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EX.CL/ 258(IX)

**REPORT OF THE MINISTERIAL MEETING ON THE DRAFT
AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND
GOVERNANCE AND ON THE REVISION OF THE LOME
DECLARATION ON UNCONSTITUTIONAL CHANGES OF
GOVERNMENT IN AFRICA**

**REPORT OF THE MINISTERIAL MEETING ON THE DRAFT AFRICAN CHARTER
ON DEMOCRACY, ELECTIONS AND GOVERNANCE AND ON THE REVISION OF
THE LOME DECLARATION ON UNCONSTITUTIONAL CHANGES OF
GOVERNMENT IN AFRICA**

I. INTRODUCTION

1. By Decision EX.CL/Dec.31 adopted in Maputo, Mozambique, in July 2003, the Executive Council, among other things, took note of the documents that emerged from the African conference which held in Pretoria, South Africa, in April 2003, on Governance, Democracy and Elections, and welcomed the proposal of the Commission to prepare a draft document on Democracy, Elections and Governance, which would contain all commitments made by Member States in this regard, and requested that the draft be submitted to the consideration of government experts.

2. Furthermore, in Decision EX/CL/Dec.124(V) adopted in July 2004 in Addis Ababa, Ethiopia, the Executive Council, among other things, requested the African Union Commission to convene a meeting of government and other experts to prepare the Draft Charter on Democracy, Elections and Governance, on the basis of commitments already collectively made by Member States in this regard, and to present the document at its 7th ordinary session.

3. Pursuant to the implementation of these decisions, the Commission has prepared a Draft Charter on Democracy, Elections and Governance. Concurrently, the Commission has also prepared a report on the revision of the Lome Declaration of July 2000 on unconstitutional changes of government in Africa, in accordance with the provisions of the 93rd communiqué of the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution, which had requested the Commission to "*make an in-depth review of the Lome Declaration, in light of the developments that have occurred since its adoption, in July 2000, and to submit to it, through its sub-committee on Unconstitutional Changes of Government, for subsequent consideration by the competent policy organs of the AU, concrete proposals aimed at strengthening the effectiveness of the Declaration, including the rejection of any participation, in particular as candidates, of the perpetrators of coups d'état, or any other form of unconstitutional change, in elections organized to restore constitutional order*".

4. Before submitting the Draft Charter on Democracy, Elections and Governance for the consideration of government experts, the Commission first submitted it to an independent group of experts for examination, which also simultaneously examined the report on the revision of the Lomé Declaration of July 2000 on unconstitutional changes of government in Africa. The independent experts met in Addis Ababa, Ethiopia, from 21 to 23 November 2005. Their report was submitted to the meeting of government experts.

5. After the meeting of independent experts, the Commission convened a meeting of government experts which held in Addis Ababa from 3 to 5 April 2006. The government experts examined the proposals of independent experts on the revision of the Lomé Declaration on Unconstitutional Changes of Government in

Africa and those on the Draft Charter on Democracy, Elections and Governance. In the aftermath of their work, they made recommendations which they submitted to the ministerial meeting, which included the need to incorporate the key elements of the Lomé Declaration in the Draft Charter.

6. The ministerial meeting met in Addis Ababa, Ethiopia, on 6 and 7 April 2006. It examined the report of the meeting of government experts on the revision of the Lomé Declaration on Unconstitutional Changes of Government in Africa as well as the Draft Charter on Democracy, Elections and Governance. At the end of their in-depth deliberations, the ministerial meeting requested that a second meeting of government experts be convened to give legal form to the Draft Charter, followed by a second ministerial meeting to adopt it.

7. In implementation of the decision of the ministerial meeting on the Draft Charter on Democracy, Elections and Governance, held in Addis Ababa, on 6 and 7 April 2006, the Commission convened, on 7 and 8 June 2006, in Brazzaville, Republic of Congo, the 2nd meeting of government experts to take a second look at the Draft. It should be recalled that before submitting the Draft anew for examination to government legal experts, the Commission submitted it first to a group of independent legal experts to give it appropriate legal form.

8. At their meeting of 7 and 8 June 2006, government experts examined the Draft Charter article by article. They had a consensus on almost the whole Draft, except on the question of the independence of national electoral bodies, which they decided to submit for consideration to the ministerial meeting.

9. The second Ministerial Meeting on the Draft African Charter on Democracy, Elections and Governance held in Brazzaville, the Republic of Congo, on 9 and 10 June 2006. It examined the Draft Charter article by article and arrived at a consensus on all issues discussed, which consensus was reflected in the new Draft Charter. It should be noted that the question of the revision of constitutions as a ploy to stay in power had dissenting opinions which were reflected in the Draft.

II. ATTENDANCE

10. The following Member States were represented: Algeria, Angola, Botswana, Burkina Faso, Burundi, Republic of Congo, Democratic Republic of Congo, Côte d'Ivoire, Egypt, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Liberia, Libya, Mali, Namibia, Nigeria, Republic of South Africa, Saharawi Arab Democratic Republic, Senegal, The Sudan, Tanzania, Togo, Tunisia, Uganda and Zimbabwe.

11. The Secretariat of the New Partnership for Africa's Development (NEPAD) and the following organizations participated as observers: The Commonwealth, International Institute for Democracy and Electoral Assistance (IDEA), Electoral Institute of Southern Africa (EISA), and the Economic Community of Central African States (ECCAS).

III. OPENING CEREMONY

12. The opening ceremony was graced by the presence of the Prime Minister in charge of Coordination of Government Action and Privatization, H.E. Isidore Mvouba, deputizing for H. E. Denis Sassou Nguesso, President of the Republic of Congo and current Chairperson of the African Union.

13. In her welcome statement, the AU Commissioner for Political Affairs, Mrs. Julia Dolly Joiner, first welcomed the holding of this meeting in Brazzaville, capital city of the Republic of Congo. She thanked the people and government of Congo for the efforts they had made to host this conference and assured them of the solidarity and support of the African Union Commission in their endeavour to consolidate national peace, reconciliation and concord.

14. The Commissioner then recalled the issues which were discussed at length during the Addis Ababa meeting, namely, the need to strengthen the Lomé Declaration on Unconstitutional changes of Government in order to put an end to the proliferation of coups d'état and the possibility of incorporating key elements of that Declaration into the Charter to render it legally binding; the issue of the amendment and revision of constitutions to prolong tenure of office; the strengthening of the role of the political parties in consolidating political pluralism and fostering open political debate in Africa; the issue of sanctions, elections, combating corruption and poverty alleviation.

15. Lastly, the Commissioner indicated that the Charter on Democracy, Elections and Governance, once it is signed and enters into force, will infuse new impetus which will contribute to consolidating democracy and good governance in the Continent for the development and wellbeing of African populations.

16. Opening the meeting, the Prime Minister pointed out that the quest for stability and sustainable development in Africa is today a source of major concern of Heads of State and that these noble objectives could not be attained without sustained democracy, good governance and free, regular and transparent elections.

17. He however emphasized that Africa's nascent democracy increasingly generates challenges that it must address itself. That is why, he stated, there is an urgent need to enhance democracy, both in quantitative and qualitative terms, using appropriate electoral instruments, in order to prevent violence as well as pre- and post-electoral debates that degenerate into inter-community clashes which, unfortunately, portray Africa as a continent of bad losers and of unending discord in the aftermath of elections.

18. Democracy, the Prime Minister continued, should be marked by a common set of rules, mechanisms and conventions on the basis of which regular, free and transparent elections would be organized to choose representatives of the people.

19. The Prime Minister concluded by underscoring that the Charter should necessarily take into account the developments and major changes occurring in the world and that only sustained democracy could guarantee social peace, thus paving the way for democratic alternation and good governance in the political, economic

and social spheres, failing which Africans would be out of step with the globalization and modernization trend.

IV. ELECTION OF THE BUREAU

20. The Bureau was elected as follows:

Chair	Republic of Congo
1 st Vice Chair	Republic of South Africa
2 nd Vice Chair	Republic of Uganda
3 rd Vice Chair	Sahrawi Arab Democratic Republic
Rapporteur	Republic of Senegal

V. PRESENTATION OF THE REPORT OF GOVERNMENT EXPERTS

21. Mr. Charles Zacharie Bowao, Assistant Secretary General of the Government of the Republic of Congo, in his capacity as the Chairman of the Meeting of Government Experts, presented the Report of the Second Meeting of Government Experts. He expressed satisfaction at the consensus reached on almost all the issues considered. He also drew the attention of the Ministerial Meeting to the issue of independent national electoral bodies on which the experts failed to reach a common position and were referring to the Ministerial Meeting for consideration.

22. The Ministerial Meeting took note of the Report of the Meeting of Government Experts.

VI. MAIN ISSUES CONSIDERED IN THE MEETING OF EXPERTS AND MINISTERS

23. At the ministerial meetings (in April and June 2006), a number of issues were at the centre of intense discussions before a consensus was arrived at. These discussions dealt both with the Lomé Declaration and the Draft Charter:

A) Consideration of the Lomé Declaration on Unconstitutional Changes of Government

24. The discussions on the Declaration centred on the following points:

The strengthening of the Lome Declaration

25. Government experts considered it fundamental to strengthen the provisions of the Declaration while waiting for the entry into force of the Charter. The key elements of the Declaration should be incorporated into the Charter.

The issue of sanctions

26. It was observed that sanctions provided in the Lomé Declaration were limited to the suspension of the participation, in the activities of the Union, of authors of coups d'état and of other unconstitutional changes of government. Strengthened by this, authors of coups d'état and of other unconstitutional changes install themselves in power and organize elections which they generally win, and are thereafter recognized by the international community. It was therefore imperative to strengthen the Lomé Declaration, by introducing therein coercive sanctions even if some delegations thought that the sanctions regime was already provided for in the Constitutive Act of the Union (Article 23(2)).

Early warning system

27. The need was underscored to put in place an early warning system which would help to prevent the taking of power through unconstitutional methods.

The issue of the status of former Heads of State

28. This issue was discussed in the light of the question of attempts to stay in power. It was thought that the issue should be considered in a preventive context, which would enable former Heads of State to have a status which ensures their retirement and security. It should be noted that this idea was the subject of controversy and was not included in the Charter.

Recommendations on the Lomé Declaration

29. Following their discussions, government experts made the following recommendations:

- The need to strengthen the provisions of the Lomé Declaration on Unconstitutional Changes of Government
- A ban on authors of coups d'état and of other unconstitutional changes of government on contesting elections for the purpose of returning to constitutional order or occupying any post of responsibility;
- A ban on the manipulation of constitutions and other legal texts in order to stay in power;
- A referendum should be the preferred method of any constitutional amendment;
- The institution of autonomous or independent bodies to manage and run elections;

- The credibility of elections should be ensured by independent institutions;
- Institution of media regulating organs to ensure equal access to the media;
- Enhancing of early warning systems pursuant to Article 12 of the Protocol relating to the establishment of the Peace and Security Council of the African Union;
- Institution of coercive sanctions against authors of coups d'état or of other forms of unconstitutional changes of government;
- Strengthening of democracy by the introduction of the culture of democracy;
- Abolition of the six (6) months time lapse in the Lomé Declaration for the return to constitutional order;
- Categorical condemnation and systematic rejection of all unconstitutional changes of government;
- Recognition of the role, rights and obligations of political parties;
- The need to organize consultations with regional mechanisms, international and civil society organizations, when deemed necessary.

B) Consideration of the Draft Charter on Democracy, Elections and Governance

30. With regard to the Draft Charter, the discussions of the experts and ministers focused on the following: The independence of national electoral organs, the role of political parties, the revision of constitutions as a ploy to stay in power, the representation of governments.

The question of the independence of national electoral bodies

31. The opinion of some delegations was that account should be taken of the systems and experiences of each country. They pointed out the fact that the organization of elections was the duty of the State and that therefore the question was that of impartiality and neutrality. They also requested, in this regard, that reference be made to existing texts of the Organisation, especially, the Durban Declaration of 2002 on the principles governing democratic elections in Africa.

32. Other delegations highlighted the fact that an increasing number of countries were establishing independent national bodies, and that there was the need to consolidate this practice to ensure neutrality and impartiality in the organization and conduct of the electoral process.

33. It was unanimously recognized, during the debate, that the independence of national electoral structures could only be functional; meaning that independence is relative to decision-making.

34. At the end of deliberation, participants agreed that the principle of the independence of national electoral organs should be retained, given the fact that it really boils down to functional independence within the context of the decision-making process. The meeting recommended that the concept of “independence” be defined as such in Article 1 – Definitions. The notion of “electoral organ” should also be defined accordingly.

The issue of the representativeness of democratically elected governments

35. Article 3 of the Draft sets down the principle of “regular, transparent, free and fair elections as a means of ensuring the legitimate authority of a representative government”.

36. Some delegations expressed the view that the representative character of a government was dependent on democratic governance and, for that reason, the notion of representative government should not be retained in the text.

37. Others underscored the need for a democratically elected government to take into consideration the diversity and distinctive characteristics of the national dimension; and in this regard, be as representative as possible. These delegations therefore advocated that the notion of representative government should be retained.

38. On this issue, the meeting agreed on the need to promote a system of government that is as representative and inclusive as possible. In this connection, the following paragraph was recommended for inclusion in Article 3 - Principles: “promotion of a system of government that is representative and all-inclusive”.

The issue of the role of Political Parties

39. The special role of political parties in the enhancement of political pluralism and, by that token, in the consolidation of democracy at national level was reaffirmed. The need for these parties, especially the opposition, to operate within the ambit of the law, was however underscored. The meeting, in particular, accepted the principle of adoption of a code of conduct to guide both the recognized political parties and the Government, before, during and after elections. It was recommended that such an instrument should include a commitment by the parties to accept the results of elections or to contest such results by legal means.

The issue of amending the Constitution and legal instruments to remain in power (Article 25, para. 5)

40. Article 25, paragraph 5, of the Draft Charter includes on the list of unconstitutional changes, “Amendment or revision of constitutions and legal instruments, contrary to the provisions of the constitution of the State Party concerned, to prolong the tenure of office for the incumbent government.”

41. The debate on this paragraph focused on whether or not to retain in the Draft Charter part of the sentence which reads: "to prolong the tenure of office for the incumbent government."

42. Some delegations argued against the retention of this phrase on the grounds that maintaining a government in power is a function of democratic expression, within the framework of constitutional rules and procedures in force.

43. Others stressed the need to retain the phrase, arguing that it was vital to allow the free play of democratic alternation, thereby preventing any attempt to remain indefinitely in power through the amendment of the constitution and relevant legal instruments by the Government of the day, in violation of the letter and spirit of the constitution.

44. In the absence of a consensus on the provisions of Article 25, paragraph 5, on which the Ugandan delegation expressed reservation, the Ministers decided to submit the matter to the next session of the Executive Council and the Assembly of the Union, due to take place from 25 June to 2 July, 2006, for final decision.

VII. ADOPTION OF THE DRAFT CHARTER

45. At the end of their meeting, the Ministers adopted the Draft Charter hereto attached with amendments, and decided to recommend it for adoption by the Executive Council and the Assembly of the Union.

46. The Draft Charter on Democracy, Elections and Governance is annexed to this Report.

EX.CL/ 258(IX)
Annex

**REPORT OF THE MINISTERIAL MEETING ON THE DRAFT
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DRAFT/CHARTER/II/Rev.2

**DRAFT AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND
GOVERNANCE**

DRAFT AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

PREAMBLE

We, the Member States of the African Union (AU);

Inspired by the Objectives and Principles of the African Union as enshrined in the Constitutive Act, particularly Articles 3 and 4, which emphasise the significance of good governance, popular participation, human rights and the rule of law;

Recognising the contributions of the African Union and Regional Economic Communities in the promotion, nurturing, strengthening and consolidation of democracy and governance;

Reaffirming our collective will to continuously deepen and broaden the roots of democratic and constitutional rule, peace and security and development in our countries;

Guided by our common mission to strengthen and consolidate institutions for good governance, continental unity and solidarity;

Committed to universal values and principles of democracy, good governance, human rights and the right to development;

Cognizant of the historical and cultural conditions in Africa;

Seeking to entrench a political culture of change of power through regular, free, fair and transparent elections managed by competent, independent and impartial national electoral bodies;

Concerned about the unconstitutional changes of governments that have generated profound insecurity, instability and violent conflict;

Determined to promote and strengthen good governance through the institutionalization of transparency, accountability and participatory democracy;

Convinced of the need to enhance the role of election observation missions as they are an important contributory factor to the transparency and credibility of elections;

Desirous to consolidate the relevant decisions and declarations of the OAU/AU (including, but not limited to, the 1990 Declaration on the political and socio-economic situation in Africa and the fundamental changes taking place in the world, the 1995 Cairo Agenda for Action – Re-launch of Africa’s Economic and Social Development, the 1999 Algiers Declaration on unconstitutional changes of governments, the 2000 Lome Declaration for an OAU Response to Unconstitutional Changes of Governments, the 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa, the 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union) into one single document with legally binding measures in the form of a Charter in the light of the Decision EX.CL/Dec.31(III) adopted in Maputo, Mozambique in July 2003 and Decision EX.CL/124(V) adopted in Addis Ababa, Ethiopia in May 2004;

HAVE AGREED AS FOLLOWS:

**Chapter 1
Definitions**

Article 1

In this Charter, unless otherwise stated, the following expressions shall have the following meaning:

“African Human Rights Commission” means the African Commission on Human and Peoples’ Rights;

“African Peer Review Mechanism” means the African Peer Review Mechanism of the New Partnership for Africa’s Development;

“Assembly” means the Assembly of Heads of State and Government of the African Union;

“AU” means the African Union;

“Commission” means the Commission of the Union;

“Constitutive Act” means the Constitutive Act of the Union;

“Charter” means the African Charter on Democracy, Elections and Governance;

“Independent” in relation to national electoral bodies means the ability to function effectively and take decisions concerning the management and conduct of elections without interference by, or direction from, any authority;

“Member States” means the Member States of the African Union;

“National Electoral Body” means a competent authority, established by the relevant legal instruments of a State Party, responsible for organizing and supervising elections;

“NEPAD” means the New Partnership for Africa’s Development;

“Peace and Security Council” means the Peace and Security Council of the Union;

“Regional Economic Communities” means the regional integration blocs of the African Union;

“State Parties” means any Member State of the African Union which has ratified or acceded to this Charter;

“Union” means the African Union.

Chapter 2 Objectives

Article 2

The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
3. Adhere to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonisation of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;
9. Promote the fight against corruption as enshrined in the AU Convention on Preventing and Combating Corruption;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

Chapter 3 Principles

Article 3

State Parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
3. Promotion of a system of government that is representative and all-inclusive;
4. Regular, transparent, free and fair elections as the means for ensuring legitimate authority and governance;
5. Separation of powers to ensure accountability of the public institutions;
6. Gender equality and equity in public and private institutions;
7. Participation of African peoples in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs in order to build and sustain public trust of the people in public institutions;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties.

Chapter 4 Democracy, Human Rights and Rule of Law

Article 4

1. State Parties shall recognize and accept democracy as a basic right and shall commit themselves to promote democracy, human rights, and the principle of the rule of law.
2. State Parties shall recognize popular participation as the fundamental right of the people.

Article 5

State Parties shall take all appropriate measures to ensure constitutional rule and constitutional transfer of power.

Article 6

State Parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility.

Article 7

State Parties shall take all necessary measures to strengthen the Organs of the Union that are mandated to promote and protect human rights and to fight impunity and endow them with the necessary resources.

Article 8

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as diverse forms of intolerance.
2. State Parties shall adopt legislative and administrative measures to mainstream the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons or other marginalized and vulnerable social groups.
3. State Parties shall respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

Article 9

State Parties undertake to develop and implement social and economic policies and programmes that promote sustainable development and human security.

Article 10

1. State Parties shall entrench the principle of the supremacy of the constitution.
2. State Parties shall ensure that a referendum is entrenched as one of the best means of amending the constitution.
3. State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society.

Chapter 5 A Culture of Democracy and Peace

Article 11

The State Parties shall develop legislative and policy frameworks to entrench a culture of democracy and peace.

Article 12

State Parties shall carry out programmes and activities designed to promote democratic principles and practices and strengthen a democratic culture in Africa.

Article 13

1. State Parties shall promote good governance by ensuring transparent and accountable administration.
2. State Parties commit themselves to strengthen political institutions to entrench a culture of democracy and peace.
3. State Parties shall create conditions conducive for civil society organizations to exist and operate within the law.

Article 14

State Parties shall integrate civic education in the formal educational curricula and to this end develop appropriate programmes and activities.

Article 15

State Parties shall take measures to ensure political and social dialogue, public trust and transparency between political leaders and the people in order to entrench democracy and peace.

Chapter 6 Democratic Institutions

Article 16

1. State Parties shall strengthen and institutionalize civilian control over the armed and security forces to ensure that they protect democracy and constitutional order.
2. State Parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.
3. State Parties shall cooperate with each other to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.

Article 17

1. State Parties shall establish public institutions that promote and support democracy and constitutional order.
2. State Parties shall ensure that the independence of these institutions is guaranteed by the constitution.
3. State Parties shall ensure that these institutions are accountable to competent national organs.
4. State Parties shall provide resources to enable these institutions to perform their duties efficiently and effectively.

Article 18

State Parties shall cooperate at regional and continental levels in building and consolidating democracy through sharing of experiences, lessons and best practices.

Chapter 7 Democratic Elections

Article 19

State Parties re-affirm their commitment to hold regular democratic elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa and towards implementation of this article, each shall:

1. Establish and strengthen independent and impartial national electoral bodies that shall manage electoral processes and systems.
2. Establish and strengthen national mechanisms that redress election related disputes in a timely manner.

3. Ensure fair and equal access by contesting parties and candidates to private and state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political parties and government prior, during and after elections. The code shall include a commitment by parties to accept the results of the election or challenge them in a court of law.

Article 20

1. 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.
2. The Commission may at any time, with the consent of the State Party concerned, send special advisory missions to provide assistance to that State Party for strengthening its electoral system and processes.

Article 21

1. Each State Party shall inform the Commission of scheduled elections and invite the Commission to send an electoral observer mission.
2. Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.

Article 22

1. The Commission shall ensure that these missions are independent and shall provide them with the necessary resources for that purpose.
2. Electoral observer missions shall be conducted by appropriate and competent experts in the area of election monitoring, drawn from continental and national institutions such as but not limited to the Pan African Parliament, national electoral bodies, national legislatures or eminent persons taking due cognizance of the principles of regional and gender representation.
3. Electoral observer missions shall be conducted in an objective, impartial and transparent manner.
4. All electoral observer missions shall present the report of their activities to the Chairperson of the Commission within a reasonable time.
5. A copy of the report shall be submitted to the State Party concerned within a reasonable time.

Article 23

In the report referred to in article 22 above, the electoral observer missions shall notify the Commission, if the necessary conditions and environment for

free and fair elections existed as agreed in the Union's principles governing democratic elections.

Article 24

State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.

Chapter 8 Arrangements and Sanctions in Cases of Unconstitutional Changes of Governments

Article 25

State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. A military coup d'état against a democratically elected government.
2. Intervention by mercenaries to replace a democratically elected government.
3. The replacement of a democratically elected government by armed dissidents and rebels.
4. The refusal of an incumbent government to relinquish power to the winning party after free, fair and regular elections; or
5. Amendment or revision of constitutions and legal instruments, contrary to the provisions of the constitution of the State Party concerned, to prolong the tenure of office for the incumbent government*.

Article 26

When a situation arises in a State Party that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order in accordance with relevant provisions of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, hereinafter referred to as the Protocol.

Article 27

1. When the Peace and Security Council determines that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of Union in

* The delegation of Uganda entered a reservation on article 25(5) and particularly the last part of the paragraph

accordance with the provisions of articles 30 of the Constitutive Act and 7 (g) of the Protocol.

2. The suspension shall take effect immediately. However, the suspended State Party shall continue to fulfill its obligations to the Union, in particular with regard to human rights obligations.
3. Notwithstanding the suspension of the State Party, the Union shall maintain diplomatic and other initiatives to restore democracy in that State Party.
4. The Assembly shall be entitled to declare that the perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order and shall forfeit their rights to compete or hold any position of responsibility in public institutions.
5. Perpetrators of unconstitutional change of government may also be tried before the African Court of Justice and Human Rights.
6. The Assembly shall impose sanctions on any Member State that is proved to have instigated or supported unconstitutional change of government in another state in conformity with article 23 of the Constitutive Act.
7. In line with Article 23 of the Constitutive Act, the Assembly may decide to apply other forms of sanctions on perpetrators of unconstitutional change of government including punitive economic measures.
8. State Parties shall not harbour or give sanctuary to perpetrators of unconstitutional changes of government of any Member State.
9. State Parties shall take necessary steps to effect extradition of perpetrators of unconstitutional changes of government, encourage conclusion of bilateral extradition agreements as well as the adoption of legal instruments on extradition and mutual legal assistance.

Article 28

Once the situation that led to suspension has been resolved, the Peace and Security Council shall decide that suspension and sanctions be lifted.

Chapter 9 Political, Economic and Social Governance

Article 29

In order to advance political, economic and social governance, State Parties shall commit themselves to:

1. Strengthening the capacity of parliaments and legally recognised political parties to perform their core functions;

2. Fostering popular participation and partnership with civil society organizations;
3. Undertaking regular reforms of the legal and justice systems;
4. Improving public sector management;
5. Improving efficiency and effectiveness of public services and combating corruption;
6. Promoting the development of the private sector through, inter alia, enabling legislative and regulatory framework;
7. Development and utilisation of information and communication technologies;
8. Promoting freedom of expression, in particular freedom of the press and fostering a professional media;
9. Harnessing the democratic values of the traditional institutions; and
10. Preventing the spread and combating the impact of diseases such as Malaria, Tuberculosis, HIV/AIDS, Ebola, and Avian Flu.

Article 30

State Parties shall ensure and promote strong partnerships and dialogue between government, civil society and private sector in the institutionalization of democracy.

Article 31

1. State Parties shall create conditions for full and equal participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.
2. State Parties shall take all possible measures to encourage the full participation of women in the electoral process and ensure gender parity in representation of women at all levels, including legislatures.
3. State Parties shall recognize the crucial role of women in development and in strengthening democracy.

Article 32

State Parties shall promote citizen participation in the development process through appropriate structures.

Article 33

1. State Parties shall promote participation of social groups with special needs, including the youth and people with disabilities, in the governance process.

2. State Parties shall ensure systematic and comprehensive civic education in order to encourage full participation of social groups with special needs in democracy and development processes.

Article 34

State Parties shall strive to institutionalize good political governance through:

1. Accountable, efficient and effective public administration;
2. Strengthening the functioning and effectiveness of parliaments;
3. An independent judiciary;
4. Relevant reforms of public institutions including the security sector;
5. Harmonious relationships in society including civil-military relations;
6. Consolidating sustainable multiparty political systems;
7. Organising regular multiparty elections; and
8. Entrenching and respecting the principle of the rule of law.

Article 35

State Parties shall institutionalize good economic and corporate governance through, inter alia:

1. Effective and efficient public sector management;
2. Promoting transparency in public finance management;
3. Preventing and combating corruption and related offences;
4. Efficient management of public debt;
5. Prudent and sustainable utilization of public resources;
6. Equitable allocation of the nation's wealth and natural resources;
7. Poverty alleviation;
8. Enabling legislative and regulatory framework for private sector development;
9. Providing a conducive environment for foreign capital inflows;
10. Developing tax policies that encourage investment;
11. Preventing and combating crime;
12. Developing and promoting economic development strategies including private-public sector partnerships;
13. Efficient and effective tax system premised upon transparency and accountability.

Article 36

State Parties shall decentralize power to democratically elected local authorities as provided in national laws.

Article 37

Given the enduring and vital role of traditional authorities, particularly in rural communities, the State Parties shall strive to find appropriate ways and means to increase their efficiency and effectiveness within the larger democratic setting.

Article 38

State Parties shall promote and deepen democratic governance by implementing the principles and core values of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance and, where applicable, the African Peer Review Mechanism.

Article 39

State Parties shall pursue sustainable development and human security through achievement of NEPAD objectives and the United Nations Millennium Development Goals.

Article 40

1. State Parties shall promote peace, security and stability in their respective countries, regions and in the continent by fostering participatory political systems with well-functioning and inclusive institutions;
2. State Parties shall promote solidarity amongst Member States and support the conflict prevention and resolution initiatives that the Union may undertake in conformity with the Protocol establishing the Peace and Security Council.

Article 41

State Parties shall promote a culture of respect, compromise, consensus and tolerance as a means to mitigate conflicts, promote political stability and security, and to harness the creative energies of the African peoples.

Article 42

State Parties shall adopt and implement policies, strategies and programmes required to generate productive employment, mitigate the impact of diseases and alleviate poverty and eradicate extreme poverty and illiteracy.

Article 43

State Parties shall undertake to provide and enable access to basic social services to the people.

Article 44

State Parties shall implement policies and strategies to protect the environment to achieve sustainable development for the benefit of the present and future generations. State Parties are encouraged to accede to relevant treaties and conventions.

Article 45

State Parties shall endeavour to provide free and compulsory basic education to all, especially girls and women, rural inhabitants, minorities, people with disabilities and other marginalized social groups.

Chapter 10 Mechanisms and Scope of Application

Article 46

To give effect to the commitments contained in this Charter:

1. National level

State Parties commit themselves to implement the objectives, principles and commitments enshrined in this Charter as follows:

- (a) State Parties shall initiate appropriate measures including legislative, executive and administrative actions to bring State Parties' national laws and regulations in conformity with this Charter;
- (b) State Parties shall take all necessary measures in accordance with the constitutional arrangements and procedures to ensure the wider dissemination of the Charter and all relevant legislation as may be necessary for the implementation of its fundamental principles;
- (c) State Parties shall promote political will as a necessary condition for the attainment of the goals set forth in this Charter;
- (d) State Parties shall incorporate the commitments and principles of the Charter in their national policies and strategies.

2. Regional Level

Regional Economic Communities shall:

- (a) Encourage Member States to ratify or accede to this Charter;
- (b) Designate focal points for coordination and evaluation of the commitments and principles of this Charter and ensure broad stakeholder participation, including civil society organisations in this process.

3. Continental Level

- (a) The Commission shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties;
- (b) The Commission shall promote the creation of favourable conditions for democratic governance in the African Continent, in particular by facilitating the harmonization of policies and laws of State Parties;
- (c) The Commission shall take the necessary measures to ensure that the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund provide the needed assistance and resources to State Parties in support of electoral processes;
- (d) The Commission shall establish a framework for cooperation with Regional Economic Communities on the implementation of the principles of the Charter;
- (e) The Commission shall ensure that effect is given to the decisions of the Union in regard to unconstitutional change of government on the Continent.

Article 47

The Commission shall:

- (a) Act as the central coordinating structure for the implementation of this Charter;
- (b) Assist State Parties in implementing the Charter;
- (c) Coordinate evaluation on implementation of the Charter with other key organs of the Union including the Pan-African Parliament, the Peace and Security Council, the African Human Rights Commission, the African Court of Justice and Human Rights, the Economic, Social and Cultural Council, the Regional Economic Communities and appropriate national level structures.

**Chapter 11
Final Clauses**

Article 48

In conformity with applicable provisions of the Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, the Assembly and the Peace and Security Council shall determine the appropriate measures to be imposed on any State Party that violates the letter and spirit of this Charter.

Article 49

1. This Charter shall be open for signature, ratification and accession by Member States of the Union in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 50

This Charter shall enter into force thirty (30) days after the deposit of fifteen (15) Instruments of Ratification.

Article 51

1. State Parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter;
2. A copy of the report shall be submitted to the relevant organs of the Union for appropriate action within their respective mandates;
3. The Commission shall prepare and submit to the Assembly, through the Executive Council, a synthesized report on the implementation of the Charter;
4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.

Article 52

1. Any State Party may submit proposals for the amendment or revision of this Charter;
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit same to State Parties within thirty (30) days of receipt thereof;

3. The Assembly, upon the advice of the Executive Council, shall examine these proposals at its session following notification, provided all State Parties have been notified at least three (3) months before the beginning of the session;
4. The Assembly shall adopt amendments and revisions by consensus or failing which, by two-thirds majority;
5. The amendments shall enter into force when approved by two-thirds majority of State Parties.

Article 53

1. The Chairperson of the Commission shall be the depository of this Charter;
2. The Chairperson of the Commission shall inform all Member States of the signature, ratification, accession, entry into force, reservations, requests for amendments and approvals thereof;
3. Upon entry into force of this Charter, the Chairperson of the Commission shall register it with the Secretary General of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Article 54

None of the provisions of the present Charter shall affect more favourable provisions relating to democracy, elections and governance contained in the national legislation of State Parties or in any other regional, continental or international conventions or agreements applicable in these State Parties.

Article 55

This Charter, drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies of same to all Member States and the United Nations Secretariat.

2006

Report of the ministerial meeting on the draft African charter on democracy, elections and governance and on the revision of the Lome declaration on unconstitutional changes of government in Africa

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