

# AFRO-GOVERNANCE

## *Continentalism and Africa's Emerging Democratic Regime*

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### ABSTRACT

*The 1994 Abuja Treaty Establishing the African Economic Community (AEC) commits African states to eventual Pan African political and economic union – a United States of Africa (USAf). Pan-Africanism's ultimate goal is two-fold: an African federal system with a central authority possessing supra-national powers and a unitary community resulting from the merger of sovereign African states. But the Abuja Treaty's ideals remain a distant goal. For now, Africa has entered an important stage en route to that ideal – a 'new' wave of Pan-Africanism: progressive 'continentalism'. The continent's state actors and key institutions promote a new progressivism, which champions development, peace and security, democratic governance and accelerated economic growth. Whereas the OAU defended non-interference in the domestic affairs of African states and unity and solidarity at all costs and was preoccupied with the liberation struggle and efforts to rid the continent of colonial rule and white minority oppression, the African Union promotes a 'new' wave of inter-African union based on the doctrine of non-indifference, by which African states are encouraged to become more democratic and 'good' governance is promoted. However, although the new progressive continentalism promotes Afro-governance it is fraught with major challenges because of adherence by the vast majority of African states to narrow notions of 'sovereignty'. The challenges notwithstanding, while Pan-Africanism remains a distant aspiration, it would be prudent to focus on the consolidation of a progressive continentalism.*

## INTRODUCTION

In the past decade Africa has witnessed the gradual growth of a new progressive continentalism. This emerging inter-African regime places great import on a democratic governance architecture, fundamentally different from the continental regime which preceded it and driven, in the main, by efforts to construct a continental political community of 'sovereign' states. I see political community here as meaning a set of norms and principles to which states in a region and community agree and by which they decide to live. In contrast to the past epochs of colonialism, the Cold War, and apartheid there has emerged in Africa a defence of democratic governance, defined here simply as the appropriation, management and distribution of power in a society through state institutions, mechanisms, laws, and regulations, and through the strengthening of state-societal relations (Landsberg 2003).

This paper seeks to explain the origins and nature of the democratic governance elements contained in some of the continent's key inter-state institutions and programmes, and assesses their implications for continental governance and democratisation. It deals essentially with what could be dubbed the 'new' wave of Pan-Africanism under way in Africa – otherwise described here as the new 'continentalism'.

There has been a policy revolution in Africa in the past decade. The continent boasts new norms, principles, values, mechanisms and structures, which are fundamentally different from those which prevailed during the era of liberation and the struggle against white minority domination and apartheid on the continent.

Key groupings of the continent's state actors negotiated a new, progressive Pan-Africanism, or, more properly, a continentalism, that makes a fundamental break with the past as characterised by the period of the Organisation of African Unity (OAU). The OAU placed a huge emphasis on unity, a struggle for political liberation, and non-interference in the domestic affairs of African states and was preoccupied with the liberation struggle and efforts to rid the continent of colonial rule and white minority oppression.

In contrast, the 'new' wave of inter-African co-operation puts the issues of development, governance, democratisation, economic growth and peace and security firmly on the continental agenda. It therefore espouses a progressive agenda, which seeks to build consensus on African development, governance, and peace and security by articulating new norms, values, principles and policies and designing institutional mechanisms for implementing the new paradigm. Key leaders driving this process have dubbed it the 'new African agenda'; it is geared to breaking away from the decades-old regime of 'non-interference', 'non-

intervention' and an obsession with 'national sovereignty' (Mwanasali 2004). So it articulates a new interventionism in defence of democratisation, accountable governance and human rights, among other pillars, whereby inter-state bodies such as the AU, sub-regional bodies and others would engage African states and nudge them, primarily through non-confrontational quiet diplomacy, in the direction of greater democratisation and peace and security.

The interventionism is articulated under the banner of the doctrine 'from non-interference to non-indifference', meaning that African states and their key continental and sub-regional institutions would not stand idly by in the face of gross violations of human rights, genocide, internal threats to security in African states that could threaten regional security, and unconstitutional changes of government. In short, the new continentalism's ultimate goal is to bring about a political community in Africa, with political community defined here as a 'social unit or group holding common values, utilising mutual institutions for decision-making, and complying with decisions made' (Ziring et al 1995, p 325). A political community may take the form of a regional organisation that fosters limited co-operation among members, a federal system with central authority possessing supra-national powers, or a unitary community resulting from the merger of previously sovereign entities (Ziring et al 2005, p 325). At this point the African Union is little more than a continental organisation struggling to foster co-operation among African states, and attempting to convince such states to adopt, and live by, common values and institutions, and to comply with the decisions of these institutions.

### CONCEPTUALISING AFRO-PROGRESSIVE GOVERNANCE

This paper distinguishes between 'good governance' and 'democratic governance' and advances the idea of Afro-progressive governance. Africa's new continentalism boasts its own concept of governance, best captured by the African Peer Review Mechanism (APRM).

Let us start by defining governance. Governance denotes the management, appropriation and distribution of power. It is thus seen as 'the sum of many ways individuals and institutions, public and private, manage their common affairs' (Commission on Global Governance 1998). It is 'the exercise of economic, political, and administrative authority to manage a country's affairs at all levels' (UN 2000).

African states and the African Union borrow heavily from the World Bank's understanding of good governance as 'epitomised by predictable, open, and enlightened policy-making [that is transparent processes]; a bureaucracy imbued with professional ethos; an executive arm of government accountable for its

actions; and a strong civil society participating in public affairs; and all behaving under the rule of law' (World Bank 2000).

Democratic governance, on the other hand, refers to issues of democratic participation and the voice of civil society actors in policy and governance processes. It calls for the opening up of decision-making efforts and their democratisation. Proponents of the notion of democratic governance propound the view that power and decision-making should not simply be the preserve of ruling elites; power should be shared and democratised, and state and civil society actors should engage one another critically, independently and constructively (UNDP 1997).

Africa's formal continental institutions and programmes now seek to uphold the continent's own, new concept of democratic governance. This concept is best captured by one of those continental programmes – the African Peer Review Mechanism. This Afrocentric concept of governance links the good governance and democratic governance elements. The APRM associates itself with UN Secretary-General Kofi Annan's 1998 definition, suggesting that 'good governance means creating well-functioning and accountable institutions which citizens regard as legitimate, in which they participate in decisions that affect their daily lives and by which they are empowered' (AU and Nepad APRM Self Assessment Report 2003). Democracy, according to the APRM, constitutes:

- the rule of law;
- the equality of all before the law and the liberty of the individual;
- individual and collective freedoms, including the right to form and join political parties and trade unions in conformity with the constitution;
- equality of opportunity for all;
- the inalienable right of individuals to participate, by means of fair, credible and democratic political processes, in periodically electing their leaders for a fixed term of office;
- the doctrine of separation of powers, including the protection of the independence of the judiciary, and of effective parliaments.

The democracy and political governance base of the APRM is fundamentally concerned with 'measuring popular participation' and 'political equality', doing so under several broad categories (APRM Foundation 2003). These include a guaranteed framework for equal citizen rights; institutions of representative and accountable government; a vibrant civil society; international standards and codes; regional instruments and standards; prevention and reduction of intra- and inter-state conflict; decentralisation; security services and the rule of law; promotion

and protection of economic, social, and cultural rights, and civil and political rights; independence and effectiveness of the judiciary; the independence of legislative bodies; institutions for an efficient and effective public service; transparent recruitment for positions in the civil service; the state of corruption and combating of corruption; promotion and protection of the rights of women, children and young persons and vulnerable groups.

Turning now to Afro-progressive governance, Khabele Matlosa and I have defined this new concept as committing to: multiparty democracy, participatory governance, collective security, equitable regional integration, people-centred and pro-poor development, rejection of unilateralism and commitment to multilateralism, developmental states, state intervention in a market-dominated economy, social development, gender equity, social inclusivity and equality, policies to address the plight of the vulnerable in society, and strong state institutions able to meet democratic and developmental goals. In our understanding of progressive governance, the form of the regime is crucial and openly encourages the formation of democratic forms of government.

The question is: does Africa's new continentalism espouse progressive governance?

### THE POLITICAL CONTEXT

The formal end of the Cold War, the eradication of political apartheid in South Africa, and the start of democratisation processes in Africa by the late-1990s saw the process of restructuring Afro-governance crystallise in earnest when some key African states – South Africa, Nigeria, Senegal, Algeria, Mozambique, Tanzania – and their continental partners undertook a series of initiatives (the key ones are listed below), filled with new and at times radical policy directives, with the object of managing relations among the continent's 53 states.

It was particularly the election to the positions of heads of state of Olusegun Obasanjo in Nigeria and Thabo Mbeki in South Africa that gave the putative continental regime a boost. South Africa, Nigeria and their partners who backed this paradigm could be called progressives: they supported a project that was in favour of a break with the past and would put Africa on a democratic development path, as opposed to the more radical group (the radicals) like Libyan president Muammar Qaddafi, Zimbabwean president Robert Mugabe, and others, who would have preferred a process whose emphasis was on the sovereign nationalistic rule of states (Landsberg 2004). Qaddafi espouses a more radical confederation of African states approach that would, overnight, lead to a United States of Africa. The Libyan leader thus subscribes to the Nkrumah-esque notion of African union. Mbeki, Obasanjo, Abdelaziz Bouteflika (of Algeria) and others, on the other hand,

prefer the incremental, functionalist approach of gradually building institutions and anchoring them on clear rules and principles that will lead to a progressive union of independent states.

So, Nigeria and South Africa, together with their political allies, were in the forefront of articulating a number of initiatives which enunciate the governance doctrine. The new continental initiatives that provide both the form and the substance of the emerging Afro-governance comprise nine elements: the 1994 Abuja Treaty for the Establishment of the African Economic Community; the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) and its formal incorporation into the OAU's conflict-prevention, management and resolution machinery (established in 1993, and incorporated into the African Union in 2002), as well as the African Renaissance; the decision taken in Lomé in 1999 by the OAU to transform itself into the African Union; the acceleration of the OAU-mandated drafting of the Millennium Africa Recovery Plan under the leadership of Mbeki, Obasanjo and Bouteflika; the merger of the Millennium Africa Recovery Plan (MAP) and the Omega Plan (the initiative spearheaded by Senegalese president Abdoulaye Wade) to create the New Africa Initiative; the launch of the New Partnership for Africa's Development (Nepad); the APRM; the Draft Charter for Democracy, Elections and Governance; and Africa's quest for a partnership with the industrialised world through seeking strategic relations with the G8 and other actors.

The design and construction of these policy initiatives form the crux of the 'new' continental democratic governance architecture. Each of them proposes a major restructuring of Africa's development and links development to the advancement of democratic governance.

#### KEY ELEMENTS OF THE EMERGING GOVERNANCE ARCHITECTURE

Several processes have started in the past decade to articulate new post-Cold War, post-apartheid norms, values and mechanisms on peace, security and democratic governance in Africa.

In this paper I deal with this emerging framework. The framework stresses a new rights regime containing progressive norms, values, principles, and a putative new set of rules for a new game. One such progressive move is the stated challenge that all member states must incorporate elements of a bill of rights into their national codes of laws. Where such a bill of rights does not exist, the idea is to put in place provisions for the protection of every citizen of Africa from arbitrary arrest or detention without trial and other forms of cruel and degrading treatment, and to institute mechanisms for the monitoring and effective implementation of

such codes. We have already seen some member states, notably from North Africa, resisting such an idea as it would purportedly clash with their own politico-cultural traditions and systems. So it would be foolish to expect major progress on this score in the short term, and the AU should also not raise its expectations.

The continent boasts an impressive array of declarations, protocols and conventions, such as the Constitutive Act of the African Union and the CSSDCA, which spell out 'core values' to which committed African states purportedly dedicate themselves (OAU 2002). It even went to the extent in the past four years of crafting a *Draft African Charter on Democracy, Elections and Governance* (the Draft Charter), which was released for consideration in May 2006 (African Union, Draft/Charter/II/Rev.1). The Draft Charter is explicit and elevates democracy to the status of a 'basic right': Article 4 decrees that 'State Parties shall recognise and accept democracy as a basic right and shall commit themselves to promote democracy, human rights, and the principle of the rule of law'. The aims of the Draft Charter are clear: '...to entrench a political culture of change of power through regular, free, fair and transparent elections managed by competent, independent and impartial national electoral bodies', and '...to promote and strengthen good governance through the institutionalisation of transparency, accountability and participatory democracy' (African Union 2006a).

The objectives of the AU, according to the body's Constitutive Act, shall be, among other things, to promote peace, stability and security on the continent, as well as to promote democratic principles and institutions.

Nepad, the socio-economic development plan of the AU, asserts that it is of crucial importance to Africa to establish and protect political orders and systems of governance that are:

- legitimate and enjoy the support and loyalty of the African people;
- strong enough to advance the interests of African people;
- able to address the fundamental development interests of African people;
- able to engage effectively with various global processes that characterise the world economy (Nepad 2002).

Both the Constitutive Act and Nepad suggest that the continent has broken with the past and entered a new era where the politics of democratic contestation and values will count for a considerable part of continental order and relations between African states. The APRM is, to date, the most innovative instrument for the promotion of democracy and governance.

It is important to understand the ethos of the APRM. Contrary to perceptions in many quarters it is not a punitive tool designed to impose conditions, it is

'... a self-monitoring mechanism voluntarily acceded to by member states' (Nepad 2003a). Its aim is to foster 'the adoption of policies, standards and practices that would lead to political stability, high economic growth, sustainable development and accelerated regional and economic integration' (Nepad 2003a). Countries are encouraged to undertake 'self-assessments' as the APRM promotes a 'holistic approach to development'. This holistic approach emphasises (Nepad 2003a), inter alia, poverty eradication, gender balance, decentralisation, the capacity of a country to participate in the APRM, access to and dissemination of information, corruption, broad-based participation, and sustainability in financial, social and environmental issues.

All participants should be 'aware of these cross-cutting issues, as well as others that might be of special significance within the context of the country'. The APRM defines stakeholders as 'all the representative constituencies in a society, including but not limited to government, civil society, trade unions, youth, private sector, women groups and religious organisations' (Nepad 2003b).

All African states participating in the APRM process should produce a detailed self-assessment report on the basis of a questionnaire which covers the following focal areas (Nepad/HSGIC 2003): democracy and political good governance; economic governance and management; corporate governance; and socio-economic development.

The new democratic governance framework provides for the establishment of key institutions that would govern and regulate relations between African states. While the OAU only had executive, government- and state-dominated institutions, notably the Assembly of Heads of State and Government, and the Secretariat, to serve the political principles, the AU caters for representative, democratic institutions, such as the Pan-African Parliament (PAP), and the Economic and Social Council (Ecosocc), with the main purpose of providing a platform for civil society to influence continental policy and governance processes. The July 2001 *Protocol Establishing the Pan-African Parliament* calls for an institution to 'represent all the peoples of Africa'. The objectives of the PAP shall be to: facilitate the effective implementation of the policies and objectives of the AU; promote the principles of democracy and human rights in Africa; encourage good governance, transparency and accountability in member states; familiarise the peoples of Africa with the objectives and workings of the AU; promote peace, stability and security; promote collective self-reliance and economic recovery; facilitate co-operation and development in Africa; strengthen solidarity and build a sense of common destiny amongst the peoples of Africa and facilitate co-operate among Regional Economic Communities (RECs) and their parliamentary fora.

While the establishment of Ecosocc should be strengthened, we have already seen how the Conference on Security, Stability, Development and Co-operation

in Africa Unit, which was established to deal with civil society issues within the AU Commission, has been stripped of its original purpose. So, while civil society actors played key roles in the process of incorporating CSSDCA into the AU's structures during the past decade, CSSDCA has been transformed, not necessarily for the better, into the Conference on Security, Stability, Development and Co-operation Diaspora Directorate in Africa on the African Union (CSSDCA/CIDO) in the office of the Chairperson of the Union, in order to ensure civil society participation.

This move, ironically, raises the risk of CSSDCA's progressive provisions being diluted and ghettoised. CSSDCA/CIDO also has the task of mainstreaming civil society concerns into all AU departments.

The commission should also be prepared to help overcome the apprehension of several African governments about civil society actors. Nepad's civil society structures remain decidedly weak, and its operatives seem more interested in inviting civil society participation during implementation processes than involving them in policy-making, design and construction processes – a serious omission since stakeholder participation is needed in all stages of the policy and governance processes if buy-in and ownership are to be ensured.

For the democratic governance process to take firm root in Africa, civil society must engage the AU, Nepad, the APRM and sub-regional bodies. Civil society actors throughout the continent are now strategically placed to engage the continental architecture and should seriously consider forgoing cross-border networks and enhancing each other's so as to take up this challenge effectively.

These continental initiatives unambiguously place on the agenda the issue of good governance, including accountability, transparency, the rule of law, and the elimination of corruption. They also subscribe to the exercise of individual rights as enshrined in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, and the African Charter on Human and People's Rights, adopted in 1981 and ratified in 1986. Indeed, the AU is determined that key aspects of the Afro-democratic governance architecture should conform with international and universal provisions. They see 'good' governance as a prerequisite for sustainable peace and security in Africa and for economic development, co-operation and integration.

Proponents of this emerging architecture argue that there is a fundamental link between stability, human security, and democratic governance. They assert that sustainable stability in Africa demands the establishment and strengthening of democratic structures and good governance based on commonly held tenets of democracy (OAU 2002). These tenets reject unconstitutional changes of government in any African country as a threat to order, and seek to make this rejection the foundation for national and continental stability (OAU 2002).

The new Pan-Africanism places a huge emphasis on 'good governance'; in this new paradigm, 'good governance' equals stability. Thus there is an emphasis on the stabilisation of African states through the promotion of governance. The new endeavours stress democratic governance and 'good' governance as the best means of bringing about stability on the continent (OAU 2002). A link is therefore being made between the promotion of 'good' (especially democratic) governance and the promotion of stability.

During the era of the anti-colonial and anti-apartheid struggles the continent was preoccupied with bringing these scourges to an end. During the age of the African Renaissance the emphasis is on 'pillars of Democratic Society'. The new progressive governance framework calls for African societies to be run on the basis of:

- legitimate constitutions, even the application of bills of rights;
- free and fair elections;
- independent judiciaries;
- freedom of expression;
- a separation of powers between the executive, legislative and judicial branches of government;
- the subordination of the military to legitimate civilian authority.

Again, the core tenets speak out against unconstitutional changes of government, thus rejecting coups d' état. African leaders and institutions have set for themselves the task of developing and codifying these principles into a full-fledged doctrine over the next few years – a project that may prove just too ambitious.

### 'GOOD' GOVERNANCE

The emerging African continental regime emphasises 'good' (read: formal), as opposed to 'democratic' (read: substantive) governance. The emphasis is, in other words, on sound management of public finances, commonly agreed indicators for national legislatures (including decentralisation of administration and effective and transparent control of state expenditure) (OAU 2002). All African countries are expected to enact legislation to provide for the impartiality of the public service, the independence of the judiciary and the necessary autonomy of public institutions such as the central bank and the office of the auditor-general, as well as a semblance of electoralism. Democratic governance goes beyond this formalism to include more substantive elements, most notably, public participation – especially giving a voice to the poor and indigent, groups that are normally marginalised in many societies (OAU 2002). Public participation requires that

the public is able to associate and organise collectively to influence the decisions of the state, beyond political parties and political representatives. It requires the freedom of people to organise and engage with the decision-making processes of the state in order to influence policy outcomes. Formal mechanisms will need to be created for such public participation, including access to legislatures and the policy-making processes.

Within the framework of the APRM, the ability of the state to deliver on its promises is fundamental, and the peer review singles out a number of areas in need of institutional reform. These include: administrative and civil service, strengthening parliamentary oversight, promoting participatory decision-making, adopting effective measures to combat corruption and embezzlement, and undertaking judicial reforms.

The APRM promotes a 'dedicated, honest and efficient civil service' and wishes to 'establish oversight institutions providing the necessary surveillance and ensuring transparency and accountability by all layers of government'. The APRM is also strongly in favour of the creation and strengthening of 'institutional capacity to ensure the proper functioning of democratic institutions and instruments'. It states that among the key factors which enhance good governance of economies and must be vigorously promoted are transparency, accountability, an enabling environment for private sector development and growth, and institutional capacity and effectiveness.

### *Anti-corruption campaigns and commissions*

A key aspect of the 'good' governance provisions of the new continentalism is the stress on the need to combat corruption and establish anti-corruption commissions throughout the continent. In the past the OAU adopted a Convention on Combating Corruption. Its successor, the AU, now encourages all African states to establish independent anti-corruption commissions, and is adamant that such bodies should have their own budgets and report annually to the national legislature on the state of corruption in their countries.

The Economic and Corporate Governance Peer Review Mechanism goes beyond neo-liberal economic and fiscal dictates. It recognises that good political governance is a prerequisite for good economic and corporate good governance. The objectives of the APRM's Country Self Assessment Report include 'fighting corruption in the political sphere', 'fighting corruption and money laundering', and 'promoting the adoption of codes of good business ethics in achieving the objectives of the corporation' (APRM 2006).

The AU Convention on Combating Corruption and Related Offences encourages states to enact and enforce criminal laws which deal with corruption

and to adopt legislative mechanisms and procedures for the public to be able to raise complaints and concerns about corruption, including the protection of witnesses and whistle-blowers (African Human Security Initiative 2005). Article 7 of the convention calls upon public officials to declare their assets and Article 12 undertakes to allow and encourage full participation of the media and civil society in combating corruption (African Human Security Initiative 2005). But, as the African Human Security Initiative notes, '...the fight against corruption needs more than just a good legislative or criminal justice framework. There should also be strong political will on the part of the government to ensure that no offender escapes the law – regardless of position or status in society' (African Human Security Initiative 2005). The initiative further states that 'transparency is imperative in the fight against corruption because it makes it possible for the public to monitor the actions of office bearers in relation to rules and regulations' (African Human Security Initiative 2005).

### *Democratic Afro-governance*

The new continentalism espouses ground rules and provisions for 'free and fair' elections, including campaign finance reform, inclusive systems of government, popular participation in development, multipartyism and political parties, strengthening a human rights culture, addressing the gender relations of power, and even the vexed question of term limits for heads of government and state. Again this is evidence that the continent's premier institutions and programmes are serious about inculcating a progressive political culture in Africa. So, on the policy front, the continent is serious; the challenge remains to implement and internalise the new democratic ethos.

### *Electoral politics*

The question of elections in our societies is often associated with fierce struggles for power. There are problems with election results in almost all regions of the continent. Many states face the serious problem of non-acceptance of results, with both incumbents and opposition parties tending to be bad losers when it comes to accepting results which are not in their favour.

In July 2002 the OAU Council of Ministers, at its meeting in Durban, South Africa, adopted the Declaration of the Principles Governing Democratic Elections in Africa. The Council of Ministers recommended the establishment of an OAU administrative unit for monitoring and observing elections and supporting democratisation in Africa (AU 2006). Such a unit will be involved in election observation and monitoring, electoral observation training, publishing and

dissemination of observation documents, strengthening regional structures for electoral observation and co-ordination of regional mechanisms, and strengthening the capacities of national electoral institutions through training, exchange of human and material resources and promoting a continental forum for these institutions (AU 2006).

After the establishment of the AU in 2002, the Commission began to encourage all African states to establish, where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent elections.

Importantly for those who work in electoral administration, the African Peer Review Mechanism commits signed-up members to ensuring 'impartial, transparent and credible electoral administration and oversight systems'.

The AU now has a fairly well developed election observation mechanism and guidelines, although the capacity of the institution to undertake this task is still wanting. At the time of writing, the Commission in Addis Ababa was in the process of establishing a Democracy and Electoral Assistance Unit and a Democracy and Electoral Assistance Fund to promote elections and democratisation on the continent. Member states are also encouraged to develop regional electoral observation guidelines in line with the continental AU guidelines. So far, only the Southern African Development Community (SADC) region has developed its own guidelines and principles governing democratic elections.

The AU has pleaded for the Commission to be gradually equipped and funded so as to enable it to conduct independent election observation, but the chances of African states living up to the funding commitment are limited.

Another question under the ambit of electoral politics is that of campaign finance reforms. One of the challenges likely to face the continent is the conclusion of legal mechanisms for the reform of campaign financing, including disclosure of funding sources and transparent state funding of all political parties so as to ensure transparency, equity and accountability in electoral contests.

This difficulty has been aptly illustrated in the South African case where both the main opposition and the ruling party have opposed court action by a non-governmental advocacy organisation, the Institute for a Democratic South Africa (Idasa), to compel political parties to reveal their sources of financing from private donors (Ensor 2002). Idasa (2003) argued that if there is no access to information about private donors, the founding constitutional provisions calling for transparent, open and responsive government are diminished, as is the right to make political choices. On 20 April 2005 the Cape High Court ruled that political parties in South Africa should not, as a matter of principle, be compelled to disclose details of private donations made to them (*Mail & Guardian* 2005). This course of events could well portend difficulties to come.

### *Inclusive systems of governance*

Societies in Africa are predominantly pluralistic, raising questions of citizenship and identity. It is therefore not surprising that the AU encourages African states to conclude appropriate arrangements, including electoral reforms, for the institution of more inclusive systems of government that would bring about more politically and socially cohesive states. The AU is clear that efforts need to be undertaken to promote democratic pluralism and create the space in which a plurality of political parties can compete for power freely, fairly and transparently. Moreover, civil society organisations representing the citizenry at large should be given the space and freedom not only to exist without undue duress from the state but to engage the state and its organs on matters of law or policy that affect citizens.

### *Popular participation*

The question of participation or voice is a key dimension of the continent's democratic governance tenets. The preamble to the Constitutive Act of the OAU states that the Act will be 'guided by our common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our people' (OAU 2000). Article 3 of the Act, which deals with the objectives, makes a commitment to 'Promote democratic principles and institutions, popular participation and good governance'. Article 33 of the African Union Draft Charter on Democracy, Elections and Governance (2006) asserts that 'state parties shall ensure systematic and comprehensive civic education in order to encourage full participation of social groups with special needs in democracy and development processes'. Article 13 of the Charter also states that 'state parties shall create conditions conducive for civil society organisations to exist and operate within the law'.

Nepad has established a civil society desk and places a high premium on information-sharing with civil society organs. The Nepad secretariat in Midrand, South Africa, has committed itself to consultation and has conducted many workshops. Civil society actors, including the labour movement, the print and electronic media, universities, and NGOs, have hotly debated Nepad. The Nepad civil society sector has reached out to business and the private sector, and there has been a considerable amount of engagement by businesses in general on Nepad issues.

The 1992 Windhoek Treaty, which established SADC, gives special status to the role of civil society organisations (SADC 1999). The Treaty states that '... SADC shall seek to involve fully the peoples of the region and non-governmental

organizations in the process of regional integration ... SADC shall co-operate with, and support the initiatives of the peoples of the region and non-governmental organizations, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and peoples of the region'. In subsequent amendments to the Treaty, especially the 2001 amendment, reference is made to the roles to be played by 'key stakeholders', including 'private sector, civil society, non-governmental organizations and workers and employers organisations'. So, like the AU and Nepad SADC makes bold commitments to engaging civil society.

One of the more serious challenges faced by states in Africa is that of democratising decision-making and giving citizens, especially the poor, a stake in and a say over the decisions which affect their lives. As stated above, both democratic and undemocratic African states are faced with the challenge of opening up processes of governance to enable their people to participate in such processes. Provisions for public participation are already contained in the Charter for Popular Participation in Development and Transformation in Africa, adopted by the OAU Assembly of Heads of State and Government in 1990. This Charter calls for the creation of more and better enabling conditions in Africa so that the participation of women, the youth and civil society organisations can be increased. But it should be pointed out that many NGOs and civil society actors are very ambivalent about engaging the AU, Nepad, and other aspects of the continental architecture. To the extent that there is engagement, NGOs tend to engage the AU and other structures more actively on questions of peace and security, governance, democratisation, and trade.

As far as the political issues of governance, democratisation and the rule of law are concerned, the AU seeks to ensure greater political participation, pluralism, transparency, accountability, and freedom for the citizenry to participate in and entrench democratic governance processes. In this respect, the following issues are highlighted: establishing and strengthening organs and mechanisms of good and democratic governance such as the Pan African Parliament, the Court of Justice, Ecosoc, the Regional Economic Commissions and the involvement and participation of civil society.

### *Political parties*

The struggle for power among contestants in African states can come at a very high price. Given that we have a terrible track record of 'bad losers' and 'bad winners' in elections in many of our states, it is understandable that the continent's institutions and programmes emphasise the need to address the question of the role of political parties, which are key to the building and consolidation of

democracy. The AU, Nepad and sub-regional organisations have set for themselves the goal of adopting, where this does not exist, enabling legislation on the formation and operation of political parties to ensure that such parties are not formed and operated on the basis of ethnic, religious, sectarian, or regional loyalties or extremism.

The idea is also to establish a threshold of voter support as a criterion for public funding, without compromising freedom of association and the principle of multi-party democracy. Again, while it is commendable that policies and legislation be adopted to level the playing fields for political parties, a huge problem remains in that states often lack the capacity to enforce the free operation of parties. There is, typically, a love-hate relationship between opposition and governing parties in Africa, and one is reminded of the constant complaint that ruling and incumbent regimes often manipulate resources in order to secure a monopoly of power and to prolong their stay in power.

### *Observance, protection and promotion of human rights*

The AU has challenged all African countries that have not done so to ratify the Protocol to the African Charter on Human and People's Rights (as that would lead to the establishment of the African Court on Human and People's Rights), as well as all other relevant international instruments for the protection and promotion of human rights.

All African countries will need to submit to the African Commissions of Human and People's Rights annual reports on the status of human and people's rights within their countries. The Commission needs, in turn, to be provided with adequate resources to enable it to produce comprehensive, independent and publicly available annual surveys.

The AU seeks to promote unity and solidarity among African states and African people; to promote and protect respect for human rights, democratic principles and institutions; and to encourage 'good governance' and popular participation.

### *The gender relations of power*

The gender relations of power are among the key governance challenges faced by the continent and there has been little movement in this regard. While African states are encouraged to take steps to promote the equality of women and ensure their representation in all national regional and continental institutions, as well as eliminate all laws that discriminate against women, there appears to be a lack of political will and commitment by governments to do so.

States are expected to adopt, sign and ratify the Protocol to the African Charter Relating to the Rights of Women in Africa as well as other instruments and mechanisms to guarantee and preserve the rights of women; all member states are also expected to sign, ratify and accede to the UN Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (Cedaw). The Draft African Charter on Democracy, Elections and Governance promotes 'gender balance and equality in the governance and development processes'. Article 8 of the Draft Charter asserts that 'State Parties shall adopt legislative and administrative measures to mainstream the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons or other marginalized and vulnerable social groups'.

In Southern Africa women's movements have acted collectively to bring pressure to bear on governments to live up to the principles and commitments of the 1995 Beijing conference (Lowe-Morna 2004). For the women's movement there is a need to go beyond the numbers; the idea is to ensure the representation and participation of women in key positions of power and decision-making. During the 1997 SADC Summit in Blantyre, Malawi, women's organisations presented to heads of state and government the Declaration on Gender and Development. Through this declaration leaders committed themselves to ensuring that by 2005 women constituted at least one-third of all decision-makers. A Gender Unit established by SADC at its headquarters in Gaborone was set up to monitor and record women's participation in decision-making throughout the region.

The 1997 SADC Declaration on Gender and Development was important, but because it is a declaration not a protocol it is difficult to enforce. Seven years after its adoption, only three countries in the region have reached the 30 per cent threshold of women in politics and decision-making. This poses major challenges for women's engagement.

Regional women's movements have played a crucial role in campaigning for women's rights beyond the issue of representivity. They have fought for the development of viable poverty reduction agendas and have been in the forefront of campaigns for rights and treatment of people living with HIV / AIDS (SADC 1999). There are growing numbers of networks through which women come together on issues such as violence against women, children, and the sick and frail; insistence on democratic norms and values in the region; and challenges to gender-based poverty.

### *Political term limits*

As a further sign of its commitment to introducing democratic governance the continent has also moved to place the tricky question of term limits on the

continental agenda. In recent times Obasanjo's efforts have brought this question into sharp relief. In 2005 Ugandan president Yoweri Museveni amended his country's constitution to enable him to run for what was, effectively, a fifth term in office. At the continental level, this vexed issue has been put squarely on the agenda, notably by the Draft African Charter on Democracy, Elections and Governance. The AU seeks to develop and adopt, in the next few years, a commonly derived Code of Conduct for Political Office Holders. The code is expected to stipulate, among other things, the inviolate constitutional limitation on the tenure of elected political office holders. This limitation would be based on nationally stipulated periodic renewal of mandates through free and fair elections. Again, while it is hoped that governments will abide scrupulously by such a code there are sure to be major challenges to it.

In a frank and hard-hitting speech Alpha Oumar Konare, chair of the AU Commission, addressed the question of term limits, saying that the practice of amending constitutions for the sake of extending terms in office should be reversed (Konare 2006).

But, as we know now, the commitment to regulate term limits is one of the reasons why the Draft African Charter was blocked by some states in the AU's Executive Council during the Summit in June 2006. The states feel threatened by such provisions as they are determined to limit what they perceive as intrusion by the AU Commission and other bodies in their 'domestic affairs'. This again reveals the tensions between continentalism in Africa and a narrow obsession with sovereignty at the domestic level.

## CONCLUSION

In response to the question asked at the beginning of this paper – whether Africa's new continentalism espouses progressive (democratic) Afro-governance – we can state unequivocally that, in theory, the answer is Yes. However, I have also argued that, while the new Pan-Africanism puts democratic governance on the agenda, the greatest challenge to future Afro-governance will be in the realms of implementation and internalisation of this agenda. Key African institutions and some leaders and governments have pushed for this new regime, but our continent suffers from a serious accession problem in that, while states are members of key continental bodies and sign up to their programmes, they generally fail to live by the rules, provisions and legal instruments of these programmes and institutions. A key problem is, therefore, that not all states are committed to the ambitious pillars of a 'democratic society', or to a common African position. This lack of commitment is likely to reveal itself in relation to ratification of the instruments at executive and parliamentary levels.

A related problem is what can be referred to here as the 'jurisdictional gap' (Kaul et al 1999) – a gap between the national and the continental, with many states making protestations about and verbal commitments to the new continental regime; typically and energetically signing up to declarations, protocols, treaties and charters. In practice, however, they ignore, and even violate the tenets of these accords and compacts. Instead of abiding by the new continental *esprit de corps*, the majority of African states still play a narrow nationalistic game, clinging to parochial notions of sovereignty, and confusing electoral procedures with democracy.

The AU, together with its commissions and other institutions, lacks the capacity to insist on and enforce its new Afro-governance regime provisions, and these weaknesses are often exploited by reluctant states. Another problem is that there is much reference to 'good' governance – the health, efficiency and effectiveness of institutions – often at the expense of democratic governance. In other words, despite the fact that the continent now boasts key democratic participatory institutions in the form of the Pan African Parliament and the Economic, Social and Cultural Council, there is only limited reference to notions of civic and public participation in continental policy and governance processes. These democratic institutions are weak in that they struggle for financial resources and rely heavily on governments and donors for funding, which, in turn, affects their political independence since governments are more interested in the institutions doing the bidding of Africa's ruling elites. It is important to recognise, therefore, that, while the new political regime in Africa puts greater emphasis on democratic governance and issues of participation and engagement than it has done hitherto, all in search of a new progressive continentalism, the continent should brace itself for a long period of crisis during which lofty ideals will be more easily professed than practised.

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