African Union Support to Elections in Africa: Rethinking the Preventive Role

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Abstract

It is trite law that free, fair, and credible elections are essential to representative democracy. In the African context, an additional aspiration of 'peaceful' is added to the lexicon on elections. This emerges from a history of election-related violence that has meted severe consequences on human security, and socio-economic and political development in Africa spanning from Kenya, Nigeria, Zimbabwe, Côte d'Ivoire, the Democratic Republic of the Congo (DRC), and most recently in Uganda in its 2021 elections. Under its objective to promote peace, security, and stability in Africa, the African Union (AU) has adopted various measures to achieve this goal with varied success. This paper analyses the mechanisms used by the AU within and beyond the African Peace and Security Architecture (APSA) including the Panel of the Wise (POW), the Continental Early Warning System (CEWS), and Election Observation Missions (EOMs) to identify early warning signs of conflict and prevent disputes from escalating into electoral violence. In doing so, the chapter examines the experiences in Kenya (2007, 2013 and 2017), Zimbabwe (2008, 2013 and 2018), and Côte d'Ivoire (2010, 2015 and 2020). In these jurisdictions, while the AU's preventive action was evident, electoral violence was among other irregularities and illegalities that marred the credibility of elections. This emanates from a disconnect between norms in theory and norms in practice, weak institutional capacity, poor enforcement of the AU's recommendations, and ineffective redress of structural issues in member states. While acknowledging that the AU's preventive interventions cannot be a panacea for electoral violence in Africa, the chapter explores how the AU can enhance its effectiveness in conflict prevention throughout the election cycle in African countries.

Introduction

This article explores why and how the African Union (AU) supports elections in Africa with a specific focus on preventing election-related violence and conflict. An underlying thrust to this analysis is the assumption that there is a nexus between democracy and peace.[1] Although the term democracy has inspired varied definitions from scholars, a

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1 *Kristian Gleditsch* and *Michael Ward*, Peace and War in Time and Space: The Role of Democratization, in International Studies Quarterly 44 (2000), pp. 28–30; *Roland Paris*, At War's End: Building Peace After Civil Conflict, Cambridge, 2004, pp. 4–5.

majority consensus emerges that it is the ideal form of governance and its promotion is crucial for global peace and stability.[2] Democracy promotion is an endeavour that requires the intervention of external forces, and in the African context this responsibility largely rests on the AU. Democracy promotion has been defined as:

> *... all overt and voluntary activities adopted, supported, and (directly or indirectly) implemented by (public or private) foreign actors explicitly designed to contribute to the political liberalization of autocratic regimes and the subsequent democratization of autocratic regimes in specific recipient countries.[3]*

Under the Economist Intelligence Unit's (EIU) Democracy Index, the quality of democracy is based on five categories: electoral process and pluralism, the functioning of government, political participation, political culture, and civil liberties.[4] Four of the categories under the index – electoral process, pluralism, political participation and to some extent, civil liberties – are measured in the context of elections. Regular, free, fair and genuine elections therefore constitute a crucial aspect of democracy and a means of preventing conflict and violence over political power struggle. It is the vehicle through which the will of the people is exercised and the source of government legitimacy.[5]

However, the mere conduct of elections does not satisfy the requirements for democracy, but the administration of a genuine, free and fair process does.[6] Flawed elections are a major precipitating factor of election violence in many countries in Sub-Saharan Africa.[7] Election violence has not only jeopardised the state of peace and security in Africa but also tracked back democratic gains at national, regional, continental and global levels.[8] A culture of constitutions without constitutionalism has had a negative effect on peace and democracy in Africa.[9] Ideally, a good constitution provides the foundation for redressing root causes of structural violence and prevent recurrent violence and conflict.

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2   *Kanika Gupta*, Trends in Democracy Promotion by Regional Organisations: The Arab Revolution of the 21st Century and the After-Effects, in Journal of Humanities and Social Science 6 (2015), pp. 6–16.

3   *Philippe Schmitter* and *Imco Brouwer*, Conceptualizing, Researching, and Evaluating Democracy Promotion and Protection, EUI Working Paper SPS No. 99/9, Florence, 1999, http://cadmus.eui.eu/bitstream/handle/1814/309/sps99_9.pdf (accessed on 14 April 2021).

4   *Economist Intelligence Unit*, Democracy Index 2020: In Sickness and in Health?, 2021, p. 3.

5   *Bo Rothstein*, Creating political legitimacy, in American Behavioral Scientist 2009, p. 311.

6   Indicators of a free, fair and credible election process include: Such a process includes the respect of principles such as universal suffrage, free suffrage, devoid of violence, coercion, undue influence and corruption; and transparency and accountability.

7   *Liisa Laakso*, Insights into Electoral Violence in Africa, in *Mathias Basedau*, *Gero Erdmann* and *Andreas Mehler* (eds.), Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa, Virginia, 2007, pp. 224–254, 227–228.

8   *The Nordic African Institute*, Electoral violence in Africa, 13 (2012), p. 1.

9   *Gordon Schochet,* Introduction: Constitutionalism, Liberalism, and the Study of Politics, in *Roland Pennock* and *John Chapman* (eds.), Constitutionalism: Nomos XX, New York, 1979, pp. 1–15;

The AU has a key role to play in protecting and promoting constitutionalism and democracy as a strategy to maintain peace and stability in Africa. It is commonplace that prevention is better than cure, necessitating the AU to expend more efforts in preventing rather than resolving and rebuilding from conflicts and crises. This paper therefore analyses three mechanisms that have been implemented by the AU, namely the Panel of the Wise (POW), the Continental Early Warning System (CEWS) and Election Observation Missions (EOMs) to identify early warning signs of conflict and prevent disputes from escalating into electoral violence. It discusses how the AU employed these mechanisms in Kenya, Zimbabwe and Côte d'Ivoire. These countries serve as prototypical cases to analyse the effectiveness of AU's preventive strategies.

Thus, the paper is divided into six parts. The first part is this introduction; the second part rationalises AU's preventive role in elections in Africa by examining its normative framework; the third part analyses its institutional capacity to implement its normative framework in the context of peaceful and credible elections with a focus on POW, CEWS, EOMs and governance mechanisms; the fourth part analyses AU's implementation of its norms and preventive mechanisms in practice; the fifth part illustrates this in the three most recent elections in Kenya, Zimbabwe and Côte d'Ivoire; and the sixth and final part is the conclusion.

A. Rationalising the Preventive Role of the AU in African Elections through a Legislative Lens

The metamorphosis of the Organisation of African Unity (OAU) to the AU was a paradigmatic shift in the African continent; at least in theory. This perspective was grounded on the ideological and operational shift in the continental body from one of non-interference to non-indifference.[10] This change in stance was precipitated by the dismal consequences of the principle of non-interference that saw widespread gross human rights abuses, war crimes, genocide and crimes against humanity in African countries.[11] OAU's adherence

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H.W.O. Okoth-Ogendo, Constitutions without Constitutionalism: Reflections on an African Political Phenomenon, in *Issa Shivji* (ed.), State and Constitutionalism: An African Debate on Democracy, Harare, 1991, chapter four; *Adebayo Olukoshi,* State, Conflict and Democracy in Africa: The Complex Process of Renewal, in *Richard Joseph* (ed.), State, Conflict and Democracy in Africa, London, 1999, pp. 451–463; *John Haberson*, Rethinking Democratic Transitions: Lessons from Eastern and Southern Africa, in *Richard Joseph* (ed.), State, Conflict and Democracy in Africa, London, 1999, pp. 39–53; *Karuti Kanyinga*, Elections without Constitutionalism: Votes, Violence, and Democracy Gaps, in African Journal of Democracy and Governance 5 (2018), p. 147; *The Nordic African Institute*, Electoral violence in Africa, note 8, p. 1; *Joseph Oloka-Onyango* (ed.), Constitutionalism in Africa: Creating Opportunities, Facing Challenges, Kampala, 2001, p. 2.

10 *IRRI,* From non-interference to non-indifference: The African Union and the Responsibility to Protect, 2017, p. 4.

11 *Ben Kioko*, The Right of Intervention under the African Union's Constitutive Act: From Non-interference to Non-intervention, in International Review of the Red Cross 852 (2003), pp. 807–808.

to the principle of non-interference was widely criticised for tacitly inculcating a culture of human rights infringement in the African continent by focusing on state security over human security.[12] The reconstitution of the OAU into the AU was therefore hoped to augur a new dawn in the realisation of human rights, peace and security as well as democratic promotion in Africa; an aspect captured in its normative framework.[13]

Impressively, its foundational document, the AU Constitutive Act, was pioneering in encapsulating the principle of non-indifference, otherwise known as the right to protect.[14] The instrument empowers the AU with the right to intervene in a member state in the event of grave circumstances, namely, war crimes, genocide and crimes against humanity.[15] Noteworthy, the AU is yet to exercise this power despite opportunities where such intervention was necessary as was the case in Côte d'Ivoire in 2010 and Libya in 2011.[16] It has been argued that the AU rather prefers interventions that proceed with the acquiescence of the state concerned such as peace and diplomatic missions. This has raised doubt whether in fact the AU has shed the shackles of its predecessor's state-centric approaches for the human centric tools availed to it by its Constitutive Act.[17]

Further indicative of its normative commitment to human security over state security are the objectives of the AU. While the defence of state sovereignty is still an aim of the AU, so is the promotion of peace, security and stability in Africa; the promotion of 'democratic principles and institutions, popular participation and good governance'; and protection and promotion of human rights under the African Charter on Human and Peoples' Rights.[18] The task of achieving the objective of promoting peace, security and stability in Africa largely falls on the AU Peace and Security Council (PSC) with the support of other bodies including the POW, the CEWS and the African Standby Force (ASF).[19] Towards this end, the Protocol on the PSC tasks this body with engaging in early warning and preventive diplomacy. This requires the PSC to anticipate and prevent conflicts in member states and to implement early responses to crises in order to prevent them from escalating into full blown conflicts.[20] The emphasis on the preventive role applies to both potential crisis

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12 *Christian Ani Ndubuisi,* The African Union Non-Indifference Stance: Lessons from Sudan and Libya, in African Conflict and Peacebuilding Review 2 (2016), pp. 2–3.

13 *Abadir M. Ibrahim*, Evaluating a Decade of the African Union's Protection of Human Rights and Democracy: A Post-Tahir Assessment, in African Rights Law Journal 12 (2012), p. 31.

14 *Kioko*, note 11, pp. 807–808.

15 AU Constitutive Act (11 July 2000), articles 4 (h) and 4 (j).

16 *Ndubuisi*, note 12, p. 5; *Paul Williams*, The African Union's Conflict Management Capabilities, in Working paper, Council on Foreign Relations, International Institutions and Global Governance Program. 2011.

17 Ibid.

18 AU Constitutive Act, articles 3 (f), 3 (g) and 3 (h).

19 AU Constitutive Act, preamble and articles 3 (a), 3 (b) and 6 (a); Protocol Relating the Establishment of the Peace and Security Council of the African Union (9 July 2002), articles 2 and 7.

20 Ibid.

situations and resolved conflicts that have a potential to resurface. In such post conflict situations, the effectiveness of the peace building and post-conflict reconstruction measures are critical to preventing resurgence of violence.[21] A key objective of the PSC in preventing conflicts is promoting and encouraging 'democratic practices, good governance and the rule of law,' and 'protecting human rights and fundamental freedoms, and respect for the sanctity of human life and international humanitarian law'.[22]

Regional Economic Communities (RECs) are crucial players in the African Peace and Security Architecture (APSA) and their collaboration with the AU bodies is vital to ensure the implementation of relevant instruments on peace, security and stability.[23] This collaboration extends to enhancing their ability to anticipate and prevent conflicts and gross human rights violations.[24]

The broader normative framework of the AU seeks to buttress the ability of the continental body to advance democracy, good governance, peace, security and stability with a recognition of the centrality of electoral democracy. This is captured in various instruments including the African Charter on Democracy, Elections and Governance (ACDEG), the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, the African Union Convention on Preventing and Combating Corruption, and the Guidelines for African Union Electoral Observation and Monitoring Missions.

In particular, ACDEG seeks to promote regular, free and fair elections in Africa as the basis for legitimate governments and as the mode for changing the national leadership.[25] Generally, states are required to set up the necessary conditions for democratic elections and promote democracy, rule of law and human rights.[26] Relevant to conflict prevention, states are obligated to promote national, regional and continental peace, security and stability through participatory political systems enhanced by well-functioning and inclusive institutions.[27] States are also obligated to support conflict prevention and resolution activities undertaken by the AU.[28]

The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa further supports conflict prevention measures during electoral processes by requiring states

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21 Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 3(c).

22 Ibid., article 3 (f) and Article 4 (c).

23 Protocol Relating the Establishment of the Peace and Security Council of the African Union, articles 16 (a) and 16 (b); Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa (2008), article VII.

24 Ibid.

25 African Charter on Democracy, Elections and Governance (30 January 2007), article 2(3).

26 Ibid., articles 4(1) and 17.

27 Ibid., article 38(1).

28 Ibid., article 38(2).

to adopt measures to prevent illegal practices such as fraud and rigging throughout the electoral process.[29] Respect for the rights of citizens including free and equal political participation, pluralism, as well as respect for human rights and fundamental freedoms are critical contributing factors to democratic and peaceful electoral processes.[30]

B. Analysis of the AU's Institutional Capacity to Exercise its Preventive Role

Primarily, the PSC's objectives are to promote peace, security and stability in Africa with the support of other institutions of the AU.[31] This section focuses on how the POW, CEWS, and EOMs fit into this matrix particularly through the effective anticipation and prevention of conflict. This is not an exhaustive examination of the AU's preventive capacity but the section does give credence to the link between good governance and conflict prevention. To this end, it discusses the mechanisms in place that promote good governance in Africa with the aim of preventing conflict in Africa during elections.

I. Panel of the Wise

The POW supports the efforts of the PSC and the Chairperson of the Commission towards conflict prevention.[32] The criteria for the composition of the POW is meant to deliver a select team of highly respected personalities with outstanding qualifications in promoting peace, security and development in the continent that can assist towards the achievement of this goal.[33]

In the exercise of their mandate, the POW advises the PSC and the Chairperson of the Commission on the 'promotion, and maintenance of peace, security and stability in Africa'.[34] This shall inform actions to specifically prevent conflict or generally promote and maintain peace and security in the continent.[35] Towards the goal of conflict prevention, the deployment of the POW is particularly critical in the pre-election phase where it can

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29 AHG/Decl. 1 (XXXVIII), Declaration on the Principles Governing Democratic Elections in Africa, 38th Ordinary Session of the OAU Assembly, Durban (South Africa), 8 July 2002, Part III (d).

30 Ibid., Part IV.

31 Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 3.

32 Ibid., article 11(1).

33 Ibid., article 11(2). As of 2020, the current membership of the POW includes: Hifikepunye Pohamba, former President of Namibia; Ellen Johnson Sirleaf, former President of Liberia; Speciosa Wandira Kazibwe, the first female African Vice-President of Uganda; Amr Moussa, former Secretary-General of the League of Arab States and former Egyptian Minister of Foreign Affairs; and Honorine Nzet Bitéghé, former Minister for Social Affairs in Gabon.

34 Ibid., article 11(3).

35 Ibid., article 11(4).

employ preventive diplomacy strategies.[36] These approaches include advisory services, promoting engagements and cooperation among stakeholders, shuttle diplomacy, and fact-finding missions among others.[37]

The work of the POW is complemented by similar structures at the regional level.[38] There is also a collaborative network made up of the AU, RECs and Civil Society Organisations (CSOs) in Africa called Pan-African Network of the Wise (PanWise) that seeks to harmonise approaches towards peace, security and stability in Africa. However, there is still need to fully operationalise and promote better cooperation within this network. This need for improved collaboration and harmonisation of interventions extends to operations of the POW and other conflict prevention mechanisms under the AU.[39]

There have been calls for the improvement of the relationship between the PSC and the POW, and a more defined, structured and well-planned involvement of the POW in both conflict prevention and mediation.[40]There is hope for the achievement of this recommendation following the merging of the Peace and Security Department, and the Department of Political Affairs in March 2021. There is an ongoing conversation on how to enhance the preventive diplomacy strategies under the departments including the operations of the POW and AU Commission's deployed special envoys, special representatives or mediators. Historically, some countries have been sceptic about the presence of the POW during election periods. This may stem from perception that given the political background of the panel, and the wide range of political issues that they explore, they have a disruptive element. The potential approach to improving acceptance for the presence of POW in countries is to have them work with the High-Level Mission in the election observation framework to temper their stark visibility.[41]

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36 *International Peace Institute*, 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 (2010), p. 6.

37 *African Union*, African Peace and Security Architecture, APSA Roadmap 2016–2020, Addis Ababa, 2015, p. 16.

38 Ibid. The sub-regional structures include: the Panel of Elders and a Mediation Reference Group of the Southern African Development Community (SADC); Council of the Wise of the Economic Community of West African States (ECOWAS); Panel of Eminent Persons of the East African Community (EAC); The Committee of Elders of the Common Market for Eastern and Southern Africa (COMESA); The Permanent High-Level Mediator for Peace and Security of the Community of Sahel-Saharan States (CEN-SAD); Mediation Unit of the Intergovernmental Authority on Development (IGAD); and Mediation and Preventive Diplomacy Unit of the Economic Community of Central African States (ECCAS).

39 *African Union,* note 37, p. 17.

40 *AU Peace and Security Council*, New Panel of the Wise has a lot on its Plate, 2016, https://issafrica.org/pscreport/psc-insights/new-panel-of-the-wise-has-a-lot-on-its-plate (accessed on 15 April 2021); *Gustavo De Carvalho*, Conflict Prevention: What's in it for the AU ?, in ISS Policy Brief, 2017, p. 316.

41 Interview with *Guy Cyrille Tapoko*, Head of the Democracy and Electoral Assistance Unit of the Political Affairs Department of the AU, 14 April 2021.

The preventive diplomatic approach often adopted by the POW is a realisation of the 'African solutions to African problems' policy. Historically, respected elders were involved in preventing and resolving conflicts within the African society, which is simulated under the POW framework.[42] This policy has inspired much debate whether in fact there is a consensus as to what connotes African solutions given the multi-cultural and multi-ethnic composition of the continent. Or is it rather an African solution just because it has been undertaken by Africans?[43] This debate is relevant when confronted by African solidarity justifications that have been seen to shield authoritarian and otherwise undemocratic leaders from sanctions and accountability especially when the international community pushes for punitive rather that quiet diplomacy interventions.[44] The POW therefore has to effectively implement their preventive diplomacy interventions such that they are not seen as an enabler of regime preservation over democracy and human rights promotion.

II.   Continental Early Warning System

As the name suggests, this mechanism was established to anticipate and prevent conflict.[45] The effectiveness of the CEWS relies on a collaborative network at the continental and regional levels.[46] This system includes observation and monitoring units based at regional level mechanisms that are linked to the main observation and monitoring centre called 'The Situation Room'.[47] The regional centres are required to collect, process and feed information to the Situation Room.[48] Information from the African Peer Review Mechanism (APRM) and the Africa Governance Report (AGR) additionally sheds light on possible triggers for conflict emanating from governance concerns.[49] The cooperation of member

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42   *João Gomes Porto* and *Kapinga Yvette Ngandu*, African Union Panel of the Wise: A concise history, Durban, 2015.

43   *Mxolisi Goodman Mlatha,* The Role of the African Union in Promoting Democracy and Human Rights: A Case Study of Zimbabwe', University of Free State, 2018, p. 78.

44   *Eldridge Adolfo*, Coalition of Liberation and Post Liberation Politics within SADC: A Study of SADC and the Zimbabwean Crisis, Stockholm, 2009, pp. 23–24.

45   Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 12(1); *Mlatha,* note 43, p. 59.

46   Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 12(3); *African Union*, note 37, at 15 and 23; *COMESA*, IGAD Early Warning Team in COMESA for Benchmarking (8 March 2019) https://www.comesa.int/igad-early-warning-team-in -comesa-for-benchmarking/ (accessed on 14 April 2021).

47   Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 12(2) (a) and (b).

48   Ibid. The EWSs at regional level include: CEWARN for IGAD; ECOWARN for ECOWAS; EACWARN for EAC; COMWARN for COMESA and MARAC for ECCAS. See *African Union*, note 37, p. 15.

49   *African Union,* Report of the Chairperson of the Commission on the Follow-Up to the Peace and Security Council Communiqué of 27 October 2014 on Structural Conflict Prevention (29 April 2015), p. 4.

states is necessary to allow early response by the PSC or Chairperson of the AU Commission as guided by early warning information.[50]

There is still much to be done to operationalise and take full advantage of the opportunities presented by the CEWS both at continental and regional levels. Both systems need to ensure that quality and timely reports and updates are developed and shared at a more regular basis. This should be further supported by timely response from the decision makers.[51] This can be facilitated by creating more opportunities for engagement between the two levels. Further, there is need to enhance the capacity of national Early Warning Systems (EWSs) through strategies such as training and capacity building, and information sharing.[52]

There is also a low level of interaction between the PSC and similar structures at RECs level. Effective collaborations with the broader network of external stakeholders at national, regional and continental level is vital for improving the quality and outputs of data collection, information sharing and analysis to improve identification of and response to early warning signs of conflicts.[53] It was estimated that in 2020, the cost of AU's mediation and preventive diplomacy efforts would be around to $43 million.[54] This is a financial incentive to adopt a common approach to conflict prevention and mitigation by RECs and AU to optimise available resources towards a common agenda.[55]

There is an acknowledgement within the AU conflict prevention framework of the need to address root causes of conflict in Africa, an aspect that should feature in the early warning systems. Structural factors that jeopardise peace and stability emanate from social, economic, cultural and political inequalities as well as historical human rights violations.[56] Structural interventions therefore seek to address these inequalities, enhance democracy, human rights and good governance, and promote peaceful coexistence.[57] While combating structural causes of conflict has a great potential in addressing conflict in Africa, this is still a developing aspect.[58]

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50 Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 12(6).

51 *African Union,* note 37, p. 24.

52 Ibid., p. 26.

53 Ibid., pp. 26–27.

54 AU Commission, Progress Report of the African Union High Representative for the Peace Fund (July 2016).

55 *African Union,* Report on the Retreat of the Peace and Security Council on Enhancement of Cooperation between the African Union Peace and Security Council and the Regional Economic Communities and Regional Mechanisms for Conflict Prevention, Management and Resolution in the Promotion of Peace, Security and Stability, 2016, https://archives.au.int/handle/123456789/277 0 (accessed on 11 April 2021); *Carvalho,* note 40, p. 1.

56 *African Union,* note 49, p. 2.

57 Ibid., p. 3.

58 Ibid., pp. 27–28.

III. Election Observation Missions

The AU, through the AU Commission, has given special attention to election observation and monitoring to promote free, fair and credible elections in Africa given that disputed elections have historically been a source of election violence. Further, this goes towards the overall goal of enhancing good governance, rule of law and the respect for human rights in Africa. The AU EOM draws its mandate from various AU instruments, most importantly, the African Charter on Human and Peoples' Rights, the ACDEG, the OAU/AU Declaration on Principles Governing Democratic Elections in Africa and the AU Guidelines for Elections Observation.

In 2018 and 2019, the AU through the Department of Political Affairs deployed pre-election evaluation to 12 and 15 countries respectively as well as short-term and long-term EOMs.[59] In 2018, the AU noted that there was a general improvement in election management but with reported national incidents of election violence and disputed results. In 2019, the AU reported generally peaceful elections. These statistics show a persisting tendency to focus on the voting process.[60] The challenge with this approach is the poor focus on the processes leading up to the elections. There is need for the AU to engage more deeply with both historical and emerging socio-political, demographic and economic factors that can be triggers for election violence. This can be effectively facilitated by deep interrogation and action based on information from the CEWS.

The methodology for AU EOMs is expounded in the Guidelines for African Union Electoral Observation and Monitoring Missions. The ACDEG also stipulates that following a state request, the AU can offer electoral assistance to member states through the Democracy and Electoral Assistance Unit, the Democracy and Electoral Assistance Fund, or special advisory missions.[61] Member states have an obligation to appraise the AU Commission of upcoming elections, invite the AU EOM and provide suitable operational conditions for the AU EOM to conduct election observation.[62]

The ACDEG requires the AU Commission to send an exploratory mission before the elections to assess the state preparedness for holding democratic elections.[63] The inclusion of this provision in ACDEG is important towards a shift from only short term to a combination of short- and long-term observation missions that was seen from 2013. The AU Commission is tasked to convene an independent, well resourced, competent and

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59 *African Union,* Annual Report on the Activities of the Union and its Organs, (February 2019), para. 520; *African Union*, Annual Report on the Activities of the Union and its Organs (February 2020), para. 15.

60 *International Peace Institute*, note 36, p. 9.

61 African Charter on Democracy, Elections and Governance, article 18.

62 Ibid., article 19.

63 Ibid., article 20.

diverse team who should conduct the election observation in an 'objective, impartial and transparent manner'.[64]

To enhance the impact of EOMs, special advisory missions, and interventions by the POW, it is wise to collaborate and benefit from shared expertise towards ensuring democratic and peaceful elections in African countries. Relevant stakeholders should however ensure that calls for peaceful elections go alongside democratic elections so that it does not deliver short-term solutions to a contentious election that would only serve to defer the conflict.[65]

C. Norms in Theory Versus Norms in Practice in the Exercise of the AU Preventive Role

When examined through the prism of the normative framework, the AU has a firm ideological backbone to exercise it preventive role by promoting democracy and human rights, and supporting free, fair, genuine and peaceful elections in Africa. African states have a duty to respect and uphold their obligations under relevant human rights instruments that promote democratic elections, and peace, security and stability. However, the fact that Africa has the highest number of authoritarian regimes globally and only one full democracy is indicative of the failure to realise the AU normative framework in praxis.[66] Less than one in six major elections in Africa results in a full transfer of power' and worse still five of the top 10 longest serving presidents in the world come from Africa.[67]

This democratic deficit does not stem from the failure to hold elections. Authoritarian, hybrid and democratic regimes alike hold regular elections. However, elections are increasingly seen as tools of legitimising authoritarian governments rather than an expression of the will of the people.[68] Oftentimes this has been a catalyst of electoral violence by

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64 Ibid., article 21.

65 *Robert Gerenge*, Preventive Diplomacy and the AU Panel of the Wise in Africa's Electoral-related Conflicts, in Policy Briefing 2015, p. 4.

66 Economist Intelligence Unit, note 4, p. 47. Mauritius is the only African country that is meets the criteria of a full democracy under the Democracy index.

67 *M. Ronceray and B. Byiers*, Elections in Africa – Playing the Game or Bending the Rules? Discussion Paper No 261 (October 2019), p. 1. These long serving presidents are: Teodoro Obiang Nguema Mbasogo, Republic of Equatorial Guinea, 43 years; Paul Biya, Cameroon, 40 years; Denis Sassou Nguesso, Republic of the Congo, 38 years; Yoweri Museveni, Uganda, 36 years; Isaias Afwerki, Eritrea, 29 years; and Ismaïl Omar Guelleh, Djibouti, 23 years.

68 *Obert Hodzi*, Political Transition to Democracy: The Role of the Security Sector and Regional Economic Communities in Zimbabwe and Côte d'Ivoire's Democratic Puzzle, in African Security Review 23 (2014), p. 296; *Said Adejumobi*, Elections in Africa: A Fading Shadow of Democracy?, in International Political Science Review 21 (2000), p. 60; *Babatunde Fagbayibo*, Democratic Development in Africa: A Tale of One Step Forward, Two Steps Backward, in Consultancy Africa Intelligence, 2010, https://www.polity.org.za/article/democratic-development-in-africa-a-tale-of-one-step-forward-two-steps-backward-2011-01-04 (accessed on 16 April 2021); *Nic Cheeseman* and *Brian Klaas*, How to Rig an Election, London, 2018.

aggrieved parties thereby jeopardizing human security and truncating democratic promotion and consolidation in the African continent.

Despite touting a non-indifference ideology, the AU has been found wanting in halting electoral authoritarianism in accordance to its normative framework. Importantly, the AU has largely, but not consistently, condemned unconstitutional changes of government. Its record is however worse when confronting undemocratic governance and leaders who violate the AU normative framework to deliver flawed electoral victories, and commit human rights violations during election cycles. Unsurprisingly, the continental body has been painted as an endorser of a 'club of incumbents'[69] or a 'heads of states club'[70] who in reciprocation turn a blind eye to the transgressions of other member states. Like its forerunner, the AU still struggles with the shackles of state-centrism and African solidarity, witnessed by its endorsement of undemocratic or imperfectly democratic governments.[71]

The AU has failed to effectively employ the carrot and stick method in promoting peace, security and stability. Arguably, it has heavily relied on quiet diplomacy and preventive measures, which have often favoured incumbents. Its coercive powers such as sanctions, and direct intervention under articles 4(h) and 4(j) of the Constitutive Act have not been given due consideration.

Encouragingly, with proper facilitation and international, regional and sub-regional organisations, the AU's early warning systems has great potential to inform AU's preventive strategies. An examination of root causes of conflict is apropos, which in tandem acknowledges the importance of good governance and respect for human rights as a preventive strategy. But this is ultimately a monumental task without political will and compliance. Unfortunately, the situation is dire given that the governance challenge has been one that has troubled the African continent since independence.[72] Arguably, the governance agenda following independence was a continuation of imperialistic agendas, cloaked in a new 'African-led' outfit that did not focus on human rights promotion. Post-independence states were handed over to ill-experienced leaders who adopted a praxis of human rights violations, personalisation of state power, state capture, rent seeking and patronage politics.[73] The intervention of regional and international actors has unfortunately not managed to inculcate a culture of good governance and democracy in Africa. While democracy promotion has never happened on a linear scale; Africa has witnessed more of a downward

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69   *Eki Omorogbe*, A Club of Incumbents? The African Union and Coups d'état, in Vanderbilt Journal of Transnational Law 44 (2011), p. 123.

70   *Kioko,* note 11, p. 814.

71   *Omorogbe*, note 69, p. 124.

72   *World Bank*, From Crisis to Sustainable Growth – Sub-Saharan Africa: A Long-Term Perspective Study, Washington, 1989; *Mohammed Yimer*, Governance and Leadership Challenges in Africa, in International Journal of Political Science and Development 3 (2015), p. 129.

73   *Salami Issa Afegbua* and *Kahinde David Adejuwon,* The Challenges of Leadership and Governance in Africa, in International Journal of Academic Research in Business and Social Sciences 2 (2012), p. 142.

trajectory in democracy and governance seen through among other things, the quality of elections. Worse still, this endemic problem has elicited an argument that Africans are increasingly forced to resign to violent and oppressive leadership as customary.[74]

Mechanisms of the African Governance Architecture (AGA), such as APRM and the African Union Development Agency - New Partnership for Africa's Development (AUDA-NEPAD), are relevant in this regard as enablers of norm diffusion and norm implementation to promote democracy and good governance and concurrently improve electoral democracy. Central to the objectives of these mechanisms is to assess the state of governance in Africa acknowledging the nexus between good governance, and human rights promotion, development, and peace, security and stability. Lack of political will to realise the objectives of these mechanisms remains a significant stumbling block. As a point of departure, AUDA-NEPAD was premised on using governance, realised through human rights and democracy promotion and sound economic policies, as conditions for allocating developmental funds to African states by Western countries.[75] The APRM system is central to this assessment using the AU and AUDA-NEPAD normative framework, and international, continental and regional standards as a guide.[76] However, the APRM suffers from an inception crutch given that it was and continues to be a state rather than people driven process that is voluntary in nature.[77] Firstly, its voluntary nature means undemocratic leaders would otherwise avoid subjecting themselves to assessment. Contemporaneously, the heavy state influence constricts the independence of the APR team. Even when assessments are done, it is hard to obviate the fraternity mentality of states who selectively ignore the governance and human rights transgressions of other member states to avoid scrutiny in their own backyard.[78] After all, those who live in glass houses should not throw stones. This protection of incumbents by incumbents coupled with the reluctance to implement coercive measures to inspire norm compliance was an Achilles heel of the OAU that still plagues the AU.[79]

The weaknesses of the AU have contributed to the human rights, democracy and governance crisis in Africa and the endemic electoral violence in many African states. With good reason, the AU is yet to be identified as a powerful force in preventing conflict as a way of supporting elections in Africa. Decidedly, there is a tension between the norm creation and norm diffusion and implementation by the AU. Lack of political will to implement the

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74 *Stephen Phiri* and *Emmanuel Matambo*, Foreign Intervention Predicament in Africa: Deploying Fanonian Psychoanalysis, in The Journal of Pan African Studies 10 (2017), pp. 322–338.

75 *John Akokpari,* The AU, NEPAD and the Promotion of Good Governance in Africa, in Nordic Journal of African Studies 13 (2004), pp. 252–253.

76 Ibid., p. 252.

77 *André Mbata Mangu,* The African Union and the Promotion of Democracy and Good Political Governance under the African Peer Review Mechanism: 10 Years On, in Africa Review 6 (2014), p. 68.

78 *Akokpari,* note 75, p. 259.

79 *Mangu,* note 77, pp. 68–70.

decisions on AU and its organs, manoeuvring state sovereignty, principle of subsidiarity, limited resource capability of preventive deployment measures, poor collaboration among different conflict prevention mechanisms, and unwillingness by AU to implement punitive measures weakens and even defeats the preventive capacity of the AU.[80] Some of these elements played out in interventions in the country case studies below.

D. Assessment of the Impact of AU Interventions in Elections in Kenya, Zimbabwe and Côte d'Ivoire

I. Kenya

1. The AU's Intervention During the 2007 Elections

The 2007–2008 election cycle remains a poignant time in Kenya's history not only because of the electoral violence that rocked the country but the unprecedented scale of the violence. Historically, violence has marred the conduct of elections in Kenya since the introduction of multi-party rule.[81] The intensity of electoral violence following the 2007 elections can be said to be the culmination of unaddressed historical injustices, structural inequalities and the instrumentalization of violence by political actors in their quest for political office, with little to no accountability.[82] The 2007 election period led to the death of over 1,000 people and the displacement of over 350,000 people.[83]

In the 2007 elections, the incumbent President *Mwai Kibaki* faced off against *Raila Odinga*. The elections in themselves were conducted in a problematic context characterised by among other things: centralisation of power within the presidency that crippled the legislature and judiciary and compromised separation of powers; absence of a credible voters register; and ethnic polarisation. Worse still, the process was administered by an incompetent and ill prepared Electoral Management Body (EMB).[84] While the voting process was generally peaceful it went downhill when President *Kibaki*, who was trailing behind *Raila Odinga*, suspiciously began gaining ground as the counting process drew to an end. What followed the announcement of his win was a rushed inauguration ceremony,

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80 *Carvalho*, note 40; *Faten Aggad-Clerx* and *Sophie Desmidt*, 'De-securitising Conflict Responses in Africa What Prospects for a Structural Conflict Prevention Approach?, Discussion Paper 209 (2017), p. 5; *Shewit Woldemichael,* The reality of the AU's Response to Crises: National Sovereignty and Subsidiarity Limit the African Union's Intervention in the Continent's Conflicts', 2021, https://issafrica.org/iss-today/the-reality-of-the-aus-response-to-crises (accessed on 14 April 2021).

81 *Philip Waki et al.*, Kenya: Commission of Inquiry into the Post-Election Violence (CIPEV) (2008), pp. 22–23.

82 Ibid., pp. 22–23.

83 Ibid., pp. 272 and 305.

84 Ibid., p. ix. See also *Independent Review Commission*, Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007 (2008), pp. 1–3.

a media blackout, and ultimately, spontaneous and organised acts of violence that later epitomised the 2007 elections.[85]

The AU did not send an election observer mission to Kenya in 2007 and was therefore unable to comprehensively assess and advise on preventive or mitigation strategies prior to the elections.[86] The failure of the AU to send an EOM to Kenya was caused by a late invite from Kenya to the AU two weeks before the elections. Previously, the policy had been that AU deploys observer missions based on an invite from a member state.[87] The 2007 crisis in Kenya however pushed the AU to rethink their approach and base deployment on a needs assessment as opposed to a state invite.[88] However, it should be acknowledged that the intervention of the AU at the height of the post-election violence was instrumental in resolving the crisis and restoring peace and stability in Kenya. Following the outbreak of violence, the AU Assembly quickly seized the matter in early January 2008, condemning the ongoing gross human rights violations and calling for the conflicting parties to respect the rule of law and peacefully resolve the conflict through dialogue.[89]

The signing of the National Accord and Reconciliation Act on 28 February 2008 under the Kenya National Dialogue and Reconciliation (KNDR) framework brought to an end the political crisis that had gripped the country. Four main agendas were identified including:[90]

- Immediate action to stop violence and restore fundamental rights and liberties;
- Immediate measures to address the humanitarian crisis, promote reconciliation, and healing;
- How to overcome the political crisis; and
- Address long term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.

Noteworthy, the KNDR was not only geared towards short term conflict resolution but recognised the need to address structural and root causes of conflict in Kenya. The transitional justice aspect of this framework stands out as a future conflict prevention measure in the event the state redresses the root causes of the conflict. The operationalisation of the National Accord and Reconciliation Act required an ad hoc constitutional review process to incorporate the measures that aimed to resolve the conflict and most importantly a

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85 Independent Review Commission, note 84, pp. 1–2.
86 Interview with *Guy Tapoko*, note 41.
87 AHG/Decl. 1 (XXXVIII), note 29, Part V (3).
88 Interview with *Guy Tapoko*, note 41.
89 Assembly/AU/Dec.187 (X), Decision on the situation in Kenya following the presidential election of 27 December 2007. 10th Ordinary Session of the AU Assembly, Addis Ababa (Ethiopia), 31 January – 2 February 2008.
90 *South Consulting*, The Kenya National Dialogue and Reconciliation: Building a Progressive Kenya (December 2011), p. 1.

power sharing agreement that created the office of the Prime Minister and a coalition government.[91] The agreement to form a coalition government however leaned more towards conflict containment, in reality, it is never a reflection of the will of the people.[92]

The final peace deal and power sharing agreement was facilitated by a mediation framework that was conceived and led by the AU and orchestrated by a team of Eminent African Personalities. This was a unique first for the AU to dispatch three elders and not one in a team led by *Kofi Annan*, former Secretary-General of the United Nations, and included *Benjamin Mkapa*, former President of Tanzania, and *Graca Machel*.[93] This intervention was preceded by the good offices of and shuttle diplomacy by President *John Kufour*, the then chairperson of the AU.[94]

It should also be noted that the situation in Kenya had garnered significant international attention and there was pressure to resolve the conflict.[95] However, an African-led conflict resolution process was preferred to western interference.[96] The relatively quick success of the AU-led mediation in resolving the conflict within 40 days can be ascribed to a combination of factors. Firstly, it was commendable that the AU reacted swiftly to develop a mediation framework. Secondly, the composition of the team leading this endeavour was exceptional given their background, expertise and mediation skills which inspired respect as well as confidence in the process.[97] Thirdly, the process was conducted in a context of both local and international leverage and pressure to restore peace and order.[98]

Although the AU's intervention was critical to resolving the 2007–2008 post-election crisis in Kenya, this was a post-conflict intervention. The AU could have done more to actually obviate the 2007–2008 crisis in Kenya. At the time of the elections, the POW that had been launched in 2007 was yet to become operational.[99] However, the AU was not blind to the peace and security concerns in Kenya's 2007 elections. Although Kenya had

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91 *Stef Vandeginste,* The African Union, Constitutionalism and Power-Sharing, in Journal of African Law 57 (2013), p. 19.

92 *Rutendo Daphne Tumbare*, Government of National Unity (GNU) as a Strategy for Democracy in Zimbabwe, Master's Dissertation, University of Limpopo, 2014.

93 *Gilbert Khadiagala*, Forty Days and Nights of Peace-Making in Kenya, in Journal of African Elections 7 (*2008*), p. 13; Assembly/AU/Dec.187 (X), note 89.

94 *Monica Kathina Juma*, African Mediation of the Kenyan Post-2007 Election Crisis, in Journal of Contemporary African Studies 27 (2009), p. 413.

95 The US, UK, and Commonwealth all called for the peaceful resolution of the conflict. In Africa, there were attempts at resolution by Archbishop Desmond Tutu, the chair of the African Elders Forum, an unsuccessful attempt by President Museveni of Uganda as the Chairperson of the East African Community (EAC), President *Jakaya Kikwete* of Tanzania, and also push from the African Commission and the African Development Bank among others.

96 *Juma,* note 94, pp. 412–413.

97 *Khadiagala,* note 93, pp. 13–14.

98 Ibid., p. 23; *Juma,* note 94, p. 408.

99 *African Union*, Panel of the Wise, https://www.peaceau.org/en/page/29-panel-of-the-wise-pow (accessed on 20 April 2021).

been touted as an 'island and haven of peace for the region' this was not an accurate depiction as was highlighted in the 2006 reports from the APRM and the AUDA-NEPAD.[100] The reports raised issues of concern that may jeopardise Kenya's democratic trajectory, and peace and stability.[101] Therefore, the AU should have tried to engage with critical stakeholders prior to the elections, even in the absence of a state invite, to address the identified concerns in an effort to prevent possible conflict. This points to a deficiency within the AUDA-NEPAD framework in how it conducts follow-up and implementation of the recommendations put forward in its reports to mitigate and/or solve the identified concerns.[102]

That being said, the KNDR framework developed with the support of the AU as well as the reports of the Commission of Inquiry on Post-Election Violence (CIPEV), the Independent Review Commission (IREC) and the Truth, Justice and Reconciliation Commission (TJRC) developed in response to the 2007–2008 crisis acknowledged that Kenya needed to address structural issues that would continue to pose a threat to peace and stability.[103] CIPEV was formed as a result of the AU mediation and therefore provided documentation for historicity and future accountability measures that played out further in the 2013 election cycle. It was also a recognition of the need to examine and redress root causes of conflict to prevent cyclical violence from unresolved historical injustices.

2. AU's Intervention during the 2013 Elections

The 2013 elections were conducted with the 2007 crisis still fresh in the minds of national, regional and international actors.[104] This election saw the top two contenders for the presidency as Uhuru Kenyatta and former Prime Minister *Raila Odinga* who garnered 50.51 % and 43.70 % of the votes respectively.[105]

There was an overabundance of peace messaging during the 2013 election period, where to some extent, it was felt that it overshadowed calls for free, fair and credible elections.[106] However, peace advocacy was essential given that Kenya was entering another election yet the root causes of violence that significantly contributed to the 2007–2008

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100 *African Peer Review Mechanism*, Country Review Report of the Republic of Kenya, 2006, pp. 62, 63, 70, 77 and 258; *Carvalho,* note 40, p. 5.

101 Ibid.

102 *Mugambi Laibuta*, The African Union and Kenya's Constitution-Building Process, 2014, p. 11; *World Peace Forum*, Kenya Short Mission Brief, Kenya, p. 5, https://sites.tufts.edu/wpf/files/201 7/07/Kenya-brief.pdf (accessed on 12 April 2021).

103 *Kofi Annan,* The Kenya National Dialogue and Reconciliation Building a Progressive Kenya our Common Vision Views of Stakeholders, 2012.

104 *EU Elections Observation Mission,* General Elections 2013: Final Report Kenya, 2013, pp. 2–3.

105 *Independent Electoral and Boundaries Commission,* General Election Results, 2013 https://www. iebc.or.ke/election/?election-results (accessed on 15 April 2021).

106 *Kenya Human Rights Commission,* The Democratic Paradox: A Report on Kenya's 2013 General Elections, 2014, pp. 8,9 and 17; *Salomon Ayele Dersso*, How Did Kenya Deliver Peaceful Elections on 4 March 2013, Defying Observers' Warning of a Repeat of the 2007/8 Violence?,

crisis persisted.[107] Additionally, there had been little accountability in the way of domestic prosecutions for the atrocities committed during the post-election violence.[108]

However, it should be acknowledged that the constitutional, institutional and judicial reform process and the set-up of the TJRC that completed its mandate in 2013 had been undertaken between 2008 and 2013 improved the democratic setup of the country.[109] Despite some emerging election concerns including voter bribery, sporadic incidences of violence, limited participation of minorities and vulnerable groups, runaway campaign financing, disorganised party nominations and elections, and failure of the Electronic Voter Identification System (EVID) among others, the general conclusion was that Kenya conducted an election that had elements of a free, fair and credible process. The irregularities were not significant enough to discount the whole process as flawed.[110] The Kenyan Human Rights Commission (KHRC) dubbed the 2013 elections a 'democratic paradox' stating:[111]

> *...in a way, the March 2013 general election were a democratic paradox. We say so because although the rules of engagement were largely democratic, the same were implemented by the various political actors and the IEBC in a manner that gave the process a porously thin if not superficial veneer of acceptability that fell far short of realizing a truly free and fair electoral outcome.*

It was encouraging that the losing challenger, *Raila Odinga*, opted to direct his electoral grievances before the courts as opposed to the streets.[112] The ongoing judicial reform process, galvanised by the promulgation of the 2010 Constitution, no doubt enhanced confidence in the judiciary as a viable platform for the resolution of disputes. This confidence was lacking during the 2007 election period.[113] The acceptance by *Raila Odinga* of

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    https://issafrica.org/iss-today/how-kenya-delivered-its-peaceful-general-elections (accessed on 15 April 2021).

107 *Human Rights Watch,* High Stakes: Political Violence and the 2013 Elections in Kenya, https://www.hrw.org/report/2013/02/07/high-stakes-political-violence-and-2013-elections-kenya (accessed on 15 April 2021); *Elections Observation Group*, The Historic Vote: Elections 2013, 2013, p. 1.

108 Ibid.

109 *Trixie Akpedonu, Ben Lumsdaine* and *Aminata Sow*, Keeping the Peace: Lessons Learned from Preventive Action Towards Kenya's 2013 elections, 2013, Paper No 10 Geneva Peace Building Platform; *Elections Observation Group*, note 107, p. 4.

110 *EU Elections Observation Mission*, note 104, p. 1; *The Carter Centre*, Observing Kenya's March 2013 National Elections Final Report, 2013, pp. 3–4; *ELOG,* note 107, pp. 1–6; *African Union,* Report of African Union Elections Observation Mission to the 4 March 2013 General Elections in Kenya, 2013.

111 *Kenya Human Rights Commission*, note 106, pp. xiii and xiv.

112 *Raila Odinga & 5 others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR* http://kenyalaw.org/caselaw/cases/view/91624/ (accessed on 15 April 2021).

113 *EU Elections Observation Mission,* note 104, p. 2.

the Supreme Court decision affirming the electoral win of his challenger further averted looming concerns over possible retaliatory violence.

Also notably, is the momentum provided by the KNDR framework to redress root causes of conflict in Kenya through measures such as institutional, legal and constitutional reforms.[114] The promulgation of the 2010 Constitution following an inclusive and participatory referendum was a crucial element in working towards addressing long term issues under agenda 4 of the KNDR agenda.[115] This Constitution has been lauded for its progressive nature particularly in the comprehensive Bill of Rights, provisions for devolution as well as efforts to improve inclusion of minorities and vulnerable groups. It also provided a mechanism that allowed the losing political candidate to seek redress in courts.

The 2013 electoral period in Kenya marked the first time the AU deployed a long-term observation mission in a member state.[116] This was reinforced by preventive diplomacy of the POW which had prioritised prevention of conflicts after its launch in 2007 and also jointly participated in a pre-election assessment of Kenya's election preparedness.[117] Others in the joint mission included the Common Market for Eastern and Southern Africa (COMESA) Committee of Elders, and the Intergovernmental Authority on Development (IGAD) that conducted a pre-election assessment of Kenya's preparedness for the election and whether there was indeed a conducive environment for elections.[118]

The AU's employment of preventive diplomacy and both long- and short-term observation strategies in Kenya's 2013 elections is commendable. A significant departure from a singular focus on the events of the election day to a more holistic examination of the elections. This is in addition to working with the relevant RECs to undertake a joint mission which enhanced the expertise and resource capability of the pre-election assessment team. The PSC had further released a situation analysis of Kenya prior to the elections which supports preventive strategies by providing a comprehensive picture of issues that may

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114　*Laibuta,* note 102, p. 11; *World Peace Forum*, note 102, pp. 14–15.

115　*Vandeginste*, note 91, pp. 25–26.

116　*African Union,* note 10, pp. 3–4. This mission of five long term observers was deployed from 12 January to 15 March 2013 for the elections scheduled for March 2013. They were later joined by the short term observers from 24 February to 9 March 2013.The chair and deputy chair of the mission were Joaquim Chissano, former President of the Republic of Mozambique as Head of Mission and Aisha Abdullahi, the African Union Commissioner for Political Affairs who were joined by a diverse team of observers from the Pan-African Parliament (PAP), members of the Permanent Representative Committee (PRC) in Election Management Bodies (EMBs) and African Civil Society Organisations spanning 29 countries and experts from experts from the AUC, the PAP and the Electoral Institute for Sustainable Democracy in Africa (EISA).

117　*African Union Panel of the Wise*, Press Release: AU and COMESA High Level Officials on Pre-Election Assessment Mission and the Launch of AU Long-term Elections Observation Mission to Kenya, Addis Ababa, 16 January 2013, https://au.int/ar/newsevents/26604/au-and-comesa-high-level-officials-pre-elections-assessment-mission-and-launch-au (accessed on 15 April 2021).

118　*African Union*, note 110, pp. 4–5.

impair the conduct of the elections and trigger electoral violence.[119] Arguably, having such an international focus on the 2013 elections both before and after the elections was a crucial cog in the wheel that delivered a relatively peaceful election.

The restraining influence of the impending International Criminal Court (ICC) trials for crimes against humanity against the ultimate victors of the office of the president and vice president cannot be ignored. Paradoxically, despite the ICC cases, two persons indicted by the ICC managed to gain state control. While the relationship between Africa and the ICC was already fraught with controversy given the international body's perceived bias against African states, the Kenyan situation further complicated this relationship.[120] The AU opposed the intervention of the ICC characterising it as an impediment to long term conflict resolution.[121] Arguably, this was misplaced African solidarity given the ICC case was instituted following the submission of the list of suspects by former UN Secretary General *Kofi Anan*, who led the AU mediation in 2008.[122] The action was also in fulfilment of the recommendations of the CIPEV, the very commission of inquiry established to investigate the 2007–2008 post-election violence, following the AU's mediation of the conflict. The AU's stance in Kenya was reflective of its propensity to support leaders with human rights records that are in contradiction with its own nomenclature. To some extent the AU's condemnation of the ICC cases against Kenya contributed to the withdrawal of the ICC cases, meaning that this particular justice element was never realised. It can only be speculated whether the prosecution of the case would have provided a strong preventive motivation for conflicts in Kenya.

3. AU's Intervention during the 2017 Elections

The 2017 election period in Kenya represents another contentious election in Kenya's history which played out on the corridors of justice and the streets. For a second time, the election pitted President *Uhuru Kenyatta* against *Raila Odinga*. Ultimately, the Independent Electoral and Boundaries Commission (IEBC) declared *Uhuru Kenyatta* the winner of this election with 54.27 % of the vote against 44.74 %.[123] For a second time, *Raila Odinga* insti-

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119 *Institute for Security Studies,* Peace and Security Council Report Issue 38 (September 2012), pp. 3–6.

120 *Westen Shilaho*, The International Criminal Court and the African Union: Is the ICC a Bulwark against Impunity or an Imperial Trojan Horse?, in African Journal on Conflict Resolution 1 (2018), p. 18.

121 See Ext/Assembly/AU/DEC.1 (October 2013), Decision on Africa's Relationship with the International Criminal Court (ICC), Extraordinary Session of the Assembly of the African Union, Addis Ababa (Ethiopia), 12 October 2013.

122 *Geoff Dancy* et al, What Determines Perceptions of Bias toward the International Criminal Court? Evidence from Kenya, in Journal of Conflict Resolution 2020, p. 146.

123 *EU Elections Observation Mission*, Final Report Republic of Kenya General Elections 2017, 2018, p. 2; *Kenya National Commission on Human Rights*, Mirage at Dusk: A Human Rights Ac-

tuted a case at the Supreme Court challenging the win of *Uhuru Kenyatta*.[124] In a surprising and unprecedented move in the African continent, the Supreme Court of Kenya (SCOK) annulled the presidential election results, despite the elections having been declared free, fair and credible by EOMs including the AU. The SCOK agreed with the petitioners that there were significant illegalities and irregularities that substantially marred the credibility of the elections, and ordered a repeat presidential election.[125]

However, the legal victory was short lived. The opposition accused the IEBC of failing to implement the necessary reforms to address the inadequacies of the first election. The embattled IEBC consistently failed to garner widespread public trust given concerns about its independence and transparency.[126] This prompted the opposition to boycott the election leading to a sweeping victory for President *Uhuru Kenyatta*.[127]

The repeat presidential election was unsuccessfully challenged by CSOs before the SCOK.[128] It cannot however be ignored that the SCOK was operating in an intimidating and tense environment, having been threatened by the incumbent of repercussions for their earlier decision.[129] It was evident that the judiciary had felt the pressure and threats, as was witnessed when the SCOK failed to hear a petition seeking to postpone the election due to lack of quorum.[130]

Beyond the intimidation of the judiciary, electoral violence once again marred the conduct of elections. There were widespread protests with stark ethnic undertones that revealed the extant ethnic polarisation in Kenya. These protests were often met with harsh state response. Reports estimate that during this period, more than 100 people lost their lives due to police brutality.[131] Heavy handed police responses are an endemic problem in Kenya particularly during elections, especially due to lack of accountability for state sanctioned security operations. It is also indicative of the role of the security sector as a tool for retaining or gaining political power.

count of the 2017 General Elections, 2017; *Independent Electoral and Boundaries Commission*, Data report of 2017 elections, 2020, p. 6.

124 *Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others [2017,] eKLR,* http://kenyalaw.org/caselaw/cases/view/140716/ (accessed on 15 April 2020).

125 Ibid., para. 405.

126 *EU Elections Observation Mission,* note 123, p. 5.

127 Ibid.

128 *John Harun Mwau & 2 others v Independent Electoral and Boundaries Commission & 3 others [2017], eKLR,* http://kenyalaw.org/caselaw/cases/view/143813 (accessed on 15 April 2021).

129 *Wesley Kipng'enoh,* We shall revisit-President Uhuru Kenyatta in scathing attack on Chief Justice David Maraga and Supreme Court Local News, The Standard*, (2017), https://www.standardmedi a.co.ke/entertainment/local-news/2001253376/we-shall-revisit-president-uhuru-kenyatta-in-scathi ng-attack-on-chief-justice-david-maraga-and-supreme-court (accessed on 15 April 2021).

130 *The Carter Centre*, Kenya 2017 General and Presidential Elections Final Report, 2018, p. 6.

131 *Human Rights Watch,* Kenya: Events of 2018, https://www.hrw.org/world-report/2019/country-c hapters/kenya# (accessed on 15 April 2021).

As had been done in 2013, the AU deployed a pre-election assessment team to Kenya to assess the conduciveness of the Kenyan context for elections. This informed their deployment of observers as well as conflict prevention strategies.[132] Prior to the election, the AU orchestrated a high-level meeting of personalities who met with the top two challengers, Uhuru Kenyatta and *Raila Odinga* as well as other key electoral stakeholders to promote credible and peaceful elections.[133]

The pre-election assessment report flagged the tension in the political environment as well as the growing risk of polarisation in social media platforms due to inflammatory statements that could disturb peace and stability.[134] The report in addition canvassed election administration and preparedness by the IEBC, election campaigns, civic and voter education, media freedom and election dispute resolution mechanisms. It raised concerns on areas that needed improvement with recommendations to political parties and candidates, media and security agents.[135] The AU was therefore well appraised of the triggers for possible conflict in this election.

The AU maintained their EOM methodology of using both long-term and short-term observers.[136] In a joint communique, prior to the election day heads of international election observer missions including AU and RECs, such as COMESA, East African Community (EAC), IGAD and International Conference on the Great Lakes Region (ICGLR), maintained calls for peaceful elections and respect for rule of law.[137] When Kenya was faced with a repeat election, the AU deployed another observation mission. For the 26 October 2017 fresh presidential election, the mission comprised of a core team of five thematic

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132 *African Union,* Election Observation Mission to the 8 August 2017 General Elections and the 26 October 2017 Fresh Presidential Election in the Republic of Kenya, 2018, pp. 8–9.

133 They included the Chairperson of the African Union, Moussa Faki Mahamat, the Head of Mission (HoM), Thabo Mbeki and the Commissioner for Political Affairs, Minata Samate-Cessouma. AU, 'Pre-election Statement: The African Union Election Observation Mission to Kenya's 2017 Elections Nairobi, Kenya Wednesday, 2 August 2017', https://au.int/en/pressreleases/20170803/ pre-election-statement-african-union-election-observation-mission-kenyas-2017 (accessed on 15 April 2021).

134 Ibid.

135 Ibid.

136 *African Union*, note 132, p. 9. From 3 July to 26 August 2017, AU deployed 14 long term observers to 29 of the 47 counties of Kenya. Thereafter, the AUEOM deployed 90 short-term observers from 6 to 14 August 2017.

137 Ibid., pp. 10–11; *African Union,* Communique Issued at the Joint Meeting of Heads of International Observer Missions to the 2017 General Elections in Kenya, 7 August 2017, https://au.int/e n/pressreleases/20170807/communique-issued-joint-meeting-heads-international-observer-missio n-2017 (accessed on 15 April 2021); *EAC,* Communiqué Following the Post-Election Meeting of the Heads of International Election Observation Mission to the 2017 General Elections in Kenya, 9 August 2017, https://www.eac.int/communique/849-communique-following-the-post-election -meeting-of-the-heads-of-international-election-observation-mission-to-the-2017-general-election s-in-kenya (accessed on 15 April 2021).

experts, including an expert on elections information technology in response to the 2017 the SCOK decision.[138]

Despite the presence of violence in the 2017 election, it can be seen that the AU endeavoured to intervene through observer missions and diplomacy to prevent conflict. The interventions were adapted to emerging realities such as the spread of online misinformation and disinformation that could jeopardise the credibility of the elections and destabilise the country. Reports of injuries and death of civilians by the hands of the police was especially worrying. This points to institutional pitfalls and underlying structural causes of conflict. From this Kenyan experience, there is need for a greater focus on regional, sub-regional and national collaborations towards combating root causes of conflict, as well as better implementation of AU's decisions and policies.

II. Zimbabwe

1. The AU's Intervention in the 2008 Elections

Like its Kenyan counterpart, the 2008 election period in Zimbabwe jeopardised the peace and security of the southern African country and worsened its democratic trajectory. The elections took place in a democratic context that was severely struggling given limited political pluralism.[139] This was evidenced by an independence political party and president determined to maintain their hold on power, disregard for the rule of law, continued economic decline, economic inequalities, harassment and intimidation of the opposition, political violence against the opposition and their supporters, unequal access to state media, military interference in politics, failed constitutional and legislative reforms, and an Election Management Body (EMB) that lacked independence and impartiality.[140] Despite these challenges, the embattled Movement for Democratic Change (MDC) opposition candidate, *Morgan Tsvangirai*, pulled off an electoral victory in the first round of the Harmonised Elections of 29 March 2008, albeit not garnering sufficient votes to clench the top seat.[141] This necessitated a runoff.

The post-election period before the runoff was one that witnessed devastating violence largely meted by the government with the support of the military, police and pro-government militia groups.[142] The instrumentalization of the security sector to secure election

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138 *African Union,* note 132, pp. 10 -11. Long-term observers were dispatched from 29 September to 9 November 2017. 40 short-term observers were further deployed from 24 to 28 October 2017.

139 *Electoral Institute for Sustainable Democracy in Africa*, Observer Mission Report 2008, 2009, pp. xii, xiii and xiv.

140 *Dikgang Moseneke* and *Sisi Khampepe*, Report of the 2002 Presidential Elections of Zimbabwe, 2002.

141 *Electoral Institute for Sustainable Democracy in Africa,* note 139, p. xi.

142 *Human Rights Watch,* Bullets for Each of You. State-Sponsored Violence since Zimbabwe's March 29 Elections, (9 June 2008), https://www.hrw.org/report/2008/06/09/bullets-each-you/stat e-sponsored-violence-zimbabwes-march-29-elections (accessed on 16 April 2020).

victory in Zimbabwe has been a major impediment to the free expression of the will of the people.[143] Scholars have gone as far as characterise the regime in Zimbabwe as 'a military form of electoral authoritarianism'.[144] Targeted victims were the opposition, their supporters, and 'defectors' of the ruling party, Zimbabwe African National Union-Patriotic Front (ZANU-PF), in what came to be known as "Operation Makavhoterapapi?" (Operation Where Did You Put Your Vote?).[145] The ensuing political violence led *Morgan Tsvangirai* to withdraw from the presidential race. He had been severally arrested and assaulted during this period, and he lacked confidence in the credibility of the election.[146] The Zimbabwean Electoral Commission rejected the withdrawal because it was filled out of time, and the 27 June run-off proceeded securing a sixth term for President *Robert Mugabe*.[147]

There is much to be criticised about AU's intervention during the 2008 election crisis in Zimbabwe given the hope that the AU's intervention would help address potential peace and stability challenges in Zimbabwe. This was also in light of previous difficulties experienced by the Southern African Development Community (SADC) and South Africa in supporting the constitutional reform process that preceded the elections.[148] AU's slow response at the commencement of the crisis in Zimbabwe can be juxtaposed against their quick reaction months before in Kenya's post-election crisis.[149] AU was urged to declare the runoff vote as unconstitutional and suspend Zimbabwe from the AU.[150] There were additional calls for the AU to impose sanctions on Zimbabwe and the instigators of an unconstitutional change of government.[151] Further, the AU was urged to deploy a peace

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143 *Knox Chitiyo*, The Case for Security Sector Reform in Zimbabwe, 2009, p. 4, http://www.rusi.org /downloads/assets/Zimbabwe_SSR_Report.pdf (accessed on 16 April 2021).

144 *Michael Bratton* and *Eldred Masunungure*, Zimbabwe's long agony, in Journal of Democracy 19 (2008), p. 42.

145 *Human Rights Watch,* note 142.

146 *Morgan Tsvangirai*, Withdrawal of candidature letter, https://www.eisa.org/pdf/zimmt200806.pdf (accessed on 16 April 2020).

147 *Electoral Institute for Sustainable Democracy in Africa*, Observer Mission Report 2008, above note 139, pp. xv; *Electoral Institute for Sustainable Democracy in Africa,* Zimbabwe: 2008 Presidential Election Results – Second Round, https://www.eisa.org/wep/zim2008results6.htm (accessed on 16 April 2021).

148 *International Crisis Group,* Zimbabwe: Prospects from a flawed election, Africa Report N°138, (20 March 2008) 19–20; *Human Rights Watch,* note 142; *Kennedy Abwao* and *Alan Cowell*, African Union Calls for Settlement in Zimbabwe, 2008, https://www.nytimes.com/2008/07/02/ world/africa/02zimbabwe.html (accessed on 16 April 2021); *Kennedy Abwao* and *Alan Cowell*, Undeterred by Criticism, Mugabe Joins Peers at African Union Meeting, 2008, https://www.nyti mes.com/2008/07/02/world/africa/02zimbabwe.html (accessed on 16 April 2021).

149 *Khadiagala*, note 93.

150 *Human Rights Watch*, African Union: Reject Result in Zimbabwe's Sham Election Sanction Leaders, Press for Peacekeepers to End Violence, (29 June 2008), https://www.hrw.org/news/200 8/06/29/african-union-reject-result-zimbabwes-sham-election (accessed on 16 April 2021).

151 *Juliana Abena Appiah*, Africa Peace and Security Architecture Reflections on over a Decade of Promoting Peace and Security in Africa, in African Insight 2018, p. 35; *AU,* African Union

keeping mission to help restore peace and stability in the country following South African President *Thabo Mbeki's* unsuccessful intervention, and help stop the ongoing human rights violations.[152] The AU did not implement any of the suggested punitive measures opting for the customary quiet diplomacy intervention. The AU's approach starkly differed from that of the UN and EU that were in favour of sanctions and rejected the results from the 27 June 2008 runoff vote.[153] Eventually, all these interventions facilitated a SADC-led mediation between ZANU-PF and MDC that culminated in a power sharing agreement on 15 September 2008. The agreement was seen to largely favour ZANU-PF.[154]

Notably, the AU had dispatched an observer mission for both the March and June elections following an invite from the Zimbabwean government. In their statement on the runoff, they acknowledged the violence that characterised the pre-election period and its impact on the political participation as well as the unequal access to media. Their conclusion was that 'the Election process fell short of accepted AU standards'.[155] Another pre-runoff assessment statement by the Pan-African Parliament had concluded that there was an unconducive environment for free, fair and credible elections. SADC and AU were urged to dialogue with the leadership of Zimbabwe towards a negotiated transitional settlement.[156] Given the ensuing events, it is clear this intervention did not do much to restrain the actions of the incumbent and ZANU-PF.

Decidedly, the AU and SADC were reluctant to implement any coercive measures to hold President *Mugabe* and ZANU-PF accountable in what was a subversion of the will of the people. This is despite the bodies actually occupying a position of power as

Summit Resolution on Zimbabwe Adopted at the 11th Ordinary Session of the African Union Assembly, 1 July 2008, Sharm El Sheikh, Egypt', https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Zim%20AU%20Resolution%20%201%20July%2008.pdf (accessed on 16 April 2021); *VOA News,* AU Summit Communiqué to Deal Gently with Zimbabwe's Mugabe' (1 November 2009), https://www.voanews.com/archive/au-summit-communique-deal-gently-zimbabwes-mugabe (accessed on 16 April 2021); *BBC,* African call for Zimbabwe unity, http://news.bbc.co.uk/2/hi/africa/7484165.stm (accessed 16 April 2021).

152 *Human Rights Watch*, note 150.

153 *BBC News,* African Call for Zimbabwe Unity, http://news.bbc.co.uk/2/hi/africa/7484165.stm (accessed on 16 April 2021), *DIRCO,* ACP-EU joint parliamentary assembly ACP-EU 100.439/08/fin Resolution On the situation in Zimbabwe' http://www.dirco.gov.za/eumaltilateral/docs/Peace%20and%20Security/resolution%20on%20the%20situation%20in%20zimbabwe.pdf (accessed on 16 April 2021).

154 *Electoral Institute for Sustainable Democracy in Africa,* note 139, p. xvi.

155 *African Union,* African Union Office of the AU Observer Mission to the Presidential Run-Off and House of Assembly By-Elections in Zimbabwe Preliminary Statement of the African Union Observer Mission, (29 June 2008) https://aceproject.org/regions-en/countries-and-territories/ZW/reports/zimbabwe-preliminary-statement-by-au-on (accessed on 16 April 2021).

156 *African Union,* The Pan-African Parliament election observer mission to the presidential run-off and parliamentary by-elections in Zimbabwe, (1 July 2008), https://reliefweb.int/report/zimbabwe/pan-african-parliament-election-observer-mission-presidential-run-and-parliamentary (accessed on 16 April 2021).

compared to President *Mugabe* who had in fact lost the election and could have been more amenable to reform measures.[157] AU and SADC missed an opportunity for reinforcing their own norms and democracy promotion but rather pursued a political solution that favoured the incumbent government.[158] The quiet diplomacy approach that excluded the input of CSOs who could have enhanced the bargaining power of the opposition and countered a regime-preserving solution ultimately delivered a Government of National Unity (GNU) agreement that was more beneficial for the ZANU-PF. Generally, both the intervention of the AU and SADC were seen as instrumental to shielding President Mugabe and ZANU-PF from accountability.[159] Absent in the GNU agreement and mediation were measures for transitional justice, possibly to pre-empt extended negotiation or challenges to the conflict containment.[160] Critics have also questioned the commitment and considerations of SADC and South Africa to meaningful conflict resolution as opposed to quick conflict containment.[161] Hegemonies in the regions, and regional bodies often favour quick settlement of crisis to avoid a spill over effect into their territories. Therefore, they may fail to duly consider the long-term consequences of only pursuing conflict containment measures.

2. The AU's Intervention during the 2013 Elections

The political context in which the 2013 elections occurred largely resembled that prior to the 2008 first round March elections.[162] Notably, advancements in Information and Communication Technologies (ICTs) expanded the avenues for freedom of expression and access to information. The 2013 election therefore saw increased internet usage for both politicians, electoral stakeholders and voters.[163]

After 33 years in leadership, President *Mugabe* sort to secure another term in office. At the regional level, SADC had not been particularly successful at supporting significant reform in Zimbabwe post the 2008 crisis. However, there was a new 2013 Constitution in place but it was unlikely that the Constitution would significantly impact the process given

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157 *Mlatha*, note 43, p. 86.

158 *Ibrahim,* note 13, p. 38.

159 Ibid.

160 *Gwinyayi Dzinesa*, Zimbabwe's Constitutional Reform Process: Challenges and Prospects, 2012, p. 8.

161 *Mlatha,* note 43, p. 84; *Sabelo Ndlovu-Gatsheni,* The Zimbabwean Nation-State Project: A Historical Diagnosis of Identity and Power-Based Conflicts in a Postcolonial State, a Discussion Paper, 2011, p. 6, https://www.files.ethz.ch/isn/133999/59.pdf (accessed on 19 April 2021); *Patrick Dzimiri*, African Multilateral Responses to the Crises in Zimbabwe. A Responsibility to Protect Perspective. Strategic Review for Southern Africa, in Strategic Review for Southern Africa 39 (2017), p. 62.

162 *International Crisis Group,* Zimbabwe's Elections: Mugabe's last stand' Policy Briefing Africa Briefing N°95 Johannesburg/Brussels (29 July 2013), pp. 1–2.

163 Ibid., p. 2.

that the elections were held soon after its passage.[164] Ultimately, President *Mugabe* maintained a hold of his seat with a 61 % vote against *Tsvangirai's* 34 %, effectively avoiding a runoff.[165] *Morgan Tsvangirai* opted to challenge the election results before the Constitutional Court. The grounds for the petition included that the conduct of the election was in breach of the constitution; voters suffered from psychological violence from the 2008 elections; violations of right to vote; bribery; and unequal access to the state broadcaster.[166] *Tsvangirai* later withdrew the petition stating that he was not granted access to crucial electoral evidence. The Constitutional Court dismissed the petition and confirmed President *Mugabe's* win.[167]

Both the AU and SADC released statements prior to the elections commending Zimbabwe for passage of the Constitution in March 2013 and maintaining peace and calm in the leadup to the elections.[168] Interestingly, these statements failed to mention previous calls for more reforms including recommendations to postpone the elections which may have been untimely, too close after the referendum.[169]

Prior to the 31 July 2013 Harmonised Elections, the PSC released a report that analysed the early warning issues ahead of the 2013 elections in Zimbabwe.[170] The report raised concern of the risk of violence during the 2013 elections. The coalition government of President *Robert Mugabe* and Prime Minister *Morgan Tsvangirai* was an unstable one. 'Deeply entrenched political interests, lack of political cohesion, biased institutional structures and elite groups keen to maintain the status quo' threatened to prevent the gains of the new Constitution and peaceful and democratic elections in Zimbabwe, risking a stalemate such as in 2008.[171] The report recommended that SADC and AU should adopt early response mechanisms to include their assistance in helping the country deliver peaceful and credible

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164 Ibid., p. 3.

165 *David Smith*, Robert Mugabe's Zimbabwe election win challenged in court (9 August 2013), https://www.theguardian.com/world/2013/aug/09/robert-mugabe-election-win-zimbabwe (accessed on 16 April 2021).

166 *African Union,* Report of African Union Election Observation Mission to the 31 July 2013 Harmonised Elections in the Republic of Zimbabwe, 2013, pp. 20–21.

167 Tsvangirai Affidavit Explaining Presidential Election Petition Withdrawal, http://www.veritaszim .net/node/497 (accessed on 16 April 2021).

168 *African Union*, Press statement of the Peace and Security Council of the African Union (AU), at its 385th meeting on the Preparations for Upcoming Elections in Zimbabwe, Madagascar, Mali, Togo and Guinea Bissau, (19 July 2013), http://www.peaceau.org/en/article/press-statement-o f-the-peace-and-security-council-of-the-african-union-au-at-its-385th-meeting-on-the-preparat ions-for-upcoming-elections-in-zimbabwe-madagascar-mali-togo-and-guinea-bissau (accessed on 16 April 2021); *SADC,* Communiqué of the Extraordinary Organ Troika Plus Republic of Mozambique Summit of Heads of State and Government Harare – Zimbabwe (19 May 2020), https://www.sadc.int/files/9315/8991/2199/Communique_of_the_Extraordinary_SADC_Organ_ Troika_Summit_held_on_19_May__2020.pdf (accessed on 16 April 2021).

169 *International Crisis Group,* note 162, pp. 1–2.

170 *Institute for Security Studies,* Peace and Security Council Report Issue 4 (May 2013), p. 2.

171 Ibid., p. 3.

elections, as well as receive early warning reports from CSOs and media. Additionally, they should deploy long term election observers.[172] In line with the subsidiarity principle, the AU opted to have the SADC take a more prominent role in addressing the political challenges facing Zimbabwe.[173]

As was the case in Kenya, AU deployed its first long term observation mission in 2013 that noted that the election campaigns and voting was largely held in a peaceful environment.[174] To that extent, the intervention contributed to a relatively peaceful election process. However, the failure by continental and regional bodies to call out Mugabe and ZANU-PF for human rights abuses, and electoral violence not to mention regime sustenance through military electoral authoritarianism is still reflective of the tension of AU's norm implementation in theory versus in practice.

3. The AU's Intervention during the 2018 Elections

The 2018 election represented a momentous one in Zimbabwe's history being the first in 37 years that *Robert Mugabe* was not on the ballot. Following the November 2017 'coup de etat' and the eventual resignation of *Robert Mugabe*, *Emmerson Mnangagwa* took over at the helm of the ruling party ZANU-PF and had conveyed his commitment to free and fair elections.[175] Arguably, lip service, given that ZANU-PF, an independence party tainted by a long history of human rights abuses, was his choice political outfit. While this was a fitting opportunity for Zimbabwe to turn the tide in its history of contentious and violent elections, the election rather had the markings of an intra-elite transfer of power.[176] More so, the military's influence in securing an electoral win for Emmerson Mnangagwa was yet another page from his predecessor's playbook.

On a positive note, the 2018 election environment saw relatively peaceful campaigning, and greater respect for freedom of expression, freedom of assembly and association that in turn encouraged the right to political participation.[177] However, familiar challenges still bedevilled the freeness, fairness and credibility of the process. There was still lack of public trust in the EMB whose independence and impartiality were in doubt. These perceptions were worsened by incidences of incompetency that compromised the transparency and veri-

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172   Ibid., pp. 6–7.

173   Ibid., pp. 4–5.

174   *African Union,* note 166, pp. 3–4. This included nine LTOs whose mandate spanned the period between 15 June to 14 August 2013. The teams also dispatched 60 short term observers from 21 July to 6 August 2013.

175   *EU Elections Observation Mission,* Final Report Republic of Zimbabwe Harmonised Elections 2018, 2018, p.4.

176   *Dominique Emmanuel Uwizeyimana,* Democracy and Pretend Democracies in Africa: Myths of African Democracies, in Law Democracy Development 16 (2012), p. 141.

177   *African Union,* note 166, p. 1.

fiability of the vote.[178] Other concerns surrounded misuse of state resources, intimidation and bribery of voters, and an irregular voter registration process. There were also reports of harsh state response to post-elections protests.[179] The election delivered a win for ZANU-PF's *Emmerson Mnangagwa* who received 50.8 % of votes, compared to 44.3 % by his opposition challenger, *Nelson Chamisa*.[180] Although, *Nelson Chamisa* challenged this win before the Constitutional Court, the petition was dismissed due to lack of sufficient evidence.[181]

As it did in 2013 elections, the AU deployed both long-term and short terms observers to the Zimbabwe 2018 elections.[182] The elections however occurred in a largely peaceful environment but the freeness, fairness and credibility of the process could have been improved.[183] The question of AU's response to the 2018 elections has to be examined against the backdrop of President *Mugabe's* removal from power in November 2017. There was a reluctance both at the national, regional and continental level to call the events that occurred in Zimbabwe in November 2017 a coup, which complicated AU's response. The Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lomé Declaration), the ACDEG, and the AU Constitutive Act all condemn unconstitutional changes of government and require the AU to decry such events when they occur.[184]

However, in Zimbabwe's case, the military's insistence that this was not a coup, and the unfolding events that led to the resignation of President *Mugabe* provided the AU with an excuse from outrightly addressing what can be termed as a soft coup.[185] AU has previously been accused of inconsistency in its approach to unconstitutional changes of government as was also seen in this case here when both the AU and SADC tiptoed around

178 Ibid., p. 3–4, *EU Elections Observation Mission,* note 175, pp. 1–2.

179 *EU Elections Observation Mission,* note 175, p. 3.

180 *BBC News,* Zimbabwe Election: Emmerson Mnangagwa Declared Winner in Disputed Poll (3 August 2018), https://www.bbc.com/news/world-africa-45053412 (accessed on 16 April 2021).

181 *Nelson Chamisa vs Emmerson Dambudzo Mnangagwa and others*, Constitutional Court of Zimbabwe, Judgment No. CCZ 21/19, Constitutional Application No. CCZ 42/18, August 22 and 24, 2018, https://kubatana.net/wp-content/uploads/2019/11/ConCourt-Judgment-Presidential-Election-Petition-191107.pdf (accessed on 16 April 2021).

182 *Afrian Union,* note 166, p. 6. A core team of four experts were deployed on 2 July 2018 and 10 long term observers joined them on 5 July 2018. The AU further deployed 50 short term observers one week to the election. The head of mission was Hailemariam Desalegn Boshe, former Prime Minister of Ethiopia, assisted by Minata Samate Cessouma, AU Commissioner for Political Affairs as deputy. The team was also joined by high profile personalities and experts.

183 *African Union*, note 166, pp. 1–3.

184 *Martin Nsibirwa* and *Peacemore Mhod*, Coup, what coup? The vexing question of how SADC and the AU should react to Zimbabwe's situation, https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/1023-coup-what-coup-the-vexing-question-of-how-sadc-and-the-au-should-react-to-zimbabwe-s-situation (accessed on 16 April 2021).

185 *Christian Ani Ndubuisi*, Coup or Not Coup: The African Union and the Dilemma of "Popular Uprisings", in Democracy and Security 1 (2021), p. 17.

the issue, failing to identify it as a coup.[186] However, despite this run-around involving the 2017 events in Zimbabwe, what emerges is that the initial events surrounding the removal of President *Mugabe* were unconstitutional according to the Lomé Declaration. The AU should have condemned the coup. This was concerning given that such a pivotal political event close to elections has a real likelihood of affecting the democratic and peaceful nature of elections. AU's failure to condemn the coup is a further indictment of AU's deficiency in implementing its own norms when faced with member state abrogation. Such inconsistency in AU's response to coups, exacerbated with its reluctance to outrightly confront undemocratic leadership, buoys attitudes among such leaders to commit human rights infringements without fear of sanctions.[187]

III. Côte D'Ivoire

1. The AU's Intervention during the 2010 Elections

Côte d'Ivoire's 2010 election was a particularly eventful one building up from the historical context of the country. The 1999 military putsch in Côte d'Ivoire plunged the country into a tumultuous dissent into conflict and instability in the previously relatively stable West African nation.[188] This is not to say the country was a democratic and peaceful haven prior to the coup d'état. The policies and practices of the former long serving late President *Houphoudt-Boigny* and his cronies in the ruling Democratic Party of Ivory Coast (PDCI) set the stage for the political turmoil that Côte d'Ivoire was to experience. This included disregard for the Constitution, state monopoly, fraudulent elections, and political instrumentalization of ethnic divisions. Economic challenges amid reports of government corruption further engendered social discontent.[189] Following the death of President *Houphoudt-Boigny*, the contentious 2000 elections ultimately led to the ascending

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186   *Mlungisi Phakath,* An analysis of the Responses of the African Union to the Coup in Burkina Faso (2015) and Zimbabwe (2017), in Journal of African Union Studies 7 (2018), p. 129; *Ndubuisi,* note 185, p. 1; *BBC News,* Zimbabwe Takeover Seems Like a Coup, African Union Says (15 November 2017), https://www.bbc.com/news/world-africa-42004816 (accessed on 16 April 2021); *Southern African Development Community*, Press Release: SADC Organ Troika Plus Council Chairperson Ministerial Meeting discusses the Political Situation in Zimbabwe (16 November 2017), https://www.sadc.int/news-events/news/press-release-sadc-organ-troika-plus -council-chairperson-ministerial-meeting-discusses-political-situation-zimbabwe/ (accessed on 16 April 2021); *African Union*, Statement by the Chairperson of the African Union Commission on the Situation in Zimbabwe (15 November 2017), https://au.int/en/pressreleases/20171115/sta tement-chairperson-african-union-commission-situation-zimbabwe (accessed on 16 April 2021); *Abdur Rahman Shaban*, Zimbabwe takeover 'seems like a coup' – A.U. chair Conde worried (15 November 2017), https://www.africanews.com/2017/11/15/zimbabwe-takeover-seems-like-a-cou p-au-chair-conde-worried// (accessed on 16 April 2021).

187   *Phakath,* note 186, p. 131.

188   *Cyril Daddieh,* Elections and Ethnic Violence in Côte d'Ivoire: The Unfinished Business of Succession and Democratic Transition, in African Issues 2001, pp. 14–19.

189   Ibid., p. 16.

to power of President *Laurent Gbagbo*. In the period between 2000 and 2010, the country was bedevilled by a failed 2002 coup, civil war, four signed peace accords that were not fully respected,[190] and an election date that was severally postponed.[191]

In 2010, the country was faced with a political crisis when both the incumbent President *Gbagbo* and his opponent *Alassane Ouattara* claimed electoral victory. *Ouattara* relied on the results published by the Independent Electoral Commission (IEC) declaring him the winner and had the backing of the international community. On the other hand, *Gbagbo* relied on the decision of the Ivorian Constitutional Council, which had reviewed and annulled in part the election results and declared *Gbagbo* victorious.[192] *Gbagbo's* actions received widespread disapproval from the international community including the AU, UN, EU, Economic Community of West African States (ECOWAS) and France.[193] What followed was a period of instability and uncertainty marked by protests, fighting by supporters of the opposing sides, and harsh state response. It was only approximately five months later that President *Alassane Ouattara* was sworn in after the arrest of President *Laurent Gbagbo*. This conflict saw the death of at least 3,000 people and flight and displacement of about one million people.[194]

The intervention of other international actors that included a blend of mediation and coercive measures eclipsed that of the AU in the resolution of the 2010 crisis in Côte d'Ivoire.[195] At the regional level, ECOWAS collaborated with the High Representative for Elections and the United Nations Operation in Côte d'Ivoire (UNOCI) and offered technical assistance and advice towards the resolution of the conflict and restoration of peace and stability.[196] Other actors at the international level included Carter Centre, the National Democratic Institute (NDI), the International Foundation for Electoral Systems (IFES), and France.

It has been posited that the AU took a backbench role in this case as it was then wont to do when the respective regional body was involved in line with the subsidiarity principle. The AU had also been criticised for failing to take tough measures such as sanctions when faced with refusal to accept election results, which is a form of unconstitutional

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190 The Linas-Marcoussis Agreement of 24 January 2003, The Accra III Agreements of 31 July 2004, Pretoria Agreement of 6 April 2005 and The Ouagadougou Political Agreement (OPA) of 4 March 2007.

191 *Nicolas Cook,* Côte d'Ivoire's Post-Election Crisis (28 January 2011).

192 Ibid., pp. 2–3.

193 *United Nations Operation in Côte d'Ivoire,* Post-election crisis, https://peacekeeping.un.org/en/mission/past/unoci/elections.shtml (accessed on 14 April 2020).

194 Ibid.

195 *Appiah*, note 151, p. 36.

196 *ACE Project*, Côte d'Ivoire, 2010 Presidential Elections UN Integrated Electoral Assistance Case Study, https://aceproject.org/ero-en/regions/africa/DZ/cote-divoire-un-integrated-electoral-assistance/at_download/file (accessed on 17 April 2021).

change of government under the Lomé Declaration.[197] However, in this case after the ECOWAS suspended Côte d'Ivoire from the organisation after President *Gbagbo* refused to concede,[198] the PSC of the AU followed suit and suspended Côte d'Ivoire from the AU.[199]

Both ECOWAS and the AU organised several high level diplomatic meetings and sponsored delegations aimed at de-escalating the conflict and advising President *Gbagbo* to concede.[200] The suggestion of a negotiated power sharing arrangement as had happened in Kenya in 2007–2008 and Zimbabwe in 2008 was not accepted.[201] The AU and ECOWAS even threatened military intervention although this did not come to pass.[202] In this case, while both AU and the regional mechanisms adopted a blend of diplomacy and a trickling of coercive measures, the collaborative post-conflict intervention of other international and regional actors was also instrumental to the settlement of the conflict five months later. Arguably, this conflict could have been sooner contained and possibly resolved if AU has implemented the right to protect and react under article 4(h) of its Constitutive Act. Thus, the AU failed to emerge as a valiant implementer of its norms.

2. The AU's Intervention during the 2015 Elections

The 25 October 2015 elections in Côte d'Ivoire can be qualified as a step towards the right democratic direction when weighed against previous elections in the country. The elections delivered a landslide victory of 83.66 % to the incumbent *Alassane Ouattara* under the *Rassemblement des houphouëtistes pour la démocratie et la paix* (the Rally of Houphou-

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197 *France 24,* Mbeki Arrives in Ivory Coast to Mediate Crisis (5 December 2010), https://www.fran ce24.com/en/20101205-ivory-coast-thabo-mbeki-arrives-ivory-coast-mediate-crisis-gbagbo-ouatt ara, *Appiah,* note 151, p. 37.

198 *Economic Community of West African States,* "Final Communiqué," ECW/CEG/ABJ/EXT/FR. / Rev. 2 (7 December 2010).

199 Communiqué PSC/PR/COMM.1(CCLII), 9 December 2010.

200 *Aljazeera,* Mbeki fails to end Ivorian crisis (7 December 2010), https://www.aljazeera.com/ne ws/2010/12/7/mbeki-fails-to-end-ivorian-crisis (accessed on 14 April 2021). At the request of Jean Ping, AUC chairperson, Thabo Mbeki travelled to Abidjan on 4 December 2010 to mediate a settlement but returned two days later unsuccessful. There was also a joint delegation by the chairpersons of the AUC Peace, the AU Security Council Ramtane Lamamra, and ECOWAS Commission that met with President Gbagbo aimed at initiating a dialogue for him to step down and to facilitate the de-escalation of the conflict with an offer to resettle him in a foreign country.

201 *Louis Charbonneau*, UN tells Mbeki he got it wrong on Ivory Coast (18 August 2011), http://blog s.reuters.com/global/2011/08/18/un-tells-mbeki-he-got-it-wrong-on-ivory-coast/ (accessed on 14 April 2021).

202 *South African Press Association – Agence France Presse (AFP),* Kenyan PM: Gbagbo should be forcibly removed (17 December 2010), https://www.timeslive.co.za/news/south-africa/2010-12 -17-kenyan-pm-gbagbo-should-be-forcibly-removed / (accessed 14 April 2021); *AFP,* Africa's mediator due in Ivory Coast (17 January 2011), https://english.ahram.org.eg/NewsContent/2/9/4 139/World/International/Africas-mediator-due-in-Ivory-Coast.aspx (accessed on 14 April 2021); *Chronicle,* AU chief meets Ivory Coast presidential rivals (25 January 2011), https://www.chroni cle.co.zw/au-chief-meets-ivory-coast-presidential-rivals/ (accessed on 14 April 2021).

etists for Democracy and Peace, RHDP) coalition.[203] Granted, he was not faced with a worthy challenger given the fragmentation of the opposition and the absence of *Gbagbo* in the political scene, who had previously been a formidable opponent. That being said, the economic upturn during President *Ouattara's* first term in office was a strong point in his favour.[204] Notably though the voter turnout dropped to 52.86 % compared to over 80 % in the previous election.[205] The political situation in 2015 did not require much intervention on the part of the AU, which only sent a short-term observation mission to Côte d'Ivoire.[206] The election was largely peaceful and the election results accepted by the political parties and candidates.[207]

3. The AU's Intervention in the 2020 Elections

The democratic momentum from the previous cycle was however lost in the 2020 election cycle despite Côte d'Ivoire having adopted a new Constitution in 2016. The elections were held in an environment of political exclusion, election violence, opposition boycott, polarised media environment, misuse of state resources, disregard for regional court decisions and human rights violations.[208] Côte d'Ivoire joined the ranks of countries scarred by the third termism scourge after President *Ouattara* sought to run for a third term despite previous assurances that he would not.[209] His justification was that the constitutional amendment in 2016 limiting the presidency to two terms came into force during his first term therefore allowing him to run for another term.[210] The opposition's bid to challenge the eligibility of President *Ouattara* was dismissed.[211]

203 *Ibrahim Maïga*, *Jeannine Ella Abatan* and Armande *Jeanine Kobi*, Côte d'Ivoire Presidential Election: Beyond Alassane Quattara's Victory, ISS Today (6 November 2015).

204 *Maggie Fick*, Coming Years Will Be Critical Test of Ivory Coast's Focus, in Financial Times, 27 September 2015, https://www.ft.com/content/5959c0fe-5ad8-11e5-9846-de406ccb37f2 (accessed on 15 April 2015).

205 Republic of Côte d'Ivoire, Election Guide, https://www.electionguide.org/countries/id/54/ (accessed on 14 April 2021).

206 *African Union Commission*, Mission d'observation de l'Union Africaine pour l'élection du Président de la République du 25 Octobre 2015, République de Côte d'Ivoire Rapport Final (Juin 2016), p. 8.

207 *Tyson Roberts* et al., Côte d'Ivoire's 2015 Presidential Election: A Sign of Democratic Progress?, in Journal of African Elections 15 (2016), p. 46.

208 *Electoral Institute for Sustainable Democracy in Africa* and *The Carter Centre*, International Election Observation Mission: Côte d'Ivoire 2020 Preliminary Statement (2 November 2020), pp. 1–2.

209 Ibid., p. 1.

210 *Reuter*, Ivory Coast's Ouattara Says He's Free to Run Again In 2020: Jeune Afrique (3 June 2018), https://www.reuters.com/article/us-ivorycoast-politics-ouattara-idUSKCN1IZ0S3 (accessed on 14 April 2021).

211 *Electoral Institute for Sustainable Democracy in Africa* and *The Carter Centre*, note 208, p. 3.

The impartiality of the EMB was in question especially given its decision to certify the eligibility of only four out of 44 candidates.[212] In the absence of other avenues for aggrieved candidates to appeal the decision, two of the 44 candidates, *Guillaume Soro*[213] and *Laurent Gbagbo*,[214] appealed the decision before the African Court on Human and Peoples' Rights (ACtHPR). The ACtHPR delivered preliminary orders requiring Côte d'Ivoire to respect the right to political participation of the two candidates by removing the obstacles to their participation.[215] However, Côte d'Ivoire, in violation of its obligations, failed to implement this order. The ensuing unrest left at least 40 persons dead and affected the conduciveness of holding elections. Reports of undue restrictions on freedom of expression and assembly further compromised the freeness and fairness of the process.[216]

This situation necessitated the AU to play a more preventive role to militate against further conflict, and ensure free, fair and credible elections in line with its normative framework. However, what materialised were the same soft approaches to conflict prevention seen through joint mediation efforts with regional and international actors. Prior to the election, AU jointly with ECOWAS, UN and the *Conseil de l'Entente*, undertook a preventive diplomacy mission in Côte d'Ivoire with the objective of 'promoting a credible, transparent and peaceful presidential election'.[217] Additionally, the AU deployed a short-term observation mission that raised concerns over the political division, spread of hate speech, ethnic tensions, and political violence that were already shaping out in the pre-election environment.[218] The diplomacy efforts of the AU and its partners were however unsuccessful given Côte d'Ivoire still experienced election violence that impacted the level of freeness, fairness and credibility of the elections. The AU also failed to adopt effective mediation and coercive tactics to address the concerns raised in the short-term observation mission reports.

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212 *Ibid.*, p. 1.
213 *Guillaume Kigbafori Soro et 19 Autres vs Republic of Côte d'Ivoire,* Application 012/2020, ACtHPR, Ruling Provisional Measures, 15 September 2020.
214 *Laurent Gbagbo vs Republic of Côte d'Ivoire,* Application 025/2020, ACtHPR, Ruling Provisional Measures,* 25 September 2020, https://www.african-court.org/cpmt/storage/app/uploads/public/601/bc2/af2/601bc2af2f6c3987033466.pdf (accessed on 15 April 2020).
215 Ibid.
216 *Electoral Institute for Sustainable Democracy in Africa* and *The Carter Centre,* note 208, p. 3.
217 *African Union,* Communique Joint High-Level Solidarity Mission ECOWAS-African Union-United Nations and Conseil de l'entente for the Promotion of Credible, Transparent and Peaceful Presidential Elections in the Republic of Côte d'Ivoire (7 October 2020), p. 2, https://au.int/en/pressreleases/20201007/joint-solidarity-mission-ecowas-au-un-conseil-de-lentente-cote-divoire (accessed on 16 April 2020).
218 *African Union,* Arrival Statement: AU Election Observation Mission to the Presidential Election in the Republic of Côte d'Ivoire' (October 26, 2020), https://au.int/en/pressreleases/20201026/arrival-statement-au-election-observation-mission-cote-divoire (accessed on 15 April 2021); *African Union,* note 217, p. 4.

IV. Summary and Analysis of the AU's Interventions in Kenya, Zimbabwe and Côte d'Ivoire

Country	Election period	AU intervention	Impact
Kenya	2007	- Post conflict mediation - Good offices - Shuttle diplomacy - Mediation by Eminent African Personalities	- De-escalation of the conflict - Establishment of a power sharing agreement - Provided framework to commence legal, constitutional and institutional reform
	2013	- Preventive strategies - Panel of the Wise - POW collaborated with COMESA's Committee of Elders and IGAD - Pre assessment technical team - Long term and short-term observation	Contributed to peaceful elections
	2017	- High level meeting with electoral stakeholders - Pre assessment technical team - Long term and short-term observation ☐Joint statements with EOMS from AU and RECs including COMESA, EAC, IGAD and ICGLR on peaceful and democratic elections	Kenya still experienced election violence especially from state security forces
Zimbabwe	2008	- Reluctance to strongly condemn or sanction President Mugabe - Pre-election assessment reports between first election and runoff - Post conflict mediation with AUC chairperson, SADC, and SA's president - Statements from other AU organs including PAP and African Commission	- De-escalation of the conflict - Establishment of a power sharing agreement

	2013	• AU and SADC collaboration in reform process • Long- and short-term observation mission	• Contributed to the peaceful 2013 elections
	2018	• Soft stance toward soft coup before the elections • Long- and short-term observation mission	• Contributed to relatively peaceful elections
Cote d'Ivoire	2010	• Greater visibility of interventions from ECOWAS, UN and France • AU suspended Cote D'Ivoire's membership after ECOWAS did the same • Post conflict intervention of a joint delegation with ECOWAS • Deployed mediators • Threat of military intervention. by AU and ECOWAS	• Conflict resolved after five months through collaborative efforts by AU, ECOWAS and the international community
	2015	• Short term observation mission • Collaboration with ECOWAS EOM	• Contributed towards peaceful elections
	2020	• Preventive diplomacy through a joint high level mission including ECOWAS • Short term observation	• There were still reports of election violence

In assessing the effectiveness of AU's support towards elections in Africa in the context of undertaking its preventive role, this paper discussed three preventive interventions being the POW, the CEWS and EOMs. EOMs outrightly stand out as the most consistently employed preventive strategy during elections in Africa. Post 2013, it is encouraging to see the AU deploy pre-assessment teams, high level missions and long-term and short-term observation missions prior to elections. This allows for a better grasp of the context of the country. Effective linkages with the EWS at both continental and regional levels is essential in ensuring that these teams are well appraised of the historical and emerging destabilising factors that can inform action by decision-making bodies. The development of effective strategies informed by early warning assessments is an aspect that needs to be strengthened within the preventive strategy of the AU. Even when pre-election assessments reveal early warning signs of conflict, follow-up measures such as quiet diplomacy have not delivered consistent results in preventing conflict.

It is noteworthy that in the period spanning 2007 and 2020, the AU has been inconsistent in how it chooses to deploy conflict prevention and mitigation measures during

elections. While different factors and contexts determine what interventions to employ, it is important that the selected intervention is appropriate, timely and effective. For example, in the case of Kenya, the timely intervention of the AU was crucial to facilitating a relatively quick resolution of the conflict in 2007. The AU's response was however relatively slower in Zimbabwe (2008, and 2017–2018) and Côte d'Ivoire (2010 and 2020). It calls into question whether Kenya's political standing and influence at the regional and continental levels impacted the decision when compared with the two other countries. The speed of intervention is crucial given the consequences of deepening existing chasms that already divide a country during a protracted conflict.

Interestingly, both Zimbabwe and Côte d'Ivoire have faced potentially destabilising events before their elections that were in opposition with AU's norms. In 2008, Zimbabwe faced blatant state repression before the runoff vote, and in 2017–2018, a soft coup. In 2010, Côte d'Ivoire experienced an unconstitutional change of government, and in 2020, a third term president. In both cases, the AU showed reluctance to adopt coercive preventive sanctions in addition to using existing preventive diplomacy measures. Strong condemnation is especially critical when faced with unconstitutional changes of government given the threat it poses on peace and stability as well as constitutionalism, but the AU did not consistently and strongly decry these instances. Strong condemnation should also be directed to incumbents manipulating constitutions to extend their presidency, and those who violate international and African human rights norms and standards. Africa should be keen to ensure that existing leadership in fact reflects the will of the people and not the will of the incumbent.

Noteworthy, various mutually reinforcing factors contribute to ensuring peaceful and democratic elections in Africa that are important towards enhancing the effectiveness of preventive strategies of the AU. Collaborative efforts with RECs, as seen in the case of ECOWAS and SADC in Côte d'Ivoire and Zimbabwe respectively, reinforced the preventive role of the AU. This collaborative aspect promises to be more impactful if it is nurtured not only during election periods but throughout the election cycle. AU-REC cooperation is also necessary given the difficulty in navigating pushback from state sovereignty, and subsidiarity practices. State enforcement of the decisions of the PSC and other organs of the AU still remains a challenge towards conflict prevention and other peace and security interventions.[219] Continental and regional collaboration as well as adopting coercive preventive measures such as sanctions also has the advantage of providing more political clout for a country to respect the principles of free, fair, credible and peaceful elections.

It is concerning that the studied countries in this research have not experienced a steady improvement in the state of peace and democracy following AU interventions. Contentious election periods are sometimes followed by relatively peaceful periods then a regression to violent elections. This paper calls for a greater focus on addressing the structural roots of conflict to encourage progressive improvement of electoral processes.

219 *African Union,* note 37, pp. 14–15.

The AU in collaboration with RECs should actively emphasise on addressing root causes of conflict through supporting legal, constitutional and institutional reforms. The work of AGA, APRM and AUDA-NEPAD is important to inculcate a democratic culture that upholds constitutionalism in the African continent. Therefore, other preventive strategies such as POW, CEWS and EOMs will dovetail to effectively address emerging concerns in the election cycles.

Conclusion

AU's normative framework reflects a nomenclature geared towards the promotion of democracy, human rights and good governance in Africa. These principles are key enablers of peace, security and stability in Africa particularly during elections and crucial to the exercise of the AU preventive role. Despite the coterie of powers extended to AU by its normative framework, the continental body has failed to effectively prevent election violence in African elections towards promoting electoral democracy. When faced with the option, AU favours diplomacy over tougher measures such as sanctions, which has emboldened undemocratic leaders. AU has thus been characterised as favouring regime sustenance over democratic promotion that has consequently not addressed the peace and stability concerns. A change of stance is needed. AU should completely shed the shackles of its predecessor and truly embrace a non-indifference approach that holds leaders who manipulate elections and infringe on human rights accountable. It needs to reinforce the support for mechanisms that enable it to play a preventive role. Alternative funding sources are necessary to overcome the resource challenge. Further, to ensure holistic conflict resolution over conflict containment, the AU needs to capacitate its governance mechanisms in the AGA, AUDA-NEPAD, and APRM. There is need for more public ownership and support for the preventive interventions and democratic promotion measures of the AU as a countervailing strategy to state influence. The continental body should therefore seek more opportunities for collaboration with CSOs.