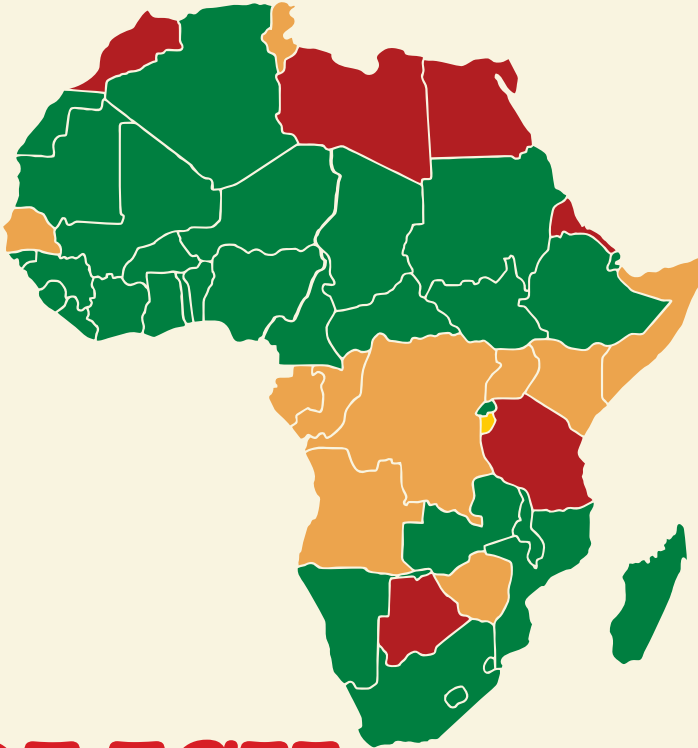




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# **POLICY** **BRIEF**

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**ON**

THE ROLE OF AFRICAN CHARTER ON  
DEMOCRACY, ELECTIONS AND GOVERNANCE  
IN PROMOTING DEMOCRATIC ACCOUNTABILITY.





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# Acronyms

<b>ACDEG</b>	African Charter on Democracy, Elections and Governance
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>CSO</b>	Civil Society Organisation
<b>NGO</b>	Non-Governmental Organisation
<b>OAU</b>	Organisation of African Unity
<b>REC</b>	Regional Economic Communities

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**Tasallah Chibok**

Director of Programmes  
ActionAid Nigeria

# Executive Summary

The African Charter on Democracy, Elections and Governance is a consolidation of earlier commitments through various declarations and decisions of the Organization for Africa Unity (OAU) and the Africa Union (AU) to ensure the success of the democratization process on the continent. The Charter's adoption was triggered by the decisions taken by Head of States and Governments during the 2002 inaugural summit held in Durban, South Africa, which was followed by the conference on Elections, Democracy, and Governance held in Pretoria, South Africa in 2003.

Democracy is much more than holding regular elections and certifying them to be 'free and fair', it comprises many other elements which, when examined together, give a more robust picture of the state of democracy in Africa. Regrettably, in substantial parts of Africa, democracy is wrongly conceptualized as voting on Election Day. Once the task of voting is completed, it is erroneously assumed that the ends of democracy have been achieved but this is untrue. Democratization requires the continuous engagement of citizens with their elected and appointed representatives in order to achieve the ends of good governance (Ukase, 2010).

Citizens have a duty to actively engage their leaders and also participate in the democratic process (by performing their duties and obligations to the State) to achieve the ends of good governance. Through such engagements, the citizens are able to hold their leaders accountable for their actions and inactions. Quite often, the citizens are unable to improve the quality of governance because they are farther away from the situation in which power is being abused (Ukase, 2017: 184).

It is strongly believed that the Universal ratification of ACDEG will contribute to deepening democratic governance, which is critical for sustainable development, peace, and security. All stakeholders at the continental, regional and national levels should therefore be encouraged to urgently ratify the Charter.

The ACDEG is unique because not only does it reflect the AU's most current efforts to foster democracy in Africa, but it is also the first binding regional instrument adopted by AU member states that attempts to comprehensively address all of the elements necessary for the establishment of liberal democracies.

Through the adoption of the Charter, the AU has appropriately used a multi-layered approach to measure democracy in Africa. The Charter provides evidence that the AU has elected to promote liberal democracy with a representative form of government. It is likely that the AU's decision to foster liberal democratic ideals will promote the protection of human rights in African countries, provided that the AU effectively enforces the Charter.

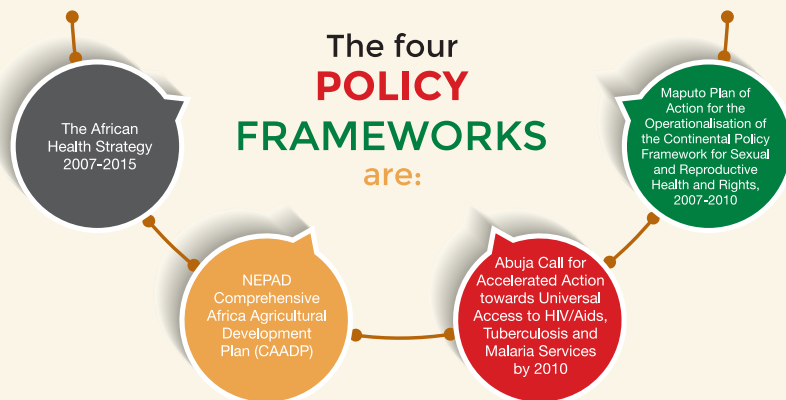
# Background

The African Union was established after two thirds of Africa's governments signed the Constitutive Act of the AU in July 2001. Formally launched in Durban, South Africa, in July 2002, the AU replaced the Organisation of African Unity (OAU). The Constitutive Act commits African governments to further the values of African integration, democratic governance, human rights and the participation of its citizens in the African Union. Indeed, it asserts that the AU will be a union not just of governments, but people as well.

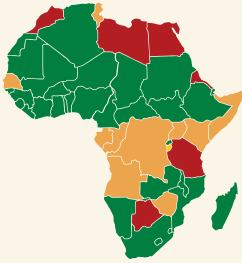
Since the Act, African governments have developed and acceded to 49 instruments in the form of protocols, conventions, treaties and declarations. These instruments were developed to accelerate the integration of African government policies and programmes at the national level. Collectively, these instruments hold African states to higher standards of performance. They range from governance, political, social and economic rights, to peace and security, as well as development. It is felt that if 14 of these instruments -10 legal instruments and four policy standards – are fully implemented they would have tremendous promise for the lives of millions in Africa.

The 10 legal instruments are:

- The African Youth Charter.
- Treaty Establishing the African Economic Community.
- African Charter on the Rights and Welfare of the Child.
- African Charter on Human and People's Rights in Africa.
- African Charter on Democracy, Elections and Governance.
- African Union Convention on Preventing and Combating Corruption.
- African Convention on the Conservation of Nature and Natural Resources.
- Revised African Convention on the Conservation of Nature and Natural Resources.
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.
- Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament.



It was expected these instruments would significantly raise the bar for most African governments in the areas of democratic accountability, as well as political, social and economic rights.



# The State of Democracy in AFRICA

There is a sense in which Africa's democratic landscape has improved since the 1990s, especially after the end of the Cold War and the super power rivalries that propped up unpopular autocratic regimes on the continent. However, many African states are still passing through a period of suffocating civilian dictatorship. Statistics show a decline in the number of one party States from 1991 to 1994, while within the same period, there was an expansion in the number of democratic and intermediate (hybrid) regimes. Besides, the past two decades have seen the rapid expansion of independent media, blossoming civil society, a decline in military governments, increasingly regular elections, and the removal of long term regular dictators.

This aforementioned progress in governance norms were achieved largely due to internal and external factors. Internally, Africans resiliently opposed the state of affairs in their respective countries. For instance, civil society, labour organizations, and opposition parties, were key in dismantling authoritarian regimes. Another important change to the democratization landscape in Africa is the shift in governance norms endorsed by regional bodies. This was reflected in the Constitutive Act of the AU in 2002, which emphasized the principles of good governance, popular participation, the rule of law, and human rights. The adoption of ACDEG in 2007-was essentially an aspirational statement of governance values and principles for the continent (ACSS Special Report, 2011:22). Since that adoption, there has been growing expectations that the AU and other Africa's Regional Economic Communities (RECs) would actively narrow the gap between aspiration and reality.

Unfortunately, most African countries are still nominally democratic in nature and character. The democratic calculus of several states on the continent is essentially defined by the key democratic indicator of holding regular elections, despite the fact that these elections are often marred by violence, exclusion of candidates or voters, and allegations of vote rigging. As earlier stated, democracy is much more than holding regular elections and certifying them to be 'free and fair', it comprises many other elements which, when examined together, give a more robust picture of the state of democracy in Africa.

More commonly, the concept of democracy is used to describe a political system designed to widen the participation of ordinary citizens in government, the powers of which are clearly defined and limited. New democracies, as opposed to more established ones, are by definition fragile in the sense that they are formally constituted and are less experienced (Mesfin, 2008:1, citing Pridhams & Lewis, 1961:1).



Another element that paints a comprehensive picture of democracy in Africa is the existence of membership-based, inclusive, and democratic political parties. Political parties are required to be inclusive and their membership is expected to be of a national character and not based on ethnic, regional, religious or other sectional bases. Parties are required to operate in conformity with the principles of democracy.

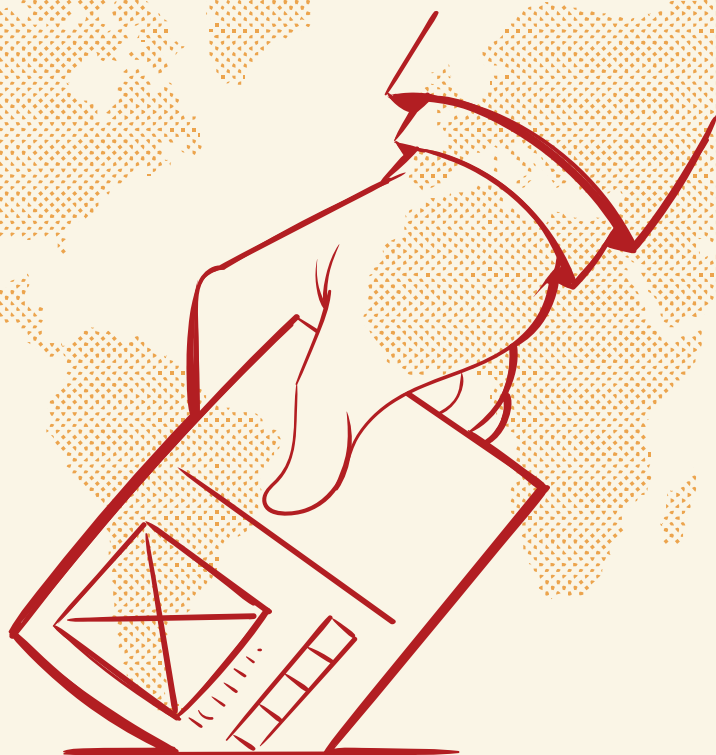
Civic education also plays an important role in institutionalizing the culture of democracy. Civic education is supposed to be provided by the State, especially through the national education curriculum - as envisaged in the Charter on Democracy. However, African states have not been proactive or prominent in championing this clause. Quite often, civic education is limited to voter education initiatives organised by NGOs or consultancy firms - usually funded by international development agencies, like the United Nations Development Programme - in the run-up to general elections. Such occasional and cyclic interventions do not support the creation of a sustainable culture of peace or peaceful elections.

Another key element of democracy is the establishment of democratic institutions and democratic culture in society. This is provided for under Chapter 6 of The African Charter on Democracy, Elections and Governance. The African Charter was adopted by member states of the OAU in 1981. African Charter on Human and Peoples' Rights, adopted June 27, 1981, and was entered into force on Oct. 21, 1986. The African Charter contains a number of provisions that specifically address fundamental rights necessary for the promotion of democracy. For example, Article 10 provides that an individual has the right to freedom of association provided that he or she abides by the law, while Article 11 provides that every individual has the right to assemble freely with others. Similarly, Article 9 establishes the right of freedom of expression and Article 13 provides that every individual has the right to participate freely in the government of his or her country, either directly or through freely chosen representatives in accordance with the provisions of the law.

While the African Charter is a valuable instrument that seeks to protect human rights in Africa, this instrument alone is incapable of achieving overall democracy in Africa. Despite the relative success of the African Charter, it is unable to ensure that widespread democracy will occur based solely on the AU's implementation of the African Charter and the Constitutive Act of the African Union.

The African Charter, Constitutive Act, Lomé Declaration, Elections Declaration, Corruption Convention, and the NEPAD Democracy Declaration each represent prior efforts by the AU and its predecessor - the OAU - to promote democracy in Africa.

The earlier instruments adopted by the AU member states to promote democracy failed to lead to the widespread establishment of liberal democracies in Africa. This is due to the fact that many of these instruments: (1) failed to include effective enforcement provisions; (2) were non-binding—and the instruments that were binding were not ratified by all member states; (3) were inadequately drafted; and/or (4) were under-used by the AU. The failure of these previous instruments illustrate that adequately drafted regional instruments, widespread state ratification, effective enforcement provisions, and sound use of binding regional instruments are needed to foster liberal democracies.



African Charter on Democracy,  
Elections and Governance (ACDEG):

The

**INNOVATION**

**W**ith the transition from the OAU to the AU, member states recognised the need to address democracy deficits and lack of good governance amongst member states. With the launch of Agenda 2063, the AU member states further strengthened their stated commitments to democracy and good governance. Aspiration 3 of Agenda 2063 aims for 'an Africa of good governance, democracy and respect for human rights and the rule of law'.

The African Charter on Democracy, Elections and Governance (The Charter) was adopted on 30th January 2007 as the African Union's main normative instrument to set standards for better governance across the continent. It came into force in February 2012 after ratification by fifteen (15) States in accordance with Article 48 of the Charter. The Charter aims to reinforce the commitment of member States of the African Union towards the protection of democracy and the rule of law, as well as human rights. Among its paramount objectives are: Adherence to principles of democracy and human rights; Rule of law premised on supremacy of constitutions; Regular free and fair elections; Strengthening governance institutions; Promoting the fight against corruption; Promoting citizen participation and civil society; Promoting gender balance and Promoting best practices in the management of elections.

## **RATIFICATION AND DOMESTICATION**

As at March 2017, 45 African member states had signed up the ACDEG, of which 29 had been ratified. Following its adoption in 2007, AU member states were initially very slow to ratify the ACDEG. This prompted a lengthy advocacy campaign by civil society - including Open Society Foundations' African Governance Monitoring and Advocacy Project (AfriMAP) to push for ratification in order to bring the ACDEG into full force. This campaign was successful in garnering 11 ratifications before 2011. There was a lot of skepticism about the ACDEG ratification campaign because the standards and values prescribed in the Charter posed an explicit challenge to the way politics was conducted in many African states.

The first country to ratify the ACDEG was Mauritania in July 2008, only to experience a military coup eight days later. This raised skepticism on whether the country was willing to adhere to the principles enshrined in the ACDEG. The second country was Ethiopia, which ratified the ACDEG in December 2009 and deposited its instruments of ratification in January 2009. This coincided with the adopted oppressive NGO-regime, which has been criticized as 'designed to strictly control and monitor civil society in an atmosphere of intolerance.' Such events raised skepticism about the actual relevance of the ACDEG. Not surprisingly, four years after it was adopted only four countries had ratified it.

Although the pace of ratification significantly picked up in the last 2-3 years, a significant number of countries are yet to ratify and domesticate the instrument. The slow ratification of the ACDEG could be attributed to the fact that ratification seemed likely to draw attention to lack of good governance in a country and expose it to criticism. Consultations with AU member states that were inclined towards ratifying the ACDEG revealed that logistical and knowledge constraints, rather than political hostility, were responsible for delaying the ratification.

Nevertheless, since the ACDEG came into force with the requisite 15 signatures, AU member states had ratified the treaty, albeit at a slow pace. So far, the 29 ratifications are made up of countries with both electoral democracies and authoritarian 'civilian' regimes. For instance, while countries such as South Africa, Nigeria, Zambia, Ghana, Niger, Sierra Leone and Burkina Faso fall in the first category; Cameroon, Chad, Rwanda and Guinea Bissau who were among the early adopters, have unapologetically authoritative governments that are not democratically open.

Despite the several benefits derivable from ratifying the ACDEG some countries hailed as being democratic, like Botswana, have not yet signed or ratified the ACDEG.

## THE ACDEG PRINCIPLES

ACDEG aims to advance Africa's democratization by, inter alia:

Promoting African governance standards, which include universal values and principles such as respect for human rights, supremacy of the Constitution and the rule of law, regular, transparent, free and fair elections, interdiction, rejection and condemnation of unconstitutional changes of governments. Others areas of intervention include: independence of the judiciary, separation of powers, democratic culture and practice, good governance, fight against corruption and impunity, political pluralism, sustainable development, peace and security (Articles 2-22, 27, 36-43);

Defining "unconstitutional changes of governments" and empowering the African Union Peace and Security Council (AU-PSC) and Assembly to impose sanctions on the perpetrators of unconstitutional changes of governments or Member States that would have supported or encouraged them (Articles 23 – 26, 46);

Emphasizing the nexus between democracy, governance, sustainable development, peace and human security (Articles 2, 3, 11-13, 36-43);

Encouraging cooperation between the AUC and RECs on the implementation of ACDEG and massive participation of stakeholders, particularly civil society organisations (Articles 43-45).

In essence, the Charter basically aims to do the following (Kane, 2008:44):

"Ensuring [that] respect for democratic standards, human rights and the rule of law in general [are] incorporated into state institutions, pivotal principles for the functioning of any democratic states",

"Implementing independent monitoring procedures for the effective application of these standards and principles in the states in question";

"Involving civil society in the management of the state",

"In the most appropriate manner, punishing any violations of these clauses, particularly by excluding those who undermine the principal democratic standards and principles, from any participation in the process of restoring the democratic state" (Kane, 2008 citing Piccone, 1997:25).

Universal ratification of ACDEG is unarguably essential for deepening democratic governance, which is critical for sustainable development, peace, and security. All stakeholders at the continental, regional, and national levels should, therefore, be encouraged to urgently ratify the Charter.





The African Union and the  
**PROMOTION OF DEMOCRATIC  
ACCOUNTABILITY**

in

**AFRICA**

**T**he AU's Constitutive Act (2000), which formally established the organs of the AU, sets as its objectives the promotion of “democratic principles and institutions, popular participation and good governance” as well as the protection of “human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments”, among others. To deliver on these objectives, new institutions were created, new processes launched and new normative instruments adopted.

According to political and development literatures, there are different kinds of accountability arrangements in place. Some of these include social, political administrative, bureaucratic and political accountabilities. Democratic accountability takes place when elected leaders or public officials have to answer to the common citizens regarding their actions, decisions or indecisions during the time they are or were occupants of the public offices. Those found to be performing to the required standards are usually rewarded by their continued stay in office while those found to be lacking in one way or another are punished.

The key elements of accountability and accountability measures include but are not limited to:

- **Norms and standards:** These are used to assess the behavior and performance of public officials (elected or nominated). They can be based on universal values such as human rights. They are often set out in laws and regulations, e.g. the African Charter on Democracy, Elections and Governance.
- **Answerability:** The different parties (elected representatives) are called upon to account for their policy actions or provide information to allegations. In democratic practice, the executive arm of government is answerable to the legislature as an oversight institution on its implementation actions.
- **Enforceability:** adjudication is followed by sanction or compensation where appropriate. A judge may decide on guilt or innocence, penalties or compensation. A court order can stop detrimental actions. Police, prisons, bailiffs, debt-collecting agents all play a part in enforcing judgments.

## ACDEG & THE AU AGENDA FOR DEMOCRATIC CONSOLIDATION IN AFRICA

The ACDEG provides a stronger mandate to the AUC in the area of governance. It emphasizes principles already enshrined in existing instruments – such as the rejection of unconstitutional changes of government – but it also goes further by, for instance, limiting presidential office terms to two terms or by making it mandatory for member states to establish independent election bodies.

The ACDEG is unique because not only does it reflect the AU's most current efforts to foster democracy in Africa, but the ACDEG is also the first in binding regional instrument adopted by AU member states that attempts to comprehensively address all of the elements necessary for the establishment of liberal democracies.

African countries have a long history of unsuccessfully experimenting with different forms of democracy.

As elaborated above, the Charter has enormous provisions on virtually all the principles of democratic governance, accountability inclusive. For example, article 2 (10) provide that parties to the Charter shall establish all the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs. Specific provision on accountability can also be found in article 32(1); it specifies that State Parties to the Charter shall strive to institutionalize good political governance through accountable, efficient and effective public administration. Other provisions on democratic accountability are enshrined in different sections of the Charter. Some of them include article three (3) sub-sections (1-11), which deals with democratic principles; article 27 on horizontal accountability measures; this article encourages strengthening of legislature and Judiciary for oversight functions and democratic efficiency in AU Member states. In addition to the above, articles 31 and 32 have ample provisions on citizens' participation and accountable governance.

In a nutshell, the Charter has ample provisions on accountability measures to strengthen democratic accountability on the continent. Although, efforts are in place by the African Union Commission to commence evaluation of the implementation of the Charter, actual evaluation of implementation has not taken place. Nonetheless, several African Union member States have initiated different measures to promote democratic accountability on the continent; for example, some elected representatives in government have been dismissed and or imprisoned for wrong actions; these were accomplished following accountability initiatives in Member States.

In general, the response of the African Union Member States to accountability call has been encouraging but not without challenges. As earlier indicated, out of the fifty four (54) AU Member States, only forty six (46) have signed the Charter and out of these numbers, only twenty three (23) had ratified same out of which only one State Party has reported on implementation. It was on the basis of this that the Department of Political Affairs of the African Union decided to develop a “benchmarking framework” on the instrument to encourage implementation reporting.

Through the adoption of the Charter, the AU has appropriately used a multi-layered approach towards promoting democratic accountability in Africa. The Charter is evident that the AU has elected to promote liberal democracy with a representative form of government. It is likely that the AU's decision to foster liberal democratic ideals will promote the protection of human rights in African countries, provided that the AU effectively enforces the Charter.

The ACDEG is aimed at establishing liberal democracies with a representative form of government in AU member states. A representative form of government is a core concept of liberal democracies. Free and fair periodic elections by universal and equal suffrage, respect for the rule of law, respect for human rights, and political participation by citizens are central elements of all liberal democracies. The African Charter on Democracy, Elections and Governance facilitates the promotion of these liberal ideals. For instance, the ADC provides that the objective of the ACDEG is to promote “the universal values and principles of democracy and respect for human rights . . . [as well as] the necessary conditions to foster citizen participation.”



# Recommendations

One of the objectives of the AU is to promote democratic principles and institutions, popular participation and democratic governance as buttressed by Article 3(g and h) and Article 4(m) of the Constitutive Act of AU. These ideals are further reinforced by norms, pronouncements, decisions, policy frameworks and instruments adopted by the AU, including Agenda 2063 and the African Charter on Democracy, Elections and Governance (ACDEG).

Central to the AU democratic governance agenda, is the promotion of the ratification, domestication and implementation of the AU Shared Values Instruments, including ACDEG. This agenda is premised on a Declaration on the Theme of the 2011 Summit: “Towards Greater Unity and Integration Through Shared Values” (Assembly/AU/Decl.1 (XVI)), in which the AU Heads of State and Government noted the challenges in promoting, ratifying and domesticating instruments of Shared Values and reaffirmed their commitment to speed up the ratification and domestication of the instruments of Shared Values. There is, therefore, every need for the African Union Commission (AUC) to put measures and modalities in place to support AU Member States to establish the required capacities and processes for monitoring and reviewing domestication efforts. This is very critical to the realization of this protocol on the continent.

In addition, robust democratization requires deliberate, continuous and conscious participation by citizens, elected and appointed representatives. This orientation will promote and deepen independent media, civil society and strengthen internal democracy and sustain governance. The AU must encourage and insist that member states emphasize these issues beyond lip service, which has become the stock-in-trade of many African countries.

In the same vein, the AU can certainly not be speaking to issues of democracy and democratization of the continent when several member states are yet to dismantle authoritarian regimes. Granted that the collective struggles and resilience of civil society groups, labour unions, opposition parties and the media have played key roles in dismantling several authoritarian regimes on the continent, but several of them still exist. While there is need for these groups to sustain these efforts, the AU must also consider the promotion of democracy as an article of faith.

Further still and closely tied to the above is the fact that most African states are still nominally democratic in nature and character; because popular participation, the rule of law and human rights issues are treated with levity by the AU. To change this narrative, the AU must work conscientiously towards changing the continent's democratic calculus. This could be done and achieved by defining key democratic indicators which must include strict adherence to periodic election devoid of irregularities, democratic culture, principles and values. The AU must and should be ready to punish violators or members states violating these principles.

Finally, the AU must strive to promote the African Charter on Human and Democratic Rights. In doing this, the Union must as a matter of necessity ensure that all institutions are made effectual and strong so as to be able to widespread democracy and accountability across the continent. This will reduce the democratic deficits and lack of good governance among member states.

# Conclusion

The ACDEG is a culmination of a series of initiatives to create stability and prosperity in Africa. The success of the ACDEG will be determined by the political will of Member States to participate in a more effective African human rights system. To the extent that the ACDEG has condemned unconstitutional changes of government in terms of Article 23 and promoted the ideals of democracy with an inclusive approach to political dialogue. One can suggest with caution that it does reflect a better understanding of African realities and the need for political transformation.

However, there is a lack of collective accountability and responsibility made conspicuous with the omission of provisions to deal with the issues mentioned in this paper. On a close examination of ACDEG, it is obvious that it is an initiative by African leaders to provide African solutions to African challenges whilst ensuring that they do not unwittingly and simultaneously portray themselves as part of the African problem. In order to ensure effective implementation and realization of the ADEG objectives, all stakeholders- national, regional, and continental must pool the necessary resources and join hands together to promote the full ratification and implementation of the Charter.

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