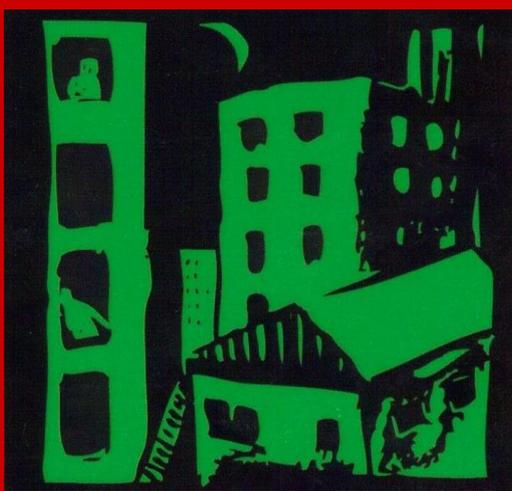


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The role of the African Charter on Values and Principles of Public Service and Administration in promoting good governance

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ABSTRACT

This article critically analyses the provisions of the African Charter on Values and Principles of Public Service and Administration from an interdisciplinary standpoint of law and public administration. It assesses the Charter's substance and its potential role in the promotion of good governance in Africa, subject to internationally accepted standards for good governance. Central to this approach is identifying probable legal, institutional and structural shortcomings, thus helping to set out useful guidelines required in facilitating the effective application and implementation of the Charter. Since there is a lack of track records and benchmarks concerning the Charter, the article seeks to give it substance and prominence. It aims to establish that the

Charter can play a catalytic role in the promotion of good governance by requiring political commitment to the rule of law, effective implementation of state policy, enforcement of professional ethics, and adherence to sound ethical standards by public service agents. The envisioned public service governance should be an accountable and effective public administration that is based on a functional legal framework, efficient regulatory structures, and transparent systems for financial and legal accountability.

Keywords: Good governance, human rights, implementation, professionalism, political will, public administration, public service ethics, rule of law.

1 INTRODUCTION

The concept of good governance is broad, and there has been some interest in the quest to define it.¹ The United Nations Economic and Social Commission for Asia and the Pacific enumerates eight major characteristics of good governance. The latter is, “participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law”.² In the context of public service and administration, good governance entails having stable administrative structures, the best possible service delivery, high standards of ethics and professionalism, increased public trust and satisfaction, and the management of public affairs in an efficient, open, accountable, participatory and economic manner; all of these requirements are subject to existing national laws and regulations. According to Mudau:

“[p]ublic administration is any institution with operations aimed at applying, enforcing or fulfilling public policies and programmes or undertaking public service duties as well as regulating the conduct of public servants. Public service is any service or public-interest activity provided by government under the authority of the relevant administration.”³

Africa is prone to public service malgovernance. This has caused the erosion of professionalism and public service ethics, rampant bureaucratic corruption, excessive politicisation, institutional ineptitude, and poor service delivery.⁴ Against this backdrop, the Assembly of Heads of State and Government of the African Union (the AU Assembly) adopted the African Charter on Values and Principles of Public Service and Administration (the Charter) on 31 January 2011.⁵ The Charter came into force on 23

¹ Demmke C & Moilanen T “Effectiveness of good governance and ethics in central administration: Evaluating reform outcomes in the context of the financial crisis” (2011) 8 available at https://www.eupan.eu/wp-content/uploads/2019/05/2011_2_PL_Effectiveness_of_Good_Governance_and_Ethics_in_Central_Administrations.pdf (accessed 8 February 2022).

² United Nations, Economic and Social Commission for Asia and the Pacific “What is good governance?” (undated) available at <http://www.unescap.org/sites/default/files/good-governance.pdf> (accessed 8 February 2022).

³ Mudau P “Constitutionalisation of public service and administration in Africa” (2021) available at <https://africlaw.com/2021/03/23/constitutionalisation-of-public-service-and-administration-in-africa/> (accessed 16 February 2022).

⁴ Odhiambo-Mbai C “Public service accountability and governance in Kenya since independence” (2003) 8(1) *African e-Journals Project* at 113.

⁵ The African Charter on Values and Principles of Public Service and Administration, 2011.

July 2016. So far, of the 55 member states of the AU, only 19 have ratified the Charter.⁶ The Charter is the first binding legal instrument adopted by member states of the AU with the objective of comprehensively addressing the challenges that have plagued African public service and administration.⁷ It must be noted that, instead of merely capturing standards to be followed by member states, the Charter is intended to establish a broad legal framework that guides member states on how to develop effective national legal frameworks for public service and administration.

This article assesses the Charter's substance and its potential role in the promotion of good governance in Africa, subject to internationally accepted standards for good governance. Central to this approach is identifying probable legal, institutional and structural shortcomings and setting out useful guidelines for facilitating the effective implementation of the Charter. This article argues that the Charter could play a catalytic role in the promotion of good governance. This is achievable through political commitment to the rule of law, the enforcement of professional ethics, adherence to sound ethical standards by public service agents, and the effective implementation of state policy. The article addresses questions as to what role the Charter can play in the promotion of good governance in Africa; what challenges the Charter might confront; and what the possible solutions to these challenges are.

The article is based on desktop research. There is little scholarship generally, and even less in the African context, which engages with issues at the interface between law and public administration. This article uses the Charter, as an instrument that exists at this interface, to engage with the two fields. Thus, the article defends the Charter against insignificant objections, and presents it as a noteworthy and impactful legal framework.

The article is divided into several sections. These outline the problem statement; define the meaning of good governance; summarise the historical development of and rationale for the Charter; discuss the basic legal framework for public service and administration in Africa; provide the duties of the public service and administration in accordance with the Charter; and discuss possible challenges to the Charter and its application in practice.

2 OUTLINING THE PROBLEM STATEMENT

The Charter provides important impetus to the promotion of good governance in the African public service and administration.⁸ Although it came into force on 23 July 2016,

⁶ Ratification table of African Charter on the Values and Principles of Public Service and Administration, available at <https://au.int/sites/default/files/treaties/36386-sl-AFRICAN%20CHARTER%20ON%20THE%20VALUES%20AND%20PRINCIPLES%20OF%20PUBLIC%20SERVICE%20AN.D%20ADMINISTRATION%20%281%29.pdf> (accessed 8 February 2022).

⁷ Tjihambuma AT "Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and Strategies" (2011) 2 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022).

⁸ Tjihambuma AT "Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and Strategies" (2011) 2 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022).

its major drawback is its lack of a track record to display its effective application and implementation. Addressing the issue of application and implementation could assist efforts to devise mechanisms to expedite its continent-wide ratification, domestication, and implementation. The failure to uphold the rule of law certainly results in a crisis of confidence in state institutions, and this compounds the problem. The absence of political will to strengthen professionalism and ethics in the public service and administration also contributes to bad governance.

3 HISTORICAL DEVELOPMENTS AND THE RATIONALE FOR THE CHARTER

The path of historical development that led to the adoption of the Charter began with the first Pan-African Conference of Ministers of Civil Service in Tangier, Morocco in 1994.⁹ This conference was spearheaded by the African Training and Research Centre in Administration for Development (CAFRAD) and the United Nations Department of Economic and Social Affairs (UNDESA). The Ministers' conference is now known as the African Union Commission Specialized Technical Committee (STC) Number 8.¹⁰ The second Ministers' conference was held in Rabat, Morocco in December 1998, and marked a new beginning for the African public administration, "as it set the foundation for the establishment of the Charter for the Public Service in Africa".¹¹ Thereafter, the third Ministers' conference, held in Windhoek, Namibia in February 2001,¹² formally adopted the African Public Service Charter.¹³ The African Public Service Charter was adopted with "acknowledgement that the professionalisation of the public service is a prerequisite for the improvement of the State".¹⁴

However, a decade after its adoption, many countries have not ratified the Charter; in addition, among states which have adopted the Charter, there has been a lack of adequate implementation. Details of its usefulness thus remain sketchy due to this lack of implementation among state parties. The obsolete African Public Service Charter was discarded owing to its gaps in regard to transformation processes, which did not satisfy AU member states at the political, institutional, economic and social level. As a result, there was a need to review and revise it in order to give it a wider legal status. The

⁹ "The African Conference of Ministers of Public Service and Administration: Advancing the African Agenda for Capable States" (undated) 6 available at http://www.africamdin.net/documents/d00003/Pan-African_Conference_of_Ministers_for_Public_and_Civil_Service_English.pdf (accessed 8 February 2022).

¹⁰ SH Isaack "Continental imperatives of the African Charter on Values and Principles of Public Service and Administration" (2016) 6(2) *The South African Public Sector Innovation Journal* at 20.

¹¹ Tjihambuma AT "Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and strategies" (2011) 3 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022).

¹² Berhe A "Crisis of African States" in United Nations Office for ECOSOC Support and Coordination *Supporting Africa's efforts to achieve sustainable development* at 34.

¹³ The African Public Service Charter A/56/63-E2001/21.

¹⁴ Tjihambuma AT "Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and strategies" (2011) 3 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022).

Charter has thus been renamed as the African Charter on the Values and Principles of Public Service and Administration.

The present Charter is the first binding legal instrument adopted by member states of the AU with the acknowledgment that professionalism and public service ethics infused with viable legal and policy framework based on good governance principles are crucial ingredients for the improvement of African public service governance. The concerted efforts of the member states of the AU were intended to produce a legal instrument that would profoundly, “transform policy development in the areas of governance, public administration, civil service and service delivery”.¹⁵

The Charter forms part of important normative standards that have a bearing on both good governance and human rights.¹⁶ It provides a remedy for addressing service delivery challenges¹⁷ and the ethical deficits inherent in, “graft, corruption, abuse of power, lack of transparency and accountability, dictatorship, lack of integrity on the part of leaders ... and many other social wrongs”.¹⁸

4 THE LEGAL FRAMEWORK FOR PUBLIC SERVICE AND ADMINISTRATION IN AFRICA

In terms of article 3(6) of the Charter, member states of the AU have agreed to implement the Charter in accordance with the principles of professionalism and ethics in the public service and administration. The Charter calls upon state parties to implement its principles and objectives. The objective is to entrench internationally accepted standards of professionalism and ethics in the African public service and administration. The Charter does this by providing a code of conduct for public service agents,¹⁹ as well as setting out the duties of the public service and administration.²⁰

A code of conduct is “a listing of required behaviour, the violation of which would result in disciplinary action”.²¹ The United Nations Development Programme rightly states that “upholding the principles and standards of right conduct in the administrative

¹⁵ “The African Conference of Ministers of Public Service and Administration: Advancing the African Agenda for Capable States” (undated) 3 available at [http://www.africamdin.net/documents/d00003/Pan-African Conference of Ministers for Public and Civil Service English.pdf](http://www.africamdin.net/documents/d00003/Pan-African%20Conference%20of%20Ministers%20for%20Public%20and%20Civil%20Service%20English.pdf) (accessed 8 February 2022).

¹⁶ The African Charter on Human and Peoples’ Rights, 1981; the African Charter on Democracy, Elections and Governance, 2007, which states in article 32(1) that state parties shall strive to institutionalise good political governance through accountable, efficient and effective public administration; and the African Charter on Statistics, 2009.

¹⁷ Jovini TE “Synopsis on African Charter on Values and Principles of Public Administration” (2011) 1 available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/130911synopsis.pdf> (accessed 10 February 2022).

¹⁸ Byaruhanga-Rukooko AB *Accountability, responsibility and integrity in development: The ethical challenges in sub-Saharan Africa and beyond* (2010) x1.

¹⁹ Chapter III of the Charter.

²⁰ Chapter II of the Charter.

²¹ Ethics and Compliance Initiative “Ethics and compliance glossary” available at <https://www.ethics.org/resources/free-toolkit/toolkit-glossary> (accessed 8 February 2022).

sphere of government is an important aspect of public service ethics”.²² Accordingly, the Charter promotes adherence to existing national laws, regulations and policies.²³

5 OVERVIEW OF THE FEATURES OF THE CHARTER

As stated in its preamble, the Charter aims to promote the values and principles of democracy, good governance, human rights and the right to development. The objectives of the Charter include, among other things: ensuring quality and innovative service delivery that meets the rights of users of public service;²⁴ promoting the moral values which are inherent in the activities of public service agents;²⁵ encouraging citizens and users of public services to actively and effectively participate in public administration processes;²⁶ and harmonising public service and administration policies among member states of the AU.²⁷ In addition, the objectives of the Charter encompass the strengthening of sub-regional, continental and international cooperation for the improvement of public service and administration,²⁸ and sharing experiences and best practices.²⁹

The Charter consists of 34 articles, which are divided into six chapters. Its provisions constitute a framework for maintaining the legitimacy of the public service. The adoption of the Charter by member states of the AU thus signals a collective commitment to promote the moral values inherent in public service activities,³⁰ improve public service delivery,³¹ combat corruption,³² protect the rights of citizens and users of public service,³³ and promote good governance.³⁴ In ratifying the Charter, state parties undertake to “encourage citizens and users of public service to actively and effectively participate in public administration processes”.³⁵

6 POLITICAL-ADMINISTRATIVE INTERFACE

The political-administrative interface is a delicate balance of public administration and management at the confluence of political and administrative activities, where technical applications and methods combine with political mandates and social sensitivities in

²² United Nations Development Programme “Case evidence on ‘ethics and values in civil service reforms” (2007) 3 available at <https://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/case-evidence-on-ethics-and-values-in-civil-service-reforms/Ethics-Values.pdf> (accessed 10 February 2022).

²³ Articles 4(2) and (3); 5(1); 9(4); 10(1); 11(2); 12(1) and (2); and 15(7).

²⁴ Article 2(2).

²⁵ Article 2(3).

²⁶ Article 2(4).

²⁷ Article 2(7).

²⁸ Article 2(9).

²⁹ Article 2(10).

³⁰ Article 2(5).

³¹ Articles 5 and 7.

³² Article 12.

³³ Article 4.

³⁴ Preamble of the Charter.

³⁵ Article 2(4).

pursuit of the public interest and of welfare.³⁶ It comprises the relationship and the interface between political appointees and professional public service agents, who constitute the public service. This interface is important in that the political sphere should ensure that there is a clean and stable politico-administrative dichotomy, marked by clear, separate and distinctive roles of the political and administrative heads. This interface is a key ingredient in the development agenda for the reform of public service governance. Professionalism entails: courtesy, integrity and neutrality in the actions of public service agents;³⁷ along with adherence to state policy and ethical standards, it entails protecting citizens against abuse of power, and also safeguards public service agents from diversion from the rule of law at the behest of the political sphere.

In terms of article 19(2) of the Charter, the recruitment of public service agents should be based on merit and equality rather than political patronage. The Charter should thus be praised for promoting the reform of management and development of human resources in the public service by pitting meritocracy against political patronage, partisanship and manipulation. In the context of the Charter, meritocracy entails the absence of the malicious influence of the political sphere in the administrative setup of the government. This requires the entrenchment of: good human resource management; employment and personnel management practices that are based on ability, objectivity and fairness; and the enforcement of professionalism, ethics, accountability, transparency, integrity, excellence and innovation, all of which are indispensable in the achievement of good governance.

7 DUTIES OF THE PUBLIC SERVICE AND ADMINISTRATION

This section discusses specific provisions of the Charter, with the aim of giving them substance in the context of promoting good governance.

7.1 Respect for human rights and legality

The Charter specifically mentions that public service agents must respect human rights and adhere to existing laws. Its provisions are grounded on the notion that, “relations among the public service and its employees are hinged on professional merit and respect for human rights”.³⁸ Accordingly, from a human rights perspective, the Charter affirms the rights of users of public services and the corresponding obligation on the part of public service agents to respect such rights.³⁹ Similarly, it provides for the rights of public service agents.⁴⁰ Article 4(2) promotes the fulfilment of human rights and

³⁶ Naidoo V *A human rights perspective on policy implementation processes: Observations from the South African public service* (2003) at 2.

³⁷ Article 9(3).

³⁸ Tjihambuma AT “Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and strategies” (2011) 5 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022). 5.

³⁹ Article 4(1).

⁴⁰ Chapter IV provides for the rights of public service agents.

enjoins that the delivery of public service must be in accordance with national laws, regulations and policies.⁴¹ Individual accountability by public service agents enhances respect for human rights and also raises standards of ethical behaviour.⁴²

7.2 Access to information

Transparency, a key element of good governance, “refers to unfettered access by the public to timely and reliable information on decisions and performance in the public sector”.⁴³ Article 9 of the African Charter on Human and Peoples’ Rights⁴⁴ guarantees the right to receive information. Thus, the decisions of public service and administration must be made in a transparent, legally compliant manner, and must be easily available for public scrutiny.⁴⁵

Article 6(2) of the Charter states that the users of public service shall be informed of decisions that affect them and that they are entitled to be given reasons for such decisions. Mechanisms for appeal against such decisions must also be available. Information on procedures and formalities pertaining to public service delivery must be available to users.⁴⁶ The legal and policy framework must establish clear-cut formats “for preparation, follow-up and communication” on government activities that directly require the involvement of users.⁴⁷ Article 6(3) of the Charter states that:

“[p]ublic service and administration shall establish effective communication systems and process to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and input”.

This provision calls for public transparency, which enables public services users and citizens to assess the performance of public service agents and reach their own conclusions. Transparency and enhanced public participation in decision-making are aspects of good, ethical governance. It is not only that information should be made available – citizens and users of public services should be actively encouraged to become aware of laws, trends and facts that affect their lives.⁴⁸ Such developments bolster the “ethical infrastructure” of the public service and administration.

⁴¹ Article 4(2).

⁴² Support for Improvement in Governance and Management (SIGMA) “The principles of public administration” (2014) 42 available at <http://www.sigmaweb.org/publications/Principles-Public-Administration-Overview-Nov2014.pdf> (accessed 10 February 2022).

⁴³ Armstrong E *Integrity, transparency and accountability in public administration: Recent trends, regional and international developments and emerging issues* (2005) 1.

⁴⁴ The African Charter on Human and Peoples’ Rights, adopted on 27 June 1981 entered into force on 21 October 1986.

⁴⁵ SIGMA *The principles of public administration* (2014) 28 available at <http://www.sigmaweb.org/publications/Principles-Public-Administration-Overview-Nov2014.pdf> (accessed 10 February 2020).

⁴⁶ Article 6(1).

⁴⁷ See SIGMA (2014).

⁴⁸ Édés BW *The role of public administration in providing information offices & citizens information services* (2000) 7.

7.3 Efficient and quality service

In article 7(1), the Charter stipulates that public services must be delivered in the most effective, efficient and economic manner, in line with the highest possible standards.⁴⁹ This implies that public service agents are obliged to administer public resources in a responsible manner to provide quality service delivery. In order to assess whether or not the provision of such services really meets the expected standards, appropriate mechanisms to periodically monitor and evaluate the effectiveness of public service delivery must be established.⁵⁰ Public service and administration must set and respect time-frames for public service delivery,⁵¹ and the services have to be adapted to the evolving needs of users.⁵²

8 LEGAL, STRUCTURAL AND INSTITUTIONAL CHALLENGES OF THE CHARTER

In terms of the extent to which the Charter influences good governance in Africa, it may be deemed to be in its infancy. Even so, the potential challenges facing mechanisms for the Charter's implementation cannot be overlooked. This section discusses such challenges, which can be classified as legal, structural and institutional in nature.

8.1 Legal challenges

Of the 55 member states of the AU, only 19 are parties to the Charter. The Charter's crucial role regarding the reform of the African public service and administration is thus restricted to a mere quarter of the member states of the AU. Ojigho bemoans the lack of ratification of regional instruments in Africa, and states as follows:

“The poor ratification level is a big setback for regional integration in Africa and will have an impact on the implementation of AU Agenda 2063. This means that across Africa there are no common standards accepted by all the states since some have committed to some treaties while others have not.”⁵³

The lack of wider continental ratification, as well as slow implementation, clearly impedes attainment of the Charter's transformational goals in that poor ratification of the Charter hinders the development of common standards for optimum conditions of equity and efficiency. Another challenge is that the Charter's provisions are not legally binding. This is a major drawback. The obsolete African Public Service Charter, which was replaced by the present Charter,⁵⁴ had the same void. It is the case, in other words, that the framers of the Charter took no steps to ensure compliance with its provisions.

⁴⁹ Article 7(1).

⁵⁰ Article 7(2).

⁵¹ Article 7(3).

⁵² Article 7(4).

⁵³ Ojigho O “State of compliance with the instruments and norms of the African Union (AU): State of the union (Sotu) Coalition Report”.

⁵⁴ Member states of the African Union had to review and update the Charter because it had gaps with regard to alignment with transformation processes in member states at the political, institutional, economic and social level.

Consequently, the absence of a binding provision could deflate the Charter's potential for entrenching its principles. There are no enforcement mechanisms within the Charter's framework for dealing with non-compliance with its provisions. This could limit the Charter's effectiveness and, indirectly, perpetuate bad governance. The scope of the Charter's applicability is greatly limited; this includes its guiding mechanisms.

This poses an immense challenge for, "the common desire to strengthen and consolidate public service with a view to promoting integration and sustainable development on the continent".⁵⁵ To overcome these challenges, the AU Commission, Regional Economic Communities (RECs) and individual state parties must urge all member states of the AU to ratify or accede to the Charter and to ensure its effective implementation. Any state party that is concerned by the lack of binding provision may submit proposals for amendment of the Charter in terms of article 31.

George and Ghere argue that transparency and accountability can be promoted through a variety of means, including, "expert guidance, mandates, peer review, technical assistance, partnerships, mutual reciprocity, and recommended preventive and punitive measures".⁵⁶ Waiguru further states that a combination of incentives and sanctions is needed to encourage professional standards of conduct.⁵⁷ Without any enforceability, it may take these initiatives a decade or more to operate in the intended way. The Charter's potential role will also need to be complimented by other relevant legal instruments.

8.2 Structural challenges

According to Tjihambuma,⁵⁸ the kind of assistance that could be offered regionally to facilitate or create national implementation mechanisms has to be addressed. This concern is informed by the fact that the AU Commission is obliged to assist all, "state parties to implement the Charter and coordinate the evaluation of its implementation".⁵⁹ Moreover, the Commission is obliged to establish the required mechanisms and create capacities for the Charter's implementation.⁶⁰ This mandate could be futile if the Commission's efforts are not met with modest contributions from and mutual structural commitments by state parties.

⁵⁵ Preamble of the Charter.

⁵⁶ Yoder DE & Cooper TL "Public service ethics in Africa" in Frederickson HG & Ghere RK (eds) *Ethics in public management* (2015) 318.

⁵⁷ Waiguru A "Using codes of ethics to build the integrity of the public sector in Sub-Saharan Africa in the context of the circular flow of values" in Byaruhanga Rukooko AB (ed) *Accountability, responsibility and integrity in development: The ethical challenges in Sub-Saharan Africa and beyond* (2010) 17.

⁵⁸ Tjihambuma AT "Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and strategies" (2011) 15 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022).

⁵⁹ Article 23(2)(i)(e).

⁶⁰ Article 23(2)(i)(g).

The Charter charges the Commission with the responsibility of establishing a Conference of State Parties to the Charter.⁶¹ In partnership with the Conference of State Parties, the Commission has to develop the Charter's implementation guidelines.⁶² Furthermore, in consultation with the Conference of States Parties, the Commission must establish a Secretariat that will, "coordinate and undertake the duties, obligations and responsibilities for ensuring the implementation of [the] Charter".⁶³

However, at the present juncture a key obstacle to these crucial processes remains the absence of the first Conference of State Parties, which also prevents the establishment of the Secretariat. Apart from urging RECs to encourage their member states to ratify or accede to the Charter and implement it,⁶⁴ the Charter is silent on the structural role that RECs can play in ensuring and facilitating its implementation. With regard to the consolidation and integration of shared values of public service governance, there are weak sub-regional institutions, and there is a lack of complementarity among member states' national structures.

The RECs have significant differences in terms of how they narrow down discrepancies among themselves or within their own member states.⁶⁵ For instance, in the East African Community (EAC) alone, the finalisation of the Draft Protocol on Preventing and Combating Corruption has been pending since 2006.⁶⁶ The delay has been caused primarily by divergent positions on some of the provisions in the draft protocol that were adopted by the member states. The Commission must engage in a "bottom-up" approach to elicit views on how each state party needs assistance in the facilitation of the implementation of the Charter, while considering the unique conditions of every state party. In the process, state parties must commit to ensuring the effective application and implementation of the Charter. RECs must play a pivotal role in encouraging their member states to ratify the Charter. Discrepancies among RECs must be dealt with by creating common values and encouraging the exchange of best practices within member states.

8.3 Institutional challenges

Tjihambuma has noted that possible institutional challenges facing the implementation of the Charter are, "poor implementation, limited resources, lack of skills or capacity and weak management, among others".⁶⁷ It is also doubtful whether the present efforts

⁶¹ Article 23(2)(i)(a).

⁶² Article 23(2)(i)(b).

⁶³ Article 23(2)(1)(c).

⁶⁴ Article 23(2)(ii)(a).

⁶⁵ De Melo J & Tsikata Y *Regional integration in Africa: Challenges and prospects* (2014) at 4.

⁶⁶ Ethics and Anti-Corruption Commission "The East African Community Protocol on Preventing and Combating Corruption to be adopted soon" available at <http://www.eacc.go.ke/WHATSNEW.ASP?ID=666&day=8/10/2015> (accessed 10 February 2022).

⁶⁷ Tjihambuma AT "Implementing the African Charter for the Values and Principles of Public Service and Administration: Challenges and strategies" (2011) 15 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022).

to promote good governance will be effective due to over-centralised state systems and a serious deficit of trust, transparency, and effective accountability to citizens.⁶⁸ One further major institutional challenge facing the Charter is that too few people know about it. This reality requires the Commission to embark on an awareness-raising campaign. The campaign should target civil society to give it information about the Charter and the values and principles it aims to achieve. State parties must also take the necessary measures to seek broader dissemination of the Charter.⁶⁹ The domestic effect of a treaty is contingent on the nature and extent of its awareness at the state level.⁷⁰ In article 5(4), the Charter specifically invokes the effective involvement of all stakeholders, or more precisely, civil society, in the planning and delivery of public service.

To overcome the challenge of limited awareness of the Charter, the Commission, the RECs and member states of the AU must undertake initiatives to sensitise donors, civil society, citizens, users of public service and public service agents about the Charter. “Popularisation” of its relevance largely hinges on the capacity and commitment of these stakeholders.

8.3.1 *Lack of political will*

As with any other international agreement, the Charter’s implementation is dependent on the political will of state parties.⁷¹ Political will plays a crucial role in the success or failure of any intervention. The, “lack of political will to mainstream regional commitments and agreements into national plans to ensure the success of the process” presents itself as a challenge.⁷² National strategies for enforcing professionalism and ethical standards can make progress if they are supported by strong political will at all levels of government. Political will is the most potent force for reform of public administration structures, processes, and performances.⁷³ The preamble of the Charter thus emphasises the significance of political commitment for the strengthening of professionalism and ethics in public service and administration. Effective institutionalisation of ethics and professionalism, as outlined in the Charter, can be hobbled by lack of political will or when the political sphere interferes in public administration processes.

⁶⁸ Olowu D “Public administration in Africa: Deepening crisis despite reform efforts” in PG Peters & J Pierre *The SAGE handbook of public administration* (2012) at 624.

⁶⁹ Article 23(1)(c).

⁷⁰ Ayeni VO *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 15.

⁷¹ Tindifa S *Public accountability and good governance in East Africa* (2009) xiii.

⁷² Mbaku JM “Bureaucratic corruption in Africa: The futility of cleanups” (1996) 16(1) *The Cato Journal* at 100.

⁷³ See Olowu (2012) at 161.

9 APPLICATION OF THE CHARTER

To give effect to the commitments of the Charter, the Charter provides the respective actions that must be undertaken at a continental, regional and state level.⁷⁴ The following sections analyse the existing enforcement mechanisms of the Charter.

9.1 At continental level: The AU Commission

The Commission is obliged to develop mechanisms and create capacities for the implementation of the Charter.⁷⁵ These mechanisms and capacities should establish uniform standards to be followed by AU member states. Through the harmonisation of policies and laws of state parties, the AU Commission must also facilitate the creation of conditions for good governance, pursuant to article 23(2)(d). Through the AU Commission, the AU can be seen as an integrated body espousing the values and principles of good governance as a leader of African nations.⁷⁶ Persistent efforts to promote ethical frameworks in individual countries renew hope for improved public service governance.⁷⁷

9.2 At regional level

Article 23(2)(ii)(a) of the Charter requires RECs to, “[e]ncourage their Members States to ratify or accede” to the Charter and implement it. In accordance with their constitutive instruments, the RECs must infuse their legal instruments with the objectives, principles and values of the Charter.⁷⁸ In terms of article 23(1)(e), African states that excel must take steps to share their best practices. The cumulative effect of such arrangements would be to encourage ratification of the Charter.

9.3 At individual state-party level

State parties are required to implement the Charter in three main ways, namely through the adoption of legislative, executive, and administrative instruments. Each of the instruments is described briefly below.

9.3.1 *Legislative measures*

The translation of international and regional legal obligations into domestic legislation is often a challenge. Nonetheless, state parties are required to enact the legislative instruments that give effect to the objectives and principles of the Charter. There are different approaches to the relationship between international law and municipal law. These are monism and dualism. Under a monist approach, public international law and

⁷⁴ Chapter VI of the Charter.

⁷⁵ Article 23(2)(i)(g).

⁷⁶ Yoder & Cooper (2015) at 318.

⁷⁷ Yoder & Cooper (2015) at 318.

⁷⁸ Article 23(2)(ii)(b).

domestic law form a single system of law.⁷⁹ The ratified international agreements are directly enforceable in a monist state without requiring the domestication of the treaty into local law. Such treaties enjoy primacy over domestic legislation.⁸⁰ By contrast, a dualist approach considers public international law and domestic law as two separate legal systems. This entails that international agreements require formal incorporation into domestic law before they are enforceable in a dualist state. Therefore, where domestic legislation takes precedence over international agreements such as the Charter, more attention must be given to these dualistic states. The relevant member states must domesticate the Charter in order to integrate it with national laws.⁸¹

9.3.2 *Executive and administrative measures*

The Charter requires state parties to adopt executive and administrative measures for the purpose of giving effect to it. The enforcement of laws is vested in the executive arm of the state, which can also promulgate proclamations and regulations to institutionalise the objectives of the Charter. Through proclamation or notices, the executive can ensure the Charter's implementation. The significance of administrative policies lies in their ability to translate laws into tangible reality.

9.4 **Monitoring the implementation of the Charter**

The monitoring mechanism of the Charter works mainly through reporting. The following section seeks to establish whether the Charter provides an effective monitoring mechanism.

9.4.1 *Reporting mechanism*

State parties are obliged to submit every two years, from the date the Charter came into force, a report to the Commission on legislative or any other relevant measures taken to implement the Charter.⁸² A copy of the report shall be submitted to the relevant organs of the AU for appropriate action within their respective mandates.⁸³ Accordingly, through the Executive Council and the Conference of State Parties, the AU Commission prepares and submits to the Assembly a synthesised report on the implementation of Charter.⁸⁴ Thereafter, the AU Assembly takes appropriate measures with a view to addressing issues raised in the report.⁸⁵ The Pan-African Conference of Ministers of Civil Service, which (as mentioned) is now known as the African Union Commission

⁷⁹ Ferreira G & Ferreira-Snyman A "The incorporation of public international law into municipal law and regional law against the background of the dichotomy between monism and dualism" (2014) (17)4 *Potchefstroom Electronic Law Journal* at 1471.

⁸⁰ Ayeni VO *Domestic impact of the African Charter on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa: A case study on Nigeria* (unpublished LLM dissertation, University of Pretoria, 2011) at 18.

⁸¹ Musa SA "Charter for Public Service in Africa strategies for implementation in Nigeria" (2001) 8 available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044624.pdf> (accessed 10 February 2022).

⁸² Article 24(1).

⁸³ Article 24(2).

⁸⁴ Article 24(3).

⁸⁵ Article 24(4).

Specialised Technical Committee (STC) Number 8, has established a Sub-Committee on Public Service and Administration (AU-STC 8 on Public Service and Administration) and held a brainstorming consultative session on 25 to 27 July 2017 in Nairobi, Kenya. The consultative session concerned the development of model guidelines for reporting on the implementation of the Charter.⁸⁶

The results of this consultation are yet to be released, but they will be revised and aligned with the 2018 AU theme. In noting the urgent need to expedite the development of a model guideline for the reporting mechanisms, the Commission demonstrated the will to facilitate the implementation of the Charter and the desire to facilitate conditions for good governance. Having these model guidelines will enrich and appropriately direct the main implementation and reporting guideline, which the Commission shall develop in conjunction with the Conference of State Parties.

Balogun has written on the establishment of measures needed to facilitate the implementation of the now-defunct African Public Service Charter,⁸⁷ but his proposal is equally relevant to the development of implementation guidelines as required by article 23(2)(i)(b) of the present Charter.⁸⁸ Balogun suggested the integration of general and substantive provisions with parallel measures.⁸⁹ According to Balogun, for the Charter to be functional it must reflect broadly on four types of concerns. First, the government must require commitment to and effective implementation of its policy. Secondly, public service agents' constant demand for political neutrality and fair employment practices must be considered. Thirdly, there is a desire for improved and satisfactory standards of service delivery by users of public services. Lastly, citizens prefer administrative arrangements that promote high ethical standards which achieve integrity, accountability, transparency and related values in the conduct of public business.⁹⁰ In this regard, Balogun's recommendations can provide a basis for the effective implementation of the Charter and lead to positive outcomes when members report on the status of the Charter's implementation.

⁸⁶ African Union Commission, Department of Political Affairs "AU- STC8 Sub-Committee on Public Service and Administration" (2017) available at <https://au.int/en/pressreleases/20170726/au-stc8-sub-committee-public-service-and-administration> (accessed 10 February 2022).

⁸⁷ Balogun MJ "The African Public Service Charter: Implementation modalities, capacity-building implications and regional follow-up mechanisms" 17 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.566.913&rep=rep1&type=pdf> (accessed 10 February 2022).

⁸⁸ Article 23(2)(i)(b) mandates the AU Commission to develop guidelines on the implementation of the Charter in partnership with the Conference of State Parties.

⁸⁹ See Balogun MJ "The African Public Service Charter: Implementation modalities, capacity-building implications and regional follow-up mechanisms" 17 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.566.913&rep=rep1&type=pdf> (accessed 10 February 2022).

⁹⁰ Balogun MJ "The African Public Service Charter: Implementation modalities, capacity-building implications and regional follow-up mechanisms" 17 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.566.913&rep=rep1&type=pdf> (accessed 10 February 2022).

9.5 Effects of non-compliance

The Charter lacks a provision that deals specifically with non-compliance. Perhaps this is because the Charter is intended to establish a broad framework that guides member states on how to develop their public services and administrations.⁹¹ Generally, poor enforcement of national laws and policies, combined with lack of political commitment, exacerbates the disregard of public service ethics.

10 CONCLUSION

This article has argued that the Charter can provide a solution to the challenges that have plagued the African public service and administration. The Charter contains provisions with the potential for reforming the organisation and governance of public administration. If effectively implemented, the Charter could promote good governance. In conjunction with the Conference of State Parties, the Commission must expedite the creation of a Secretariat that will coordinate and undertake the implementation of duties, obligations and responsibilities enshrined in the Charter. The partnership must develop the implementation guideline that mainstream the Charter. The development process must involve a “bottom-up” approach, where direct inputs and consultations with various member states of the AU are taken into consideration.

AU member state have varying institutional structures. When coordinating the evaluation of the implementation of the Charter by state parties, the Commission must identify the national structures that are best positioned to secure the effective implementation of the Charter domestically. The Commission must also embark on awareness-raising campaigns to make the Charter’s existence and importance widely known. Additionally, the RECs must constantly urge their member states’ ratification, accession, and implementation of the Charter. They must draft and adopt legal instruments that integrate and consider the objectives, principles and values of the Charter. They must also seek to establish institutional structures that are geared towards the modernisation of the public service and administration, in particular by mainstreaming ethics and professionalism. In addition, RECs must address the discrepancies among themselves that often hinder efforts to strengthen integration on the continent.

AU member states must ratify, domesticate, and implement the Charter. Central to the Charter’s implementation is the political will to adhere to the rule of law. The legal framework, as guided by the Charter, must contain efficient regulatory structures as well as transparent systems for financial and legal accountability. There must also be respect for the political-administrative interface to secure the neutrality and loyalty of public service agents. Governments must engage in awareness-raising campaigns on the importance of high standards of ethical and professional conduct by public service agents. Users of public services and citizens must be sensitised on the benefits of

⁹¹ Jovini TE “Synopsis on African Charter on Values and Principles of Public Administration” (2011) 1 available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/130911synopsis.pdf> (accessed 10 February 2022).

actively and effectively participating in public processes for the purpose of generating solutions to public service malgovernance.

Civil society can play an active role in ensuring that governments adhere to internationally and regionally accepted standards of public service governance by lobbying for the ratification, domestication, and implementation of the Charter. The Charter can play a meaningful role in enabling scrutiny of the public service and its administration processes.

BIBLIOGRAPHY**Books**

Ayeni VO *The impact of the African Charter and the Maputo Protocol in selected African states* Pretoria: Pretoria University Law Press (2016)

Byaruhanga Rukooko AB *Accountability, responsibility and integrity in development: The ethical challenges in sub-Saharan Africa and beyond* Kampala: LawAfrica Publishing (U) Ltd (2010)

Tindifa S *Public accountability and good governance in East Africa* Kampala: Fountain Publishers (2009)

Chapters in books

Berhe A "Crisis of African states" in United Nations Office for ECOSOC Support and Coordination *Supporting Africa's efforts to achieve sustainable development* New York: United (2004)

Olowu D "Public administration in Africa: Deepening crisis despite reform efforts" in Peters PG & Pierre J (eds) 2nd ed *The SAGE Handbook of Public Administration* London: SAGE Publications Ltd (2012)

Waiguru A "Using codes of ethics to build the integrity of the public sector in sub-Saharan Africa in the context of the circular flow of values" in Byaruhanga Rukooko AB (ed) *Accountability, responsibility and integrity in development: The ethical challenges in sub-Saharan Africa and beyond* Kampala: LawAfrica Publishing (U) Ltd (2010)

Yoder DE & Cooper TL "Public service ethics in Africa" in Frederickson HG & Ghere RK (eds) 2nd ed *Ethics in public management* London and New York: Routledge, Taylor & Francis Group (2015)

Journal articles

Ferreira G & Ferreira-Snyman A "The incorporation of public international law into municipal law and regional law against the background of the dichotomy between monism and dualism" (2014) (17) 4 *Potchefstroom Electronic Law Journal* 1471-1497

Isaack SH "Continental imperatives of the African Charter on Values and Principles of Public Service and Administration" (2016) 6(2) *The South African Public Sector Innovation Journal* 20-29

Mbaku JM "Bureaucratic corruption in Africa: The futility of cleanups" (1996) 16(1) *The Cato Journal* 100-118

Odhiambo-Mbai O "Public service accountability and governance in Kenya since independence" (2003) 8(1) *African e-Journals Project* 113-145

Treaties

African Charter on Democracy, Elections and Governance, 2007

African Charter on Human and Peoples' Rights, 1981

African Public Service Charter A/56/63-E2001/21

African Charter on Statistics, 2009

African Charter on Values and Principles of Public Service and Administration, 2011

Reports and working papers

Armstrong E *Integrity, transparency and accountability in public administration: Recent trends, regional and international developments and emerging issues* New York: United Nations (2005)

De Melo J & Tsikata Y *Regional integration in Africa: Challenges and prospects* (2014) February 2014 UNU WIDER Working paper: WP/2014/037

Édes BW *The role of public administration in providing information offices & citizens information services* (2000), presentation at the EIPA Seminar on “An Efficient, Transparent Government and the Rights of Citizens to Information” 29-30 May 2000 Maastricht, The Netherlands

Ministry of Public Service of Uganda *Policy paper on the transformation of the Uganda Public Service* (2011)

Naidoo V *A human rights perspective on policy implementation processes: Observations from the South African public service* Democracy and Governance (2003)

Internet sources

“The African Conference of Ministers of Public Service and Administration: Advancing the African Agenda for Capable States” (undated) available at http://www.africamdin.net/documents/d00003/Pan-African_Conference_of_Ministers_for_Public_and_Civil_Service_English.pdf (accessed 8 February 2022)

African Union Commission, Department of Political Affairs “AU- STC8 Sub-Committee on Public Service and Administration” (2017) available at <https://au.int/en/pressreleases/20170726/au-stc8-sub-committee-public-service-and-administration> (accessed 10 February 2022)

Balogun MJ “The African Public Service Charter: Implementation modalities, capacity-building implications and regional follow-up mechanisms” available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.566.913&rep=rep1&type=pdf> (accessed 10 February 2022)

Demmke C & Moilanen T “Effectiveness of good governance and ethics in central administration: Evaluating reform outcomes in the context of the financial crisis” (2011) available at https://www.eupan.eu/wp-content/uploads/2019/05/2011_2_PL_Effectiveness_of_Good_Governance_and_Ethics_in_Central_Administrations.pdf (accessed 8 February 2022)

Ethics and Anti-Corruption Commission “The East African Community Protocol on Preventing and Combating Corruption to be adopted soon” available at <http://www.eacc.go.ke/WHATSNEW.ASP?ID=666&day=8/10/2015> (accessed 10 February 2022)

Ethics and Compliance Initiative “Ethics and compliance glossary” available at <https://www.ethics.org/resources/free-toolkit/toolkit-glossary> (accessed 8 February 2022)

Jovini TE “Synopsis on African Charter on Values and Principles of Public Administration” (2011) available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/130911synopsis.pdf> (accessed 10 February 2022)

Mudau P “Constitutionalisation of public service and administration in Africa” (2021) available at <https://africlaw.com/2021/03/23/constitutionalisation-of-public-service-and-administration-in-africa/> (accessed 16 February 2022)

Musa SA “Charter for Public service in Africa strategies for implementation in Nigeria” (2001) available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044624.pdf> (accessed 10 February 2022)

Ojigho O “State of Compliance with the Instruments and Norms of the African Union (AU): “State of the Union” (Sotu) Coalition Report” available at <https://docplayer.net/35881379-State-of-compliance-with-the-instruments-and-norms-of-the-african-union-au.html> (accessed 10 February 2022)

Support for Improvement in Governance and Management (SIGMA) “The principles of public administration” (2014) available at <http://www.sigmaweb.org/publications/Principles-Public-Administration-Overview-Nov2014.pdf> (accessed 10 February 2022)

Tjihambuma AT “Implementing the African Charter for the values and principles of public service and administration: Challenges and strategies” (2011) available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044654.pdf> (accessed 8 February 2022)

United Nations Development Programme “Case evidence on ethics and values in civil service reforms” (2007) available at <https://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/case-evidence-on-ethics-and-values-in-civil-service-reforms/Ethics-Values.pdf> (accessed 10 February 2022)

United Nations, Economic and Social Commission for Asia and the Pacific “What is good governance?” (undated) available at <http://www.unescap.org/sites/default/files/good-governance.pdf> (accessed 8 February 2022)

Theses

Ayeni VO *Domestic impact of the African Charter on Human and Peoples’ Rights and the Protocol on the Rights of Women in Africa: A case study on Nigeria* (unpublished LLM dissertation, University of Pretoria, 2011)