

**The African Charter on Democracy,  
Elections and Governance:  
Declaration vs. policy practice**

*Khabele Matlosa*

## Policy Brief 53

December 2008

Published by the Centre for Policy Studies, an independent research institution,  
incorporated as an association not for gain under Section 21 of the Companies Act.

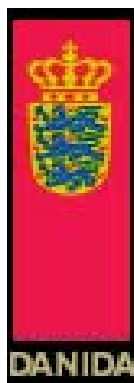
Centre for Policy Studies  
6 Sturdee Avenue  
Rosebank  
Johannesburg, South Africa  
Email: [portia@cps.org.za](mailto:portia@cps.org.za)

P O Box 1933  
Parklands  
Johannesburg, 2121

Tel (011) 442-2666  
Fax (011) 442-2677

[www.cps.org.za](http://www.cps.org.za)

Supported by the Royal Danish Embassy, Pretoria



## INTRODUCTION

The African Charter on Democracy, Elections and Governance was adopted by the African Union (AU) during the 8th Ordinary Session of the Assembly of the Heads of State and Government convened in Addis Ababa, Ethiopia on 30 January 2007. Although the overarching concern that propelled the Charter's development was the political destabilisation caused by unconstitutional changes of governments, its broad rationale was anchored on the following:

- Demonstrating commitment of AU member states to the universally accepted principles and pillars of democracy.
- The development of a clear agenda for institutionalising and strengthening democratic culture and a culture of peace consistent with the Constitutive Act of the AU.
- Setting up the institutional mechanism for democracy and peace-building in the African continent that complements the 1981 African Charter on Human and Peoples Rights, the 2000 CSSDCA<sup>1</sup> Solemn Declaration, the 2000 Declaration on the Framework for the OAU Response to Unconstitutional Changes of Government, the 2001 NEPAD, the 2002 NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, and the 2003 African Peer Review Mechanism (APRM)
- Reaffirming the centrality of democratic governance for sustainable development stability and security in Africa.
- Defining a clear methodology for a collective responsibility by AU member states for political, social and economic governance in pursuit of democracy, peace and development of the continent.
- The Charter is now available in all four official languages of the AU, namely English, French, Portuguese and Arabic. The evolution of the Charter involved commissioning the drafting tasks to the Electoral Institute of Southern Africa (EISA) which released its Research Director (this author) to provide technical assistance in the development of this historic document. With a view to ensuring that the Charter evolved in a consultative and inclusive manner, the methodology adopted for its development sought to bring on board as many key stakeholders as possible, including governments, civil society organisations, election management bodies, and academics. The adoption of the Charter was a culmination of various meetings of experts from government, the independent, and the legal sectors to debate and refine various drafts between 2005 and 2006. The main meetings were:

---

*The adoption of the  
Charter was a culmination  
of various meetings of  
experts*

---

<sup>1</sup>Conference on 'Security, stability, development and co-operation in Africa.'

- preliminary consultative meetings between the consultant and the Department of Political Affairs in May 2005, Addis Ababa, Ethiopia
- the Independent Experts Meeting in November 2005 in Addis Ababa
- the Meeting of the Government Experts in March 2006 in Addis Ababa
- the Meeting of Independent Legal Experts in April 2006 in Addis Ababa
- the back-to-back Government Experts and Ministerial Meetings in Brazzaville, Republic of the Congo in June 2006
- the Council of Ministers Meeting in July 2006 in Banjul, The Gambia, before the Charter was adopted in Addis Ababa in January 2007.

Since the Charter draws from the AU's commitment to democratic governance enunciated in its founding treaty, the Constitutive Act, we start with a brief discussion of the Act that formed the firm foundation for the Charter.

---

*The Constitutive Act  
also recognises that  
sustainable democratic  
governance in Africa  
requires political  
stability, peace and  
security*

## **THE CONSTITUTIVE ACT OF THE AU**

The 2000 Constitutive Act of the AU is the principal instrument and founding treaty that commits the 53 AU member states to democratic, representative and responsive governance under conditions of peace and stability. Articles 3 and 4 of the Constitutive Act enunciate the key objectives and principles of the AU. The principal plank of these two Articles is the unequivocal embrace of popularly elected governments and an outright rejection and condemnation of unconstitutional changes of government, in line with the 2000 Lome Declaration. Within the framework defined in these two Articles, the AU upholds the basic democratic principle that elections are a legitimate method of transfer of power and the only democratic manner of expressing popular sovereignty in representative democracy. The Constitutive Act also recognises that sustainable democratic governance in Africa requires political stability, peace and security in conformity with the 2002 Protocol relating to the establishment of the Peace and Security Council of the AU. Without political stability, peace and security, democracy is likely to be compromised and socio-economic development not realised. Recognising this challenge, the main objectives of the AU, as enshrined in the Constitutive Act, include the:

- promotion of peace, security and stability of the continent
- promotion of democratic principles and institutions, popular participation and good governance

- promotion and protection of human and peoples' rights in accordance with the African Charter on Peoples' and Human Rights and other relevant human rights instruments (Constitutive Act of the AU, 2000:5-6).

These objectives vividly demonstrate the evolving AU peace, democracy and human rights architecture in Africa. They are complemented by a set of clear principles that guide the Union, as articulated in Article 4. These include:

- respect for democratic principles, human rights and the rule of law and good governance
- respect for the sanctity of human life, condemnation and rejection of impunity and political assassinations, acts of terrorism and subversive activities
- condemnation and rejection of unconstitutional changes of government (Constitutive Act of the AU, 2000:7).

Various other AU documents<sup>2</sup> have reinforced its commitment to building a democratic, stable, peaceful and prosperous Africa. The Charter therefore builds upon democratic principles adopted by the AU through the Constitutive Act and its various declarations and protocols. It has brought all these commitments together into what will be a legally binding document once it is signed and ratified.

## THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

The process towards the development of the draft Charter was triggered by the Inaugural AU Summit of Heads of State and Government held in Durban, South Africa in July 2002. During that Summit, two declarations relating to democratic governance were adopted, namely the OAU Declaration on Principles Governing Democratic Elections and the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance.

---

<sup>2</sup> These documents include the 1981 African Charter on Human and Peoples' Rights; the 1990 African Charter for Popular Participation in Development; the 1990 Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World; the 1991 Treaty Establishing the African Economic Community; the 1995 Cairo Agenda for Action; the 1999 Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights in Africa; the 2000 Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government; the 2000 Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament; the 2000 Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration; the 2002 Memorandum of Understanding of Security, Stability, Development and Cooperation in Africa (CSSDCA); the 2002 Declaration on Democracy, Political, Economic and Corporate Governance of the New Partnership for Africa's Development (NEPAD) which, among other things, provides for the establishment of the African Peer Review Mechanism (APRM) which is an innovative instrument for promoting democratic governance in Africa; the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the 2003 African Union Convention on Preventing and Combating Corruption; the 2004 Protocol Relating to the Establishment of the Peace and Security Council of the African Union; the 2007 African Charter on Democracy, Elections and Governance.

The 2002 AU summit did not only get momentum going for advancing democratisation in the continent through the adoption of the NEPAD Declaration on Democracy and the adoption of the APRM, but it further triggered enthusiasm for the development of the African charter on democracy. This enthusiasm informed the organisation of a continental conference co-hosted by the Independent Electoral Commission (IEC) of South Africa, the African Association of Electoral Authorities (AAEA) and the African Union Commission (AUC) in Pretoria, South Africa on 7-10 April 2003, with the theme of 'Elections, democracy and governance: strengthening African Initiatives.' The conference involved various key stakeholders - such as the electoral management bodies, politicians, academic community, AU commission, government officials, donor community and other development partners. Participants agreed to the following principles of democratic governance:

- Entrenchment of democratic values and institutions to promote and strengthen constitutionalism and good governance.
- Promotion and protection of all basic human rights, freedoms and obligations as enshrined in relevant UN human rights instruments, and the African Charter on Human and Peoples' Rights.
- Constitutions and legal frameworks should determine the tenure and number of terms that a head of state and government can stand for elections.
- Political pluralism and freedom of association, assembly, political tolerance and promotion of free political activity.
- Establishment of independent electoral management bodies (EMBs) and other autonomous public institutions that support and entrench democratic governance, such as national human rights' commissions, anti-corruption commissions, public protectors, and independent judiciaries.
- Institutionalisation of certain and predictable election rules and procedures, and the entrenchment of uncertainty about electoral outcomes.
- Entrenchment of a culture of accountability of elected representatives.

The final statement<sup>3</sup> adopted by conference participants exhorted African states to expand the frontiers of democratisation. It was this statement that formed

---

<sup>3</sup> Participants to the conference expressed their collective support of the ideals of the AU and NEPAD aimed at ensuring the promotion of good governance and strengthening of democratisation, including delivery of free, fair and credible elections in Africa. The conference statement that was adopted at the end of the conference emphasised the following constitutional and legal frameworks for strengthening democracy in Africa: (a) constitutions and legal frameworks should entrench democratic values and institutions to promote and strengthen constitutionalism and good governance; (b) constitutions and legal frameworks should provide for all basic human rights, freedoms and obligations as enshrined in

the basis for the development of the draft declaration on elections, democracy and governance - the precursor to the Charter. A year after this conference, the 2003 Summit of the AU Heads of State and Government held in Maputo, Mozambique considered the draft declaration and mandated the AUC to transform this declaration into a charter.

The AU convened a meeting of government experts in Addis Ababa, Ethiopia from 15 to 17 May 2004 to discuss the draft that emanated from the Pretoria conference and considered by the AU summit in Maputo. Specifically, the meeting recommended that:

- the draft declaration contain a whole series of commitments already made by member states in the areas of democracy and governance, which the Commission would like to convert into a legally binding text, such as a charter
- the document deals with issues of relationship between democracy and the AU system; democracy and human rights; democracy, sustainable development and poverty alleviation; illiteracy and conflicts; strengthening and protecting democratic institutions; democracy and free and fair elections, and promoting democratic culture
- in view of the legal nature of such a document and the required procedures of a charter, the experts recommended that should the Executive Council accept the principle, it should mandate the Commission to convene a meeting of legal and other experts to examine the draft and put it in appropriate legal language before submitting it to the policy organs of the Union for adoption.

It was against this background that the AU commissioned the EISA Programmes Director to provide technical assistance in drafting the Charter between 2005 and 2007 when it was finally adopted after the intense debates and discussions involving various actors that have already been described.

---

relevant United Nations instruments and the African Charter on Human and Peoples' Rights; (c) constitutions and legal frameworks should determine the tenure and number of terms that a head of state and government can stand for elections; (d) constitutions and legal frameworks should provide political pluralism and freedoms of association, assembly and expression to promote free political activity; (e) constitutions and legal frameworks should provide for establishment of independent election management bodies and independent institutions that support and entrench democracy such as national human rights commissions, anti-corruption bodies and independent judiciaries; (f) constitutions and legal frameworks should regulate the calling of elections allowing for sufficient time for proper preparations. A period of not less than 45 days and not more than 90 days within which to prepare for elections should be the norm; (g) constitutions and legal frameworks should promote accountability of elected representatives.

Once adopted, the Charter can only be effectively enforced 30 days after its ratification by 15 AU member states. So far, about 17 member states<sup>4</sup> have signed the Charter. No AU member state has as yet ratified it. Before signature and ratification, the Charter cannot be domesticated and applied; thus the task facing member states is to sign and ratify it in preparation for its application at national level. While adopting the Charter was a significant milestone - demonstrating the profound commitment of the AU member states to democratic governance, thereby jettisoning the age-old culture of unconstitutional change of governments without signature and ratification - the Charter will remain inactive, without legal teeth.

For this reason, between 2007 and 2008 the Department of Political Affairs embarked upon a popularisation programme which aimed to implore AU member states to sign and ratify the Charter. The principal objectives of these popularisation workshops, which involved all the five sub-regions of the continent, were to:

- sensitise decision makers and other stakeholders on the value and contents of the Charter
- develop common perspectives on how ratifying the Charter can contribute towards the improvement of governance within each region
- build an understanding of the role of different actors in the ratification process
- share insights on the various ratification procedures applied by member states
- establish a common perspective on the actions that would be taken at sub-regional and member-state levels to ensure that the Charter is ratified
- contribute towards the overall continental framework for action on popularising, ratifying and applying the Charter.

The Charter derives its authority and legitimacy from the Constitutive Act of the African Union, which commits AU member states to participatory democracy, constitutionalism, rule of law, human rights, peace and security, as well as sustainable human development in Africa. As noted (see footnote 1) it builds on various previous commitments of the member states to democratic governance enunciated through numerous declarations, decisions and instruments.

---

<sup>4</sup> These include Benin, Burkina Faso, Burundi, Congo-Brazzaville, Djibouti, Ethiopia, The Gambia, Ghana, Guinea, Mali, Mauritania, Mauritius, Namibia, Nigeria, Rwanda, Swaziland and Togo.



The Charter, therefore, draws together the member states' commitment and noble declarations into a single consolidated treaty with legally binding commitments. It serves as a point of reference for all AU efforts aimed at enhancing the overall state of democracy, elections and governance throughout the continent. By adopting it in January 2007, member states have committed themselves to an established set of common standards, principles and guidelines for participatory democracy, credible elections and good governance, in the process holding each other accountable for their actions and inactions.

More specifically, the Charter was the result of a long-standing concern of AU member states about unconstitutional changes of government and the consequent political instability, insecurity and violent conflict. These changes had become a major destabilising factor in Africa, reversing democratic gains and arresting socio-economic development. Article 23 of the Charter provides that the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'état against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections.
5. Any amendment or revision of the constitution or legal instruments, which is an infringement of the principles of democratic change of government.

Drawing from the 2000 Lome Declaration, the AU Constitutive Act and the above article of the Charter, there is a clear commitment by member states to jettison the cancerous culture of unconstitutional changes of government. Military coups have been met with punitive measures by the AU through the Peace and Security Council; the latest military coup in Mauritania led to the country's membership of the AU being suspended and diplomatic efforts made to restore democracy, peace and security. Member states are now more committed than ever to promoting and strengthening democratic governance through citizen participation, transparency, accountability, rule of law, gender equality, decentralisation, human development, eradication of poverty and credible elections.

---

*Erroneously, political  
players tend to  
perceive elections as a  
zero-sum game*

- The Charter thus reinforces the commitment of AU member states to holding credible, transparent and legitimate elections that add value to democratic governance, and in the process promoting peace, security and political stability, all of which are critical pre-requisites for socio-economic development. Member states will strive to hold genuine and credible elections with legitimate and acceptable outcomes. To this end, the Charter exhorts member states to:
- establish and strengthen independent and impartial national electoral bodies responsible for the management of elections
- establish and strengthen national mechanisms that redress election-related disputes in a timely manner
- ensure fair and equitable access by contesting parties and candidates to state- controlled media during elections
- ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior to, during, and after elections. The code shall include a commitment by political stakeholders to accepting the results of the elections or challenge them only through legal channels.

One of the factors that fuel political tension around elections is a simple misunderstanding among political players of the electoral contest, its rules, and their application. This situation leads to mistrust and mutual suspicion. Erroneously, political players tend to perceive elections as a zero-sum game in which the winner takes all and the loser loses everything. Elections, however, should be perceived as a positive-sum game in which both the winners and losers accept the outcome and feel bound to co-operate in the governance process following the poll. This is one reason why the Charter encourages systematic and regular dialogue among key political players. Article 13 provides that "state parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace." The adoption of the Charter by the AU is a significant step in the right direction. Experience has shown that adopting progressive peace, security and democracy declarations is one thing, while translation of these instruments into legal frameworks and policy practice is quite another. It is therefore incumbent upon the AU to sign, ratify and domesticate the Charter. Concrete steps towards achieving the goals and objectives of the CSSDCA and the Democracy Charter will go a long way in building peace and promoting democratic governance in Africa.

## FROM DECLARATION TO POLICY PRACTICE

---

*It is therefore  
incumbent upon the AU  
to sign, ratify and  
domesticate the  
Charter*

As discussed earlier, the adoption of the Charter without signature and ratification will not be enough to transform the governance architecture in Africa. Evidence suggests that the AU has signed numerous progressive declarations to date, many of which have not been translated into policy practice by way of law reform, reform of governance institutions, transformation of political culture, and socio-economic policy reviews and adaptation. The slow pace of signatures by member states makes it clear that their enthusiasm is lukewarm. This may be explained by the fact that not many African states are fully fledged democracies; many of them are caught between multi-party democracy and autocratic governance systems. It will be recalled that many African countries adopted autocratic governance systems (of both military and civilian varieties) some five or so years after attaining political independence. One-party and one-man rule became the norm. Military dictatorships were common. Elections were meaningless. Elections without competition became a liability, rather than an asset to democracy.

An election is a key ingredient of democracy. According to Steffan Lindberg, “every modern definition of representative democracy includes participatory and contested elections perceived as the legitimate procedure for translation of rule by the people into workable executive and legislative power” (Lindberg 2006:1). Thus, while an election has its own intrinsic value (citizens’ choice of leadership), it also has an instrumental value, namely to build, nurture and consolidate democratic governance, peace and political stability. This means that an election for its own sake is an exercise in futility. An election should not be an end in itself; it must be a means to an end. That end is the transformation of society into more open and pluralistic politics that allow citizens to participate in the choice of their leaders and the governance of national affairs.

If elections do not contribute effectively to the democratic transformation of society, they become mere rituals, which are used to camouflage illiberal democracies and authoritarian governance. In a recent seminal work, Sørensen reminds us that not all elections have led to transition to democratic governance, as some African countries have tended to vacillate between democratic ‘transition’ and ‘stand-still’ while others have witnessed democratic ‘reversals’. The majority of African countries have experienced a democratic stand-still and, according to Sørensen, “most of these countries are not on the way to more democracy and will probably remain in the gray zone” (2008:65). It is these gray-zone regimes that are dubbed illiberal democracies (see Schedler 2002). Those are the regimes that - on the face of it - exhibit democratic

---

**The Charter was prompted by the desire on the part of African states to reverse the cancerous culture of unconstitutional changes of government**

tendencies, but under the veneer of democracy lies a deep-seated authoritarian mode of governance. Some of the characteristic features of illiberalism include vote-buying, legal fine-tuning, ethnic affirmative action, emergency laws, and restrictions on the right to organise, debate and voice opinions. It is no exaggeration to say that many African states can be classified as illiberal democracies. This may explain the ostensible lack of interest in signing, ratifying, and adapting the Charter domestically. Will the Charter facilitate transformation of African political systems away from illiberal democracies towards fully fledged democracies?

It is worth reiterating that the Charter was prompted by the desire on the part of African states to reverse the cancerous culture of unconstitutional changes of government. The Charter has a specific section that deals with this problem in detail, suggesting strategies that need to be adopted to eradicate this culture. Despite this commitment on the part of the AU member states, which also draws from the 2000 Lome Declaration, military coups continue to take place, the latest being a recent military putsch in Mauritania which led to the AU, through the Peace and Security Council, reacting by suspending this country. The Charter has also expanded the definition of unconstitutional changes of government through inclusion of Article 23 sub-section 5, which provides that unconstitutional manipulation of tenure of office of governments amounts to unconstitutional change of government. Despite this provision, the manipulation of constitutions aimed at prolonging terms of office of incumbents is still with us (see Saungweme 2008). One of the pioneers of NEPAD and APRM, Olusegun Obasanjo, former president of Nigeria, made an abortive attempt to change the constitution to prolong his tenure of office. President Biya of Cameroon has been in power since 1982 and has changed the constitution, removing a provision that would limit his term. President Yoweri Museveni has also changed the constitution to remove limits on his tenure in office. Will the Charter inculcate a culture of constitutionalism and rule of law which will compel African leaders to respect their countries' constitutions?

Ideally, elections are supposed to ensure democratic governance and facilitate peace and political stability. Democracy cannot prevail and become sustainable if peace and political stability are non-existent. By the same token, under conditions of protracted violent conflict, war and political instability, socio-economic development is impossible. Africa's diverse societies are often conflict-prone; these conflicts threaten nation-building and social harmony. While these conflicts occur all the time, they tend to be exacerbated during elections, which entail political contestation over the control of the state for stakes that are too high. This is even more so in countries where the state provides an avenue for patrimonial politics and where elite enrichment is assured through state-sponsored accumulation. The capture of the state then is

---

*Effective conflict  
management  
structures should be  
established*

perceived as a political licence for self-serving accumulation and the election is seen as the route to capturing the state either by fair or foul means. It is in this context that often ruling parties tend to abuse state resources during elections, simply to gain political mileage to the disadvantage of opposition parties. One good example of abuse of state resources is the unequal access of contestants to public media during election campaigns.

The electoral contestation becomes so fierce that elections at times are considered to be war by another name. In some instances, ballots are disregarded as contestants quickly resort to bullets to capture state power. As bullets replace ballots, often the main victims are the ordinary citizens who get caught in the cross-fire of power-hungry politicians. In the process politics becomes militarised and the military becomes politicised, all in the name of contestation for state power. Recent elections in Africa that have triggered violent conflicts include Nigeria (2007), Lesotho (2007), Kenya (2007) and Zimbabwe (2008). It is imperative that elections are transformed to become conflict management tools or instruments, rather than triggers of violent conflict, war and political instability. Effective conflict management structures should be established to ensure that electoral disputes are handled amicably and dealt with early enough, before they escalate into violent conflict. Furthermore, given the socio-economic, religious, ethnic and gender cleavages that mark diverse African societies, power-sharing arrangements (at both national and sub-national levels) should be institutionalised so as to transform politics from a zero-sum game into positive-sum game. The Charter needs to facilitate the holding of credible and transparent elections with institutionalised mechanisms for the prevention, management and resolution of election-related conflicts.

## **CONCLUSION**

This Policy Brief unravels the evolution of the African Charter which, if effectively implemented, may radically transform Africa's governance architecture and in the process improve the livelihoods of ordinary people on the continent. The democratisation process in Africa has been bedeviled by various endogenous and exogenous challenges (see Ake 1996; Ake 2000). The Charter aims to tackle the challenges confronting political and socio-economic governance in the continent. This paper argues that the Charter is a progressive step in the right direction in terms of the advancement of democratisation in the continent especially in light of the all-pervasive phenomenon of 'democratic stand-still' (Sørensen 2008) and/or 'democratic backsliding' (McMahon and Baker 2006; McMahon 2008) in some African countries. However, the adoption of the Charter on its own may not be enough. It will have to be translated into

policy practice through appropriate governance reforms aimed at effective nurturing and consolidation of democracy on the continent.

## REFERENCES

Ake, C. 1996. *Democracy and Development in Africa*, Washington DC: The Brookings Institution.

Ake, C. 2000. *The Feasibility of Democracy in Africa*, Dakar: CODESRIA Books.

AU. 2007. African Charter on Democracy, Elections and Governance, Addis Ababa, Ethiopia (mimeo)

Lindberg, S. 2006. *Democracy and Elections in Africa*, Baltimore: The John Hopkins University Press.

McMahon, E. and S. Baker. 2006. *Piecing a Democratic Quilt? Regional Organizations and Universal Norms*, Bloomfield: Kumarian Press.

McMahon, E. 2007. The African Charter on Democracy, Elections and Governance: a positive step on a long path, *OPENSOURCE*, vol. 2 issue 1, November.

Saungweme, S. 2008. A critical look at the Charter on Democracy, Elections and Governance in Africa, Open Society Institute, Afrimap (mimeo).

Schedler, A. 2002. Elections without democracy: the menu of manipulation, *Journal of Democracy*, 13(2), April.

Sørensen, G. 2008. *Democracy and Democratisation: Processes and Prospects in a Changing World, Third Edition*, Boulder: Westview Press.