

Sanctions and Enforcement Capacities: Deterrence Against UCG

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Tomorrow (15 August), the African Union (AU) Peace and Security Council (PSC) is set to convene its 1100th session to discuss “sanctions and enforcement capacities: deterrence against unconstitutional changes of government (UCG)”.

Following opening remarks of the Permanent Representative of The Gambia to the AU and Chairperson of the PSC for the month, Jainaba Jagne, AU Commissioner for Political Affairs, Peace and Security (PAPS), Bankole Adeoye is expected to deliver a statement. Representatives of the respective Regional Economic Communities/Regional Mechanisms (RECs/RMs) are also expected to deliver statements while presentations will be made by representatives of the United Nations (UN) and the Institute of Security Studies (ISS).

The recent resurgence in UCG in the continent, noted particularly over the course of 2021, has brought the issue to the fore of policy discourse continentally in the AU and various state and non-state actors and regionally at RECs/RMs. Regionally, the policy debate has been dominant in West Africa, within the Economic Community of West African States (ECOWAS). As highlighted in Amani Africa’s [Policy Brief](#), the fact that sanctions imposed on Mali did not deter subsequent coups in four other cases has brought into sharp focus the efficacy of the responses of the AU and RECs/RMs.

While some of the recent conversations on UCG in the continent have focused on the critical importance of comprehensively

addressing governance deficits, human rights violations and other governance related underlying root causes which create the fertile ground for coups, the debate within the AU and among the wider policy stakeholders illustrated that not any less important is the issue of ensuring enforceability and impactfulness of sanctions imposed once UCG takes place in a given member State. Beyond the emergence of divergent perspectives in the PSC about whether and when to apply the enforcement measures of suspension and sanctions, the importance of this issue also came out during the March 2022 Accra Forum that the PSC convened in Ghana. In addition to reflecting on the challenges faced so far in applying the enforcement measures (of suspension from AU and/or regional bodies), tomorrow's session may also serve as an opportunity for building on and articulating modalities for effective operationalization of commitments made under the Accra Declaration with respect to enforcing UCG sanctions.

When addressing the issue of enforceability of sanctions against UCG, one of the first considerations that will require close examination is the existence of a comprehensive framework which establishes clear designation criteria, thresholds and categories for imposition of sanctions as well as conditions that need to be met for lifting them. It is true that the AU Constitutive Act, the Lome Declaration of 2000, the African Charter on Democracy, Elections and Governance (ACDEG) of 2007, the PSC Protocol and the practice of the PSC in enforcing the AU norms on UCG show that there is adequate clarity about the automaticity of suspension from the AU in cases of UCG, most notably coups. The PSC for example invoked Article 7(1)(g) to suspend AU member states for 19 times. Only in two instance that the PSC withheld the automatic application of suspension (November 2014 on Burkina Faso & April 2019 on Sudan), underscoring that automatic suspension from participating in the AU upon the occurrence of UCG in a member state is the norm.

It is worth noting that this clarity and largely consistent application has significantly contributed to the decline of coups until their unprecedented upsurge in 2021. As established in our policy brief of May 2022 published ahead of the Malabo Summit, 'until 2021, the trends in the occurrence of coups in Africa is largely characterized by decline, despite its sporadic occurrence in a range of one to two coups per year (in the years when it occurred).' Prior to 2021 the maximum that Africa experienced a coup since 2000 was in 2003. Since then, there were a few years (2005, 2008 and 2012) when a maximum of two coups occurred, with several years passing without coups.

However, with the unprecedented number of coups in 2021/22, signs of doubt on upholding this established norm and practice on applying suspension has been observed on the part of policy makers (including some PSC members). It is however critical to resist any temptation to blame the lack of effectiveness during 2021/22 on the norm that may lead to the revision or the scraping of the normative automaticity of suspension and the dominant practice of applying it (throwing the baby with the bath water). Instead, attention should focus on whether there is weakening of the strong political commitment & wider public support for the AU norm of zero tolerance against coups. Indeed, although the lack of regard by coup perpetrators is mostly a product of national political power dynamics, this weakening of both political commitment in AU & wider public support for zero tolerance would not be without its contribution. Tomorrow's session affords the PSC an opportunity for finding ways of strengthening strong political commitment within the AU (both on the part of member states and AU Commission) for upholding the principle of zero tolerance for coups irrespective of their origins.

Equally significant in restoring confidence in the principle of zero tolerance to coups and hence the automatic suspension of States upon occurrence of coups is to ensure that the

enforcement of suspension for coups is backed by strong consensus within the AU and at the level of RECs/RMs with formidable backing from AU's partners. The weaker the consensus among AU member states and between the AU and RECs and the divided the backing of the UN, EU and major powers, the less effective will suspension by AU & RECs/RMs against coups would be.

When it comes to enforcement measures other than suspension (namely diplomatic, territorial and economic sanctions), the major gap (other than the fact that the AU lacks the economic tools (such as those at the disposal of the EU) or (economic & military tools, at the disposal of the UN Security Council) both at the AU and RECs/RMs levels is the absence of a common framework on what kind of sanctions to be applied, under what circumstances, the mechanism for monitoring and the criteria for the lifting of such sanctions. On account of this, participants of the Accra Forum have undertaken to ensure the development of a 'comprehensive framework establishing different categories of sanctions that may be gradually applied, upon the approval of the relevant AU policy organs, in accordance with the gravity of the violation or threat to the constitutional order.' It is critical that the PSC uses tomorrow's session for initiating a process for developing a framework for sanctions, which could also potentially serve as basis for reforming the UN's sanctions regime, which has increasingly become under scrutiny.

Another important point that must form part of the discourse on imposition and enforcement of sanctions is ensuring protection of the rights and welfare of ordinary citizens of the concerned member State. Imposition of blanket economic and financial sanctions on member States or the closure of borders have had disastrous impacts on populations as multiple examples across the world stand to demonstrate. Mali's recent experience has particularly invoked much concern and is among the factors that have informed the need to convene tomorrow's

session on sanctions. It is to be recalled that following the inability of Mali's transition authorities to conduct elections by the timeline stipulated by the Economic Community of West African States (ECOWAS), the regional bloc imposed sanctions against Mali at its Extraordinary Summit of 09 January 2022. At its 1057th session, the PSC also endorsed ECOWAS's decision, albeit reluctantly and with a proviso on the need for ensuring that it does not affect the general public. The sanctions which carried measures such as closure of borders, suspension of economic and financial transactions and suspension of financial assistance, affected the country's economy which has already been battered by insecurity and impacts of the COVID-19 pandemic. As a result, the sanctions were felt more among ordinary citizens. The resultant public anger against the sanctions and ECOWAS contributed to the weakening of the efficacy of the sanctions.

One key lesson to draw from Mali's experience is therefore the importance of making sanctions as specifically targeted as possible. In order to make sanctions impactful and avert negative implications on wider populations, they need to as much as possible be targeted against specific individuals and entities. So far, the PSC has dealt with UCG in various member States 23 times. Out of these, the Council imposed targeted sanctions only four times – at its 168th, 204th, 363rd and 551st sessions – while it merely resorted to suspension in all other cases. Equally important is the need for building into sanctions, well-crafted carve-out clauses that ensure that lifesaving activities such as provision of humanitarian assistance or access to life supporting supplies are not impeded.

Another critical area that has contributed to the lack of effectiveness of enforcement measures against UCG is the lack of consistent application. At one level this has to do with inconsistency in how the AU applied, for example, suspension. The seizure of power by the military in Chad by suspending the

constitutional process is case in point. The failure of the PSC to apply the same measures it applied on Mali has led to legitimate charges of selective application and double standard of the norms. At another level, there is also the fact that the AU is more disposed to take measures against coups than other forms of unconstitutional changes of government outlined in the Lome Declaration of 2000 & ACDEG. Accordingly, it is of utmost importance that the AU develops a predictable process for taking measures against extension of term limits within the framework of Article 23(5) of ACDEG.

The role of various complementary measures is another essential consideration that should be taken into account while imposing sanctions. If the ultimate objective of restoring constitutional order is to be realised, enforcement measures (whether suspension and/or sanctions) need to be combined with parallel, complementary measures such as diplomatic engagement with the concerned member State and support to national dialogue. The need for diplomatic engagements with transition authorities should not however be regarded as a factor for dispensing with more serious measures such as suspensions. In this regard, the Lome Declaration of 2000 clearly requires that such diplomatic engagements are undertaken parallel to the suspension of the country concerned following UCG.

The outcome of the session is expected to be a Communiqué. Council may reaffirm the conclusions of the Accra Forum on strengthening the efficacy of enforcement measures and request that the measures outlined in this regard in the Accra Declaration are followed up and reports are submitted to the PSC within specified timelines. It may underscore the need for restoring the political commitment of the AU and other stakeholders in the principle of zero tolerance to coups and the automatic application of suspension upon the occurrence of UCG such as coups as a matter of principle. The PSC may also underscore the need for building strong consensus within the

AU and among other stakeholders with the relevant leverage when considering and adopting enforcement measures. It may call on the AU Commission, in collaboration with RECs, to work towards the development of a comprehensive sanctions framework which illustrates relevant criteria and benchmarks for imposition, monitoring and lifting of sanctions. It may also urge the immediate activation of its Sanctions Committee which, supported by an expert body, could play an instrumental role in monitoring implementation of sanctions imposed by the Council and in assessing fulfilment of conditions for their lifting thereof. It may also reiterate the sentiment of the Accra Declaration on ensuring that sanctions do not harm the ordinary citizens of a non-complying member State. It may further highlight the importance of having clarity on the goals intended with sanctions so that they do not aggravate political disputes and the need to closely examine the humanitarian and human rights consequences of sanctions, particularly on countries experiencing overlapping governance, security and humanitarian crises.