



The AU and the challenge of unconstitutional changes of government in Africa

INTRODUCTION

In recent years, analysts and commentators have pointed out that the ‘resurgence’ of military coups and other governance-related issues – such as election-related violence – constitutes a setback for the democratic process in Africa. Yet this happens at a time when the African Union (AU) and Regional Economic Communities (RECs) are striving to fine-tune their relevant mechanisms and policy/legal instruments to address what has been identified as one of the major sources of dysfunctionality of the post-colonial African state.

Divided into four sections, this paper seeks to examine three main issues with regard to ‘Unconstitutional Changes of Government’ (UCG) in Africa. The first issue and section looks at the definition of the concept or phenomenon of UCG, at least from the viewpoint of the AU, with a special emphasis on the phenomenon of ‘military *coup d’état*’. The second section deals with the policy position of the AU with regard to this phenomenon. This entails not only looking at the position of the AU, but also analysing the rationale behind it. In other words, knowing that the position of the AU is to condemn this phenomenon, the task is to interrogate this position to determine what led to its adoption and how justified it is. The third section then tries to scrutinise this position and examine its adequacy. In so doing, the preventive and reactive effect of the policy is juxtaposed with more emphasis on the latter. The fourth section deals in more detail with the preventive role of the policy and, with shortcomings identified in this regard, highlights two important issues to be considered to enhance the preventive impact of the policy.

The overall objective of the paper is to suggest certain measures susceptible to at least minimise the risk of military *coups d’état* and other forms of unconstitutional changes of government on the continent, including what may be considered as coups carried out by sitting leaders,

such as what the ongoing attempts by Mamadou Tandja in Niger seek to do.

THE CONCEPT OF UNCONSTITUTIONAL CHANGE OF GOVERNMENT

Both the definition of the concept or phenomenon of UCG and the most detailed policy actions suggested by the AU, in continuation of the practice of its predecessor Organisation of African Unity (OAU), are contained in three policy instruments. The first is the Lomé ‘Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government’ (hereinafter referred to as the Lomé Declaration), adopted at the 36th Ordinary Session of the Assembly of Heads of States and Governments of the OAU held in the Togolese capital, Lomé, in the period from 10 to 12 July 2000.¹ The African Charter on Democracy, Elections and Governance, adopted in Addis Ababa by the 8th ordinary summit of the AU in January 2007, is the second one – that is in terms of detail.² One could even argue that the latter (hereinafter referred to as the Addis Charter) is more elaborate than the Lomé Declaration. It has to be noted, however, that we refer to the Addis Charter despite the fact that it has not yet entered into force, which is conditional on the passing of thirty days after the deposit of fifteen instruments of ratification by AU member states. At the time this paper was completed, only Mauritania (28 July 2008) and Ethiopia (6 January 2009) had done so.

The Constitutive Act of the AU is the third instrument dealing with the subject matter at the continental level. While the AU seeks to partner with RECs in the execution of all these instruments in their respective regions, some RECs have elaborated their own instruments to complement those of the continental body. One such regional instrument is the December 2001 additional Protocol on Democracy and Good Governance of the Economic Community of West African States (ECOWAS).

Both the Lomé Declaration and the Addis Charter consider four main situations as constituting instances of UCG:

- Military *coup d'état* against a democratically elected government
- Intervention by mercenaries to replace a democratically elected government
- Replacement of democratically elected governments by armed dissident groups and rebel movements; and
- The refusal by an incumbent government to relinquish power to the winning political party after free, fair and regular elections

Article 23(5) of the Addis Charter adds a fifth situation: 'Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government'.

Of all these situations, this paper focuses on the first and the fifth ones without neglecting others. These are also the main thrust of the Lomé Declaration. Thus, a brief overview of the phenomenon of military *coup d'état* is necessary.

To this effect, it is worth noting that the term '*coup d'état*' is a French word that found its way into the English dictionary in the 17th century. It literally means 'stroke of State' or 'sudden change at the summit of the State'. Theoretically, however, it is defined by McGowan and Johnson as 'events in which existing regimes are suddenly and illegally displaced by the action of relatively small groups, in which members of the military, police, or security forces of the state play a key role, either on their own or in conjunction with a number of civil servants or politicians'.³

The Lomé Declaration of July 2000, the Constitutive Act and the African Charter on Democracy, Elections and Governance are the three main continental instruments that guide AU's position on UCGs

This is a very elaborate definition that goes beyond defining the phenomenon to explaining how it occurs. A simpler yet equally elaborate framework might be to

define *coup d'état* as 'an illegal seizure of the highest level of power by a limited number of military officers in a more or less violent or peaceful covert operation that does not exceed a few days'.⁴

Both these definitions imply a number of points. First, the illegality of the seizure. Second, the level of power of the deposed leader: this level has to be the highest, which means that the deposed leader has to be either the 'executive' prime minister (in parliamentary countries) or the president (in presidential systems). Third, the operation should not involve a huge number of military officers. This is a crucial distinctive point between '*coup d'état*' and 'civil war'. The latter requires a significant number of soldiers/fighters, ranging from the hundreds from the start of the campaign and reaching the thousands in most cases. However, with regard to military coups, because of the covert nature of the operations, the number of those involved is very limited.

Finally, the duration of the operation should be fairly short. This is obvious since it needs to be discreet and the number of actors minimal, which means that the latter cannot sustain a long campaign, unless they have a significant number of fighters, which will make it a civil war rather than a *coup d'état*. This is to say that a failed coup cannot be turned into a civil war overnight.⁵ This is why we do not consider, for example, the events of 19 September 2002 in Côte d'Ivoire as an 'attempted *coup d'état*', as some like to describe them, but as a short cut strategy to win the war that had already been prepared without much fighting.

Having clearly defined the concepts, we shall now look at the policy position of the AU with regard to the subject matter.

THE POLICY POSITION OF THE AU

This section looks at two main points. The first is the policy position of the AU with regard to UCG, as defined above, including the various steps to be taken *vis-à-vis* the authors and supporters of this type of change of government on the continent. The other issue is to critically interrogate the rationale behind this policy with a view to establishing whether or not it is justified. This exercise is necessitated by the fact that some commentators contend that some coups are 'good coups', which, if valid, would mean that the AU policy that does not support this view is partial.

The AU and UCG

Both the Lomé Declaration and the Addis Charter take decisive stances on the above-mentioned situations defined as instances of unconstitutional change of government. They elaborate more on military coups than

on any other situation. One could surmise from this that African leaders thought coups were the most prevalent of all the four or five situations and that it would be easier to deal with this particular phenomenon than with others. Another reason could well be that most African leaders – some of whom had come to power through the barrel of a gun – thought that coups were a bigger threat to their regimes and thus merited greater attention than other forms of unconstitutional changes of government.

While condemning military coups, and prior to setting forth the policy position of the OAU/AU with regard to regimes birthed by coups, both the Lomé Declaration and the Addis Charter acknowledge a number of factors that may reduce the risk of military coups. In particular, they acknowledge that strict adherence to ‘the principles of good governance, transparency and human rights’ and the ‘strengthening of democratic institutions’ will considerably reduce the risks of UCGs on the continent.

The Lomé Declaration lists nine such principles or values, including:

- Respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament
- Separation of powers and independence of the judiciary
- The principle of democratic change and recognition of a role for the opposition; and
- The organisation of free and regular elections, in conformity with existing texts

But beyond these recommendations, which pertain to the ‘ideal situation’ that would greatly minimise the risk of a UCG if not eliminate it – an issue we will return to below – the policy position of the OAU/AU *vis-à-vis* unconstitutional changes of government, particularly military coups, is one of condemnation and prohibition. They are considered by the Lomé Declaration ‘as an unacceptable and anachronistic act, which is in contradiction of our commitment to promote democratic principles and conditions.’ The 6th paragraph of the Preamble of the Addis Charter expresses the concerns of African leaders ‘about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa.’

To give effect to this principled position, a number of practical actions to be taken whenever a UCG takes place in an OAU/AU member State were identified in the following sequence:

- The current Chairperson of the OAU/AU Commission and the President of the AU Commission (AUC), on behalf of the Organisation, should immediately and

publicly condemn the act of UCG and urge for the speedy return to constitutional order in the country concerned, as well as urge for consistency of action at the bilateral, inter-state, sub-regional and international levels

- The Peace and Security Council (PSC) of the AU should convene, as a matter of urgency, to discuss the matter
- The country where the UCG occurred should be suspended from participating in the policy organs of the AU while the ‘new authorities’ (or the perpetrators of the UCG) are given a period of up to six months to restore constitutional order. Article 30 of the Constitutive Act of the AU lends more support to this as it stipulates: ‘Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union’⁶
- The AU would, during this six-month period, engage with the new authorities with a view to ascertaining their intentions regarding the restoration of constitutional order in the country, and, in so doing, seek the contribution of African leaders and personalities in the form of discreet moral pressure on the perpetrators of the unconstitutional change in order to get them to cooperate with the AU in its efforts. The collaboration of the REC to which the ‘country in crisis’ belongs is also to be enlisted in this endeavour
- At the expiration of the six-month suspension period, a range of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order should be instituted, in addition to the continued suspension from participation in the AU policy organs. These sanctions could include visa denial, restrictions of government-to-government contacts, trade restrictions, etc. In implementing this sanctions regime, the AU should involve all its Member States, RECs and the wider international/donor communities, including the UN. Careful attention should be exercised to ensure that the ordinary citizens of the concerned country do not suffer disproportionately on account of the enforcement of sanctions

Article 25 of the Addis Charter echoes the same policy but adds two more important measures. The fourth paragraph of this Article disallows any auto-legitimation by the coup-makers when it states: ‘The perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or to hold any position of responsibility in political institutions of their State.’ The sixth paragraph of the same Article envisions the imposition of sanctions ‘on any Member State [of the AU] that is proved to have instigated or supported unconstitutional change of government in another state.’

Interrogating the rationale behind the policy

In order to gauge the rationale behind the policy position contained in the Lomé Declaration and supported by the Constitutive Act of the AU, it is crucial to put it in its appropriate historical and political contexts, which can be found in the Declaration itself. In the preamble of the Declaration, African leaders state ‘that coups are sad and unacceptable developments in our Continent, *coming at a time when our people have committed themselves to respect of the rule of law based on peoples will expressed through the ballot and not the bullet*’ (emphasis added).

It would seem that African leaders came to this conclusion after a careful review of various patterns of change of government and realised that constitutional channels were not only the best way, but the only acceptable means of coming to power. Indeed, the adoption of the Lomé Declaration in July 2000 took place about ten years after the end of the Cold War and the start of a widespread democratisation process on the continent, dubbed by some as the ‘whirlwind of democratisation.’ As Francis Ikome notes, democracy had ‘emerged as the most popularly accepted form of government [...] even among Africa’s not-too-democratic leadership.’⁷

Military coups were a normal occurrence in Africa before 1990, a period during which most African rulers left office through a military coup, political assassination, or some other forms of violent overthrow

Military coups were a normal occurrence in Africa in the period prior to 1990. In this period, most African rulers left office through a military coup, political assassination, or some other forms of violent overthrow.⁸ Virtually none left power after losing elections, although some retired voluntarily (e.g. Aden Abdullah Osman in Somalia in June 1967, Léopold Senghor in Senegal in December 1980, Ahmadou Ahidjo in Cameroon in November 1982, and Julius Nyerere in Tanzania in October 1985). But most of those did so after handpicking their own successor. The prevalence of military coups was such that some argue that in analysing the

phenomenon, the question should not be why military coups occur or occurred in an African country, but perhaps rather why they do or did not.⁹ Thus, the condemnation of various regimes emerging from coups in this period were not informed by any continent-wide policy position, but were in fact based on the perceptions various countries had of the new regime, particularly about their relationship with the ousted regime (e.g. Kofi Busia after Kwame Nkrumah in Ghana, 1966; Idi Ami after Melton Obote in Uganda, 1971; and Samuel Doe in Liberia after the brutal overthrow of the William Tolbert regime in 1980).

It is therefore against the backdrop of the changed political environment in the continent following the end of the Cold War and the menace military coups were perceived to pose to this new or ‘aspirational’ political order that the Lomé Declaration has to be read. This is illustrated by the fact that the most significant step taken by African leaders towards the adoption of the Lomé Declaration came at the 33rd summit of the OAU held in Harare, Zimbabwe, in early June 1997, following the *coup d’état* in Sierra Leone, barely a week earlier. For almost the first time, African leaders jointly and unequivocally condemned and rejected that coup and any unconstitutional change of government on the continent and resolved to maintain a united official stance on this issue in future, ‘particularly, as regards the measures to apply in *coup d’état* situations occurring in Member States.’¹⁰

For more contextual clarity on this matter, it is important to recall that the military coup in question in Sierra Leone happened on 25 May 1997 when the Economic Community of West African States (ECOWAS) had managed to broker peace in the country after a seven-year brutal civil war started by the so-called Revolutionary United Front of Sierra Leone (RUF). Multi-party elections had been held in the previous year, which Ahmed Tejan Kabbah had won undisputedly. However, some disgruntled soldiers had allied with the RUF rebels in staging this coup, overthrowing the democratically elected government which then sought refuge in neighbouring Guinea.¹¹ Thus, African leaders saw the coup as a double setback: for both the peace process in the country and the democratic process there in particular, and on the continent as a whole.

Given the above, the evaluation of the rationale of the AU policy *vis-à-vis* unconstitutional changes of government should largely be based on the answer to the following two questions. One is to ascertain whether or not the new political order that is seemingly espoused by the continent, or that which it is striving to adopt or perfect since the end of the Cold War (i.e. multiparty democracy and constitutionalism as the only acceptable means of change of government), is a better political dispensation than what existed before 1990 or what exists

now (assuming that this order is still aspirational). If this is the case, the other question is to establish the truthfulness of the assumption made by the Lomé Declaration that military coups and other forms of unconstitutional change of government are a true menace to this new order.

Regarding the first question, it would appear from the empirical data on military coups in Africa that some regimes birthed by military coups have turned out to be relatively better than the ones they overthrew, some of which were constitutional regimes in the legal sense of the word. Examples include the March 1991 coup staged by Amadou Toumani Touré in Mali and that of August 2005 by Ely Ould Mohamed Vall in Mauritania. Both men overthrew autocratic regimes, promised to restore democracy and honoured this promise by organising credible elections and handing over power to the duly elected leader in 1992 and 2007, respectively. This is because military coups are sometimes the consequence of bad governance by the ousted regime, as the Lomé Declaration itself acknowledges. It is perhaps this fact that led Francis Ikome to suggest that 'some coups are acceptable, and therefore could be said to be good coups, whereas others are not acceptable, and are therefore bad coups.'¹²

Paul Collier makes a similar argument in his latest book on *Wars, Guns and Votes*. To him, because elections are not always free and fair in Africa, Western governments should declare their readiness to accept military coup if that is the only way to remove 'African despots' from power. He advances this idea in an even more forceful way with regard to President Robert Mugabe of Zimbabwe, considering him a 'despot' that 'can be toppled only by a military coup'.¹³

Notwithstanding a few exceptions, the 'majority' of unconstitutional regimes have not governed any better than the regimes they replaced

But this assertion poses a number of problems. One is that notwithstanding a few exceptions, the 'majority' of unconstitutional regimes or those that came to power through unconstitutional means have not governed any better than the regimes they replaced. To use John Clark's expression, military rulers have, in most cases, 'turned out to be at least as corrupt and authoritarian as

the civilians whom they replaced.'¹⁴ Naison Ngoma notes that: 'Although the military has a certain contribution to make towards the development of a state, this contribution has not always been successful.'¹⁵ Yet laws and policies such as the Lomé Declaration are based on general considerations and not exceptional ones, even though they might be somehow unfair to these exceptions.

Another problem that flows from the above is that policies are based on predictable patterns and not versatile and unstable ones; yet coup-plotters who replace bad leaders, constitutional or otherwise, may themselves end up governing poorly and therefore become bad and illegitimate regimes, as has generally been the case.¹⁶ In fact, the qualification of certain military coups as 'good coups' has almost always been 'retrospective', after the leaders of the coup left power, having lived up to their initial promises, for all coup-makers come with good promises.

Finally, while regimes that come to power through constitutional means may violate their terms of office and the very constitutional arrangements that brought them to power, there are *more* peaceful ways through which they can be made to respect these provisions. This seldom exists under unconstitutional regimes. Consequently, one could argue that constitutional order, which the continent has been striving to embrace or perfect since the end of the Cold War, is better than the prior political dispensation. And because unconstitutional changes of government *generally* lead to the establishment of unconstitutional regimes,¹⁷ this method of acquiring power is a true menace to the aspiration of Africa to adopt constitutional norms in the governance systems of its countries. In the final analysis therefore, the rationale behind the Lomé Declaration is a valid one, and therefore the qualification of coups as 'good coups' is not a sound one.

CRITICAL ASSESSMENT OF THE EFFECTIVENESS OF THE POLICY

A policy may be based on good premises and have noble aims but still be ineffective or inadequate for the problem it seeks to address. In other words, notwithstanding the above assertion that the foundations and end goals of the AU policy *vis-à-vis* UCG are valid, it is still important to evaluate the effectiveness and adequacy of the means – that is the policy in practical terms. This is more so, considering the fact that the continent has experienced or witnessed almost nine instances of 'successful' military coups or other forms of unconstitutional changes of government since the adoption of the Lomé Declaration in July 2000.¹⁸

The first of those cases arguably happened in Madagascar with the coming to power of Marc

Ravalomanana in January 2002 after a dispute over the results of the first round of the 16 December 2001 presidential elections between him and the then incumbent President Didier Ratsiraka. The official results of this poll had given Ratsiraka 40.61 per cent of the votes, against 46.44 per cent for Ravalomanana, which made a run-off election inevitable. A few days after the proclamation of the results, however, the opposition leader and his supporters claimed that he had won outright according to 'their independent tally' of the votes. Ravalomanana therefore declared himself President, a move the AU deemed an 'unconstitutional change of government' and refused to recognise his self-proclaimed government until he organised legislative elections in December 2002.¹⁹

The other eight cases occurred in the Central African Republic (15 March 2003), São Tomé and Príncipe (17 July 2003), Guinea-Bissau (14 September 2003), Togo (5 February 2005), Mauritania (twice: 3rd August 2005 and 6th August 2008), Guinea-Conakry (23 December 2008), and Madagascar (17 March 2009).²⁰

Given the above, the question can be posed as to whether the policy is effective, and if so, why it could not prevent the occurrence of these coups. This section attempts to answer this question and, where reparable inadequacies are found in the policy, identifies them and proposes a set of measures that might be useful in trying to address them.

How effective is the AU policy
when an undemocratic
regime or one that had come
to power democratically but
ceased to be so yet remained
legal is overthrown?

The Policy between reaction and prevention

From the outset, it should be made clear that it is always difficult and sometimes impossible to gauge the preventive effect of a policy or instrument on its targets. The phenomenon for which the policy was devised may fade away or decrease not because of the policy, or the policy alone, but because its implementation coincides with other factors. Nor does the continued occurrence of a phenomenon despite a policy designed to combat it

necessarily mean that the policy has not prevented the occurrence of any incidence of the phenomenon, just as the repeated occurrence of an illness in a community does not necessarily mean that medical doctors are not doing their work. It could well be that the policy is working and that those incidents that come to our attention are those that trickled through the net. And clearly, if one were to compare the nine per decade (9/d) rate of unconstitutional changes of government that have occurred in Africa since 2000 to that of previous decades, particularly during the Cold War era, the significant reduction in the rate of military coups since 2000 is undeniable.

Perhaps to substantiate this claim, one may compare this continent-wide rate of the current decade, for example, to that of *West Africa* (the 15 member states of ECOWAS plus Mauritania) *alone* in the Cold War decades: 13 (1963-70); 11 (1971-80); and 7 (1981-90). The difference is clearly significant. In fact, West Africa alone beats the record of the whole continent in the first two decades.²¹

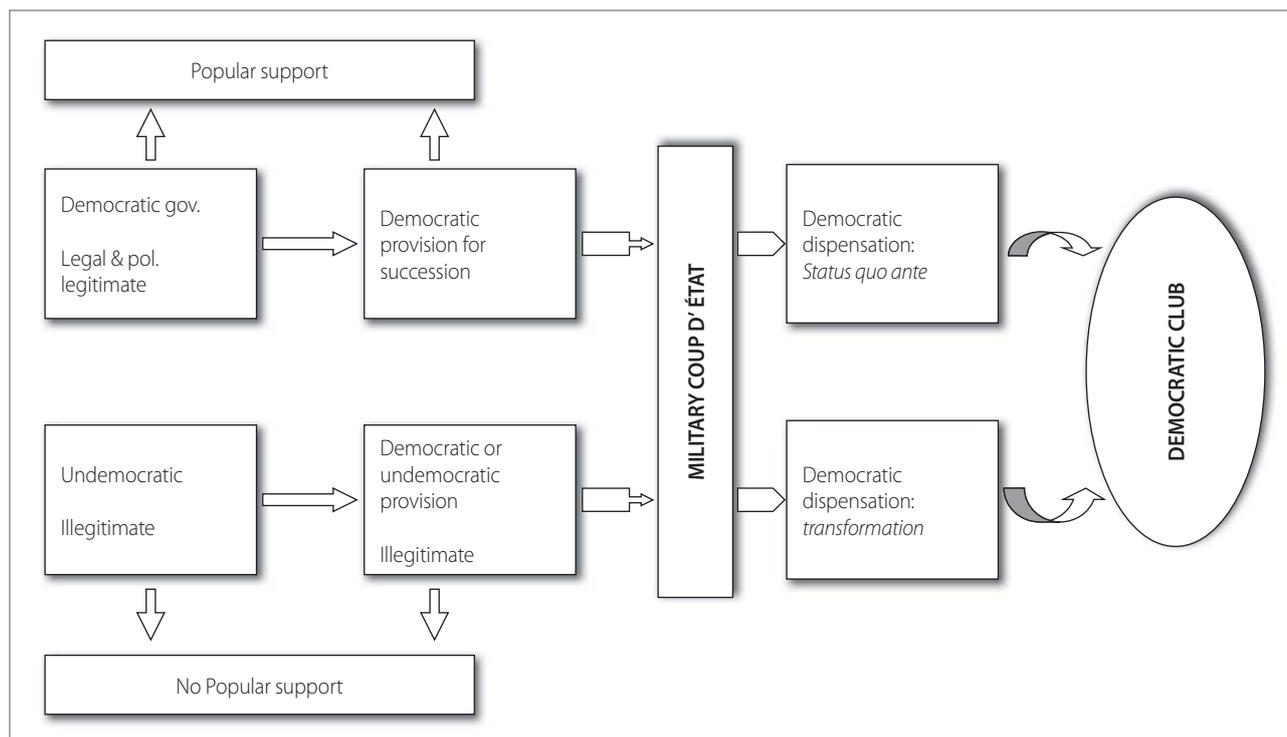
This said, it has to be acknowledged that more can still be done to strengthen the preventive effect of the policy, particularly since bad governance of sitting leaders, which is persistently cited by coup-makers to justify their actions, is still prevalent on the continent, and the AU policy does not have any decisive measure to combat this. We will return to this later, but first, the focus now is on the reactionary effect of the policy.

To do this, it is important to recall the rationale behind the policy, which is to enhance the democratic process on the continent or to at least prevent any setback or interruption of this process. In other words, whilst the OAU/AU could not force all the countries of the continent to adhere to the ethos of democracy and good governance, they did not want any setback in those where this was beginning to become the norm.

In this regard, insisting on the return to constitutional order where a democratically elected government has been overthrown serves this purpose if effect is given to the policy. But how effective would the policy be in the case of an undemocratic regime – including one that came to power democratically but ceased to be so yet remained legal – were it to be overthrown? Would insisting on the return to the constitutional norm not mean a return to autocracy in this case, as it was the case in Guinea (December 2008)?²² What if the leaders of the military junta decide to organise elections in which they take part in an attempt to auto-legitimise themselves, as François Bozizé did in the Central African Republic (CAR) in 2005?

One could argue that the policy can still be effective provided that the AU takes a decisive stance against all attempts at auto-legitimation by coup-makers. This can

Graph 1 The place of coup in the democratic process and the potential impact of AU's reaction to the coup



Source © Author's illustration

be ensured by barring all putschists and anyone associated with the coup from taking part in the elections they organise in order to restore constitutional order in the country (or establish it in cases where the ousted regime was undemocratic). The aforementioned Article 25(4) of the Addis Charter provides a coherent policy framework for this. Of course this policy has to be applied consistently. Yet, while this was the initial approach taken by the PSC on the perpetrators of the 2008 coups in Mauritania and Guinea,²³ this was not the case with regard to the regime of Bozizié in the CAR (2005), and Ravalomanana in Madagascar (2002).²⁴ The Mauritanian coup leader was eventually allowed to stand for elections, which he won on 18 July 2009. This may be attributed to the fact that this Charter has not yet entered into force because the requisite 11 ratifications has not been reached.²⁵

As it can be seen in Graph 1 above, if there is (a) consistence in condemning UCG; and (b) barring their authors from legitimising themselves through often rigged elections; and a consistent insistence on reinstating the overthrown leaders that were not killed in the process, particularly if they were 'democratic', then the policy will be much more effective in its 'reactionary' approach. But there remains a challenge: what if the overthrown leader was neither democratic nor killed in the process? Would insisting on his/her reinstatement serve the cause of democracy on the continent, or would it be better to organise new elections in which neither he/she nor the leaders of the military junta can take part? But who 'at the AU' can decide who is democratic and who is not in Africa?

Here one has to acknowledge that until a majority of AU member states join the 'democratic club' shown in Graph 1 above, which does not seem yet to be the case, the same policy of insisting on the reinstatement of the ousted 'democratic' leader should apply – if somehow regrettably. This will be necessary in order to avoid a practice of 'double standards' that might be detrimental to the AU itself, given that adherence to the principles of democracy and good governance was not a criterion for membership of the OAU when it was founded in 1963. The danger of that scenario seems greater than what one stands to lose in keeping a few autocratic leaders, for it would mean the collapse of the AU and thus of the Policy. The same argument mentioned above is also relevant here; that there is no guarantee that the military regime would be any better than the ousted 'autocratic' constitutional regime.

While this speaks more to pragmatism and what some might describe as *Realpolitik*, it does not necessarily mean an abandonment of the ideal AU, one that comprises of democratic countries that can take firm actions against undemocratic practices, including from sitting leaders. But because the AU or its minority 'democratic' members cannot impose democracy on others in any forceful manner, despite the existence of texts and treaties aspiring to a more democratic Africa, the attainment of this ideal situation will have to be banked on a number of factors/actions, including controlled and uncontrolled ones. An uncontrolled one is to let the democratic process follow its normal course,

as more and more countries democratise or become more democratic, not because they are forced to do so from the outside world, but because leaders see the logic of it and/or they are forced by their own citizens. The prospect of this is indeed quite promising on the continent, as it will be shown below. A controlled one could be an AU binding policy on the respect of national constitutions, which pertains more to the preventive arena and is easily marketable and implementable, as it will generally consist of getting leaders to respect something they themselves devised.

It is to these two strategies that we turn now.

TOWARD A MORE PREVENTIVE POLICY

As noted above, the ideal solution to address the shortcomings of the AU response to UCG and thus to minimise the risk of this phenomenon would be to strictly subscribe to the aforementioned democratic and governance principles, which are enunciated, in more details, in the Constitutive Act of the AU (Article 3) and the African Charter on Human and People's Rights. Ideally also, any regime that fails to abide by these injunctions should be sanctioned. The reports of the African Peer Review Mechanism (APRM) and those of various civil society organisations on each country should inform the decisions of the AU in this regard. However, given the difficulty to attain this objective under the current circumstances in Africa despite the need to work towards it, this section looks specifically at two ways of ensuring this, one uncontrolled and the other controllable.

Taking decisive action against leaders that violate the principles of democratic governance is the ideal measure to eliminate military coups in Africa

Democratisation by choice

In organisations such as the European Union (EU), it is relatively easy to take decisive action against member states that default on their commitments to uphold the principles of democratic governance. This is the ideal situation that the AU is or should be aspiring to and one that is guaranteed to drastically reduce, if not eliminate, the risk of unconstitutional changes of government on the African continent. But one must realise that, on the

one hand, there is a fundamental difference between the EU and the AU based on the respective histories, and, on the other hand, between the notions of what is 'ideal' and what is 'realistically achievable'. The EU began with a few democratic countries, which then conditioned the adherence of new members to democratisation and respect of the principles of good governance – both political and economic.

But when the OAU, the predecessor of the AU, was being formed in the early 1960s, the only condition for membership was to be African and committed to African liberation and independence. Adherence to multiparty democratic principles was – and could only be – of little if any concern. These principles were therefore formulated when the group had already been constituted. Care must therefore be taken in excluding or sanctioning some of the members for their failure to adhere to these principles, which does not mean that ways in which this can be done should not be explored.

Fortunately, however, the pace at which the democratisation process is progressing on the continent is rather promising, and it gives the impression that if this trend continues, democracies will, sooner or later, be in the majority in the AU.

Some saw in what happened in Kenya and Zimbabwe in 2008 a regress of the democratisation process on the continent, and questioned whether or not Africa was ready for democracy. The media particularly echoed this sentiment, reinforced by the view of certain researchers and 'experts' on democratisation in Africa. Indeed, the much renowned *Journal of Democracy* (JoD) devoted the main theme of its April 2008 issue to analysing the 'Progress and Retreat [of democracy] in Africa' in light of the violence that happened in Kenya following the proclamation of the results of the disputed December 2007 presidential election.

Having more or less echoed this sentiment in his contribution to this issue of JoD, Richard Joseph, using Kenya as an example, sought to moderate his view and could not help but conclude that the reassuring factor was that democracy was not 'in full retreat' on the continent.²⁶ But the problem with these views is that they seem to focus on 'what is missing' or 'is not working' in the democratic process and overlook or choose to ignore 'what is present' or 'what is working'. They also tend to do this selectively.

For example, granted that Kenya and Zimbabwe had indeed regressed, how could this amount to a general regress of democratisation in Africa when we know that the indicators of most characteristics of and factors that contribute to democracy are, generally, stable if not improving in much of the continent. These indicators or factors include freedom of expression and the emergence of active civil society organisations, as indicated by

recent figures of Freedom House and Reporters without Borders. While there are still many African countries that are lagging behind in the process, countries such as Benin, Botswana, Cape Verb, Ghana, Mali, Mauritius, Seychelles, South Africa, and Tanzania are either completing their democratic transition or have begun their journey on the consolidation trail.

In fact, whereas democratic systems were rare in Africa prior to 1990, in 2007, Freedom House classified half of the 48 or so Sub-Saharan African states as democracies – that is, regimes under which citizens can choose and replace their leaders in reasonably free and fair elections.²⁷ Even in North Africa, where the process has been slower compared to other regions of the continent, there are some positive movements towards democratisation, notwithstanding the many outstanding hurdles to be overcome. And although some African leaders have manipulated their countries' constitutions to elongate their stay in power, particularly with regard to term limitation of presidential mandates dealt with below, others – like in Malawi and Nigeria – failed to do so, and those that succeeded did so in a context of more societal resistance.²⁸

If this trend continues, and indications are that it is very likely to, then the voluntary or internally induced adherence to democratic principles will sooner or later carry the day on the continent. Moreover, most of the remaining 'political dinosaurs' of the continent are disappearing and those that replace them are either democrats or individuals that cannot manipulate things as they used to do. Thus, whenever duly elected leaders become the majority of AU leaders through this voluntary process, punitive measures should be considered against those leaders that flagrantly violate democratic principles, including suspension of their countries from the AU, in the same way as countries ruled by military juntas. This should be the case even if these leaders had come to power through constitutional means, because it is not sufficient to come to power democratically, for one must also rule the country democratically.

Ensuring respect of presidential term limits

Notwithstanding the promising prospects of voluntary democratisation on the continent, it is an uncontrolled process and one that depends almost solely on the will of certain individuals and/or the unknown planning of the Gods. It is therefore useful to think about ways in which some planned and predictable human intervention can be instituted to supplement this uncontrolled process, without an undue forcing of the situation, so that some of the risks identified above may be avoided.

One area that seems fertile for such an intervention by the AU is the provision of presidential term limits

found in the constitutions of most African countries, which appears to be a veritable instrument for facilitating leadership alternation on the continent, but is also the field of much constitutional manipulation by sitting presidents intent on elongating their stay in power. The suggestion being made here is for the AU and RECs on the continent to consider the following three steps: a) ensure by all possible means that the provision of term limits is strictly adhered to in all the countries that have it in their constitutions; b) get those that have abolished it to restore it; and c) strive to persuade and, eventually, force those that do not have it to adopt it in their constitutions. Fortunately, Article 23(5) of the Addis Charter provides a policy framework to ensure the first step. *The ultimate aim would be to adopt a binding continent-wide policy on two-term limits of a maximum of seven years for presidential mandates for a minimum period of three decades or thereabout and to categorically refuse any change to this policy.*

This recommendation raises at least two important questions. One relates to its rationale and justification: Why such a policy? The other regards its 'practicability': Why does it seem a fertile terrain for AU intervention?

Regarding the first question, two important, empirical facts ought to be highlighted to fathom the rationale behind this policy and unpack its justification. One is that overstay in power of many African leaders has not been accompanied by good governance, which (a) seems to be a source of political instability in many countries; (b) has been a constant pretext, if not justification for military coups; and (c) as the AU policy itself recognises, highlights the need to find a way to ensure smooth and regular change of leadership on the continent.

The other fact is that there is an empirically proven correlation between presidential term limits and leadership alternation in Africa, given that almost all the African leaders that have left power after elections have done so after 'exhausting' all their constitutional terms except in eight cases (see Table 1 below).²⁹ In other words, only about eight African leaders have lost elections and peacefully left power as a result of this, as those that left power after exhausting their terms were not vying for re-election and thus do not count here. But looking at this table closely, the exceptions can even be reduced to only one case – that of Nicéphore Soglo in Benin. All others had been in power for about two decades on average and, in most cases, their electoral defeat followed a period of transition that they did not necessarily control.

Some might argue that adopting this policy would be unfair, as it might deprive the people from the opportunity to keep 'performing leaders' and the latter from 'achieving' some appreciable projects. One could also argue that some well-established and 'traditional' democratic countries, such as the United Kingdom, France and

Table 1 African Heads of State that have left power 'after losing elections' since independence³⁰

No.	Leader	Country	Departed	Came to power
1	Aristide Pereira	Cape Verde	Feb. 1991	July 1975
2	Mathieu Kérékou	Benin	March 1991	Oct. 1972
3	Kenneth Kaunda	Zambia	Nov. 1991	Oct. 1964
4	Denis Sassou N'Gueso	Congo Rep.	Aug. 1992	Feb. 1979
5	Didier Ratsiraka ³¹	Madagascar	March 1993	June 1975
6	Hastings Banda	Malawi	May 1994	July 1964
7	Nicéphore Soglo	Benin	March 1996	March 1991
8	Abdou Diouf	Senegal	March 2000	Jan. 1981

Source Author's own data compilation

Germany do not have such provisions. While this may be the case, this argument can be countered by the fact that whereas electoral processes in these 'established democracies' are *almost* always free and fair, and thus one can be sure that the electorate can remove non performing leaders during elections, this does not seem to be the case yet in the majority of African countries.³² The argument of allowing leaders 'to complete their work' is also not convincing, given that most of those that have abolished term limits did so after serving many years in office and only towards the end of their last constitutional term. One can legitimately question the ability of such leaders to perform well in a third term when they have failed to do so for years if not decades. Moreover, an individual may still contribute to the development of his or her country even if he or she is not the Head of State, particularly if he or she is a former head of state that created a conducive environment for such activities in the country.

With the rationale behind the policy thus explained, it is now important to look at its practicability – how easy would its implementation be and how can it be explained?

Adopting and implementing this policy throughout the whole continent would clearly be revolutionary, particularly given that some leaders have shown a clear hostility towards it by abolishing its provision from their national constitutions. But if one can count on numbers and, if necessary, adopt a regional approach, then one could argue that implementation is relatively easily attainable given that a majority of African states already have the provision, and some of those that have attempted to change it have failed.

Of the 54 or so African states (the 53 member states of the AU plus Morocco), the constitutions of 34 states contain the provision of two presidential term limits (with only Seychelles having a three term limit and the Comoros one, the presidency being rotational there). Only 11 do not have term limit, including the kingdoms of Lesotho, Morocco and Swaziland, as well as Libya, which is the only African country without a multiparty

system that is not a kingdom. The remaining eight countries had this provision in their constitutions but their leaders later abolished it despite popular resistance in most cases (see Table 2 below).

But if the initial implementation of this policy proves difficult at the continental level, a regional approach might be worth trying before eventually going continent-wide. For example, given that the overwhelming majority of its member states (12/15) already have this provision, and only one (The Gambia) does not have it, while the remaining two (Guinea and Togo) had it but later abolished it, ECOWAS may find it easy to implement all the above three phases sooner than any other region of the continent. This is so particularly since the transitional period set in motion by the December 2008 military coup in Guinea is likely to end with the restoration of this provision in that country, and the current authorities in Togo seem more amenable compared to the regime of the late Eyadema. The Gambia can then be brought to the fold relatively easily. A good starting point for that is what ECOWAS is already doing with regard to Niger, where President Mamadou Tandja has launched an aggressive campaign to change this provision of the constitution so that he could stand for a third term. This he did despite the constitution having a provision stipulating that the term-limit clause is not to be amended. Thus, much will depend on the success of ECOWAS' efforts to prevent this undue attempt by President Tandja and his opportunistic supporters.³⁴

CONCLUSION

This paper considered the phenomenon of unconstitutional changes of government in Africa and the challenges it poses to the AU and the efforts of the latter to curb if not eliminate it. It thus looked first at the AU policy with regard to this phenomenon. This policy is contained in the Lomé Declaration of July 2000 made by the Heads of State and Government of the OAU,

Table 2 African countries according to presidential term-limit provisions

Two term limits (34 countries)					
Angola	Côte d'Ivoire	Malawi	Sierra Leone	Eritrea	Ethiopia ³³
Benin	Djibouti	Mali	South Africa	Mauritania	Sao Tome & Principe
Burkina Faso	DR Congo	Mozambique	Sudan	Namibia	Senegal
Burundi	Ghana	Niger	Tanzania	Zambia	Comoros (1)
Cape Verde	Guinea-Bissau	Nigeria	Kenya	Congo (Bra)	Madagascar
Central African Republic		Rwanda	Liberia	Seychelles (3 term-limit)	
No term limits (11)					
E. Guinea	Egypt	Libya (no party system)	Morocco (K)	Swaziland (K)	SADR
The Gambia	Lesotho (K)	Mauritius	Somalia	Zimbabwe	
Abolished presidential term limits (8)					
Algeria (Nov. 2008)	Chad (May 2004)	Guinea (Nov. 2001)	Tunisia (May 2002)	Cameroon (April 2008)	Gabon (Jul. 2003)
		Togo (Dec. 2002)	Uganda (Sept. 2005)		

Source Author's own data compilation

the predecessor of the AU, and the African Charter on Democracy, Elections and Governance, adopted by the AU in January 2007. Article 30 of the Constitutive Act of the AU also addresses the matter and strengthens certain stipulations of the Lomé Declaration. In particular, the policy as contained in these documents states that regimes born out of military coups d'état or other forms of unconstitutional change of government are not to be recognised by the AU.

Put in its proper political and historical context, we found that there is a sound rationale behind this policy position. For, its adoption came at a time when the continent was making great strides towards democratisation and good governance, and military coups were a clear threat to this. This assertion was substantiated by empirical evidence from the contemporary history of the continent. Having said this, it was noted that there are some shortcomings with the policy. One such shortcoming is the apparent lack of consistency in its application in various countries. Reference was made particularly to cases in which coup-makers later orchestrated elections to legitimise themselves and subsequently gained the AU's recognition.

But the biggest shortcoming the paper identified relates to the preventive measures of the policy or, in other words, its non-application to sitting leaders that manipulate their constitutions and thus create conditions that can be exploited by coup engineers to justify their actions. We thus emphasised the need for the AU and regional economic communities on the continent to consider ways in which they can ensure that all African leaders respect their constitutions and are not allowed to manipulate them. One specific constitutional provision that we found to be key to the success of the preventive

effect of the AU policy is that of 'presidential term limits'. Given that a majority of African states (34/54) already have this provision, and a further eight had it in the recent past, we suggested that a continent-wide policy be adopted by the AU to prevent the leaders of these 34 countries from undertaking any alteration to this provision, and then persuade the eight to restore it. Once they succeed in this, they should then campaign for the remaining eleven states that do not have the provision to adopt it.

One important action that African states should speedily take is the ratification of the African Charter on Democracy, Elections and Governance. In so doing, they would provide the AU with a binding legal instrument that not only condemns unconstitutional changes of government, but also prevents auto-legitimation of putschists. This is to acknowledge that notwithstanding the good will that officials at the African Union Commission may have, they will remain toothless if member states do not provide the Commission with the appropriate legal powers to act. For, the AU, as any other organisation, is the sum of its members. And this is an area where African leaders that claim their adherence to principles of good governance can prove the truthfulness of these claims.

Adopting a shorter period for the perpetrators of unconstitutional changes of government to restore constitutional order might also be a measure to consider. The current policy position is to suspend from the AU decision-making organs countries in which this phenomenon occurs for six months during which the AU would engage with the 'new authorities' to get them to restore constitutional order. One could argue that this gives a lot of time to the leaders of such regimes to consolidate

their position. Thus, the AU might consider making the six-month period the deadline for the restoration of constitutional order, or even to bar the coup-makers from ruling the country, by way of forcing them out of power as swiftly as possible.

NOTES

- 1 Apart from replacing the Charter of the OAU with a Constitutive Act of its own, the AU maintained almost all the legal texts and decisions adopted by the former. This paper will use the titles and names (e.g. President of the AU Commission rather than Secretary General of the OAU; Peace and Security Council rather than the Organ, etc.) used by the African Union and not those of the OAU, even when we refer to cases that happened prior to the formation of the AU. For the specific provisions of the Lomé Declaration in relation to the subject matter, see the Lomé Declaration, July 2000, 37–42 at <http://www.africa-union.org/root/au/Documents/Decisions/decisions.htm> (last access: 30 May 2009). It should be noted that the Lomé Declaration is an outgrowth of the 1997 Harare Declaration and, in particular, of the 1999 Algiers Declaration on Unconstitutional Changes of Government. Both those are available at the same Internet link as the Lomé Declaration.
- 2 See African Union, Sanctions in Cases of Unconstitutional Changes of Government' (Chapter 8: Articles 23–26), in *African Charter on Democracy, Elections and Governance*, Addis Ababa, 30 January 2007. See the link above.
- 3 Pat McGowan and Thomas H. Johnson, African Military Coups d'Etat and Underdevelopment: A Quantitative Historical Analysis, *Journal of Modern African Studies*, 22(4) (December 1984), 633–666.
- 4 Issaka K. Souaré, *Civil Wars and Coups d'État in West Africa: An Attempt to Understand the Roots and Prescribe Possible Solutions*, Lanham, Md.: University Press of America, 2006, 29–30.
- 5 Ibid, McGowan and Johnson, *African Military Coups d'Etat and Underdevelopment*, 635. Some more definitions, generally in line with the above, can be found in Naison Ngoma, Coups and Coup Attempts in Africa: Is there a missing link? *African Security Review*, 13(3) (October 2004), 85–94.
- 6 This applies only to the suspension of representatives of the concerned country from participating in meetings of the decision-making organs of the AU, such as the Council of Ministers and the Assembly of Heads of State and Government. It should not affect the country's membership in the AU and therefore will not exonerate it from honouring its basic obligations towards the Organisation, particularly financial contributions to the AU's regular budget.
- 7 See Francis Nguendi Ikome, *Good Coups and Bad Coups: The limits of the African Union's injunction on unconstitutional changes of power in Africa*, Pretoria, Institute for Global Dialogue, 2007, 29.
- 8 Samuel Decalo, *Coups and Army Rule in Africa: Studies in Military Style*, New Heaven & London, Yale University Press, 1976, 5; Daniel N. Posner and Daniel J. Young, The Institutionalization of Political Power in Africa, *Journal of Democracy*, 18(3) (July 2007), 126–140.
- 9 John F. Clark, The Decline of the African Military Coup, *Journal of Democracy*, 18(3) (July 2007), 141–155. See also Ngoma, *Coups and Coup Attempts in Africa*, 86.
- 10 See the Preamble of the Lomé Declaration.
- 11 For more information and analysis on the crisis in Sierra Leone and/or this particular military coup, see Souaré, *Civil Wars and Coups d'Etat in West Africa*, 53–56; Adekeye Adebajo, *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau*, Boulder and London, Lynne Rienner Publishers, 2002; Jimmy Kandeh, *Coups from Below: Armed Subalterns and State Power in West Africa*, New York: Palgrave Macmillan, 2004.
- 12 Ikome, *Coups and Coup Attempts in Africa*, 35. A similar sentiment is echoed by G. Ferguson in his *Coups d'État: A practical manual*, New York, Arms & Armour Press, 1987, 17–18, as quoted in Ngoma, *Coups and Coup Attempts in Africa*, 85.
- 13 Paul Collier, *Wars, Guns and Votes: Democracy in Dangerous Places*, New York, HarperCollins, 2009; and Let Us Now Praise Coups, *Washington Post*, 22 June 2008, B03.
- 14 Ikome, *Coups and Coup Attempts in Africa*, 7; Clark, *The Decline of the African Military Coup*, 141.
- 15 Ngoma, *Coups and Coup Attempts in Africa*, 88.
- 16 Ikome, *Coups and Coup Attempts in Africa*, 13.
- 17 There have been very few exceptions where military leaders acquired power through unconstitutional means and then restored or established constitutional regimes, such as Amadou Toumani Touré in Mali (1991–92) and Gen. Mohamed Ould Vall in Mauritania (2005–07).
- 18 A similar remark is made by Ngoma, *Coups and Coup Attempts in Africa*, 86.
- 19 For more details, see Ikome, *Coups and Coup Attempts in Africa*, 35–36. What happened in Togo on 5 February 2005 was the reverse of this, in terms of the actors. For following the sudden death of Gnassingbé Eyadéma, the country's long-serving ruler (1967–2005), the president of the National Assembly (speaker of parliament) was the one to take the presidency and organise fresh elections in 60 days, according to Article 65 of the Togolese Constitution. However, the military suspended the Constitution and prevented the president of the Assembly, Natchaba Ouattara, who was on an official mission abroad at the time, from returning home. They then nominated one of the sons of the late president as the new Head of State. Both ECOWAS and the African Union condemned this action and rightly insisted that the military and their appointed Head of State abide by the Constitution. Following regional pressure, Faure Gnassingbé did agree to elections, but was declared winner of these when they were held in April 2005. For a brief overview of the post-Lomé coups that pertain to West Africa and all the successful military coups d'état that happened in this region from independence till 2005, see Souaré, *Civil Wars and Coups d'Etat in West Africa*, chap. 3, particularly pp. 115–124. For more details about the specific coup of February 2005 in Togo, see Issaka K. Souaré, Togo: A Constitutional coup after the fall of a baobab, *Africa Week* [Special Print Edition], February 2005.
- 20 There were some discussions about whether or not what happened in Madagascar on 17 March 2009 was an

unconstitutional change of government. We consider it to be one because Andry Rajoelina did not come to power through any of the two constitutional ways in which one may come to power in Madagascar, according to the current constitution of the land, both in its original August 1992 version, and its 1996 and 1998 amended versions. First, the principal constitutional channel by which leaders of all democratic countries come to power is through elections. Article 45 of the Constitution of Madagascar stipulates that the 'President of the Republic shall be elected by universal direct suffrage'. Rajoelina was not, nor could he have been elected, given that he was only 34 years of age at the time he seized power, which was six years short of the minimum 40-year bar required from presidential candidates according to Article 46 of the Constitution. The other way he could have come to power constitutionally was to replace the Head of State when the latter resigns or becomes incapacitated. But Article 52 of the Constitution provides that in such cases, 'the duties of the President of the Republic shall be temporarily exercised by the President of the Senate' until the holding of new elections. Rajoelina was not the President of the Senate either. For more details, see Otilia A Maunganidze, Madagascar: What Now? *ISS Today*, 18 March 2009 at www.issafrica.org.

- 21 For the whole region except Mauritania, see Souaré, *Civil Wars and Coups d'État in West Africa*; and on Mauritania, see Issaka K. Souaré, The Coup d'État in Mauritania: Why the Military Still Intervenes in African Politics, 5th August 2005 at www.hollerafrica.com.
- 22 On the 23 December 2008 coup in Guinea and the autocratic nature of Lansana Conté's regime, see Issaka K. Souaré, Explaining the December 2008 Military Coup d'État in Guinea, *Conflict Trends*, 2009/1, 27–33, Guinea's Military Coup a Blessing in Disguise? *ISS Today*, 6 January 2009 at www.issafrica.org; Ousmane Tity Faye, *Guinée: Chronique d'une démocratie annoncée*, Paris, L'Harmattan, 2008; Zogbélemou Togba, *Elections en Guinée: Technologie électorale et imbroglio juridique*, Paris, L'Harmattan, 2007.
- 23 On Mauritania, see the communiqué of the 151st meeting of the PSC, PSC/MIN/Comm.2 (CLI), of 22 September 2008 and that of the 163rd meeting, PSC/MIN/Comm.3 (CLXII) of 22 December 2008; and on Guinea, see the communiqué of the 165th meeting of the PSC, PSC/PR/Comm. (CLXV) of 29 December 2008.
- 24 On those and other instances of auto-legitimation practices of coup-makers since 2000, see Ikome, *Coups and Coup Attempts in Africa*, 35–42.
- 25 See Issaka K. Souaré, Mauritania: Mauritania: Auto-Legitimising Another Coup-Maker in Africa? *ISS Today*, 14 August 2009 at www.issafrica.org.

- 26 Richard Joseph, Challenges of a 'frontier' Region', *Journal of Democracy*, 19(2) (April 2008), 94–108.
- 27 Larry Diamond, The State of Democracy in Africa, Paper presented at the conference on *Democratization in Africa: What Progress toward Institutionalization?* Ghana Centre for Democratic Development, Accra, 4–6 October 2007.
- 28 Daniel N. Posner and Daniel J. Young, The Institutionalization of Political Power in Africa, *Journal of Democracy*, 18(3) (July 2007), 126–140.
- 29 Posner and Young, The Institutionalization of Political Power in Africa, Arthur A. Goldsmith, Predatory versus developmental rule in Africa, *Democratization*, 11(3) (June 2004), 88–110.
- 30 The data used to generate this table was compiled by the author and Nadia Ahmadou (for a forthcoming monograph on change of leadership in Africa), with inspiration from Sandrine Perrot, *Y a-t-il une vie après le pouvoir? Le devenir des anciens chefs d'État africains*, Bordeaux, CEAN, 1996.
- 31 Ratsiraka's second departure from office in December 2001 was a forced one that does not count here, even if it followed elections in which he was participating.
- 32 This point was eloquently made by the Uganda Constitutional Commission (the Odoki Commission) set up by President Yoweri Museveni in 1993 to draft what became the 1995 Constitution. After broad consultations regarding presidential term limits, the Commission concluded that the majority of the people were in favour of this provision and noted that 'while in countries like the United Kingdom, term limits are non-existent, the African context is very different.' Thus, this provision was contained in Article 105(2) of the Constitution, which was amended in the 2005. See Juma Anthony Okuku, *Beyond 'Third-Term' Politics: Constitutional amendments and Museveni's quest for life presidency in Uganda*, Occasional Paper no. 48, Pretoria, Institute for Global Dialogue, 2005, 9–12.
- 33 We included Ethiopia in this category despite the fact that there is no term-limit for the tenure of the executive Prime Minister because there is one for the President who is elected by Parliament. See Article 70 (4) of the Constitution for the terms of the President, and Article 73(2) for those of the Prime Minister.
- 34 For information on some of the efforts being made by the ECOWAS in this matter, see 'ECOWAS delegation in Niger to deliver message from Chairman of Authority,' ECOWAS Press Release no.: 047/2009, 2 June 2009 at: <http://news.ecowas.int/presseshow.php?nb=047&lang=en&annee=2009> (last access: 10 June 2009).

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ABOUT THIS PAPER

This paper examines the policy position of the AU with regard to 'Unconstitutional Changes of Government' (UCG) in Africa. After analysing the definition of the concept or phenomenon of UCG, at least from the viewpoint of the African Union (AU), with a special emphasis on the phenomenon of 'military *coup d'état*', the policy position is critically assessed, looking at its rationale and effectiveness. With shortcomings identified in this regard, the paper highlights some important issues to be considered to enhance the preventive impact of the policy. The overall objective of the paper is to suggest certain measures susceptible to at least minimise the risk of military *coups d'état* and other forms of unconstitutional changes of government on the continent. The paper appeals to African leaders to speedily ratify the African Charter on Democracy, Elections and Governance in order to provide the AU with a legally binding instrument that not only condemns unconstitutional changes of government, but also prevents auto-legitimisation of coup-makers through often charade elections.

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FUNDER

This paper was published with the support of the Government of Switzerland. In addition, general Institute funding is provided by the Governments of Denmark, the Netherlands, Norway and Sweden.



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