

THE ROLE OF REGIONAL PARLIAMENTS IN PROMOTING THE ENFORCEMENT OF THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS, AND GOVERNANCE IN MEMBER STATES.

Nwosu, Uchechukwu Wilson (Ph.D)

Institute of Public Policy & Administration
University of Calabar, Calabar, Cross River State, Nigeria.
uchey2000@yahoo.com; uchey2014@gmail.com
+234-803-705 0009; +234-803-705 0010; +234-805-255-5366.

Abstract

This research paper evaluates the role of Regional Parliaments in promoting the enforcement of the African Charter on Democracy, Elections, and Governance in Member States with particular emphasis on the Problems and Prospects therein. Using the doctrinal research methodology, which entails the gathering, evaluation and analysis of information within the context of the issue under examination, the paper revealed that Regional Organizations primarily foster cooperation, political and economic integration, dialogue, and most importantly promote constitutionalism among Member States. It was found that they do this by encouraging good governance via the adoption of democratic principles and institutions positioned on well defined concepts such as the need for human rights, an independent Judiciary, as well as the adherence to the principles of Separation of Powers. It was however noted that various problems such as poor funding, lack of political will, low level of parliamentary awareness, and failure of State parties to ensure prompt ratification, domestication, and implementation by their National Parliaments have formed cogs in the wheels of sustained progressive achievements. The paper concludes that the integration agenda of Regional Parliaments has not only engendered cooperation among States, but has indeed infused harmony into the *corpus juris* of the various regions where they are found in Africa. It was recommended *inter alia* that State parties should ensure adequate funding, parliamentary awareness, enhanced political will, better coordination, regular reporting, and prompt ratification and implementation of the Charter and indeed other African Union Treaties.

Keywords: African Charter, Constitutionalism, Democracy, Integration, Regional Parliaments.

Introduction

The African Charter on Democracy, Elections, and Governance marks the culmination of commitments that have been collectively taken by African Member States during the last two decades, and builds on various previous commitments of the African Union (AU) Member States to democratic governance enunciated through numerous declarations, decisions, and instruments. The true value of the Charter resides in the commitment of all stakeholders to ensure that the contents are

widely communicated, debated, and understood, in addition to being made available across the African society.¹

The adoption of the Charter by the AU Assembly demonstrates the determination of the African Union and its Member States to promote and strengthen good governance through institutionalizing transparency, accountability, and democracy. Through its adoption, Member States committed themselves to a set of common standards and approaches to ongoing political reform in the continent. Although the primary responsibility of ratifying and implementing the African Charter on Democracy, Elections, and Governance resides with Member States, the Charter in reality belongs to all Africans and has wider value to Regional Parliaments, civil society organizations, and other African and global stakeholders.

The vision of integration and by extension development can hardly be attained without sustained democratic governance. The range of states concerned encompasses failed or disintegrating states, such as Somalia and Congo; countries in a state of flux or transition, like Tunisia, Egypt, and Libya, following the revolutions in those countries; dictatorial regimes as in Sudan, Chad, and Rwanda; and consolidated, functioning democracies including South Africa, Cape Verde, Botswana, Ghana, and Mali.²

While formal ratification provides a basis for action on the part of the African Union, engagements on compliance with the commitments embodied in the Charter are possible outside of the formal process. Thus, stakeholders must be encouraged to engage each other and Member States on the need to ensure compliance with the Charter provisions. Governance, democracy, and improvements in electoral processes and practices are an ongoing process and in this, the Charter serves to enrich this process by providing a set of common standards and principles, a foundation for the continuing reconstruction of governance, democracy, and electoral practice and approaches.

Regional Organizations and Parliaments in Perspective

Regional Organizations are segments of the world bound together by a common set of objectives based on geographical, social, cultural, economic, or political ties. They usually possess a formal structure provided for in intergovernmental agreements. Their role is primarily to foster cooperation, political and economic integration and dialogue, and most importantly to promote constitutionalism among member states by encouraging good governance and the adoption of democratic principles and institutions. This is usually positioned on well defined concepts such as the need for human rights, an independent Judiciary, as well as adherence to the principles of Separation of Powers. Most Regional Organizations therefore have Parliamentary arms.

The parliament may be composed of members of the national legislatures whose members are directly nominated, or of its own directly elected members, further strengthening the supra-nationalism of the organization.³ Instances include the ECOWAS Parliament, the East African Legislative Assembly (EALA), the Southern African Development Community (SADC)

¹ Concept Note, Regional Parliamentary Meeting on the Promotion, Ratification, and Domestication of African Union Legal Instruments, 2012.

² Glen, P.J., 'Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Elections, and Governance', *AJLS* Vol.5, 2012, 149.

³ In Wikipedia, <https://www.wikihow.com>, accessed, 10th July, 2018.

Parliamentary Forum, the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP), and the Pan-African Parliament. These Regional Parliaments usually engage in advisory, consultative, legislative, and other functions depending on the terms of the Constitutive Acts upon which they are established. Recently also, Regional Parliaments routinely engage in Model Law making to guide Member States and ensure harmony and uniformity of standards.

One of the areas in which these Regional Parliaments have played a significant role is with particular reference to the promotion of the enforcement of the African Charter on Democracy, Elections, and Governance in member states of the African Union. This Charter of the AU is inspired by the principles of good governance, popular participation, rule of law, and human rights that are contained in the African Union's Constitutive Act. The Charter is committed to achieving a political culture that is based on the holding of regular, free, fair, and transparent elections conducted by competent, independent, and impartial national bodies.

Overview of the African Charter on Democracy, Elections, and Governance

The Charter was adopted by the eighth Ordinary Session of the Assembly held in Addis Ababa – Ethiopia on the 30th of January, 2007.⁴ It is the African Union's main normative Instrument to set standards for better governance across the continent. It came into force in February, 2012 after ratification by fifteen (15) States. As of September 2017, the Charter had been ratified by thirty (30) and signed by forty-five (45) out of the fifty-five (55) African States.⁵

The objectives of the Charter include: respect for democracy and human rights; promotion of the rule of law and respect for the supremacy of the constitution; the holding of regular, free, and fair elections that result in legitimate representative governments as well as the democratic change of governments; rejection of unconstitutional change of government; the independence of the judiciary; political pluralism and tolerance; promotion of regional and continental integration; citizen participation, transparency, access to information, and freedom of the press; promotion of gender equality in governance and development; and promotion of best practices in election management.⁶

Regarding Democracy, Rule of Law, and Human Rights, State parties shall commit to democracy, rule of law, and human rights while recognizing and ensuring universal suffrage.⁷ They are to take measures to ensure constitutional rule and constitutional transfer of power in addition to taking steps to strengthen the organs of the African Union that protect and promote human rights. In so doing, the State parties shall eliminate all forms of discrimination, especially based on political opinion, gender, ethnic, religious, and racial grounds while protecting the rule of law.

Furthermore, State parties to the Charter undertake to respect ethnic, cultural, and religious diversity, and especially to respect the supremacy of the constitution; and any amendment or revision of the constitution should be done through national consensus or, if need be, through referendum. As regards democratic institutions, the member states of the African Union pledge to ensure constitutional civilian control over the army and security forces by putting in place legal measures

⁴ www.africa-union.org, accessed, 10th July, 2018.

⁵ Aniekwe, C.C., Oette, L., Vandegiste, S., & Wiebusch, M., *The 10th Anniversary of the African Charter on Democracy, Elections, and Governance*, Antwerp, Institute of Development Policy, 2017.

⁶ Chapter 2 of the Charter.

⁷ Chapter 4 of the Charter.

to deal with the unconstitutional removal of an elected government. To achieve this, they are to establish public institutions that support democracy and constitutionalism, ensure that such institutions are independent and accountable to competent national organs, and that they have sufficient resources to function effectively by cooperating both regionally and continentally to build and consolidate democracy.

With particular reference to democratic elections, the State parties to the Charter must commit to holding regular, transparent, free, and fair elections in terms of the AU's Declaration on the Principles governing democratic elections in Africa.⁸ To achieve this, the state parties shall: establish and strengthen independent and impartial national election bodies; ensure there are mechanisms that resolve election disputes timeously; ensure that political parties can equitably access state controlled media during election periods; and ensure that there is a legally enforceable code of conduct for all those involved in elections.

One of the objectives of the African Union as indicated in its Constitutive Act is to promote peace, security, and stability on the continent, democratic principles and institutions, popular participation and good governance, and to promote and protect human and people's rights and other relevant human rights instruments.⁹ The Charter interestingly provides for sanctions in cases of unconstitutional changes of government.¹⁰ To this end, any putsch or coup *d'état*, mercenary intervention, armed rebel or dissident action against a democratically elected government shall be sanctioned by the AU. Thus, if an incumbent government refuses to relinquish power after a free and fair election has been held, such action will also be sanctioned by the AU.

Furthermore, any amendment or revision of the constitution or legal instruments which infringes on the principles of democratic change of government will also invite sanctions from the AU. Those responsible for unconstitutional change of government may be tried before a competent court of the AU. Besides, the Assembly can impose sanctions including punitive economic sanctions on a Member State that has perpetrated unconstitutional change of government. The Council shall however lift the sanctions once the situation is resolved.

With a view towards advancing Political, Economic, and Social Governance, State parties shall: strengthen parliaments and legally recognized political parties; promote citizen participation and partnerships with civil society; undertake regular reforms of the legal and justice systems; improve the performance of the public sector and combat corruption; promote the private sector through an enabling legal framework ; develop Information Communication Technologies; promote freedom of expression and freedom of the press; promote democratic values in traditional institutions; prevent the spread of diseases and combat their impact; recognize and support the full participation of women in decision-making structures and processes; consolidating sustainable multi-party political systems; prevent and combat crime; implement economic development strategies that include private-public partnerships.

Because traditional authorities are important, State parties are enjoined to find ways for them to be part of the larger democratic system. As such, respect, compromise, consensus, and tolerance should

⁸ Chapter 7 of the Charter.

⁹ Article 3(f)(g)(h), Constitutive Act of the AU.

¹⁰ Chapter 8 of the Charter.

be promoted by Member States in addressing conflicts and promoting stability and security. Consequently, State parties shall: work towards generating productive employment, alleviate poverty and illiteracy, and lessen the impact of diseases; implement environmental protection policies and are encouraged to accede to treaties and international legal instruments; and work towards providing free and compulsory education to all and especially vulnerable groups.

Mechanisms for Application

At the national level, State parties shall: adopt legislative, executive, and administrative actions to conform with the Charter; take steps to widely disseminate the Charter and related legislation; incorporate the commitments and principles of the Charter in their policies and strategies.¹¹ At the continental level, the Commission shall: develop benchmarks for implementation of the Charter; promote favourable conditions for democratic governance; ensure that the Unit and Fund provide electoral support to State parties; ensure all decisions of the AU on unconstitutional government change are carried out; establish guidelines for cooperation with Regional Economic Communities to implement the Charter; and establish focal points at the regional level for the implementation of the Charter, particularly ensuring civil society participation.

The Commission shall assist State parties in implementing the Charter and shall coordinate evaluation on the implementation with other organs of the AU and regional and national structures.

The Role of Regional Parliaments in Promoting the Charter

The main AU instruments on governance, namely: the African Charter on Democracy, Elections, and Governance; the African Charter on the Values and Principles of Public Service and Administration; and the African Union Convention on Preventing and Combating Corruption continue to experience slow ratification, domestication, and implementation.¹² This undermines the credibility of Pan-African Institutions as well as denies millions of African Citizens fundamental freedoms and basic human rights. The Pan-African Parliament, Regional, and National Parliaments have a role in promoting and advocating for the ratification and implementation of these key AU instruments and policy standards.

In July 2010, at the 15th Ordinary Summit of the African Union in Kampala, Uganda, African Presidents committed themselves to universally ratify all remaining AU Treaties. The Executive Council made an explicit request to specific AU organs, RECs, International and Regional organizations and civil society to assist with advocacy and sensitization of Member States to expedite the process of ratification of / ascension to OAU/AU Treaties.¹³ It also instructed the Commission to institute a regular reporting mechanism to the Executive Council on the implementation of this particular decision.

During the 18th Ordinary Summit in Addis Ababa in January 2012, the Executive Council explicitly prioritized on the implementation 18 out of the 43 Treaties including the Charter on Democracy, Elections, and Governance for on the implementation attention. Nevertheless, the response still remains slow and at the current rate, universal ratification of all African Union Treaties would not

¹¹ Chapter 10 of the Charter.

¹² Concept Note, 2012, 2, *Op. cit.*

¹³ Decision 571 (XVII)

be complete before 2053, one hundred years after the formation of the AU's predecessor, the Organization of African Unity (OAU).

Problems and Prospects

According to the 2008 High Level Panel Audit of the African Union, there are two types of challenges that block the implementation of key Instruments such as the Charter on Democracy, Elections, and Governance. They are: low parliamentary awareness and ownership of these Instruments; poor Government political will; lack of adequate funding / resources, poor coordination of government ministries; and an insufficient understanding of a multi-sectoral approach that is required for effective implementation. Besides, very few Heads of State or Ministers of Foreign Affairs report regularly on the decisions made and other plans for their domestic implementation to their citizens, National Assemblies, and Governments. Reporting is thus sporadic, and most States are behind on reporting back on their commitments under the different AU Decisions and Instruments.

Equally noteworthy is the fact that most National Parliaments are slow in ratifying AU Decisions. Apart from ratification, the main challenge remains to be the domestication and implementation of these key Instruments at the national levels. The role of National Parliaments in promoting and advocating for ratification, domestication, and implementation of these key Instruments becomes imperative. This is essentially because, the slow rate of ratification and domestication of key Instruments continues to undermine the credibility of the African Union and all its key organs and denies thus denies millions of African citizens fundamental freedoms and basic human rights as intended by the Protocols.

Against this background, at the Regional Parliamentary Meeting on African Governance Platform and Promotion of African Union Legal Instruments held in Port Harcourt, Rivers State Nigeria in 2012, the Members of the Pan-African Parliament in the West African Region resolved *inter alia*: that members of the PAP in the West African Region should become champions and sensitize their domestic Parliament and Government on the need to sign, ratify, and implement AU Instruments; that the PAP is to sensitize national Parliaments on the need to mainstream AU legal Instruments with national Constitutions to achieve harmonization as envisaged by the Protocol establishing the PAP.

Similarly, the ECOWAS Parliament with a view to achieving the aims of the Charter set up an Ad hoc Parliamentary Committee on the crises in Mali, Guinea Bissau¹⁴, and recently the Gambia. The Committee in each case made recommendations to the Parliament on the basis of which the Parliament passed consequential Resolutions. These Resolutions constitute a significant contribution of Parliament towards promoting stability, peace, and democracy in the Region.

Conclusion

In conclusion, it is obviously apposite that Regional Parliaments are a vehicle for good governance in any part of the globe particularly Africa. Their role in the political space as pacesetters has indeed promoted constitutionalism. Their integration agenda has not only engendered cooperation among states, but has indeed infused harmony in the *corpus juris* of the regions where they are found. With

¹⁴ Draft Report of the 2013 First Ordinary Session of the ECOWAS Community Parliament, Abuja, 2013.

particular reference to the African Charter on Democracy, Elections, and Governance, the influence of Regional Parliaments particularly the ECOWAS Parliament, the East African Legislative Assembly, and the Southern African Development Community (SADC) Parliamentary Forum in the movement towards democracy, free, and fair electoral practices, and the existence of good governance within Africa cannot therefore be overemphasized. Their contribution in the promotion of peace and stability is equally invaluable. Unfortunately, despite these laudable strides, the level of acceptance and implementation of the Charter remains highly uneven, which constitutes one of the key challenges in making the Charter's objectives a reality across Africa.

Recommendations

Given the challenges facing some of the Regional Parliaments and in view of their invaluable role in the sustenance of peace and stability in the world particularly Africa, the following recommendations are put forth to ensure the sustainability of Regional Parliaments to enhance their prospects:

- State parties should take decisive and definite steps towards ensuring the parliamentary awareness of the role of these Regional Parliaments to engender greater acceptability and coordination between the National Parliaments and the Regional Parliaments.
- There is an obvious need for enhanced political will on the part of the various governments of State parties as this will enhance the practical relevance of the role of these Regional Parliaments.
- State parties should ensure adequate and sustained funding of the Regional Parliaments to obviate the need for their dependence on charitable organizations and foreign sponsorship.
- There is need for better coordination of government Ministries and capacity building to ensure sufficient understanding of the multi-sectoral approach that is required for effective implementation of the Charter provisions.
- There should be regular reporting by State representatives to their National Assemblies on their commitments under the different AU decisions and Instruments particularly on a Charter such as that on Democracy, Elections, and Governance.
- There is an urgent need for not just ratification, but domestication and implementation of the Charter by all National Assemblies of AU Member States, and Regional Parliaments have to set timelines to achieve this.