

## **Commitments, indicators and motivation: Monitoring the adherence of African governments to selected AU commitments on democracy and political governance**

A concept paper for the AHSI,  
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### **Introduction: the project and its execution**

The African Human Security Initiative (AHSI), a network of non-governmental African research organisations, launched in September 2003 a research programme that will monitor and review the compliance of African countries to a selection of commitments they have entered into as members of the African Union (AU). For this pilot project, eight countries will be subject to review. The countries are Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda. These countries are among the most active in promoting the goals of the New Economic Partnership for Africa's Development (NEPAD) and they have all signed up to the African Peer Review Mechanism (APRM). They are selected due to this commitment to NEPAD and because they constitute a geographically representative mix of countries from North, Southern, East and West Africa. Since the overall focus for the review project is 'human security', the commitments reviewed are chosen because, if implemented, they would greatly improve the conditions for human security on the African continent. Within the AHSI project, the South African Institute of International Affairs (SAIIA) will concentrate on democracy, elections and 'political governance' commitments.

The core concepts of the AHSI project, such as 'human security' and 'political governance', are very broad. They need to be further defined and specified if they are to guide a practical research agenda. Thus a main task of this concept paper is to narrow down what 'governance' means when seen from the perspective of 'human security'. Having done that, I will set out the AU commitments that SAIIA proposes to review, together with a motivation why we have chosen these particular commitments, and suggestions on which indicators can be used to assess the compliance of states to these commitments.

### **Democracy from a human security perspective**

The first we must do is to define what we mean by *human security*, since this concept constitutes the overall framework within which the research project will be conducted. In order to: one, confine the study to political (rather than environmental, social and economic) commitments; and, two, ensure that we retain the distinction between political problems and security threats, I prefer a relatively narrow interpretation of the concept. I will thus focus on political governance and democracy issues that are related to:

1. Direct or indirect political violence against individuals or groups or the threat thereof.
2. Non-violent actions or processes (such as the stealing of elections through manipulation of voters lists, for instance) that have a strong likelihood of leading to political instability and violence (see point 1).

*Good political governance* is the sum of the institutions, processes and policies that are conducive to democracy or democratisation. Democracy is in this regard not only

understood as majority rule and the holding of regular elections, but includes all the other paraphernalia of democratic governance: checks and balances, independence of the judiciary, party pluralism, minority protection, constitutional protection, political liberties such as freedom of speech and association, etc. For this project, the focus will be more on democratisation than democracy, since a core aim of the review project is to assess whether a country's democracy record is improving or deteriorating. This provides a more just measurement of a state's commitment to democracy than a snapshot picture would.

The overall theme of the review is thus *the progress of democratisation from a human security perspective*. This leads us to the next question: Taking this understanding of good governance as democracy/democratisation (depending on how far a country has come in its political development), what are the human security aspects of governance that we should focus on?

#### Overall Criteria for selecting democracy commitments to be monitored and reviewed:

1. The commitments we choose to investigate must be possible to convert into practical (researchable) indicators.
2. The indicators must be relatively inexpensive and easy to research, due to the time and funding constraints of the project.
3. But they must also be important and central aspects of democratisation, not peripheral.
4. SAIIA's choice of commitments is constrained by the research clusters of the other partners in the AHSI. It is particularly important to be aware of potential overlap with the human rights and corruption clusters.

#### What parts of democratisation are particularly salient for human security?

From the perspective of human security, a central issue in the field of political governance is the question of transfer of power. This issue includes:

1. Elections and electoral processes.
  - Either because of violence during the election, or because of violence as a result of election outcomes or as a result of the way in which the election was conducted.
2. The right and opportunity to create or be a member of opposition parties and campaign on their behalf.
  - Because without legitimate channels through which to voice dissent and disagreement, the risk is high that illegitimate channels will lead to violence.
  - Also because, from the perspective of individual security, to be a member of an opposition party should not entail any particular risk.
3. The adherence to constitutional caveats concerning limits on terms in office.
  - Because if there is no peaceful way in which to get a leader to stand down, then each transition of power is at risk of being violent, anarchic and destabilising.
4. The independence of the judiciary
  - Because an independent judiciary is an invaluable check on executive power
  - It is also a necessary condition for the rule of law

#### **Overall justification for the choice of commitments**

African states have committed themselves in unambiguous terms to democracy and the values that this political system entails. The AU documents that constitute the basis for this

review project, all promote a generally and globally accepted understanding of the concept of democracy. This can be seen in the Lomé Declaration on Unconstitutional Changes of Government from 2000, where AU members spell out the principles underlying the organisation's 'common concept of democracy'. The Declaration states that:

'(...) without being exhaustive, we have also agreed on the following principles as a basis for the articulation of common values and principles for democratic governance in our countries:

- i) adoption of a democratic Constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy;
- ii) respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament;
- iii) separation of powers and independence of the judiciary;
- iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;
- v) the principle of democratic change and recognition of a role for the opposition;
- vi) organization of free and regular elections, in conformity with existing texts;
- vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders;
- viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981;
- ix) guarantee and promotion of human rights.

Having set out the strong overall commitment of AU member states to democracy, I will turn to the seven particular commitments to be studied in this review. The seven are listed below and discussed in detail in Table 1. For an assembly of the documentary evidence of these commitments, please see annex 1 (separate attachment).

- 1) **Fairness of the electoral system:** is the overall result of the electoral process seen as fair by most stakeholders and is the election outcome reflected in the composition of the legislative and executive powers?
- 2) **Electoral Commissions:** do they exist, are they independent and well funded, and are their operations and rulings generally accepted as fair and impartial?
- 3) **The voter registration system:** is everyone who, according to generally accepted principles of democracy, is entitled to vote, able and allowed to do so?
- 4) **Political pluralism:** are political parties allowed to form, meet, and stand for elections? Can they campaign freely and do they have equal access to the media?
- 5) **An exclusive or inclusive political system:** who has access to political power and to the benefits of public policies and services?
- 6) **Limits to terms in office for Heads of State:** are there such limits and are they adhered to?
- 7) **Independence of the judiciary:** are courts independent from governments and do they exercise meaningful oversight over executive and parliamentary actions?

**Table One: Overview of commitments to be studied**

Commitments	Indicators	Motivation	Problems
Fairness of overall electoral system	<p>Is the overall result of the electoral process seen as fair by most stakeholders?</p> <p>1) Are there structural problems that allow a ruling party to win the presidency or dominate parliament without commanding a majority of votes/support? Most important in this regard is the way in which votes are transformed into seats. Is for instance</p> <p>a) the president allowed to appoint a certain number of members of parliament?</p> <p>b) a first-past-the-post system dooming a substantial minority to a lack of parliamentary representation and perpetual voiceless opposition?</p> <p>2) Are the constituency boundaries fair, or are they the object of gerrymandering by the ruling party?</p> <p>3) Are state resources used by the ruling party in its campaigning?</p> <ul style="list-style-type: none"> <li>- vote buying</li> <li>- the use of government logistics: vehicles, planes, equipment</li> </ul>	<p>In 2002, the AU summed up the many commitments it has made to the principles of democracy as follows:</p> <p>'These should include; promulgated constitution with a Bill of Rights' provision; free and fair elections at constitutionally stipulated intervals; multiparty political systems; separation of powers; an independent judiciary; a free press and freedom of expression and assembly; effective military subordination to civilian authority, and accountability and popular participation in governance'.<sup>1</sup></p> <p>Without free, fair and inclusive elections that provide a result that most of the country's citizens believe is fair (or at least fair enough), there can be no stable democracy. Thus, although AU democracy commitments do not explicitly mention the electoral system, the nature of this system should be a core part of any study of the progress of democratisation in Africa.</p>	<p>What is a 'fair' electoral system? No system is entirely proportional or just, all have their flaws and strengths. Often it comes down to political culture what sort of system is considered fair by the population and politicians of a country.</p> <p>=&gt; This makes it difficult to set up exact benchmarks, so we must be careful to provide sound judgement and take the particular conditions of the country into account when assessing 'fairness'</p>
Electoral commissions	<p>1) Are the members of the electoral commission fair and impartial or biased towards the ruling party?</p> <p>a) How are commissioners appointed - according to the law and in practice?</p> <p>2) Does the commission seek consensus or vote on party lines in addressing complaints on procedure?</p> <p>3) Does the commission have sufficient human and financial resources to control elections?</p> <p>a) Are there sufficient vehicles and independent electoral officers to physically control ballots at all times? Or are the police or army left alone to transport and/or guard the ballots?</p> <p>b) Is the commission able to ensure that vote counting is monitored by all participating parties and that ballots are not tampered with?</p> <p>5) Does the commission have the power and will to insist upon equal access and exposure to the media for all political parties?</p>	<p>There is a strong and explicit commitment by African states to establish and strengthen this critically important institution for the conduction of free and fair elections.</p> <p>General commitments to free, fair and transparent elections are found in most of the AU documents under review, but there is also specific mention of Electoral Commissions.</p> <p>In a 2002 Memorandum of Understanding focused on implementing the goals of the CSSDCA, AU Heads of State '[a]ccept the necessity for significant improvement in the African electoral process including the establishment of truly independent national electoral Commissions and other appropriate mechanisms to ensure transparency, fairness, and credibility of elections.'<sup>2</sup></p> <p>Further on in the same document the signatories commit to: 'Establish by 2003 where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent elections in all African countries'.<sup>3</sup></p>	<p>Many AU documents warrant independent electoral commissions but do not give details.</p> <p>It will therefore be SAIIA's task to discuss what features this institution must have if the term is to have a meaning consistent with democratic values.</p> <p>For instance, nominal independence but no resources at its disposal is not an independent commission.</p> <p>SAIIA will draw on work of election monitors and best practice research to determine what the features of an independent electoral commission should be.</p>

Voter registration system	<p>We will look at some of the most common problems connected with the voter registration process:</p> <ol style="list-style-type: none"> <li>1) Are registration processes equally fair: <ol style="list-style-type: none"> <li>a) to urban and to rural voters?</li> <li>b) to voters in different geographical regions of the country (this is particularly salient in countries where different ethnic, religious or otherwise politically distinctive groups live in separate parts of the country.</li> </ol> </li> <li>2) Do registration requirements result in disenfranchising significant groups or minorities or their candidates on citizenship grounds?</li> <li>3) Are new forms of proof of identity imposed in ways that – due to time requirements on the citizen, burdensome proofs of residence, inefficient registrars or limited time periods open for registration – significant minorities are excluded?</li> <li>4) How easy is it to find out that you are registered to vote and that you are on the correct registration roll? How far do you have to trek in order to register and do you have to make the same journey to check that you are registered?</li> </ol>	<p>This is an essential part of democracy, since a just system of voter registration is a necessary component of free and fair elections. The voter registration system is the first hurdle that citizens encounter when wanting to participate in democratic governance. An unfair system would mean that groups of citizens are practically disenfranchised and excluded from the most basic component of political participation: that of voting.</p> <p>There have been several recent examples of the voter registration system being manipulated by incumbent governments in order to skew the election result. This approach is favoured because it is a non-violent, relatively discreet way of fixing elections, which therefore receives little attention in the media. Furthermore, because this manipulation usually takes place several weeks or months before the election day – before the arrival of outside election observers and the international media – it gives observers the opportunity to forget or ignore this aspect of the election process when they assess whether the election was ‘free and fair’.</p>	<p>Some of the indicators are straightforward to research. For instance, unjust or excessively conservative or complicated rules of citizenship can be discerned by looking at the constitution and laws of the country.</p> <p>However, other aspects of an unjust voter registration system will be more difficult to assess, since they are the result of informal practices rather than rules. How, for instance, can one measure whether a registrar in a particular election district is just slow or deliberately hindering voters from registering? SAIIA will rely on the reports from recognised and well-reputed observer teams and rights groups in assessing this informal and hidden way of distorting the voter registration process.</p>
Political pluralism: Freedom to associate, campaign and speak	<p>Are there inherent obstacles to multi-party and pluralist politics in the political system?</p> <ol style="list-style-type: none"> <li>1) Can political parties form freely?</li> <li>2) Do all parties get state funding? What are the rules for this?</li> <li>3) Are opposition parties allowed to arrange meetings and other activities free of police or other interference and without having to seek government permission?</li> <li>4) How easily can political parties and their candidates register and stand for elections?</li> <li>5) How easy is it for opposition parties to election campaign? Do they have equal access to media, especially when a lot of the media is state owned? (or is the public broadcaster actually a government broadcaster?) Can they campaign freely and safely everywhere or are there no-go areas?</li> <li>6) Can citizens demonstrate, hold rallies and exercise freedom of speech on political issues? Even to call for political change?</li> <li>7) Do courts and police provide real redress when these rights are violated?</li> </ol>	<p>The CSSDCA spells out a strong AU commitment to pluralism: - ‘There shall be no hindrance to the promotion of political pluralism’<sup>4</sup>. And furthermore: - States agree to ‘Protect and promote respect for Human Rights and Fundamental Freedoms, such as the freedom of expression and association, political and trade union pluralism and other forms of participatory democracy’.<sup>5</sup></p> <p>There is no dispute about AU member states’ commitment to political pluralism, then. It is also clear that until a formally democratic, but in practice one-party state, has proven its democratic credentials by allowing opposition parties to freely form; run for elections; and even take over power if they win – it will remain an untested democracy.</p>	<p>As in the case of assessing the ‘independence’ of electoral commissions, it is not enough to look at the laws of the country to determine the conditions for multi-party politics in a country. We must both look at the laws and – more importantly – the actual practices of the police and other government bodies in allowing parties to form and political protests to be voiced.</p>

Exclusive or inclusive political system?	<p>Are significant groups of people marginalized or excluded from participating in or benefiting from state institutions and policies on the grounds of sex, race, region, religion or ethnicity?</p> <p>Is the political system – not just during elections – skewed towards benefiting members of the ruling coalition or particular groups of society? Is such a system of privilege endorsed in the constitution and legislation, or is it an informal practise? E.g.:</p> <p>1) Who has access to posts in the civil service? Are there patron-client relationships at play?</p> <p>2) How and where is public money spent? Do government policies mostly cater to the needs of certain groups or areas? Do some provinces or groups receive fewer public goods and services than others?</p>	<p>AU member states explicitly commit themselves to work against discrimination of any kind in several documents. For instance, the Ouagadougou declaration commits states to: ‘(...) abolish exclusion and, in this regard, involve all and sundry without discrimination in the management of public affairs;’<sup>6</sup></p> <p>From the perspective of both state and human security, the exclusion of significant groups from the political system is a potentially serious threat. From the perspective of state security, this system will remain volatile, since excluded groups will have to resort to desperate, sometimes violent, measures to have their voice heard. The lack of legitimacy of the government among significant portions of the citizenry also undermines efforts at strengthening state structures and institutions.</p> <p>From a human security perspective, groups that are excluded from political participation are usually also more vulnerable to abuses of power and less protected by the law and legal enforcement agents such as the police.</p>	<p>It is easier to determine what are the legal limitations on an inclusive political system than what are the practical hindrances put up against political, ethnic, religious or other minorities. Often the obstacles are subtle and kept away from scrutiny.</p>
Term limits for Heads of State	<p>1) Are there term limits? Are these limits enshrined in and protected by the constitution, making it difficult to change them by the sitting head of state? If there are not term limits, is there a legislative process in place to introduce them?</p> <p>2) Are the term limits obeyed?</p> <p>3) If state leaders try to change the term limits, do they go through the proper channels prescribed by the constitution?</p> <p>4) If there has been a contentious extension of terms in office in the country of study, what is the political fall-out from this?</p> <p>5) If the country has not had term limits introduced, can we discern the effects of this on democratisation? E.g.:</p> <ul style="list-style-type: none"> <li>- Have there been peaceful transitions of power in the country due to other reasons than the death of the incumbent president?</li> <li>- Has a long-sitting president become increasingly non-democratic over the years?</li> </ul>	<p>The CSSDCA solemn declaration does not call explicitly for term limits, but it comes out strongly against undemocratic and unconstitutional changes of government – including unconstitutional ways of staying in government. The MoU from 2002, which follows up the Solemn Declaration with a plan of action, stipulates that States shall ‘Adopt by 2005 a commonly derived Code of Conduct for Political Office Holders that stipulates among others, an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates and governments should scrupulously abide by it.’<sup>7</sup></p> <p>However, the AU does at no point stipulate what the maximum length of each term in office should be. This commitment thus raises some interesting questions:</p> <p>1) Are term limits central to the health of democracies?</p> <p>2) Why should we insist on term limits?</p> <p>3) What length of time in office would be acceptable? One suggestion is to find the average permitted term of office in Africa as the benchmark for when a particular president has reached his due date – regardless of whether his country has term limits in its institution or not.</p>	<p>We must discuss why the UK and some other western countries do not have term limits. Why should this be demanded of African states? The UK would benefit from term limits too (fewer years of Margaret Thatcher), but the issue of term limits is not as critical in mature democracies as in nascent ones. It is particularly imperative for weak and newly established democracies to have these types of safeguards against the abuse of power. It is widely accepted that political leaders become destructively powerful if left in office too long and become destructively focused on their own political survival unless confined to a reasonably short period of office.</p>

Independent judiciary	<p>Are courts independent from government?</p> <p>1) Do the courts offer meaningful redress to aggrieved parties? Or are they biased towards the ruling party and its members? In other words, is the judiciary politically neutral and non-partisan?</p> <p>2) Do the courts act swiftly enough to reach decisions or are delays so significant as to deny justice?</p> <p>3) Do the courts act as the third independent arm of the state vis-à-vis the executive and the legislative arms?</p> <p>- Do courts exercise meaningful oversight over executive and parliamentary actions or are the courts subverted or ignored?</p> <p>- Do the courts act as the guardian of the spirit of the constitution to counteract arbitrary legislation emanating from the executive or legislature?</p> <p>- Do judges have security of tenure or are they easily displaced by the executive if they reach unfavourable decisions?</p> <p>- Who appoints the judges and according to what procedure?</p>	<p>Several AU documents specify the importance of an independent judiciary.<sup>8</sup></p> <p>From a human security point of view, the importance of an independent judiciary is self-evident. The separation of powers into an executive, legislative and judiciary is there to protect against self-serving governments and the abuse of power. It is also a necessary element of the rule of law. Without an independent judiciary, then, the individual – especially if he belongs to a minority or opposition groups – is more vulnerable to having his rights violated or other abuses of power.</p> <p>From a state security point of view, an independent judiciary is a crucial aspect of ensuring that the executive power stays within the constitutional limits of its rule. This again bolsters a stable political society and facilitates the peaceful and lawful resolution of political conflicts.</p>	<p>There is the same problem when reviewing the independence of the judiciary as when assessing the fairness of an electoral system. No election system is completely fair, and no judiciary can be completely independent from the executive. This is most clearly seen in the appointment of judges. Even in the most mature democracies this process has an element (sometimes a big element) of politics in it. There is no blueprint for how this process should take place, then. Instead, the particular practice within a state must be assessed on its own merits and over time. If the effect of the appointment system is a weak, insecure judiciary, then the system should be changed.</p> <p>For instance, in the United States, the appointment of supreme court judges is highly political, but once appointed, there is no space for interference from the executive.</p>
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<sup>1</sup> AU, Memorandum of Understanding on Security, Stability, Development, and Cooperation in Africa (Durban: Heads of State and Government First Standing Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), 8-9 July 2002), Section II 'Commitments to give effect to the core values', para (o).

<sup>2</sup> AU, Memorandum of Understanding on Security, Stability, Development, and Cooperation in Africa (Durban: Heads of State and Government First Standing Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), 8-9 July 2002), section II 'Commitments to give effect to the core values', para. (r).

<sup>3</sup> AU, Heads of State and Government First Standing Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) (Durban: AU, 8-9 July 2002), section III 'Key Performance indicators', para. B.18.

<sup>4</sup> AU, Solemn Declaration on the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA), (Lomé: AU, 10-12 July 2000, Doc. AHG/Decl.4 (XXXVI)), para. 11(d).

<sup>5</sup> AU, CSSDCA Solemn Declaration, section on 'Stability', para. (i).

<sup>6</sup> AU, Ouagadougou Declaration (Ouagadougou: AU Summit, Doc. AHG/Decl. I (XXXIV), 8-10 June 1998), para. 1.

<sup>7</sup> AU, Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa (Durban: AU Heads of State and Government First Standing Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), 8-9- July 2002), para. III.B.(16).

<sup>8</sup> E.g. AU, Lomé Declaration on Unconstitutional Changes of Government (Lomé: AU, 2000), para. iii.