

Multilateralization of Democracy Promotion and Defence in Africa

Thomas Kwasi Tieku
University of Toronto

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Abstract

The use of multilateral institutions to promote and defend democracy is one of the most remarkable recent trends in politics. The novelty of the approach has generated enormous interest among social science scholars. Yet, none of the major studies on the subject explores the origins, nature, and performance of multilateralization of democracy promotion and defence in Africa. This paper seeks to fill this gap by examining the democracy promotion and defence activities of the African Union. It argues that the African Union's record on democracy promotion and defence in Africa is decidedly mixed. While the Pan-African organization has dealt with coup makers decisively, it has been far less successful in dealing with authoritarian backsliding. Despite the enormous diplomatic toolkit at its disposal, the African Union has been unequivocally effective only at 'firefighting' authoritarianism, and its record at preventing misrule is at best questionable.

Introduction

Multilateral organizations have become important instruments for promoting and defending democracy around the world. Major regional organizations, such as the European Union (EU), the Organization of American States (OAS), the Caribbean Community, and the African Union, (AU) have adopted multilateral frameworks to strengthen democracy and human rights norms and practices in their member states (Cameron 2003; Pevehouse 2005; Cooper & Legler 2006; McMahon 2006; Legler & Tieku 2008). The Inter-American Democratic Charter (IADC) adopted by the OAS on September 11, 2001 enhanced the capacity of the organization to promote and defend democracy in the Americas (Cooper 2004; McCoy 2006; Boniface 2007). The Amsterdam Treaty, which entered into force in May 1999, empowered EU institutions to

promote democracy in Europe and in the global south. Even in Asia, the Association of Southeast Asian Nations (ASEAN) took an important step towards the construction of a new regional multilateral democracy promotion regime with the signing on November 20, 2007 of a new ASEAN Charter that included the creation of a new ASEAN Human Rights Body.

The AU took the multilateral approach to democracy promotion and defence to a new level when African leaders adopted the African Charter on Democracy, Elections, and Governance (the African Democracy Charter) on January 30, 2007 during the AU summit in Addis Ababa. The African Democracy Charter presents ambitious benchmarks for, and legal principles to support, the promotion of the democratic ethos, as well as peer review mechanisms for measuring democratic performance in 52 states in Africa and Western Sahara. It contains unprecedentedly detailed definitions of democracy, elaborate and, in some, cases innovative instruments for responding to coups d'état and authoritarian backsliding, and provisions for international election monitoring (Eborah 2007; McMahon 2007; Saungweme 2007; Wodzicki 2007; Legler & Tieku 2008).

The fact that many of the ideas of the African Democracy Charter are also found in other multilateral democracy charters, such as the Inter-American Democratic Charter, suggests a profound and historic global diffusion of democracy and human rights norms (McMahon 2007; Wodzicki 2007).¹ Some scholars have claimed that the OAS inspired African leaders to develop and adopt the African Democracy Charter (McMahon, 2007; Saungweme 2007; Eborah 2007 Saungweme 2007). While AU officials might have gained insights from the Inter-American Democratic Charter, the present paper shows the fallacy of the assumption that the AU is merely trying to 'localize' (Acharya 2004) democratic norms that originated in the Americas.

In the sections to follow I show that, on the contrary, the AU's democracy promotion and defence are home-grown projects that have yielded normative innovations to address distinct African regional problems. The creation of institutional mechanisms for the Organization of African Unity (OAU), now the AU (henceforth O/AU), to promote and defend democracy in Africa predates the Inter-American Democratic Charter.² Its institutional mechanisms originated in the work of transnational knowledge networks in Africa. The knowledge networks were made up of policy think tanks in South Africa and bureaucrats of the O/AU. They have a "common frame" (Keck and Sikkink 1998: 7) that African governments have collective responsibility for the development of policies supporting a liberal ethos such as representative democracy, good governance and human rights in every African state. The experts embedded in these knowledge networks teamed up to develop the instruments to bind member governments of the AU, including the illiberal ones, to a set of liberal democratic and good governance principles, thereby compelling them to defend and promote democracy in every African state. The expert-driven process of the AU's democracy promotion and defence construction has fostered a legalistic approach to democratic promotion and defence in Africa.

In addition, I offer an assessment of the performance of AU democracy promotion and defence, arguing that the overall record of the AU on democracy promotion and

¹ An international norm is a standard of appropriate behaviour for actors of a given identity (Katzentstein 1996; Finnemore and Sikkink 1998).

² I use O/AU when talking about both the OAU and the AU.

defence in Africa is decidedly mixed. While the AU has dealt with coup makers decisively, it has been far less successful in dealing with authoritarian backsliding. Despite the enormous diplomatic toolkit at its disposal, the AU has only been effective at 'firefighting' (Acevedo and Grossman 1996), responding only to extreme forms of bad governance, and not so successful at preventing authoritarian tendencies among its member-states.

I demonstrate the above-outlined insights in three sections. First, I place AU democracy promotion within the institutional architecture of the continental organization. I then outline the key elements of AU democratic promotion and defence instruments in section two. In the third section, I examine the AU's record on democracy promotion and defence in Africa. I conclude the paper by summarizing the core arguments.

The African Union

A deeper understanding of AU democracy promotion and defence requires particular insights into the African Union itself. African leaders created the AU on May 26, 2001 to reflect a shift in the focus of the Pan-African project.³ Pan-Africanism as practised within the institutional framework of the OAU focused primarily on legitimizing and institutionalizing statehood in Africa. Protection of states and governing regimes in Africa became its referent. As part of the efforts to protect and consolidate the African state, the Charter of the OAU committed African governments to a treaty that contained some of the 'purest statements [that defend and hold together the rings] (...) of elements of juridical sovereignty ever to be embodied in any international organization' (Clapham 1996). The Charter also put in place only institutions, rules and administrative mechanisms that strengthened sovereign prerogatives and the territorial integrity of African states. Many institutional restrictions were imposed on the OAU Secretariat to prevent it becoming a supranational entity.

The institutionalization of the state across the African continent meant that Pan-Africanism needed a new focus and meaning. A new generation of Pan-Africanists, led by the eminent South African Nelson Mandela and the shrewd Tanzanian diplomat Ahmed Salim Ahmed, made conscious efforts in the 1990s to give a new meaning to Pan-Africanism. They felt that it needed to deal with challenges facing ordinary Africans, rather than those encountered by broader entities, such as states and regimes (Mandela 1994; OAU 1990). They identified three main challenges: security threats and bad governance; underdevelopment; and the impact of international political economic forces (Salim 1995). These three major issues informed the creation of the AU and the drafting of its legal text, the Constitutive Act of the African Union (CA). As part of the effort to promote peace across the African continent, the Constitutive Act of the AU explicitly enjoins state parties to promote and defend democracy. Member-states are required to respect human rights, develop democratic institutions and culture, and ensure good governance and the rule of law (African Union 2001 and 2005). On January 30, 2007, they adopted the African Democracy Charter to give institutional mechanisms to a third

³ May 26, 2001 is recognized as the official date that the AU came into existence because it was the date of the entry into force of the Constitutive Act of the African Union. It was exactly 30 days after the deposit of the instrument of ratification by two-thirds of the member states of the AU, as provided for in Article 28 of the Constitutive Act.

party—primarily AU institutions—to operationalize and enforce the democracy promotion and defence regimes embedded in the Constitutive Act of the AU. While the African Democracy Charter and democracy instruments in the Constitutive Act have enhanced the AU’s capacity in the area of democracy promotion and defence in Africa, the democracy instruments in the AU’s arsenal go beyond the democratic institutional mechanisms contained in these legal documents. More broadly, the democratic regimes in the AU’s regimes stand on four key pillars.⁴

The AU Democracy Promotion and Defence Regimes

First, they make democracy promotion and defence an explicit purpose of the organization. The African Charter for Popular Participation in Development that was adopted by African leaders during the OAU summit in Addis Ababa in Ethiopia in July 1990 made the promotion and consolidation of representative democracy an explicit purpose of O/AU. The then Secretary-General of the OAU, Salim Ahmed Salim, who developed the Charter, felt that OAU promotion of democracy ‘would ensure the involvement of all including in particular women and youth in the development efforts’ of African states (OAU 1990). It was reinforced by Decision CM/Dec.357 (LXVI), which African leaders adopted during the Council of Ministers meeting in Harare in Zimbabwe on May 28, 1997. Decision CM/Dec.357 (LXVI) committed African governments to concrete steps to ‘work towards the establishment and consolidation of effective democratic systems, ensure respect for human rights and fight impunity’ in Africa.⁵ The Constitutive Act of the AU, which replaced the OAU Charter, built on these instruments by enjoining African governments to develop democratic institutions and culture, and to ensure good governance and the rule of law (African Union 2001 and 2005).

Second, the democratic regimes of the AU are grounded in a strong anti-coup norm. In 1998, AHG/DECL.1 (XXXIV) created an automatic and rapid response mechanism for the AU in the event of a coup d’état against a member state. The declaration also stipulated measures that the AU could adopt to combat unconstitutional seizures of power. The anti-coup regime emerged out of the measures that the AU developed to restore constitutional governments in Sierra Leone in 1997. In response to a military overthrow of Ahmed Tejan Kabbah’s civilian government in Sierra Leone on May 25, 1997, on May 28, in Harare in Zimbabwe, Salim introduced to the OAU Council of Ministers meeting specific measures designed to restore constitutional order in Sierra Leone. The measures included a request to ‘all African countries, and the International Community at large, to refrain from recognizing the new regime and lending support in any form whatsoever to the perpetrators of the coup d’état’ (OAU 1997). As a follow-up, Salim proposed to the OAU leadership that they exclude from participation in OAU activities ‘[s]tates whose Governments came to power through unconstitutional means’ (OAU 1998). The proposal was accepted as a declaration during the 34th OAU summit held in Ouagadougou in Burkina Faso in June 1998. A revised version of the proposal that included additional pro-democracy measures was submitted to the 35th summit held in Algiers in July 1999 (OAU 1999). The new proposal required that states ‘whose

⁴ Regimes are sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given issue-area (Krasner 1983).

⁵ AHG/DECL.1 (XXXIV).

Governments came to power through unconstitutional means after the Harare Summit [ie May 1997] restore constitutional legality before the next Summit.’ It also mandated the OAU secretary-general to ‘assist in programmes intended to return such countries to constitutional and democratic governments.’ The AU Constitutive Act added these measures to its binding rules.

Third, the democratic regime of the AU has strong sanctions against coup makers. The O/AU Assembly of Heads of State and Government decided, during the 36th OAU summit held in Lome, Togo in July 2000, on a fairly comprehensive sanction regime to be applied by the OAU in cases of unconstitutional changes of governments in African states (OAU 1999). Such changes were defined in the proposal as the replacement of democratically elected governments through a military coup d’état, or mercenary intervention, or armed rebellion, or by the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections. The proposal that was adopted as Declaration AHG/Decl.5 (XXXVI) during the 36th OAU summit, held in Lome in Togo in July 2000, conferred on the OAU Chairperson and Secretary-General the responsibility to immediately condemn any military take-over in Africa and demand a speedy return to constitutional order. The country in question, according to Declaration AHG/Decl.5 (XXXVI), would be automatically suspended from participating in the activities of the OAU, and given six months to restore constitutional rule (OAU 2000). The OAU Under Secretary-General for Political Affairs, Said Djinnit, and the Acting OAU Legal Counselor, Ben Kioko, integrated the core pro-democracy ideas in Declaration AHG/Decl.5 (XXXVI) into the draft Constitutive Act of the AU.

Finally, the AU attempted to commit its members to upholding democracy via democratic charters. The AU democratic regime tried to move African governments away from the traditional idea that every state in Africa has ‘the right [...] to determine [...], the system of democracy on the basis of their socio-cultural values’ (OAU 1990). In order to commit the leadership of the OAU to a specific set of democratic principles, Salim forged a partnership with a group of civil society organizations that had started a campaign to make the OAU focus on humanitarian issues and to demand certain “standards of behaviour ... from every government [in Africa] in the interest of common humanity’ (Obasanjo & Mosha 1992, p. 260; Deng & Zartman 2002).⁶ Salim, together with civil society groups, in July 1999 pushed OAU leadership to bind their states to a decision that defined democracy as representative and stable government, and indicated that ‘the principles of good governance, transparency and human rights are essential elements for building’ such a government (OAU 1999).

Following criticisms by civil society groups that the OAU stand on democracy is vague, the OAU bureaucrats developed ‘a set of principles on democratic governance to be adhered to by all Member States of the OAU’ (OAU 2000). The principles were adopted as Declaration AHG/Decl.5 (XXXVI) during the 36th OAU summit held in Lome, Togo in July 2000. These principles encouraged OAU members to adopt a “Democratic Constitution’ whose ‘preparation, content and method of revision [...]

⁶ The major conference of the group was organized between May 19 and 20, 1991 in Kampala in Uganda. It was attended by over 500 people, including representatives of African intellectual communities and former African heads of state. The group developed continent-wide principles and benchmarks designed to demand certain “standards of behaviour ... from every government [in Africa] in the interest of common humanity.”

conform with generally acceptable principles of democracy’ and that guarantees and promotes human rights. In addition, Declaration AHG/Decl.5 (XXXVI) required that OAU member-states respect their constitutions, the provisions of the law and other legislations adopted by the parliaments of their states. Also, member governments would be required to adhere to: the principle of separation of powers; respect for the independence of the judiciary; and respect for the role of the opposition and for the principle of democratic change, in addition to requiring OAU member states to promote: political pluralism through the organization of free and regular elections; respect for freedom of expression; freedom of the press; and respect for fundamental rights and freedoms. Finally, Declaration AHG/Decl.5 (XXXVI) appealed to African governments to ensure gender balance and involvement of African civil society in the political process.

The African Charter on Democracy, Elections, and Governance seeks to bind African states to this conventional understanding of democracy. It stipulates that parties to the Charter would adhere to ‘universal values and principles of democracy,’ including, among other things, respect for human rights, representative government, the rule of law, supremacy of constitutions and constitutional orders, free and fair elections, and the independence of the judiciary, (African Union 2007: 5).⁷ It is significant that the African Democracy Charter provides a common frame of reference for democracy, although the definition of democracy is part of the aspirational principles.⁸ The shared frame of reference is likely to minimize the potential for conflicts over the meaning of democracy in the African context and, more important, it undercuts African governments’ tendencies to adopt context-specific interpretations of democracy.

An important element of the African Democracy Charter is the elaborate rules it imposes on democracy activists and promoters when they defend existing democracies in Africa. Chapter eight includes useful legal instruments to promote both vertical and horizontal accountability. Four out of the five clauses of Article 23 seek to strengthen vertical accountability by stipulating a series of sanctions against illegal access to and maintenance of power. Though Article 23 places emphasis on vertical accountability, it in no way erodes horizontal accountability, as Article 23(5) makes it illegal for incumbent regimes to manipulate national constitutions in order to prolong their term in office. In addition, it is illegal under the African Democracy Charter for an incumbent regime to refuse to concede defeat when it has lost in a free and fair election. The AU is given the responsibility of imposing sanctions on regimes that refuse to hand over power following free and fair elections and on those who manipulate their national laws to prolong their stay in office. The great virtues of the African Democracy Charter are that it provides relatively precise rules and imposes strong obligations on parties, and it has a strong third-party oversight for dealing with critical African democratic problems, such as civil-military relations, authoritarian tendencies of civilian regimes, and human right abuses, among others.⁹

⁷ Article 2, Articles 3 through 6

⁸ Aspirational principles are difficult to enforce, which is why all aspirational principles lack strong sanction regimes.

⁹ For discussion of the various elements of the African Democracy Charter, see (McMahon, 2007; Saungweme, 2007, Eborah 2007 Saungweme, 2007, Wodzicki, 2007).

The Performance of AU Democracy and Defence Regimes

The AU democracy and defence regimes have been tested on a number of occasions. They have been tested by military coups in the Central African Republic (2003), Guinea-Bissau (2003), Sao Tome and Principe (2003), Mauritania (2005), a self-coup in Togo (2005), the Zimbabwe crisis (2003-2005) and the post-elections controversy in Kenya. Except for Zimbabwe, the AU dealt with the challenges relatively well.

Since the adoption of the anti-coup norm, the AU has suspended all countries where coups have taken place, and put pressure on the military juntas to return the states in question to civilian rule. In contrast with regional organizations, such as the OAS and ASEAN, that do not use diplomatic suspension, in 2003 the AU suspended Guinea-Bissau and Sao Tome and Principe, and did it again with Mauritania and Togo in 2005 after unconstitutional changes of governments. All of these states were pressured by the AU to return to civilian rule. The AU's response to the leadership succession in Togo in 2005 was a landmark move, as it was not a classic military take-over, and is worth elaborating on. Faure Gnassingbe was installed as the head of state of Togo by the Togolese army after the death of his father Gnassingbe Eyadema in February 2005. Immediately following the installation, the then chair of the AU Commission, Alpha Oumar Konaré, released a statement in which he described the changeover as an unconstitutional seizure of power, and called on the new regime to return Togo to constitutional legality. The AU Peace and Security Council upheld the stand taken by the chair of the AU Commission, and excluded Togo from all AU activities. The AU's delegitimation of Faure Gnassingbe's regime, together with sustained international pressure, forced him to resign. Though Faure Gnassingbe ended up winning the hurried elections under dubious circumstances, and the AU re-admitted Togo into the Pan-African club later in 2005 without questioning the process that brought Faure Gnassingbe to power, the Togo case has provided a key precedent for the AU to respond to such changes of government. As for the classic coup makers, none of the military juntas that have emerged since the AU took a firm stand against the coup has been able to turn its regime into a civilian government in disguise. Without the AU stand, it is likely the juntas would have followed the post-1990s political practice by coup makers in Africa in order to find a way to legalize their regimes. In fact, informed observers of the behaviour of African militaries believe that the AU anti-coup measures have deterred 'African militaries from plotting and attempting coups' (McGowan 2005: 242).

The AU has emerged as an important institution that validates electoral results in Africa. In addition to giving rules for determining free and fair elections, such as requiring member-states to provide free access to information, in order to ensure freedom of movement of the mission and to cooperate with the mission, it obligates parties to inform the AU Commission of any scheduled elections and to invite the AU Electoral Assistant Unit to send an electoral observer mission. The AU Commission has given its seal of approval to elections in many African states. It helped to legitimize major election results in Ghana in 2004, Zanzibar in 2003 and 2005, Zimbabwe in 2000, Kenya in 2002 and 2007, Nigeria in 2003 and 2007, Swaziland in 2003, Mozambique in 2003 and 2004), Sierra Leone in 2004 and 2007), Malawi in 2004, Cameroon in 2004, Lesotho in 2005, Zambia, in 2006, Gambia in 2006, Seychelles in 2006 and Uganda in 2006. While the passing grade that AU election observers have given to results that have emerged from electoral process considered unfair, AU observers' penchant for presenting

electoral problems in flattering diplomatic language, and the unwillingness of the observers to highlight abuses of incumbencies during the electioneering campaign have undermined the AU's credibility in the area of external election validation, the electoral observations by the Pan-African organization have contributed to making parties accept the outcome of election results. This has in a major way helped some African states avoid post-election disputes and conflicts similar to the one witnessed in Kenya after the December 2007 presidential and parliamentary elections.

In spite of the significance of AU mediation efforts in cases of political conflict, and the remarkable successes it has had, including helping to avoid a major political crisis in Sao Tome and Principe and Burundi in 2003, the AU's mediation work remains largely unknown, underappreciated, and virtually undocumented. A more recent AU mediation effort which produced meaningful political settlement and helped stop violence is the AU mediation mission that resolved the election dispute between Raila Odinga's Orange Democratic Movement (ODM) and Mwai Kibaki's Party of National Unity (PNU) after the December 2007 Kenyan elections. Following the controversial declaration of Mwai Kibaki as the winner of the December 2007 presidential election in Kenya and the protests and violence that ensued, the AU Chairperson, Ghanaian President John Kufuor, led a mediation mission to Kenya in January 2008. When President Kufuor failed to broker a peace agreement between Raila Odinga's ODM and Mwai Kibaki's PNU, the AU appointed a team of mediators that includes former Tanzanian President Benjamin Mkapa and Madame Graça Machel and is headed by the former U.N. Secretary General Kofi Annan, with the goal of resolving the post-election impasse. With the support of the diplomatic machinery of leading Western states such as the United States of America, Annan's team helped the PNU and ODM agree to share power and form a coalition government. Though mainstream media and some analysts have tried to distance the AU from the resolution of the post-election conflict in Kenya, it remains one of the AU's greatest achievements.¹⁰ The lack of meaningful study of AU's work in the area of mediation is unfortunate as there are useful intellectual and policy insights that can be gleaned from the mediation process.

On the negative side, the AU has been far less able to deal with authoritarian backsliding: that is, elected officials who undermine their countries' democratic constitutional orders. It has been unable to prevent elected officials abusing their office, as the ongoing Zimbabwe crisis demonstrates. The AU's ineffectiveness in this regard is a major worry, as studies suggest that authoritarian tendencies are creeping into the administrations of a number of the African states that embraced democracy in the early 1990s (Bratton & van de Walle 1997; Bratton, Mattes & Gyimah-Boadi 2005). The AU has failed to condemn regimes that have manipulated their states' constitution in order to prolong their term in office. It did virtually nothing to stop governments, such as those of Blaise Compaoré of Burkina Faso, Omar Bongo of Gabon and Idriss Deby of Chad, manipulating their national constitutions to extend their stay in office. More curiously, the AU said nothing while Cameroonian President Paul Biya, who has been in power for 26 years, in April 2008 scrapped the presidential term limits stated in the Cameroonian national constitution. The move will allow him to run for the presidential elections scheduled for 2011, and to stay in power until 2018, when he will be 85 years of age. AU

¹⁰ I thank Larry Diamond for pointing out this to me in San Francisco on March 29, 2008.

leaders' failure to condemn Biya's blatant desire to stay in office at all costs makes a mockery of the AU's democracy and defence aspirations.

Equally damaging to the AU's desire to spread genuine democracy across the African continent is its inability or, rather, unwillingness to pressure military rulers, such as Muammar Gaddafi of Libya and Lansana Conté of Guinea, who were in power prior to May 1997, when the OAU decided not to admit military regimes into the Pan-African organization, to establish constitutional order in their states. While the leadership of the AU Commission claims that the African Democracy Charter is designed to deal with these challenges, it is doubtful whether the entry into force of the African Democracy Charter would be enough to compel illiberal regimes, such as the Muammar Gaddafi government, to liberalize.

Additionally, despite the impressive diplomatic toolkit at its disposal, including the many seasoned diplomats outside of the AU system upon whom the organization can call to engage in preventive diplomacy, the AU has been more effective at "firefighting" (Acevedo and Grossman 1996), responding to crises in full process, than at preventing them in the first place. It has remained largely silent and disengaged while leaders such as Robert Mugabe systematically dismantle democratic arrangements and measures in their states. It has failed to openly criticize authoritarian tendencies, ignoring Mugabe's massive violations of human rights in Zimbabwe. It has even refused to discuss the issue in a meaningful way. In 2004, AU bureaucrats prepared a fairly comprehensive report on Mugabe's regime that strongly criticized his human rights record. The report contains allegations of government complicity in a wide range of rights abuses, including 'the torture and arbitrary arrests of opposition members of parliament and human rights lawyers.'¹¹ Though the report was discussed by the AU Permanent Representative Council and the Peace and Security Council, it was not put on the agenda of the heads of state and government because Zimbabwe's foreign minister questioned the legal right of the AU to discuss the issue.

Explanation for the AU's Mixed Performance

The mixed performance of the AU on the question of democracy begs explanation. The efficacy of its approach to coups is due to the mechanical and legalistic manner in which the anti-coup sanctions have been applied and the actors behind it. Unlike the usual practice of exhausting all possible non-confrontational diplomatic measures before suspending a member state, a coup automatically triggers suspension from the AU. Additionally, the affected state cannot rejoin the AU club until elections have been organized and constitutional order restored. This mechanical operation of the regime has made it less prone to political manipulation. The drafters of the anti-coup sanction, the OAU bureaucrats, with strong technical and analytical support from Jackie Cilliers, the Executive Director of the South African Institute for Security Studies, felt it would not work well if it were left to political leaders to apply it. They made a conscious effort to distance its operation from O/AU political leadership.

Moreover, the AU has abandoned the 'by invitation only' norm that seeks consent of parties before sending mediation and/or observer missions to member states. The empowerment of the AU Commission to conduct fact-finding missions without the

¹¹ See, <http://www.afrol.com/articles/13595>; <http://www.irinnews.org/report.aspx?reportid=50560>. Accessed on April 4, 2008.

express consent of member states has enhanced the AU's ability to engage in mediation and observations. The AU has sent numerous fact-finding missions to crisis states in Africa without having received an official invitation. A prominent case is the role the AU played in the resolution of the post-election crisis in Kenya. It appointed the former UN Secretary General to help the feuding parties resolve their differences without seeking the explicit consent of conflicting parties. The absence of a 'by invitation only' norm in Africa is significant, as its presence in the other regions, such as the OAS, undermines mediation efforts (see for instance, Legler & Tieku 2008).

Similarly, the AU norms and practices, which empower the AU Commission to conduct election monitoring without the express consent of member states, have enhanced the AU's ability to perform that task. The AU Commission set up election monitoring teams in Zanzibar in 2005, Lesotho (2005), Zambia, (2006), Gambia (2006), Seychelles (2006) and Uganda (2006) without seeking the approval of the parties involved. Clever governments can use the "by invitation only" prerogative to negotiate the terms of the observation mission, such as when to issue the invitation (how soon before the election date), who to invite to observe, access to electoral institutions, and shaping the election observation mission to their liking. The actors who pushed for the adoption of these measures explained the de-politicized nature of the process of conducting AU missions. These mechanisms emerged out of the activist work of indigenous African knowledge networks, such as the African Bar Association and the Association of African Jurists. Its history can be traced to the 1960s when African jurists demanded an African multilateral instrument to promote and defend human rights and democracy in Africa during the first meeting of the International Commission of Jurists held in Lagos in Nigeria from January 3 to 7, 1961 (Umozurike 1981). Similar demands were made at the meeting of the African Bar Association and the French-speaking African jurists in the latter half of the 1960s (Nkulu 2004). The specific instruments themselves were developed by non-state actors, such as AU bureaucrats in Political Affairs and Legal Affairs Departments, with technical support from civil society actors, such as Khabele Matlosa, the Research Director of the Electoral Institute of Southern Africa (EISA).¹²

Last, the AU has been ineffective in dealing with authoritarian backsliders in part because it does not have the necessary legal instruments to do so, and in part because a group of AU political leaders have been frustrating attempts by AU bureaucrats to find extra-legal instruments to deal with elected officials who are abusing their powers. The group, whose members include long-serving authoritarian leaders such as Gaddafi of Libya, Conté of Guinea, and Bashir of Sudan, have been acting as gatekeepers, undermining AU bureaucrats' attempts to put human rights violations and abuse of powers on the agendas of AU summits. They have resisted attempts to introduce liberal ideas and discourse into Pan-Africanism, claiming that they would deprive Africans of the chance to develop organic political institutions and undermine African cultures. In private, it is not uncommon to hear members of the group accuse the pro-democracy campaigners of being agents of the West and neo-colonialism. These states' foreign ministers and ambassadors rallied behind Mugabe during the discussion of the report on Zimbabwe. Some criticized the AU bureaucrats and, in particular, the then Chairperson of the Commission for overstepping their powers by compiling the report and submitting

¹² See decisions EX.CL/DEC.31(III); EX.CL/124(V).

it for the consideration of AU organs. They lobbied the Assembly not to discuss the 2004 report on the human rights situation in Zimbabwe.

Conclusion

I have tried to examine the origins, nature, and performance of AU democracy promotion and defence in Africa. I have also tried to offer explanations for the AU's mixed record on democracy promotion and defence. I showed that the AU's efforts in that sphere have a longer history than those who have written on the subject have indicated. It is certainly incorrect to suggest that the AU's democracy promotion and defence are mere vestiges of the localization of international norms that originated in the Americas. The African regimes are homegrown projects that have been developed to address distinct regional problems. The main drivers of the AU's democracy promotion and defence in Africa are transnational knowledge networks made up of policy think tanks in South Africa and bureaucrats of the O/AU. The expert-driven process of AU democracy regime construction has compelled the organization to take a more legalistic, even constitutionalist, path to these goals.

The AU's uneven record includes success in dealing with coup makers, and it is believed that the AU has even deterred some army officers in Africa from overthrowing their governments. In addition, the AU has used mediation and observer missions to defuse pre-election tension and to resolve post-election disputes in many states in Africa. However, the AU has failed to deal with the authoritarian tendencies of some of its member-states. It has a particularly bad record in preventing the elected heads of states of its member states from abusing their powers. The AU has also been unable to pressure military regimes that were in existence before the anti-coup norm emerged into liberalizing their political systems. The poor performance of the AU with respect to elected officials who undermine their countries' democratic constitutional orders is related to the dynamics of its membership. The often tense relationship between African authoritarian leaders, on one hand, and new African democratic states, such as South Africa, Mali, Ghana and Cape Verde, and O/AU bureaucrats on the other, is a major contributing factor to the AU's inability to deal with authoritarian backsliders. Military regimes, such as the government of Guinea's Conté, have become gatekeepers preventing AU bureaucrats and liberal minded African leaders from dealing with human rights violations and abuse of powers in AU member states.

References

- Acevedo D. & C. Grossman. (1996). 'The OAS and the protection of democracy.' in Tom J. Farer, ed., *Beyond sovereignty: Collectively defending democracy in the Americas*, ed. Baltimore: Johns Hopkins Univ. Press, 132-149.
- Acharya, A. 2004. How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International Organization* 58: 239-275.
- African Union. 2001. *The Constitutive Act*. Addis Ababa.
- . 2005. Declaration of the Heads of State and Government of the African Union on the Fourth Ordinary Session of African Union, Addis Ababa, Ethiopia. Addis Ababa.
- Boniface, D. S. 2007. 'The OAS's mixed record,' in Thomas Legler, Sharon F. Lean, and Dexter S. Boniface, eds. *Promoting democracy in the Americas*. Baltimore, MD: Johns Hopkins University Press, 40-62.
- Bratton, M. & N. van de Walle, eds. 1997. *Democratic Experiments in Africa*. New York: Cambridge University Press.
- Bratton, M., R., Mattes, & E. Gyimah-Boadi, eds. 2005. *Public Opinion, Democracy, and Market Reform in Africa*. Cambridge: Cambridge University Press.
- Cameron, M. A., ed. 2003. Special issue on the Inter-American Democratic Charter. *Canadian Foreign Policy* 10, 3 (Spring).
- Clapham, C. 1996. *Africa and the International System: The Politics of State Survival*. Cambridge: Cambridge University Press.
- Cooper, A. F. 2004. 'The Making of the Inter-American Democratic Charter: A Case of Complex Multilateralism,' *International Studies Perspectives* 5, 1 (February 2004), 92-113.
- Cooper, A. F., & T. Legler. 2001. 'The OAS in Peru. A model for the future?' *Journal of Democracy* 12 (4): 123-136.
- Cooper, A. F., & T. Legler. 2006. *Intervention without intervening: The OAS defense and promotion of democracy in the Americas*. New York: Palgrave MacMillan.

- Eborah, S. T. 2007. *The African Charter on Democracy, Election and Governance: A New Dawn for the Enthronement of Legitimate Governance in Africa?* Open Society Institute. Available at: <http://www.afrimap.org/papers.php>.
- Finnemore, M. & K. Sikkink. 1998. 'International norms dynamics and political change.' *International Organization* 52, 4: 887-917.
- Gyimah-Boadi, E., ed. 2004. *Democratic Reform in Africa: The Quality of Progress*. Boulder, Colo.: Lynne Rienner.
- Huntington, S. P. 1991. *The Third Wave: Democratization in the late twentieth century*. Oklahoma: University of Oklahoma Press.
- Krasner, S., ed. 1983. *International Regimes*. Cambridge, Mass., Cornell University Press.
- Legler, T & T. Tiekou, 2008. 'What Difference Can a Path Make? Regional Regimes for Democracy Promotion and Defense in the Americas and Africa.' Paper presented at the Annual Convention of International Studies Association, San Francisco, March 2008.
- Levitt, B. S. 2006. 'A desultory defense of democracy: OAS Resolution 1080 and the Inter-American Democratic Charter.' *Latin American Politics & Society* 48, 3 (Fall): 93-123.
- McCoy, J. L. 2006. 'International response to democratic crisis in the Americas, 1990-2005.' *Democratization* 13, 5 (December): 756-775.
- McGowan, P. 2003. 'African Military Coups d'Etat, 1956–2001: Frequency, Trends and Distribution,' *Journal of Modern African Studies* 41, 3: 339–70.
- . 2006. Coups and Conflict in West Africa, 1955-2004, *Armed Forces & Society*, 32, 2: 234-253.
- McMahon, E. R. 2007. *The African Charter on Democracy, Elections, and Governance: A Positive Step on a Long Path*. Open Society Institute. Available online at <http://www.afrimap.org/papers.php>.
- Mandela, N. 1994. Speech to Assembly of OAU Heads of State and Government at the 30th Ordinary Session of Organization of African Unity. <http://www.anc.org.za/ancdocs/history/mandela/1998/sp980608.html>, accessed 20 June 2007.

- Organization of African Union. 1990. Report of the Secretary General to the Fifty-second Ordinary Session of Council of Ministers. *Organization of African Unity*. Addis Ababa.
- . 1990. Report of the Secretary General to the Fifty-first Ordinary Session of Council of Ministers. *Organization of African Unity*. Addis Ababa.
- . 1990. The Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World. *Organization of African Unity*. Addis Ababa.
- . 1997. Introductory Note to the Report of the Secretary General to the Thirty-Third Ordinary Session of OAU of Organization of African Unity. *Organization of African Unity*. Addis Ababa.
- . 1998. Ushering the OAU into the next Century: A Programme for Reform and Renewal. *Organization of African Unity*. Addis Ababa.
- . 1999. Report of the Secretary General to the Thirty-fifth Ordinary Session of Organization of African Unity. *Organization of African Unity*. Addis Ababa.
- Obasanjo, O. & F. G. N. Mosh, eds. 1992. Africa Rise to the Challenge: Conference Report on the Kampala Forum. Abeokuta/New York: Africa Leadership Forum.
- Parish, R., M. Peceny, & J. Delacour. 2007. 'Venezuela and the collective defense of democracy regime in the Americas.' *Democratization* 14, 2 (April): 207-231.
- Pierson, P. 2000. 'Increasing Returns, Path Dependency, and the Study of Politics.' *American Political Science Review* 94, 2: 251-67.
- . 2001. *The New Politics of the Welfare State*. Oxford: Oxford University Press.
- . 2004. *Politics in Time: History, Institutions, and Social Analysis*. Princeton, NJ: Princeton University Press.
- Saungweme, S. 2007. *A Critical Look at the Charter on Democracy, Elections, and Governance in Africa*. Open Society Institute. Available online at <http://www.afrimap.org/papers.php>.
- Umzurike, U.O. 1983. 'The African Charter on Human and Peoples' Rights', *The American Journal of International Law*, 77, 4: 902-912.
- Wodzicki, M. 2007. 'The Inter-American Democratic Charter and the African Charter on Democracy, Elections, and Governance: A comparison.' Background document

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Zartman, I. W. & F. Deng, eds. 2002. *A Strategic Vision for Africa: the Kampala Movement*. Washington, DC: The Brookings Institution Press.