

The African Union Series

Election-Related Disputes and Political Violence

Strengthening the Role
of the African Union
in Preventing, Managing, and
Resolving Conflict

REPORT OF THE AU PANEL OF THE WISE

JULY 2010

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Election-Related Disputes and Political Violence

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EARLY WARNING SYSTEM AND PREVENTIVE
DIPLOMACY

Continental Early Warning System (CEWS)

The Panel of the Wise

ELECTION OBSERVATION AND MONITORING

MEDIATION OF POSTELECTION DISPUTES

TECHNICAL AND GOVERNANCE ASSISTANCE

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List of Abbreviations

AAEA	African Association of Electoral Authorities
APRM	African Peer-Review Mechanism
AU	African Union
AUC	African Union Commission
CBOs	community-based organizations
CEWS	Continental Early Warning System
CSSDCA	<i>Conference on Security, Stability, Development, and Cooperation in Africa</i>
DEAF	Democracy and Electoral Assistance Fund
DEAU	Democracy and Electoral Assistance Unit
ECF	Electoral Commissions Forum of the SADC countries
ECOWAS	Economic Community of West African States
EISA	Electoral Institute of Southern Africa
EMBs	election-management bodies
MOU	memorandum of understanding
NEPAD	New Partnership for Africa's Development
OAU	Organisation of African Unity
PAP	Pan-African Parliament
PCRDR	Postconflict Reconstruction and Development
PSC	Peace and Security Council
RECs	regional economic communities
SADC	Southern African Development Community
TORs	terms of reference

Foreword

As Africa prepares for more than thirteen presidential and legislative elections in 2010, the need for vigilance is paramount. In the wake of the 2008 election-related crises in Kenya and Zimbabwe, the African Union (AU) and regional economic communities recognize that they face major challenges as they seek to ensure that the elections have a positive impact on African democracy.

This report published by the International Peace Institute (IPI) in partnership with the AU is the first in the *African Union Series*, which seeks to provide fresh insight into the policy alternatives available for the work of the AU Commission. The AU Panel of the Wise has chosen to dedicate its first thematic reflections to developing strategies for the prevention of election-related violence and for ensuring that postelection processes secure responsible nonviolent transitions in accordance with the rule of law and respect for human rights. The report contains important recommendations, which, as the Panel itself highlights, depend in large measure on the political will and commitment of national leaders in specific conflict-prone countries.

IPI is pleased to partner with the AU on this project, which is one of several recent initiatives in a work plan that marks a new chapter in a history of cooperation dating back almost two decades. IPI's engagement with the Organisation of African Unity (OAU) began in 1993 under my predecessor Olara Otunnu; and the Africa Program's first director, Dr. Margaret Vogt, was instrumental in assisting the OAU in the development of the *Protocol and Mechanism for Conflict Prevention, Management, and Resolution* adopted at the OAU Cairo Summit in 1993.

From Liberia and Somalia in the early 1990s, to the deployment of African and United Nations (UN) peacekeeping missions in Sierra Leone, the Democratic Republic of the Congo, and, since 2007, in the hybrid UN-AU mission in Sudan, the UN and African organizations have been repeatedly called upon to enhance indigenous capacities and develop partnerships to prevent, manage, and resolve conflicts on the African continent.

Since the transition from the OAU to the African Union in 2000-2002, IPI has sought to serve as a partner in the development of the AU's evolving African Peace and Security Architecture. At the request of the AU Commission's first Chairperson Alpha Oumar Konaré, IPI organized a brainstorming meeting of African practitioners in October 2003 in Addis Ababa, a first step in the development of the AU's current peace and security framework. Since then, IPI has held a series of consultations with the AU. This has included a meeting in Addis Ababa in May 2008 on the responsibility to protect, and two meetings in May 2009—one in Kigali on the development of the African Standby Force and one in Monrovia on "impunity, justice, and reconciliation."

Under its new director, Ambassador Adonia Ayebare, IPI's Africa Program has developed a series of new initiatives for 2009-2012, which have been incorporated into a memorandum of understanding (MOU) with the AU. The *African Union Series* is a product of this process. Its key aim is to expand the knowledge base of the AU, with an initial focus on enhancing the capacity of the Panel of the Wise. Future issues in the series will include reports on impunity, justice, and national reconciliation; mitigating vulnerabilities of women and children in armed conflict; and unconstitutional changes of governments.

The publication of this report opens a new chapter in AU-IPI relations. It is a welcome initiative that reinforces our joint commitment to an active intellectual engagement to facilitate the work of the AU, the regional economic communities, and the United Nations in developing a sustainable long-term approach to peace and security. I am most grateful to the AU Commission for the opportunity to work together on this project.

Terje Rød-Larsen

President, *International Peace Institute*

Preface

In representative democracies, which have been aspired to and achieved to varying degrees across Africa, elections are the means or mechanisms by which people make choices about who should represent and lead them, as well as express preference for given policies. Elections are instruments of legitimation for a body politic. They facilitate changes in leadership from one party to another in a way that is structured, competitive, transparent, and within a legal framework. In such a process, tension is inevitable and perhaps desirable to the extent that it can bring out the best of the contending parties or individuals, but it can also bring out the worst. Elections can fuel violence in situations where contestants do not follow the rules or accept the election outcome as the legitimate expression of the will of the citizenry. Elections, however, are not the sole cause of pre- or postelection violence. Often, elections provide the opportunity for people to express other grievances, be they political, about resource sharing, social justice, marginalization, ethnic rivalry, intimidation, or other malaise, perceived or real. And of course, we must not forget the role of rogue elements in such situations. For a myriad of reasons, including structural and institutional, legal and organizational, election-related conflicts and political violence have been on the rise in spite of the ascendance of democratization across the continent. The links between elections, peace and security, and democratization are not automatic. They are contingent upon many factors. In some cases, elections build and enhance democracy and its institutions, while, in others, elections lead to contested results and violence.

It was in recognition of this negative trend that the Panel of the Wise decided to examine how best to prevent, manage, and resolve election-related conflicts and political violence. The idea was to come up with mechanisms and modalities to create an “inflection process” to ensure that elections contribute to sustainable democratization processes in the very diverse states of Africa. The report of the panel disabuses us of the notion that elections should be understood as a singular event. They are not. Like democratization itself, elections are a process that ideally confers legitimacy

on a government and contributes to the long-term democratization of society.

An ideal electoral cycle would have the following key elements:

- a legal framework;
- electoral planning and organized implementation;
- civic training and education;
- official voter registration;
- election campaigning;
- voting;
- certified verification of election results; and
- postelection processes.

This report observes that electoral conflicts and political violence signal “weaknesses in the governance of elections, the rules of orderly political competition and lack of impartial judiciaries to interpret and adjudicate electoral disputes.” In this regard, the report recommends that mechanisms to prevent election-related disputes and conflicts need to be aligned with the electoral cycle in a way that is long-term in approach.

The recommendations the report makes on ameliorating electoral processes derive their authority from three basic documents of the African Union:

- (i) *The African Charter on Democracy, Elections and Governance*. This charter has been signed by thirty member states and ratified by three. It requires ratification by fifteen member states to make it binding.
- (ii) *The OAU/AU Declaration Governing Democratic Elections in Africa*, adopted in Durban in 2002.
- (iii) *The Guidelines for African Union Electoral Observation and Monitoring Missions*, also adopted in Durban in 2002.

Furthermore, the AU Framework and Approach regarding election-related conflicts should be organized around the following clusters eloquently elaborated in the report:

- preventive and early warning mechanisms;
- electoral governance and administration;
- coordination of electoral assistance;
- postelection conflict transformation mechanisms;
- international cooperation and partnerships; and
- strategic interventions by the Panel of the Wise.

These are the basic tenets of the report adopted by the Assembly of the Heads of State and Government during its thirteenth Ordinary Session held in Sirte, Libya, in July 2009. The Assembly also adopted Decision 254, which “requests the Commission to take all necessary steps to implement the recommendations of the Panel and to report to it regularly on progress made in this respect.” Therein lies the challenge. Implementation of this decision will be at national, regional, and continental levels, and should be determined on the basis of the principle of subsidiarity and respect for the sovereignty of states. It is recognized that implementation depends primarily on the sovereign decisions of states and that implementation of this particular policy decision is as much a function of the legitimacy of the process through which it was created as the merits of the policy decision itself. The Assembly’s decision confers this legitimacy, and the merits of the Panel’s recommendations are not in any shadow of doubt. Implementation will therefore require the undivided commitment of national governments as well as regional economic communities (RECs). In this regard, a good start has been made by the convening of the first AU Election Management Body Continental Meeting in Accra, Ghana, on December 17-19, 2009, whose objective was to outline the nature and form of assistance the AU will offer electoral management bodies (EMBs) and the procedure by which it will be dispensed, as well as the creation of an AU/EMB election network.

By publishing the Panel’s report, in the AU’s *Year of Peace and Security on the Continent*, IPI ensures its contents are accessible to as many individuals as possible, particularly legislators and organizations, so that its contents can assist in triggering legislative processes designed to enable the legal framework to prevent, manage, and resolve election-related conflicts and political

violence. The context in which our elections are held must change, and only then can we hope for a behavioral shift on the part of the participants. This challenge requires political courage and commitment of time and resources.

This is not a “eureka” moment for the Panel, but the gauntlet has been thrown down.

Ramtane Lamamra

Commissioner for Peace and Security, *African Union*



Executive Summary

Elections are the hallmark of representative democracy, allowing the people's regular input in choices about leaders and policy. Yet they are also competitive processes, unleashing conflict and tensions that, if not constructively managed, could potentially destabilize the fabric of states and societies. Since the new wave of democratization in Africa in the early 1990s, elections have become a core ingredient of popular participation in the governance process. At the same time, elections have spawned conflicts and violence and scrambled ethnic and regional alliances that sometimes threaten the social order, economic development, and efforts to strengthen regional integration. With the steady decline of some of the historic causes of African conflicts, elections have emerged as one of the major recent sources of conflict across Africa. The challenges occasioned by election-related conflicts and political violence underscore the importance of building institutions that balance competition with order, participation with stability, and contestation with consensus.

In recognition of the escalation of election-related conflicts and political violence, the African Union (AU) Panel of the Wise decided to reflect judiciously on the mechanisms and modalities of ensuring that elections contribute to sustainable democratic governance and peace through proactive strategies aimed at preventing, managing, and resolving election-related conflicts and redressing political violence. This task was considered even more significant because, since the late 1980s, the AU and its predecessor, the Organisation of African Unity (OAU), have expended considerable resources and energy in the articulation, elaboration, and implementation of various principles and protocols on the fundamentals and foundations of democratic governance and peace. At this decisive phase of Africa's democratization, election-related conflicts and political violence retard the gains made by the OAU/AU thus far in their various efforts toward building a democratic and peaceful Africa. This report

seeks to address measures to preempt election-related conflicts and political violence against the backdrop of the progress made in institution-building for democratic governance, peace, and security by the OAU/AU.

This report outlines the record of Africa's democratization since the 1990s, pointing to the major milestones in the institutionalization of pluralism, participation, and accountability. The background is instructive in highlighting the significance of democratization processes in enhancing stability in Africa. It also reviews the causes and consequences of electoral violence and political conflicts over the years. In examining the various attempts by the AU to construct a wide range of protocols and principles that have solidified and standardized democratic practices and patterns, the report seeks to emphasize the progress Africa has made with regard to the evolution of mechanisms for orderly participation and political inclusiveness. The conclusions and recommendations reiterate the significance of African ownership of African electoral challenges by constructing more robust electoral governance and administration systems. The report also suggests how important it is for the Panel of the Wise to work collaboratively with other AU institutions and regional economic communities (RECs) to find new approaches to mitigate election-related conflicts and political violence.

The main recommendations in this report proceed from three assumptions. First, marked progress has been realized in enshrining democratic standards, rules, and best practices pertaining to the conduct and organization of free and fair elections in Africa. Second, continental reform initiatives such as the African Peer-Review Mechanisms (APRMs) have recently acknowledged that gaps and loopholes do exist in Africa's electoral architecture that need to be addressed in order to boost its efficacy and legitimacy. Third, since not all elections in Africa lead to political violence and conflicts, it is important for intervention mechanisms to be tailored to countries where elections may

exacerbate violence. In preempting and managing future instances of political and electoral violence, external actors—particularly the AU, RECs, and international partners—need to craft measures that prioritize countries that are prone to problematic elections. The recommendations are, therefore, grouped under six clusters: (a) preventive diplomacy and early-warning mechanisms; (b) electoral governance and administration; (c) AU’s coordination of electoral assistance; (d) postelection-conflict transformation mechanisms; (e) international cooperation and partnerships; and (f) strategic interventions by the Panel of the Wise.

CLUSTER I: PREVENTIVE AND EARLY-WARNING MECHANISMS

It is critical that all institutions of the AU invest in preventive and early-warning mechanisms geared toward countries that have a history of electoral violence or reveal signs of erupting into conflicts because of competition occasioned by political contestation and elections. The wealth of socioeconomic and political information on African countries generated by the APRM, the AU “situation room,” academic/policy research, and media reports should form part of the collective knowledge that informs decisions about potential electoral hotspots. In the face of severe constraints on resources, it is important for the AU to evolve strategic intervention measures that focus on countries in need. Since the Panel of the Wise is a critical pillar of the AU’s conflict-prevention apparatus, it is well-positioned to provide leadership in developing early-warning mechanisms to forestall electoral violence.

CLUSTER II: ELECTORAL GOVERNANCE AND ADMINISTRATION

Electoral governance and administration are embedded in wider constitutional rules that define and delineate political competition over state power in each AU member state. These rules are,

in turn, influenced by the social, cultural, and demographic matrices that characterize various African countries. Recent experiences in electoral violence and political conflict reflect unresolved questions of constitutional-design arrangements among Africa's diverse societies. While Africa's electoral systems should reflect regional, ethnic, and demographic needs and variations, the pattern of high-stakes winner-takes-all electoral systems seems to be one of the major causes of violence and political instability. Africa should make deliberate efforts to progressively and creatively move toward electoral systems that broaden representation, recognize diversity, respect equity, and respect majority rule, while at the same time protecting minority rights. In the recent past, a trend of postelectoral crisis power-sharing arrangements has been on the ascendance. There is a sense that issues of justice and peacebuilding could justify this trend in some instances. However, there is a serious concern that if this trend is not well-managed, it may spiral out of control and become a political tool, abused for the purposes of manipulating the democratic process and annulling the people's vote. If this is the case, then public trust in democratic institutions and elections may decline, which may in turn lead to decreased participation in the democratic process, especially elections. There is a need for sturdy constitutional, institutional, and legal frameworks to build a firm foundation for electoral governance and administration.

CLUSTER III: AU'S COORDINATION OF ELECTORAL ASSISTANCE

The involvement of the OAU/AU in elections, mainly through observation, is traceable to the early 1990s. Between 1990 and 2008, the OAU, and later the AU, observed about 200 elections throughout the continent. This is a commendable record by all indications. Although the AU continues to observe elections, the process itself has to be deliberately professionalized. It has to be more technical and less political. To this end, a lot of assistance has to be given to the AU Department of Political Affairs,

through its Electoral Assistance Unit, to coordinate elections more efficiently and effectively. The Electoral Assistance Unit, working in concert with the Electoral Assistance Trust Fund, could change the electoral landscape in Africa in such a way that it promotes political stability, peace, democracy, and good governance.

CLUSTER IV: POSTELECTION CONFLICT TRANSFORMATION MECHANISMS

The AU and RECs have a wide array of institutions with the competence to manage postelectoral crises in a timely fashion. The most significant question is when and how the AU can mobilize various institutional energies to make a difference in countries convulsed by electoral violence. The roles of these institutions hinge on their preparedness and their ability to coordinate with each other in transforming violent and uncertain postelectoral contexts into peaceful, fair, and just outcomes that respect democratic norms. There are also lessons from the Kenyan and Zimbabwean cases on how the AU should coordinate diverse intervention mechanisms in postelection conflict transformation.

CLUSTER V: INTERNATIONAL COORDINATION AND PARTNERSHIPS

International actors constitute a vital part of electoral management in Africa by mobilizing funds and administrative and technical expertise, as well as the sharing of experiences of democracy-building efforts. As wide-scale electoral violence becomes a core issue on the African landscape, bilateral and multilateral state and nonstate actors will become even more critical at each phase of the election cycle in terms of funding and technical assistance.

CLUSTER VI: STRATEGIC INTERVENTIONS BY THE PANEL OF THE WISE

As a new institution endowed with a recognized moral authority and the power of persuasion, the Panel of the Wise can effectively use its eminent position and mediation and negotiation skills to prevent, manage, and resolve electoral conflicts on its own and through other AU structures and instruments. Its small membership allows sufficient flexibility to rapidly intervene in all phases of the electoral process, particularly where crises are anticipated. The Panel's personal and professional attributes afford it wide latitude to carve a niche in electoral peacemaking and conflict prevention.

The Panel should also be furnished in the medium to long run with the technical and financial resources needed to sustain good-offices, advisory, assessment, and technical missions. The technical back-up for the Panel's conflict-management work should be provided jointly by the AU Department of Peace and Security and the AU Department of Political Affairs. The secretariat of the Panel should be further strengthened and be in a position to link the Panel's interventions strategically to those of the two departments relating to prevention, management, and resolution of election-related conflicts. Through the burgeoning numbers of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives. Working closely with the AU and subregional early-warning mechanisms, the Panel should be periodically apprised of electoral events that may lead to violence and conflict so that it can play a role in preventing such an outcome

The Panel can be deployed in two critical stages of elections: the pre-voting stage, with a focus on preventive diplomacy and early warning; and the postvoting stage, with a focus primarily on mediation. In its interventions in the prevention, management, and resolution of election-related conflicts, the Panel of the Wise

should work in close collaboration with other key AU organs and other existing fora of former heads of states in Africa.

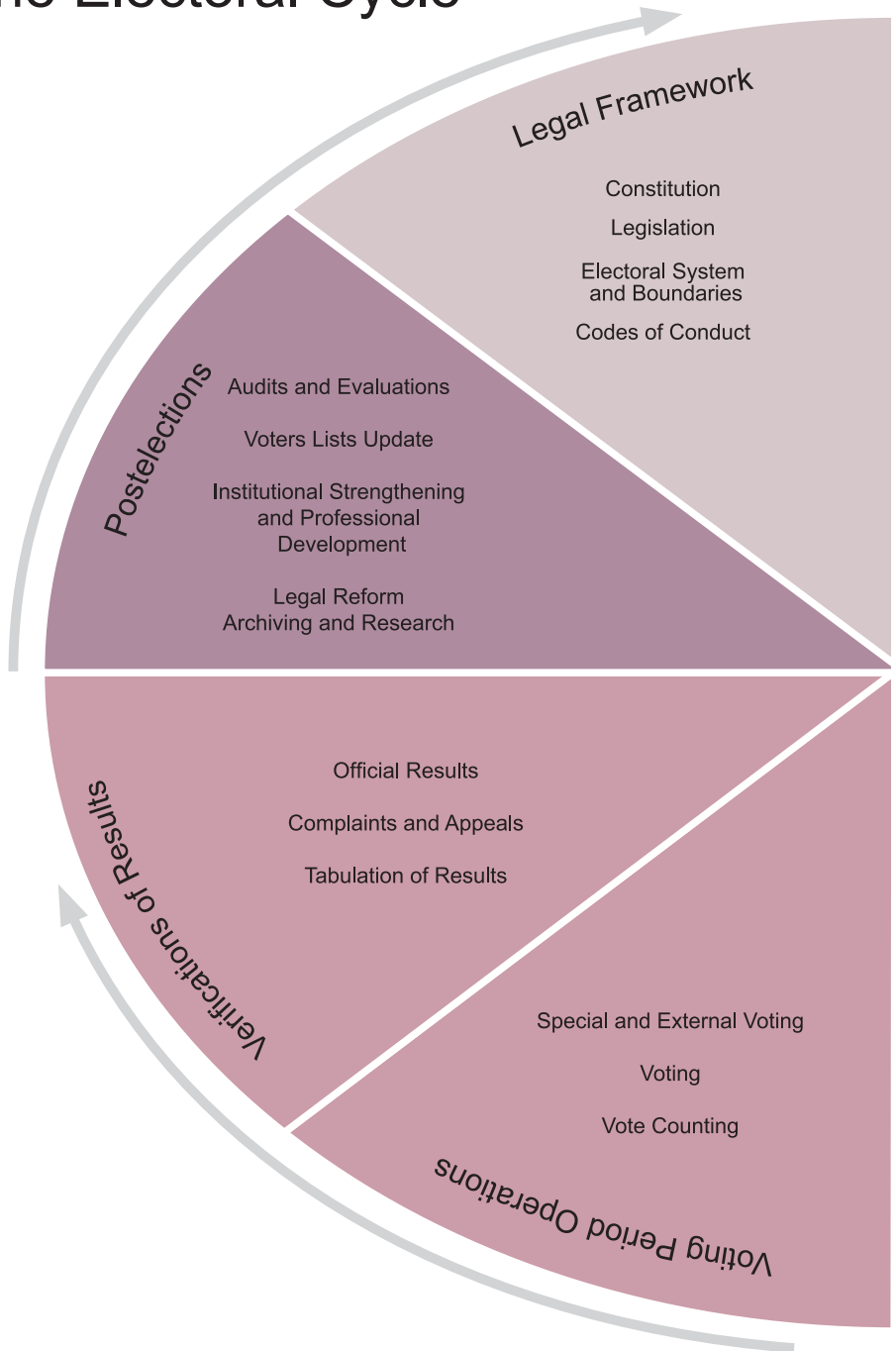
Introduction

1. The 2000 *Constitutive Act of the African Union* (AU) commits AU member states to democratic governance. The act declares that the AU shall “promote democratic principles and institutions” (Article 3(g)). Various other AU documents emphasize that democracy guarantees the protection of human rights, the right to development, as well as peace and security. The commitment of the AU to democracy, peace, and security is articulated in the 2002 *Memorandum of Understanding on Security, Stability, Development, and Cooperation* and the 2007 *African Charter on Democracy, Elections, and Governance*. As part of their commitment to promote democratic governance, peace, and security, the AU member states have institutionalized the practice of holding regular elections. Although holding elections is itself important, there is a need for them to be underpinned by a culture of transparency and credibility. The 2002 OAU/AU *Declaration on the Principles Governing Democratic Elections in Africa* emphasizes that “transparent and credible elections play a crucial role in ensuring the fundamental and universal right to democratic and participatory government.”¹
2. The AU further recognizes that there is no direct link between elections per se and democratization, peace, and security. In other words, some elections build democratic governance and prosperity of citizens. In other instances, ill-timed and ill-prepared elections may undermine democracy, generating political instability that reverses development gains. In some countries, elections have helped build solid foundations for democratic governance, but in others, they have led to contested results and violent conflict among political actors. Several AU documents acknowledge the risk associated with elections and have noted the violence and instability resulting from disputed elections. The efforts to consolidate

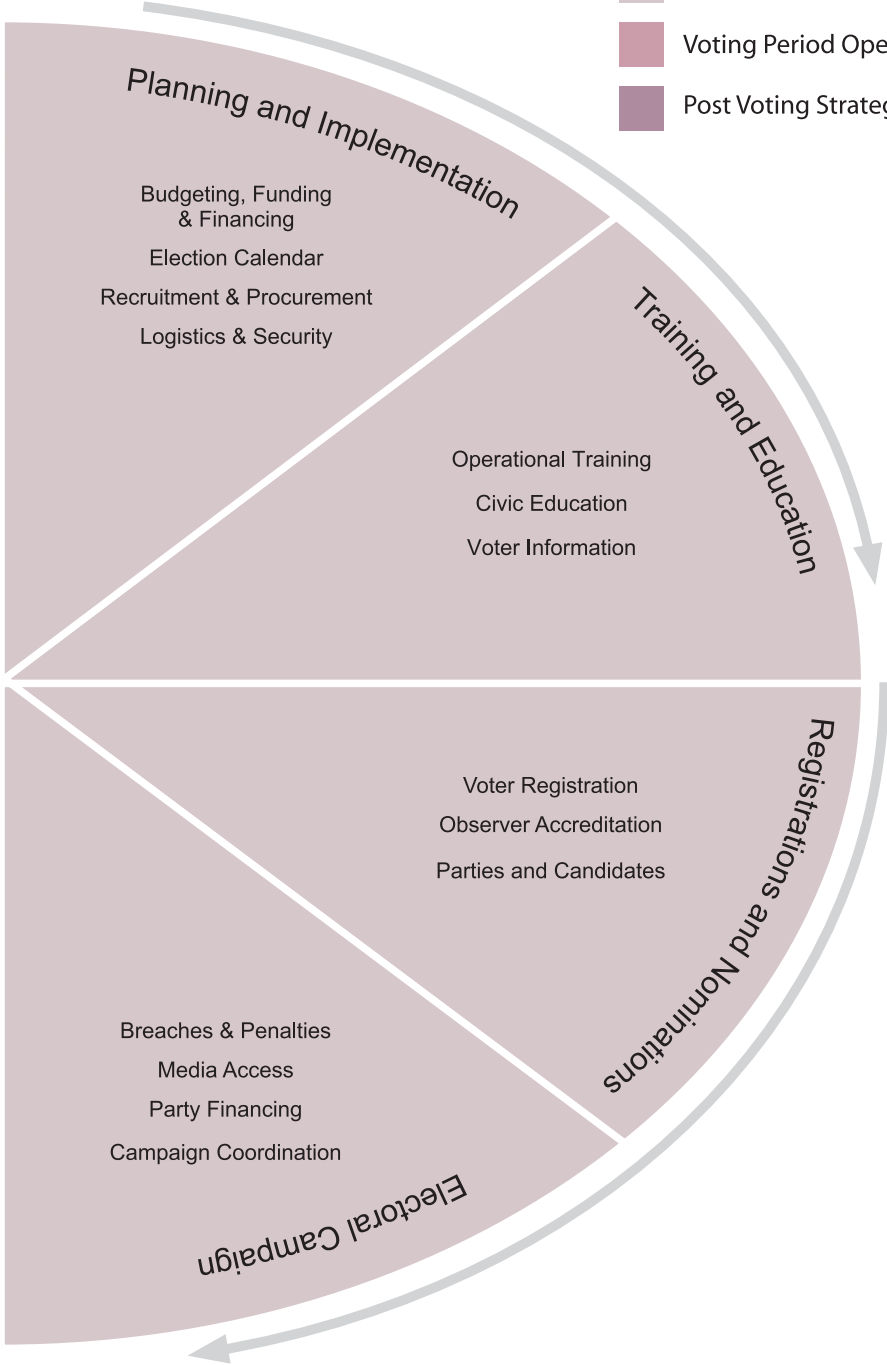
democracy are compromised when results are disputed and when such disputes escalate into political violence.

3. Thus, it is important to note that while elections are pivotal to the democratic process, they do not invariably make democracy; neither do they ensure peace and security. For elections to enhance democracy, relevant institutions need to be built, including impartial and independent election-management bodies (EMBs); and the roles of political parties and civil-society organizations in all stages of the electoral cycle need to be guaranteed.² In addition, elections promote peace and security where there is a culture of tolerance, regular political dialogue among key democracy stakeholders, and public trust of democratic institutions. In particular, it is crucial that adequate political preparations are made before elections are held, especially in the process of building democracy and peace in postconflict countries.
4. Given all these factors, the AU's approach to election-related disputes and conflicts needs to be aligned to the electoral cycle and take a long-term approach. The full electoral cycle is depicted in figure below.
5. From the electoral-cycle perspective, the AU should emphasize conflict prevention and preventive diplomacy prior to elections. In addition to the current work being done by its Department of Political Affairs, the AU needs to do more in the preelection phase to preempt election-related conflicts through conflict management, resolution, and transformation. Currently, the AU tends to focus mainly on election monitoring and observation during elections to ascertain how free and fair the electoral processes are. During the postelection phase, the AU often focuses on mediation, especially if an election leads to a contested result and political violence. In most of these cases, the AU does not take the leadership role; instead, it defers overwhelmingly to the RECs.

The Electoral Cycle



- Pre -Voting (preparations)
- Voting Period Operations
- Post Voting Strategies



6. Following the postelection crisis in Kenya in December 2007, the Assembly of the Union and the Peace and Security Council saw the need to conduct a study on election-related disputes. To this end, the Panel of the Wise was mandated to initiate reflections on strategies and measures to mitigate electoral violence. In its advisory role, the Panel of the Wise was asked to inform the Peace and Security Council and the chairperson of the AU Commission (AUC) on findings to prevent, manage, and resolve election-related conflicts. Thus, as part of its 2008 program, the Panel commissioned this study on election-related crises and tensions to contribute to conflict prevention on the continent. The main purpose of this study is to improve Africa's capacity to deal with these challenges, including the strengthening of the AU capacity to observe elections at national, regional, and continental levels.

Democratization Processes and Elections in Africa: Progress, Problems, and Prospects

7. The wave of democratization in Africa since the late 1980s stemmed from the confluence of circumstances and events. After years of military dictatorships and single-party governments, there was growing mass pressure for increased participation and accountability as part of a new momentum for political renewal. Equally significant, the end of the Cold War unleashed external pressures for democratization that were decisive in supporting the process of change. The coincidence of these factors produced the much-heralded “second liberation” that marked a significant chapter in Africa’s political rejuvenation. Almost twenty years after the inauguration of political pluralism, Africa has made remarkable progress in instituting the core principles and practices of democratic governance, with regular elections becoming routine and widespread, and leadership successions and rotations occurring more frequently than before. Although elections and leadership changes signify the steady growth of democracy, obstacles to consolidation remain. As the incidences of electoral violence that have accompanied recent elections in some African countries have demonstrated, the consolidation and sustainability of democracy depend on the construction of sturdy rules and structures of political competition.
8. The groundswell of internal and external pressures in the past couple of decades compelled African leaders to organize national conferences and other fora that facilitated the succession from authoritarian to elected governments. In most Francophone African countries, national sovereign conferences helped produce the transitional mechanisms that jumpstarted political pluralism and shaped the sociopolitical environment for political competition. In most Anglophone

African countries, there were limited changes to the existing constitutional structures that permitted the inauguration of political pluralism. Since the onset of pluralism, elections became the critical elements in the process of change by expressing popular will, engendering leadership changes, and providing legitimacy to elected governments. Not only did elections enable people to choose their representatives, but they also constituted the most important facet in redefining the reciprocal relations between governments and the people.

9. Between 1989 and 1994, thirty-eight African countries held competitive elections, while another eleven states followed suit and held founding elections between 1995 and 1997. In the same period, sixteen countries held second elections. The founding elections of the early 1990s produced vital breakthroughs that started the gradual liberalization of politics and expansion of civil liberties. The first phase of Africa's democratic transitions led to three distinct patterns. First, in some countries, opposition parties in alliance with a vibrant civil society campaigned for fundamental reforms that made a difference in the emergence of new leaders through competitive elections. In the second pattern, although opposition groups led the initiative for reforms in the political system, ruling parties either scuttled these reforms or watered them down. Most of the ruling parties ended up winning the subsequent elections. In the third pattern, democratic pressures ignited deep-seated ethnic divisions that led to civil wars.
10. The early phase of the democratic transitions was characterized by the slow growth of political parties with organizational programs and unity of purpose. Parties are essential to democratization because they are the core institutions of participation, lending meaning to competition, and offering alternative visions and perspectives to the electorate. Throughout Africa, there has been a strengthening of democratic norms and practices where political parties have emerged with coherent policies grounded

in popular support. After many years in which parties had been proscribed, it took a long time for political parties in most countries to regain strength and stature. Organizing political parties was also compounded by heightened ethnic and regional stakes produced by the democratic processes, raising profound questions about political stability in some countries.

11. By the late 1990s, although elections and multiparty competition had become internalized, there were renewed debates across countries about the need to revamp the rules that governed political competition, particularly in the creation of constitutional structures that reflected the reality of democratic transitions. The agitation for constitutional and electoral reforms grew from the recognition that since most of the democratic breakthroughs of the 1990s had been hastily organized, most African countries had had precious little time to institutionalize sound procedures for popular government. Furthermore, even though elections had become central instruments for political transformations, there had been little attention paid to building sturdy rules and institutions that would enhance organized and predictable competition. The impetus for reforms in electoral rules led to the search for competent, autonomous, and nonpartisan electoral bodies to administer the conduct of elections. Part of these campaigns entailed the search for more autonomous, impartial, and transparent election management bodies (EMBs). In addition to electoral reforms, constitutional reform movements focused on changes in the broader institutional environment supportive of meaningful and competitive elections. These campaigns recognized that democracy involves much more than just elections, hence the necessity of robust civil society, effective and independent legislatures, and impartial judiciaries.

12. The experiences of electoral reforms and other constitutional changes varied across the continent, reflecting the strength of reform movements, the willingness of authorities to concede to demands for reform, and the political stakes coalescing around constitutional change. But in general, electoral and constitutional reforms since the late 1990s yielded three outcomes. First, because of ethnic fragmentation and elite conflicts, some countries did not make significant progress in altering the rules that determine competitive politics; instead, despite widespread clamor for constitutional change, these countries have witnessed stalemates in the dialogue on rules that would underwrite multiparty politics. These countries continue to be characterized by considerable strife and political uncertainty. Second, some countries have instituted far-reaching electoral and constitutional reforms that have stabilized multiparty politics and liberalized the wider social and political environment. In most of these countries, national leaders have been selected consistently through public, competitive, free, and fair elections that have also been peaceful.
13. In between these two extremes are countries that are struggling to build participatory democracies on the basis of unreformed and undefined institutions. In the latter cases, constructing new rules has posed formidable challenges, largely because of the prevalence of enormous constraints on the effective participation of political parties. In addition, some of these countries have had reversals in the democratic reforms, which made it difficult to expand political space.
14. Despite these diverse experiences, most African countries have had an average of three elections since the onset of pluralism, underscoring the considerable progress made toward democratization. Repeating cycles of elections has been one of the greatest achievements of democratization, producing a spiral of self-reinforcement. In the hostile socioeconomic

conditions prevalent in many African countries, the growth of democracy has defied the pessimistic analyses which doubted the possibilities of positive political change in Africa. Democracy has flourished in countries where there has been alternation among major parties and where opposition parties have had the opportunity to govern. These countries have also evidenced high levels of confidence among the people in the credibility of electoral rules and the strengthening of institutions that complement and underwrite stable competition. More importantly, these countries have become models of durable democracy whose experiences have been transmitted in Africa's various subregions. In other countries, however, the dominant party system has persisted, whereby one party continues to govern unimpeded, opposition parties remain on the margins of power, and where, in some instances, intolerance and animosities pervade most social aspects of life.

15. The other critical trend that emerged in the late 1980s and early 1990s in the democratization process was the remarkable recovery of countries that were formerly engulfed in civil wars. International efforts to negotiate constitutional compromises in war-torn countries steadily created conditions for the emergence of vigorous democratic experiments that reversed years of state collapse and defied the popular myths of chaotic Africa. In addition to learning from the experiences that produced civil wars, these countries have benefited from the resources the international community devoted to the construction of stable constitutional rules prior to elections, the management of electoral processes, and a host of economic and social support programs to consolidate the gains from democracy. Although they are still relatively tentative in their democratic experiments and face obstacles to institutional regeneration, the dramatic recovery of formerly war-torn countries is a milestone in the annals of democratization on the continent. These success stories

of democratic recovery are also instructive to countries that continue to face endemic political conflicts and structural violence.

16. Almost two decades into the democratic transitions, progress in Africa is far from uniform, but there is widespread recognition that democracy is a process, not an event, and the key element in building democratic culture in Africa is anchoring the ongoing practices in clear procedures and strong institutions supported by assertive countervailing groups in civil society. The widespread reforms in electoral processes in Africa have yielded a remarkable convergence about fair and transparent rules to conduct and organize elections. This continental convergence is witnessed in the proliferation of EMBs that are functional and financed through national treasuries. There has also been recognition that well-endowed EMBs are the firewalls against manipulation and other egregious practices that reduce the credibility of elections and cause violence. Likewise, the growing culture of election monitoring and observation by local and international actors has been important in contributing to the credibility and transparency of electoral processes. As many African countries have held successful elections that have led to changes in power and enhanced democratic accountability, there has been a healthy trend toward consolidation.
17. It is within this context that presidential term limits, most often of two terms, became a common feature of democratic constitutions adopted in the 1990s. As a result, a number of presidents stood down after having completed their two terms in office. In other cases, ruling parties made decisions to abolish or extend presidential tenure on the grounds that such constitutional provisions artificially limit the democratic choice of citizens. While some of the countries that embarked on this process have successfully carried out the required

constitutional reforms, others have failed because of a strong domestic backlash.

18. As democratic norms and patterns have taken root across Africa, a consensus has begun to emerge that electoral competition has generated multiplier effects that have spilled over into other facets of society. Elections and electoral competition have contributed to the liberalization of society by endowing citizens with a louder voice and greater capacity to exercise their civil and political liberties. Countries that have held elections have also witnessed the expansion of press freedoms, more citizen demands for accountability, and the flourishing of a wide array of organizations supportive of democracy. These positive spillover effects have, in turn, enhanced the legitimacy of leaders and the reciprocity between the governors and governed. The emerging democratic culture is boosted by large-scale surveys throughout Africa that reveal that people overwhelmingly support democracy and reject authoritarian rule.
19. The strides made in deepening democracy are threatened by the emergence of violently contested elections and by the return of militaries to power in some parts of Africa. Despite AU provisions against forcible seizure of power and the denunciation of military coups, over the last three years, there has been a resurgence of militarism and military rule in some countries. In some instances, militaries have intervened to take advantage of disarray within civilian institutions, particularly divisions among civilian leaders on key national issues. In others, militaries have taken power ostensibly to prevent their countries from descending into chaos and civil violence following major leadership transitions. Generally, the rise of military regimes is a symptom of failures to solidify civil-military relations that are underpinned by the democratic ethos of civilian control of national governance. It is also an illustration of either the fragility or decay of the democratic

institutions which are therefore dysfunctional. Building and solidifying democratic institutions and inculcating a culture of democracy and peace will go a long way in reversing this ominous phenomenon of militarism.

Election-Related Conflicts and Political Violence: Causes and Consequences

20. Electoral conflicts and political violence have featured in Africa's democratization, signaling weaknesses in the governance of elections, the rules of orderly political competition, and the lack of impartial judiciaries to interpret and adjudicate electoral disputes. The challenges of electoral conflicts and political violence reflect the problems of transitions to democracy associated with managing elections and building institutions of competition that are widely accepted by winners and losers. In other instances, electoral conflicts and political violence arise, in part, from reactions of groups that have been deliberately disadvantaged and disempowered by their opponents. Claims about the deliberate subversion of the ends of electoral and democratic processes are always invoked by losers who then seek redress through violence. Although certain levels of violence frequently occur at different stages of the electoral process in Africa, the upsurge of electoral contestations that lead to large-scale violence is an emerging issue of policy concern. Elections that end in widespread conflict and violence, resulting in the loss of lives and the destruction of property raise questions about election management and administration, but also about the long-term impact on the consolidation of political competition.
21. In general, violence during any stage of the electoral cycle that arises from differences in political views, opinions, and practices could be defined as electoral violence. As one form of political conflict, electoral violence typically occurs when

groups and parties use force to intimidate opponents to affect the electoral process and outcomes in their own favor. At heart, electoral violence fractures political competition and impedes or criminalizes political dissent. The use of threats and intimidation during voter registration may disenfranchise part of the population, while assaults and assassinations during election campaigns may force political contenders to boycott elections. In some circumstances, parties may use forms of electoral violence to seize power and extinguish the democratic process altogether. Electoral conflicts and political violence also occur in the aftermath of contested elections where groups or parties use violence to contest the legitimacy of outcomes or alter it completely. Both localized and national forms of electoral violence adversely affect social stability and, if not properly managed, could, in combination with other conflict fissures, lead to anarchy and civil war.

22. In the incipient phase of democratization in Africa in the late 1980s, political and electoral violence was caused by the determination of ruling parties under siege from emerging opposition parties to hang onto power. In this fragile era of democratization, dominant parties accustomed to occupying the political space hardly countenanced the power and legitimacy of opposition forces. Violence often occurred during the elections, particularly as competing parties sought to mobilize constituencies using all available means. Facing intense pressure from new and untested political parties, some of the ruling parties resorted to political violence aimed at subverting the electoral process and outcomes. They also deployed partisan state institutions, particularly the military, paramilitary, and police forces against opposition groups. Political and electoral violence organized by ruling parties included forceful dispersions of political rallies, beating, assault, arbitrary detention of leaders and followers, torture, murder, and wanton destruction of property. Furthermore, blatant manipulation of the electoral process, including vote

buying, intimidation of voters, and rigging and destruction of ballot boxes became part of the repertoire of violence for parties determined to deny their opponents the opportunity to take power. Similarly, opposition parties and groups, invoking the language of fairness and seeking to undo years of authoritarianism, also engaged in forms of violence such as violent street demonstrations, arson, and destruction of property, to counter state-instigated violence.

23. The patterns of electoral violence that characterized the electioneering process often persisted into the postelectoral phase, particularly where losing parties challenged the legitimacy of winners. In some of the elections in the mid-1990s, losing parties challenged the results through mass demonstrations, destruction of property, threats and intimidation of opponents, and work stoppages. These events, in turn, elicited violent responses by regimes that sought to restore order, peace, and security. In some cases, the spiral of violence throughout the electoral cycle forced opposition groups to boycott the elections, especially in circumstances where organized violence by ruling parties succeeded in curtailing the organizational abilities of weak and fledgling parties.
24. Although the reluctance by ruling parties to accept legitimate political competition and pluralism dominated the initial democratic transition, deep ethnic and regional cleavages in most African countries also contributed to political and electoral violence by raising the stakes of competition. In ethnically divided societies, the costs involved in losing or winning elections are sometimes fundamental to the well-being of entire communities. With the politicization of communal or ethnic identities, winning an election can be a matter of survival in the eyes of the parties competing for power. Electoral violence in Africa has occurred where the uncertainties of electoral outcomes have aggravated

communal, ethnic, and religious conflicts. The most common element of this dynamic is where politicians mobilize support from ethnic and regional constituencies to win elections without attempts to reach out to other groups. The most publicized cases of electoral violence in Africa entailed elites from different ethnic groups appealing to sectarian and partisan interests, transforming elections into zero-sum contests. These patterns of mobilization, in turn, invited violent reactions from competing ethnic and regional groups, igniting violence during and after elections.

25. In extreme instances, electoral violence took the forms of ethnic cleansing, balkanization, sabotage, evictions, and mass displacements. The results were ethnic and regional disenfranchisement that deprived opposition challengers of the minimum conditions necessary for effective participation. In some countries, the patterns of political marginalization and disenfranchisement continued into the postelectoral phase where whole groups and communities were economically disenfranchised because of their support for losing parties, intensifying political exclusion and alienation.
26. One of the outcomes of the political and electoral conflicts of the 1990s was the incremental militarization of society as aggrieved and marginalized groups in some countries resorted to arms to protect themselves against violence perpetrated by opposition groups. Although in some African countries, militarization of large segments of society was a consequence of years of civil war, there are countries where election-related violence invariably generated defensive militarization that continued to have an impact on subsequent elections. Where militarization coincided with economic and political marginalization, there emerged in some countries an infrastructure of violent dissent. Initially used in the first phase of electoral and political competition, armed militias and violent youths have gradually mutated into strong organizational structures

that have perpetrated violence during elections and beyond. In some countries, the militarization of youth coincided with a dramatic increase in poverty leading to a class of economically disenfranchised people who could be used to perpetrate political and electoral violence.

27. In societies undergoing democratization soon after civil wars, elections have frequently descended into military confrontation between armed factions. Electoral competition in conditions of political instability leads some parties to use political violence as an alternative to accepting electoral defeat. This is more so where there have been insufficient or weakly implemented programs of disarmament, demobilization, and reintegration. In some postconflict contexts, elections exacerbate existing conflicts and harden conflict-related alliances, leading to incidences of violence. It is for this reason that discussions of elections in postconflict environments focus on questions of timing and supervision: sometimes, elections that are held too early without close international supervision can produce results that may extend the conflict rather than resolve it. However, as most of the countries recovering from civil wars in Africa have shown, postconflict elections that are managed by the deployment of international resources may help to defuse existing conflicts, creating lasting institutions for conflict management.
28. The momentum for electoral and constitutional reforms since the late 1990s arose from widespread desire for structures that would stabilize political competition, manage the fissures of ethnicity and regionalism, and enhance transparency, predictability, and impartiality of electoral governance and administration. Some of the constitutional reforms dealt with changes in the electoral systems to mitigate the winner-take-all systems that deprived losing parties of electoral representation. Other reforms touched on boosting the independence and effectiveness of EMBs, thus endowing them with

the capacity and autonomy to be impartial players. The priority accorded to impartial and effective electoral management systems stemmed primarily from the fact that people disappointed with election results are always those likely to contest electoral outcomes in violent ways. Furthermore, to lessen electoral violence and increase mutual confidence, some of the key reforms across Africa involved the initiation of codes of conduct that govern competition among parties. Where political parties used violence and intimidation to promote sectarian ends, codes of conduct seek to enjoin them to observe a core set of civic principles and norms.

29. Beyond changes to improve the quality of electoral management to reduce violence and conflicts, some African countries instituted fundamental constitutional changes to level the playing fields. In a number of AU member states, such reform measures have included abolishing restrictions on the formation of political parties; financing of political parties; reforms to reduce the control by incumbents of information and enable equal access to vital media organs; expanding the role of civil society and other stakeholders around political questions; and boosting the capacity of the judiciary to help adjudicate and resolve election disputes. All these reform measures notwithstanding, electoral playing fields are often uneven as ruling parties enjoy political advantage over opposition parties leading to contested electoral outcomes. But, in some countries, constitution-making has also occasioned high levels of political violence during the process and the subsequent constitutional referenda. Like elections, constitutional referenda to establish rules of competition have faced violent reactions from parties and groups in and out of government to put limits on pluralism and marginalize opponents. For the most part, constitution-making became highly contested and conflict-ridden where contesting groups and constituencies failed to agree on new power-sharing rules.

30. Similarly, violence and political conflicts have arisen from bids by incumbent governments and leaders to change existing constitutional rules to extend their terms in office or reformulate rules to favor certain succession candidates. Changes in term limits in some African countries since the early 2000 have led to conflicts, dividing societies and worsening political tensions, with aggrieved parties using or threatening to use violence to defend the status quo. In these countries, the consequences of conflicts over term limits have invariably affected electoral processes with incumbents attempting to use elections to legitimate such changes while the challengers scramble to prevent such outcomes. In a number of instances, contests over constitutional arrangements and term limits have been violent or have foreshadowed the onset of widespread electoral violence.
31. Where electoral and constitutional rules have been established, violence occurs due to either the willful changing of established rules or organizational deficiencies in the administration of those rules. Countries that have witnessed electoral violence have frequently been characterized by high levels of contestation of the legitimacy of previous election outcomes, particularly by losing parties. Frustration with flawed elections boils over into violence particularly where there has been a pattern of selective use of the law to exclude political rivals and suppress the common will. The new outbursts of electoral violence are reminiscent of the incipient phase of Africa's democratization, where the electoral rules for multiparty competition have not been widely accepted and where strong parties with long-standing dominance of the political process cannot countenance defeat. In these instances, opposition groups that have never had a chance to govern perceive elections as the vehicles to ascend to power, while the incumbents see elections as means to legitimate their continued rule.

32. Electoral violence everywhere imperils democracy by distorting normal mechanisms of political competition but, more fundamentally, by increasing mass apathy toward and alienation from politics. In those African countries that have made significant progress in building pluralism, the growing incidence of electoral violence has dampened the impetus for democratic consolidation. In some countries that have witnessed a history of interethnic coexistence and amity, violent skirmishes resulting from poorly administered elections have resurrected societal fault-lines, casting doubt on the patterns of statebuilding and national harmony.
33. There is also growing concern that in recent outcomes of contested elections, the international community has expeditiously prescribed negotiated arrangements to stabilize volatile situations. Although it is understandable why national and international actors would move precipitously to forestall the destabilization of national institutions that comes with the upsurge in electoral violence, wholesale prescriptions of power-sharing arrangements and institutions may weaken the trend toward building competitive rules that clearly define losers and winners. Power-sharing arrangements that create broad-based governing coalitions after violent electoral processes may reward parties that intimidate opponents through violent means. They may also potentially undermine democratic values by making a mockery of the essence of electoral competition. Moreover, postelectoral power-sharing institutions may end up being brittle solutions that, although keeping violence in check, create divided and dysfunctional governments that may worsen governance. For partners in the emerging power-sharing arrangements, the challenge is to seize the momentary opportunities created by periods of relative stability to craft enduring rules that preempt the resurgence of electoral violence.

Relevant AU Instruments for Peace, Democracy, and Credible Elections

34. The African Union (AU) is firmly committed to peace and democratic governance in Africa. To this end, its fifty-three member states have adopted instruments relating to peace, democracy, and credible elections. This chapter of the report examines these instruments as enunciated in various official AU documents. The first part discusses the AU commitments relating broadly to democratic governance, peace, and security. The second part focuses specifically on AU declarations relating to the holding of credible democratic elections. The conclusion highlights the remaining challenges that require strategic policy responses from the AU.

KEY AU INSTRUMENTS FOR DEMOCRACY, PEACE, AND SECURITY

The Constitutive Act

35. The 2000 *Constitutive Act* of the African Union is the principal instrument, and the founding treaty, that commits member states to democratic, representative, and responsive governance under conditions of peace and stability. Articles 3 and 4 of the *Constitutive Act* enunciate the key objectives and principles of the AU respectively. The principal plank of these two articles is the unequivocal embrace of popularly elected governments and outright rejection and condemnation of unconstitutional changes of government in line with the 2000 *Lomé Declaration*. In these two articles, the AU upholds the basic democratic principle that elections are a legitimate method of transfer of power and the only democratic manner of expressing popular sovereignty in a representative democracy. The *Constitutive Act* also recognizes that sustainable democratic governance in Africa requires political stability, peace, and security in conformity

with the 2002 *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*. Without political stability, peace, and security, democracy is likely to be compromised and socioeconomic development will not be achieved. Cognizant of this challenge, the main objectives of the AU, as enshrined in the *Constitutive Act*, include the following:

- the promotion of peace, security, and stability on the continent;
- the promotion of democratic principles and institutions, popular participation, and good governance; and
- the promotion and protection of peoples' rights and human rights in accordance with the *African Charter on Peoples' and Human Rights* and other relevant human rights instruments.³

36. The above objectives demonstrate the evolving AU peace, democracy, and human rights architecture in Africa. They are complemented by a set of clear principles that guide the AU as articulated in Article 4. These include the following:

- respect for democratic principles, human rights and the rule of law, and good governance;
- respect for the sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism, and subversive activities; and
- condemnation and rejection of unconstitutional changes of government.⁴

37. Various other AU documents⁵ have reinforced the organization's commitment to building a democratic, stable, peaceful, and prosperous Africa.

Conference on Security, Stability, Development, and Cooperation (CSSDCA)

38. The 2000 *Conference on Security, Stability, Development, and Cooperation in Africa* (CSSDCA) commits AU member states to pursue peace and security, political stability, socioeconomic development, and regional/continental cooperation and integration. The declaration states that “democracy, good governance, respect for human and peoples’ rights and the rule of law are pre-requisites for the security, stability and development of the continent.”⁶ The declaration espouses three complementary principles:

- the peaceful resolution of disputes needs to place emphasis on seeking African solutions to African problems;
- the prevention, management, and resolution of conflicts provide the enabling environment for peace, security, stability, and development to flourish; and
- the responsibility for security, stability, and socioeconomic development of the continent lies primarily with African states.⁷

39. During the AU Summit of Heads of State and Government held in 2002 in Durban, South Africa, the *Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa* was adopted with a view to putting into effect the 2000 *CSSDCA Solemn Declaration*. The memorandum of understanding (MOU) defines clearly how AU member states should pursue the key objectives of security, stability, development, and cooperation. It also outlines a plan for achieving the set objectives, and identifies performance indicators with timeframes. The MOU exhorts the AU member states to do the following:

- Adhere to the fundamental tenets of a plural democratic society; and these include a promulgated constitution

with a bill of rights provision; free and fair elections at constitutionally stipulated intervals; multiparty political systems; the separation of powers, including an independent judiciary; a free press and freedom of expression and assembly; effective military subordination to civilian authority; and accountability and popular participation in governance.

- Uphold the principle of constitutionalism so that the political class and civil society at all levels commit to abiding by and respecting the provisions of the constitutions of their states.
 - Accept the necessity for significant improvement in the African electoral process, including the establishment of truly independent national electoral commissions and other appropriate mechanisms to ensure transparency, fairness, and credibility of elections.
 - Observe, protect, and promote the human rights of all Africans.
 - Quickly establish the African Court on Human and Peoples' Rights.
 - Strengthen, improve, and practice good governance in public and private domains in Africa to ensure adherence to the rule of law, strict accountability by all, and transparency in public affairs.⁸
40. The MOU goes beyond declaration and spells out clear performance indicators and timeframes for the achievement of set objectives. First, on security, the MOU exhorted member states to establish national institutions or mechanisms for prevention, management, and resolution of conflicts with active participation of civil-society organizations and community-based organizations (CBOs) by 2004. Second, with respect

to stability, the MOU emphasized the achievement of the following objectives:

- adoption, by 2004, of a constitutions and bills of rights provision, free and fair elections, an independent judiciary, freedom of expression and subordination of the military to legitimate civilian authority, rejection of unconstitutional changes of government, and implementation of these principles by 2005;
- adoption by 2005 of a commonly provided code of conduct for political office holders that stipulates, inter alia, a limitation on the tenure of elected political office holders based on the periodic renewal of mandates, which governments should scrupulously abide by;
- establishment by 2003, where they do not exist, of independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent elections in all African countries;
- adoption and standardization, by 2003, of guidelines for independent and effective observation of elections in AU member states, with the provision of an effective electoral assistance unit within the AUC which should include provision for strengthening civil society and local monitoring groups in individual African countries aimed at ensuring free and fair elections and the reports of the AU observer missions should be made public;
- adoption by 2004, where it does not exist, of enabling legislation on the formation and operation of political parties to ensure that such parties are not formed or operated on the basis of ethnic, religious, sectarian, regional, or racial extremism; and establish a threshold of voter support as a criterion for public funding, without compromising freedom of association and the principle of multiparty democracy;

- taking measures, by 2005, to promote gender equality and ensure equal representation of men and women in all national, regional, and continental institutions as well as the elimination of all laws that discriminate against women in African countries; AU member states should also adopt, sign, and ratify the *Protocol to the African Charter Relating to the Rights of Women in Africa*, as well as other instruments to promote and protect the rights of women.

The African Charter on Democracy, Elections, and Governance

41. The 2002 AU summit in Durban did not only build momentum for advancing democratization through the adoption of the NEPAD (New Partnership for Africa's Development) Declaration on Democracy and the adoption of the African Peer-Review Mechanism (APRM), but it further inspired enthusiasm for the development of the *African Charter on Democracy*. This enthusiasm provided impetus to the organization of a continental conference co-hosted by the Independent Electoral Commission of South Africa, the African Association of Electoral Authorities, and the African Union Commission in Pretoria, South Africa, on April 7-10, 2003, on the theme "Elections, Democracy, and Governance: Strengthening African Initiatives." The final statement adopted by the conference exhorted African states to expand the frontiers of democratization.⁹ Later that year, the 2003 Summit of the AU Heads of State and Government held in Maputo, Mozambique, considered the draft *Declaration on Elections, Democracy, and Governance* and mandated the AUC to transform this declaration into a charter. The AU decision to develop an African democracy charter was further reinforced during the Council of Ministers meeting held in Addis Ababa in May 2004. It took the AUC about three years (2004-2007) to develop the *African Charter on Democracy, Elections, and Governance* which is the most

comprehensive commitment by the AU to date to deepening and consolidating democratic governance in Africa.

42. The *African Charter on Democracy, Elections, and Governance* was adopted during the eighth ordinary session of the assembly of the AU convened in Addis Ababa on January 30, 2007. The adoption was the culmination of various meetings of government, independent, and legal experts which debated and refined various drafts between 2004 and 2006. The evolution of the charter was, therefore, an inclusive process ensuring that as many key stakeholders as possible had input in the development of this historic document intended to set Africa on a sustainable path of democracy, constitutionalism, rule of law, and human rights. The charter is the most comprehensive human rights and democracy instrument in Africa.
43. By March 2010, the *Charter on Democracy, Elections, and Governance* had been signed by thirty member states of the African Union: Benin, Burkina Faso, Burundi, Central African Republic, Chad, Côte d'Ivoire, Congo-Brazzaville, Djibouti, the Democratic Republic of the Congo, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Mauritius, Namibia, Nigeria, Niger, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Togo, and Uganda.
44. The signatories of the charter have been slow to ratify it. So far, it has only been ratified by Ethiopia, Mauritania, and Sierra Leone. This means that another twelve states still have to ratify the charter before it becomes a legally binding document. More efforts need to be made by the signatories, and all the other member states, to ratify the charter as soon as possible, so that the threshold of fifteen states will be reached and the charter will then become fully binding.

45. Between 2007 and 2008, the AU Department of Political Affairs embarked upon a popularization program aimed at imploring states to sign and ratify the charter. The principal objectives of these popularization workshops, which involved all five African subregions, were to
- sensitize decision makers and other stakeholders to the value and contents of the charter;
 - develop common perspectives on how charter ratification could contribute to improving governance in each region;
 - build an understanding of the role of different actors in the ratification process;
 - share insights on the various ratification procedures applied by AU member states;
 - establish a common perspective on the actions that would be taken at subregional and state levels to ensure that the charter is ratified; and
 - contribute to the overall continental framework for action on the popularization, ratification, and application of the charter.
46. The charter derives its authority and legitimacy from the *Constitutive Act* of the African Union, in particular Articles 3 and 4 which commit member states to participatory democracy, constitutionalism and the rule of law, human rights, peace and security, as well as sustainable human development in Africa. It builds on previous commitments to democratic governance enunciated through numerous declarations, decisions, and instruments (see endnote 5).
47. The charter, therefore, consolidates the above commitments of the AU member states to democratic governance and brings together these noble declarations into a single solidified treaty with legally binding commitments. It serves as a consolidated

point of reference for all the AU efforts aimed at enhancing the overall state of democracy, elections, and governance throughout the continent. With the adoption of the charter in January 2007, African countries have committed themselves to an established set of common standards, principles, and guidelines for participatory democracy, credible elections, and good governance and, in the process, hold each other accountable for their actions and inactions.

48. More specifically, the charter emanated from the long-standing concern of AU member states at unconstitutional changes of government and the consequent political instability, insecurity, and violent conflict. Unconstitutional changes of government had become one of the major destabilizing factors in Africa reversing democratic gains and threatening socioeconomic development. Article 23 of the charter provides that the following means of accessing or maintaining power constitute unconstitutional changes of government and shall draw appropriate sanctions by the AU:
- any putsch or coup d'état against a democratically elected government;
 - any intervention by mercenaries to replace a democratically elected government;
 - any replacement of a democratically elected government by armed dissidents or rebels;
 - any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair, and regular elections; or
 - any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.
49. Drawing from the 2000 *Lomé Declaration*, the *AU Constitutive Act*, and the above article of the charter, there is a commitment

on the part of the member states to jettison the culture of unconstitutional changes of government. Military coups have been met with punitive measures by the AU through its Peace and Security Council. Indeed, the 2008 military coup in Mauritania led the AU to suspend the country from the organization and to the launching of diplomatic efforts to restore democracy, peace, and security. AU member states are now more committed than ever to promoting and strengthening democratic governance through citizen participation, transparency, accountability, rule of law, gender equality, decentralization, human development, eradication of poverty, and credible elections.

50. The *African Charter on Democracy, Elections, and Governance*, reinforces the commitment of AU member states to hold credible, transparent, and legitimate elections that enhance democratic governance and in the process promote peace, security, and political stability, all of which are critical prerequisites for socioeconomic development. The charter implores AU member states to strive to hold genuine and credible elections with legitimate and acceptable outcomes. To this end, the charter exhorts member states to

- establish and strengthen independent and impartial national electoral bodies responsible for the management of elections;
- establish and strengthen national mechanisms that redress election-related disputes in a timely manner;
- ensure fair and equitable access by contesting parties and candidates to state-controlled media during elections; and
- ensure that there is a binding code of conduct governing legally recognized political stakeholders, government, and other political actors prior to, during, and after elections that will include a commitment by political stakeholders

either to accept the results of elections or challenge them exclusively through legal channels.

51. One of the factors that propels political tension around elections is misunderstanding among political players of the electoral contest and its rules. This situation leads to mistrust and mutual suspicion among the key players. Erroneously, political players tend to perceive elections as a zero-sum game in which a winner takes all and the loser loses everything. Elections are supposed to be perceived as a positive-sum game in which both the winners and losers accept the outcome and feel bound to cooperate in the governance process following the poll. It is for this reason, among others, that the charter encourages systematic and regular dialogue among key political players. Article 13 of the charter provides that “state parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace.” The adoption of the charter by the AU is a significant step in the right direction. Experience has shown that while the adoption of progressive peace, security, and democracy declarations is easy, it is more difficult to translate these instruments into legal frameworks and policy practice. It is, therefore, incumbent upon the AU member states to sign, ratify, and domesticate the charter. Concrete steps toward achieving the goals and objectives of the CSSDCA and the democracy charter will go a long way toward building peace and promoting democratic governance in Africa.

KEY AU INSTRUMENTS FOR CREDIBLE ELECTIONS

52. The above section has elaborated the various key AU instruments on democracy, peace, and security in Africa. This section focuses on key AU instruments dealing with credible elections. Almost all the above-mentioned AU instruments

for democratic governance cover aspects of elections emphasizing the value of elections to democracy, peace, and political stability. In addition, there are specific instruments that outline the AU commitment to holding credible, transparent, and legitimate elections. These instruments are important because experience has shown that the mere act of holding regular elections, while good in and of itself may not be a sufficient indicator of the “democraticness” of a country. Elections alone do not always promote democracy, peace, and political stability. There is a dire need to emphasize the quality of these elections to democracy, political stability, and peace. While, in a majority of countries, elections lead to democratization, stability, peace, and security, in others they have triggered political instability, violence, and war. The AU member states need to create a climate in which elections are a political asset rather than a liability to democratic governance, peace, and security.

53. It is, therefore, becoming clear that while the holding of regular elections is a critical indicator of progress on democracy in Africa, the regularity and frequency of elections on their own are inadequate as measures of democratic advancement. Besides regularity and frequency, there is need to ensure that the election process itself is transparent, all-inclusive, consultative, impartially managed, and credible. The outcome must also be viewed as acceptable, legitimate, and collectively owned by all key stakeholders. The rules of the game must be known and widely accepted by all the stakeholders. The results of elections must not be known in advance. Knowing the procedures well and not knowing the results in advance are what some have referred to as procedural certainty and substantive uncertainty. According to some scholars, in order to ensure the quality of elections, electoral governance must be predicated upon procedural legitimacy and certainty, while at the same time guaranteeing substantive uncertainty:

The close association between procedural legitimacy and substantive uncertainty poses the paradoxical challenge “institutionalizing uncertainty” The paradox is that substantive uncertainty requires procedural certainty. It is this paradox that defines the central task of electoral governance: organizing electoral uncertainty by providing institutional certainty. Distinguishing between substantive and procedural uncertainty enables a more nuanced understanding of variations in political actors’ risk-aversion. Authoritarian and democratic actors, for instance, exhibit different attitudes toward uncertainty. While the former attempt to reduce the uncertainty of outcomes, the latter attempt to reduce the uncertainty of institutional rules.¹⁰

54. Democracy scholars and activists alike agree that if electoral governance is to be adequately democratized, there is dire need for the institutionalization of procedural certainty and substantive uncertainty. It is under conditions in which electoral rules and procedures are transparent and election results are uncertain that elections are most likely to produce legitimate and acceptable outcomes. To this end, the AU has invested considerable efforts in developing norms, standards, principles, and guidelines governing elections in Africa in the recent past. The two key ones are (a) the *OAU/AU Declaration Governing Democratic Elections in Africa*, July 2002; and (b) *Guidelines for African Union Electoral Observation and Monitoring Missions*, July 2002;

The OAU/AU Declaration Governing Democratic Elections in Africa

55. The OAU/AU declaration was adopted during the Heads of State and Government Summit held in Durban in 2002. Through the declaration, AU member states accepted the reality that (a) democratic elections are the basis of the authority of any representative government; (b) regular

elections constitute a key element of the democratization process and therefore are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability, and development; and (c) the holding of democratic elections is an important dimension of conflict prevention, management, and resolution. The declaration further commits AU member states to elections that are conducted

- freely and fairly;
- under democratic constitutions and in compliance with supportive legal instruments;
- under a system of separation of powers that ensures in particular the independence of the judiciary;
- at regular intervals, as provided for in national constitutions; and
- by impartial, all-inclusive, competent, accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

The Guidelines for African Union Electoral Observation and Monitoring Missions

56. The *Guidelines for African Union Electoral Observation and Monitoring Missions* were also adopted in Durban during the Summit of Heads of State and Government in 2002. The guidelines are meant to facilitate the implementation of some of the key aspects of the *Declaration Governing Democratic Elections in Africa*. Through the guidelines, AU member states recognize that electoral observation and monitoring have

become an integral part of the democratic and electoral processes in Africa. International, regional and national observers have come to play important roles enhancing

the transparency and credibility of elections and democratic governance and the acceptance of election results throughout the continent. Electoral observation and monitoring missions can also play key roles in diminishing conflicts before, during, and after elections.¹¹

Prior to sending a full-fledged mission, the AU dispatches an assessment team to a country holding elections. It is the assessment by this preelection mission that will inform and determine the nature and mandate of the AU electoral mission. Such a mission could then take one or more of the following forms: (a) observation; (b) monitoring; (c) mediation; (d) technical assistance; and/or (e) supervision and audit.

57. The AU dispatches election-observation and monitoring missions to observe elections organized by member states provided an invitation to observe elections is received two months ahead of the poll. With a view to ascertaining conditions for electoral contest and the degree to which there exists a level playing field, AU observers investigate the extent to which an election conforms to the *AU Declaration on Principles Governing Democratic Elections*.¹² The invitation by AU member states to the AUC to observe elections still remains a contentious issue. The dilemma here is whether the AU should simply prepare a calendar of forthcoming elections in a particular year and make plans to observe such polls, or it should leave the decision to observe to individual states.
58. The *Constitutive Act* of the AU is an unequivocal statement of its commitment to peace and democratic governance. All fifty-three members have signed and ratified the *Constitutive Act* as a clear sign of their commitment to implementing its core objectives and principles as enshrined in Articles 3 and 4. The spirit of the *Constitutive Act* is reinforced by other documents and initiatives that demonstrate the AU's firm

conviction that democratic governance is a critical condition for democracy, peace, and development. It is within this framework that the significance of such initiatives as the CSSDCA and the *African Charter on Democracy, Elections, and Governance* should be understood. These initiatives have been adopted by the AU, and it is therefore imperative that AU member states translate the democratic principles enshrined in the CSSDCA and the *African Charter on Democracy, Elections, and Governance* into practice.

59. In relation to elections specifically, the AU also recognizes that depending on how they are organized, as well as the nature of the political landscape in which they are organized, elections could either enhance democratic governance, peace, security, and political stability or undermine democracy and development by fueling violent conflicts and destabilizing political systems. This is why the progress toward institutionalized democracy and sustainable peace can no longer be measured merely by the regularity of elections without due consideration of the quality of these elections. It was this concern with balancing the regularity and quality of elections that prompted the AU to adopt the *Declaration on the Principles Governing Democratic Elections in Africa* and the *Guidelines for AU Electoral Observation and Monitoring Missions* in 2002.
60. Despite the adoption of the various principles, protocols, and declarations on democracy, the AU still faces enormous challenges in its efforts to promote democratic governance and credible elections. These include the following:
 - The AU's agenda in building and promoting democratic governance, peace, and credible elections is well-defined and anchored in the *Constitutive Act*, but there has not been appreciable movement toward implementation at national, subregional, and continental levels;

- The lack of implementation of the AU agenda on democratic governance and peace creates a gap between its declarations and the political practices of member states. This leads to a lack of congruence between agreed principles and government policies and actions;
- Until all AU member states embrace the various democracy initiatives including the CSSDCA, NEPAD, APRM, and the *African Charter on Democracy, Elections and Governance*, these instruments will not nurture and consolidate democracy, peace, stability, and the constructive management of conflicts;
- The extent to which the *Declaration on Principles Governing Democratic Elections in Africa* is stringently adhered to by all AU member states still remains contentious. For instance, some AU member states invite the AU to observe their elections, while others do not, providing evidence of inconsistency in the application of the declaration;
- The AU election observation and monitoring missions exhibit gaps in their capacity and rigor in playing their expected roles with efficiency and effectiveness. This problem needs urgent attention in view of the various elections that the AU intends to observe in 2010 and beyond;
- One of the major contentious issues that has also contributed to the emergence of protracted violent conflicts following elections in Africa relates to the nature and role of EMBs due in large measure to the perception that they lack impartiality and independence and that they do not execute their mandates with professionalism and integrity.

The Role of the AU in the Prevention, Management, and Resolution of Election-Related Conflicts and Political Violence

61. The AU has put in place various organs and structures whose mandates include the prevention, management, and resolution of conflicts including election-related disputes. Conflict prevention and preventive diplomacy apply to situations where conflict is still in its embryonic stage and measures are taken to contain its escalation. Conflict management applies when a conflict has already occurred and is beginning to escalate, but measures are put in place to reduce the intensity of violence associated with such conflict. Conflict resolution applies where a conflict situation is transformed into peacebuilding through, for instance, postconflict reconstruction and development programs. It is important to appreciate these three dimensions of dealing with conflict because election-related conflicts are not only confined to polling day or the voting stage of the electoral process. Election-related conflicts may occur in all the phases of the election cycle, namely (a) pre-voting stage, (b) voting stage, and (c) postvoting stage. This suggests that any strategy that aims at effectively dealing with electoral conflicts should be more long term than short term, and should be more systematically planned than reactive or ad hoc. It is imperative that the AU invests adequate resources in dealing with preelection root causes of conflict so that disputes are dealt with well in advance of elections, while also positioning itself strategically to preempt conflicts during and after the elections.
62. The AU framework and approach to election-related conflicts is five-pronged: (a) early warning and preventive diplomacy; (b) election observation and monitoring; (c) postelection mediation; (d) technical and governance assistance; and (e) postconflict reconstruction and development (PCRD).

EARLY-WARNING SYSTEM AND PREVENTIVE DIPLOMACY

63. The early-warning system is crucial in efforts to preempt election-related conflicts. Early signs of political tension in a country ought to be detected allowing the AU to intervene rapidly to forestall political crisis through preventive diplomacy. This is crucial because the root causes of election-related conflicts are often traceable to existing socioeconomic and political tensions within countries which tend to become heightened during elections. For instance, in some African countries, elections may lead to conflict and political violence due to acute socioeconomic inequality, politicized ethnic, religious, or racial diversity. In others, elections may trigger violent conflict because there are deep-seated political tensions among the political contestants, especially political parties themselves, with adverse repercussions for peace, security, and political stability. It is in this context that preelection fact-finding missions and preelection assessment missions by the AU to countries holding an election are important.
64. As part of preventive diplomacy, the Peace and Security Council (PSC) and the Department of Peace and Security of the AU need to play a much more proactive role than is currently the case. For its part, the PSC has to more effectively operationalize the Continental Early Warning System (CEWS) and facilitate timely and strategic intervention by the Panel of the Wise.

Continental Early Warning System (CEWS)

65. Article 12 of the *Protocol Relating to the Establishment of the Peace and Security Council* of the AU provides for the establishment of the Continental Early Warning System whose primary purpose is the “provision of timely advice on potential conflicts and threats to peace and security to enable

the development of appropriate response strategies to prevent or resolve conflicts in Africa.”¹³ The CEWS consists of two parts:

- An observation and monitoring center known as “the situation room,” located at the Conflict Management Directorate of the AU, and responsible for data collection and analysis on the basis of an appropriate early warning indicators module;¹⁴ and
- Observation and monitoring units of the regional mechanisms to be linked directly through appropriate means of communications to the situation room, and which shall collect and process data at their level and transmit the same to the situation room.¹⁵

66. Since 2006, sustained efforts have been made to operationalize the CEWS. However, much more needs to be done to ensure that the CEWS effectively deals with election-related conflicts. During the brainstorming retreat in Algiers on January 5-6, 2008, with the AU and the Regional Mechanisms for Conflict Prevention, Management, and Resolution, participants raised concerns about the resurgence of election-related conflict and political violence in the recent past. The declaration emanating from this retreat aptly states that “this situation has not only the potential of endangering stability, but also that of undermining the democratic processes initiated in the continent in accordance with relevant OAU/AU instruments.”¹⁶ In order to deal with preelection tension and avoid escalation of conflict into outright violence, the declaration recommends that the PSC

- improve monitoring of potential developments in the countries concerned during the preelection phase, including through the early-warning systems;
- strengthen election observation by deploying missions with adequate strength ahead of the election, with a view

to having a more comprehensive view of the situation and making, if need be, recommendations to the stakeholders to guarantee the transparency of the electoral process;

- effectively combine the resources of the AU and the competent regional organizations, including the deployment of joint evaluation and electoral observation missions;
- undertake, whenever required, preventive deployments of peace-support operations; and
- ensure that Africa, through the missions deployed on the ground, is in a position to speak with one voice, with the necessary authority and objectivity, on the transparency of the electoral processes and ensure that these processes are fully owned by Africa.¹⁷

67. The challenge for containing electoral conflicts in Africa is not merely confined to early warning in terms of information gathering and analysis. It extends further, to timely and effective interventions. This is where the Panel of the Wise becomes extremely strategically relevant.

The Panel of the Wise

68. Article 12 of the *Protocol Relating to the Establishment of the Peace and Security Council* of the AU provides for the establishment the Panel of the Wise as a structure meant to provide strategic support to the PSC and the chairperson of the AU in areas of conflict prevention, management, and resolution. Comprised of five respected African personalities of high integrity and independence who have made outstanding contributions to peace, security, and development in Africa, and selected by the chairperson after consultations with member states concerned, the Panel primarily advises the PSC and AU chairperson on issues relating to the promotion and protection of peace and security in Africa. It undertakes activities aimed at supporting the efforts of the

PSC and the AU chairperson in the implementation of the AU peace and security architecture and pronounces itself on any issue pertaining to the promotion of peace and security. According to the *Modalities for the Functioning of the Panel of the Wise*, adopted by the PSC on November 12, 2007, the overall mandate of the Panel is as follows:

- advise the PSC and/or the chairperson of the AUC on all matters within their respective competencies pertaining to the promotion and maintenance of peace, security, and stability in Africa;
- facilitate the establishment of channels of communication between the PSC and the chairperson of the AUC on the one hand, and parties engaged in a dispute on the other, in order to prevent such disputes from escalating into conflict;
- carry out fact-finding missions as instruments of conflict prevention in countries and/or regions where the Panel considers there is a danger of conflict either breaking out or seriously escalating;
- conduct shuttle diplomacy between parties to a conflict in cases where parties are not ready to engage in formal talks;
- encourage parties, where appropriate, to engage in political dialogue, adopt confidence-building measures, and carry out reconciliation processes, and facilitate such efforts, where appropriate;
- assist and advise mediation teams engaged in formal negotiations;
- assist and advise parties on how to resolve disputes related to the implementation of peace agreements; and

- develop and recommend ideas and proposals that can contribute to promoting peace, security, and stability on the continent.¹⁸

69. To deal with key challenges facing peace and security, the Panel has adopted a strategy of focusing on one thematic area of reflection key to conflict prevention per year that will inform most of its strategic interventions. During its second meeting held in Addis Ababa on July 17, 2008, the Panel exchanged views on the peace and security landscape in the continent highlighting the main challenges. On the basis of these deliberations, the Panel decided that the key thematic area of reflection for 2008 is the prevention, management, and resolution of election-related conflicts and tension.
70. The Panel of the Wise is strategically positioned to play a meaningful role in assisting the PSC and the chairperson of the AUC to use preventive diplomacy in forestalling election-related disputes with a view to containing political tensions from escalating into outright violence.
71. The AU needs to strengthen further its intervention strategies to ensure that election-related conflicts are resolved amicably, recognizing the central role of its Department of Political Affairs through its Democracy and Electoral Assistance Unit and the Peace and Security Department through the Panel of the Wise. The early-warning mechanism must be used more effectively to assess preelection environments with a view to making a determination that an election will not lead to violence or political instability. AU preelection assessment missions and the Panel of the Wise should be used strategically to preempt preelection conflicts.
72. As part of its preventive-diplomacy role, the Panel of the Wise should play a distinctive role in dealing with electoral disputes. Depending on the conflict situations of AU member states holding elections, the Panel of the Wise could play

an important role in the prevention, management, and resolution of election-related conflicts through the following interventions:

- fact-finding missions;
- good-offices missions;
- undertaking and/or supporting AU mediation initiatives;
- providing assistance and advice to national reconciliation efforts aimed at resolving disputes and restoring political stability;
- supporting the chairperson and the PSC in their effort to prevent, manage, and resolve election-related conflicts by issuing communiqués on current conflict situations, offering advice on specific conflict situations, and submitting recommendations to the chairperson and the PSC on the appropriate course of action for a resolution of a specific election-related political impasse.

ELECTION OBSERVATION AND MONITORING

73. Election observation and monitoring plays an important role in ensuring the credibility of elections, transparency, and integrity of the electoral process and legitimacy of the outcome by key electoral stakeholders. To this end, election observation and monitoring constitute tools for conflict prevention, management, and resolution in countries holding elections, and especially countries experiencing, and/or emerging from, violent conflicts.
74. Election observation refers to information gathering or on-site fact-finding aimed at assessing the credibility, legitimacy, and transparency of the electoral process. It is often carried out by external agencies, which are not entitled to intervene in the voting and counting operations. Monitoring refers to information gathering, examination, and evaluation of the

electoral process often carried out by national civil-society agencies which are also able to interfere and correct identified deficiencies in election management, without unduly interfering with the election administration, which is the sole jurisdiction of the election management body.

75. The African Union has developed a framework for election observation and monitoring which has been used since 2002. This framework includes the 2002 *Declaration on the Principles Governing Democratic Elections in Africa* and the 2002 *Guidelines for Election Observation and Monitoring Missions*; and the 2007 *African Charter on Democracy, Elections, and Governance*. All election observer missions of the AUC and the Pan-African Parliament are guided by these three instruments. Regional economic communities (RECs) have also developed their own norms, standards, and guidelines for election observation such as the *Principles and Guidelines Governing Democratic Elections* adopted by the Southern African Development Community (SADC) in 2004.¹⁹ As early as 2001, the Economic Community of the West African States (ECOWAS) adopted the *Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping, and Security* which aims to ensure that member states entrench democratic culture and practices under conditions of political stability.²⁰
76. Since the 1990s, the AUC has observed close to 200 elections in a majority of the fifty-three member states through the coordination of the AU Department of Political Affairs. It should be noted that all AU observation and monitoring missions are dependent upon a formal invitation by the country holding an election which must reach the AUC at least two months before the election. This essentially means that whether the AU observes an election or not is at the sole discretion of the member state concerned. If the member

state does not invite the AU, then the AU has no obligation or responsibility to send observers. It is important to question whether the AU should observe all elections in Africa or whether it should retain this invitational approach to election observation.

77. In accordance with provisions of the *African Charter on Democracy, Elections, and Governance*, upon receiving a formal invitation from an AU member state, the chairperson of the AUC shall

send an exploratory mission during the period prior to elections. This mission shall obtain any useful information and documentation, and brief the Chairperson, stating whether the necessary conditions have been established and if the environment is conducive to the holding of transparent, free and fair elections in conformity with the principles of the Union governing democratic elections.²¹

78. The preelection assessment team assesses the political landscape and other technical aspects of the election in advance of polling day and through its report, advises the chairperson of the AUC on the scope and mandate of the AU mission. The scope may include one or a combination of the following:

- **observation**, which involves gathering information and making an informed judgment;
- **monitoring**, which involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedure are being violated or ignored;
- **mediation**, that is, third-party intervention in electoral disputes, directed at assisting disputants to find mutually acceptable outcomes and solutions to the electoral disputes;

- **technical assistance**, which generally takes the form of technical support and advice to the electoral commission; and
- **supervision and audit**, which involves the process of certifying the validity of all or some of the steps in election processes either prior to or after the election has taken place.²²

79. Of all five possible mandates of the AU missions, only the first one (observation) has become an entrenched norm, although this is still dependent upon an invitation and thus not compulsory for member states. Only recently has the AU begun a process of mediation in election-related disputes (e.g., Kenya in 2008) with encouraging results. The other three aspects of AU missions as envisaged in the AU guidelines (namely, monitoring, technical assistance, and supervision and audit) have not yet been implemented in any systematic fashion. Now that the AU Department of Political Affairs has established the Democracy and Electoral Assistance Unit (DEAU)²³ and the Democracy and Electoral Assistance Fund (DEAF),²⁴ the AU should strive to implement all the five aspects of its electoral missions as envisioned in the 2002 *Guidelines for AU Electoral Observation and Monitoring Missions*.

80. Prior to sending an election observation mission, the AU must ensure that it has

- adequate lead-time for preparations;
- available essential planning information;
- available professional expertise; and
- financial and other resources.²⁵

81. In observing elections, AU missions aim to promote the integrity of the electoral process and legitimacy of its outcome

by investigating the degree to which the playing field is level for all the contestants (mainly political parties). Some of the key questions that the missions aim to determine include whether the general political situation in a country is peaceful or marked by tension. If the political situation is characterized by political tension, the mission has to assess the role of security forces in maintaining neutrality and impartiality. It is the duty of the missions to defuse political tension and promote peaceful elections. This is why the guidelines themselves proclaim that “electoral observation and monitoring missions can also play key roles in diminishing conflict before, during and after elections.”²⁶

82. For AU election-observation missions to enhance their effectiveness, especially in preventing and mitigating election-related conflicts, the following strategies should be considered:

- Enhance the capacity of the DEAU to plan, organize, and coordinate AU electoral missions;
- Mobilize financial resources through DEAF to ensure that the AU is capable of providing requisite resources for its missions;
- Ensure smooth coordination of efforts between electoral missions coordinated by the AU Department of Political Affairs and election-related strategic interventions by the Panel of the Wise;
- Ensure the right balance by AU missions between short-term and long-term observation; and
- Ensure, in a more systematic and coordinated fashion, synergies and complementarities between AU mission efforts and those of the RECs in election observation.

MEDIATION OF POSTELECTION DISPUTES

83. Since the recent past, elections in Africa have tended to trigger enormous controversy with contestants disputing outcomes, not only by rejecting election results, but also by resorting to violence. Ideally, elections ensure democratic governance and facilitate peace and political stability. Democracy cannot prevail and become sustainable if peace and political stability are nonexistent. By the same token, under conditions of protracted violent conflict, war, and political instability, socioeconomic development is impossible. Africa's diverse societies are often conflict-prone and such conflicts threaten nation-building and social harmony. Whereas tensions are present all the time, preexisting conflicts tend to be exacerbated during elections. This is because elections entail political contestation over the control of the state and the stakes in such contestation tend to be high. In some instances, ballots are disregarded as contestants quickly resort to bullets to capture state power. In these situations, the victims are often the ordinary citizens who get caught in the cross-fire of feuding politicians.
84. It is imperative that elections are transformed into conflict-management tools rather than triggers for violent conflict, war, and political instability. Effective conflict-management structures should be established to ensure that electoral disputes are handled amicably and dealt with sufficiently early so they do not escalate into violent conflict. Furthermore, given the socioeconomic, religious, ethnic, and gender cleavages that mark the diversity of African societies, power-sharing arrangements (at both national and subnational levels) should be institutionalized so as to transform politics from a zero-sum game into a positive-sum game.
85. The prevalence of violent postelection conflicts demonstrates the need for the AU to exercise its mandate to intervene through mediation. The AU-facilitated third-party mediation

is important in managing conflicts and in deescalating political violence. As indicated earlier, the AU *Guidelines for Elections Observation and Monitoring Missions* provide for AU mediation in election disputes. The most exemplary and successful AU experience in mediating postelection conflict was witnessed during the postelection political crisis in Kenya in 2008. The mission was led by the former Secretary-General of the United Nations, Kofi Annan.

TECHNICAL AND GOVERNANCE ASSISTANCE

86. This is an area where the AU has not yet been very effective. It is anticipated that with the establishment of the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund, assistance will be provided in a more systematic manner and on a more sustainable basis with a view to enhancing the institutional capacity of key governance institutions of AU member states. The 2002 *Guidelines for Election Observation and Monitoring Missions* and the 2007 *African Charter on Democracy, Elections, and Governance* recognize this role for the AU in relation to strengthening capacity of electoral authorities in managing elections. Article 18 subsection 1 of the charter states that “State Parties may request the Commission, through the Democracy and Electoral Assistance Unit and the Democracy and Electoral Assistance Fund, to provide advisory services or assistance for strengthening and developing their electoral institutions and processes.” This is complemented by Article 18 subsection 2 which states that “the Commission may at any time, in consultation with the State Party concerned, send special advisory missions to provide assistance to that State Party for strengthening its electoral institutions and processes.” AU technical assistance in the democracy and governance field in Africa ought to focus on enhancing the capacity of the following institutions (a) election-management bodies (EMBs); (b) political parties; and (c) civil-society organizations.

87. More AU technical and governance assistance ought to focus principally on the EMBs with a view to assisting these bodies to do the following:

- manage all aspects of the elections more effectively;²⁷
- prevent, manage, and resolve election-related conflicts before they spiral into political violence;
- undertake voter and civic education;
- effectively enforce the code of conduct; and
- support electoral reforms.

88. Besides the enhancement of the institutional capacity of EMBs, AU member states must be implored to develop the institutional capacity and democratic culture of political parties. If political parties lack internal democracy and their interparty relations are marked by intolerance and disregard for electoral rules and the code of conduct, they may contribute to political tension which in turn may trigger election-related conflicts either before, during, or after the elections. Furthermore, civil-society organizations, including faith-based organizations, should be supported in their various efforts to inculcate democratic culture, especially in voter education, civic education, and conflict-management initiatives.

POLICY ON POSTCONFLICT RECONSTRUCTION AND DEVELOPMENT (PCRD)

89. During its Head of State and Government Summit held in Banjul, Gambia, in July 2006, the AU adopted the *Policy on Post-Conflict Reconstruction and Development* (PCRD). The policy on PCRD is intended to serve “as a guide for the development of comprehensive policies and strategies that elaborate measures that seek to consolidate peace, promote sustainable development, and pave the way for growth

and regeneration in countries and regions emerging from conflict.”²⁸ This policy is timely because, while Africa has made considerable progress in the reduction of interstate conflicts, intrastate conflicts still bedevil the continent. Of the intrastate conflicts, those that are election-related are increasingly becoming a major governance challenge. The overall goal of the policy is “to improve timeliness, effectiveness and coordination of activities in post-conflict countries and to lay the foundation for social justice and sustainable peace.”²⁹ This policy is conceived as a tool for (a) the consolidation of peace and the prevention of violence; (b) dealing with the root causes of conflicts; (c) encouraging and fast-tracking the planning and implementation of reconstruction activities; and (d) enhancing complementarities and coordination between and among diverse actors in PCRD processes.³⁰ The policy on PCRD has six main components:

- security
- humanitarian/emergency assistance
- political governance and transition
- socioeconomic reconstruction and development
- human rights, justice, and reconciliation
- women and gender.

90. In all six components, the PCRD policy provides best practices and benchmarks for achieving the overall goal stated above. With specific reference to political governance, the policy encourages principles such as dialogue, consensus-building, participation, visionary leadership, constitutionalism, and the rule of law, while also providing benchmarks for their attainment. With regard to human rights, justice, and reconciliation, the PCRD policy exhorts AU member states to promote and protect the human rights of their peoples; guarantee and protect women’s rights; establish national

structures that promote human rights, such as national commissions; ensure access to justice; embark on justice reforms to ensure the independence of the judiciary as well as professionalization and efficiency of delivery of justice; total rejection of impunity; encouragement of national reconciliation and harmony and guaranteed opportunities for the use of traditional mechanisms of reconciliation and justice in line with national laws and other human rights instruments. With respect to women and gender, the policy commits AU member states to gender equality in line with the 2003 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*³¹ and the United Nations Security Council Resolution 1325. The policy on PCRDR provides for women's participation in conflict prevention, management, and resolution; women's representation in peace negotiations and their implementation; and creation of gender focal points to ensure that gender is mainstreamed through all PCRDR activities.

Conclusion and Recommendations

91. Dealing with election-related conflict and political violence is the collective responsibility of national, subregional, and continental institutions. Although international assistance is also essential, it is important to recognize that the singular objective of fostering African capacity and ownership for conflict resolution and problem solving should begin with endogenous African initiatives. It is in this respect that leadership by the AU is germane to developing modalities that strengthen existing institutions and values around electoral processes, democratic governance, and consolidation of peace. Since elections are a costly democratic exercise, African Union member states should also make deliberate efforts to shoulder the largest burden of the costs of elections, with international partners contributing only where needed.

92. As this report has shown, since the 1990s, the AU has advanced and articulated significant principles, structures, and instruments to guide the conduct of elections and democratization in Africa. These standards have also been widely embraced by AU member states in what has become a collective exercise in the self-reinforcement of democratic norms and values of participation, transparency, and accountability. The latest of these instruments is the 2007 *African Charter on Democracy, Elections, and Governance*, which has thus far been signed by only thirty member states and ratified by only three. Also vital, parliaments at national levels and regional institutions have adopted and ratified several fundamental provisions that relate to deepening democracy in Africa. While there is still more to be done in the ratification of core continental charters on democracy, what has been achieved so far is impressive in light of Africa's cultural and political diversities. Additionally, at the subregional level, various regional economic communities (RECs) have adopted a number of instruments aimed at deepening democracy and ensuring the integrity, credibility, and transparency of elections.
93. In accordance with the objective of strengthening the role of the AU in the prevention and management of electoral conflicts and political violence, the recommendations in this report proceed from three basic assumptions. First, marked progress has been realized in enshrining democratic principles, rules, and best practices pertaining to the conduct and organization of free and fair elections across Africa. The widespread domestication of democratic standards means that there is need for renewed commitment and determination to implement existing charters, statutes, and declarations. In this regard, there is a need to reinvigorate political will by member states to meet obligations that dovetail with prevailing African values and expectations. Second, continental reform initiatives such as the APRM have recently acknowledged that gaps and loopholes do exist

in Africa's electoral architecture and mechanisms that need to be addressed to boost their efficacy and legitimacy. The recent surge of electoral violence is an opportune moment for the AU to reiterate and clarify existing electoral mechanisms and structures and at the same time chart a clear course to strengthen institutions and arrangements that undergird electoral governance. Third, since not all elections in Africa lead to political violence and conflicts, it is important for intervention mechanisms to be tailored to countries where elections may exacerbate violence. In managing future instances of political and electoral violence, external actors, particularly the AU, RECs, and international partners need to craft measures that prioritize countries that are prone to problematic elections. All the AU institutions, including the Panel of Wise, have a complementary role to play in the articulation and implementation of measures to manage electoral violence.

94. The recommendations are grouped under six main clusters: (a) preventive and early warning mechanisms; (b) electoral governance and administration; (c) AU coordination of electoral assistance; (d) postelection conflict transformation mechanisms; (e) international coordination and partnerships; and (f) strategic interventions by the Panel of the Wise. Before delving into the specific recommendations in respect of each one of the clusters outlined above, our general recommendations are the following:
- AU member states have to scrupulously strive to implement the recommendations of the various declarations aimed at entrenching democracy, peace, and human rights including the CSSDCA.
 - AU member states have to sign, ratify, and domesticate the *African Charter on Democracy, Elections, and Governance* adopted in 2007.

- The Panel of the Wise has a major responsibility to intervene in efforts by the AU to prevent, manage, and resolve election-related conflicts and political violence in collaboration with other AU organs and other existing panels of elders.

CLUSTER I: PREVENTIVE AND EARLY WARNING MECHANISMS

95. It is critical for all institutions of the AU (particularly the Department of Peace and Security and the Department of Political Affairs) to invest in preventive and early-warning mechanisms geared toward countries that have a history of electoral violence or that reveal signs of conflict potentially arising out of the competition occasioned by political contestation and elections. Since most of the work in the electoral cycle occurs in the pre-voting stage, in countries facing the danger of lapsing into electoral violence, there needs to be adequate diplomatic and preparatory initiatives that ensure that such countries can hold competitive and peaceful elections. The wealth of socioeconomic and political information on African countries generated by the APRM, the AU situation room, academic and policy research, and media reports should form part of the collective knowledge that informs decisions about potential electoral hotspots. Without identifying potential problem countries, it would be impossible for the AU to develop meaningful preventive measures that reflect the uniqueness and peculiarities of each country. In the face of severe constraints on resources, it is important for the AU to evolve strategic intervention measures that focus on countries in need.
96. As part of the preventive and early warning mechanisms, the AU should take the following action:
 - Strengthen its information-gathering capacity with respect to potential electoral hotspots; this would entail tapping

into and drawing from the information available from agencies such as the APRM, the PSC, DPA, RECs' early-warning systems, and other organizations, such as the Former Heads of State Forum based in Pretoria, South Africa.

- Develop an annual roster and typology of forthcoming elections in Africa to determine which countries may require close monitoring and deployment of preventive resources to avoid the occurrence of violently contentious elections.
- Prioritize the countries that require urgent attention to mitigate potential problems.
- Priority should be given to deployment of preelection assessment teams with a clear mandate to assess both the technical preparedness of electoral stakeholders and the overall political climate for elections and to promote dialogue among contestants as well as suggesting, where need be, whether or not an election should be held or postponed until an appropriate later date.

CLUSTER II: ELECTORAL GOVERNANCE AND ADMINISTRATION

97. Electoral governance and administration are embedded in wider constitutional rules that define and delineate political competition over state power in each AU member state. These rules are, in turn, influenced by the social, cultural, and demographic matrices that characterize various African countries. Recent experiences of electoral violence and political conflict reflect unresolved questions of constitutional-design arrangements among Africa's diverse societies. While Africa's electoral systems should reflect regional, ethnic, and demographic needs and variations, the pattern of high-stakes winner-takes-all electoral systems seem to be one of the major causes of violence and political instability. Africa

should make deliberate efforts to progressively and creatively move toward electoral systems that broaden representation, recognize diversity, respect equity, and respect majority rule, while at the same time protecting minority rights. In the recent past, a growing trend of postelectoral crisis power-sharing arrangements has been evident. There is a sense in which issues of justice and peacebuilding could justify this trend in some instances. However, there is a serious concern that if this trend is not well managed, it may spiral out of control and become a political tool abused for manipulation of the democratic process and the annulment of the people's democratic vote during elections. If this is the case, then an undesirable development is likely to be the decline of public trust in democratic institutions and elections which may lead to the withdrawal of people's participation in the democratic process and especially in elections where voter turn-out is low. There is a need for sturdy constitutional, institutional, and legal frameworks to build a firm foundation for electoral governance and administration. Beyond the movement toward sturdy national constitutional structures that reinforce democratic consolidation, with respect to electoral governance and administration, the AU should work toward ensuring the following:

Effective and Efficient Election Administration and Management

- Independent and impartial national electoral bodies solely responsible for the management of elections with a view to ensuring credible and transparent elections should be established and strengthened.
- The size, composition, mandate, and tenure of office for the members of EMBs must be determined through an inclusive and transparent process.

- EMBs must be provided with adequate resources (financial, human, and technological) in order to execute their legislated mandate effectively.
- EMBs should be adequately funded to provide voter and civic education, in partnership with other stakeholders such as civil-society organizations and faith-based organizations, with a view to inculcating a culture of democracy and peace.

Effective and Professional Election Monitoring and Observation

- Make assessments of progress in the implementation of recommendations emanating from previous election observation missions, as well as other continental initiatives such as the APRM.
- Ensure that the AU observes all elections held by the member states.
- All stages of elections should be effectively observed (pre-voting, voting, and postvoting stages) and a comprehensive report on how the electoral process was conducted should be prepared and submitted to the AUC.
- The AU should coordinate its election monitoring and observation closely with those of the Pan-African Parliament, RECs, and other regional and national civil-society organizations.
- The capacity of national CSOs involved in election monitoring and observation should be enhanced and their efforts toward promoting transparent and credible elections fully supported.
- AU member states should reduce their dependence on international observer missions and strengthen continental

and regional efforts in the monitoring and observation of elections.

- During the preelection phase, election monitoring and observation should pay due attention to the timing of elections, voter registration, demarcation of electoral zones, political party registration, candidate nominations, party funding, political campaigning, the role of security forces, use of state resources, and the media environment, as these have been known to generate disputes and conflicts.
- Focus of election monitoring and observation during the voting stage should ensure the secrecy of the ballot and the right to vote, including vote counting and the tabulation of results.
- During the postelection stage, election monitors and observers should focus on the management of election results, the timing of results announcements, and reactions of the political players to the election results, as well as the management of election disputes by the relevant authorities including EMBs and judiciaries.
- Following an election, AU member states should endeavor to embark on postelection reviews and audits which could point to needed electoral reforms to deepen the roots of democratic governance.

CLUSTER III: AU'S COORDINATION OF ELECTORAL ASSISTANCE

98. The involvement of the OAU/AU in elections, mainly through observation is traceable to the early 1990s. Between 1990 and 2008, the OAU/AU observed about 200 elections throughout the continent. This is a commendable record by all indications. Although the AU continues to observe elections, the process itself has to be deliberately professionalized. It has to be more technical and less political and diplomatic. To this

end, a lot of assistance has to be given to the AU Department of Political Affairs, through its Electoral Assistance Unit, to coordinate elections more efficiently and effectively. The Electoral Assistance Unit, working in concert with the Electoral Assistance Trust Fund, could change the electoral landscape in Africa in such a way that it promotes political stability, peace, democracy, and good governance. To this end, we recommend that the DEAU:

- be provided with requisite resources to undertake its mandate, including financial, technological, and human capacity;
- work with national EMBs to plan for elections, particularly in the mobilization of resources for elections and the anticipation of resource shortfalls;
- conduct training for EMBs, collect and share information and experiences about best electoral practices, and exchange visits among EMB personnel across Africa;
- mobilize expertise in Africa and the diaspora with respect to election administration, such as voter registration, party funding, political campaigns, and the demarcation of boundaries;
- work with national and regional election monitors to standardize election-observation information and toolkits; and
- develop a data bank of experts and professionals in election observation and management in order to facilitate the mobilization of resources, as well as building and consolidating partnerships.

CLUSTER IV: POSTELECTION CONFLICT TRANSFORMATION MECHANISMS

99. The AU and RECs have a wide array of extant institutions with the competence to manage postelection crises in a

timely fashion. The most significant questions are when and how can the AU mobilize the various institutional energies to make a difference in countries convulsed by electoral violence? The roles of these institutions hinge on their preparedness and their ability to coordinate with each other in transforming violent and uncertain postelection contexts into peaceful, fair, and just outcomes that respect democratic norms. Since the upsurge of electoral violence often denotes the absence or collapse of orderly mechanisms for managing competition, the role of external actors and institutions is even more critical in the postelection phase. Fortunately, postelection violence occurs when there is still a significant presence of international actors on the ground in the form of electoral observers and in circumstances whereby it is easier to draw international attention to the plight of the affected country. This means that when violence breaks out, external actors such as the AU and other observers can quickly step in to defuse the escalation of violence. At this stage, the AU and its institutions could take the lead in the following:

- ensuring that the parties abide by the electoral code of conduct and use judicial and alternative dispute resolution mechanisms in resolving disputes and conflicts;
- encouraging the parties to resolve electoral conflicts through regional and continental judicial mechanisms such as the African Court of Justice and judicial mechanisms established by the RECs (this is important where local mechanisms are feeble or contested);
- establishing political mediation and confidence-building mechanisms among the parties to prevent further escalation of violence; and
- providing reassurance to the wider public about international anxiety for the return to normalcy and respect for the rule of law.

100. There are also lessons to be learned from the Kenyan and Zimbabwean cases on how the AU should coordinate diverse intervention mechanisms in postelection conflict transformation. In Kenya, the AU's intervention led to the timely creation of the Panel of Eminent Persons led by Kofi Annan, while in Zimbabwe, the AU encouraged the Southern African Development Community (SADC) to lead the mediation. As two distinctive cases of managing the problems of postelection conflicts, Kenya and Zimbabwe reveal approaches that are born of different but complementary continental and regional institutions with distinct comparative strengths. More importantly, in both AU and SADC mechanisms, the role of eminent African statesmen and leaders was crucial in generating momentum to resolve the crises. It is for this reason that the Panel of the Wise stands out as an important institution at this stage of the electoral cycle. Through the burgeoning numbers of Africa's elder statesmen and other prominent individuals, the Panel will have a wide pool of experienced individuals it can continually draw from in fulfilling its prerogatives.

CLUSTER V: INTERNATIONAL COORDINATION AND PARTNERSHIPS

101. International actors constitute a vital part of electoral management in Africa as they mobilize funds, provide administrative and technical expertise, exert political pressure on groups, and observe and furnish legitimacy to elections. As wide-scale electoral violence becomes a core issue on the African landscape, bilateral and multilateral state and nonstate actors will become even more critical at each phase of the electoral cycle in terms of funding and technical assistance. In the past, most of the international actors have accorded disproportionate attention to election monitoring at the expense of investment in the institutions that undergird free, fair, and competitive elections. Equally

significant—although international partnerships have made a difference in underwriting the transitions to electoral processes—coordination of intervention remains problematic, particularly in circumstances where selective engagement of different parties and the pursuit of competing priorities often create conflicts. In countries that are prone to electoral violence, it is imperative that there be better coordination among international partners and between them and continental, regional, and local actors to preempt mixed motives and expectations during competitive electoral processes. Coordination problems pose a major challenge to the integrity of electoral processes when multiple actors compete to elicit different outcomes. To foster better coordination and partnerships, it is important that donors do the following:

- increase involvement at all stages of the electoral cycle through funding and technical assistance;
- minimize competitive engagements in electoral processes through better coordination and cooperation;
- mitigate coordination problems through joint planning of electoral assistance programs, information sharing, and regular consultation with actors across the electoral cycle;
- deepen involvement in the preelection institution- and confidence-building phase to strengthen the preventive mechanisms that minimize conflicts;
- devote more resources, especially to strengthening the capacity of local bodies to manage and oversee elections instead of funding large election observation teams; and
- provide technical support to the institutionalization of the Panel of the Wise mechanisms for prevention, management, and resolution of electoral disputes.

CLUSTER VI: STRATEGIC INTERVENTIONS BY THE PANEL OF THE WISE

102. As a new institution endowed with moral authority and the power of persuasion, the Panel of the Wise is in a strong position to use its eminent position, as well as its members' mediation and negotiation skills, to prevent, manage, and resolve electoral conflicts in collaboration with other AU structures and other panels of elders. Its small membership allows sufficient flexibility to rapidly intervene at all phases of the electoral process, particularly where crises are anticipated. The Panel's personal and professional attributes afford it wide latitude to carve a niche in electoral peacemaking and conflict prevention.
103. The Panel should also be furnished in the medium to long run with the technical and financial resources to sustain good offices and advisory, assessment, and technical missions. The technical back-up for the Panel's conflict management work should be provided jointly by the Department of Peace and Security and the AU Department of Political Affairs. The secretariat of the Panel should be further strengthened to be in a position to link the Panel's interventions strategically to those of the two departments relating to the prevention, management, and resolution of election-related conflicts. Working closely with the AU and subregional early-warning mechanisms, the Panel should be periodically apprised of electoral events that may lead to violence and conflict so that it can play a role in preventing them. In its involvement in the prevention, management, and resolution of election-related conflicts, the Panel of the Wise should work in close collaboration with other key AU organs and other existing fora of former heads of states in Africa.
104. The Panel can be deployed in two critical stages of elections namely the pre-voting stage, with a focus on preventive

diplomacy and early warning, and the postvoting stage, with a focus primarily on mediation.

Pre-voting Stage

105. At this decisive prevention stage, the Panel can intervene in anticipation of a crisis through the following:

- **early warning** through discreet missions and contacts;
- **fact-finding missions** of its own (the Panel has the moral authority to intervene in an impending crisis without invitation by national authorities);
- **shuttle diplomacy** by Panel members to defuse potential conflicts in the preparations for elections; through such missions, the Panel should have the mandate to recommend to the AU Commission, as well as the government and national stakeholders, about the conditions for holding of elections;
- **preliminary mediation and consultative offices** and fora, established where parties are feuding and contesting electoral rules.

106. In addition the following actions should be considered at the pre-voting stage:

- In fragile and volatile situations, acting at the behest of the Peace and Security Council, and/or of the chairperson of the AU, the Panel, in a voluntary assessment manner, could propose measures to preempt the escalation of conflict.
- In situations where an election has a great potential to ignite political violence that could destabilize a given country, the Panel could work for a postponement of the poll to an alternative date following deliberate efforts to deescalate the conflict.

- The Panel should also coordinate with other institutions and bodies to guarantee a preelectoral environment conducive to a credible electoral process.
- And the Panel should work to encourage AU member states to embark on systematic and continuous voter and civic education to promote a culture of political tolerance, peace, and democratic culture throughout all layers of society.

Postvoting Stage

107. In order to anticipate future postelection crises:

- The main role of the Panel of the Wise in the postvoting stage should focus on mediation of postelection conflict with a view to building peace.
- A Panel Mediation Committee, along the lines of the Kofi Annan mediation, which was utilized effectively in Kenya, should be institutionalized and broadened.
- The capacity of the Panel Mediation Committee should be enhanced through technical assistance and the training of a competent mediation support team.
- Postelection reviews and audits through relevant election-management bodies involving other key stakeholders should be institutionalized to ensure that corrective measures are taken through electoral reforms addressing electoral violence.
- And implementation of the recommendations of election observer missions (including those of the AU) by AU member states following elections should be monitored.

Endnotes

1. OAU/AU, *Declaration on the Principles Governing Democratic Elections in Africa*, 2002.
2. The eight key elements of the electoral cycle are legal framework; electoral planning and implementation; training and education; voter registration; election campaign; voting operations and election day; verification of election results; and postelection processes.
3. *Constitutive Act of the African Union*, 2000, Articles 5-6.
4. *Ibid.*, Article 7.
5. These documents include the 1981 *African Charter on Human and Peoples' Rights*; the 1990 *African Charter for Popular Participation in Development*; the 1990 *Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World*; the 1991 *Treaty Establishing the African Economic Community*; the 1995 *Cairo Agenda for Action*; the 1999 *Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights in Africa*; the 2000 *Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government*; the 2000 *Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament*; the 2000 *Conference on Security, Stability, Development, and Cooperation (CSSDCA) Solemn Declaration*; the 2002 *Memorandum of Understanding of Security, Stability, Development, and Cooperation in Africa*; the 2002 *Declaration on Democracy, Political, Economic, and Corporate Governance of the New Partnership for Africa's Development (NEPAD)* which, among other things, provides for the establishment of the African Peer Review Mechanism (APRM) which is an innovative instrument for promoting democratic governance in Africa; the 2003 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*; the 2003 *African Union Convention on Preventing and Combating Corruption*; the 2004 *Protocol Relating to the Establishment of the Peace and Security Council of the*

African Union; the 2007 African Charter on Democracy, Elections, and Governance.

6. *Conference on Security, Stability, Development, and Cooperation in Africa*, 2000, Article 9h.
7. *Ibid.*, Articles 9d, 9e, and 9f.
8. *Memorandum of Understanding on Security, Stability, Development, and Cooperation in Africa*, 2002, Articles II(o), II(p), II(r), II(s), and II(t).
9. Participants in the conference expressed their collective support for the ideals of the AU and NEPAD aimed at ensuring the promotion of good governance and strengthening of democratization, including delivery of free, fair and credible elections in Africa. The statement that was adopted at the end of the conference emphasized the following constitutional and legal frameworks for strengthening democracy in Africa: (a) constitutions and legal frameworks should entrench democratic values and institutions to promote and strengthen constitutionalism and good governance; (b) constitutions and legal frameworks should provide for all basic human rights, freedoms, and obligations as enshrined in relevant United Nations instruments and the *African Charter on Human and Peoples' Rights*; (c) constitutions and legal frameworks should determine the tenure and number of terms that a head of state or government can stand for election; (d) constitutions and legal frameworks should provide political pluralism and freedoms of association, assembly, and expression to promote free political activity; (e) constitutions and legal frameworks should provide for establishment of independent election-management bodies and independent institutions that support and entrench democracy, such as national human rights commissions, anticorruption bodies and independent judiciaries; (f) constitutions and legal frameworks should regulate the calling of elections allowing sufficient time for proper preparations. A period of not less than forty-five days and not more than ninety within which to prepare for elections should be the norm; and (g) constitutions and legal frameworks should promote accountability of elected representatives.

10. Shaheen Mozaffar and Andreas Schedler, "The Comparative Study of Electoral Governance—Introduction," *International Political Science Review* 23 no. 1 (2002): 5-27.
11. *Guidelines for African Union Electoral Observation and Monitoring Missions*, 2002, Article 1.1.
12. In accordance with the *Guidelines for AU Electoral Observation and Monitoring Missions*, some of the key questions that AU missions investigate include (i) does the constitution and legal framework guarantee fundamental freedoms and human rights? (ii) is the electoral system premised on the right to freedom of association and enables people to advance this right through the formation of political parties for the purpose of electoral competition? (iii) is the electoral commission independent and impartial, and does it exercise its powers and perform its functions without fear, favor, or prejudice? (iv) are rights of observers guaranteed? (v) is it likely that the security forces will maintain a neutral role in the provision of election security? (vi) is the situation in the country generally peaceful or is there political violence? (vii) are there clearly articulated rules for political party funding to be respected by all parties and candidates? (viii) is voter education provided in a nonpartisan, independent and coordinated manner throughout the whole country? (ix) will there be equitable use of or access to public resources for the election campaign? (x) is the registration of voters undertaken without discrimination on the basis of gender, race, religion, region, or ethnicity? (xi) does an independent media authority responsible for monitoring and regulating the media allow equitable access to the public media by all parties and candidates?
13. African Union, *Framework for the Operationalization of the Continental Early Warning System*, 2006, section B.9.
14. *Protocol Relating to the Establishment of the Peace and Security Council of the AU*, Article 12a.
15. *Ibid.*, Article 12b.
16. *Declaration of the Brainstorming Retreat Between the African Union and the Regional Mechanisms for Conflict Prevention, Management and Resolution*, 2008, 3 .
17. *Ibid.*, 2008, 3-4.

18. *Modalities for the Functioning of the Panel of the Wise*, adopted by the Peace and Security Council on November 12, 2007.
19. The principles commit SADC member states to the following best practices in election management and democracy building: (a) full participation of the citizens in the political process; (b) freedom of association; (c) political tolerance; (d) regular intervals for elections as provided for by the respective national constitutions; (e) equal opportunity for all political parties to access the state media; (f) equal opportunity to exercise the right to vote and be voted for; (g) independence of the judiciary and impartiality of the electoral institutions; (h) voter education; (i) acceptance of and respect for the election results by political parties proclaimed to have been free and fair by competent national authorities in accordance with the law of the land; and (j) challenge of the election results as provided for in the law of the land.
20. The protocol provides that, inter alia, (a) the preparation and conduct of elections and announcement of results shall be done in a transparent manner; (b) adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of elections and announcement of results; (c) the party and/or candidate who loses the elections shall concede defeat to the political party and/or candidate finally declared winner, following the guidelines and within the deadline stipulated by law; (d) all holders of power at all levels shall refrain from acts of intimidation or harassment against defeated candidates or their supporters; and (e) the use of arms to disperse nonviolent meetings or demonstrations shall be forbidden. Whenever a demonstration becomes violent, only the use of minimal and/or proportionate force shall be authorized.
21. *African Charter on Democracy, Elections, and Governance*, Article 20.
22. *Guidelines for AU Electoral Observation and Monitoring Missions*, 2002, Article, 6.
23. The DEAU is the unit in charge of all election-related initiatives and programs of the African Union including the five main intervention areas spelled out in the guidelines, especially (a) observation, (b) monitoring, (c) technical assistance, and (d) supervision and audit. It has a staff complement of approximately

three people and its 2008 program has six elements, namely (i) election observation; (ii) coordination of EMBs in Africa; (iii) technical assistance to national EMBs; (iv) improving quality of electoral processes; (v) resource mobilization through the DEAF; and (vi) development of a database of experts on elections and democracy in Africa. The DEAU is still fairly new and is yet to be firmly established and deliver on its program. It is also weak in terms of its staff complement and other requisite resources to implement the above six-point program.

24. The main objectives of the DEAF include (a) the enhancement of the capacity of the African Union to support national and regional initiatives to build and sustain democratic processes, entrench government accountability and promote the transparency and accountability of state institutions; (b) supporting national electoral processes that contribute to the holding of regular, free, and fair elections in accordance with internationally recognized standards; and (c) supporting regional and national capacity building of electoral management bodies, regional forums and networks to manage and oversee democratic electoral processes and electoral observation missions.
25. *Guidelines for AU Electoral Observation and Monitoring Missions*, Article 3.
26. *Ibid.*, Article 1.
27. The broader context of the electoral process includes (a) the electoral system; (b) the party system; (c) the constitutional and legal system; and (d) election management bodies. Within this context, there are about nine major steps through which an electoral process unfolds: (i) voter and civic education; (ii) demarcation of boundaries; (iii) voter registration and management of the voters' roll; (iv) candidate nomination; (v) political campaign; (vi) polling; (vii) counting and tabulation; (viii) dispute management; and (ix) election-results management.
28. African Union, *Report on the Elaboration of a Framework Document on Post-Conflict Reconstruction and Development*, 2006, Section 1.1.
29. *Ibid.*, Section 3.
30. *Ibid.*

31. This protocol was adopted on July 11, 2003, during the AU Heads of State and Government Summit held in Maputo, Mozambique. It exhorts AU member states to, inter alia, include in their national constitutions and legislative frameworks the principle of gender equality and ensure its effective application; integrate gender perspective in their policy decisions, legislation, development plans, programs, and activities; take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist; and support local, national, regional, and continental initiatives directed at eradicating all forms of discrimination against women. In respect of good governance, the protocol provides for the promotion of participative governance and equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that (i) women participate without any discrimination in all elections; (ii) women are represented equally at all levels with men in all electoral processes; and (iii) women are equal partners with men at all levels of development and implementation of state policies and development programs. In relation to the women's right to peace, the protocol further provides that state parties should take appropriate measures to ensure the increased participation of women in (a) programs of education for peace and a culture of peace; (b) structures and processes for conflict prevention, management, and resolution at local, national, regional, continental, and international levels; (c) decision-making structures to ensure protection of asylum-seekers, refugees, returnees, and displaced persons, in particular women; (d) structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular women; and (e) all aspects of planning, formulation, and implementation of postconflict reconstruction and rehabilitation. At the time of writing this report, of the fifty-three AU member states, only forty-three had signed this protocol, of which only twenty-one had ratified it. The protocol entered into force on November 25, 2005. See www.achpr.org/english/ratifications/ratification_women%20protocol.pdf.

Annex

TRIPOLI DECLARATION ON THE ELIMINATION OF CONFLICTS IN AFRICA AND THE PROMOTION OF SUSTAINABLE PEACE

1. We, the Heads of State and Government of the African Union (AU), meeting in Tripoli, Great Socialist People's Libyan Arab Jamahiriya, on 31st August 2009, on the occasion of the Special Session on the Consideration and Resolution of Conflicts in Africa, as agreed in Decision Assembly/AU/Dec.252 (XIII), have reviewed the state of peace and security on our continent and the steps we need to take to hasten the attainment of our common objective of a conflict-free Africa.
2. The decision to convene this Special Session reflects our growing concern at the persistence of conflict and crisis situations on the continent, despite the many efforts deployed thus far to resolve them. It also bears testimony to our renewed determination to give further impetus to the implementation of relevant AU decisions and promote lasting peace, security and stability on the continent, for without such an environment our vision of the political and economic integration and development of Africa will not materialize.
3. Our meeting is taking place at a time when significant efforts are being made to end conflict and promote peace and security on the continent. We have come a long way since we launched the AU in Durban, in July 2002, and inaugurated the Peace and Security Council (PSC), in Addis Ababa, in May 2004. Today, we have the necessary institutional and normative framework to address the scourge of conflicts, and the AU has demonstrated a renewed dynamism in dealing

with issues of peace and security on the continent.

4. We note that the operationalization of the African Peace and Security Architecture (APSA), as articulated in the Protocol Relating to the Establishment of the Peace and Security Council, is well on course, as shown by the effective functioning of the PSC, the launching of the Panel of the Wise and the establishment of key components of the African Standby Force (ASF) and the Continental Early Warning System (CEWS).
5. We also note that, consistent with the spirit and letter of the AU Constitutive Act, we have, over the years, adopted a number of instruments on human rights, governance, democracy, disarmament, terrorism, and good neighbourliness, which represent a consolidated framework of norms and principles, whose observance would reduce considerably the risk of conflict and violence on the continent and consolidate peace where it has been achieved.
6. Finally, significant strides have been made in the resolution of conflicts in Africa, as evidenced by the remarkable achievements in countries such as Burundi, the Comoros, the Democratic Republic of Congo, Liberia and the Sudan (South Sudan), as well as the advances recorded in the search for peace in a number of other countries and regions. These developments have brought hope and enhanced the prospects for development and renewal, which now need to be enhanced through sustained efforts at peace-building and post-conflict reconstruction.
7. While we take pride in these achievements, we remain, nevertheless, deeply concerned at the continued prevalence of conflict, insecurity and instability in large parts of the continent, with its attendant humanitarian consequences and socio-economic impact. Indeed, armed conflicts in Africa kill thousands of people every year; create humanitarian

disasters; wipe out livelihoods and wealth that ordinary people have worked hard to accumulate over their lifetimes; and make sustainable economic development impossible. There is also a more profound loss: the destruction of hope for a better future.

8. In addition, we note with concern the resurgence of unconstitutional changes of Government, which constitutes a serious setback to the democratization process, as well as the emerging trend of election-related violence and conflicts; the threats posed by terrorism, drug trafficking, transnational organized crime, piracy, and illicit exploitation of natural resources to fuel conflicts; and the persistence of the border disputes and conflicts. We reiterate our commitment, in conformity with the decision adopted in Sirte, in July 2009, to cut off the sources of funding for terrorism, in particular those originating from the payment of ransom in situations of hostage taking. Of equal concern are the implications of climate change and its resulting consequences (food insecurity, scarce water resources, damage to coastal infrastructure and cities, reduced agricultural yields and environmentally-induced migration) for our quest for peace and the efforts being made in this respect.
9. Against this background, we are determined to deal once and for all with the scourge of conflicts and violence on our continent, acknowledging our shortcomings and errors, committing our resources and our best people, and missing no opportunity to push forward the agenda of conflict prevention, peacemaking, peacekeeping and post-conflict reconstruction. We, as leaders, simply cannot bequeath the burden of conflicts to the next generation of Africans.
10. To this end, we recommit ourselves to accelerate the full operationalization of the APSA, including the further refinement of existing provisions, where necessary, to facilitate their implementation. In this respect, we agree to increase

our contributions, both financial and technical, in support of the APSA. We request the Chairperson of the Commission to take all steps necessary to strengthen the Commission's capacity to better address the challenges of peace, security and stability on the continent, including through the speedy recruitment of necessary additional staff, bearing in mind that additional resources are needed.

11. We undertake to make renewed efforts to address the root causes of conflicts in a holistic and systematic manner, including through implementing existing instruments in the areas of human rights, the rule of law, democracy, elections, good governance, disarmament, arms control and non-proliferation and good neighborliness. This requires that all Member States that have not yet done so speedily sign and/or ratify those instruments and that the Commission actively monitor their implementation. We request the Commission to take all necessary steps to sensitize the Member States concerned and to undertake a thorough and systematic review of the status of implementation of these instruments and to submit to the Assembly concrete proposals on how to improve compliance.
12. In particular, we reiterate our total rejection of unconstitutional changes of Government and undertake to enhance both prevention of, and response to, this phenomenon. In this vein, we reiterate the need for Member States to promote good governance, to abide by the rule of law and to respect their own Constitutions, especially when it comes to introducing constitutional reforms, bearing in mind that failure to do so can lead to situations of tension, which could, in turn, precipitate political crisis. Equally, we shall take all necessary measures, including the condemnation of, and imposition of sanctions against any African country that would encourage, support or host armed groups whose objective is to destabilize another state. We commit ourselves to abide by the

principles of sovereignty, territorial integrity and non-use of force, directly or indirectly, in the conduct of our external relations.

13. We reiterate our determination to ensure that, at all times, Africa moves first and in a timely manner to deal with the scourge of conflicts in our continent. We also reiterate our commitment to exercise utmost restraint, to systematically resort to peaceful means to settle all disputes, and to be responsive to mediation and other preventive diplomacy endeavors.
14. We are resolved to ensure that sufficient troops and observers are made available for rapid deployment when and where they are required.
15. Driven by our determination to transform the geo-political landscape of Africa for the benefit of all its peoples, by promoting the development and integration of the continent, we shall take a series of concrete and effective measures to accelerate the implementation of solutions already agreed to for the settlement of a number of conflicts, and the promotion of fair and equitable solutions to situations for which no agreement has yet been reached by the parties concerned, as well as for post-conflict reconstruction, to provide the peoples concerned with peace dividends.
16. We reiterate our full support to all ongoing peace efforts on the continent and urge all concerned parties to leave no stone unturned to end the conflicts they are party to, bring hope to their people and build sustainable peace. In line with the relevant provisions of the Constitutive Act and the Rules of Procedure of the Assembly, as well as the PSC Protocol, we commit ourselves, where parties to a conflict stubbornly refuse to live up to their obligations and cooperate towards the promotion of peace, to impose sanctions and ensure their scrupulous implementation throughout the continent, while

seeking the support of our partners within the international community, including the UN Security Council.

17. We commit ourselves, within the framework of the AU Policy on Post-Conflict Reconstruction and Development (PCRD), to show the required solidarity with the African countries emerging from conflicts, to assist them in consolidating their hard-won peace and avoiding relapse into violence.
18. We stress the need for all Member States to extend full cooperation and support to the PSC, bearing in mind that, in carrying out its duties under the Protocol, the PSC acts on behalf of the entire membership of the AU. Equally, we commit ourselves to increase substantially our contribution to the Peace Fund, for Africa to truly own the ongoing efforts to promote peace, security and stability on the continent. In this respect, we request the Commission to take the necessary preparatory steps for the increase of the statutory transfer from the AU regular budget to the Peace Fund from 6 to 12%. We also encourage all Member States in a position to do so, to make voluntary contributions to the Peace Fund. We request the Commission to submit to the Assembly, in June 2010, a comprehensive report on how best to mobilize increased resources from within the continent to support our peace efforts.
19. Making and sustaining peace and security is also an intellectual challenge. We therefore undertake to build the capacity of our universities and research institutes to explore the nature of African conflicts, to investigate what succeeds and what fails in conflict resolution efforts, and to arrive at African-centered solutions, drawing from our own distinctive and unique experience.
20. To achieve our objective of an African continent that is not only at peace with itself but is also at peace with the rest of the world, we need to continue to strengthen our relations

with our major partners. We value the support provided by our bilateral and multilateral partners in the Americas, Asia, Europe and Middle East, and call on them to continue working closely with us in achieving our goals, understanding that peace and security are indivisible.

21. At the same time, we reiterate our determination to ensure that these partnerships are fully based on Africa's leadership, because without such leadership, there will be no ownership and sustainability; because we understand the problems far better than those who come from far away; because we know which solutions will work, and how we can get there; and because, fundamentally, these problems are ours, and we will live with their consequences.
22. We call on the African civil society to continue to play its role in promoting peace, security and stability as partners of Government, as we seek to ensure that the AU, as called for in its Constitutive Act, respect the principle of participation of the African peoples in the activities of the Union.
23. We declare the year 2010 as *Year of Peace and Security on the Continent*. In this regard, we request the Chairperson of the Commission to prepare a detailed programme which would identify concrete steps that could be taken to promote peace, security and stability on the continent, and to submit it to the next ordinary session of the Assembly of the Union.
24. We solemnly adopt the Tripoli Declaration, and pledge our full commitment to its effective implementation so as to open a new chapter in our collective action in favor of peace, security, stability and shared prosperity throughout Africa and the rest of the world.

About this Report

At its tenth ordinary session, held in Addis Ababa from January 31 to February 2, 2008, the assembly of the African Union (AU) adopted decision Assembly/AU/Dec.187(X) on the situation in Kenya following the presidential election of December 27, 2007. In that decision, the assembly stressed, *inter alia*, the need to initiate a collective reflection on the challenges linked to the tension and disputes that often characterize electoral processes in Africa, including the strengthening of African capacity at national, regional, and continental levels to observe and monitor elections. At its 109th and 115th meetings held on January 21 and March 14, 2008, respectively, and devoted to the situation in Kenya, the AU Peace and Security Council also stressed the need to initiate such a reflection.

In response to these decisions, and as part of its work program for 2008 as endorsed at its third meeting held on February 18, 2008, the Panel of the Wise decided to devote that year's reflection to a thematic issue relevant to conflict prevention: specifically, the problem of election-related conflicts. Subsequently, the AU Commission put together a team of consultants to prepare a report on the subject that would form the basis for the recommendations that the Panel intended to submit to the assembly of the Union. The main terms of reference (TORs) for the work, culminating in this report, included the following:

- Review elections and electoral practices in the context of the democratization processes initiated in the 1990s, with particular attention to political violence and electoral disputes.
- Assess the causes, manifestations, and impact of electoral disputes on the democratization processes in Africa.
- Review issues such as the technical capacity of electoral organs; the composition, independence, and funding of

electoral commissions and other similar organs; the demarcation of electoral areas; the registration of voters, campaigns, political party financing, access to media, and their impact on the conduct of elections.

- Examine the role and contribution of international observers to electoral processes in Africa, including observers from outside the continent.
- Review relevant AU instruments on elections, democratization, and good governance, and evaluate their impact on the efforts aimed at improving the conduct of elections and democratization in Africa.
- Make concrete proposals on how the AU can more effectively address election-related disputes and conflicts, including through long-term and operational prevention strategies, as well as on the enhancement of the African capacity to observe elections at the national, regional, and continental levels.

In achieving the above TORs, the consultants met with officials and staff of the AU Commission, as well as with representatives of the UN and the European Union involved in election-related matters.

At its third meeting, held in Algiers, Algeria, from October 12 to 14, 2008, the Panel of the Wise requested that the Commission convene a workshop in Nairobi to review the report prepared by the team of consultants. This workshop took place from December 26 to 27, 2008, and was attended by members of the AU Panel of the Wise, representatives of the regional economic communities (RECs), African think tanks, and civil-society organizations, as well as the United Nations, the European Union, and other stakeholders. The representatives of the AU chair and the chair of the Peace and Security Council for the month of November 2008 also attended the meeting. The workshop was addressed by the Kenyan minister for foreign affairs who seized the opportunity to expound on the Kenyan experience following the December 2007

general elections. The minister stated that the issue of election-related conflicts was so crucial to the future of the democratization processes in the continent that it required the active involvement of all concerned. Subsequently, the Panel of the Wise submitted its recommendations to the 13th Summit of African Heads of State and Government in Sirte, Libya from June 24 to July 3, 2009, where they were approved. Finally, as part of the IPI African Union Series, this report was launched at the 15th Summit of African Heads of State and Government in Kampala, Uganda, July 19-27, 2010.

The **International Peace Institute (IPI)** is an independent, international not-for-profit think tank with a staff representing more than twenty nationalities, located in New York across from United Nations headquarters. IPI is dedicated to promoting the prevention and settlement of conflicts between and within states by strengthening international peace and security institutions. To achieve its purpose, IPI employs a mix of policy research, convening, publishing, and outreach.

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From the *Preface*

The context in which our elections are held must change, and only then can we hope for a behavioral shift on the part of the participants. This challenge requires political courage and commitment of time and resources. This is not a “eureka” moment for the Panel, but the gauntlet has been thrown down.

Ramtane Lamamra

Commissioner for Peace and Security, *African Union*



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