

Is the AU addressing the challenges to effective enforcement of its norm banning Unconstitutional Changes of government?

The 36th Ordinary Session of the African Union Assembly will be held on 18-19 February preceded by the 42nd Ordinary Session of the Executive Council on 15-16. As part of covering this years summit, we profile some key issues and events around the summit. In the light of the democratic regression the continent, like other parts of the world, is experiencing, one event we wish to profile is the 2023 Africa Governance Report expected to be tabled and adopted by the Assembly. The thematic focus of the 2023 African Governance Report by the African Peer Review Mechanism is unconstitutional changes of government. The think piece below seeks to offer reflection on an aspect of this theme.

Is the AU addressing the challenges to effective enforcement of its norm banning unconstitutional changes of government?

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In 2021, Africa experienced what the UN Secretary General termed 'epidemic of coups'. It was in 2021 for the first time in the 20 years of operation of the AU that the AU suspended four of its member states in one calendar year. During 2021-2022, Africa has experienced six instances of military

seizure of power. If one adds to the list attempted coups or plots of coups reported by states, there were a total of 14 instances of successful coups, attempted coups and plots of coups on the continent during 2021 and 2022.

While there are a number of factors that account for this 'epidemic of coups' as discussed in fair details ([here](#) and [here](#)), some of these are specific to the gaps in both the AU norm banning unconstitutional changes of government (UCG) and in its enforcement.

One major gap in the norm is the lack of criteria and mechanism for determining the occurrence of one of the instances of unconstitutional changes of government stipulated in Article 23(5) of the [African Charter on Democracy, Elections and Governance](#) (ACDEG) – 'any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government' manipulation of term limits or 'constitutional coups'. This is critical considering that the Peace and Security Council, AU's highest standing decision-making body on matters of peace and security and constitutional governance, deemed **'manipulation of national constitutions to extend term limits' as one of the issues threatening peace and security on the continent**. The other gap is the absence of clear criteria on conditions that should be met for the lifting of suspension of a country from the AU for UCG.

The lacunae in enforcement of the ban on UCG involves both the predictability of the process for applying suspension from AU and/or the consistency of the PSC in applying suspension and AU member states commitment to fully uphold the principle of zero tolerance to UCG and the application of suspension against states where UCG takes place without distinction.

It is to be recalled that this epidemic of coups triggered a plethora of policy actions on the part of the AU. While the PSC has been the main site of such actions, it has also led to

actions at the level also of AU's highest decision making body, the Assembly of the AU. Following its decision in January 2022 for convening a continental forum on UCG, the PSC convened the Accra Forum on UCG in March 2022. This continental forum, which brought together AU member States, AU organs, Regional Economic Communities/Mechanisms, constitutional experts and CSOs including research organizations, produced the [Accra Declaration](#) on UCG, which the PSC adopted in one of its sessions subsequently.

At the level of the AU Assembly, it took a decision in February 2022 that it would convene an extraordinary summit which would have as one of its focus this upsurge of UCG on the continent. Accordingly, on 28 May 2022, the Assembly held its [16th extraordinary summit](#) which as part of its declaration addressed the spike in the incidents of UCG, which, among others, endorsed the Accra Declaration.

The review of the plethora of policy activities shows that the AU has started to address the gaps in the enforcement of AU's norm banning UCG, albeit progress remains uneven, slow and partially adequate.

The Accra Declaration, as endorsed by the AU Assembly, for example expresses the commitment to comprehensively address factors which lead to UCG, including manipulation of democratic processes to tamper with constitutions and effecting amendments to electoral laws within a short span before the elections and without the consent of the majority of political actors and in violation of the stipulated national democratic principles, rules and procedures for constitutional amendment.' In this respect beyond **appealing** 'to Member States to respect their respective Constitutions, especially adherence to presidential term limits and to organize free, fair, transparent and credible elections in line with national laws and international norms, as well as respecting the outcomes of election,' the Accra Declaration, stressed the need for the AU to finalise and adopt the AU

guidelines on the amendment of constitutions in Africa based on the AU's existing laws, policies and practice relating to constitutionalism and rule of law.'

Considering the continuing challenge of manipulation of constitutional amendments for extending term limits or removing constitutional term limits, the process towards the adoption of the guidelines on amendment of constitutions remains slow. While the development and eventual adoption of the guidelines helps towards addressing manipulation of constitutional amendments for extending or removing term limits, the effectiveness of these guidelines in this respect depends on whether they provide the PSC with clear and implementable criteria for determining the occurrence of UCG under Article 23(5) of the ACDEG.

In terms of the Malabo Declaration, apart from the endorsement of the Accra Declaration, the most important element relates to what the Assembly outcome document said about commitment of member states to the norm banning UCG. As advocated in Amani Africa's various works including the policy brief published ahead of and targeting the Malabo summit, the Declaration not only 'unequivocally condemn all forms of unconstitutional changes of government' and reiterated member states 'zero tolerance' in this respect but also recommitted member states to total adherence to ACDEG and the [Lomé Declaration](#). This is particularly important given that the lack of strong consensus and support for AU norms by member states are among the factors for the weakening of the efficacy of the sanctions in 2021.

The translation of this reaffirmation of zero tolerance to any form of UCG into action by applying the rule consistently is the litmus test for demonstrating the firmness of the commitment of states. After all, as the old saying holds, the test of the pudding is in the eating!

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