

# **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 was held on 18-19 February preceded by the 42nd Ordinary Session of the Executive Council on 15-16. As part of covering this year's 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 presented to the Assembly. The thematic focus of the 2023 African Governance Report by the African Peer Review Mechanism is unconstitutional changes of government. In this second and last part, we provide further analysis on where progress is being made and where it is lacking.

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

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In a clear admission that the AU norm banning coups faced serious enforcement challenges, the Peace and Security Council (PSC), African Union's (AU) highest standing decision making body on matters peace and security, convened one of its important sessions on the subject on 15th August 2022.

Convened under the theme ‘Sanctions and enforcement capacities: deterrence against unconstitutional changes of government (UCG)’, the session served as a follow-up to the outcome of the [16<sup>th</sup> Extraordinary session](#) of the AU Assembly of Heads of State and Government held on 28 May 2022 in Malabo, Equatorial Guinea. Notably, the session aimed at assessing the effectiveness of sanctions in deterring UCGs in Africa, as well as the capacities of the existing enforcement mechanisms.

The range of policy issues for consideration in this session are canvassed in full detail in [the analysis](#) we produced ahead of the session. As highlighted in Amani Africa’s [Policy Brief](#) produced ahead of the Malabo summit, the fact that sanctions imposed on Mali in April 2021 did not deter subsequent coups in four other cases, has brought into sharp focus the efficacy of the responses of the AU and Regional Economic Communities and Regional Mechanisms (RECs/RMs) involving suspension and other forms of sanctions.

In the [Communique](#) it adopted on the session, the PSC admitted with concern ‘the challenges facing the implementation of AU sanctions regime against unconstitutional changes of government.’ This, according to the PSC, is due, among others, to ‘lack of coordination between the AU and RECs/RMs, partners as well as the actions of external actors.’ Indeed, as pointed out in our analysis, on the normative plane, not all RECs/RMs have comparable standards making military coups illegal. In the absence of all RECs/RMs having standards banning UCG comparable to the AU norm, the AU and RECs/RMs face the unavoidable challenge of adopting complementary positions. That is why, for example, it is difficult to coordinate between IGAD and AU in respect to the coup in Sudan. Accordingly, the PSC should have called on RECs/RMs lacking such norms and authority to sanction UCG, to adopt legal instrument authorizing them to sanction their occurrence. Instead, the PSC ‘underscored the need to improve coordination of efforts to achieve wider buy-in of AU sanctions by other

international actors, as well as to ensure synergies between AU sanctions and sanctions imposed by similar intergovernmental organizations, particularly the RECs and UN.’ It also reiterated the need ‘for full implementation of the commitments of the Accra Declaration on Unconstitutional Changes of Government and the Assembly Decision and Declaration on Terrorism and Unconstitutional Changes of Government.’

Another issue that arose during the session of the PSC and highlighted in our analysis was the absence of a common framework on a) what kind of sanctions (beyond suspension) to be applied, b) under what circumstances, c) the mechanism for monitoring and d) the criteria for the lifting of such sanctions. In this respect, the PSC underlined ‘the importance of refining existing sanctions pronouncements into consistent frameworks that are aligned with the current evolution of the challenges they are meant to address.’

To this end, it requested ‘the AU Commission, in collaboration with the UN stakeholders and relevant African research institutions and think tanks including the African Members of the UN Security Council (A3) and UN Security Council Permanent Members, to explore and to develop an effective mechanism for the strengthening of the AU sanctions regime and providing appropriate technical capacities to the PSC Committee of Experts and the Military Staff Committee.’ As a follow up to this request, the AU Commission convened a workshop in Ghana in September 2022. The work for developing such effective sanctions framework has since been underway.

Of course, the development of this framework needs to build on the existing norms of the AU which in various ways present in a skeletal form the sanction for UCG. These AU norms include: the AU Constitutive Act, the Lomé Declaration, the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, and the African Charter on Democracy, Elections, and Governance (ACDEG). In particular,

Chapter 8 of the ACDEG specifically outlines 'Sanctions in Cases of Unconstitutional Changes of Government'. It defines UCGs in Article (23); it empowers the PSC with powers to impose sanctions against Member States (Article 24); and it details the types of sanctions that could be imposed against the Member States and perpetrators (Article 25).

African Peer Review Forum of Heads of State and Government, High-Level Validation of the Africa Governance Report 2023 (AGR2023) on UCG, 07 February 2023

*Source: Office of the Presidency, Republic of Sierra Leone*

In terms of strengthening the structures and processes for enhancement of the effectiveness of sanctions, the PSC called for the operationalization of the PSC Sub-Committee on Sanctions, the development of the requisite technical capacities to ensure its effectiveness and directed the PSC Committee of Experts to draw up the terms of reference of the Sub-Committee.

Most notably, the PSC went further and provided for the establishment of both 'a solid sanctions infrastructure... that will effectively support the work of the PSC Sub-Committee on Sanctions' and 'a monitoring and evaluation group, to assess the implementation of the sanctions imposed against the Member States.' While the development of such institutional structures for the AU sanctions is a welcome development, the form that such structures take is yet to be seen. Of particular significance is also the provision for the establishment of the monitoring and evaluation group.

It is worth recalling that [our analysis](#) also underscored the need for 'an expert body (which) could play an instrumental role in monitoring implementation of sanctions imposed by the Council and in assessing fulfilment of conditions for their lifting thereof.' Depending on the terms of reference of the expert group and the criteria that is used for the group to

develop the technical assessment on the occurrence of UCG to propose the type of combination of response measures for adoption by the PSC and to monitor the implementation of the measures, this stands to contribute to the credibility and predictability of PSC's responses to UCG.

There were a few things that did not receive the level of adequate attention that they deserved. The first is the need for strengthening the support of member states for the AU policy of zero tolerance to coups. This is particularly important given that the lack of strong consensus and support for AU norms banning coups by member states is one of the factors for the weakening of the efficacy of the sanctions in 2021. The other issue not addressed in the PSC communiqué is the lack of consistency in how the PSC applies its power under Article 7(1)(g). As we pointed out in our analysis, the failure of the PSC to apply (on Chad) the same measures it applied on Mali has led to legitimate charges of 'selective application'. The PSC also missed an opportunity to address the lack of established criteria for applying Article 23(5) of the ACDEG that enables the AU to sanction not only coups but also unconstitutional extension of presidential terms.

On further strengthening the nature and scope of the response to UCGs, the PSC called for 'a new strategic approach that will *simultaneously employ* mediation and peace-building to prevent and resolve conflicts.' Both in the policy brief we published to inform the Extraordinary AU Assembly Session in Malabo and the edition of *Insights on the PSC* for this session, our analysis underscored the need for the response of the AU and RECs/RMs to go beyond adopting sanctions. It emphasized the imperative for the deployment of robust diplomatic initiative as critical measure for ensuring that relevant reform measures that guarantee sustainable restoration of constitutional order are pursued as part of the transitional process.

Ultimately, effective application of the AU norm banning coups

depends on AU's firmness and consistency in applying the relevant provisions as well as the reversal of the unfolding democratic regression and the accompanying lack of commitment to constitutionalism on the continent.

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