

Brainstorming Session on “Popular uprisings” and its Impact on Peace and Security on the Continent

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Tomorrow (22 August) the African Union (AU) Peace and Security Council (PSC) will hold its 871st meeting. This is designed to be a brainstorming session on the concept of “popular uprisings” and its impact on peace and security on the continent.

International Institute for Democracy and Electoral Assistance (IDEA) and the Institute for Security Studies (ISS) are expected to brief the PSC. The Department of Political Affairs that has been engaged on the subject of popular uprisings and unconstitutional changes of government (UCG) is also best placed to provide insights on the subject. Ambassador Albert Chimbindi, chair of the month, is expected to make a statement highlighting the issues that need to be interrogated during the session.

While recent events in Algeria and more specifically Sudan reignited policy interest in the subject, it was the popular uprisings that erupted in North Africa in 2011 that first brought the issue of popular uprising to the fore of continental peace and security agenda. The AU responded to those events, particularly the precedent setting events in Tunisia, in relation to its norm banning unconstitutional change of government (UCG). Although in a strictly legalistic interpretation the ouster through street protest of Tunisia’s then President Ben Ali in early 2011 could have been deemed an UCG on account of the fact that it was not constitutionally

envisaged, the PSC did not consider the lack of stipulation of changing government through popular uprising in Tunisia's constitution as an UCG. Instead, it expressed its respect for the democratic aspiration and the will of the people, implying that the demand for constitutional rule is not simply about respecting constitutional processes for their own sake but about safeguarding the will of the people.

Clearly the issue of popular uprising has since that time become recurrent, it was in 2014 that the PSC looked specifically into the question of the relationship between popular uprising and UCG. Under Nigerian chairmanship in April 2014, the PSC dedicated its 432nd session to the theme 'unconstitutional changes of government and popular uprisings – Challenges and lessons learnt'. In the statement issued at the session, the PSC affirmed the legitimacy of popular uprisings. It in particular held that '[i]n circumstances where governments fail to fulfill their responsibilities, are oppressive and systematically abuse human rights or commit other grave acts and citizens are denied lawful options,' it 'recognized the right of the people to peacefully express their will against oppressive systems.'

At the same time, the PSC in this statement also underscored the need 'for developing a consolidated AU framework on how to respond to situations of unconstitutional changes of government and popular uprisings'. It in particular noted that such a framework 'should include the appropriate refinement of the definition of unconstitutional changes of government, in light of the evolving challenges facing the continent, notably those related to popular uprisings against oppressive systems, taking into account all relevant parameters.' Indeed, this is important since the AU norm on UCG as it stands offers no clear and systematic guidance on how to differentiate legitimate popular uprising from acts that can be considered as UCG and on how to respond to such popular movements. The PSC accordingly tasked 'the Commission to prepare the elements

of the framework and to submit to it for consideration.'

While there has been efforts within the Department of Political Affairs to undertake the review process, there has been no follow up on this subject from the side of the PSC. Instead, the issue featured as part of the final report of the AU High-level Panel on Egypt in June 2014. Observing the lacuna in the AU norm on UCG, the Panel proposed the elaboration of a guideline for determining the compatibility of popular uprisings that result in a change of government with the norms on UCG. According to the proposal, for popular uprisings to be compatible with existing AU norms, consideration should be had to the following five elements: '(a) the descent of the government into total authoritarianism to the point of forfeiting its legitimacy; (b) the absence or total ineffectiveness of constitutional processes for effecting change of government; (c) popularity of the uprisings in the sense of attracting significant portion of the population and involving people from all walks of life and ideological persuasions; (d) the absence of involvement of the military in removing the government; (e) peacefulness of the popular protests'.

As can be seen from these considerations, rather than being completely new the Panel built on the press statement of the PSC from its 432nd session as the references to failure of the government or its descent into repressive authoritarian rule and the lack of any effective constitutional means for changing the government (the principle of last resort) make it clear.

In a measure that illustrated an emerging norm affirming the legitimacy of popular uprisings, the PSC reiterated the language it used in its press statement of 432nd session in the case of Burkina Faso. The PSC in the communique of its 465th session relating to the situation in Burkina Faso of made reference to "the recognition of the right of peoples to rise up peacefully against oppressive political systems". Even

more recently in relation to the situation in Sudan, the PSC clearly stated its recognition of the 'legitimate aspirations of the Sudanese people to the opening of the political space in order to be able to democratically design and choose institutions that are representative and respectful of freedoms and human rights'. The PSC accordingly made a distinction between the popular protests in Sudan and the military takeover of power, which it condemned as being contrary to the AU norm on UCG.

Clearly, AU's treatment of the popular uprisings in North African, Burkina Faso and most recently in Sudan vis-à-vis its norm on UCG has signaled a new approach in interpreting legal frameworks that provide justification and legitimacy for popular uprisings in ousting authoritarian regimes. Yet, although the considerations elaborated in the final report of the AU High-level Panel on Egypt offer the framework for establishing the framework for distinguishing those popular uprisings that constitute UCG from those that do not, there has been no follow up to the Panel's useful foundational work. Accordingly, there remain lack of clarity including on the question of what makes an uprising or protest movement popular and hence consistent with the AU norm on UCG.

The most recent background to the agenda of this session is the surge of protest events on the continent. While these events have been witnessed in many parts of the continent, they have been notable, among others, in Burundi, Congo, DRC, and Ethiopia. Indeed, some of the conflict data sets notably the Armed Conflict Location and Event Data (ACLED) noted that, accounting for a total of 5660 events in 2017, protests and riots have become the leading conflict or crisis events on the continent.

This session affords the PSC an opportunity for clarifying a number of questions related to popular uprisings including vis-à-vis the list of considerations developed in

the June 2014 AU High-Level Panel report. Apart from the question noted above, these questions include who makes the determination of when an uprising becomes popular, what sets ordinary protest events apart from popular uprisings and whether there is a threshold that should be met for making such determination. While these questions are important, it is worth recognizing that there can be no full proof and mathematically precise formula for making determination on these questions.

What these questions rather highlight is the need for following up on the outstanding tasks stipulated in the press statement of the 432nd session of the PSC. The PSC is holding tomorrow's brainstorming session five years after its landmark meeting on UCG and popular uprising in 2014. This presents it with the opportunity for making such follow up to the outcomes of its 432nd session.

As a brainstorming session, the expected outcome of the session remains unclear. Yet, irrespective of whether the outcome takes the form of a communique or press statement, it is expected that the PSC would reiterate its 432nd session on the need for addressing the gap in the AU normative framework. More specifically, the PSC may also task the AU Commission to establish an ad hoc body composed of the PSC Committee of Experts and legal experts who have studied the issue to produce and submit to it a proposal with objective guidelines on determining popular uprisings based on the various PSC outcome documents and the outline set out in the report of the AU High-Level Panel and with the support of the Department of Political Affairs and the AU Legal Counsel. The PSC may also call on for addressing the root causes of popular dissent highlighted in its 432nd session including through the expansion of the democratic space, respect for constitutional term limits, ensuring the credibility of elections as the normal avenue for changing governments and by addressing socio-economic grievances and inequalities.