

THE STATUS OF THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE IN NIGERIA: ISSUES OF DOMESTICATION AND IMPLEMENTATION*

Abstract

In order to mitigate the incidents of unconstitutional changes of government, manipulation of constitutional provisions to achieve arbitrary tenure elongation, electoral mal-practice and bad governance in Africa, the African Union (AU) adopted the African Charter on Democracy, Elections and Governance (ACDEG). The treaty defines a continental governance agenda for AU member states by establishing a comprehensive normative framework around governance which member states are enjoined to implement in order to promote governance and accountability in Africa. The ACDEG's normative framework defines a continental standard that can guide the implementation of the AU governance agenda as encapsulated in the African Union Agenda 2063. However, the ACDEG has not been domesticated as required under Section 12 of the Constitution of the Federal Republic of Nigeria 1999. Hence there are agitations for its domestication particularly by some members of the civil society organizations. The paper however, argues that though the treaty has not been domesticated in line with the provisions of the above Section, the provisions of the Charter have been substantially albeit informally domesticated in Nigeria. Against this background, the paper examines what the Charter is all about and the extent of its domestication and implementation in Nigeria. It is further argued, that though in principle, Nigeria can be said to have made substantial progress in an effort to promote the objectives of the ACDEG, nevertheless, there are existential structural and institutional challenges militating against their effective implementation of the provisions. The paper concludes that despite its challenges, the ACDEG remains a progressive international legal instrument which all AU member states, including Nigeria should adopt, adapt and seriously implement in order to improve on their governance systems.

Keywords: Democracy; Domestication; Elections; Governance

1. Introduction

It cannot be overstressed, that democracy as practiced in most African countries is bedeviled with several shortcomings that deprive their citizens of good governance and development. As a result, most African states continue to be ranked poorly in international democracy indices as elections generally fall short of requisite standards of credibility. The factors which militate against good governance in Africa include: lack of internal democracy; lack of independent electoral management bodies; corruption and various forms of electoral fraud and irregularities; unwillingness of the incumbents to hand-over power; to mention but a few.

It is argued that the above problems are worsened by structural imbalances and institutional weaknesses which make it difficult to implement the electoral laws and guidelines intended to promote democracy, elections and good governance in Africa. The above challenges continue to negatively impact on governance making Africa's developmental goals remain a tall dream. The African Union (AU) in its commitment to frontally address the challenges of democracy and good governance adopted the 'African Charter on Democracy, Elections and Governance'¹ on 30th January, 2007 during the 8th ordinary session of the Assembly of the African Union held in Addis Ababa, Ethiopia.² The general intendment is to encourage African states to imbibe democratic principles, build and strengthen democratic institutions as well as inculcate a culture of change of power based on the holding of regular, free, fair and transparent elections.³ In general, the objectives of the ACDEG are to promote democratic governance and accountability by establishing an African governance standards, common or shared values and principles including supremacy of the constitution, the rule of law, separation of powers, independence of the judiciary, respect for human rights, the regular, transparent, free and fair elections, outlawry of unconstitutional changes of governments, fight against corruption and impunity, political pluralism, participation and other democratic values.⁴ Thus, the ACDEG is a continent-wide normative framework adopted for the consolidation of constitutionalism and democratic governance in order to realise the AU aspiration, that is, a new democratic culture and collective responsibility towards improving the democratic experience for Africans, the 'Africa We Want'.

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¹ Hereinafter referred to as the Constitution.

² Hereinafter referred to as ACDEG or 'the Charter'.

³ See the Decision of the Assembly of the African Union Eighth Ordinary Session' <<https://au.int/sw/decisions/assembly-african-union-eighth-ordinary-session>> (accessed 19 November 2019).

⁴ See the Preamble of the ACDEG.

⁵ See generally, Articles 2-22, 27, 36-43 of the Charter.

Accordingly, it is expected that the domestication of the African Charter on Democracy, Elections, and Governance in Nigeria would guarantee free, fair, and credible elections in the country and help to consolidate democracy and promote good governance. Nigeria signed the Charter on 2nd July, 2007 and ratified it on 1st December, 2011 signifying its willingness and commitment to comply with its provisions. However, the Charter has not been domesticated as required by Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).⁵In reaction to the non-domestication of the Charter after such long period, there have been calls by concerned Nigerians for its domestication as required by the Constitution. For instance, the Action Aid Nigeria, Trade Union Congress, TUC, Yiaga Africa and others have been agitating for the domestication in the charter. In this connection, the National Stakeholders' Forum was held to provide insight into the state of the ACDEG implementation in the country *vis-a-vis* its conformity to national legislation, democratic practice and most importantly to mobilize the necessary action towards full domestication and set in motion the necessary mechanism towards fulfilling its reporting obligations.⁶ Unfortunately, the country is yet to domesticate the Charter in line with the country's constitutional requirements.

It cannot be gainsaid, that it is necessary to domesticate the Charter having signed and ratified same as required by the instrument. However, the paper argues that it cannot be denied that the principles of the Charter find expression in various extant national laws including the Constitution, the Nigerian statutes especially the Electoral Act and adjectival laws and guidelines of the electoral bodies, though they were not made pursuant to the Charter. In other words, many of the important provisions of the Charter are contained in the corpus of Nigerian laws including democratic rights and processes, the establishment of Electoral body, multi-party systems and other democratic institutions. Nevertheless, the domestication of the Charter in Nigeria remains crucial so that the citizens whose democratic rights are derogated from can vindicate their claims by placing reliance on the Charter as an applicable law in Nigeria and therefore enforceable. The domestication will in addition complement the provisions of the national laws where there are gaps thereby widening the scope of the existing legal protection.

Against the above background, the paper examines the general provisions of the Charter *vis a vis* the Nigerian extant laws on democracy, elections and governance with a view to determining to what extent they conform with the provisions of the Charter. Furthermore, the paper analyses the extent of the impact of ADGEG in defining and influencing democratic, electoral and governance institutions, laws and practices in Nigeria. The paper is divided into sections commencing with this introduction. Section 2 deals with conceptual clarifications including Democracy; Elections; and Governance. Section 3 examines the background of the Charter, status and its general provisions. Section 4 examines the application of ACDEG in Nigeria and the extent of Nigeria's compliance with the ACDEG normatic framework. The impact of the Charter in Nigeria is examined from the perspective of its enforceability; reflection of its standards in relevant domestic law and practices; and efficacy of its implementation mechanisms. Section 5 finally concludes the paper with remark on the positive impact of the Charter and recommendations made on the need for AU member states to ensure compliance with its provisions.

2. Conceptual Clarifications

Democracy

Democracy is a contested concept devoid of a universally accepted definition. Accordingly, various definitions have been put forward, depending on the context or ideological disposition.⁷ Lincoln provides a classic and the most popular definition of democracy as 'a government of the people by the people and for the people'.⁸The will of the people in a democracy is expressed mainly in two forms, that is, directly or indirectly through their elected representatives. The focal point of democracy is the people in whom sovereignty lies and from whom the government ought to derive all its powers and authority to govern.⁹

Domestication

The concept of domestication can be explained in various contexts. In the context of this paper, domestication is explained in relation to international law, to describe the act of making an international legal instrument to have the force of law outside the jurisdiction where the instrument was originally issued or created.¹⁰ It is the process

⁵ Hereinafter referred to as 'the Constitution' or 'CFRN'.

⁶This was emphasised at a 'National Stakeholders' Forum and Policy Documents Dissemination' under the 'Africa We Want' project organised by ActionAid Nigeria on Thursday in Abuja. See 'ActionAid, TUC, Yiaga, others seek domestication of African Charter to strengthen Nigeria's democracy', <https://www.vanguardngr.com/2020/09/actionaid-tuc-yiaga-others-seek-domestication-of-african-charter-to-strengthen-nigerias-democracy/> (accessed 20 July 2022).

⁷O.E. Nwebo, 'African Union Agenda 2063 and the Imperative of Democratic Governance' [2018] (11) (2), *The Law and Development Review* 259.

⁸A. Lincoln, in his famous speech *The Gettysburg Address* on 19 November 1863 <<http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>> accessed 9 July 2019.

⁹ O.E. Nwebo, 'African Union Agenda 2063 and the Imperative of Democratic Governance' (n 7 above).

¹⁰See <https://www.yourdictionary.com/domestication>.

of including the provision, standards and practices in a foreign instrument into the national jurisprudence of a country. This could be by way of executive degrees, ratification or accession of the international instruments. Domestication of a treaty is the process of incorporating the provisions of a treaty into the domestic legal order in order to give it the force of law thereby making it enforceable within the legal order. Thus, the whole essence of the domestication of an international instrument or treaty is to adopt and adapt the provisions to the domestic legal environment as part of the *lex lata* for the purpose of introducing reforms in the law for the benefit of the community.

Notably, most of the international principles governing treaties have been codified by international conventions of universal application, the most important of which is the Vienna Convention on the Law of Treaties (1969),¹¹ the content of which can be described as comprehensive but not exhaustive.¹² However, the rules of customary international law will continue to govern questions not regulated by the provisions of the Convention.¹³ Furthermore, though the Vienna Convention on the Law of treaties (1969) contains detailed provisions regulating treaty relationships between states as alluded to above, the theoretical and practical issues on the law of treaties cut across international and municipal laws.

The point is that the fundamental principles governing the life of treaties from their formation, implementation and termination cut across international and municipal laws. The implication of this is that states' practice on a number of the issues on treaty relations amongst states is governed by municipal constitutional laws especially with regard to those bordering on entry into force and implementation by national governments.¹⁴ Thus, while in some states, treaties automatically acquire the force of law upon ratification,¹⁵ in some others the constitution of the state may require that a specific act of incorporation of the treaty into the legal order must be carried out before it acquires the force of law.¹⁶ Thus, in the case of Nigeria for instance, the issue of treaty making and implementation is governed by Section 12 of the Constitution which provides thus:

No treaty between the Federal the federation and any other Country shall have the force of law except to the extent to when any such treaty has been enacted into law by the National Assembly. The National Assembly may make laws for the federation or any part thereof with respect to matters not included in the Exclusive Legislative list for the purpose of implementing a treaty. A bill for an Act of the National Assembly passed pursuant to the provisions of subsection 2 of this section shall not be presented to the president for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the federation.

Based on the above provision, it is submitted, that it is mandatory to comply with the prescribed processes to have a treaty (bilateral or multilateral) domesticated to have the force of law and *ipso facto* applicable in Nigeria. Accordingly, the Supreme Court had held in *Registered Trustees of National Association of Community Health Practitioners of Nigeria & ors v Medical and Health Workers Union of Nigeria*,¹⁷ that the International Labor Organization Convention, not having been domesticated in Nigeria cannot therefore be applied in Nigeria. Thus, based on the combined effect of the above constitutional provisions and the case laws, it is submitted without equivocation that as earlier alluded to, Nigeria is a dualist state and accordingly the ACDEG as a treaty is not part of the applicable laws in Nigeria until it is domesticated. This paper however, argues that domestication of some of the provisions of a treaty or any model law for that matter is possible without the wholesale incorporation of the international instrument.

Elections

Elections are virtually unavoidable as a major democratic process in any modern polity and indeed, a necessity in a representative democracy in modern times. Generally, elections are a 'form of procedure, recognised by the rules of an organisation, whereby all or some of the members of the organisation choose a smaller member of persons or one person to hold office or authority in the organisation'.¹⁸ In relation to the governance of a state, elections according to Gutto involve a cycle of procedural mechanisms through which people effect their choice

¹¹See the Convention. See also United Nations, *Treaty Series*, vol. 1155, p. 331.

¹²<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0034.xml> (accessed 29 February 2019).

¹³ See the preamble to the Vienna Convention on the Law of treaties (1969).

¹⁴ This also depends on the attitude of the states concerned with regard to the application of international law domestically and the nature of the treaty itself as to whether it is a law making treaty or treaty contract.

¹⁵ This is the case in a monist state like South Africa.

¹⁶ This is the position in a dualist state like Nigeria which requires that for a treaty to be applicable in Nigeria it must be enacted into law by the National Assembly under Section 12 of the Constitution.

¹⁷(2008) 2NWLR (Pt 1072) 575 at 623.

¹⁸ International Encyclopedia of Social Science in P.K. Inokoba and I. Kumukor, 'Electoral Crisis, Governance and Democratic Consolidation in Nigeria' [2001] (27) (2) *JSS* 139.

of political leadership.¹⁹ Essentially, elections are the means through which people choose their leaders vesting them with legitimacy to govern them.²⁰ Elections must be free, fair and credible in order to birth or sustain a true democracy. Elections are free when the full participation and choice of the people is upheld. Fair elections import equality of participation and of vote, impartiality and non-discrimination.²¹

Governance

Governance simply refers to ‘the process of decision making and the process by which decisions are implemented (or not implemented) by those in authority’.²² It refers to...the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.²³ In relation to administration of a state, UNDP describes governance as:

a system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. It is the way a society organises itself to make and implement decisions - achieving mutual understanding, agreement and action. It comprises mechanisms and processes adopted by citizens and groups to articulate their interests, to mediate their differences and exercise their legal rights and obligations. It is the rules, institutions and practices that sets limits and provide incentives for individuals, organisations and firms.²⁴

Essentially, governance involves the rules by which public affairs are conducted as well as controlling public affairs.²⁵ Governance depending on its quality may be adjudged good or bad, democratic or undemocratic. Democratic governance can only spring from a legitimate government, that is, government does not act capriciously but manages the resources of a state transparently, accountably and responsively so as to realise developmental ends.²⁶ It must be noted, that the concepts of democratic governance and good governance are used interchangeably as they espouse the same ideas and principles. These principles include accountability, control, responsiveness, equity, effectiveness and efficiency, transparency, public participation, economic efficiency, consensus orientation, strategic vision, rule of law and so on.²⁷

3. African Charter on Democracy, Elections and Governance

Background

The OAU was transformed into the AU with a clear intention of promoting peace, security and stability on the African Continent as well as promoting democratic principles and institutions, popular participation and good governance.²⁸ The Charter drew inspiration from a number of prior initiatives of the AU/OAU.²⁹ In other words, the Charter is a consolidation and activation of prior initiatives, and the first binding instrument adopted by the AU that endeavoured to comprehensively address the factors and conditions necessary for the establishment and sustenance of democratic governance. It represents a deliberate and conscious effort geared towards fostering African development by promoting democratic governance as its enabler and necessary condition. Following the various decisions taken by the Assembly

¹⁹ S. Gutto, ‘Constitutionalism, Elections and Democracy in Africa: Theory and Praxis’ <https://docgo.net/detail-doc.html?utm_source=prof-s-gutto-constitutionalism-elections-and-democracy-in-africa-theory-and-praxis> (accessed 11 September 2019).

²⁰B.Ighorejeh and B.A. Adeyeye, ‘Election and Electoral Fraud in Nigeria’s Democratic Experience of the Fourth Republic: An Exposition’ [2016](2)(1) *NJASS* 3.

²¹ G. Goodman-Gill, ‘Free and Fair Elections’ in O. Mtapuri, ‘Holding Free but not Fair and Fair but not Free Elections: Be the Judge’ in Rukema J.R. (ed) *Elections and Governance in Africa* (Sub-Saharan African University Press 2017) 24-56.

²²O.E. Nwebo, *op cit* (n 7 above)

²³Commission on Global Governance, ‘Our Global Neighbourhood’ <<http://www.gdrc.org/u-gov/global-neighborhood/chap1.htm>>(accessed 10 September 2019).

²⁴UNDP in ‘State of Governance: A Framework for Assessment’ <https://darpg.gov.in/sites/default/files/sogr_framework.pdf>(accessed 10 September, 2019).

²⁵G. Hyden and J. Court, *op cit*.

²⁶O.E. Nwebo, *Critical Constitutional Issues in Nigeria* (rev edn, Versatile Publishers 2011)222.

²⁷ W.J. Ekundayo, ‘Good Governance Theory and the Quest for Good Governance in Nigeria’ [2017] (7)(5) *IJHSS* 154.

²⁸ Article 3 Constitutive Act of the African Union, adopted 11 July, 2000 at the Lome Summit (Togo), entered into force in 2001.

²⁹For instance, the 1990 Declaration on the Political and Socio-Economic Situation in Africa and Fundamental Changes Taking Place in the World; the 1995 Cairo Agenda for Action for Relaunching Africa’s Economic and Social Development; the 1999 Algiers Decision on Unconstitutional Changes of Government in Africa; the 2000 Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government in Africa; the 2002 OAU/AU Declaration on the Principles governing Democratic Elections in Africa;<<https://au.int/decisions/assembly>>(accessed 27 June 2019).

of Head of States and Government³⁰ particularly, at the inaugural summit of the AU in Durban, South Africa and subsequently the Pretoria Conference on Elections, Democracy and Governance, a Commission of Experts was formed and called upon to draft the Charter in 2004.³¹ The Charter was adopted by the Assembly on 30th January, 2007 at the 8th ordinary session of the AU at Addis Ababa, Ethiopia.³² The Charter entered into force on 15 February 2012, that is, thirty days after the deposit of the 15th instrument of ratification.³³ The Charter consists of fifty-three articles divided into eleven chapters: I – Definitions; II – Objectives; III – Principles; IV- Democracy, Rule of Law and Human Rights; V – Democratic Culture and Peace; VI – Democratic Institutions; VII- Democratic Elections; VIII- sanctions in cases of Unconstitutional Changes of Government; IX- Political, Economic and Social Governance; X- Implementing Provisions; and XI – Final Provisions.

Objectives

Article 2 of the Charter identifies thirteen objectives of the Charter which center on promoting democratic values and principles such as respect for human rights, rule of law, supremacy of the Constitution, regular holding of free and fair elections, independence of the judiciary, citizen participation, political plurality, tolerance, transparency and, accountability. The Charter also aims at strengthening governance institutions, promoting security and sustainable development, gender balance and equality, combating corruption, enhancing cooperation and generally promoting best practices in the management of elections. The objectives of the Charter evidence the AU's robust stance to dealing to governance challenges in the continent, addressing underlying conditions necessary for democratic elections.

Principles

The implementation of the Charter is to be aligned with the principles enunciated in Article 3. These principles underlie constitutionalism and good governance and they include: respect for human rights and democratic principles; supremacy of the Constitution; rule of law; representative government; regular holding of transparent, free and fair elections; separation of powers; gender equality; citizens participation; transparency and fairness in management of public affairs; rejection of corruption, impunity and unconstitutional changes of government; and political pluralism.

Important General Provisions

Chapter 4 of the Charter consists of provisions which mandate State Parties to commit themselves to: promote democracy, rule of law and human rights;³⁴ recognize popular participation through universal suffrage as a people's right;³⁵ ensure constitutional rule and constitutional transfer of power;³⁶ ensure citizens' enjoyment of all human rights and promote AU human rights mechanisms;³⁷ eliminate discrimination, guarantee the rights of minorities and vulnerable groups and respect diversity;³⁸ supremacy of the constitution, ensure that the process of amendment or revision of their Constitution rests on national consensus obtained if need be through referendum and equality before the law.³⁹ These provisions emphasise the people as the focus of a democracy whose voice, will and rights should be protected by States. Chapter 5 obligates States Parties to develop legislative and policy framework as well as execute programmes to promote a culture of democracy and peace. In order to fulfill this commitment, States are to ensure transparency and accountability in public administration; strengthen political institutions; create conducive conditions for the existence and operation of civil society organisations; include civic education in its school curricula; and maintain political and social dialogue.⁴⁰ Chapter 6 on Democratic Institutions enjoins States to institutionalize civilian control over the security and armed forces; take internal measures as well as cooperate with one another to penalize any attempt at unconstitutional change of government.⁴¹ Democratic institutions should be established by State parties to function independently and accountably as well as be provided with adequate resources for effective performance.⁴² Chapter 7 is on Democratic Elections and it commences with the re-affirmation of States' commitment to regularly holding free and fair elections in accordance with AU's Declaration on the Principles Governing Democratic Elections in Africa.⁴³ This Declaration was adopted at the 38th ordinary session of the Assembly of Organisation of African Unity (OAU) in Durban, South Africa. The principles of democratic elections declared in the Chapter include: regularity, freeness and fairness, organized in line with democratic constitutions, separation of powers, independence of the judiciary, conducted

³⁰ Generally referred to as 'the Assembly'.

³¹P.J. Glen, 'Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Elections and Governance' [2010] (5) *AJLS* 149.

³²African Union, 'Assembly of the African Union Eighth Ordinary Session' <<https://au.int/sw/decisions/assembly-african-union-eighth-ordinary-session>> (accessed 19 November 2019).

³³Art 48 ACDEG.

³⁴ See art 4(1) of the ACDEG.

³⁵ Ibid, art 4 (2).

³⁶ Ibid, art 5.

³⁷ Ibid, arts 6 and 7.

³⁸ Ibid, art8.

³⁹ See art 10.

⁴⁰ See arts 11, 12 and13.

⁴¹ See art 14.

⁴² See art 15.

⁴³See art 17.

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by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.⁴⁴

Specific standards set by the Charter which states should adhere to include:

To establish and strengthen independent and impartial national electoral bodies responsible for the management of elections;

To establish and strengthen national mechanism that redress election-related disputes in a timely manner;

To ensure fair and equitable access by contesting parties and candidates to state controlled media during elections;

To ensure there is a binding code of conduct governing political stakeholders, government and other political actors which should include a commitment to accept the results of the election or challenge them through exclusively legal channels;

To create a conducive environment for independent and impartial national monitoring or observation mechanisms.⁴⁵

The Charter also highlights the role the AU should play in ensuring regular holding of free and fair elections in State Parties. These include: providing advisory services or assistance for strengthening and developing electoral institutions and processes through its Democracy and Electoral Assistance Unit and its Democratic and Electoral Assistance Fund;⁴⁶ sending special advisory missions to a state party to provide assistance for strengthening its electoral institutions and processes;⁴⁷ sending Election Observation Missions;⁴⁸ and sending exploratory missions prior to scheduled elections in states parties to assess if necessary conditions for free and fair elections exist.⁴⁹

Chapter 8 commences by identifying five illegal means of accessing or maintaining power as constituting unconstitutional changes of government. These include: *putsch* or *coup d'etat* against a democratically elected government; intervention by mercenaries to replace a democratically elected government; replacement of a democratically elected government by armed dissidents or rebels; refusal by an incumbent to relinquish power to the winning party/candidate after free, fair and regular elections; or amendment/revision of the Constitution or other law which infringe principles of democratic change of government. This list is not exhaustive but highlights familiar scenarios that play out within the African continent beyond the traditional understanding of a *coup d'etat* to include any attempt to override the will of the people as expressed in free and fair election or limit their ability to do so.

The Peace and Security Council is mandated to maintain constitutional order in line with relevant provisions in its Protocol.⁵⁰ Article 25 prescribes that when the Peace and Security Council observes that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of Articles 30 of the AU Constitutive Act and 7(g) of the Protocol. The AU shall however maintain diplomatic contacts and take any initiatives to restore democracy in that State Party. Further sanctions include not allowing perpetrators of unconstitutional change of government to participate in elections held to restore the democratic order or to hold any position of responsibility in political institutions of their State; trial of such perpetrators before the competent court of the AU; imposing sanctions on any Member State that is proved to have instigated or supported unconstitutional change of government in another state in conformity with Article 23 of the Constitutive Act including punitive economic measures or other sanctions. State Parties are enjoined not to harbour or give sanctuary to perpetrators of unconstitutional changes of government but rather bring them to justice or take necessary steps to give effect to their extradition.

Chapter 9 contains provisions by which State Parties commit themselves to advancing political, economic and social governance including strengthening the capacity of parliaments and political parties, reform of legal and justice systems promoting freedom of the press, promoting strong government and private sector partnerships; recognizing and encouraging the participation of women and youths. Other essential social, political and economic conditions necessary for democratic governance to thrive are also addressed in this Charter.⁵¹

Implementation Mechanisms

Mechanisms for implementation of the commitments in the ACDEG are envisaged at the state, continental and regional levels. States are mandated to implement the objectives, apply the principles and respect the commitments of the ACDEG through various means. Mainly, states are to initiate appropriate legislative, executive and administrative

⁴⁴AU Declaration on the Principles Governing Democratic Elections in Africa, AHG/Dec.1 (XXXVIII), 2002 <<https://www.ohchr.org/EN/Issues/RuleOfLaw/Compilation.Democracy/Pages/AHG.aspx&hl=en-NG>>(accessed 31 October 2019).

⁴⁵art 22 ACDEG.

⁴⁶art 18(1).

⁴⁷art 18(2).

⁴⁸art19.

⁴⁹ Art 20.

⁵⁰ See art 24 of the ACDEG.

⁵¹See *ibid*, arts 28-42.

actions to bring their national laws and regulations into conformity with the ACDEG.⁵² It is also the responsibility of states to take all necessary measures to ensure dissemination of the ACDEG and all necessary legislation for the implementation of its fundamental objectives.⁵³ States are to promote political will as well as incorporate the commitments and principles of the ACDEG in their national policies and strategies.⁵⁴ States are also expected to submit report every two years to the AU Commission on relevant measures taken towards giving effect to the ACDEG.⁵⁵ Each state is obliged to inform the AU Commission of scheduled elections and invite it to send an EOM as well as ensure essential conditions for the EOM to operate within the country.⁵⁶

At the continental level, the AU Commission is to act as the central coordinating structure for the implementation of ACDEG.⁵⁷ The Commission is to develop benchmarks for implementation and evaluation of states' compliance to ACDEG; promote the creation of favourable conditions for democratic governance in the continent by facilitating harmonization of laws and policies. The AU Commission ought to ensure the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund provide the needed assistance and resources to States in support of electoral processes. Finally, the AU Commission is to ensure effect is given to African Union's decisions in regard to unconstitutional change of government.⁵⁸ At the regional level, implementation of the ACDEG is envisaged through a framework for cooperation with Regional Economic Communities (RECs) established by the AU Commission. Through this framework, RECs are to encourage ratification of the ACDEG by member states as well as designate focal points for coordination, evaluation and monitoring implementation.⁵⁹

The Assembly and the Peace and Security Council shall determine measures to be imposed on any State Party that violates the Charter in line with the AU Constitutive Act and the Protocol.⁶⁰ Article 52 of the Charter provides that nothing in the Charter shall affect more favourable provisions relating to democracy, elections and governance contained in the national legislation of State Parties or in any other regional, continental or international conventions or agreements applicable in these State Parties.

4. The Status of African Charter on Democracy, Elections and Governance in Nigeria

Following the adoption of the ACDEG by the AU, Nigeria signed it on 2nd July 2007 and ratified it on 1st December, 2011. Accordingly, the country deposited its instruments of ratification with the AU on 9th January 2012.⁶¹ Nigeria's ratification of the ACDEG ordinarily is an indication of its willingness to fulfil the obligations therein. The point is that the ratification of the Charter ought to have been followed with its domestication as required by section 12 of the Constitution. In other words, the domestication of an international treaty in Nigeria is by its enactment into law by the National Assembly in conformity with the provisions of Section 12 of the Constitution.⁶²

As earlier submitted in this paper, the above requirement is mandatory and since the provisions of the Constitution are sacrosanct and supreme, this requirement cannot be subverted.⁶³ However, till date, there is no record of any Act of the National Assembly domesticating the Charter in Nigeria, thereby rendering the Charter *per se* unenforceable in Nigeria. On the other hand, the Constitution has made various provisions on democratic principles and established various democratic institutions aimed at enforcing electoral democracy in Nigeria as envisaged by the ACDEG framework, though not necessarily pursuant to the Charter. These institutions include the Independent National Electoral Commission, the Courts with jurisdiction to adjudicate over electoral disputes. Thus, there are compendious provisions under the Nigerian legal system which reasonably meet the standard established under the ACDEG. It is therefore submitted, that what is important is not so much of the domestication of the Charter as a holistic document but to ensure that there are provisions in the Nigerian legal system which guide the democratic processes or enable the introduction of legal and institutional reforms that can promote democracy, elections and governance. In other words, that the standards set by the Charter are reflected in the relevant national laws, policies and administrative procedures that can promote democratic governance in the country. This is the contemplation of the Charter in Article 44 (1) (a) & (d) and several other provisions therein.⁶⁴

⁵² See art 44(1)(a) of the ACDEG.

⁵³ See art 44(1) (b).

⁵⁴ See art 44 (1) (c) and (d).

⁵⁵ See art 49 (1).

⁵⁶ See art 19.

⁵⁷ See art 45.

⁵⁸ See art 44 (2).

⁵⁹ See art 44 (2) B.

⁶⁰ See art 47.

⁶¹ African Union; 'List of Countries Which Have Signed African Charter on Democracy, Elections and Governance' <https://www.africanunion.org/press-releases/2011/12/01/list-of-countries-which-have-signed-african-charter-on-democracy-elections-and-governance> (accessed 10 December, 2021).

⁶² See the provision as referred to in section 2.1 above.

⁶³ See Section 1 of the Constitution; *Abacha v Fawehinmi* (2000) 6 NWLR (pt. 660) 228; *Balonwu v Gov. Anambra State* (2009) 18 NWLR (pt. 1172) 13.

⁶⁴ Arts 8(2), 5, 7, 8(2), 11, 30 & 32(4) ACDEG.

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The above submission is buttressed by the wide range of provisions covered in the Charter extending to political, social and legal dimensions of governance. The pragmatic approach is the need to ensure that State parties bring their domestic laws, policies and actions in these diverse fields to conform to the standard established for the AU member states under the Charter. Furthermore, the Charter ought to serve as a standard for the assessment of the democratic content of local legislations by: identifying the lacuna in the laws and filling same; improving on the standards in local laws to conform to the standards envisaged in the Charter; but leaving more favourable provisions in local laws untouched.⁶⁵

Based on the foregoing, it is submitted, that the Nigerian laws on democracy and elections and governance are substantially consistent with the standard established by ADGEG and in some cases even ahead. Furthermore, a close examination of the objectives of the Charter in Article 2 reveals that the provisions thereof are reflected in Chapter 2 of the Constitution on the fundamental objectives and directive principles of state policy to which all persons and authorities performing legislative, executive or judicial powers in Nigeria ought to conform to, observe and apply.⁶⁶ Some of the relevant provisions include that: Nigeria should be a state founded on principles of democracy and social justice with sovereignty belonging to the people;⁶⁷ welfare and security of people is a primary purpose of government;⁶⁸ ensuring popular participation;⁶⁹ abolishing corrupt practices and abuse of power;⁷⁰ prohibiting discrimination;⁷¹ ensuring equality by reflecting federal character in public institutions;⁷² with an independent and impartial judiciary;⁷³ and upholding freedom of press and accountability of government.⁷⁴

Thus, on a realistic Juxtaposition of the principles of the Charter as highlighted in chapter 3 against the various domestic legislations in Nigeria, it is evident that these principles are reflected in the relevant extant laws in Nigeria. For instance, human rights are recognized in the Nigerian Constitution,⁷⁵ the African Charter on Human and Peoples' Rights (Ratification and Domestication) Act 1985 and several other human rights legislations. Mechanisms for enforcement of these rights also exist.⁷⁶ The Constitution of the Federal Republic of Nigeria, the supremacy of which is asserted in Section 1 thereof, outlaws the ascension to governmental position otherwise than in the manner provided for in the Constitution. It went further to prescribe qualifications of political office holders and the means of access to power via regular elections conducted in compliance with the provisions of the Constitution and the Electoral Act 2022. The legislative arm of government is representative of the various parts of the nation.⁷⁷ Governmental powers are shared between the federal, state and local governments as well as separated between the three arms of government with a system of checks and balances in place to stem arbitrariness.⁷⁸

Non-discrimination on grounds of sex is guaranteed in the Constitution and other legislations so as to foster gender balance in governance.⁷⁹ The freedom of information which is guaranteed in the Constitution and the Freedom of Information Act 2011 is geared towards promoting openness, accountability and transparency in governance.⁸⁰ There are several local legislations aimed at preventing, combating and punishing corruption in Nigeria.⁸¹ A multiparty system is recognized in Nigeria with laws governing their recognition, functioning and finance of political parties so as to ensure political pluralism.⁸²

Specifically, the standards relating to democratic elections in chapter 7 of the Charter are mostly reflected in national legislations in wider ambits than even required by the Charter. Nigeria's main electoral management body (EMB) the Independent National Electoral Commission (INEC) is established to independently organize, supervise and undertake elections at the state and federal levels. Over the years, some amendments have been made to the law to enhance INEC's capacity to effectively perform its assigned duties.⁸³ Regarding the obligation of state parties to establish and strengthen national mechanism to timeously address election related disputes, electoral tribunals are established in Nigeria to

⁶⁵ Art 52 ACDEG.

⁶⁶ Chapter II CFRN 1999; see Section 13.

⁶⁷ S 14(1) & (2)(a) CFRN 1999 (as amended).

⁶⁸ 14(2) (b).

⁶⁹ 14(2) (c).

⁷⁰ 15(5).

⁷¹ 15(2).

⁷² See *ibid*, Section 14 (3) & (4); see also the equality of rights, obligations and opportunities as provided for in Sections 17(1) & (2).

⁷³ See *ibid*, Section 17 (2) (e).

⁷⁴ See *ibid*, Section 22.

⁷⁵ See Chapters 2 & 4 of the Constitution.

⁷⁶ See the Fundamental Rights (Enforcement Procedure) Rules 2009.

⁷⁷ See Sections 48, 49 & 91 of the Constitution.

⁷⁸ *Ibid*, Sections 4, 5 & 6.

⁷⁹ *Ibid*, Section 42.

⁸⁰ *Ibid*, Section 39.

⁸¹ Economic and Financial Crimes Commission (Establishment) Act 2004; Independent Corrupt Practices and Other Related offences Act 2006; Money Laundering (Prohibition) (Amendment) Act 2012 *et cetera*.

⁸² See Sections 221-219 of the Constitution; See also Sections 75-97 of the Electoral Act 2022.

⁸³ See the Electoral (Amendment) Act 2010; Electoral (Amendment) (No.2) Act 2011; Electoral (Amendment) Act 2015 and now the Electoral Act 2022 which repeals the Electoral Act 2010.

exclusively handle post-electoral disputes. Relevant laws have also been amended to allow for timely disposal of both pre-electoral and post-electoral disputes.⁸⁴ Furthermore, provisions exist to ensure equal access to state-controlled media during elections⁸⁵ as well as the Code of Conduct prepared by INEC which political parties commit to abide by.⁸⁶

Other standards spread across the Charter, which are reflected in national legislations include universal adult suffrage with efforts made to include marginalized and vulnerable groups.⁸⁷ Civic education is included as part of the school curriculum in Nigeria via its Universal Basic Education policy. The armed forces and other security agencies are under the direction and control of the President who is the commander-in-chief.⁸⁸ Funds accruing to the National Assembly and judiciary and INEC are made to payable to them directly so as to strengthen their independence from the executive arm of government.⁸⁹ It is instructive to also note, that Article 10(2) of the Charter provides that 'State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.' The above provision is not contained in the Constitution of the Federal Republic of Nigeria hence, there are calls for restructuring via amendment of or the making of a new Constitution, but this has been stalled by the rigorous provision on constitutional amendment.⁹⁰

As submitted earlier, the provisions on democracy, elections and governance under the Nigerian laws are not necessarily influenced by the Charter, as some of these provisions predate the Charter. However, the recent amendments made to these legislations may have been influenced by the global, regional and domestic pressure for more democratic electoral laws and practices. Thus, it can be argued that the adoption of the Charter by the AU as part of the regional pressure towards promoting electoral democracy in Africa has obvious impact in Nigeria. The AU Election Observation Mission (EOM) to Nigeria is another medium through which the Charter influences elections in Nigeria. The African Union's EOM mandate is derived basically from the Charter, the 2002 OAU/AU Declaration on Principles Governing Elections in Africa, the 2002 AU Guidelines on Election Observation and Monitoring Missions and the African Charter on Human and Peoples Rights (ACHPR). The aim of the African Union through its EOM is to promote the conduct of free and fair elections in Nigeria as this is deemed critical to the realization of good governance, democracy and respect of human rights, justice and rule of law on the continent.⁹¹ This is in line with AU's aspirations outline in Agenda 2063 –No.3. The EOM's report contains observations and recommendations which if considered and embraced can improve the quality of elections in Nigeria. The AU responded to Nigeria's invitation to observe its 2019 elections. The AU EOM to the 2019 elections in Nigeria comprised a 50-member team led by Dasalegn Boshe (a former Ethiopian Prime Minister) which issued its preliminary statement on 25/2/2019 and final report on in June 2019.⁹² The Charter however fails to state what measures may be taken if violations of its principles are revealed in its EOM report.

On the role of the African Union itself in promoting the Charter in Nigeria, the African Union Commission serves as the central coordinating structure for the implementation of the Charter. The Commission works in this regard primarily through the African Governance Architecture (AGA) platform under its Department of Political Affairs, Peace and Security (PAPS). The AGA provides a forum for working with RECs as envisaged by the Charter. PAPS are currently working to integrate the Charter into school curriculum to build awareness about democratic principles at an early age.⁹³ The AU Commission is also currently working on a Draft Roadmap for the Implementation of ACDEG Strategy and is set for implementation of the pilot project in select countries.⁹⁴

Generally, the impact of the ACDEG is limited to the extent that the Charter envisages intervention by AU in its member states only in cases of unconstitutional change of government. Thus, where unfair or unfree elections still result in a democratic change of government, the AU cannot intervene, at best it may release statements or in rare instances send an envoy to deal with a post-election crisis. Thus, other than where there is an unconstitutional change of government, violence/war and also perhaps a violation of human rights during the electoral cycle (whereby its human rights machinery can be invoked), the ability of the AU to directly enforce the Charter is limited. Since the adoption of the

⁸⁴ See Section 285 of the Constitution.

⁸⁵ See the Nigeria Media Code of Election Coverage.

⁸⁶ See the Revised Code of Conduct for Political Parties in Nigeria 2018.

⁸⁷ See Sections 77 & 117 of the Constitution; see also Section 24(1) EA 2022.

⁸⁸ See Section 130 of the Constitution.

⁸⁹ S 80(3) CFRN 1999 (as amended).

⁹⁰ Section 9 CFRN 1999 (as amended).

⁹¹ African Union, 'Aspiration no.3 Agenda 2063' <<https://au.int/en/pressreleases/20190215/head-african-union-observation-mission-nigeria's-elections-conclude>> (accessed 7 November 2019).

⁹² African Union, 'Preliminary statement: AU EOM to FRN 23 February 2019 Presidential and National Assembly Elections' <<https://au.int/en/pressreleases/20190225/preliminary-statement-african-union-election-observation-mission-aeom>>; 'AUEOM Election Report: Republic of Nigeria' <<https://au.int/en/documents/20190617/aeom-election-report-republic-nigeria>> (accessed 11 December 2021).

⁹³ Intl IDEA, *Emerging Trends and Challenges of Electoral Democracy in Africa*, International IDEA Policy Dialogue 25-27 May 2016, Abuja, Nigeria (Intl IDEA 2016).

⁹⁴ African Union, 'African Union to Adopt a Strategy on Mainstreaming the ACDEG and Develop Pedagogic Tools on the Rule of Law' <<https://au.int/en/pressreleases/20211202/african-union-adopt-strategy-mainstreaming-acdeg-and-develop-pedagogic-tools>> (accessed 11 December, 2021).

Charter, Nigeria has had a several constitutional changes of government thereby not warranting intervention by AU in the manner envisaged by the Charter even though these elections have fallen short of prescribed standards.

Furthermore, it must be noted that the general intendment of the Charter which *inter alia* includes the entrenchment of the culture of change of power via transparent, regular, free and fair elections is in principle being promoted in Nigeria. However, this is not to deny the fact that lapses still exist in the Nigerian legal and institutional framework that derogate from the general expectation of the Charter. For instance, the laws regulating political parties in Nigeria are inadequate to ensure fairness and internal democracy resulting in several pre-election disputes arising out of party primaries. In this regard, the independence and impartiality of the electoral bodies (INEC and SIEC), the judiciary, and other democratic institutions need to be institutionalized to control manipulation of the processes by politicians.

At this juncture, it must be reiterated that the execution of laws and policies require political will and collective effort that cannot be produced by mere legislation. The Charter recognizes that political will is a necessary condition for the attainment of the goals of the Charter and obliges State parties to promote same.⁹⁵ The popularity of the ACDEG in Nigeria seems to have been championed more by civil society organisations through workshops and seminars organised for the enlightenment of different stakeholders but much more needs to be done to improve the awareness of ACDEG to all Nigerians as State parties are obliged to ensure the wider dissemination of the Charter.⁹⁶

5. Conclusion and Recommendations

The paper has demonstrated that the Charter adopted a comprehensive and unique approach to the peculiar challenges of African states with regard to the promotion and consolidation of democracy and good governance. It undoubtedly advances the interdependency of democracy, human rights and development. The Charter continues to serve as a useful template and reference point for universal standards and conditions for the promotion and consolidation of democracy, elections and governance which African States should generally strive towards. Therefore, efforts should be intensified by the AU member states and AU itself to ensure that the ACDEG is ratified, domesticated and implemented in order to promote and consolidate democratic values and political participation amongst the citizens especially the political class. This will go further to act as an elixir of the challenges of fragility including conflicts, instability, corruption, impunity of the ruling elites, to mention but a few, which have been stunting development and progress in African countries. With particular reference to Nigeria, it is submitted, that notwithstanding the non-domestication of the Charter, this paper argues that for the most parts, the provisions of the Charter and the established standards are more or less, parts of the whole body of the Nigerian laws in relation to democracy, elections and governance. In support of this argument, reference could be made to the various constitutional provisions aimed at promoting electoral democracy, the Electoral Act 2022 and other electoral guidelines established by the Nigerian Electoral body.⁹⁷ Thus, although Nigeria has not domesticated the Charter as required by the Constitution yet, to all intents and purposes Nigeria is not lagging behind other AU member states in terms of the domestication of the principles and values established in the Charter, despite the existential challenges of implementation. These challenges are associated with structural imbalance, institutional weaknesses and the lack of the political will on the part of the political leaders to effectively implement the laws.

In light of the foregoing, the following recommendations are made as measures that can be taken to improve on the level of domestication and implementation of ACDEG in AU member states:

- Constant engagement with member states and their political leaders is necessary to encourage them to develop the necessary political will and commitment to carry out their national and international obligations to promote the realization of the objectives of the Charter.
- More efforts towards wider popularisation of the benefits derivable by the citizens from the implementation of the Charter in member states. To this end, the role of the AU governance institutions,⁹⁸ the various African Economic Communities, Civil Society Organisations and so on, should be exploited by continuously engaging governments and exerting pressure on them to improve and strengthen their legal and national policy frameworks to align with the provisions and principles of the Charter.

With particular reference to Nigeria, the National Assembly should without further delay take necessary steps to ensure that the Charter is domesticated in line with section 12 of the Constitution. This will additionally serve to reinforce the relevant provisions under the Constitution and other statutory provisions which citizens and the civil society can refer to, especially where gaps exist, in order to reinforce their demand for improved electoral democracy and good governance with greater impetus.

⁹⁵ Art 44(1) (c) ACDEG.

⁹⁶For instance Action Aid's training for journalists, 'Mobilising Civil Society Support for the Implementation of Africa Governance Architecture and ACDEG'; Center for Democracy and Development, 'Charter on Democracy and Development will Help Nigeria' <<https://www.cddwestafrica.org/implementation-of-the-Charter-was-imperative-for-Nigeria/>> accessed 3 November, 2019; Transition Monitoring Group NDI, 'Promoting the African Charter on Democracy, Elections and Governance in West Africa' <<https://www.ndi.org/WAEON-symposium>> accessed 4 November, 2019; Art 44 (1)(d) ACDEG.

⁹⁷It is noteworthy that the Independent National Electoral Commission (INEC) is empowered to implement the constitutional provisions, as well as the provisions of the Electoral Act in the course of its functions as the electoral umpire.

⁹⁸ The AU governance institutions include the Pan African Parliament, African Peer Review, NEPAD