

VTC Session on AU Guidelines on Elections in the context of COVID-19

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Tomorrow (29 January) African Union (AU) Peace and Security Council (PSC) will have its 977th session on the AU guidelines on elections in the context of COVID-19 pandemic and other public health emergencies. The session is expected to take place through VTC.

Permanent Representative of the Republic of Senegal, Baye Moctar Diop, will make opening remarks in his capacity as the PSC chair of the month. The Commissioner of the Political Affairs of the AU, Minata Samate Cessouma and Director of the Africa Centres for Disease Control and Prevention (Africa CDC), Dr. John Nkengasong, are also expected to brief the Council.

At its 935th meeting convened on 9 July 2020, the PSC requested the AU Commission to provide a regular briefings to the Council on elections in Africa and 'expedite the development of guidelines for the organization of credible elections, in the context of public health emergencies and humanitarian disasters'. Tomorrow's session provides the Council the opportunity to follow up on this request and consider 'African Union guidelines for elections during COVID-19 and other public health emergencies', which has been developed by the Department of Political Affairs (DPA) of the AU Commission.

In her presentation, Commissioner Samate is likely to mention the May 2020 DPA's briefing to the Permanent Representatives Committee (PRC) of the AU on the impact of COVID-19 on elections in Africa where the PRC noted the lack of a common

guiding framework for the conduct of elections in the context of COVID-19 and other public health emergencies (PHEs). It is also worth recalling that one of the recommendations that culminated from the May 2020 peer-learning consultative meeting of the African Election Management Bodies (EMBs) on Covid-19 and election in Africa, which was convened by the DPA in collaboration with the Association of African Electoral Authorities (AAEA) and EMBs Networks of Regional Economic Communities (RECs), has been for the AU to develop guideline on the issue.

The briefing may shed light on the context that necessitates the preparation of the guideline. The outbreak of the COVID-19 pandemic has presented a dilemma to member states that on one hand they need to hold a periodic and credible election, but on the other hand, they have the responsibility to protect lives. Regular, free, fair and transparent election is a democratic imperative, which member states are required to uphold. The briefing, in this regard, is likely to make reference to the 2007 African Charter on Democracy, Elections and Governance as well as the 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa, which clearly require member states to hold credible and regular elections as a key ingredient of democracy.

The COVID-19 pandemic has posed an additional layer of challenge to the already fragile electoral process in Africa. Vibrant and democratic elections usually engage large number of people during political campaign and voting days with the potential to accelerate the spread of the virus, posing a huge health risks. This may discourage voters' turnout, particularly those in the vulnerable brackets, with a repercussion on the credibility and inclusivity of elections, not to mention the competing priorities that governments face (upholding a democratic imperative at the same time protecting the safety of citizens). In this respect, the guideline alludes to Covid-19's risk not only to the health of African

people but also to the health of democracy.

According to the 2020 elections calendar of the DPA, national elections were slated to take place in seventeen member states. With the outbreak of the pandemic, some countries (such as Burundi, Mali, Malawi, Benin, Guinea, Ghana, Cameroon, Niger, Central Africa) decided to go ahead with the elections as originally planned amid high public risk posed by the pandemic, while others, such as Ethiopia, postponed.

Member states will continue to grapple with COVID-19 related challenges this year as well, as a dozen of African countries are set to hold national elections including Ethiopia, Chad, Libya, Somalia, and the Republic of Congo. Given the uncertainty surrounding the pandemic (particularly concerning how long it is going to last), and the potential for the occurrence of other PHEs, and as elections cannot be postponed indefinitely; it remains imperative to develop a guideline that would help adapting the electoral processes to the new circumstances of what has been referred to as the 'new normal'. In this context, the guideline is envisaged as a blueprint for member states and EMBs to navigate their way through elections amid COVID-19 and other PHEs that may emerge in the future. As indicated in the guideline, it constitutes a non-binding continental framework for guaranteeing the holding of safe and credible elections by providing 'a comprehensive practical tool and contextually adaptable directives for electoral administration in contexts of PHEs'.

Samate may also take the opportunity to stress that the guideline is by no means to replace national electoral laws nor is its intention to serve as a binding legislative instrument for AU, RECs or member states. The guideline, rather, clearly states that it is meant to 'complement existing national laws, rules, regulations and procedures for conducting elections...' and 'reinforce the norms and instruments on election at the national, regional and continental levels.'

In her briefing, Samate is also likely to focus on the key aspects of the guideline such as: the strategic considerations for conducting or postponing elections, the implications of COVID-19/PHEs on elections and its mitigation measures, and duties and responsibilities of key stakeholders. It is worth noting that on 22 July 2020 the African Commission on Human and Peoples' Rights (ACHPR) also issued a statement on 'Elections in Africa during the COVID-19 Pandemic' recognizing the need to ensure respect for the right to regular, free, fair and credible elections while complying with the public health measures necessary to safeguard the health and life of the public when convening elections during the pandemic.

The briefing by Nkengasong is expected to provide insights on the specific health protocols that need to be followed in the context of elections. As suggested in the draft guideline, these include ensuring observance to COVID-19 protocols (physical distancing, regular hand-washing, use of sanitizers); limiting number of people during political campaigns or civic and voter education as well as ensuring alternative modalities such as virtual platforms; increasing the number of polling centres; and providing longer and staggered voting periods.

Given the restrictions that the COVID-19 public health measures entail on various freedoms related to the holding of elections, the guideline offers guidance on key strategic considerations that should inform member state's decision on whether to hold or postpone elections during COVID-19/PHEs, while it recognizes this as a constitutional prerogative. In this respect, Samate is likely to highlight two points in her briefing as captured in the guideline. The first is the need for member states to critically engage in assessing its specific context against the existence of enabling environments to deliver democratic, credible and peaceful elections amid COVID-19/PHEs. The second is the importance for member states to ensure that the decision either to hold or

postpone elections are always outcomes of consultation, dialogue and consensus among key stakeholders. This should include, underscored in the 22 July Statement of the ACHPR, ensuring observance of applicable constitutional procedures, including judicial certification or review, as has been done, for example in the Central African Republic.

The guideline discusses at length how COVID-19/PHEs could affect the different electoral activities that fall within one of the electoral phases: the pre-election, election and post-election phases. It further suggests key mitigation measures that need be taken into account by EMBs, political parties, CSOs, and other stakeholders to ensure that the pandemic or other PHEs do not compromise the credibility of elections in Africa.

Of a particular interest to PSC in relation to the different mitigation measures could be the viability of electronic voting in the African context. Many have already flagged the risk of political backlash that rushing into electronic voting may entail in countries with no requisite infrastructure. In this connection, the WHO general guideline on election during COVID-19 makes an important caveat that 'in the Africa setting electronic voting is still a long way to go, so election will have to be through in person voting'. While the AU guideline advises African EMBs to embrace new technology for elections, it emphasizes that national consultation, dialogue, consensus, and mutual trust among all key actors should precede the adoption of the new modality.

The briefing may also touch upon the duties and responsibilities of key stakeholders- notably AU, RECs, member states, EMBs, election observation and monitoring bodies, political parties, and civil societies- in ensuring safe and credible elections in Africa amid COVID-19/PHEs.

Nkengasong is further expected to provide update to the PSC members on the situation of Covid-19 in Africa. It is to be

recalled that the Council requested Africa CDC to continue providing regular briefings on the 'progress, trends and challenges in the fight against COVID-19 pandemic in the continent' during its 935th session. The director is likely to highlight the recent spike of COVID-19 cases with a second wave of the pandemic hitting the continent, which is further compounded by the emergence of new COVID-19 variants. Despite the efforts to secure vaccines both within the COVAX initiative (which aims to buy and deliver to the poorest countries), an effort recently supplemented by AU's securing 270 million vaccine doses, the Director may caution the availability of vaccines beyond those on the frontline in the short term. As such, the representative may advise member states to reinforce safety measures, lending hand in emphasizing the importance of implementing the guideline.

The expected outcome is a communique. The PSC is expected to welcome the preparation of the guideline and may wish to commend the efforts of the DPA and others involved in developing the guideline. The Council may acknowledge the importance of the guideline in providing a practical guide for member states, EMBs, civil society organizations, domestic and international observer groups, political parties and other stakeholders on how to conduct safe and credible elections within the context of COVID-19/PHEs, and may decide to adopt the guideline. The Council may further encourage member states and EMBs to give effect to the guideline by developing their own national policy on elections during COVID-19 and other PHEs that are suitable to their contexts. It may also call upon the AU commission, RECs, member states, EMBs, political parties, civil societies, think tanks, domestic and international observers and other stakeholders to engage in popularizing this guideline for its effective implementation. As holding safe and credible elections is first and foremost the responsibility of member states, the PSC may urge them to commit all the means and resources required to ensure that the enforcement of COVID-19/PHEs measures do not compromise the

conduct such elections in a free, fair and credible manner.