelines

⁷ The DEAU is the unit in charge of all election-related initiatives and programmes of the African Union including the main five intervention areas spelled out in the Guidelines especially (a) observation, (b) monitoring, (c) technical assistance, and (d) supervision and audit. It has a staff complement of about 3 people and its 2008 programme has six elements namely (i) election observation, (ii) coordination of Election Management Bodies (EMBs) in Africa, (iii) technical assistance to national EMBs, (iv) improving quality of electoral processes, (v) resource mobilization through the Democracy and Electoral Assistance Trust Fund and (vi) development of a data-base of experts on elections and democracy in Africa. The Unit is still fairly new and is yet to be firmly established and deliver on its programme. The Unit is also weak in terms of its staff complement and other requisite resources to implement the above six-point programme.

⁸ The main objectives of the Democracy and Electoral Assistance Trust Fund include (a) the enhancement of the capacity of the African Union to support national and regional initiatives to build and sustain democratic processes, entrench government accountability and promote the transparency and accountability of state institutions; (b) Supporting national electoral processes that contribute to the holding of regular, free and fair elections in accordance with internationally recognized standards; and (c) Supporting regional and national capacity building of electoral management bodies, regional forums and networks to manage and oversee democratic electoral processes and electoral observation missions.

themselves proclaim that “electoral observation and monitoring missions can also play key roles in diminishing conflict before, during and after elections” (Guidelines for AU Electoral Observation and Monitoring Missions, 2002:1).

82. For AU election observation missions to enhance their effectiveness, especially in preventing and mitigating election-related conflicts, the following strategies should be considered:

- Enhance the capacity of the DEAU to plan, organize and coordinate AU electoral missions;
- Mobilisation of financial resources through DEAF to ensure that the AU is capable of providing requisite resources for its missions;
- Ensure smooth coordination of efforts between electoral missions coordinated by the Department of Political Affairs and election-related strategic interventions by the Panel of the Wise;
- AU missions must ensure the right balance between short-term and long-term observation; and
- The AU missions ought to ensure, in a more systematic and coordinated fashion, synergies and complementarities between their efforts and those of the RECs in election observation.

(iii) MEDIATION OF POST-ELECTION DISPUTES

83. Since the recent past, elections in Africa have tended to trigger enormous controversy with contestants disputing outcomes and losers not only by rejecting election results, but also resorting to violent means of expressing their dissatisfaction. Ideally, elections are supposed to ensure democratic governance and facilitate peace and political stability. Democracy cannot prevail and become sustainable if peace and political stability are non-existent. By the same token, under conditions of protracted violent conflict, war and political instability, socio-economic development is impossible. Africa’s diverse societies are often conflict-prone and such conflicts threaten nation-building and social harmony. Whereas these conflicts occur all the time, they tend to be exacerbated during elections. This is because elections entail political contestation over the control of the state and the stakes in such contestation tend to be too high. In some instances, ballots are disregarded as contestants quickly resort to bullets to capture state power. In these situations, the victims are often the ordinary citizens who get caught in the cross-fires of feuding politicians.

84. It is imperative that elections are transformed into conflict management tools and instruments rather than triggers for violent conflict, war, and political instability. Effective conflict management structures should be established to ensure that electoral disputes are handled amicably and dealt with early enough before they escalate into violent conflict. Furthermore, given the socio-economic, religious, ethnic and gender cleavages that mark the diversity of African societies, power-sharing arrangements (at both national and sub-national levels) should be institutionalised so as to transform politics from a zero-sum game into positive-sum game.

85. It is the prevalence of violent post-election conflicts that the AU has a mandate to intervene in these conflicts through mediation. The AU-facilitated third-party mediation is important in managing conflicts and de-escalating political violence. As

indicated earlier, the AU Guidelines for Elections Observation and Monitoring Missions provide for AU mediation in election disputes. The most exemplary and successful AU experience in mediating post-election conflict was witnessed during the post-election political crisis in Kenya in 2008. The mission was led by the former General Secretary of the United Nations, Kofi Anan.

(IV) TECHNICAL AND GOVERNANCE ASSISTANCE

86. This is an area where the AU has not yet been very effective. It is anticipated that with the establishment of the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Trust Fund, assistance will be provided in a more systematic manner and on a more sustainable basis with a view to enhance the institutional capacity of key governance institutions of the AU member states. The 2002 Guidelines for Election Observation and Monitoring Missions and the 2007 African Charter on Democracy, Elections, and Governance recognize this role for the AU in relation to strengthening capacity of electoral authorities in managing elections. Article 18 sub-sections 1 of the Charter states that “State Parties may request the Commission, 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. It is complemented by Article 18 sub-section 2 which states that “the Commission may at any time, in consultation with the State Party concerned, send special advisory missions to provide assistance to that State Party for strengthening its electoral institutions and processes”. AU Technical Assistance in the democracy and governance field in Africa ought to focus on enhancing the capacity of the following institutions (a) Election Management Bodies; (b) Political Parties; and (c) Civil Society Organisations.

87. More AU technical and governance assistance ought to focus principally on the EMBs with a view to assist these bodies to:

- Manage all the aspects of the elections more effectively⁹;
- Prevent, manage and resolve election-related conflicts before they spiral into political violence;
- Undertake voter and civic education;
- Effectively enforce the code of conduct;
- Support electoral reforms.

88. Besides, the enhancement of the institutional capacity of EMBs, AU Member States must be implored to develop the institutional capacity and democratic culture of political parties. If political parties lack internal democracy and their inter-party

⁹ The broader context of the electoral process includes: (a) the Electoral System; (b) the Party System; (c) The Constitutional and Legal System; and (d) Election Management Bodies. Within this context, there are about nine (9) major steps through which an electoral process unfolds including: (i) Voter and civic education; (ii) Demarcation of boundaries; (iii) Voter registration and management of the voters’ roll; (iv) Candidate nomination; (v) Political campaign; (vi) Polling; (vii) Counting and tabulation; (viii) Dispute management; and (ix) Election results management.

relations are marked by intolerance and disregard for electoral rules and the code of conduct, they may contribute to political tension which may trigger election-related conflicts either before, during, or after the elections. Furthermore, civil society organizations, including faith-based organizations, should be supported in their various efforts to inculcate democratic culture, especially in voter education, civic education and conflict management initiatives.

(v) POLICY ON POST-CONFLICT RECONSTRUCTION AND DEVELOPMENT (PCRD)

89. During its Head of State and Government Summit held in Banjul, The Gambia, in July 2006, the AU adopted the Policy on Post-Conflict Reconstruction and Development (PCRD). The PCRD is intended to serve “as a guide for the development of comprehensive policies and strategies that elaborate measures that seek to consolidate peace, promote sustainable development, and pave the way for growth and regeneration in countries and regions emerging from conflict” (AU, 2006:1). This policy is timely because while Africa has made considerable progress in the reduction of inter-state conflicts, intra-state conflicts still bedevil the continent. Of the intra-state conflicts, election-related conflicts are increasingly becoming a major governance challenge. The overall goal of the Policy is “to improve timeliness, effectiveness and coordination of activities in post-conflict countries and to lay the foundation for social justice and sustainable peace” (AU, 2006:3). This policy is conceived as a tool for: (a) consolidation of peace and prevention of violence; (b) dealing with the root causes of conflicts; (c) encouraging and fast-tracking planning and implementation of reconstruction activities; and (d) enhancing complementarities and coordination between and among diverse actors in PCRD processes (AU, 2006:3). The PCRD has six main components namely:

- Security;
- Humanitarian/Emergency Assistance;
- Political Governance and transition;
- Socio-economic reconstruction and development;
- Human Rights, Justice and Reconciliation; and
- Women and Gender.

90. In all the six components, the PCRD provides best practices and benchmarks of for achieving the overall goal stated above. With specific reference to political governance, PCRD encourages principles such as dialogue, consensus-building, participation, visionary leadership, constitutionalism, rule of law and provides benchmarks for their attainment. With regard to human rights, justice and reconciliation, the PCRD exhorts AU Member States to promote and protect human rights of their peoples; guarantee and protect women’s rights; establish national structures that promote human rights such as national commissions; ensure access to justice; embark on justice reforms to ensure the independence of the judiciary as well as professionalization and efficiency of delivery of justice; total rejection of impunity; encouragement of national reconciliation and harmony and guaranteed opportunities for the use of traditional mechanisms of reconciliation and justice in line with national laws and other human rights instruments. With respect to women and gender, the PCRD commits AU member states to gender equality in line with the 2003 Protocol to

the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹⁰ and the United Nations Security Council Resolution 1325. The PCRD provides for women's participation in conflict prevention, management and resolution; women's representation in peace negotiations and their implementation; creation of gender focal points to ensure that gender is mainstreamed through all PCRD activities.

VI. CONCLUSION AND RECOMMENDATIONS

91. Dealing with election-related conflict and political violence is the collective responsibility of national, sub-regional, and continental institutions. Although international assistance is equally essential, it is important to recognize that the singular objective of fostering African capacity and ownership for conflict resolution and problem solving should begin with endogenous African initiatives. It is in this respect that leadership by the AU is germane to developing modalities that strengthen existing institutions and values around electoral processes, democratic governance, and consolidation of peace. Since elections are a costly democratic exercise, African Union member states should also make deliberate efforts to shoulder the largest burden of the costs of elections with international partners' contribution where need be.

92. As this report has shown, since the 1990s, the AU has advanced and articulated significant principles, structures, and instruments to guide the conduct of elections and democratization in Africa. These standards have also been widely embraced by AU Member States in what has become a collective exercise in self-reinforcement of democratic norms and values of participation, transparency, and accountability. That latest of these instruments is the 2007 African Charter on Democracy, Elections and Governance which has thus far been signed by only 24 member states and ratified by only two member states. Also vital, parliaments at national levels and regional institutions have adopted and ratified several fundamental

¹⁰ This Protocol was adopted on 11 July 2003 during the AU Heads of State and Government Summit held Maputo, Mozambique. It exhorts AU Member States to, inter alia, include in their national constitutions and legislative frameworks the principle of gender equality and ensure its effective application; integrate gender perspective in their policy decisions, legislation, development plans, programmes and activities; take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist; and support local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women. In respect of good governance, the Protocol provides for the promotion of participative governance and equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that: (i) women participate without any discrimination in all elections; (ii) women are represented equally at all levels with men in all electoral processes; and (iii) women are equal partners with men at all levels of development and implementation of State policies and development programmes. In relation to the women's right to peace, the Protocol further provides that State Parties should take appropriate measures to ensure the increased participation of women in: (a) programmes of education for peace and a culture of peace; (b) structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels; (c) decision-making structures to ensure protection of asylum-seekers, refugees, returnees and displaced persons in particular women; (d) structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular women; and (e) all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation. At the time of writing this report, of the 53 AU Member States, only 40 had signed this Protocol of which only 18 had ratified it. The Protocol entered into force on the 25th November 2005.

provisions that relate to deepening democracy in Africa. While there is still more to be done in the ratification of core continental charters on democracy, what has been achieved so far is impressive in light of Africa's cultural and political diversities. Additionally, at the sub-regional level, various Regional Economic Communities (RECs) have adopted a number of instruments aimed at deepening democracy and ensuring the integrity, credibility and transparency of elections.

93. In accordance with the objective of strengthening the role of the AU in the prevention and management of electoral conflicts and political violence, the recommendations in this report proceed from three basic assumptions. First, marked progress has been realized in enshrining democratic principles, rules, and best practices pertaining to the conduct and organization of free and fair elections across Africa. The widespread domestication of democratic standards means that there is need for renewed commitment and determination to implement existing charters, statutes and declarations. In this regard, there is need to reinvigorate political will by member states to meet obligations that dovetail with prevailing African values and expectations. Second, continental reform initiatives such as the APRM have recently acknowledged that gaps and loopholes do exist in Africa's electoral architecture and mechanisms that need to be addressed to boost their efficacy and legitimacy. The upsurge of electoral violence is an opportune moment for the AU to reiterate and clarify existing electoral mechanisms and structures and at the same time chart a clear course to strengthen institutions and arrangements that undergird electoral governance. Third, since not all elections in Africa lead to political violence and conflicts, it is important for intervention mechanisms to be tailored toward countries where elections may exacerbate violence. In managing future instances of political and electoral violence, external actors, particularly the AU, RECS, and international partners need to craft measures that prioritize countries that are prone to problematic elections. All the AU institutions, including the Panel of Wise, have a complementary role to play in the articulation and implementation of measures to manage electoral violence.

94. The recommendations are grouped under six main clusters: (a) Preventive and Early Warning Mechanisms; (b) Electoral Governance and Administration; (c) AU's coordination of .Electoral Assistance; (d) Post-Election Conflict Transformation Mechanisms; and (e) International Cooperation and Partnerships; and (f) Strategic Interventions by the Panel of the Wise. Before delving into the specific recommendations in respect of each one of the clusters outlined above, our general recommendations are:

- AU member states have to scrupulously strive to implement the recommendations of the various declarations aimed at entrenching democracy, peace and human rights including the CSSDCA;
- AU member states have to sign, ratify and domesticate the African Charter on Democracy, Elections and Governance adopted in 2007;
- The Panel of the Wise has a major responsibility to intervene in efforts by the AU to prevent, manage and resolve election-related conflicts and political violence in collaboration with other AU organs and other existing panels of the elders.

(i) CLUSTER I: PREVENTIVE AND EARLY WARNING MECHANISMS

95. It is critical for all institutions of the AU (particularly the Department of Peace and Security and the Department of Political Affairs) to invest in preventive and early warning mechanisms geared toward countries that have a history of electoral violence or reveal signs of erupting into conflicts because of competition occasioned by political contestation and elections. Since most of the work in the electoral cycle occurs in the pre-voting stage, in countries facing the danger of lapsing into electoral violence, there needs to be adequate diplomatic and preparatory initiatives that ensure that such countries can hold competitive and peaceful elections. The wealth of socioeconomic and political information on African countries generated by the APRM, the AU Situation Room, academic and policy research, and media reports should form part of the collective knowledge that informs decisions about potential electoral hotspots. Without identifying potential problem countries, it would be impossible for the AU to develop meaningful preventive measures that reflect the uniqueness and peculiarities of each country. In the face of severe constraints on resources, it is important for the AU to evolve strategic interventions measures that focus on countries in need.

96. As part of the preventive and early warning mechanisms, the AU should:

- Strengthen its information capacity with respect to potential electoral hotspots; this would entail tapping into and drawing from the information available from agencies such as the APRM, the PSC, DPA, RECS early warning systems, and other organizations, such as the Former Heads of State Forum based in Pretoria, South Africa;
- Develop an annual roster and typology of forthcoming elections in Africa to determine countries that may require close monitoring and deployment of preventive resources to avoid the occurrence of contentious elections;
- Prioritize the countries that require urgent attention to mitigate potential problems;
- Priority should be given to deployment of pre-election assessment teams with a clear mandate to assess both the technical preparedness of electoral stakeholders and the overall political climate for elections and to promote dialogue among contestants as well as suggesting, where need be, whether or not an election should be held or postponed to an appropriate later date.

(ii) CLUSTER II: ELECTORAL GOVERNANCE AND ADMINISTRATION

97. Electoral governance and administration are embedded in wider constitutional rules that define and delineate political competition over state power in each AU member state. These rules are, in turn, influenced by the social, cultural, demographic matrixes that characterize various African countries. Recent experiences in electoral violence and political conflict reflect unresolved questions of constitutional design arrangements among Africa's diverse societies. While Africa's electoral systems should reflect regional, ethnic, and demographic needs and variations, the pattern of high stake winner-takes-all electoral systems seem to be one of the major causes of violence and political instability. Africa should make deliberate efforts to progressively

and creatively move towards electoral systems that broaden representation, recognize diversity, respect equity, and respecting majority rule while at the same time protecting minority rights. In the recent past, a trend of post-electoral crisis power-sharing arrangements has been on the ascendancy. There is a sense in which issues of justice and peace-building could justify this trend in some instance. However, there is a serious concern that if this trend is not well managed, it may spiral out of control and become a political tool abused for manipulation of the democratic process and the annulment of the people's democratic vote during elections. If this be the case, then an undesirable development is likely to be the decline of public trust in democratic institutions and elections which may lead to withdrawal of people's participation in the democratic process and especially in elections manifested by low voter turn out, among others. There is need for sturdy constitutional, institutional and legal frameworks to build a firm foundation for electoral governance and administration. Beyond the movement toward sturdy national constitutional structures that reinforce democratic consolidation, with respect to Electoral Governance and Administration, the AU should work toward ensuring the following:

a) Effective and efficient election administration and management:

- Establishment and strengthening of independent and impartial national electoral bodies solely responsible for management of elections with a view to ensure credible and transparent elections;
- The size, composition, mandate and tenure of office for the members of EMBs must be determined through an inclusive and transparent process;
- EMBs must be provided with adequate resources (financial, human, technological) in order to execute their legislated mandate effectively.
- EMBs should be adequately funded to effectively provide voter and civic education, in partnership with other stakeholders such as CSOs and faith-based organisations, with a view to inculcate a culture of democracy and peace.

b) Effective and professional election monitoring and observation

- Assessment of progress in implementation of recommendations emanating from previous election observation missions as well as other continental initiatives such as the APRM;
- Ensure that the AU observes all elections held by the Member States;
- All stages of the elections should effectively observed (namely pre-voting, voting and post-voting stages) and a comprehensive report on how the electoral process was conducted prepared and submitted to the AUC;
- The AU should coordinate its election monitoring and observation closely with those of the PAP, RECs and other regional and national civil society organisations;
- The capacity of national CSOs involved in election monitoring and observation should be enhanced and their efforts towards promoting transparent and credible elections fully supported;
- AU member states should reduce their dependence on international observer missions and strengthen continental and regional efforts in the monitoring and observation of elections;

- During the pre-election phase, election monitoring and observation should pay due attention to timing of elections, voter registration, demarcation of electoral zones, political party registration, candidate nominations, party funding, political campaign, the role of security forces, use of state resources, the media environment as these have generated disputes and conflicts;
- Focus of election monitoring and observation during the voting stage should ensure secrecy of the ballot and the right to vote, including vote counting and tabulation of results;
- During the post-election stage, election monitors and observers should focus on the management of election results, timing of announcement of results and reaction of the political players to the election results as well as management of election disputes by the relevant authorities including EMBs and judiciaries;
- Following an election, AU member states should endeavour to embark on post-election reviews and audits which could point to needed electoral reforms to deepen the roots of democratic governance.

iii) CLUSTER III: AU'S COORDINATION OF ELECTORAL ASSISTANCE

98. The involvement of the OAU/AU in elections, mainly through observation is traceable to the early 1990s. Between 1990 and 2008, the OAU/AU has observed about 200 elections throughout the continent. This is a commendable record by all indications. Although the AU continues to observe elections, the process itself has to be deliberately professionalised. It has to be more technical and less political and diplomatic. To this end, a lot of assistance has to be given to the AU Department of Political Affairs, through its Electoral Assistance Unit to coordinate elections more efficiently and effectively. The Electoral Assistance Unit, working in concert with the Electoral Assistance Trust Fund, could change the electoral landscape in Africa in such a way that it promotes political stability, peace, democracy and good governance. To this end, we recommend as follows:

- The DEAU should be provided with requisite resources to undertake its mandate including, financial, technological and human capacity;
- DEAU should work with national EMBs to plan for elections, particularly in the mobilization of resources for elections and the anticipation of resource shortfalls;
- DEAU should conduct training for EMBs, collect and share information and experiences about best electoral practices, and exchange visits among EMB personnel across Africa;
- DEAU should mobilize expertise in Africa and the Diaspora with respect to election administration such as voter registration, party funding, political campaigns, and demarcation of boundaries;
- DEAU should work with national and regional election monitoring to standardize election observation information and toolkits;
- DEAU should develop a data bank of experts and professionals in the area of election observation and management in order to facilitate the mobilization of resources, as well as building and consolidating partnerships.

iv) CLUSTER IV: POST-ELECTION CONFLICT TRANSFORMATION MECHANISMS

99. The AU and RECs have a wide array of extant institutions with the competence to manage post-electoral crises in a timely fashion. The most significant question is when and how the AU can mobilize the various institutional energies to make a difference in countries convulsed by electoral violence. The roles of these institutions hinge on their preparedness and their ability to coordinate with each other in transforming violent and uncertain post-electoral contexts into peaceful, fair, and just outcomes that respect democratic norms. Since the upsurge of electoral violence often denotes the absence or collapse of orderly mechanisms for managing competition, the role of external actors and institutions is even more critical in the post-election phase. Fortunately, post-electoral violence occurs when there is still a significant presence of international actors on the ground in the form of electoral observers and in circumstances whereby it is easier to galvanize international attention on the plight of the affected country. This means that when violence breaks out, external actors such as the AU and other observers can quickly step in to defuse the escalation of violence. At this stage, the AU and its institutions could take the lead in:

- ensuring that the parties abide by the electoral code of conduct and use judicial and alternative dispute resolution (ADR) mechanisms in resolving disputes and conflicts;
- encouraging the parties to resolve electoral conflicts through regional and continental judicial mechanisms such as the African Court of Justice and judicial mechanisms established by the RECs; this is important where local mechanisms are feeble or contested;
- establishing political mediation and confidence-building mechanisms among the parties to prevent further escalation of violence;
- providing reassurance to the wide public about international anxiety for the return to normalcy and respect for the rule of law;

100. There are also lessons from the Kenya and Zimbabwe cases on how the AU should coordinate diverse intervention mechanisms in post-election conflict transformation. In Kenya, the AU's intervention led to the timely creation of the Panel of Eminent Persons led by Kofi Annan, while in Zimbabwe, the AU encouraged the Southern African Development Community (SADC) to lead the mediation. As two distinctive cases of managing the problems of post-election conflicts, Kenya and Zimbabwe reveal approaches that are borne out of different but complementary comparative strength of continental and regional institutions. More important, in both AU and SADC mechanisms, the role of eminent African statesmen and leaders was crucial in generating momentum toward the resolution of the crises. It is for this reason that the Panel of the Wise stands out as an important institution at this stage of the electoral cycle. Through the burgeoning numbers of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives.

v) **CLUSTER V: INTERNATIONAL COORDINATION AND PARTNERSHIPS**

101. International actors constitute a vital part of electoral management in Africa by mobilising funds, administrative and technical expertise, exerting political pressure on groups, and observing and furnishing legitimacy to elections. As wide-scale electoral violence becomes a core issue on the African landscape, bilateral and multilateral state and non-state actors will become even more critical at each phase of the electoral cycle in terms of funding and technical assistance. In the past, most of the international actors have accorded disproportionate attention to election monitoring at the expense of investment in the institutions that undergird free, fair, and competitive elections. Equally significant, although international partnerships have made a difference in underwriting the transitions to electoral processes, coordination of intervention remains problematic particularly in circumstances where selective engagement of different parties and the pursuit of competing priorities often yields conflicts. In countries that are prone to electoral violence, it is imperative that there be higher levels of coordination among international partners and between them and continental, regional and local actors to pre-empt mixed motives and expectations during competitive electoral processes. Coordination problems pose a major challenge to the integrity of electoral process when multiple actors compete to influence different outcomes. To foster better coordination and partnerships, it is important for donors:

- Increase involvement at all levels of the electoral cycle through funding and technical assistance;
- Minimize competitive engagements in electoral processes through better coordination and cooperation;
- Mitigate coordination problems through joint planning of electoral assistance programs, information sharing, and regular consultation actors across the electoral cycle;
- Deepen involvement in the pre-election institution—and-confidence building phase to strengthen the preventive mechanisms that minimize conflicts;
- Devote more resources, especially on strengthening the capacity of local bodies to manage and oversee elections instead of funding large election observation teams;
- Provide technical support to the institutionalization of the Panel of the Wise mechanisms for prevention, management, and resolution of electoral disputes.

vi) **CLUSTER VI: STRATEGIC INTERVENTIONS BY THE PANEL OF THE WISE**

102. As a new institution endowed with the moral authority and suasion, the Panel of the Wise is in a strategic vantage point to use its eminent position, mediation, and negotiation skills to prevent, manage, and resolve electoral conflicts in collaboration with other AU structures and other panels of the elders. The small composition of its membership allows sufficient flexibility to rapidly intervene at all phases of the electoral process, particularly where crises are anticipated. The Panel's personal and professional attributes afford it wide latitude to carve a niche in electoral peacemaking and conflict prevention.

103. The Panel should also be capacitated in the medium-to-long-run with the technical and financial resources to sustain good offices, advisory, assessment, and technical missions. The technical back-up for the Panel's conflict management work should be provided jointly by the Department of Peace and Security and the Department of Political Affairs. The Secretariat of the Panel should be further strengthened and be in a position to link the Panel's interventions strategically to those of the two Departments relating to prevention, management and resolution of election-related conflicts. Through the burgeoning numbers of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives. Working closely with the AU and sub-regional Early Warning Mechanisms, the Panel should be periodically appraised of electoral events that may lead to violence and conflict so that it can play a role in preventing them. In its interventions in the prevention, management and resolution of election-related conflicts, the Panel of the Wise should work in close collaboration with other key AU organs and other existing forums of former heads of states in Africa.

104. The Panel can be deployed in two critical stages of elections namely the pre-voting stage with focus on preventive diplomacy and early warning and the post-voting stage with focus primarily on mediation.

a) Pre-Voting stage

At this decisive prevention stage, the Panel can intervene in anticipation of crisis through:

- Early warning through discreet missions and contacts;
- Fact-Finding missions of its own. The Panel has the moral authority to intervene in an impending crisis without invitation by national authorities;
- Shuttle diplomacy by Panel members to diffuse potential conflicts in the preparations for elections;
- Through such missions, the Panel should have the mandate to recommend to the AU Commission, as well as the Government and national stakeholders, about the conditions for holding of elections;
- Creation of preliminary mediation and consultative offices and forums where parties are feuding and contesting electoral rules;
- In cases of fragile and volatile situations, the Panel can act at the behest of the Peace and Security Council , and/or of the Chairperson of the AU, in a voluntary assessment manner in proposing measures to take to pre-empt the escalation of the conflict;
- In situations where the Panel feels that an election has a great potential to ignite political violence that could lead to destabilisation of the country, it should

strive towards a postponement of the poll to an alternative date following deliberate efforts towards de-escalation of the conflict;

- Coordination with other institutions and bodies to guarantee a pre-electoral environment conducive to credible electoral process;
- The Panel should encourage AU member states to embark on systematic and continuous voter and civic education to promote a culture of political tolerance, peace and democratic culture throughout all layers of society

b) Post-Voting Stage

In order to anticipate future post-electoral crises, the Panel should consider:

- The main role of the Panel of the Wise in the post-voting stage should focus on mediation of post-election conflict with a view to building peace;
- The institutionalization and broadening of a Panel Mediation Committee along the lines of the Kofi Annan Mediation Troika utilized effectively in Kenya;
- Enhance the capacity of the Panel Mediation Committee through technical assistance and training of competent mediation support team;
- The institutionalisation of post-elections reviews and audits through relevant election management bodies involving other key stakeholders to ensure that corrective measures are taken through electoral reforms addressing electoral violence;
- Monitoring of implementation of the recommendations of election observer missions (including those of the AU) by AU member states following elections.

REFERENCES

- AU. 2002. OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, Addis Ababa, Ethiopia (mimeo).
- AU. 2002. Guidelines for African Union Electoral Observation and Monitoring Missions, Addis Ababa, Ethiopia (mimeo)
- AU. 2007. African Charter on Democracy, Elections and Governance, Addis Ababa, Ethiopia (mimeo)
- AU.2002. Memorandum of Understanding of Security, Stability, Development and Cooperation in Africa (CSSDCA), Addis Ababa, Ethiopia.
- AU. 2002. Declaration on Democracy, Political, Economic and Corporate Governance of the New Partnership for Africa's Development (NEPAD), Addis Ababa, Ethiopia.
- APRM Secretariat. 2003. The African Peer Review Mechanism (APRM), Midrand, South Africa.
- AU. 2003. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Addis Ababa, Ethiopia.
- AU. 2003. African Union Convention on Preventing and Combating Corruption, Addis Ababa, Ethiopia.
- AU. 2004. Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Addis Ababa, Ethiopia.
- AU. 2008. Meeting the Challenge of Conflict Prevention in Africa: Towards the Operationalisation of Continental Early Warning System, Conflict Management Division, and Addis Ababa, Ethiopia.
- Mozaffar, S. and Schedler, A. 'The Comparative Study of Electoral Governance-Introduction', *International Political Science Review*, 23 (1), 2002.pp5-27.
- OAU. 1981. African Charter on Human and Peoples' Rights, Addis Ababa, Ethiopia.
- OAU. 1990. African Charter for Popular Participation in Development, Addis Ababa, Ethiopia.
- OAU. 1990. Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, Addis Ababa, Ethiopia.
- OAU.1991. Treaty Establishing the African Economic Community, Addis Ababa, Ethiopia.
- OAU.1995. Cairo Agenda for Action, Addis Ababa, Ethiopia.
- OAU.1999. Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights in Africa, Addis Ababa, Ethiopia.
- OAU. 2000. Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, Addis Ababa, Ethiopia.
- OAU. 2000. Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, Addis Ababa, Ethiopia.
- OAU. 2000. Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration, Addis Ababa, Ethiopia.
- Strom, M, 2009. Promoting the African Charter on Democracy, Elections and Governance: A Four-Part Guide for Study Circles, IDASA: Pretoria.

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