

Open Session on African Charter on Democracy, Elections and Governance

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Tomorrow (22 August) the Peace and Security Council (PSC) will have its second open session. The session will be held under the theme 'The African Charter on Democracy, Elections and Governance: Challenges and Prospects for Structural Prevention of Conflict'.

The meeting will receive a briefing from the Director for the Department of Political Affairs (DPA), Khabele Matlosa. The focus of the session is a thematic area for which the DPA is responsible.

The African Charter on Democracy, Elections and Governance (African Charter) was adopted on 30 January 2007 by the African Union (AU) Assembly. It came into force on 15 February 2012. It is perhaps the most comprehensive instruments of the AU that enshrines the norms, values and standards that embody the aspiration of the African Union for a democratic, inclusive and just continent. So far it is signed by 46 member states and ratified by 31.

The African Charter sits at the heart of the African Governance Architecture (AGA), a set of normative frameworks and institutions that serve as vehicle for the promoting and ensuring respect for the democratic and governance values of the AU. While a state reporting guideline that outlines the details of information that states party to the African Charter should report on regarding the measures that they have taken to realize the obligations they subscribed to under the Charter has been developed, Togo is the only member state that has submitted its initial State report on the implementation

of the Charter.

The theme of this session lies at the cross section of the PSC mandate that combines security and democratic governance. Indeed, under Article 7(1)(m) the PSC is explicitly mandated to 'follow up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by member states'. Undoubtedly, the African Charter offers the PSC the best framework in the pursuit of delivering on its mandate under this provision.

It is in some ways striking that a periodic review of and systematic reflections on the implementation of this key instrument has not been made a standing agenda item in the working methods of the PSC. This is not only because the African Charter fits squarely in the mandate of the PSC but also on account of the link between the governance challenges facing many parts of the continent and the occurrence of conflict situations on the continent. Indeed, as set out in the concept note for tomorrow's session, despite the progress registered on the continent where elections are accepted and practiced (albeit unevenly) universally, what informs the session are the worrying trends that include 'persistence of intra-state conflicts; manipulation of constitutions by incumbents to prolong their stay in power; rampant corruption and illicit financial flows; mismanagement of diversity; militarization of politics; refusal to accept electoral results by candidates, igniting electoral violence; extreme poverty; and human rights abuses and violations.'

This session is thus meant to be 'an opportunity for its Members and partners to deliberate on the progress and challenges for the effective implementation of ACDEG as a mechanism for structural prevention of conflict'. Apart from examining the role of various sectors of society including the

media and civil society organizations, the session importantly seeks to address the role of and gaps in the Charter for structural conflict prevention.

As a point of departure in addressing the issue of the challenges facing the African Charter and its role in structural conflict prevention, it is important to underscore that there is no need for the AU to adopt any protocol to the Charter. Nearly all the issues facing the effective operationalization of the African Charter and its role in structural conflict prevention are associated with its effective institutionalization and implementation by the AU and member states.

In terms of the institutionalization of the African Charter, the first issue is the full ratification of the Charter by all AU member states. The full continental implementation of the African Charter and its promotion by the AU, including by the PSC as instrument for structural conflict prevention, requires its full ratification. Second, despite its direct relevance in the work of the PSC, the African Charter is not properly and systematically applied by the PSC. While the PSC occasionally makes reference to the African Charter, thus far this practice remains ad hoc.

Third, while the elaboration of the state reporting guidelines within the AGA framework is a crucial step in its institutionalization, the lack of submission of reports by state parties to the Charter undermines it. There is thus a need for promoting the submission of reports by states or alternatively the establishment of a mechanism for undertaking such a review. In this regard, it is worthwhile to explore the review compliance of states parties to the Charter with the provisions of the Charter within the framework of the African Peer Review Mechanism (APRM), an innovative mechanism for review of the performance of AU member states vis-à-vis the various commitments that they have made within the framework of various AU instruments including the African Charter.

Finally, there remain gaps between the AGA institutions and frameworks and the African Peace and Security Architecture (APSA) that supports and relies on the PSC. One aspect of this is also the finalization of the draft framework on AU and regional economic communities/mechanisms (RECs/RMs) cooperation on the implementation of the African Charter's principles.

In terms of its implementation, the African Charter faces the same issues as other AU instruments. First, there is the issue of the domestication of the African Charter in the national legal system and its internalization in practice in the conduct of public affairs. More often than not states parties to the African Charter lack the political mind-set and the mechanisms for ensuring that the conduct of public affairs are guided by and comply with the values, ideals and requirements of the African Charter. Second, from the perspective of the role of the African Charter as structural conflict prevention instrument, it remains unclear whether the new tool on the structural vulnerability assessment of the APSA has as its major component appropriate indicators from the African Charter that serve as framework for a systematic assessment of AU member states structural weaknesses vis-à-vis democracy, elections and governance. Third, there is also the issue of the popularization of the African Charter among wider sections of the public in states parties to the Charter. In this respect, there is a need for ensuring that further attention is given to the work on enhancing public awareness of the African Charter. It is here that the AU, particularly the DPA and the AGA platform, need to establish strategic alliance with the media, civil society organizations and academic and policy research institutions as the key vehicle for promoting the Charter and building constituency at national levels for its adherence.

Fourth, one of there is also the issue effective continental enforcement mechanism. In this respect, a major challenge is

the fact that the AU rule on sanctions for breach of AU norms on democratic governance is currently limited in its application to unconstitutional changes of government. The result of this practice is that if the breach of AU norms on democratic governance does not qualify to be unconstitutional change of government, the PSC does not invoke its Article 7(g) power to sanction a member states irrespective of the gravity of the breach. Fifth, the lack of clarity on the question of term limits and notably the application of Article 23 (5) on manipulation of constitutional amendments meant that contestations over third termism has increasingly become a source of political instability and in some instances conflicts.

The foregoing clearly establishes the major challenges that impeded the effectiveness of the Charter. From the perspective of the role of the PSC, a major challenge is achieving consensus among its member states. At one level, there is the issue of the fact that there are PSC members that are not parties to the African Charter. Under such circumstances, it is not clear how the PSC can promote and make use of the Charter in pursuit of its mandate. More importantly, there is the perennial issue of sovereignty, which some member states tend to invoke particularly in the realm of democratic governance. Accordingly, part of the honest conversation that the concept note for the session anticipates should address is the imperative of accepting and clearly affirming the application by the PSC of the African Charter as part of the implementation of its mandate, particularly as it relates to prevention of conflicts. Instead of a protocol to the African Charter indicated in the concept note, this and the institutionalization and implementation challenges highlighted above should be the main issues that the expected outcome of the session should focus on. In this respect, apart from deliberating on the development of guidelines on the amendment of constitutions, the PSC should provide for elaboration of guidelines on the application of sanctions for major

democratic governance breaches under the African Charter other than unconstitutional changes of government.

While the expected outcome of this session is a statement, in the light of the importance of the theme and its direct relevance for the mandate of the PSC the and its direct relevance for the mandate of the PSC the communiqué apart from addressing issues highlighted above can also establish the theme of this session as a standing thematic agenda of the PSC during which the PSC receives an annual report on the state of democratic governance and threats to peace and security in Africa.