

The Role of the Regional Economic Communities and their Strategies to Promote and Uphold Credible and Legitimate Electoral Processes in Africa

Tendai Mbanje

<https://orcid.org/0000-0002-5298-1803>

Centre for Human Rights, University of Pretoria

u18037705@tuks.co.za

Abstract

Electoral malpractices in Africa are multifaceted, intertwined, and complex. Most African countries have held regular elections, albeit often flawed and contested. Elections have been contested because of structural problems within States and elections have become highly competitive. The rise of authoritarian democracies where most elections serve as a means of survival for African leaders determined to remain in power has resulted in disputed elections. The shrinking political spaces within States has led to a slide towards authoritarian democracy. The capture and neutralisation of democracy-enhancing institutions has caused vote-rigging, voter intimidation, and manipulation of vote results to mention a few. The phenomena of third termism and increasing prospects of life presidencies have been common causes of disputed elections. The use of constitutional and soft coups to retain power has often resulted in contested elections. These and many other structural issues have affected the credibility and legitimacy of elections in Africa mostly. The Regional Economic Communities (RECs) have assumed a role to address these challenges. They have adopted legal instruments to promote democratic elections. They are involved in observing elections (pre- and post-electoral audits), mediation, political negotiations, and dialogues. In some cases, they have imposed sanctions on States violating constitutional order to protect democracy within States. This article discusses how the RECs have dealt with election disputes in the past decades, and their strategies to promote and uphold credible and legitimate electoral processes in their regions. This article concludes by highlighting the challenges of electoral democracy within the RECs, and what they could do better to promote credible and legitimate elections in their regions.

Keywords: elections; credibility; legitimacy; regional economic communities; Africa

Introduction

Disputed elections in Africa threaten electoral democracy and constitutionalism on the continent.¹ Consequently, it is important that elections are handled in accordance with the law. It is also imperative that all contestants to the electoral processes are satisfied with the outcome of an election. Over the years, elections have become central to the advancement of democratic, progressive, and inclusive societies in Africa.² They provide means to economic growth and development³ and contribute to peacebuilding by conferring authority and legitimacy on leaders.⁴ They promote citizens' participation and inclusion in governance, among others.⁵ Regular and credible elections are thus, essential to the democratisation process in Africa.⁶ Credible and legitimate electoral processes have been recognised by various global, regional, sub-regional, and national entities and infrastructures as critical for sustainable development and peacebuilding.⁷ This article deliberates the problem of electoral democracy within the Regional Economic Communities (RECs) of the African Union. In addition, the article will discuss how the RECs have dealt with election disputes in the past decades and their strategies to promote and uphold credible and legitimate electoral processes in their regions. Finally, the article further underscores the challenges of the RECs, and what they could do better to promote credible and legitimate elections in their regions. The section below fleetingly explains what the RECs are prior to examining their roles and strategies.

The Regional Economic Communities and their Purpose

RECs are voluntary regional groupings of African States. They have been established separately and have different roles and structures. The purpose is to facilitate regional economic integration between their members and through the wider African Economic Community (AEC), which was established under the Abuja Treaty (1991). The 1980 Lagos Plan of Action for the Development of Africa and the Abuja Treaty proposed the creation of RECs as the basis for wider African integration, with a view to regional and eventual continental integration. Therefore, the RECs are comparable in their designs and mandates, although each REC is context specific. The RECs have adopted constitutive documents in their composition and organisation. These documents

1 Charles Fombad and Nico Steytler, *Democracy, Elections and Constitutionalism in Africa* (1st edn, 2021) Oxford University Press.

2 Global Commission on Elections, *Report of the Global Commission on Elections, Democracy and Security* (International IDEA and the Kofi Annan Foundation, 2012).

3 International IDEA, Institute for Democracy and Electoral Assistance, 'The Integrity of Elections: The Role of Regional Organizations' (2012) <<https://www.idea.int/publications/catalogue/integrity-elections-role-regional-organizations>> accessed 2 June 2021.

4 *ibid.*

5 *ibid.*

6 Daniel Calingaert, 'Election Rigging and How to Fight it' (2006) 17 *Journal of Democracy* 138.

7 *ibid.*

determine how effective they are when it comes to challenges of elections. The RECs are also increasingly involved in coordinating AU Member States' interests in wider areas such as peace and security, development, and governance. They are closely integrated with the AU's work and serve as its building blocks.⁸

The African Union (AU) recognises eight RECs, specifically, the Arab Maghreb Union (UMA), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahel–Saharan States (CEN–SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern African Development Community (SADC).⁹

Although the primary focus of the RECs is economic development, subsequent to their establishment, the RECs have significantly enhanced democratisation, integration, cooperation, and peace-building in their regions.¹⁰ On democratic elections, they have enacted treaties on elections and democracy that complement the instruments of the AU and advancing its shared values, norms, and standards.¹¹ These instruments also complement the African Union (AU) Charter on Democracy, Elections and Governance (ACDEG),¹² the AU Constitutive Act,¹³ the AU Declaration on the Principles Governing Democratic Elections in Africa,¹⁴ the guidelines by the African Peace and Security Architecture (APSA),¹⁵ and the African Governance Architecture (AGA),¹⁶ to ensure that the conduct of elections promotes good governance and ensures peace and stability on the continent.

8 'Regional Economic Communities (RECs)' <<https://au.int/en/organs/recs>> accessed 25 May 2021.

9 *ibid.*

10 For example, the RECs have promoted elections through their involvement in election observation. RECs have facilitated mediation when election disputes arise. RECs have also established courts which have been instrumental in protecting human rights of their citizens.

11 These instruments include Protocols, Treaties, Guidelines, Plans of action and Model laws. For instance: The ECOWAS has adopted the ECOWAS Protocol on Democracy and Good Governance, 2001; The SADC has adopted the SADC Principles and Guidelines Governing Democratic Elections, Revised 2015 to mention a few. These instruments deal with democracy, good governance, the conduct of elections, and the promotion and protection of human rights.

12 The African Charter for Democracy, Elections and Governance (ACDEG), adopted in 2007, articulates the universal values of democracy and respect for human rights that are founded on supremacy of the constitution and the holding of democratic and credible elections. Although AU heads of State adopted the Charter in January 2007, it only entered into force after the February 2012 AU summit, 30 days after its ratification by 15 member States.

13 The Constitutive Act of The African Union, adopted by AU Heads of State on 7 November 2000.

14 The African Union Declaration on the Principles Governing Democratic Elections in Africa, Addis Ababa, 2002.

15 Moving Africa Forward African Peace and Security Architecture (APSA), adopted in 2010.

16 The framework of such an African Governance Architecture was formally adopted in 2011 by government leaders of the African Union (AU).

The AU and the RECs have progressively increased their role and mandate regarding protecting and promoting the integrity of elections. They are currently operating under a clear and effective legal and institutional framework for electoral observation and assistance, which was further articulated since the entry into force of the African Charter on Democracy, Elections and Governance in February 2012.¹⁷

Under the ACDEG, State parties are obliged under article 17(1) to establish independent and impartial electoral management bodies (EMBs).¹⁸ Article 18 of chapter 7 deals with assistance by the AU Commission (AUC) to States in strengthening and developing their electoral institutions and processes.¹⁹ Articles 19 to 22 of chapter 7 deal with independent electoral observation by the AUC before and during elections. States are mandatorily required to inform the AUC of scheduled elections and to invite the AU to observe such elections.²⁰ Article 17(4) seeks to bind political actors to either accept results or seek redress through exclusively legal channels.²¹ This presupposes the existence of competent, independent and impartial legal channels. Chapter 7 and 8 are closely related. While the former deals with how elections should take place in a democracy, the second imposes sanctions on the States where democratic change of government is completely shunned.²² Thus, the ACDEG is a well elaborate document on the conduct of elections in Africa. The section below examines the problem of election disputes in Africa.

The Conundrum of Election Disputes in Africa

The challenges of election disputes in Africa are multifaceted, intertwined, and complex.²³ Most African States have conducted regular elections, albeit often flawed and contested.²⁴ These contested elections are caused by numerous factors. First, elections have become more competitive than in the past.²⁵ Second, there has been a rise of authoritarian democracies where most elections serve as a means of survival for African leaders determined to remain in power.²⁶ Third, elections are disputed for the reason of the shrinking political spaces within States, unfair electoral campaigns which include limited freedoms and propaganda, failure for free citizen participation in political processes leading to a slide towards authoritarian democracy.²⁷ Fourth, the capture and neutralisation of democracy-enhancing institutions has caused vote-rigging,

17 The African Charter for Democracy, Elections and Governance (ACDEG), adopted in 2007.

18 Article 17 (1) of ACDEG.

19 Article 18 (Chapter 7) of ACDEG.

20 Article 19,20,21,22 (Chapter 7) of ACDEG.

21 Article 17 (4) of ACDEG.

22 Chapter 7 and 8 of ACDEG.

23 See Fombad and Steytler (n 1).

24 *ibid* (n 1).

25 *ibid* (n 1).

26 *ibid* (n 1).

27 *ibid* (n 1).

voter intimidation, and manipulation of vote results.²⁸ Fifth, the phenomenon of third termism and increasing prospects of life presidencies have been common causes of disputed elections.²⁹ Sixth, there is unfair distribution and unavailability of funding for political parties especially opposition parties.³⁰ Africa has witnessed situations where the incumbent head of State has refused to step down after losing an election.³¹ In some instances, the use of constitutional and soft coups to retain power has often resulted in contested elections. Seventh, the increasing docile attitude of the electorate in many parts of Africa and the negative role of external international actors has affected the credibility and legitimacy of elections.³²

Furthermore, inaccuracies in vote counting by independent electoral commissions have been widespread and triggering a wide uproar within States.³³ On the other hand, scholars contend that Africa is currently subjected to weak opposition parties who are unable to defend electoral democracy within States.³⁴ As a result, election results are constantly opposed. Finally, the adverse role of external international actors and the limited political space for women, youths and other marginalised groups has been a persistent source of election disputes.³⁵ Given these circumstances, it is imperative to ask, what is the role of the RECs in dealing with the above challenges? What have the RECs done in the past to promote the credibility and legitimacy of elections? And what can be done in the future to enhance the role of the RECs on electoral democracy? Below is the overview of some of the States that have experienced disputed elections in the last two decades in Africa.

Overview of Disputed Elections in Africa in the Last Two Decades

Contemporary research indicates poor state of elections in Africa,³⁶ and that there is no African country where democracy and constitutionalism can be thought of as firmly consolidated and secure.³⁷ In the preceding decade, the number of declining countries due to failed or flawed electoral processes include Burundi, Cameroon, Democratic

28 *ibid* (n 1).

29 *ibid* (n 1).

30 *ibid* (n 1).

31 A good example is found in the case of the Republic of the Gambia (2016-7), the President of Gambia refused to step down after losing an election.

32 'The Role of Elections in Strengthening Democracy Principles and Values' <<https://agora-parl.org/interact/blog/role-elections-strengthening-democracy-principles-and-values>> accessed 31 March 2019.

33 *ibid* (n 23).

34 *ibid* (n 23).

35 *ibid* (n 23).

36 See Fombad and Steytler (n 1).

37 See Fombad and Steytler (n 1).

Republic of Congo (DR Congo),³⁸ and Republic of Congo.³⁹ Other countries that have experienced severe contested elections which were generally flawed or manipulated include, but not limited to, Egypt (2005), Ethiopia (2005, 10), Uganda (2006, 11), Nigeria (2007), Kenya (2007-8, 2013), Algeria (2009, 14), Libya (2014), Malawi (2014, 2019), Zambia (2015), Sudan (2015), Zimbabwe (2002, 2008, 2013, 2018) and Togo (2015).⁴⁰ Countries which show signs of stagnation include Botswana and South Africa.⁴¹ Stagnation means there is neither improvement nor degeneration in the state of elections in these countries.

A topical study on ‘electoral democracy’ in Africa by Maximiliano Herrera, shows that of the 54 countries analysed, only 22 (41 per cent) are electoral democracies; 27 (50 per cent) are pseudo-democracies; four (2 per cent) are dictatorships (Equatorial Guinea, Eritria, South Sudan and Eswatini) and one (Libya) is in a state of anarchy.⁴² The facts in this study show why elections in Africa are regularly contested/ disputed. A comparable study by Pippa Norris demonstrates that electoral processes in Sub-Saharan countries are almost identically distributed among three categories: ‘failed elections’ (29 per cent), ‘flawed elections’, (27 per cent), and ‘acceptable elections’ (27 per cent).⁴³ These numbers clearly show that electoral problems in Africa are of a serious nature.

In addition, a study by the Ibrahim Index of African Governance observes with concern the quality of democratic governance and elections in Africa.⁴⁴ Correspondingly, a latest Afro-barometer study found that there are existing serious concerns about the fairness of vote counts, corruption in elections and safety of voters during campaigns and at the polls.⁴⁵ These factors have had an impact on undermining the democratic quality of elections in Africa and in facilitating the emergence of authoritarian democracies.⁴⁶ Research by the Electoral Integrity Project (EIP) demonstrates that Africa, compared to

38 In most of these election disputes, the incumbents had attempted to amend the constitution to extend their stay in power and led to political instability in which hundreds and sometimes thousands of lives have been lost.

39 See Fombad and Steytler (n 1).

40 Maendeleo Policy Forum ‘Elections in Sub-Saharan Africa – UNDP in Africa. General Trends, Challenges, and Opportunities’ 5th and 6th edn <<http://www.africa.undp.org/content/dam/rba/docs/Reports/undp-rba-maendeleo-elections-subsahara-africa-2016.pdf>> accessed 25 June 2019.

41 See Fombad and Steytler (n 1).

42 Cited in Fombad and Steytler (n 1).

43 *ibid* (n1).

44 Mo Ibrahim Foundation ‘1/3 of Countries Driving Overall Improvement in African Governance; However, Many Fail to Build on Prior Progress’ <<https://mo.ibrahim.foundation/iag/2017-key-findings/>> accessed 1 July 2019.

45 ISS/PSC Report ‘Is the African Charter on Democracy Strong Enough?’ <<https://issafrica.org/pscreport/psc-insights/is-the-african-charter-on-democracy-strong-enough>> accessed 31 July 2020.

46 Jakkie Cilliers, ‘The Future of Democracy in Africa’ (2016) Institute of Security Studies (ISS), <<https://issafrica.org/research/papers/the-future-of-democracy-in-africa>> accessed 20 June 2019.

other regions, scores poorly on perception of electoral integrity (PEI) index, with electoral integrity understood as conformity to international norms governing conduct of elections.⁴⁷ Other surveys demonstrate a poor state of elections in Africa.⁴⁸ In Freedom House 2017 overview of freedom in the world, the research stipulates that although more elections are taking place in the African continent than ever before, less than one in six major elections results in a full transfer of power. Six of the world's ten longest-serving presidents are in Africa.⁴⁹ Therefore, electoral democracy remains a challenge. Below, the section considers the importance of the RECs and their role in elections.

The Nexus Between the Functions of RECs and Election Disputes in Africa

The frequency of election disputes within the members of the RECs erodes democracy, good governance, human rights,⁵⁰ democratic institutions,⁵¹ and the process of democratisation within States.⁵² On the other hand, regular, free, fair, credible, and legitimate electoral processes in member States strengthen the RECs also and foster peace and stability in the continent.⁵³ Elections free from any violations create an ethos of democratic and peaceful transfer of power among States.⁵⁴ When elections are not well promoted, there is a risk of democratic problems and violation of human rights.⁵⁵ Also, when elections are disputed within the RECs, they may weaken governments, their credibility and legitimacy are compromised as seen in some African countries.⁵⁶ Credible and legitimate elections are thus important for the integrity of the governments and their regions. Below, the section discusses some of the initiatives that the RECs

47 See Fombad and Steytler (n 1).

48 See Fombad and Steytler (n 1).

49 These include Paul Biya of Cameroon, Teodoro Nguema Mbasogo of Equatorial Guinea, Denis Sassou Nguesso of the Republic of Congo, Yoweri Museveni of Uganda, Isaias Afwerki of Eritrea and Ismail Omar Guelleh of Djibouti to mention a few. See Michael J. Abramowitz, 'Freedom in the World 2018: Democracy in Crisis' <<https://freedomhouse.org/report/freedom-world/freedom-world-2018>> accessed 1 July 2020.

50 Tikikel Alemu, 'The African Charter on Democracy, Elections and Governance: A Normative Framework for Analysing Electoral Democracy in Africa' (2007). Centre for Human Rights, University of Pretoria.

51 *ibid.*

52 Ndubuisi Christian Ani 'ISS Today: How Serious is the African Union About Democracy?' The Daily Maverick 1 October 2018 <<https://www.dailymaverick.co.za/article/2018-10-01-how-serious-is-the-african-union-about-democracy>> accessed 3 July 2019.

53 See Alemu (n 42).

54 'The Role of Elections in Strengthening Democracy Principles and Values' <<https://agora-parl.org/interact/blog/role-elections-strengthening-democracy-principles-and-values>> accessed 31 March 2019.

55 *ibid* (n 3).

56 For instance, countries like Zimbabwe where elections have been disputed over two decades, every election outcome often lacks legitimacy and credibility.

have undertaken as part of their strategies to promote and uphold credible and legitimate electoral processes in their regions.

How the RECs have Addressed Election Disputes in the Past, their Strategies to Promote and Uphold Credible and Legitimate Electoral Processes in their Regions

While there is noticeable progress that has been made by the AU and the RECs and their member States in the field of democracy consolidation, promotion and ensuring the integrity of elections,⁵⁷ the RECs continue to experience serious electoral challenges⁵⁸ that testify to the need to further strengthen the democratic processes and structures of the RECs.⁵⁹ The frequent episodes of electoral violence in most of the member States of the RECs show the need to deepen and consolidate electoral democracy among the RECs.⁶⁰

There are several initiatives that the RECs have undertaken in the past as efforts to ensure credible and legitimate elections within AU Member States. First, the RECs have enacted instruments that complement the instruments of the AU in the protection of democratic elections.⁶¹ Second, the RECs have provided election observation assistance to ensure elections are freely conducted.⁶²

Third, the RECs have provided mediation where electoral disputes have arisen. In doing so, the RECs have persuaded member States to comply with their international legal commitments. For example, in 2016, when the incumbent President of the Gambia

57 Much of the progress made by the AU and the RECs is on the adoption of laws that protect democratic elections. Some States have signed and ratified these instruments into their domestic laws. The establishment of the regional courts have also fostered compliance among States. See also, Okechukwu Oko, 'Consolidating Democracy on a Troubled Continent: A Challenge for Lawyers in Africa' (2000) 33 *Vanderbilt Journal of Transnational Law* 573, 578.

58 Electoral violence is often common when elections are announced. Most countries such as Zimbabwe (2018), The DRC (2019), Uganda (2021) election-related violence has blossomed soon after the announcement of the election result.

59 *ibid* (n 3).

60 *ibid* (n 3).

61 These include: The Constitutive Act of the AU of 2000; the Protocol on the Pan-African Parliament 2001; the Protocol on the Peace and Security Council 2002; the African Charter on Democracy, Elections and Governance 2007; to mention a few. The RECs such as the SADC have established the SADC Electoral Advisory Council to help with the monitoring and observation of elections. The ECOWAS has adopted the Protocol on Democracy and Good Governance to enhance democracy and good governance including elections.

62 For example, the SADC has established the SADC Electoral Advisory Council to help with the monitoring and observation of elections. The ECOWAS has adopted the Protocol on Democracy and Good Governance to enhance democracy and good governance including elections. Other RECs have also adopted instruments to protect and promote democratic elections.

refused to step down after losing elections,⁶³ the ECOWAS took an active role to facilitate mediation in view to persuade the President to step down and uphold constitutionalism, rule of law and the will of the people.⁶⁴

Critical to this case is that all the mediation efforts failed, and the ECOWAS was left with no option but recourse to the use of force.⁶⁵ Although the use of force is contested under international law, in certain circumstances, as in the case of the Gambia, force was necessary to reinstate constitutional order, rule of law and to respect the will of the people. In this case, it is with the use of force that the legitimacy of the election results was restored and safeguarded. Nonetheless, the legality of the actions on the use of force remains contested under international law.⁶⁶ In the case of Gambia, this paper argues that the use of force was not lawfully authorised by the United Nations Security Council, therefore, it was unlawful. The actions of the member States of the ECOWAS to protect electoral democracy in the Gambia may not be justified under international law as provided for in the United Nations Charter (UN Charter).⁶⁷

Fourth, in the past, the RECs have been persuasive and have protected democratic elections by using sanctions to regimes that have violated democratic elections. For example, in 2010, the incumbent President of Ivory Coast refused to step down after losing elections and declined to hand over power.⁶⁸ The ECOWAS took a hard line against the situation in Ivory Coast. The ECOWAS imposed sanctions on Ivory Coast and suspended its membership to all ECOWAS decision-making bodies.⁶⁹ Similarly, the ECOWAS also suspended Niger and halted economic and bilateral assistance to the uranium-producing nation in 2009, after ex-President Mamadou Tandja changed the constitution to extend his rule.⁷⁰ Moreover, the ECOWAS suspended Guinea in 2009 including an arms embargo, following a bloody crackdown on protesters by security forces. Guinea was suspended as a result of the military junta that had seized power. The ECOWAS forced that country to hold elections and return the country to democratic

63 Editorial Staff, 'Gambia's Yahya Jammeh Ready for "Billion-Year" Rule' (*BBC News*, 12 December 2011) <<https://www.bbc.com/news/world-africa-16148458>> accessed 10 August 2019.

64 Christof Hartmann, 'Local Elections in The SADC Countries, A Comparative Analysis of Local Electoral Institutions' 3(1) *Journal of African Elections* <<https://www.eisa.org/pdf/JAE4.1Hartmann.pdf>> accessed 5 June 2021.

65 *ibid.*

66 *ibid.*

67 Article 51 of the United Nations Charter, 1945.

68 REUTERS, 'ECOWAS Lifts Sanctions Against Niger, Guinea' <<https://www.reuters.com/article/ecowas-niger-idAFLDE72N20P20110324>> accessed 30 November 2019.

69 *ibid.*

70 *ibid.*

rule. Guinea was suspended from all the meetings of ECOWAS at heads of State and ministerial levels until constitutional order was restored.⁷¹

Togo was suspended by the AU between February and May 2005. In addition, the Comoros was suspended when Mohamed Taki Abdoukarim died in office and his son fraudulently retained power by manipulating the election; he then proceeded to win another election in 2010.⁷² In Madagascar, the Peace and Security Council of the AU (PSC) declared some persons in the military junta unqualified to contest in some elections.⁷³ Although these two cases do not specify the role of the RECs, the AU may request the RECs to take similar actions to a member State in violation of electoral democracy.

Similarly, the SADC has also done similar efforts to promote the good conduct of democratic elections in its member States. For example, in 2008, following the recommendations of the AU, SADC appointed Thabo Mbeki (the former President of South Africa) as a mediator to the political crisis in Zimbabwe which was born out of the disputed outcome of elections. SADC's involvement in Zimbabwe's crisis was not in vain. Its sponsored mediation, led by Thabo Mbeki, led to the Global Political Agreement (GPA) which resulted in the formation of the Government of National Unity (GNU) in the country.⁷⁴

In addition, the Intergovernmental Authority on Development (IGAD) previously managed to negotiate talks to facilitate power-sharing agreements in conflicts resulting from election disputes in the region. For example, the IGAD facilitated mediation leading to power-sharing arrangements in Sudan (2013).⁷⁵ IGAD also facilitated the peace process in Somalia (2002-2004).⁷⁶ Some countries that have received assistance from the RECs which resulted in power-sharing agreements include the role of the ECOWAS in Ivory Coast (2011),⁷⁷ the role of the Economic Community of Central

71 REUTERS, 'ECOWAS Suspends Guinea Until Democracy Restored' <<https://af.reuters.com/article/topNews/idAFJJOE50A01T20090111>> accessed 30 November 2019.

72 *ibid.*

73 Eki Yemisi Omorogbe 'A Club of Incumbents? The African Union and Coups d'état.' (2008) 44(1) *Vanderbilt Journal of Transnational Law* 123, 154.

74 Shari Eppel and Brian Raftopoulos, 'Political Crisis, Mediation and the Prospects for Transitional Justice in Zimbabwe' <http://www.csls.ox.ac.uk/documents/EppelandRaftopolous_Zim_Final.pdf> accessed 2 September 2011.

75 Fabiunke Luke, 'Mediation Outcomes from the Second Sudan Civil War: An Analysis of Abuja and IGAD Peace Initiatives' (MA Thesis, Naval Postgraduate School 2013).

76 Gudeta Kebede Asfaw, 'The Crucial Role of IGAD in the Horn of Africa' (2017) 38 *International Journal of African and Asian Studies*.

77 Alassane Dramane Ouattara, 'ECOWAS and Intrastate Conflict Mediation in West Africa: The Case of Cote d'Ivoire' University of Peace (2016).

African States (ECCAS) in Chad (2002-2008),⁷⁸ the role of ECOWAS in Liberia (2011),⁷⁹ the role of the ECCAS in Central African Republic (1996–2007), and the East African Community (EAC) in post-electoral conflicts in Kenya (2007).⁸⁰ Most of these mediation efforts were supported by the African Union and some by the United Nations. This confirms the relationship between the RECs and the AU.

Furthermore, the RECs have also been involved in pre- and post-electoral observation upon the request of their member States. Election observation by the RECs enhances the integrity of election processes, by deterring and exposing irregularities and fraud. In addition, RECs provide recommendations for improving electoral processes. Through RECs, election observation can promote public confidence as warranted, promote electoral participation and mitigate the potential for election-related conflict. Thus, electoral observation and monitoring by the RECs have become an integral part of the democratic and electoral processes in Africa.⁸¹ The work of the election observers has enhanced the transparency and credibility of elections and democratic governance in Africa and the acceptance of election results throughout the continent. Election observation and monitoring missions can also play a key role in diminishing conflicts before, during and after elections,⁸² and in strengthening acceptance of election outcomes and improving the legitimacy of elected governments.⁸³

Election monitoring and observation may take two main forms: (a) long-term, covering all the phases of the electoral process pre- and post-electoral audits and (b) short-term, covering mainly polling day activities.⁸⁴ These processes are key instruments for evaluating and assessing whether the electoral process in any given country has been conducted in a free, fair, transparent, and credible manner. Although election monitoring and observation is important for credible and legitimate elections, in

78 Jacob Bercovitch and Rubin Jeffrey (eds), *Mediation in International Relations* (Palgrave Macmillan 1992).

79 Okai, Nicholas and others, 'Mediating Conflict in West Africa: An Overview of Regional Experiences.' (2014). See also Sebastian Angzoorokuu Paalo, 'The Politics of Addressing Farmer-herder Conflicts in Ghana' (2021) 9(1) *Peacebuilding* 79–99.

80 *ibid.*

81 Micha Wiebusch, 'The Role of Regional Organizations in the Protection of Constitutionalism' International Institute for Democracy and Electoral Assistance Discussion Paper 17' (2016) <<https://www.idea.int/sites/default/files/publications/the-role-of-regional-organizations-in-the-protection-of-constitutionalism.pdf>> accessed 10 October 2021.

82 ACHPR, 'The African Union, Guidelines for African Union Electoral Observation and Monitoring Missions' (2002) <<http://archives.au.int/handle/123456789/2060>> accessed 10 October 2021.

83 Nico Steytler and others, *Free and Fair Elections* (Juta 1994). See also Oliver Ruppel, 'Regional Economic Communities and Human Rights in East and Southern Africa' (2009) <http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/9_Ruppel.pdf> accessed 1 June 2021. See also, Daniel Abebe, 'Does International Human Rights Law in African Courts Make a Difference?' (2016) 527 *Virginia Journal of International Law*.

84 ACHPR (n 82).

practice, the election observer Missions established by the RECs have not always displayed integrity in their regions.⁸⁵ This has often compromised the legitimacy and credibility of elections. For example, in 2004, SADC election observers prematurely endorsed Mozambique's polls.⁸⁶ This weighed down the credibility of the SADC Observer Mission Group.

In Zimbabwe's elections of 2008, 2013 and 2018, SADC endorsed elections even though there had been contestation.⁸⁷ Most recently, similar challenges were found in the DRC elections of 2018.⁸⁸ The SADC election monitors also endorsed the DRC's presidential elections, which were heavily contested.⁸⁹ The 2018 DRC elections were scheduled to be held in 2017. Kabila refused to step down and postponed elections for over a year.⁹⁰ SADC did very little to uphold the rule of law and democracy in the DRC and to persuade Kabila to step down timely.⁹¹ Therefore, this precedence demonstrates that the SADC region has not done enough to uphold the integrity of elections. It is imperative that RECs provide accurate reports for the purpose of protecting the integrity of elections and their integrity as institutions. In the case of SADC, its integrity has been at stake as a result of the instances where it has endorsed fraudulent elections.⁹²

RECs have established regional courts and tribunals to provide protection for human rights in their regions.⁹³ The RECs Courts are charged with resolving disputes related to the REC's treaty, protocols, and conventions. For example, one of the prominent regional courts in Africa, the ECOWAS Court, which sits in Abuja, Nigeria, has jurisdiction over fifteen West African countries and has, since 2005, decided several

85 SAIIA, 'SADC Election Standards Harm its Credibility: Mozambique's Poll was Declared Free and Fair Prematurely' <<https://saiia.org.za/research/sadc-election-standards-harm-its-credibility-mozambiques-poll-was-declared-free-and-fair-prematurely/>> accessed 2 June 2021.

86 *ibid.*

87 Amnesty International, 'Amnesty International Report 2008 – Zimbabwe' (28 May 2008) <<https://www.refworld.org/docid/483e27bf2d.html>> accessed 22 July 2019. See also Human Rights Watch, 'Zimbabwe: Events of 2008' <<https://www.hrw.org/world-report/2009/country-chapters/zimbabwe>> accessed 23 July 2019.

88 *SABC News*, 'Regional Observers Endorse Congo's Election – with Caveats' <<http://www.sabcnews.com/sabcnews/regional-observers-endorse-congos-election-with-caveats/>> accessed 31 August 2020.

89 *ibid.*

90 *ibid.*

91 SADC Electoral Advisory and Electoral Commissions Forum of SADC Countries (ECF-SADC) Conduct a Joint Electoral Assessment Mission to the Democratic Republic of Congo (2017) <<https://www.sadc.int/news-events/news/sadc-electoral-advisory-seac-and-electoral-commissions-forum-sadc-countries-ecf-sadc-conduct-joint-electoral-assessment-mission/>> accessed 31 July 2019.

92 *ibid.*

93 The courts adjudicate over cases to interpret provisions of their treaties or to advise their principals on questions with implications for human rights.

individual human rights cases. For instance, in *Barthelemy Dias v. Republic of Senegal*⁹⁴ the applicant, Barthelemy Dias, was a popular leading member of a Senegalese opposition party. He brought a case after the 2011 Senegalese election, alleging that Senegalese Democratic Party (SDP) members had organized armed thugs to eliminate opposition leaders at the time. He claimed that he was a victim of their attacks on 22 December 2011, in response to which he pulled out a firearm and fired shots in self-defence.⁹⁵ However, the court upon investigation dismissed all the allegations.⁹⁶ The point to note is the efficacy of the court.

On the other hand, in Zimbabwe, several cases were brought to the SADC Tribunal.⁹⁷ The Tribunal's first verdict at the end of 2008 was already a landmark case. Zimbabwe had enforced a highly controversial land redistribution policy in the early 1990s.⁹⁸ The Tribunal decided in *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* that the government's seizure of land owned by white farmers was indirect or 'de facto' discrimination and therefore unconstitutional and that the plaintiffs were entitled to compensation.⁹⁹ Following this decision, Zimbabwe threatened to pull out of the SADC Tribunal, challenging its legitimacy.¹⁰⁰ Although the President of Zimbabwe disrespected the tribunal leading to its suspension, the work of the tribunal was instrumental in the protection of human rights for SADC nationals.

Within the RECs, African citizens have free access and may take cases of human rights violations in their territories to the African Commission on Human and Peoples' Rights.¹⁰¹ Broadly, the Commission accepts complaints from individuals, non-governmental organizations, and States, concerning alleged violations of the African Charter on Human and Peoples' Rights.¹⁰² The Commission also provides advisory

94 *Barthelemy Dias v Republic of Senegal* [2012] ECOWAS, Suit No. ECW/CCJ/APP/01/12, Judgment No. ECW/CCJ/JUG/05/12.

95 Human Rights Decisions of the Community Court of Justice of West African States (ECOWAS) July 2013.

96 *ibid.*

97 *Mike Campbell (Pvt) Ltd. and Another v Minister of National Security Responsible for Land, Land Reform and Resettlement* (124/06).

98 Oliver C Ruppel and Francois X Bangamwabo, 'The SADC Tribunal: A Legal Analysis of its Mandate and Role in Regional Integration' (2008) <http://www.kas.de/upload/auslandshomepages/namibia/MRI2008/MRI2008_08_Ruppel.pdf> accessed 2 June 2021.

99 *Mike Campbell* (n 97).

100 Centre for Human Rights, 'Centre for Human Rights Welcomes Constitutional Court's Judgment on the Invalidity of the Disbandment of the SADC Tribunal' (2018) <https://www.up.ac.za/faculty-of-law/news/post_2740045-centre-for-human-rights-welcomes-constitutional-courts-judgment-on-the-invalidity-of-the-disbandment-of-the-sadc-tribunal> accessed 20 October 2019.

101 African Commission on Human and Peoples' Rights <<https://www.achpr.org>> accessed 30 November 2019.

102 African Commission on Human and Peoples' Rights, 'Guidelines for Submitting Complaints' <<https://www.achpr.org/communications>> accessed 1 August 2021.

opinions on the nature of human rights within member States. There are cases that have been brought before the Commission on elections and human rights. For example, in the case of *Jawara v The Gambia*,¹⁰³ the complainant was the former head of State of Gambia. His government was overthrown in a military coup in July 1994. According to the complainant, the incumbent military government had violated the African Charter of Human and Peoples' Rights by, inter alia, abolishing the Gambian Constitution's Bill of Rights; banning political parties and ministers of the former civilian government; killing soldiers affiliated with the civilian government; and arresting journalists without cause and detaining them without trial.¹⁰⁴ The former head of State also alleged that the military government that unseated him violated, among other things, the right to receive information, freedom of expression, and freedom of assembly and association.¹⁰⁵ The Commission ruled that there was a violation of the following provisions of the Charter: Articles 1, 2, 4, 5, 6, 7(1)(d), 7(2), 9(1), 9(2), 10(1), 11, 12(1), 12(2), 20(1) and 26 of the Charter.¹⁰⁶ Thus, the Commission requested the Government of The Gambia to bring its laws into conformity with the provisions of the Charter.¹⁰⁷ It is important to note that although the Commission makes these important decisions that uphold and protect the rights of Africans, the decisions of the Commission are not binding but persuasive to member States.

Challenges within the RECs and what they Could do Better to Promote Credible and Legitimate Elections in their Regions

Notwithstanding the legal instruments that the RECs have adopted, the RECs have been met with challenges that are a threat to electoral democracy in their regions. Electoral challenges have remained rampant and recurring as a result of numerous factors; for instance, the absence of enforcement of the legal instruments adopted by the RECs. This is because, in international law, no government or international organization enforces international law.¹⁰⁸ Although the RECs have established courts and these courts have introduced a new layer of supranational protection of human rights in Africa to advance the cause for the promotion and protection of human rights, the decisions of the courts may not be enforced. However, considering that the primary focus of the RECs is economic development, their ability to effectively embrace the role of human rights

103 *Sir Dawda K Jawara v The Gambia* [1995] 147/95 and [1996] 149/96.

104 *ibid.*

105 'The African Commission' <http://www.achpr.org/files/sessions/27th/communications/147.95-149.96/achpr27_147.95_149.96_eng.pdf> accessed 17 October 2019.

106 African (Banjul) Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986).

107 *ibid.*

108 Hannah Moscrop, 'Enforcing International Human Rights Law: Problems and Prospects' <<https://www.e-ir.info/2014/04/29/enforcing-international-human-rights-law-problems-and-prospects/>> accessed 10 June 2021.

protection is challenging especially in the context of Africa where electoral problems are multifaceted, dynamic and complex.¹⁰⁹

Previous efforts by the RECs such as mediation in countries such as Zimbabwe have not yielded much fruit because these efforts have not been supported post-mediation period. As a result, the countries have experienced worst political problems than before.¹¹⁰ Thus, the RECs could do better if their mediation processes could be sustained by extra support to ensure a sustainable outcome and stability in member States. Without extra and sustainable support that addresses the root causes of political disputes, election disputes may recur within the RECs.

As discussed above, the RECs have imposed sanctions to their member States in violation of a constitutional order. For example, these sanctions are in the form of suspension from the activities of the REC or region. To give a practical example, in 2021, the ECOWAS suspended Mali's membership in the region after a coup d'état.¹¹¹ However, these sanctions have not adequately worked. Their consequences have affected the rights of the civilians instead of those to whom they were targeted.¹¹² For instance,

sanctions lead to a rise in the abject poverty gap and deprived segments of the populace feel the most impact. Sanctions have a detrimental effect on income inequality and impact ordinary people more than the sanctioned country's leaders. Sanctions tend to harm rural and non-industrialised areas more, as resources are refocused in power and production centres.¹¹³

Furthermore, it has been noted above that the RECs have been engaged in election monitoring/ observation. However, challenges have been observed as the RECs such as the SADC have on many occasions failed to report correctly and have endorsed contested elections.¹¹⁴ In my view, this points to incompetence, lack of training and skill

109 See Fombad and Steytler (n 1).

110 See Human Rights Watch, 'Zimbabwe' <<https://www.hrw.org/africa/zimbabwe>> accessed 31 May 2021.

111 REUTERS, 'West African Bloc ECOWAS Suspends Mali's Membership After Coup-Minister' <<https://www.reuters.com/world/africa/west-african-bloc-ecowas-suspends-malis-membership-after-coup-minister-2021-05-30/>> accessed 12 August 2021.

112 Carren Pindiriri, 'Taking Stock of the Impact of Sanctions on Livelihoods and Poverty in Zimbabwe' (2020) 31(8) *Defence and Peace Economics* <<https://www.tandfonline.com/doi/full/10.1080/10242694.2019.1661177>> accessed 1 June 2021.

113 Dylan O'Driscoll, 'Impact of Economic Sanctions on Poverty and Economic Growth' <<https://gsdrc.org/wp-content/uploads/2017/06/136-Impact-of-economic-sanctions-on-poverty-and-economic-growth.pdf>> accessed 12 August 2021.

114 SAIIA 'SADC Election Standards Harm its Credibility: Mozambique's Poll was Declared Free and Fair Prematurely' <<https://saiia.org.za/research/sadc-election-standards-harm-its-credibility-mozambiques-poll-was-declared-free-and-fair-prematurely/>> accessed 20 July 2019.

among the observers of the region or lack of capacity and resources to observe or correctly monitor elections within the REC. In addition, this also shows the role of politics influencing election observance.

Given the above deliberation, there is impunity among the RECs especially in the SADC region where not any single State has been held accountable for violation of electoral democracy. The Zimbabwe election disputes have presented the SADC region with many challenges stretching back to early 2000s. For example, in 2004, SADC election observers were considered to have harmed the credibility of elections in Mozambique. The poll, although contested, was declared free and fair prematurely by the SADC observers.¹¹⁵ This caused dissatisfaction among the electorates in Mozambique. The same was repeated in Zimbabwe in 2005. SADC endorsed an election process that was already flawed with heavy restrictions on freedom of assembly and the clamping down on the independent media, among others.¹¹⁶

In the case of Zimbabwe, SADC has a history of congratulating the government of Zimbabwe after fraudulent and contested elections.¹¹⁷ For example, in a communiqué issued by SADC following the extraordinary SADC summit held on 28-29 March 2007 in Dar es Salaam, Tanzania, SADC recalled that the Zimbabwe's election of 2002 was democratic, free and fair and the summit reaffirmed its solidarity with the government and the people of Zimbabwe.¹¹⁸ SADC endorsed these elections despite the fact that the opposition, mainly the MDC had lamented that the election was unfair and fraudulent.¹¹⁹

In the 2008 Zimbabwe contested elections, SADC remained silent until the matter was reviewed by the AU at its ordinary session in Sharm El-Sheikh in Egypt from 30 June - 1 July 2008. The AU decided that mediation of the crisis be vested into SADC.¹²⁰ Thus, the SADC had not made any initiative except the AU.¹²¹ Subsequently, following the recommendations of the AU, SADC appointed Thabo Mbeki as a mediator of the crisis in Zimbabwe. Nevertheless, SADC did not issue any public condemnation against the

115 SAIIA, 'SADC Election Standards Harm its Credibility: Mozambique's Poll was Declared Free and Fair Prematurely' <<https://saiia.org.za/research/sadc-election-standards-harm-its-credibility-mozambiques-poll-was-declared-free-and-fair-prematurely/>> accessed 20 July 2019.

116 See 'Communiqué 2007 Extra-Ordinary SADC Summit of Heads of State and Government' (28–29 March 2007, Dar-es-Salaam) <<http://www.dfa.gov.za/docs/2007/sadc0330.htm>> accessed 23 August 2011.

117 *ibid.*

118 *ibid.*

119 *ibid.*

120 Gavin Cawthra, 'The Role of SADC in Managing Political Crisis and Conflict: The Cases of Madagascar and Zimbabwe' <www.fes.de/cgi-bin/gbv.cgi?id=07874&ty=pdf> accessed 23 August 2011.

121 *ibid.*

2008 election which was marred by a lot of irregularities.¹²² SADC abstained not only from stopping the recognition of Mugabe as the lawful head of Zimbabwe, but also from preventing him from attending the SADC summit held in Johannesburg, South Africa on 17 August 2008 and other subsequent summits.¹²³

In 2008, SADC did not take action to address the situation in Zimbabwe in spite of some SADC members openly criticising Mugabe's regime. For example, Botswana openly criticised Mugabe and declined to recognise him as the legitimate leader of Zimbabwe following the 2008 disputed election.¹²⁴ SADC, for several years, has been criticised for its unwillingness to openly condemn ZANU-PF's government in Zimbabwe on human rights issues generally and on the recurring flawed electoral processes.¹²⁵

Parallel challenge was found in the DRC elections of 2018. The SADC election monitors also endorsed the 'Democratic Republic of Congo's presidential elections which were heavily contested.¹²⁶ The 2018 DRC elections should have been held in 2017. President Kabila refused to step down and postponed elections for over a year. Consequently, very little was done from SADC to uphold the rule of law and democracy in the DRC.¹²⁷ Prior to the elections, SADC sent Electoral Advisory (SEAC) and Electoral Commissions Forum of SADC Countries (ECF-SADC) to conduct a Joint Electoral Assessment Mission (JEAM) to the Democratic Republic of Congo (DRC), to assess the electoral administration capacity and technical needs of the National Independent Electoral Commission (CENI) ahead of the country's anticipated national elections in December 2018.¹²⁸ However, in spite of the presence of the Electoral Commissions Forum of SADC Countries, these efforts were insufficient, the elections were later disputed.¹²⁹ SADC repeatedly endorsed premature election results which were later disputed.

In Malawi in 2019, the SADC alongside COMESA Electoral Observation Mission endorsed the election outcome in its preliminary Statement. The SADC reported the

122 Simon Badza, 'Zimbabwe's 2008 Harmonized Elections, Regional and International Reaction' <www.kas.de/upload/dokumente//2010/05/Defying_9.pdf> accessed 22 August 2011

123 *ibid.*

124 See 'Botswana Refuses to Recognise Mugabe Government' <http://www.mofaic.gov.bw/index.php?Option=com_content&task=view&id=316&Itemid=9> accessed 2 September 2011.

125 *ibid.*

126 *SABC News*, 'Regional Observers Endorse Congo's Election – With Caveats' <<http://www.sabcnews.com/sabcnews/regional-observers-endorse-congos-election-with-caveats/>> accessed 31 August 2019.

127 SADC Electoral Advisory and Electoral Commissions Forum of SADC Countries (ECF-SADC) Conduct a Joint Electoral Assessment Mission to the Democratic Republic of Congo (2017) <<https://www.sadc.int/news-events/news/sadc-electoral-advisory-seac-and-electoral-commissions-forum-sadc-countries-ecf-sadc-conduct-joint-electoral-assessment-mission/>> accessed 31 July 2019.

128 *ibid.*

129 *ibid.*

peaceful political and security environment that existed before, during and immediately after the polling day.¹³⁰ The reporting of SADC and COMESA omitted electoral malpractices by the incumbent. The elections were disputed by the opposition parties and the voters on the basis of inconsistencies of the election results.¹³¹ The court further annulled the election result after finding gross errors and irregularities from the Malawi Electoral Commission (MEC) and the court called for fresh elections.¹³² Thus, based on this discussion, one could notice a culture of RECs failing to facilitate a fair ground of elections in their regions. This has manifested in a circle of contested elections among the member States of the RECs as illustrated in this paper.

Although the RECs have courts/ tribunals, and their decisions are binding; non-compliance may be caused by the fact that the decisions of the courts are left to the member States to implement. This is because of the absence of enforcement mechanisms to enforce the decisions of the courts. Therefore, noncompliance in these cases has resulted in impunity. Finally, although the African Commission fulfils the work of the RECs in investigating human rights violations, it is important to note that the decisions of the Commission are also not binding but persuasive to member States. This means that the Commission may not coerce States to protect, promote and respect human rights.

Thus, the question may be asked: what could the RECs do better to promote credible and legitimate elections in their regions? Given the above deliberations in the paper, it is evident that there is a need for change of strategies in the work of the RECs. For example, change of strategies in mediation processes, and pre- and post-election monitoring/ observation, among others, so that these States may be able to fulfil their human rights obligations. A clear example is the case of Zimbabwe in 2008, after SADC facilitated mediation which resulted in the Global Political Agreement (GPA). It is noted that post-SADC mediation process, there were no concrete follow-ups to the agreement to ensure that the country could fulfil its political and human rights obligations. Upon the end of GPA, the country returned to its deep-rooted structural problems. If the post-mediation process was well conducted, it could have advanced the country's democratic values and aspirations.

130 SADC Electoral Observation Mission Presents Preliminary Statement Following the Holding of 2019 Tripartite Elections in Malawi (2019).

131 *Al Jazeera*, 'Malawi's Disputed Election: Court to Rule on 2019' <<https://www.aljazeera.com/news/2020/02/malawis-disputed-election-court-rule-2019-results-200203071211506.html>> accessed 20 June 2021, See also MK Hussein, 'Free, Fair and Credible Elections in Africa: Challenges Facing Electoral Administration in Malawi' (2019) 4(1-1) *Journal of Public Administration and Development Alternatives (JPADA)* 80–90.

132 *BBC News*, 'Malawi Election: Court Orders New Vote After May 2019 Result Annulled' <<https://www.bbc.com/news/world-africa-51324241>> accessed 5 February 2020. See also Hussein (n 131) 80–90.

Among the RECs, there is a need to provide more technical and advisory support to States. For example, prior to elections, RECs could facilitate capacity building and training of civil society groups to guarantee their maximum and meaningful participation in an election. To ensure credibility and legitimacy of elections, RECs should genuinely and effectively support their member States in pre- and post-electoral audits and electoral observations. For example, RECs could train and send competent and qualified election observers in the region to monitor elections. This ought to be reflected on how elections are endorsed by the RECs. RECs ought to avoid premature announcement of election results. RECs have to carefully endorse elections that reflect the will of the people. The RECs may need to invest in training and building capacity of election observers for better election outcomes. Finally, the RECs may need to actively help civil society groups within States and invest resources in their regions for skills and tools for them to participate fully and meaningfully in political processes of their countries.

Concluding Remarks

This paper has examined some of the problems of election disputes within the Regional Economic Communities (RECs) of the African Union. In addition, the paper has discussed how the RECs have dealt with election disputes in the past decades and some of their strategies to promote and uphold credible and legitimate electoral processes in their regions. The argument in this paper observes that since African States are very protective of their sovereignty, this may impede the ability of RECs to effectively monitor elections and address political problems in States.

Given the arguments in this paper, a few areas where RECs could improve have been identified, and more could be explored in further research. Finally, the paper highlighted the challenges of electoral democracy within the RECs, and what they could do better to promote credible and legitimate elections in their regions. The paper notes that the failure of the RECs to uphold electoral democracy has direct negative implications to democracy, constitutionalism and human rights. Since elections are linked to development and human rights, without elections these will not be achieved.

The paper concludes that the progress and consolidation of electoral democracy among the RECs remains an ongoing process. Electoral democracy is often a success when the electorates are active within member States. Today, the progress achieved by the RECs and legal instruments adopted by the RECs in efforts to uphold and promote electoral democracy may not be underestimated, these legal instruments although not fully explored as part of the discussion of this paper are yet to be fully ratified and enforced within African States.

However, the existing challenges also pose threats to electoral democracy on the continent. RECs remain with the potential to promote credible and legitimate elections

in their regions. A good beginning is the need to change and reinforce some of the strategies of the RECs and their initiatives. RECs should genuinely and effectively support their member States in pre- and post-electoral audits and electoral observations. Election observers should be well trained and their capacity built, so that they can truly deliver their mandate. This should be reflected on how elections are endorsed. Finally, the RECs must genuinely attempt to address political problems within States. This will address the core problems recurring on election disputes. Thus, the RECs should find ways to actively help citizens and invest resources for skills and tools for African citizens to participate fully and meaningfully in political processes of their countries. This will minimise electoral problems and power contestations at hand in Africa.

References

- Abebe D, 'Does International Human Rights Law in African Courts Make a Difference?' (2016) 56(3) *Virginia Journal of International Law*.
- Abramowitz MJ, 'Freedom in the World 2018: Democracy in Crisis' (2018) <<https://freedomhouse.org/report/freedom-world/freedom-world-2018>> accessed 1 July 2019.
- ACHPR, 'The African Union, Guidelines for African Union Electoral Observation and Monitoring Missions' (2002) <<http://archives.au.int/handle/123456789/2060>> accessed 10 October 2021.
- Adegboyega A and Ola AB, 'Missions with Hindrance: African Union (AU) and Peacekeeping Operations' (2016) 5(1) *J AUS*.
- AGA and APRM, 'The Africa Governance Report: Promoting African Union Shared Values' <https://au.int/sites/default/files/documents/36418-doc-eng-_the_africa_governance_report_2019_final-1.pdf> accessed 4 July 2019.
- Akande D, 'International Organizations' in Evans MD (ed), *International Law* (OUP 2003).
- Alemu T, 'The African Charter on Democracy, Elections and Governance (ACDEG): A Normative Framework for Analysing Electoral Democracy in Africa' (LLM Dissertation, University of Pretoria 2007).
- Al Jazeera*, 'Malawi's Disputed Election: Court to Rule on 2019' <<https://www.aljazeera.com/news/2020/02/malawis-disputed-election-court-rule-2019-results-200203071211506.html>> accessed 20 June 2021.
- Amnesty International, 'Opposition in the Gambia. The Danger of Dissent' (Amnesty International 2016).
- Ani NC, 'ISS Today: How Serious is the African Union About Democracy?' (2018) <<https://www.dailymaverick.co.za/article/2018-10-01-how-serious-is-the-african-union-about-democracy>> accessed 3 July 2019.
- D'Aiello L, 'The Case of Gambia: A Template for Democratic Transition' <<https://www.fpri.org/article/2018/08/the-case-of-the-gambia-a-template-for-democratic-transition/>> accessed 1 July 2019
- BBC News*, 'Malawi Election: Court Orders New Vote After May 2019 Result Annulled'. <<https://www.bbc.com/news/world-africa-51324241>> accessed 5 February 2020.

- BBC News*, 'Gambia's Yahya Jammeh Ready for "Billion-Year" Rule' (2011)
<<https://www.bbc.com/news/world-africa-16148458>> accessed 5 July 2019.
- BBC News*, 'Gambia Leader Yahya Jammeh Rejects Election Result' (2016)
<<https://www.bbc.com/news/world-africa-38271480>> accessed 5 July 2019.
- BBC News*, 'DR Congo Election: Presidential Poll Hit by Delays' (2018)
<<https://www.bbc.com/news/world-africa-46712759>> accessed 5 July 2019.
- BBC News*, 'Gambian Leader Yahya Jammeh has Rejected the Result of the Presidential Election Held Earlier this Month, a Week After Admitting Defeat' (2016)
<<https://www.bbc.com/news/world-africa-38271480>> accessed 4 July 2019.
- Calingaert D, 'Election Rigging and How to Fight it' (2006) 17(3) *Journal of Democracy*
<<https://doi.org/10.1353/jod.2006.0043>>
- Cawthra G, 'The Role of SADC in Managing Political Crisis and Conflict: The Cases of Madagascar and Zimbabwe' (2010) <www.fes.de/cgi-bin/gbv.cgi?id=07874&ty=pdf> accessed 23 August 2011.
- Centre for Human Rights, *Professional Training Series No. 2, Human Rights and Elections. A Handbook on the Legal, Technical and Human Rights Aspects of Elections* (United Nations 1994).
- Cilliers J, 'The Future of Democracy in Africa' (2016) Institute of Security Studies (ISS),
<<https://issafrica.org/research/papers/the-future-of-democracy-in-africa>> accessed 20 June 2019 <<https://doi.org/10.2139/ssrn.2860537>>
- Communiqué 2007 Extra-Ordinary SADC Summit of Heads of State and Government (28–29 March 2007, Dar-es-Salaam) <<http://www.dfa.gov.za/docs/2007/sadc0330.htm>> accessed 23 August 2011.
- Edmundson WA, *Three Anarchical Fallacies* (Cambridge University Press 1998)
<<https://doi.org/10.1017/CBO9780511663741>>
- Election Observation, 'A Decade of Monitoring Elections, the People, and the Practice' (2005) AI ODIHR.
- Fombad CM and Steytler N, *Democracy, Elections and Constitutionalism in Africa* (1st edn, OUP 2021) <<https://doi.org/10.1093/oso/9780192894779.003.0001>>
- Gawthra G, 'The Role of SADC in Managing Political Crisis and Conflict: The Cases of Madagascar and Zimbabwe' (Friedrich-Ebert-Stiftung 2010) <www.fes.de/cgi-bin/gbv.cgi?id=07874&ty=pdf> accessed 23 August 2011.
- Goodwin-Gill GS, *Free and Fair Elections: Guide to US Elections* (5th edn, Amazon 2005).

- Global Commission on Elections, Democracy and Security, 'Report of the Global Commission on Elections, Democracy and Security' (2012).
- Hartmann C, 'Governance Transfer by the Economic Community of West African States' (2013) SFB-Governance Working Paper, 47, Berlin: Freie Universität Berlin, SFB 700.
- Hartmann C, 'ECOWAS and the Restoration of Democracy in the Gambia' (2017) Africa Spectrum <<https://doi.org/10.1177/000203971705200104>>
- Human Rights Watch, 'State of Fear: Arbitrary Arrests, Torture, and Killings' (HRW 2015).
- Hussein MK, 'Free, Fair and Credible Elections in Africa: Challenges Facing Electoral Administration in Malawi' (2019) 4(1-1) Journal of Public Administration and Development Alternatives.
- International Institute for Democracy and Electoral Assistance, 'Regional Organizations' <<https://www.idea.int/our-work/what-we-do/regional-organizations>> accessed 28 June 2019.
- Isanga JM, 'The Constitutive Act of the African Union, African Courts and the Protection of Human Rights: New Dispensation?' (2013) 11(2) SCJ IL.
- ISS/PSC Report, 'Is the African Charter on Democracy Strong Enough?' <<https://issafrica.org/pscreport/psc-insights/is-the-african-charter-on-democracy-strong-enough> available at: <https://issafrica.org/pscreport/psc-insights/is-the-african-charter-on-democracy-strong-enough>> accessed 5 June 2019.
- Joshua S and Olanrewaju F, 'The AU's Progress and Achievements in the Realm of Peace and Security' (2017) 73(4) India Quarterly <<https://doi.org/10.1177/0974928417731639>>
- Mehler A, 'Not Always in the People's Interest: Power-sharing Arrangements in African Peace Agreements' (2008) GIGA Working Papers 83, GIGA German Institute of Global and Area Studies <<https://doi.org/10.2139/ssrn.1200862>>
- Merloe P, 'Promoting Legal Frameworks for Democratic Elections: An NDI Guide for Developing Laws and Law Commentaries' in Young JH (ed), *International Election Principles: Democracy & the Rule of Law* (American Bar Association 2009).
- Malawi - Electoral Institute for Sustainable Democracy in Africa <<https://www.eisa.org.za>> accessed 1 July 2019.
- Mo Ibrahim Foundation, '2017 Ibrahim Index of African Governance: Key Findings' <<https://mo.ibrahim.foundation/iiag/2017-key-findings/>> accessed 1 July 2019.

- Nguyen HY, 'Beyond Good Offices? The Role of Regional Organizations in Conflict Resolution' (2002) 55(2) *Journal of International Affairs*
<www.jstor.org/stable/24358180> accessed 19 October 2021.
- O'Driscoll D, 'Impact of Economic Sanctions on Poverty and Economic Growth'
<<https://gsdrc.org/wp-content/uploads/2017/06/136-Impact-of-economic-sanctions-on-poverty-and-economic-growth.pdf>> accessed 12 August 2021.
- Omorogbe EY, 'A Club of Incumbents? The African Union and Coups D'état' [2008] *Vanderbilt Journal of Transnational Law*.
- Saine A, *The Paradox of Third-Wave Democratization in Africa: The Gambia under AFPRC-APRC Rule, 1994–2008*, (Lexington Books 2009).
- Steytler N, Murphy J, De Vos P and Rwelamira M, *Free and Fair Elections* (Juta 1994).
- Steve A, Nwocha M and Igwe I, 'An Appraisal of Electoral Malpractice and Violence as an Albatross in Nigerian's Democratic Consolidation' (2019) 10 *Beijing Law Review*
<<https://doi.org/10.4236/blr.2019.101005>>
- The African Union, 'Regional Economic Communities' <<https://au.int/en/organs/recs>> accessed 4 June 2019.
- The University of South Africa (UNISA), *Management of Democratic Elections in Africa*, (UNISA Press 2014).
- 'Report on the Meeting of the Independent Experts on the Draft Charter on Democracy, Elections and Governance' (Addis Ababa, Ethiopia, 21–23 November 2005)
<<https://media.africaportal.org/documents/polbrief53.pdf>> accessed 27 September 2021.
- REUTERS, 'ECOWAS Lifts Sanctions Against Niger, Guinea'
<<https://www.reuters.com/article/ecowas-niger-idAFLDE72N20P20110324>> accessed 30 November 2019.
- REUTERS, 'West African Bloc ECOWAS Suspends Mali's Membership After Coup - Minister' <<https://www.reuters.com/world/africa/west-african-bloc-ecowas-suspends-malis-membership-after-coup-minister-2021-05-30/>> accessed 12 August 2021.
- Ruppel OC, 'Regional Economic Communities and Human Rights in East and Southern Africa' (2009).
- SADC Electoral Observation Mission presents Preliminary Statement Following the Holding of 2019 Tripartite Elections in Malawi (2019).

SADC Electoral Advisory (SEAC) and Electoral Commissions Forum of SADC Countries (ECF-SADC) Conduct a Joint Electoral Assessment Mission to the Democratic Republic of Congo (2017) <<https://www.sadc.int/news-events/news/sadc-electoral-advisory-seac-and-electoral-commissions-forum-sadc-countries-ecf-sadc-conduct-joint-electoral-assessment-mission/>> accessed 32 July 2019.

SAIIA, 'SADC Election Standards Harm its Credibility: Mozambique's Poll was Declared Free and Fair Prematurely' <<https://saiia.org.za/research/sadc-election-standards-harm-its-credibility-mozambiques-poll-was-declared-free-and-fair-prematurely/>> accessed 20 July 2019

SABC News, 'Regional Observers Endorse Congo's Election – With Caveats' <<http://www.sabcnews.com/sabcnews/regional-observers-endorse-congos-election-with-caveats/>> accessed 31 August 2019.

UNDP, 'Maendeleo Policy Forum: Deepening Democracy – Election Management and Stability in Africa's Divided Societies' (2016).

Williams PD, 'The African Union's Conflict Management Capabilities' (2011) International Institution and Global Governance Program Working Paper.

Wolfgang M, *The Political and Social Theory of Max Weber* (Blackwell 1989).

Zounmenou D and Souaré IK 'What Way Out of the Post-election Imbroglia in Cote d'Ivoire?' <<http://www.the-african.org/blog/?p=384>> accessed 30 August 2011.

Zwanenburg M, 'Regional Organisations and the Maintenance of International Peace and Security: Three Recent Regional African Peace Operations' (2006) 11(3) *Journal of Conflict and Security Law* <<https://doi.org/10.1093/jcsl/krl023>>

Cases

Mike Campbell (Pvt) Ltd. and Another v Minister of National Security Responsible for Land, Land Reform and Resettlement [2008] (124/06).

Sir Dawda K Jawara v The Gambia [2000] 147/95 and 149/96.

International Human Rights Instruments

The United Nations Charter 1945.

The Universal Declaration of Human Rights 1948.

Regional Human Rights Instruments

The African Charter on Human and Peoples' Rights 1981.

The African Charter on Democracy, Elections and Governance 2007.

The Constitutive Act of the African Union 2000/1.

The Protocol on Amendments to the Constitutive Act of the African Union 2003.

The Protocol to the Peace and Security Council; the Guidelines for the Electoral Observation Missions 2004.

The ECOWAS Protocol on Democracy and Good Governance 2001.

The Final Communiqué: 50th Ordinary Session of the ECOWAS Authority of Heads of State and Government, Abuja 2016.

The African Union Declaration on the Principles Governing Democratic Elections in Africa 2002 AHG/Decl.1 (XXXVIII).

Other Human Rights Instruments

SADC Principles and Guidelines Governing Democratic Elections (Revised) 2015.

The Guidelines for African Union Electoral Observations and Monitoring Missions 2004.

The New Partnership for Africa's Development 2001.