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THE AFRICAN DEMOCRACY CHARTER AT 11: AVERTING DEMOCRATIC DECONSOLIDATION

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EXECUTIVE SUMMARY

This policy briefing analyses the normative strengthening of democracy in Africa since the inception of the African Charter on Democracy, Elections and Governance. Africa's stated goal of optimising its democratic processes remains a work in progress, as democracy has not been implemented as a mode of governance at a multi-institutional level. African states' democratic processes have stagnated in a transitional phase with only a handful of democracies consolidating. The briefing argues that inconsistencies between the stated objectives of the charter and political practices in African states strain the democratic consolidation agenda. Despite the vulnerability of the liberal-democratic model, recent increases in the number of signatories to the charter and the rejuvenation of the African Peer Review Mechanism (APRM) indicate normative commitments to democratic consolidation.

RECOMMENDATIONS

1 Institutional frameworks for regulating and managing democratic outcomes are still weak. Limiting the concentration of power, enforcing strong checks and balances, and including term limits for presidents could reinforce domestic accountability and transparency frameworks.

2 Pivotal states such as South Africa, Nigeria, Kenya and Côte d'Ivoire should promote democracy as an end in itself through which other ends such as inclusive economic development and poverty reduction are realised. As members of the APRM, those reviewed could share their experiences in their bilateral and multilateral diplomacies in Africa. For the latter to occur, a more ambitious approach to the APRM is necessary.

3 The international community should not accept or support versions of weaker supply-side of democracy that do not speak to the normative commitments the continent has crafted in its instruments. The AU Constitutive Act and the charter lay down solid foundations for Africans' right to democratic governance. That right should be supported through more investments buttressing domestic democratic processes, including broader civil society, as opposed to over-investments in regional frameworks.

INTRODUCTION

'Victor Orban of Hungary, the late Hugo Chavez of Venezuela, and Jacob Zuma of South Africa all turned their countries away from liberal democracy and toward autocracy. Worldwide, democracy is in recession.'[2] With these lines, in an article in the March 2017 edition of *The Atlantic*, 'How to build an autocracy', David Frum inked South Africa, a pivotal state in the support for democracy in Africa, into the company of states responsible for its deconsolidation. This is hardly surprising in light of the South African government's botched push to withdraw from the Rome Statute, and the broader perception challenge facing South African democracy.

South Africa's entry into that list is worrying for a country that has been at the centre of the normative strengthening of democracy in a pan-African vision through the overarching collaborative framework of the African Governance Architecture. Among these frameworks, the African Charter on Democracy, Elections and Governance,[3] the first legally binding regional instrument in the promotion and protection of democracy, celebrated its first decade on 30 January 2017. A year into the second decade of the charter provides an opportunity to gaze beyond the accoutrements of independence (flags, currencies and elections) to assess if Africa's democratic instincts have grown sustainable roots over time through the charter.

Many regional economic communities (RECs) have regional protocols committing states parties to higher forms of democratic governance. Yet performance has been varied and not in line with the charter's Chapter 10 'Mechanisms for Application', which calls for greater integration between the regional and pan-African instruments of the AU. Moreover, the delay of the entry into force of the charter until 15 February 2012 underscored African leaders' less than enthusiastic commitment to legally binding democratic frameworks. Participation had been low, with only 24 out of 39 signatories having ratified what is otherwise an ambitious charter. This raises the question of whether democracy in Africa has been a mirage or is being consolidated as a permanent feature in governance.

As it is, democracy in Africa faces the risk of being trapped in the 'electoral fallacy'. Regular elections take place, but the democratic franchise has not become sufficiently diffused and entrenched as a mode of governance across political and social institutions. This challenge notwithstanding,

not all of Africa is backsliding on democracy. Yet without question, in parts of Africa, democratic processes, reforms and mediating values are stuck in a transitional phase. For democratic consolidation in governance to take place and for a better path for democracy in Africa to be charted, the continent should look beyond the push for greater institutionalisation. Many African countries have democratic institutions in place. The challenge is to make them work optimally. What is crucial is a new lens, taking into cautious account variations within member states and appreciating differences in the evolution from Western forms of democracy. However, there should be a supplementary commitment to democracy as an end in itself on the part of member states.

SINGULAR OBJECTIVES AND PLURAL OUTCOMES

Almost three decades after the end of the Cold War, the state of democracy in Africa could best be described through the metaphor of a 'glass half full or half empty'. The charter in its objectives and principles seeks to promote a culture of democracy and peace through democratic institutions. Moreover, in Chapter 8 (articles 23 to 26) it lays out ambitious procedures for sanctions in the event of member states' failure to live up to its provisions.[4] Such ambitions notwithstanding, the incompatible journeys the charter had travelled to its 11-year anniversary and beyond attest to Africa's unique democratic development trajectory. From inception, the charter, aspirational in its norm setting and directive in its implementation, was met with apprehension and indifference, which in essence captured the gloomy mood as it completed the first year of its second decade on 30 January 2018. This was not unanticipated. Five factors could serve as an explanation.

First, three out of the eight recognised RECs of the AU do not have separate instruments or constitutive documents on democracy, elections or governance. These are the Economic Community of Central African States, the Communauté des Etats Sahélo-Saheriens and the Arab Maghreb Union. Facing transnational threats, including religious extremism and terrorism, these three RECs constitute an important corpus in the AU. Conflict dynamics and domestic politico-religious considerations are affirming exceptions and differentiations in modes of governance in Mauritania, Chad, Niger, Sudan and Libya, to list but a few of the states in the Sahel and West Africa. Lowest common denominator democracy and differentiation in expectations, if not indifference,

in these peripheral zones explain in part why democracy is in a state of flux, alternating between recession and consolidation.

Second, the signs of erosion are manifested through elections as sites of violence and death; the closing down of civil society space; and the rise of populism. At high points during elections, protests and manifestations, social media and Internet blackouts as anti-democratic impulses are part of the state apparatus response. These point to the malaise of democracy in Africa. Election-related violence has been on the increase, often a consequence of elections deemed by the losing parties to be neither free nor fair. Election rigging and ballot stuffing are recurrent features of the democratic landscape. Institutions are in place, but manipulation – as the delayed electoral process in the Democratic Republic of Congo (DRC) attests – is more subtle and sophisticated. Election-related violence and other forms of democratic erosion are accentuated by standard explanations such as slowing economic growth, rising inequalities and political gridlock, of which Kenya is the most recent manifestation. As a consequence, a potentially dangerous surge in semi-authoritarian leadership, disaffection with liberal democracy and a desire for the 'strongman' are finding an echo chamber as a guarantor of stability and buffer against the perceived rise of corruption and unaccountable leadership. Tanzania under the leadership of a democratically elected John Magafuli – popular but with bold populist rhetoric oftentimes going against the rule of law, the values of political diversity and press freedom – is a case in point.

Third, democracy, a soft-prevention mechanism, has been deprioritised in the context of conflict, the rise of religious extremism and terrorism. Western actors prioritising the fight against terrorism as their top concern (in light of its direct consequences in their own domestic contexts) are without doubt contributing to the democratic recession in some parts of the Sahel and the Horn of Africa. Ethiopia, Mauritania and Chad have struggling democratic credentials. The fight against terrorism as a hard-conflict issue, with state survival at the core, has made less democratic states pivotal actors in the development and counter-terrorism strategies of the West. This form of security cooperation has occurred at the expense of the stalled agenda on the input side of democracy. As a consequence, a security-first doctrine is reinforcing a status quo where democracy is not consolidating. Moreover, the diffusion of power from the state to non-state actors, which had been in motion, is now under threat.

Fourth, the immense economic muscle of China, its own anti-democratic economic miracle, and other rising powers (Russia and Turkey) unenthusiastic about democracy have disrupted Africa's path towards a liberal democracy. These powers do not insist on respect for human rights, free elections, democratic institutions and inclusive participation as preconditions for engagement. Cynically, the nature of the regime is hardly of interest, provided their interests can be secured. In light of their own state of democracy, these powers pursue case-by-case transactional diplomacies at the bilateral level, offering attractive outlets and enhancing the legitimacy of less accountable governments. They have emboldened the stance of errant democracies such as Zimbabwe.

Fifth, the health of democracy in Africa is intimately tied to the state of democracy, if not the rhetoric of democracy, worldwide. Traditional and rising powers, including South Africa, once an eminent normative voice in the subregion, are under-investing in democracy promotion – with disturbing impacts on the state and quality of democracy in Africa. Former US president Barack Obama's strategy of retrenchment, based on the belief that if the US stepped back 'its allies would step up and take more responsibilities for the upkeep of the liberal order', appears to be faulty.[5] The election of Donald Trump in 2016, and the accompanying rhetoric of 'America first', signalled under-commitment to the norms of democracy, human rights and justice. The decline of democracy in Turkey, an influential Muslim state and developmental actor in North Africa and the Horn of Africa, is eroding the 'demonstration effect' it would have had, had it continued on the trajectory of democratic consolidation in its domestic order. If not addressed, these negative trends' cumulative effects on the state of democracy could become obvious in the months and years to come.

Thus, as a result of internal and external forces, democracy in Africa is troubled. The normative conviction about democracy's intrinsic merits and superiority over other forms of government seems to be under severe stress. Conflicting signals in the domestic politics of African countries, including divergent views on presidential term limits and the role of civil society as a firewall in democratic governance, seem to attest to the challenges on the road ahead. With distressing consequences for internal democratic development, 19 African leaders have ruled their countries beyond two decades[6] – the departure of Robert Mugabe of Zimbabwe in late November 2017 led to only a marginal decrease. On the whole, a leader's extended stay in power hardly opens up the space for

democratic norms diffusion and values convergence within the AU. Democracy seems to be stuck in the electoral fallacy, with a worrying lack of appetite among the political class for norm diffusion and implementation beyond elections. Democracy's incoherent path and hybrid practices under hesitant democrats suggest that the distribution of democratic reforms in Africa is invariably at odds with what was anticipated in the charter.

CRAFTING A NEW PATH FOR DEMOCRATIC GOVERNANCE

It is premature to make conclusions about the de-prioritisation of democracy as a dominant and preferred form of governance in Africa. Without doubt, the liberal-democratic model is demonstrably under stress in certain quarters of the continent, owing to its inability to deliver inclusive development and prosperity for most Africans. It is vulnerable. But it is not at ground zero. At this juncture of uncertainty, the road ahead for democracy points to a unique opportunity for consolidation. With the charter entering its second decade, the uptake in signatories and membership – 38 countries,[7] currently – could serve as an important landmark for the future of democracy in Africa. This positive signal should be emphasised alongside the re-invigoration of the APRM, whose remit on democratic governance is wider and potentially more impactful. With a membership of 36, and 17 reviews by the forum of heads of state and government, the APRM has the potential to illustrate the challenges and opportunities ahead in Africa's path to democratic consolidation.

Most African states have committed to some minimal form of democratic institutions and procedures. Moreover, not all regional integration mechanisms have fared badly in terms of democracy support and promotion. ECOWAS has shown the capacity and capability to have an impact on the domestic order of member states through the imposition or restoration of democracy. Following the disputed December 2016 presidential elections in The Gambia, in which the incumbent Yahya Jammeh lost to Adama Barrow, ECOWAS managed to restore democracy by threatening the use of force. Although it deployed troops to enforce the electoral outcome, a democratic transition succeeded without its resorting to military force. Moreover, ECOWAS also succeeded with French support in ensuring respect for the electoral outcome in the December 2010 presidential elections in Côte d'Ivoire, where the incumbent Laurent Gbagbo had lost to Alassane Ouattara. In Accra, Ghana at its May 2015 summit, ECOWAS attempted, albeit unsuccessfully, to put presidential term limits on the regional integration agenda in the wake of the upheavals in Burundi a month earlier. This suggests that certain regional frameworks are progressing in democracy promotion and enforcement.

In addition to regional framework-induced successes, internal developments in countries could explain the spread and pace of democratisation. Grassroots social movements have facilitated the consolidation of democracy in parts of Africa. In Burkina Faso, for example, popular uprisings against one term in office too many led to the displacement of the political oligarchy of Blaise Compaoré in 2013, opening space for dissent, competitive elections, and the emergence of a pluralistic civil society. Similar uprisings and protests from the ground up were evident in Burundi (2015), the DRC, Senegal (2012) and Ethiopia (2017). Without doubt, outcomes have been divergent, leading to repression in Ethiopia and Burundi, and difficult compromises in the DRC. But in the case of Senegal, the social movement Y'en marre ('We have had enough') mobilised youth against the presidential candidacy of then incumbent Abdoulaye Wade, who was seeking a third term and lost.

The interaction between internal demands for democracy and the external facilitation role of AU protection mechanisms and instruments in these domestic processes should not be underestimated. Several AU articles and protocols express noble principles on democratic governance, human rights and elections in Africa. Pursuing a policy of zero tolerance, Article 30 of the AU act on unconstitutional changes of government has been widely applied in Mali (2012), Egypt (2013) and Burkina Faso (2013).[8] Following a coup d'état and undemocratic forms of acceding to power in these member states, the AU suspended their participation in its activities subject to a return to a civilian government. This suggests that the AU's transition from norm setting to rule implementation constrains the actions and behaviour of member states. Within the AU and several RECs, a technocracy is emerging, socialising member states through seminars, workshops and advisories about paths to democratic consolidation in line with the AU's Constitutive Act and the charter. Yet these developments do not mask the challenges that remain, including the military-inspired changes that transpired in Zimbabwe in November 2017, leading to Mugabe's losing power.

The rise of attractive counter-democratic models of governance, inspired by the success of China and its

presence in Africa, is generally exaggerated. As a result of democratic gridlock, poor service delivery and corruption, there is a perception, albeit a minority one, that authoritarian models, including that of China, are better placed to deliver public goods. It is true that democratic consolidation requires patience, and structural changes are central to its success. The African experience, in which it takes shape under difficult conditions, with multiple external and internal demands (religious and political), suggests that democratic development will be equally daunting. The heavy lifting will occur, as it is, because of domestic demand for democracy in many African countries. The multilateralisation of the democratic enterprise through several instruments, including the charter, could then validate and legitimise domestic demand by providing opportunities for better democratic governance and normative convergence at the continental level. But this is still insufficient. The courtesies of institutions and the inherent limits to Africa's multilateral approaches for democracy support demonstrate that there is a need to look beyond the elemental, if not minimalist, considerations for democratic governance. The potential lies in concerted support for domestic processes.

ENDNOTES

1   Alfredo Tjiurimo Hengari is a Bradlow Fellow at SAIIA.
2   Frum D, 'How to build an autocracy', *The Atlantic*, 319, 2, March 2017, pp. 48–59.
3   AU, 'African Charter on Democracy, Elections and Governance', 30 January 2007, http://archive.ipu.org/idd-E/afr_charter.pdf, accessed 18 November 2017.
4   *Ibid.*
5   Schake K, 'Will Washington abandon the order: The false logic of retreat', *Foreign Affairs*, 96, 1, January/February 2017, pp. 41–46.
6   Savstrom J, 'State-building: Life-term presidency in the firing line', in *Shades of Africa: Research on a Changing Continent*, Nordic Africa Institute, 2016, http://nai.uu.se/shades/index.xml, accessed 15 February 2018.
7   African Commission on Human and Peoples' Rights, 'Ratification table: African Charter on Democracy, Elections and Governance', http://www.achpr.org/instruments/charter-democracy/ratification/, accessed 15 November 2017.
8   African Commission on Human and Peoples' Rights, 'Constitutive Act of the African Union', Article 30: Suspension, http://www1.uneca.org/Portals/ngm/Documents/Conventions%20and%20Resolutions/constitution.pdf, accessed 15 November 2017.