Strengthening democratic governance in Africa through state reporting under the African Charter on Democracy, Elections and Governance: assessing the prospects, challenges and pathways to improved compliance

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ABSTRACT: This article addresses the role of the African Charter on Democracy, Elections and Governance (African Democracy Charter) in strengthening democratic governance in Africa by focusing on the aspect of state reporting as a pathway to improving compliance by state parties. It outlines the existing framework for state reporting under the African Democracy Charter and interrogates how this framework has been operationalised and monitored with a view to identifying existing gaps and challenges. It also locates state reporting of the African Democracy Charter within the wider constellation of state reporting on human rights instruments and explores ways in which improved coherence and coordination can be achieved as states respond to these various obligations. It then explores the role to be played by civil society in enhancing aspects of state compliance with African Democracy Charter principles. It concludes with key lessons learnt from twelve years of the instrument being in force and makes proposals for a strengthened framework on state reporting as an aide to improved implementation at the national level. The article reveals that considerable work remains to be done in the areas of universal ratification, state compliance on reporting, improved coordination of stakeholders at various levels and in enhancing the involvement of civil society to enhance public ownership and engagement. It is based on extensive desk-review and research of the African Democracy Charter, its related policy and programme documents and existing academic literature. It is also informed by deliberations, reports and releases issued by various stakeholders who have engaged in development of the African Democracy Charter as well as in advocacy related to its successful implementation at the continental, regional and national levels.

TITRE ET RÉSUMÉ EN FRANÇAIS

Renforcer la gouvernance démocratique en afrique par l'établissement de rapports par les états en vertu de la charte africaine de la démocratie, des élections et de la gouvernance : évaluer les perspectives, les défis et les voies d'une meilleure conformité

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RÉSUMÉ: Cet article aborde le rôle de la Charte africaine de la démocratie, des élections et de la gouvernance (Charte africaine de la démocratie) dans le renforcement de la gouvernance démocratique en Afrique en se concentrant sur l'aspect des rapports étatiques comme moyen d'améliorer le respect par les États parties. Il décrit le cadre existant pour les rapports étatiques dans le cadre de la Charte africaine de la démocratie et s'interroge sur la manière dont ce cadre a été opérationnalisé et suivi en vue d'identifier les lacunes et les défis existants. Il situe également les rapports des États sur la Charte africaine de la démocratie dans la constellation plus large des rapports des États sur les instruments relatifs aux droits de l'homme et explore les moyens par lesquels une cohérence et une coordination améliorées peuvent être obtenues à mesure que les États répondent à ces diverses obligations. Il explore ensuite le rôle que doit jouer la société civile dans le renforcement du respect par l'État des principes de la Charte africaine de la démocratie. Il se termine par les principaux enseignements tirés des douze années d'application de l'instrument et formule des propositions pour un cadre renforcé sur les rapports étatiques afin de contribuer à une meilleure mise en œuvre au niveau national. L'article révèle qu'un travail considérable reste à faire dans les domaines de la ratification universelle, du respect par l'État des rapports, d'une meilleure coordination des parties prenantes à différents niveaux et du renforcement de l'implication de la société civile pour renforcer l'appropriation et l'engagement du public. Il est basé sur une étude documentaire et des recherches approfondies sur la Charte africaine de la démocratie, ses documents de politique et de programme connexes et la littérature universitaire existante. Il s'appuie également sur les délibérations, rapports et communiqués publiés par diverses parties prenantes qui se sont engagées dans l'élaboration de la Charte africaine de la démocratie ainsi que dans le plaidoyer lié à sa mise en œuvre réussie aux niveaux continental, régional et national.

KEY WORDS: African Charter on Democracy; Elections and Governance; democratic governance; state reporting; compliance

CONTENT:

1 INTRODUCTION

1.1 The importance of state reporting in fostering compliance with treaty obligations

State reporting is considered 'one of the oldest monitoring instruments in international law'.[1] It is the process through which a state party to a treaty is required to report to an oversight mechanism periodically, in order to highlight the steps it has taken to comply with its treaty obligations. State reporting promises three major benefits. First, the report development process is a critical self-assessment by a state which reveals the challenges that it is facing in the fulfilment of its treaty obligations and this enables the adoption of policies to improve compliance. Second, state reporting requires a participatory and consultative approach that can foster improved coordination within government while also facilitating public input and partnership with key stakeholders such as civil society. This in turn generates public awareness of the state's treaty obligations and potentially secures support for state measures aimed at compliance. Third, the state reporting process enables constructive engagement between the state and the oversight mechanism on how to overcome challenges to compliance. It also equips the state with recommendations and opportunities for assistance that can enable it to improve its compliance in future.[2] Therefore, the general objective of state reporting is to facilitate scrutiny of relevant government policies in order to enable informed and principled policy making towards compliance with treaty obligations.

It is on this basis that the African Charter on Democracy, Elections and Governance (African Democracy Charter) requires state parties at two-year intervals, to submit periodic reports that should enable the African Union (AU) to establish the progress being made towards realising democratic governance as a continentally shared value. The remainder of the introduction section of this article locates democratic governance as a constitutive element of African shared values. The second part of the article provides an overview of the state reporting mechanism under the African Democracy Charter. The third part reflects on the relationship between the African Democracy Charter and other related state reporting obligations under the AU system; in order to draw lessons and explore the prospects for improved coordination between reporting frameworks. The fourth part reflects on the role that Regional Economic Communities can play in improving state compliance with the African Democracy Charter and also reflects on the role to be played by civil society. The article concludes with a

1 http://opiniojuris.org/2020/11/27/a-little-less-conversation-a-little-more-action-please-state-reporting-and-the-treaty-body-review-2020/ (accessed 12 June 2024).

2 OHCHR *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part I- Manual* (2017) 27.

series of recommendations aimed at improving state compliance with the reporting requirements under the African Democracy Charter.

1.2 Democratic governance as a constitutive element of African shared values

The African Union (AU) through its Constitutive Act in article 4(m) recognises respect for democratic principles, human rights, the rule of law and good governance as foundational principles for its functions as a union. This is echoed as an aspiration within Agenda 2063, the AU's visionary blueprint for Africa's transformation to a peaceful, secure, stable and well-integrated continent.[3] Democratic governance is further embedded in the tapestry of the AU as part of the African Shared Values which are defined as follows:[4]

> those norms, principles and practices that have been developed or acquired, which provide the basis for collective actions and solutions in addressing the political, economic and social challenges that impede Africa's integration and development.

An integral step to make these values tangible is the African Democracy Charter. The African Democracy Charter is recognised as the normative instrument that encapsulates these shared values on democratic governance as well as those of human rights, rule of law, peace and security.

Indeed, the African Democracy Charter consolidates the experiences and values extracted from Africa's third wave of democratisation which started in the late 1980s and saw the autocratic regimes that took hold in the continent after independence give way to a fresh democratic wave on the continent.[5] Illustratively, some of the African Democracy Charter provisions drew their inspiration from and complemented preceding instruments such as the OAU Declaration on Principles Governing Democratic Elections, the New Partnership for Africa's Development (NEPAD) Declaration, the Declaration on Democracy, Political, Economic and Corporate Governance and the African Peer Review Mechanism (APRM) Base Document.[6]

Beyond providing key definitions and an operational framework for its implementation, the African Democracy Charter elaborates on democratic governance values through a series of provisions covering topical issues such as: the objectives and principles of the African Democracy Charter; democracy, rule of law and human rights; the culture of democracy and peace; democratic institutions; democratic

3 https://au.int/agenda2063/goals (accessed 12 June 2024).

4 Africa Governance Institute as cited in FA Agwu 'Shared values in Africa's integration and unity' (2011) 3(1) *Africa Review* at 4.

5 K Matlosa 'The African Charter on Democracy, Elections and Governance: origin and odyssey' (2018) 5(3) *African Journal of Democracy and Governance* 31.

6 AM Mangu 'African civil society and the promotion of the African Charter on Democracy, Elections and Governance' (2012) 12(2) *African Human Rights Law Journal* 351-352.

elections; sanctions in cases of unconstitutional changes of government; and political, economic and social governance. It is on this basis that it has been viewed as an accountability framework. It provides a benchmark to assess state parties' commitment to democratic governance values while also enabling comparative analysis between states and an analysis of governance trends on the continent.[7] This value proposition of the African Democracy Charter calls attention to the status of its acceptance by AU member states and whether its existence has indeed shaped the governance trends on the continent.

February 2022 marked 10 years since the African Democracy Charter came into force and while some gains have been made in the arena of democratic governance, this decade has been described as one of 'governance progress threatened by worsening security, democratic backsliding, and COVID-19'.[8] With regard to progress, it is notable that as at July 2024, 39 out of the AU's 55 member states had ratified the African Democracy Charter while a further seven member states have submitted their signature to the instrument as an integral step towards ratification.[9] This means that approximately 71 per cent of Africa's governments are bound by the provisions of the African Democracy Charter as state parties to this instrument while 84 per cent of Africa's governments by way of signature have at least indicated a willingness to abide by these principles.

This majority embrace of the African Democracy Charter by member states has run in tandem with the progressive deepening of various democratic benchmarks on the continent. Regular and multiparty elections, peaceful transitions of power and the establishment of independent institutions have materialised in high frequency against the backdrop of the African Democracy Charter coming into force. As will be discussed in later sections of this article, the African Democracy Charter has also enabled the strengthening of the AU's institutional capacity in responding to democratic governance priorities such as election observation, citizen engagement and participation. Furthermore, the African Court on Human and Peoples' Rights (African Court) has declared the African Democracy Charter to be a human rights instruments and thus made democratic governance principles justiciable by making it 'incumbent on state parties to ensure that they respect the rule of law, democratic governance and the right to equality before the law'.[10] This was established in the case of *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire* when the Court held that the African Democracy Charter is a human rights instrument since its provisions requiring states to establish independent and impartial electoral bodies was in furtherance of the

7 https://ecdpm.org/work/guide-african-charter-democracy-elections-and-governance (accessed12 June 2024)

8 Mo Ibrahim Foundation *2022 Ibrahim Index of African Governance: Index Report* (January 2023) 14.

9 https://au.int/en/treaties/african-charter-democracy-elections-and-governance (accessed 12 June 2024).

10 B Kioko 'The African Charter on Democracy, Elections and Governance as a justiciable instrument' (2019) 63 *Journal of African Law* 61.

rights enshrined in article 13 of the African Charter on Human and Peoples' Rights.[11] That said, this decade of the African Democracy Charter being in force has also witnessed significant setbacks.

While elections have become a frequent occurrence, questions of transparency and credibility have persisted and, in some cases, caused political violence. A 2021 study indicated that in the over 100 elections undertaken in 44 African countries for the period of 2011-2017, some form of electoral violence at some point of the electoral cycle was experienced.[12] While peaceful transitions of power in Africa have become the norm rather than the exception, episodes of Unconstitutional Changes of Government (UCG) continue to occur. Illustratively, the 2023 Africa Governance Report (AGR) noted that the continent had experienced 18 instances of UCG in the period of 2003-2022; with six of those instances happening between 2019 and 2022.[13]

Beyond the familiar dimension of military coups, the UCGs also entail unconstitutional constitutional amendments;[14] which are driven by nefarious aims such as subverting the public will and seeking to either eliminate or resist term-limits or see incumbents skew electoral laws in their favour. Indeed, a 2023 study on military coups and the need for democratic renewal in Africa identified constitutional manipulation as a proximate factor leading to UCGs since it causes the deterioration of civic trust in government performance as well as in the very notion of democracy.[15] Additionally, more than half of African states within the last decade have also registered deterioration in the critical aspects of security and rule of law and on participation, rights and inclusion.[16]

In light of the above catalogue of progress and setbacks, this article focuses on the African Democracy Charter state reporting framework as a way to effectively assess the level of commitment and compliance by member states to this instrument as a manifestation of the African shared values on democratic governance. As Matlosa importantly highlights, 'it is rather the domestication and implementation' of the provisions of the African Democracy Charter that 'speaks volumes'.[17]

11 MJ Ayissi *'Actions Pour La Protection Des Droits de l'Homme (APDH) v Republic of Côte d'Ivoire* (Afr. Ct. H.P.R.)' (2017) 56(3) *International Legal Materials* 584.

12 KJ Kewir & N Gabriel *Causes of election violence in Africa* 4.

13 African Peer Review Mechanism (APRM) and African Governance Architecture (AGA) 'The Africa Governance Report 2023: Unconstitutional Changes of Government in Africa' (2023) 5.

14 Y Roznai 'Unconstitutional constitutional amendments – the migration and success of a constitutional idea' (2013) 61(3) *The American Journal of Comparative Law* 657–719; https://www.peaceau.org/en/article/declaration-on-unconstitutional-changes-of-government-in-africa (accessed 12 June 2024).

15 United Nations Development Programme *Soldiers and citizens: military coups and the need for democratic renewal in Africa* (2023) 16.

16 Mo Ibrahim Foundation (n 8) 16.

17 K Matlosa 'Governance in Africa: AU achievements, challenges and prospects' in W Okumu & A Atta-Asamoah (eds) *The African Union at 20: African perspectives on progress, challenges and prospects* (Institute for Security Studies 2023) 161.

2 AN OVERVIEW OF THE STATE REPORTING MECHANISM UNDER THE AFRICAN DEMOCRACY CHARTER

The state reporting, evaluation and monitoring process in the Africa Democracy Charter is designed to foster compliance through cooperation that is based on consultation, analysis and persuasion as opposed to punitive or coercive measures.[18] In its essence and methodological approach, the state reporting process is established and intended to be a constructive and open dialogue between the state party and the African Governance Platform (AGP) as well as national stakeholders in order to ascertain the status of implementation, existing best practices, the challenges encountered and possible solutions. The intent is to facilitate the progressive realisation of democratic governance principles by African states. This section will first outline the legal and institutional framework for state party reporting under the African Democracy Charter and then proceed to assess its efficacy thus far in order to identify the emerging challenges and enable an inquiry into the roles that various stakeholders can play in resolving these challenges.

2.1 The African Democracy Charter's legal and institutional framework for reporting

Operationalising the African Democracy Charter is premised on the commitment of state parties to give effect to its provisions through political will and initiating appropriate legislative, policy and administrative measures at the national level. The African Union Commission (AUC) on its part is required to develop the requisite benchmarks against which the actions of state parties can be evaluated while also offering the states both technical and financial assistance towards a progressively improved rate of compliance.[19] It is on this basis that a state reporting and monitoring mechanism for the African Democracy Charter arises.

Article 49(1) requires state parties to the Charter to submit reports every two years from the date the Charter came into force. The report is to be submitted to the AUC, which is tasked with coordinating the evaluation process with key organs of the AU that possess mandates around the African Democracy Charter themes as well as with Regional Economic Communities (RECs) and appropriate national-level structures.[20] The AUC discharges its evaluation role through the African Governance Architecture (AGA) and its institutional

18 M Wiebusch and others 'The African Charter on Democracy, Elections and Governance: past, present and future' (2019) 63(S1) *Journal of African Law* 9 at 27.

19 African Democracy Charter art 44(2)(A)(a).

20 African Democracy Charter art 45(c).

framework, the African Governance Platform (AGP). The AGA is a platform for dialogue that brings together various stakeholders 'who are mandated to promote good governance and strengthen democracy in Africa, in addition to translating the objectives of the legal and policy pronouncements in the AU Shared Values'.[21]

As the institutional framework, the AGP operates in two concentric circles: the first circle brings together AU organs, institutions and RECs which hold a formal mandate on matters of democracy, governance and human rights.[22] The second circle brings in continental stakeholders from civil society, the diaspora, the private sector and development partners. It is the first circle of AGP stakeholders that is entrusted with the evaluation of state reports submitted under the African Democracy Charter.[23] The AGP ultimately evaluates state reports through the coordination function of its African Governance Architecture Secretariat (AGA Secretariat) which is tasked to coordinate the feedback envisioned under article 49(2) of the African Democracy Charter. To achieve the objectives of state reporting, state parties are encouraged to establish a multi-stakeholder national institutional framework to serve as the focal point for the coordination of the monitoring and reporting activities related to this instrument. This should encompass the relevant state and government ministries, departments and agencies as well as non-state actors so as to ensure diversity, effective participation and inclusion.[24]

States are required to prepare either an initial report or a periodic report. The initial report is the first report that the state party is required to submit after ratification of the Charter. The initial report is limited to 80 pages and serves as the baseline for the subsequent periodic reports to be submitted by the state. In terms of structure, the initial report is recommended to be divided into two broad sections which are a section on background information and a section on implementation measures. The background information required includes: information on whether the African Democracy Charter has been domesticated and whether it is justiciable before national courts; an outline of the state institutions relevant to the Charter's implementation and information on their budgetary allocations; the

21 https://au.int/en/aga/about (accessed 12 June 2024).

22 The members include the Peace and Security Council (AU-PSC), the AUC's Department for Political Affairs, Peace and Security (AUC – PAPS), the African Commission on Human and Peoples' Rights (Commission), the African Court on Human and Peoples' Rights (Court), the Pan-African Parliament (PAP), the African Peer Review Mechanism (APRM), the African Union Advisory Board Against Corruption (AUABC), the Economic, Social and Cultural Council (AU-ECOSOCC), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), the African Union Commission on International Law (AUCIL), the African Union Development Agency-NEPAD (AUDA-NEPAD)- and all the 8 AU recognised RECs (COMESA, ECCAS, ECOWAS, SADC, EAC, IGAD, UMA, CEN-SAD).

23 Rules of Procedure of the African Governance Platform (adopted by the Twenty-Eighth Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia on 28 January 2016): Annex – Guidelines for State Parties' Reports Under the African Charter on Democracy, Elections and Governance Sec II.

24 Rules of Procedure of the African Governance Platform (n 23) Sec III art 9.

status of civic space and related regulatory frameworks; the constitutional, legislative and other related instruments relevant to the implementation of the African Democracy Charter; information on the relevant regional, continental and international instruments ratified by the state party; the consultation process (which should be multi stakeholder based) for the development of the initial report; and the steps undertaken to ensure the content of the African Democracy Charter is widely disseminated.[25]

With regard to implementation measures, the initial report requires the following information: the legislative as well as administrative measures undertaken to make the state party compliant with the African Democracy Charter; the institutional mechanisms that have either been established or strengthened to enable compliance with the Charter; disaggregated data, statistics and results that can demonstrate implementation of the Charter's provisions; the challenges encountered by the state party in implementation of the Charter and the measures undertaken to overcome them; the gaps and opportunities that exist as well as lessons that other state parties can learn from; and areas on which the state party may require technical support to enable implementation of the African Democracy Charter.[26]

The periodic reports are restricted to a 40-page limit and should be submitted every two years to provide status updates on the progress made towards the implementation of concluding observations and recommendations received by the state party. Notable information to be provided in the periodic report includes: measures undertaken to implement previous recommendations and disseminate them widely; progress made in the implementation of the African Democracy Charter since the previous report; the challenges encountered and how they were overcome; updates on relevant constitutional, legislative and administrative measures since the previous report; the consultations undertaken in the development of the report; gaps, opportunities and lessons; and areas requiring technical support.[27]

Upon receiving a state report, the AGA Secretariat solicits input from AGP members as well as other relevant stakeholders, engages the state party in a dialogue and culminates in the issuance of concluding observations and recommendations. Based on an official request from a state party, the AGA Secretariat can provide training and experience sharing on the state obligations with regard to reporting on the African Democracy Charter. Under article 49(3) of the African Democracy Charter, the AUC is also mandated to prepare a synthesised report on the continental landscape as far as the implementation of the Charter is concerned, with recommendations that the AU Assembly of heads of state and government will be required to act on. The monitoring and implementation framework also envisages coordination and collaboration among the AGP members (including RECs), the national

25 Rules of Procedure of the African Governance Platform (n 23) Sec V art 13.
26 Rules of Procedure of the African Governance Platform (n 23) Sec V art 14.
27 Rules of Procedure of the African Governance Platform (n 23) Sec VI art 16.

focal points within the state parties and the participation of civil society.[28]

2.2 Emerging challenges in state reporting under the African Democracy Charter

Despite the elaborate framework outlined in the prior section, an examination of the practice reveals challenges that undermine the objectives of state party reporting under the African Democracy Charter. The challenges addressed in section include a low level of political will for compliance on state reporting, capacity constraints, limited publicity on the reporting process, multiple and overlapping reporting obligations and insufficient harnessing of the potential presented by effective coordination within the AGP.

At the time of writing, the AUC had received only two state reports on the African Democracy Charter; from the Republic of Togo (submitted in 2017) and Republic of Rwanda (submitted in 2019). This is in stark contrast to the number of state parties to the instrument which stands at 39. This low level of state reporting is attributable to several factors. The first is that the lack of reporting points to the absence of or, at best, ambivalent political will towards the implementation of the African Democracy Charter. Where the ratification of the instrument introduces a presumption of political will to adhere to democratic governance principles, the conduct of state parties has frequently pointed to the contrary.

Research has evidenced that state parties ratify the African Democracy Charter as a result of 'concerns about their legitimacy, reputation or esteem', as opposed to actually internalising or institutionalising the norm.[29] Illustratively, while all states from the Economic Community of West African States (ECOWAS) have ratified the African Democracy Charter, 11 out of 15 UCG incidents recorded on the continent from 2008 (a year into the adoption of the African Democracy Charter) up to 2022 took place in that region.[30] Furthermore, as already highlighted, more than 50 per cent of African states in the last decade registered a downward trajectory on the critical indicators of participation, rights and inclusion.[31] This was also echoed in a 2023 study which concluded that the proclamation of democracy in some African states was in fact a façade as the models of governance utilised were exclusionary in nature.[32]

28 Rules of Procedure of the African Governance Platform (n 23) Sec XI art 37.

29 U Engel 'The 2007 African Charter on Democracy, Elections and Governance: trying to make sense of the late ratification of the African Charter and non-implementation of its compliance mechanism' (2019) 54(2) *Africa Spectrum* 136.

30 African Peer Review Mechanism (APRM) and African Governance Architecture (AGA) (n 14) 5.

31 Mo Ibrahim Foundation (n 8) 16.

32 United Nations Development Programme (n 15) 21.

Capacity constraints have impacted the AUC and their ability to effectively preside over the state reporting process. Ideally, for an effective state reporting and monitoring process to work, sufficient investments on human and financial capacity need to be made. Practically however, insufficient resources have proven detrimental to the sustainability of the AGA's critical functions such as presiding over the African Democracy Charter state report evaluation process. Indeed, a 2017 study did indicate that sustainable financing was a challenge for AGA and this had undermined the effective implementation of its mandate which includes the African Democracy Charter reporting process.[33] This is further evidenced by the fact that despite only two states being compliant, Togo and Rwanda only received the concluding observations to their respective state reports in August 2024.[34] This challenge is situated in the larger context of resource allocation within the AU, where the view has been expressed that the AU tends to emphasise spending on peace and security interventions and neglected committing resources towards preventive democratic governance efforts.[35]

The AGP framework anticipates these challenges and prescribes resolving some of them through the establishment of the African Governance Facility (AGF). The AGF is a resource mobilization mechanism aimed at supporting initiatives that are geared towards promoting good governance and consolidating democracy in Africa. These initiatives include: institutional capacity strengthening and building; dialogues to facilitate citizen engagement in democratic governance processes; and technical support to member states towards the ratification, domestication, implementation and reporting on AU Shared Values instruments.[36] The AGF is meant to be jointly owned and resourced by AGP members, AU member states and other stakeholders.

However, the AGF is not operationalised. The AGF would be integral to enabling campaigns on ratification and dissemination of the African Democracy Charter as well as its reporting guidelines to a variety of stakeholders. It would also support state parties to establish national mechanisms for reporting and implementation and strengthen the AGP's coordination towards effective review of reports and monitoring the implementation of concluding observations. Illustratively, the reports by Togo and Rwanda should be amplified by the AUC to harness impetus for compliance by other states and can

33 F Aggad & P Apiko 'Understanding the African Union and its Governance Agenda: African Governance Architecture and the Charter for Democracy Elections and Good Governance' (2017) 7.

34 https://www.peaceau.org:443/en/article/togo-and-rwanda-honored-for-commitment-in-reporting-on-democracy-and-governance (accessed 10 October 2024).

35 MK Nikodimos 'The Role of the African Governance Architecture (AGA) in the Promotion of Democratic Governance in Africa: The Cases of Egypt-2013 and Burundi-2015' unpublished Master's thesis, Linnaeus University, 2020 at 26 (on file with the author).

36 https://web.archive.org/web/20160719032912/http://aga-platform.org/index.php/aga-platform/2015-10-20-06-26-7/2015-10-12-11-41-45 (accessed 12 June 2024).

serve as instructive case studies for other states on how they can undertake their own state reporting. Evidently, this work has begun in the form of workshops aimed at member states within the African Union Permanent Representatives Subcommittee on Human Rights, Democracy and Governance (HRDG) in 2022 and 2023.[37] However, much more outreach to all state parties is required if the potential for peer learning is to be fully exploited.

Closely related to resource constraints is the insufficient publicity and dissemination of information on the state reporting process. In fact, unlike other treaty reporting processes such as those of the African Charter and the United Nations human rights system, the African Democracy Charter reporting process does not have a public portal where state reports and other material relevant to their evaluation can be accessed. This limits the possibility for public debates on the recommendations issued to these states as well as extracting best practices to be adopted by the various stakeholders involved in the process. This contrasts with international best practice where it has been established that state compliance with international legal obligations does to some extent rely on public access to information from treaty processes such as state reports and the recommendations issued as a result.[38] Such access strengthens public participation, transparency and accountability.

Another challenge to state reporting under the African Democracy Charter is the assertion of reporting fatigue by states due to the multiple reporting obligations that run alongside the African Democracy Charter, arising from multiple instruments at the continental and international levels.[39] Indeed, at the continental level, the major ones along the democratic governance and human rights spectrum in addition to the African Democracy Charter are the African Charter on Human and Peoples' Rights (African Charter); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); the African Charter on the Rights and Welfare of the Child; and the African Union Convention on Preventing and Combating Corruption. There is also the voluntary country review process provided for under the Statute of the African Peer Review Mechanism (APRM). This is further compounded by reporting obligations and related engagements within the United Nations system as well as at the level of RECs.

37 https://www.peaceau.org:443/en/article/togo-and-rwanda-honored-for-commitment-in-reporting-on-democracy-and-governance (accessed 15 October 2024).

38 CD Creamer & BA Simmons 'The proof is in the process: self-reporting under international human rights treaties' (2020) 114(1) *American Journal of International Law* 36.

39 Stakeholders' seminar on the African Charter on Democracy Elections and Governance: 26-27 July 2022, Addis Ababa, Ethiopia (notes on file with the authors).

An analysis of the continued proliferation of reporting mechanisms in the African system concluded that the various mechanisms risked not being impactful due to the unfocused deployment of resources and efforts within the system.[40] It is on this basis that in 2023, the AGP commenced internal deliberations and also with member states on harmonising state reporting mechanisms in the areas of human rights, democracy and governance. Essentially, this is meant to explore the viability of consolidating the reporting processes of various mechanisms in order to ease the burden of state parties and enhance the prospects of implementation at the national level.[41] While this remains an evolving discussion in its early stages, an element that can already be capitalised on in the interim is the potential of synergies that can be established among the AGP members who undertake state reviews in line with their respective mandates, a matter that is explored in the next section.

3 IMPROVING AFRICAN DEMOCRACY CHARTER REPORTING BY BUILDING SYNERGIES WITH OTHER RELATED REPORTING OBLIGATIONS UNDER THE AFRICAN UNION SYSTEM

The African Democracy Charter implementation and monitoring framework expects the AGP members to work in a coordinated manner to ensure that state parties are effectively evaluated as far as their compliance with and implementation of the instrument's provisions are concerned.[42] Beyond direct participation in the African Democracy Charter state reporting process, the AGP's coordination aspect opens the door to further linkages between this process and other state reporting obligations that are derived from the mandates of some of the AGP members. This section explores the linkages with reporting under the African Charter and under the APRM. This is essential because the African Commission and APRM processes have higher state compliance rates than the African Democracy Charter reporting process, while also venturing into the similar areas of inquiry and thus can help bridge the gap on democratic governance reporting in the interim. Additionally, the African Commission and APRM processes provide lessons on procedure that would be useful in enlivening the African Democracy Charter reporting process and increasing the prospects for compliance.

40 C Heyns 'The African regional human rights system: the African Charter' (2004) 108(3) *Dickinson Law Review* 679, 702.

41 https://au.int/en/pressreleases/20231201/harmonizing-state-reporting-mechanisms-human-rights-democracy-and-governance (accessed 15 October 2024).

42 Rules of Procedure of the African Governance Platform (n 23) Sec II, art 5.

3.1 Reporting under the African Charter on Human and Peoples' Rights

Article 62 of the African Charter and article 26 of the Maputo Protocol require state parties to submit state reports to the African Commission every two years to demonstrate how they have upheld the rights and freedoms guaranteed in those respective instruments. The rights to freedom of association, freedom of assembly, to freely participate in the governance affairs of one's country and to have equal rights to and access to public services which are all covered under the African Charter, means that the African Commission ventures into African Democracy Charter-related obligations when reviewing state reports submitted under the African Charter. Therefore, the Concluding Observations emerging from the African Commission's review should help strengthen state compliance with the African Democracy Charter.

Illustratively, the African Commission's Concluding Observations in relation to Kenya's eighth to eleventh periodic report, commended Kenya for its jurisprudence which safeguarded the right of prisoners to vote and for reforms to its electoral law to enhance the political participation of persons with disabilities (PWDs).[43] The African Commission also raised concerns regarding the low representation of women at decision making levels;[44] and the lack of formal representation and political participation for indigenous groups such as the Ogiek, Ilchamus and Elmolo.[45] In the case of the second and third combined report of Malawi, the African Commission called on the government to challenge societal beliefs and attitudes that inhibited women's appointment in political and public positions as well as implement the affirmative action measures that were required by their law on gender parity.[46]

Beyond the Concluding Observations issued by the African Commission, there is also much to be derived from the provisions for public engagement within their reporting framework. Under the African Commission rules of procedure, the state reports on African Charter compliance are published on the African Commission website

43 Concluding Observations and Recommendations on the 8th to 11th Periodic Report of the Republic of Kenya: Adopted by the African Commission on Human and Peoples' Rights at its 19th Extraordinary Session held from 16 to 25 February 2016 in Banjul, The Gambia 4.

44 Concluding Observations and Recommendations on the 8th to 11th Periodic Report of the Republic of Kenya (n 43) 11.

45 Concluding Observations and Recommendations on the 8th to 11th Periodic Report of the Republic of Kenya (n 43) 14.

46 Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Malawi on the implementation of the African Charter on Human and Peoples' Rights (2015–2019) and Initial Report on the Protocol to the African Charter on Human and People's Rights on the Rights of Women (2005-2013): Adopted by the African Commission on Human and Peoples' Rights at the 70th Ordinary Session held from 23 February to 9 March 2022 23.

when received in order to make them available for public scrutiny.[47] This in contrast to the prevailing situation under the African Democracy Charter where the state reports submitted thus far have not been made publicly available. As already highlighted, such publicity is instrumental for public participation, transparency and accountability.

In addition to the publication of state reports, the African Commission allows for the submission of shadow reports from civil society. Shadow reports refer to the independent and credible information compiled by civil society organisations with the purpose of providing parallel or supplementary information to that of state reports, with regard to the situation of human rights in the country under review. Practically, the shadow reports are limited to 15 pages with a maximum of 10 annexes and should be submitted 30 days prior to a state being reviewed.[48] As with the state reports, the African Commission also publishes the shadow reports on its website alongside information from other stakeholders. While the African Democracy Charter reporting process anticipates input from stakeholders, there is no elaborate guidance on how such input should be provided. In this regard, the African Democracy Charter process should similarly develop clear guidelines and invite the submission of shadow reports from civil society organisations.

The examination of state reports at the African Commission is done through an open session, where the state party under consideration participates in an interactive dialogue with the commissioners in the presence of other state party representatives, civil society and national human rights institutions. The concluding observations from the examination are then made public by the African Commission and published on their website. This enables various stakeholders to participate in the efforts to monitor and follow up on the state's implementation of the recommendations issued to them. This contrasts with the experience under the African Democracy Charter thus far, where the examination of state reports has been done in closed sessions and the concluding observations not published on a publicly accessible platform.

3.2 Reporting under the African Peer Review Mechanism

Under the APRM state parties voluntarily undergo a review process to establish progress made on democratic and political governance, economic governance and management, socio-economic governance

47 Rules of Procedure of the African Commission on Human and Peoples' Rights, 2020: Adopted by the African Commission on Human and Peoples' Rights during its 27th Extra-Ordinary Session held in Banjul (The Gambia) from 19 February to 4 March 2020 Rule 79(2).

48 https://www.chr.up.ac.za/news-archive/2022/3157-guidelines-on-shadow-reports-of-the-african-commission-on-human-and-peoples-rights (accessed 12 June 2024).

and corporate governance.[49] The governance structure of the APRM consists of continental and national structures. The continental structure is headed by the APR Forum which brings together the Heads of State and Government from the AU member states that have accepted to undergo the APRM process. The APR Forum adopts the country review reports that emerge from the process and takes ownership of their implementation. There is also an APR Panel of Eminent Persons that is mandated to provide oversight to the review of a participating member state so as to underwrite the independence, professionalism and credibility of the process. The process is supported technically and coordinated administratively by the APRM Secretariat.

The APRM national structure for the member state undergoing the review should consist of a national focal point (at ministerial level), a national commission to provide strategic policy direction, a national APR secretariat for technical and administrative support, technical research institutions to execute the APRM questionnaire and a budgetary framework for the process. The review process is undertaken through a five step process as follows:[50] (1) The state under review develops a Country Self-Assessment Report (CSAR) together with a National Plan of Action (NPoA) on the basis of multi-stakeholder participation (2) A country assessment is undertaken by a country review team which is led by a member of the APR panel and consults local stakeholders (3) the government of the state under review receives a Country Review Report (CRR) and proceeds to provide its feedback to the report while also amending its NPoA accordingly (4) the Head of State or Government from the state under review then proceeds to engage in a peer dialogue within the APR Forum that sees the CRR and NPoA discussed (5) the state under review then commits to address the issues arising from the review and to report annually on the progress made while also doing the same at other appropriate platforms such as the PAP or REC.

Based on the shared subject matter of governance as well as a review structure that envisages an interactive dialogue with the state, there is a strong argument for deliberate synergies to be established between the Africa Democracy Charter and APRM state review processes. A first step towards such synergies would be a joint campaign for the universal ratification of the African Democracy Charter and accession to the APRM process in order to ensure that the frameworks become applicable to all AU member states. Where states have ascribed to both processes, the AGA Secretariat and the APRM Secretariat could explore a synchronization of the review calendars for both processes. This would ease the reporting burden for the state under review and consolidate the AU resources that can be dedicated towards evaluating state reports and monitoring implementation of concluding observations. The APRM national structure can also be adopted to cater to both the African Democracy Charter and APRM

49 https://aprm.au.int/en/focus (accessed 12 June 2024).

50 F Aggad & N Tissi 'The road ahead for the African Governance Architecture: an overview of current challenges and possible solutions' SAIIA Occasional Paper (South African Institute of International Affairs (SAIIA) (2014) 13.

reporting processes and thereby assuage the issues of reporting fatigue and capacity constraints.

Such synergies are possible as seen in the development of the African Governance Report (AGR) which is an AGP initiative led by the APRM in collaboration with its fellow AGP members. The AGR serves as a key barometer on the status of various governance themes requiring attention by the AU Assembly of Heads of State and Government; an implementation component required in article 49(3) of the African Democracy Charter. The AGR development process can serve as a foundational template for exploring the integration and synchronization of governance related state reporting obligations in order to achieve improved compliance by AU member states as well as improved coherence in the concluding observations, recommendations and monitoring mechanisms that AGP members put in place.

4 STRENGTHENING COMPLIANCE THROUGH REGIONAL ECONOMIC COMMUNITIES AND CIVIL SOCIETY

4.1 The role of regional economic communities

The 1991 Treaty Establishing the African Economic Community (Abuja Treaty) recognises RECs as essential pillars for Africa's integration and the AU has recognised eight RECs on the continent.[51] RECs are valued for the in-depth knowledge they possess with regard to the socio-cultural and political dynamics of their respective regions.[52] Therefore, RECs can play a foremost role in entrenching at state level, the core tenets of the African Democracy Charter which consist of democracy, good governance, human and peoples' rights, constitutionalism and the rule of law. This is why article 44(2) of the African Democracy Charter requires a framework for cooperation with RECs aimed at enhancing state ratifications of the instrument as well as the designation of focal points to strengthen monitoring and evaluation of state obligations and ensuring effective public participation in implementation initiatives.

In practice, RECs have had varying degrees of success in entrenching the African Democracy Charter's implementation. With regard to norm development, only ECOWAS stands out with the adoption of its 2001 Supplementary Protocol on Democracy and Good Governance which outlines the role of ECOWAS in undertaking

51 They are the Arab Maghreb Union (AMU), Community of Sahel-Saharan States (CEN-SAD), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD) and Southern African Development Community (SADC).

52 Africa Peer Review Mechanism (APRM) and African Governance Architecture (AGA) 'The Africa Governance Report 2019: Promoting African Union Shared Values | African Union' (2019) 82.

election monitoring as well as imposing sanctions on a member states for the occurrence of UCGs or massive human rights violations. The East African Community (EAC) has developed a draft protocol on good governance but it has not yet been adopted by its member states.[53] Outside these two developments, the development of REC level instruments on good governance has not gained much traction.

It is in the arenas of election monitoring and conflict resolution that governance interventions by RECs have featured prominently. RECs such as ECOWAS, EAC, IGAD, SADC and COMESA have frequently deployed election observer missions within their spheres of influence in order to bolster free, fair and credible elections. Such missions have augmented those deployed by the AUC and expanded the platforms for accountability in relation to electoral processes. The election observer reports generated by RECs should greatly inform the evaluation of African Democracy Charter state reports on the aspect of electoral governance and steer concluding observations on electoral reforms where necessary. There are also examples that point to robust interventions by RECs to affirm democratic governance principles, especially when UCGs are likely to or have taken place. ECOWAS has had to intervene severally on this issue, such as in the case of Niger; where the regional body spoke against a July 2023 military coup and resolved to restore constitutional order by all means including through the use of force.[54]

In the recent past, ECOWAS has also intervened in the cases of Burkina Faso, Guinea and Mali, where military coups in these countries have been met with sanctions that include suspension of their membership to the regional body and travel bans on government officials and senior leaders within these regimes.[55] In Eastern Africa, the EAC has deployed troops to stabilise the Eastern DRC region and restore peace in that country;[56] while IGAD is spearheading a mediation effort to restore peace in Sudan which descended into its current cycle of conflict in April 2023.[57] These sanctions and peacekeeping intervention capacities should be viewed as potential instruments of enforcement and implementation of African Democracy Charter related recommendations where relevant.

Such interventions by RECs and the AU on sensitive matters like addressing conflict are guided by adherence to the principles of

53 A Songa & M Ronceray 'EAC democracy agenda: channels, lessons and digital technologies for civil society engagement' ECDPM Discussion paper no 354 (2023) 3.

54 https://ecowas.int/final-communique-fifty-first-extraordinary-summit-of-the-ecowas-authority-of-heads-of-state-and-government-on-the-political-situation-in-niger/ (accessed 12 June 2024).

55 https://www.facebook.com/FRANCE24.English and https://www.france24.com/en/live-news/20230219-west-african-bloc-maintains-sanctions-on-junta-regimes (accessed 12 June 2024).

56 https://www.eac.int/statements/2733-status-of-deployment-of-eac-troops-and-verification-mechanisms-in-eastern-drc (accessed 12 June 2024).

57 https://igad.int/communique-of-the-1st-meeting-of-the-igad-quartet-group-of-countries-for-the-resolution-of-the-situation-in-the-republic-of-sudan/ (accessed 12 June 2024).

subsidiarity, complementarity and comparative advantage so as to strengthen their effective coordination and collaboration.[58] Therefore, on this understanding, while RECs have exercised leadership in some interventions, they have also been led by the AU on a series of interventions aimed at improving democratic governance situations in the midst of conflict. Illustratively, while ECOWAS led the intervention to ensure the peaceful transition of power in the Gambia in 2016;[59] it was the AU through the African Union Technical Support Team to The Gambia (AUTSTG) that led the post-crisis initiatives to help the Gambia undertake constitutional and security sector reforms.[60] In the case of the post-election violence of Zimbabwe in 2008, the AU deferred to the mediation leadership of SADC to resolve the crisis.[61] Despite these examples, there are legal loopholes that need to be addressed in the arenas of distribution of competencies between the AU and RECs and in clarifying the nature and scope of subsidiarity and complementarity.[62] Indeed, some instructive cases such as the intervention of ECCAS in Chad and the EAC in Burundi have demonstrated that in the absence of an adequately defined legal framework the actions of RECs could run counter to those of the AU and ultimately undermine the shared values that they should collectively uphold.[63]

Some RECs have also provided pathways to citizen engagement on governance matters. The EAC has established a Consultative Dialogue Framework (CDF). The CDF facilitates dialogue between the EAC and key stakeholders such as civil society and the private sector with a view to ensuring that 'the integration process proceeds with the involvement of the citizens of EAC Partner States through multi-stakeholder partnerships'.[64] ECOWAS has established relationships with thematic and strategic civil society networks to advance interactions on governance and notable networks include: the West Africa Civil Society Forum (WACSOF), West Africa Network for Peace building (WANEP), the West Africa Democracy Solidarity Network (WADEMOS) and the West Africa Civil Society Institute (WACSI). Such multi-stakeholder frameworks expand spaces for deliberation of pertinent governance issues and with deliberate collaboration, can be deployed as part of the

58 Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities and the Coordination Mechanisms of the Regional Standby Brigades of Eastern and Northern Africa article IV(iv).

59 C Hartmann 'ECOWAS and the restoration of democracy in the Gambia' (2017) 52 *Africa Spectrum* 85-99.

60 https://issafrica.org/pscreport/psc-insights/lessons-from-the-gambia-about-africas-evolving-post-conflict-realities (accessed 12 June 2024).

61 B Kahombo 'Constitutional crises and the jurisdiction of the African Union' (2022) 25(1) *Recht in Afrika | Law in Africa | Droit en Afrique* 12 at 28.

62 T Makunya 'The nexus between constitutionalism, peace and security in the law and practice of the African Union' (December 15, 2022) 25(1) *RiA Recht in Afrika | Law in Africa | Droit en Afrique* at 82.

63 T Makunya (n 62) 82.

64 https://www.eac.int/gender/civil-society/consultative-dialogue-framework (accessed 12 June 2024).

monitoring and evaluation framework for concluding observations that state parties receive under the African Democracy Charter evaluations.

While the potential value addition of RECs is well established, more needs to be done to actualise this potential. Relevantly, the 2019 AGR highlighted the following aspects of the AU-RECs relationship as areas for improvement: (1) ensuring that the RECs are sufficiently aligned with the AU Constitutive Act and Shared Values; (2) a clarified definition and shared understanding of the principle of subsidiarity between the AU and RECs so as to enable an efficient and effective division of labour on matters of democratic governance; and (3) establish a systematic framework for each REC to effectively monitor the implementation of AU Shared Values instruments such as the African Democracy Charter.[65] The AUC has dedicated an annual engagement with RECs during its mid-year coordination meetings to resolve the above issues and realise synergies. This can be considered an integral step towards meeting the requirements of article 44(2) under the African Democracy Charter but should be followed up with concrete measures of designating focal points within the RECs as well as establishing monitoring and evaluation frameworks in relation to the African Democracy Charter at that level to encourage and strengthen state compliance.

4.2 The role of civil society

Civil society is an essential fulcrum to realising the African Democracy Charter article 3(7) principles of effective citizen participation in democratic and development processes as well as governance of public affairs. Furthermore, the state reporting process requires states to involve non-state actors in the development of their reports in order to ensure that the outcome meets the necessary thresholds of diversity, effective participation and inclusivity.[66] Relatedly, the AGA Secretariat is developing a comprehensive citizen engagement strategy that could be instrumental in deepening the public's understanding of the African Democracy Charter and their potential role in furthering state compliance.[67]

In light of the foregoing, what roles should civil society play in the implementation of the African Democracy Charter and its reporting process? First, because of their ubiquitous and diverse nature, Civil Society Organisations (CSOs) are valuable partners in the awareness raising component of the reporting process and implementation more broadly. CSOs have frequently invested in simplifying provisions of the African Democracy Charter and disseminating it to make the

65 Africa Peer Review Mechanism (APRM) and African Governance Architecture (AGA) (n 48) 84.

66 Rules of Procedure of the African Governance Platform (n 24 Section III Article 9.

67 https://au.int/en/pressreleases/20220825/citizens-engagement-strategy-will-mainstream-engagement-african-citizens (accessed 12 June 2024).

instrument more accessible and understood by the public.[68] CSOs are also credited for capacity enhancement initiatives through convening dialogue forums and creating learning platforms for persons interested in understanding how the African Democracy Charter can be applicable in their daily lives.[69] An improved public understanding of the African Democracy Charter will increase the demand for state compliance and harness the impetus to advocate for state reporting.

Based on their competencies and evidence-based research, some think-tanks and CSOs have been able to provide technical assistance to the AU and state parties in the implementation of the AU Shared Values instruments. A recent example is the African Union Network of Think Tanks for Peace (NeTT4Peace) which is aimed at enhancing the 'relevance and value of the contribution of African knowledge communities' towards providing evidence-based research that informs AU's policy making on peace, security and governance matters.[70] There is also the Pan-African Civil Society Network on Political Affairs, Peace and Security (PANPAPS) which is aimed at strengthening collaboration between civil society and the AU on advancing democratic governance, peace, security and stability on the Continent.[71] Such technical assistance can also be envisaged in the arena of state reporting, especially in broadening citizen engagement.

With regard to reviewing state compliance to democratic governance principles, some non-state actors have provided strategic technical assistance to strengthen AU organs. The APRM entered into a partnership with the Mo Ibrahim Foundation to collaborate in the areas of knowledge and data sharing; harmonisation of the Ibrahim Index of African Governance (IIAG) with APRM processes, including the representation of APRM on the Advisory Council; capacity support to the continental Secretariat; support of the Mo Ibrahim Foundation to the continental drive for universal accession to the APRM; and participation of the Mo Ibrahim Foundation in APRM Country Review Missions.[72] The APRM also entered into a partnership with the Open Governance Partnership (OGP) so as to facilitate the implementation of APRM recommendations at state level and foster collaboration between APRM National Structures and OGP National Multi-stakeholder Forums.[73] These form of partnerships with non-state actors should be explored and harnessed in the context of the multi-

68 See for example https://ecdpm.org/work/guide-african-charter-democracy-elections-and-governance (accessed 12 June 2024).

69 See for example https://mooc.africtivistes.org/en_GB/ (accessed 12 June 2024).

70 https://www.peaceau.org:443/en/article/au-launches-the-african-network-of-think-tanks-for-peace-nett4peace (accessed 12 June 2024).

71 https://reliefweb.int/report/world/communique-1161st-meeting-peace-and-security-council-held-6-july-2023-2nd-annual-consultative-meeting-between-peace-and-security-council-economic-social-cultural-council-and-representatives-civil-society-organizations (accessed 12 June 2024).

72 https://mo.ibrahim.foundation/news/2017/aprm-mif-strengthen-partnership (accessed 12 June 2024).

73 https://www.opengovpartnership.org/documents/framework-of-collaboration-between-the-african-peer-review-mechanism-and-ogp/ (accessed 12 June 2024).

stakeholder national institutional framework envisioned within the African Democracy Charter state reporting process.

CSOs can also provide accountability to the African Democracy Charter reporting process by preparing shadow reports to those submitted by state parties. As previously highlighted, shadow reporting already takes place in the context of African Commission reviews where CSOs with observer status submit shadow reports and disseminate the concluding observations that emerge from the process.[74] The African Democracy Charter reporting process does anticipate contributions by CSOs who have accreditation from the Economic, Social and Cultural Council (AU-ECOSOCC). Such CSOs are invited to a Pre-Session convened by the AGP where they are expected to provide insights that inform the subsequent dialogue with the state party under review. However, not much is defined in terms of the format for the Pre-Session and whether CSOs can furnish the AGP with written submissions or a shadow report. In light of this, the AGP should elaborate on this provision by inviting CSOs to submit shadow reports modelled along the format adopted by the African Commission for African Charter reporting and also structure the African Democracy Charter's Pre-Session along similar lines to the NGO Forum that accompanies the ordinary sessions of the African Commission.[75]

CSOs could also introduce innovation to the state reporting process. A potential area for innovation is the use of civic technology. Civic technology refers to those initiatives that utilise technology to strengthen democratic processes and promote inclusive decision making by enhancing the capacities of citizens to actively participate and possess the tools that empower them to pursue transparency and accountability on matters of governance.[76] The civic tech initiatives deployed by CSOs in this case could be open governance and public participation tools that demystify governance processes such as law making or state reviews.[77] Civic technology can build a continental constituency for citizen engagement on matters of democratic governance and enrich the evaluation of state compliance with the African Democracy Charter. The AU should tap into the potential of collaborating with CSOs on civic technology through existing initiatives such as the AU Civic Tech Fund and the AGA Democracy and Governance in Africa- Youth Innovation Challenge.[78]

Realising these dividends from CSOs requires overcoming various challenges that inhibit their effective engagement. A key challenge is the shrinking civic space on the continent. The 2022 Ibrahim Index of African Governance notes that over a third of Africa's population

74 https://achpr.au.int/en/network/ngos (accessed 12 June 2024).

75 https://www.acdhrs.org/ngo-forum/ (accessed 12 June 2024).

76 https://ecdpm.org/work/civic-tech-service-democracy-good-governance-africa (accessed 12 June 2024).

77 https://europeandemocracyhub.epd.eu/assessing-civic-tech-that-works-to-build-theafricawewant-citizen-led-tech-for-impact-that-can-help-african-governments-deliver-better-services/ (accessed 12 June 2024).

78 https://au.int/en/pressreleases/20201202/innovation-accelerator-stimulate-growth-youth-promoting-democracy-and (accessed 12 June 2024).

resides in a country where participation, rights and inclusion has declined at an accelerating pace since 2017.[79] AU member states should be encouraged to preserve civic space as part of fostering public participation and citizen centred policies.

With regard to CSO accreditation, the eligibility requirement for CSOs to obtain AU-ECOSOC accreditation is currently prohibitive. Article 6(5) of the Statutes of AU-ECOSOCC, requires applying CSOs to demonstrate that 50 per cent of their financial resources are derived from their membership. This is a requirement that numerous CSOs have been unable to fulfil. Consequently, the lack of accreditation impedes the participation of CSOs in the African Democracy Charter reporting process. There are prospects for reform as the AU-ECOSOCC on the basis of a decision by the AU Executive Council is currently working to reform its structure in two ways: the establishment of AU-ECOSOCC national chapters within AU member states as a way of realising the goal of a people-centred union; and the development of a harmonised and clarified criteria for granting CSOs consultative and observer status with the AU.[80]

Key objectives of the harmonised accreditation mechanism are providing a simple, accessible, fair, transparent, inclusive and efficient process for CSOs wishing to engage AU organs and enhancing the ability of AU organs to receive expert information or advice.[81] Notably, the AU-ECOSOCC proposal on the harmonised accreditation mechanism recommends a two-tiered criteria for CSOs, namely, 'consultative status' and 'observer status'. The proposed consultative status category would not include the stringent funding requirement but would enable CSOs who obtain this status to engage AU member states, attend the public sessions of AU organs, make oral and written statements and be included in a consolidated database of CSOs to be used by AU organs for consultations.[82] Such a reform measure aimed at broadening CSO inclusion would be welcome in the context of CSO participation in the African Democracy Charter reporting process.

Beyond granting accreditation, the AU-ECOSOCC has also been instrumental in popularizing the African Democracy Charter across the Continent by undertaking various citizen engagements and dialogue forums such as its flagship event, the Citizens Forum. The 2022 edition of the Citizens Forum focused on democracy and UCGs in Africa and saw CSOs provide input to an outcome document of recommendations for onward submission to the AU Assembly. The AU-ECOSOCC has also used the platforms of its General Assembly and Thematic Clusters to enumerate the role of CSOs in the ratification, domestication and implementation of the African Democracy Charter. Notably, the Citizens Forum and Thematic Clusters are not hinged on accreditation

79 Mo Ibrahim Foundation (n 8) 48.

80 https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-_898_xxvii_e.pdf (accessed 12 June 2024).

81 AU-ECOSOCC stakeholder consultation 8 December 2022 (notes on file with the authors).

82 AU-ECOSOCC stakeholder consultation 8 December 2022 (notes on file with the authors).

and therefore a broad range of civil society organisations are able to engage with AU-ECOSOCC and by extension, the AGP. Therefore, these two platforms should be linked to the efforts of broad sensitisation and dissemination in as far as the public component of African Democracy Charter reporting is concerned.

5 CONCLUSION

This article has located the African Democracy Charter as an AU Shared Values instrument, expressing the collective commitment by AU member states to uphold the principles of democratic governance. However, this commitment has demonstrably wavered. With only 39 out of 55 possible ratifications, the ACDEG is still some distance from being universally applicable. Furthermore, the current decade is witnessing considerable setbacks in the arena of democratic governance, with the resurgence of UCGs as well as highly fractious electoral contests and full-blown conflicts. These situations have called attention to the implementation frameworks and this article has focused on the reporting framework. While an elaborate framework for state reporting and review is in place, it remains plagued by significant challenges that hinder its true potential. A top priority should be embarking on a campaign that encourages improved state reporting compliance among the state parties to the African Democracy Charter. The outreach targeting the HRDG sub-committee is a welcome start, but it should be escalated to engage all 39 state parties. A campaign for universal ratification of the African Democracy Charter should also be undertaken in order to ensure that the compliance mechanism for the shared value of democratic governance is truly applicable to all AU member states.

The capacity constraints at all levels must be addressed in order to bolster the review aspect of the African Democracy Charter reporting process. A key plank of this would be to operationalise the AGF which would enable the AGP to provide the envisioned technical assistance to state parties as well as activate a robust citizen engagement strategy and follow up mechanism for concluding observations. There is also a need for a deliberate policy dialogue at the AGP level aimed at fostering greater coherence and cohesion with regard to the various state reporting obligations and institutional mechanisms that exist. This will ease the reporting burden on the part of AU member states and the task of evaluation on the part of AU organs. Such coordination will also expand the much-required multi-stakeholder aspect of these processes. It will also serve to ensure that AGP members leverage on each other's strengths, mitigate their respective weaknesses and enhance the accountability of AU member states by streamlining the follow up to concluding observations. This article has identified viable synergies with reporting under the African Democracy Charter, the African Charter and the APRM. It has also suggested lessons and avenues that can be exploited at REC level.

Interventions to address conflict as well as UCGs and the development of the AGR suggests that improved coordination among

AGP members (including the RECs) is indeed possible. Finally, the CSO engagement pillar and identified aspects of reform centred on enhancing access and facilitating effective participation should be fully actualised. In this regard, the African Democracy Charter reporting process should embrace technology and establish a public portal which demystifies the process and makes relevant documents available. It should also leverage on existing infrastructure such as the African Commission's NGO Forum, the APRM national mechanisms and the emerging ECOSOCC national chapters; as a way of tapping into viable CSO constituencies and establishing best practices which can enrich the Pre-Sessions anticipated in the African Democracy Charter reporting framework. Importantly, the reporting framework should adopt the African Commission's transparent approach of publishing state and shadow reports as well as concluding observations in order to enable all stakeholders to monitor and support implementation efforts. AU member states should also be compelled to preserve civic space and welcome CSO input to governance matters. Such an integrated, consultative and multi-stakeholder framework would enliven the currently sub-optimal reporting compliance levels, raise the prospects for improved compliance with the African Democracy Charter and contribute to the AU goal of a stable, peaceful and sustainably developing continent.