The Role of the African Union in Addressing Election-Related Violence

By:

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Introduction

The African Union (AU) commemorates its second decade this year. This milestone presents a moment to reflect on the founding aspirations of the body, assess the current progress in achieving these, and provide suggestions of what the continent should do to achieve these aspirations. This piece assesses the AU's role in peace and security on the continent as far as election-related violence (ERV) is concerned and the linkages between various organs of the AU to achieve this, particularly the Pan-African Parliament (PAP) and the AU Peace and Security Council (PSC). Timothy Sisk defines ERV as 'acts of verbal assault, intimidation, coercion and physical harm used to sabotage an electoral process (at any given point) or eliminate electoral competition.' The United Nations recognises ERV as a 'form of political violence which is often designed to influence an electoral outcome and, therefore, political power distribution.'

The AU, Democracy, and Elections in Africa The successes of the liberation and independence movements introduced democracy to newly 'independent' countries in Africa. Democracy has, despite its detractors and challenges, emerged as the dominant and favoured system of governance. However, prior to 1990, most African countries were mainly under dictatorships and usually overthrown by military coups, which destabilised the possibility of democratic governance. Article 3 of the Constitutive Act of the AU (Constitutive Act) sets out the AU's objectives, which include promoting peace, security and stability and promoting democratic principles, institutions, popular participation, and good governance on the continent. Various organs and frameworks have been established to fulfil these objectives. This includes the African Peace and Security Architecture (APSA), which houses the PSC and the PAP (the legislative arm of the AU and the continental Parliament). The PAP has been earmarked as one of the bodies to assist the AU in entrenching democracy on the continent. To that effect, Rule 24(4)(d) of the PAP Rules of Procedure empowers the organ to deliberate on peace and security issues on the continent.

The AU has also set up legal frameworks such as the African Charter on Elections, Democracy and Governance (Democracy Charter or ACDEG). The Charter was adopted in January 2007 and came into force in February 2012, and has been ratified by 34 states on the continent. The Charter seeks to promote democracy and human rights principles within African states. Among the objectives of the Charter, as stated in Article 2, are the promotion of free and fair elections and the creation of the necessary conditions for increased citizen participation. The Charter also aims to foster transparency and accountability in electoral processes.

ERV and Peace and Security on the Continent

Most democratic African states host regular elections, which vary in their degree of credibility. Many elections on the continent are all too often marred by irregularities and violence, which have become a critical threat to democracy, peace and security. Incumbents have used violence as a repressive tactic to influence electoral outcomes by intimidating voters, members of opposition parties and other personnel involved in electoral processes. ERV at any stage of the electoral process can affect the credibility of the electoral processes and, in Africa, often does. Consequently, ERV shrinks the civic space

and affects fair public participation, which are essential elements of free and fair democratic elections.

The AU's peace and security infrastructure has been criticised for lack of cohesion and proactive responsiveness in instances of ERV. These include inconsistencies in the application of conflict management tools and the lack of implementation in instances where other organs have taken steps toward conflict management. This is seen most clearly in the gap in responses to conflict between the Continental Early Warning System (CEWS) and other branches of the APSA. The PSC Protocol created the CEWS in 2004, and 'The Framework for the Operationalisation of the CEWS' was adopted in 2006 to resolve, in collaboration with the APSA, the conflict between African states. However, in instances where the system flags potential conflicts, appropriate prevention missions are not engaged in. This criticism has been levelled against the development of the PSC and its architecture, with scholars stating that much of the AU PSC machinery is still in its developmental stages, thus affecting its effectiveness in resolving conflict. However, reports detail that while much time has passed since its adoption in 2006, the CEWS still faces challenges in its operationalisation.

The lack of cohesion and failure to adhere to democratic principles internally was evident in the case of the 2020 elections held in Côte d'Ivoire, where the decisions of the African Court on Human and Peoples' Rights (AfCtHPR) were disregarded by the AU Commission. The Commission sent an election observer mission despite Côte d'Ivoire's non-implementation of the order of the Court regarding elections. This decision of the Court was concerned with essential elements relating to fair participation in the elections, which included candidate selection and reforms within the country's electoral management. The Court noted this as a factor that could impair the credibility of the elections. The Commission's failure to pay attention to and 'enforce', the Court's decision led it to support an election which was flagged for lacking credibility. Disregarding the Court's opinion did not only have implications for the credibility of the Ivorian elections, but it also spoke to the culture of impunity among African states and refusal to adhere to principles such as accountability and the rule of law. In addition, it sets a dangerous precedent and enhances the lack of cohesion in the AU as the body fails to enforce its internal decisions, resulting in its inability to discipline errant member states.

A Critique of AU Intervention in ERV in Kenya and Zimbabwe

Bodies tasked with intervention in cases of ERV include the PSC and the PAP, backed by the various legally binding obligations placed on states by the treaties they have ratified. Reflecting on the electoral conflicts that have taken place on the continent, several criticisms are levelled against the response of the AU. While the AU has intervened in various election-related issues on the continent, the stance of the continental body and its commitment to protect and deepen democracy has often been questioned. Kenya and Zimbabwe are notable instances.

The AU's intervention in quelling election conflicts, especially in the post-election phase, led coalition governments to maintain peace, particularly in Zimbabwe in 2008 and Kenya in 2007/8. While these agreements assisted in providing a sense of stability, they have had the effect of entrenching incumbents and ruling parties, thereby portraying the AU as condoning the violations of democratic norms. The AU has been criticised for facilitating 'quick-fix' agreements without critically considering their intervention's effect on these countries' stability. Instances where ERV has occurred illustrate the inadequacies of these interventions. ERV reoccurred in the 2017 Kenyan elections, claiming the lives of at least 37 people. Furthermore, the continent witnessed a recurrence of ERV in Zimbabwe after the 2018 election. Post-election violence in Zimbabwe claimed the lives of 6 people in 2018, and the state was not held accountable by the continental body in this regard.

The culture of impunity among incumbents appears to have been cemented by three factors: instances of ERV attempts by incumbents to retain office and inadequate response by the AU to elections with irregularities. These factors continue to create an enabling environment for human rights violations by African states. The AU's inability to intervene decisively has been attributed to a culture of not holding errant leaders accountable. In the past, the AU election observer missions reports often declared elections marred by violence and irregularities as 'free and fair'. For instance, in the 2019 Malawi elections, the African Union Election Observation Mission (AUEOM) observed and subsequently reported that 'the 2019 election was declared as peaceful and in accordance with the legal framework and international obligations for democratic elections.' However, the results were later declared void because of

excessive vote-rigging. This type of rubber stamp exercise and apparent appeasement of incumbents negatively affect the institution's ability to promote human rights and democracy. Furthermore, it diminishes African citizens' trust in the organisation. Perhaps this approach by the AU may have been in service to promote transitional justice and maintain peace; however, in many instances, it has proved to bear the opposite result.

Regrettably, the PAP has been largely unable to perform this role meaningfully. There is little evidence of the PAP deliberating on the credibility of elections on the continent or on peace and security issues arising from electoral conflicts. In cases where this has happened, implementation of the recommendations given by the PAP has been lacklustre. For example, *The Recommendation on the fact-finding mission of the Pan-African Parliament in the Republic of Burundi*, 23rd to 27th November 2015 (PAP.4/PL/Recom.02(II)) which was directed to the AU, and the government of Burundi regarding the prevention and mitigation of election-related violence and the effects thereof, provides a good example. The lacklustre implementation has been attributed to several issues. These include the organ's lack of power and understanding of its position in the AU system as an oversight body; its internal struggles; and the lack of political will that continues to affect the effective functioning of supra-governmental organs on the continent.

Conclusion and Recommendations

ERV threatens peace, security and democracy on the continent. If electoral processes are characterised by violence and perpetrators do not face decisive action from the AU, it sets a dangerous precedent and weakens democratic consolidation. ERV and the entrenchment of autocratic systems negatively impact the human rights of African citizens, making it a priority area for AU focus.

There is a need for increased cohesion among the organs of the AU to curb these challenges on the continent. The organs should focus their efforts on proactive methods of mitigation as opposed to reactive measures once violence and its effects have occurred. It is also crucial that the AU applies democratic principles and values within its structures, a factor that allows for a clear separation of powers and functions. This will create a conducive environment

and capacitate organs tasked with specific mandates, such as the PAP, to effectively execute their mandates and ensure states' accountability in areas where this is required.

The AU needs to pay attention to the upcoming elections in Kenya and Zimbabwe. ERV has already reoccurred in these states despite the AU's intervention and is predicted in the upcoming polls. Furthermore, the AU and the various organs, including the PAP and the PSC, need to take a proactive approach in ensuring that ERV does not reoccur in these and other elections.

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