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The African Charter on Democracy, Elections and Governance: Trends, Challenges and Perspectives

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Abstract

This introduction to the Special Focus argues that more thorough and nuanced understandings of the past accomplishments and failures of the African Charter on Democracy, Elections and Governance (ACDEG) are needed. The article contends that detailed accounts focusing on the *practices* of diverse actors and institutions within the ACDEG's multi-level governance framework and their – sometimes – frictional relations are necessary to develop appropriate future policy governing continental encounters with democratic governance. The paper introduces the different articles of the Special Focus which all address the fundamental question of how the implementation and impact of the ACDEG influence the African democratic governance landscape. Based on their analysis of key norms, actors, and processes, the inquiries in this Special Focus set out distinct directions for further empirical research and theorising about the ACDEG.

Keywords

African Union, African Charter on Democracy, Elections and Governance, African Governance Architecture (AGA), treaty compliance, enforcement and implementation

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Introduction

The establishment of the African Union (AU) in 2002 coincided with an overall trend in African politics to demand better democratic governance, including peaceful and credible transfers of power, transparent and accountable exercise of power, and the progressive realisation of the fundamental rights and freedoms enshrined in national and international legal frameworks. Yet, in meeting this demand, the African continent still faced multiple challenges including coups d'états, rife corruption, abuse of state power, and silencing of dissent. These enduring democratic governance deficits formed the background against which a continental solution was sought to assume collective responsibility and offer new perspectives to improve the African democratic governance landscape: the 2007 African Charter on Democracy, Elections and Governance (ACDEG).

The ACDEG followed a long series of continental debates and policy initiatives on how to improve democratic governance on the African continent (Wiebusch et al., 2019b). For example, the first continental condemnation of an unconstitutional change of government dates back to June 1997, when the Organization for African Unity (the OAU, the AU's predecessor) at its meeting in Harare rejected the coup d'état against the democratically elected government in Sierra Leone. In the following years, different OAU and AU declarations dealt with unconstitutional changes of government (Algiers: OAU, 1999; Lomé: OAU, 2000) and principles governing democratic elections in Africa (Durban: AU, 2002). Also, a standing decision-making organ for the prevention, management, and resolution was established in early 2004, namely the AU Peace and Security Council (PSC) which, one decade later, had become the continent's institutional watchdog over violations of the ACDEG. Consolidated into a binding treaty, this international legal instrument has gradually become – as evidenced by the systematic references to it in AU PSC decisions on numerous member states' crisis situations – the most important normative framework to guide the efforts of the AU in supporting democratic processes in its member states. However, despite its early entry into force in 2012, five years after its adoption, demands for and concerns about its effective implementation remain commonplace.

For its implementation, the Charter foresees a multi-level governance framework. At the *continental* level, different AU institutions are referred to, including the Assembly; the Executive Council; the PSC; the AU Commission; the African Court on Human and Peoples' Rights; the African Peer Review Mechanism; the African Commission on Human and Peoples' Rights; the Pan-African Parliament; the Economic, Social and Cultural Council; and the New Partnership for Africa's Development. At the *regional* level, the different Regional Economic Communities (RECs¹) are expected to designate focal points for the co-ordination, evaluation, and monitoring of the implementation of the Charter in order to ensure the participation of stakeholders, particularly civil society organisations, in the process. At the *national* level, the Charter requires the involvement of government, parliament, judiciary, political parties, electoral bodies, armed and security forces, public administration, public institutions that promote and support democracy and constitutional order, media, private sector, civil society organisations,

and citizens. To operationalise this intricate web of institutions and actors, an African Governance Architecture (AGA) was established in 2011. The AGA is a platform for dialogue between various stakeholders including the AU organs, RECs, and institutions with a mandate to promote governance, democracy, and human rights in Africa (2016 Rules of Procedure of the African Governance Platform, rule 1). In particular, it is supposed to enhance co-ordination, co-operation, and synergy between all actors involved in the implementation of the ACDEG.

In 2017, when the ACDEG celebrated its 10th and 5th anniversary since its respective adoption and entry into force, the Institute of Development Policy (IOB) at the University of Antwerp in collaboration with the Centre for Human Rights Law at SOAS University of London and the AU organised an academic expert seminar and a practitioner dialogue in Antwerp, Belgium to review the progress, challenges, and opportunities of the ACDEG so far. The policy dialogues identified various outstanding challenges, including the need for the AU to respond to new forms of anti-constitutional consolidation of presidential power, ratification challenges, monitoring mechanisms, and so on (AU, 2017; Aniekwe et al., 2017; Witt, 2019a). The AU then organised a follow-up expert seminar on “Africa’s Democratic Dividend and Deficits: Commemorating the 10th Anniversary of ACDEG” in Pretoria, South Africa.

Two special issues revisit legal (Wiebusch et al., 2019a) and governance (Cessouma, 2018; Matlosa, 2018a) implications of the ACDEG and future scenarios for its enforcement a decade after its adoption. The goal of these complementary special issues was to develop a more nuanced understanding of continent-wide democratic governance trends and to assess the prospects and threats to the ACDEG’s implementation from different theoretical, empirical, and country-specific perspectives. This Special Focus seeks to address some of the key gaps in the literature and, at the same time, to pave the way towards more substantive empirical research on and further theorising of the development of the African democratic governance landscape and the role of the AU. All contributions share a concern for the linkages between the ACDEG and democratic practices, and highlight the multi-level “frictional encounters” (Wodrig and Grauvogel, 2016: 272) between normative frameworks and political practices. Although the ACDEG has been subjected to extensive scrutiny since its inception, analyses to date have largely focused on developing an understanding of the legal features and philosophical underpinnings of the instrument (Elvy, 2013; Glen, 2012), its overall role in dealing with “unconstitutional changes of government” such as coups d’états (Souaré, 2014; Vandeginste, 2013), or as part of broader accounts on the continental promotion of democratic governance (Tieku, 2009). Far less attention has been paid to the nature of the domestic and continental political regimes that help explain the uneven acceptance and implementation of the ACDEG (Engel, 2019). Also lacking thus far has been a better understanding of the dynamics on the ground of how local actors, the real beneficiaries of the legal instrument, (fail to) instrumentalise the ACDEG (Witt, 2019b). Finally, considering the comprehensive nature of the ACDEG and its wider significance for the role of marginalised groups in democratic governance, it is surprising that these key aspects have not yet been the subject of further scrutiny. A case in point is the “gender

dimension” of the ACDEG, which has not yet been analysed in any systematic way (Abdumelik and Bellay, 2019).

In what follows, an overview is provided of the main insights gathered from the collaborative project to study the implementation of the ACDEG over the past decade. Specifically, we briefly tell a story about how a consensus emerged about the interrelated nature of the various challenges in the democratic governance landscape in Africa and how these multifaceted problems are increasingly being addressed through holistic solutions. Such holistic thinking, reflected in the nature and scope of the ACDEG, resulted in a proliferation of diverse continental encounters with the African democratisation project. Unfortunately, the effects of these continental encounters remain largely understudied. The main purpose of this Special Focus is therefore to offer an account of the varying acceptance of the ACDEG throughout the African continent and its instrumentalisation across different subject matters. In general, we argue in this introduction to the Special Focus that more thorough and nuanced understandings of the past accomplishments and failures of the ACDEG are called for as a basis for developing appropriate future policy and practice responses as well as to lay solid foundations for necessary implementation-oriented follow-up research.

Continental Encounters with Democratic Governance

An elementary mapping of the main challenges facing the African continent would include high levels of unemployment, illiteracy rates, uneven income distribution, corruption, manipulation of government accountability mechanisms, electoral fraud, personal security risks, and inadequate diversity management across religion, gender, age, race, tribal, and ethnic identities often resulting in political violence. Over the last decades, there has been a growing understanding of the interrelatedness of these various socio-economic and political factors that undermine the prospects of genuine development. This understanding is also reflected at the African continental level which increasingly privileges holistic solutions to these interrelated problems. The AU’s responses to post-conflict situations as formulated in its comprehensive Post-Conflict Reconstruction and Development Policy (AU, 2006) or in its wide-ranging Transitional Justice Policy (AU, 2019) are key examples of this approach. The ACDEG also fits into this logic with its broad scope to promote democracy, sustainable development, and personal security; enhance adherence to the rule of law and respect for human rights; and foster better political, economic, and social governance.

This wide and continuously expanding catalogue of objectives has been matched by a proliferation of decisions, policies, and treaties constituting an ever-growing AU *acquis* on democratic governance.² At the same time, these normative developments have also been paired with an AU institutional multiplication to help co-ordinate and implement these various ambitions through all sorts of new procedures, including different continental compliance and enforcement mechanisms. These monitoring and evaluation mechanisms initiatives consist of, but are not limited to, state reporting mechanisms of different AU treaties intended to improve the quality of democratic governance in its member states, AU Election Observation Missions, as well as reporting systems under

the African Peer Review Mechanism and the ACDEG. Moreover, the African Court on Human and Peoples' Rights has been added to the enforcement regime of the AU, which was co-ordinated mainly by the PSC alone previously. This judicial body of the AU complements the functioning of the African Commission on Human and Peoples' Rights in its mandate to protect human rights and has a broad mandate extending to all human rights ratified by a state party to a case, including, as the case may be, the ACDEG (Kioko, 2019; Niyungeko, 2019). As charted by this Special Focus, these different actors and processes create various sites of continental encounters with democratic governance in Africa worthy of further exploration.

A diverse set of methodologies and perspectives has been applied in two other recently published Special Issues (Matlosa, 2018a; Wiebusch et al., 2019a) to study the implementation and impact of the ACDEG. Their approaches reflected the need for creativity in overcoming the myriad challenges involved in adequately measuring and evaluating the influence of the ACDEG. Wiebusch et al. (2019b), Niyungeko (2019), Kitene (2018), and Matlosa (2018b) traced the continental normative, institutional, and procedural expansion prompted by the ACDEG. Mangu (2018) assessed levels of co-operation among the implementation partners of the ACDEG. Other authors considered the influence of the values and principles enshrined in the ACDEG on specific policy areas, like transitional justice in post-conflict societies (Murithi, 2018). Furthermore, other contributors evaluated the usage of the ACDEG in the context of governance disruptions during constitutional manipulations to prolong presidential tenure (Wiebusch and Murray, 2019) or during popular uprisings (Bakr 2018; Dersso, 2019; Manirakiza, 2019). Another perspective adopted by authors entailed zooming in on the quality of key democratic institutions regulated to varying degrees by the ACDEG, such as political parties (Magolowondo, 2018) or election management bodies (Kioko, 2019). This Special Focus similarly draws on a variety of methodological approaches to address persisting challenges in gathering meaningful empirical material on the repercussions of the ACDEG. For example, Engel (2019) and Abdulmelik and Bellay (2019) used proxy indicators of political governance improvements drawn from third-party governance measuring systems and matched them with the ACDEG ratification status among AU member states. While Witt (2019b) identified varying levels of political and legal contestation in the instrumentalisation of the ACDEG to provide evidence of its effects.

In sum, a wide variety of approaches can be deployed to gauge the effects of the ACDEG, providing an avenue for further research on its effectiveness and challenges in this regard. Unfortunately, as Abdulmelik and Bellay (2019) point out, one of the most instrumental mechanisms to monitor the implementation of the ACDEG – established by the Charter itself – has still not fully been operationalised: the ACDEG state reporting mechanism. This compliance mechanism based on self-reporting by ACDEG State Parties through a multi-actor focal point composed of relevant state and non-state actors would provide more systematic and comprehensive data on various democratic governance areas the ACDEG has an impact on. Yet, this procedure is still in its operational infancy. Only one state has submitted a report – Togo in 2017 – without even having completed the review process. Thirty-one State Parties should have reported as of November 2019, with several States that theoretically should have already reported two

or three times, as they have ratified the ACDEG more than four and six years ago, respectively. This absence of self-reporting is an important missed opportunity to measure (and generate) compliance at the national level. But also, at the continental level, there are transparency deficits regarding the use of the ACDEG. As Engel (2019) makes clear, access to key information concerning AU activities relating to the interpretation and application of the ACDEG is very limited. The most important example highlighted by Engel is the absence of publicly available records of the PSC deliberations in applying the ACDEG to contexts associated with political violence.

Conclusion

In 2013, at the 50th Anniversary of the OAU, a process was initiated to develop a blueprint to guide Africa's development in the next fifty years: Agenda 2063.³ This plan which sets out the AU's desired future for Africa – "The Africa we want" – consists of seven aspirations touching on various socio-economic, cultural, and political developmental ideals.⁴ One aspiration in particular overlaps with the core purpose of the ACDEG which is to achieve "an Africa of good governance, democracy, respect for human rights, justice and the rule of law."

Imagining a better future, like Agenda 2063, fundamentally presumes a qualified statement about the state of affairs of the present. To bridge this gap between "the present" and "a better future," inspiration is generally found in developments in the past. This scrutiny of history allows the identification of factors and processes that produce a transition from one status quo into another. Crucially, this identification of two states of affairs (present and future) depends on a measurement exercise of making some variables visible and obscuring others. The intervention of the AU to improve the state of democratic governance of its member states through the ACDEG and Agenda 2063 is no exception to this *modus operandi*. Accordingly, to improve quality of governance according to the terms outlined in the ACDEG, adequate measurements of the state of governance are and will remain crucial. If the ACDEG is to effectively serve its purpose and contribute to realising Agenda 2063, then the implementation and impact of the ACDEG needs to be closely scrutinised, at least that is, if one aims to verify that the treaty commitments are being upheld and progressively realised.

While this Special Focus examines very different themes governed by the ACDEG, it also highlights cross-cutting perspectives and challenges for future research. All three contributions share an interest into the practices surrounding the implementation of the ACDEG that go beyond revisiting the legal framework and origins of the Charter. More specifically, Witt examines how and by whom the ACDEG is employed and contested regarding the right to access state power in the aftermath of an unconstitutional change of government. Abdulmelik and Bellay investigate women's participation, representation, and leadership in African governance and decision-making spaces, as called for by the ACDEG. Engel develops different hypotheses for why AU member states (fail to) ratify and implement the ACDEG compliance mechanisms.

This Special Focus further demonstrates that although, from a strict legal perspective, the ACDEG's jurisdiction is territorially limited since only thirty-four countries out of

the fifty-five AU member states have ratified the treaty, its impact has been felt beyond its State Parties. This includes, for example, its application by the PSC following the coup in Madagascar even though the latter was not yet a State Party to the treaty at the time (Witt, 2019b) or as a key benchmark during AU electoral observation missions (Abdulmelik and Bellay, 2019) or as the main catalyst to improve continental co-ordination and policymaking in the domain of democratic governance among different AU institutions through the AGA (Engel, 2019). We anticipate that the influence of the Charter will continue to grow as the most important democratic governance instrument in Africa, not only because the African Court on Human and Peoples' Rights decided to recognise the Charter as a justiciable legal instrument (Kioko, 2019; Niyungeko, 2019), but also because of its growing political authority.

Nevertheless, our inquiry also revealed that the implementation of the ACDEG remains limited and varies significantly depending on the democratic quality of the implementing governmental regime (Engel, 2019) as well as on the respective policy issue (Abdulmelik and Bellay, 2019; Witt, 2019b). Accordingly, the core objective of the Special Focus was to interrogate the different contextual factors that shape the nature, dynamics, and scope of the implementation of ACDEG. While all three contributions struggle with similar challenges of data and information access and availability, they sought to address this challenge by systematically unpacking the characteristics, motivations, and practices of different key actors both at the State Party level as well as on the regional and continental level. Specifically, the authors noted various convergences, divergences, and sometimes even contradictions *between* different levels of international governance (e.g. AU vs. Economic Community of West African States (ECOWAS)) as well as *within* international governance (e.g. differences among AU and ECOWAS institutions). Overall, the authors highlight a significant ongoing commitment gap between policy and practice that undermines the overall implementation of the ACDEG. Further research on the Charter could usefully explore the diverse institutional interactions in ensuring improved co-ordination and synergy between and among the AU, RECs, and national actors in the interpretation and implementation of the ACDEG.

Finally, we noted that there are still only few cases of direct citizens' engagement with the Charter so far. At the same time, the contributions also suggest that the above-mentioned recognition of the ACDEG as an enforceable human right instrument by the African Court on Human and Peoples' Rights (Abdulmelik and Bellay, 2019) or as a (de)legitimising instrument of access to state power (Witt, 2019b) opens important new perspectives for the Charter to make a difference in the lived realities of African citizens. These diverse opportunities to include citizens in the operationalisation of the ACDEG and the extent to which these opportunities are utilised constitute an important area for further interrogation.

The fundamental question raised and addressed by the Special Focus was how the AU, including its norms, actors, and processes, influence the democratic governance landscape in Africa. Admittedly, this Special Focus only provides a partial account of the implementation of ACDEG. Nonetheless, we believe that the articles in this Special Focus do offer valuable food for thought on this puzzle while also setting out distinct directions for further empirical and theoretical research, which we hope will be taken up by other scholars.

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Notes

1. The RECs officially recognised by the AU are the Common Market for Eastern and Southern Africa, Community of Sahel-Saharan States, Economic Community of West African States, Southern African Development Community, East African Community, Arab Maghreb Union, Economic Community of Central African States, and Intergovernmental Authority on Development.
2. For an overview of relevant policies and treaties, see the AU Shared Values Framework, available at <http://aga-platform.org/about#shared-values> (accessed 20 November 2019).
3. For an overview of Agenda 2063, see <https://au.int/en/agenda2063/overview> (accessed 20 November 2019).
4. These are (1) A prosperous Africa based on inclusive growth and sustainable development; (2) An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa's Renaissance; (3) An Africa of good governance, democracy, respect for human rights, justice and the rule of law; (4) A peaceful and secure Africa; (5) An Africa with a strong cultural identity, common heritage, shared values and ethics; (6) An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children; (7) Africa as a strong, united and influential global player and partner.

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Die African Charter on Democracy, Elections and Governance: Trends, Herausforderungen und Perspektiven

Zusammenfassung

Ein differenziertes Verständnis der Errungenschaften und Misserfolge der African Charter on Democracy, Elections and Governance (ACDEG) ist mehr als zehn Jahre nach ihrer Verabschiedung erforderlich. Diese Einleitung zum *Special Focus* über die ACDEG plädiert für eine detaillierte Auseinandersetzung mit der Praxis von verschiedenen Akteuren und Institutionen im

Rahmen der Multi-Level Governance und ihrer nicht immer spannungsfreien Beziehungen um eine angemessene zukünftige Politik für die Förderung demokratischer Regierungsführung auf dem afrikanischen Kontinent zu entwickeln. Sie umreißt die Beiträge des *Special Focus*, die allesamt die fundamentale Frage behandeln, wie sich Umsetzung und Auswirkungen der ACDEG auf die Entwicklung demokratischer Prozesse in Afrika auswirken. Die Beiträge zeigen anhand der Analyse zentraler Normen, Akteure und Prozesse, neue Perspektiven für weitergehende empirische Forschung und Theorienbildung zur ACDEG auf.

Schlagwörter

Afrikanische Union, African Charter on Democracy, Elections and Governance, Afrikanische Governance Architektur, Vertragseinhaltung, Durchsetzung und Implementierung