



**APRM**  
African Peer Review  
Mechanism

**AGA**  
African Governance Architecture

# AFRICA GOVERNANCE REPORT 2023

UNCONSTITUTIONAL  
CHANGES OF  
GOVERNMENT IN  
AFRICA



An Institution of the

**African  
Union**



**AFRICA  
GOVERNANCE  
REPORT  
2023**

UNCONSTITUTIONAL  
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GOVERNMENT IN  
AFRICA

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**AFRICA  
GOVERNANCE  
REPORT  
2023**

UNCONSTITUTIONAL  
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AFRICA

As of February 2023, the following 43 countries participate in the APRM:

People's Democratic Republic of Algeria, Republic of Angola, Republic of Benin, Burkina Faso, Republic of Burundi, Republic of Cameroon, Republic of Botswana, Republic of Congo, Democratic Republic of Congo, Republic of Chad, Union of Comoros, Republic of Côte d'Ivoire, Republic of Djibouti, Arab Republic of Egypt, Republic of Equatorial Guinea, Federal Democratic Republic of Ethiopia, Republic of Gabon, Republic of The Gambia, Republic of Ghana, Republic of Kenya, Kingdom of Lesotho, Republic of Liberia, Republic of Malawi, Republic of Mali, Islamic Republic of Mauritania, Republic of Mauritius, Republic of Mozambique, Republic of Namibia, Republic of the Niger, Federal Republic of Nigeria, Republic of Rwanda, Democratic Republic of São Tomé and Príncipe, Republic of Senegal, Republic of Seychelles, Republic of Sierra Leone, Republic of South Africa, Republic of the Sudan, United Republic of Tanzania, Republic of Togo, Republic of Tunisia, Republic of Uganda, Republic of Zambia, Republic of Zimbabwe.

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## **FURTHER ACKNOWLEDGMENTS**

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## H.E. JULIUS MAADA BIO

Chairperson of the Africa Peer Review Forum  
President of the Republic of Sierra Leone

January 2023

## FOREWORD

**T**he Africa Governance Report 2023 (AGR23) is the third report produced by the African Peer Review Mechanism (APRM), on behalf of the African Governance Architecture (AGA). The AGR23 focuses on unconstitutional change of government (UCG) in Africa and draws its mandate from two African Union Assembly Decisions.

The first is Assembly Decision/AU/Dec. 815(XXXV) of the 35th Ordinary Session, held in February 2022, which expressed deep concern about the resurgence of UCG in Africa. The assembly called on African Union (AU) member states to uphold constitutionalism and fully respect all AU shared values, normative instruments and legal instruments, particularly the AU Constitutive Act and the African Charter on Democracy, Election and Governance (ACDEG).

The second, the Assembly Decisions of the 16th Extraordinary Session of the African Union Assembly of Heads of State and Government on Terrorism and Unconstitutional Changes of Government held on 28 May 2022 in Malabo, Equatorial Guinea, as well as other AU meetings and forums, direct the focus of AGR23 on UCG and terrorism. By utilising the APRM methodologies of targeted reviews, high-level inter-agency consultations and expert thematic analysis as its development platform, this report represents a collective effort that highlights rigorous, evidence-based research conducted over one year.

The AGR23 is divided into five sections. The first section provides the background and mandate for thematic focus of this report and situates the AGR within the context of the African Union multi-agency tripod of governance, development and peace and security.

The second section presents a detailed account of the evolution of the normative framework for unconstitutional change of government in Africa from the establishment of the Organisation of African Unity (OAU) to the African Union, highlighting the various instruments that govern the response of the union in this regard.

The third section analyses the influences, causes and triggers of UCG in Africa across five themes. These are integrity of elections, diversity management and human rights, constitutional order and state legitimacy, economic governance, and public sector accountability, and finally, popular uprising, militarisation and terrorism.



Accordingly, the analysis lays the foundation for the conceptual lens through which the analysis in the subsequent sections is undertaken.

The fourth section provides an overview of the six country case studies derived from country-targeted review reports on UCG. The section presents primary first-hand information, perspectives, and data, from the countries that have experienced unconstitutional change of government for purposes of lessons learned.

The fifth section examines the efficacy and effectiveness of the African Union normative framework for sanctions regime. It presents expert opinions and analysis on the convergence and divergence, and complementarity with United Nations and other bilateral frameworks, as well as opportunities for enhancement. Sanctions remain a fundamental tool for prevention, deterrence, management, and mitigation of unconstitutional change of government

The sixth section discusses public perceptions on the causes of UCG and the effectiveness of the AU and the responses of its member states. The significance of the discussions in this section derives from the rationale that all events of unconstitutional change of government concern the social contract between the citizen and the state. It is therefore imperative that the voices of the citizen be central to this report.

Lastly, the AGR23 makes recommendations for the uptake by the AU, Regional Economic Communities, and other key actors, as well as for wide dissemination to the public and academia through strategic media campaigns.

It is therefore my honour to share this important report, and I am confident that it will receive the warm and deserved attention for its invaluable contribution to the advancement of good governance and development of our continent. ■



DR. ALI ABDEL-RHAMANE HAGGAR

REPUBLIC OF CHAD

Chairperson of the Africa Peer Review Forum  
President of the Republic of Sierra Leone

January 2023

## PREFACE

The APR Panel of Eminent Persons is pleased to present the third edition of the Africa Governance Report (AGR23) on Unconstitutional Change of Government (UCG) in Africa, produced by the African Peer Review Mechanism (APRM) Secretariat in collaboration with members of the African Governance Architecture Platform Members (AGA).

This edition of the Africa Governance Report, AGR23, presents an analysis of the influences, causes, drivers and triggers of UCG in Africa that were identified by AGA Platform Members and verified by thematic experts and an elaborate process of country-targeted reviews. The AGR23 also presents findings on the efficacy and effectiveness of the AU normative framework and instruments that govern, prevent, and manage responses to UCGs. The thematic focus of AGR23 is key and timely considering the recent resurgence of UCGs on the continent. The report contributes to ensuring the speedily realisation of Aspiration 3 and Aspiration 4 of the AU Agenda 2063: 'a 'peaceful and secure Africa' and An Africa of good governance, democracy, respect for human rights, justice and the rule of law.'

In examining the dynamic of the influences, causes, drivers, and triggers of UCGs as well as the efficacy and effectiveness of the AU policy and legal norms that have been adopted to prevent and manage responses to UCGs five themes have been identified. These are: integrity of democratic elections; diversity management and human rights; constitutional order and state legitimacy; economic governance and public sector accountability; and popular uprisings, militarisation, and terrorism. The development of the AGR23 employed approaches of complementary research methods such as, (a) review of existing literature including published reports, AU member states and REC decisions and declarations on UCGs; (b) data gathered through expert surveys undertaken via targeted review missions (TRMs) in countries that experienced UCGs.

In this regard, the APR Panel would like to express its profound appreciation for the stellar leadership and support provided by the Heads of State and Government of the six (6) countries that underwent targeted reviews. We would also like to express our profound appreciation to the Members of the Panel who provided leadership and ensured credibility and integrity in the conducted of the Targeted Reviews and Assessments on UCG, namely Ambassador Aly Hossam El -Din El Hefny Mahmoud (Lesotho), Ambassador Inonge Mbikusita-Lewanika (Sierra Leone), Dr Ousman Diallo (Comoros), Dr Ousman Diallo (Chad) Ambassador Hamed Arita Ali (Republic of Guinea) and Ambassador Mona Omar Attia, (Republic of Sudan).

The APR Panel also expresses its deep gratitude the Kingdom of Lesotho national consultant, Mr Tseliso Lesenya. The Republic of Sierra Leone national consultant, Dr Hindowa Momoh, The Union of the Comoros national consultant, Mr Faicoil Mohamed Djitihadi, The Republic of Chad national consultant, Dr Alfred Ramadji. The Republic of Guinea national consultant, Dr Issaka Souaré and the Republic of Sudan

Focal Point Chairperson of the National Governing Council, Dr Ismael Wade and Professor Hunud Abia Kadouf, respectively.

The APR Panel also recognises the exceptional efforts and contributions of the AGA Platform Members, the AU Permanent Representatives Committee Sub-Committee on Human Rights, Democracy and Governance, and the United Nations in the development of this report. We thank the key informant interviewees and all experts within, the United Nations (UN) headquarters in New York, United States Department of State who shared their insights. The APR Panel further recognises the contributions made by the United Nations Development Programme (UNDP) and the African Union Economic, Social and Cultural Council (ECOSOCC) for sharing their reports on citizen's concerns and perception on the causes, influences, causes, drivers, and triggers of UCGs. The citizen's perceptions were considered in the articulation of the recommendations.

The APR Panel would like to highlight that whilst substantive normative frameworks and instruments for prevention and management of UCGs exist at the AU and REC level, and significant efforts have been invested at national, regional and continental level to address UCGs in Africa, including the imposition of sanctions and other punitive measures in countries that have experienced UCGs; there remains notable legal, policy, structural and institutional gaps and limitations that may need the attention of AU member states, the AU, RECs and other stakeholders.

Accordingly, the recommendations in the report highlight the need for collective and collaborative efforts (at national, regional and continental levels) to enhance the integrity of democratic elections; improve diversity management and promote human rights; uphold constitutional order and enhance state legitimacy; strengthen economic governance and public sector accountability; implement security sector reforms to professionalise and depoliticise the military in AU member states; execute counter-terrorism measures to prevent and combat terrorism; tighten and broaden the scope of sanctions to deter member states from engaging in UCGs; adopt solid institutions to promote constitutionalism and prevent amendments or revisions of constitutions in ways that infringe upon the principles of democratic change of governments; expedite the ratification and domestication of UCG-related protocols and conventions at AU and REC levels; and introduce mechanism for inter-agency collaboration and platforms for regular engagements on UCGs, peace and security matters.

The APR panel is confident that the findings and recommendations in the AGR23 will provide a basis for evidence-based engagements and conversations on UCGs, specifically on how AU member states can invest efforts towards preventing, managing, and responding to UCGs with the ultimate objective of promoting peace, security and stability which are all a sine qua non for effective regional integration and continental development. ■



## ABOUT THE REPORT

### PROF EDDY MALOKA

Chief Executive Officer  
African Peer Review Mechanism

The Africa Governance Report (AGR) is a publication of the African Union (AU) on the state of governance in Africa. The report provides relevant, accurate and informative assessments of selected key governance areas across all 55 member states of the AU based on expert research and analysis. Accordingly, the AGR presents evidence based, objective, and balanced reviews on the state of African governance in contributing to the attainment of long-term political, social, and economic stability and development on the continent. Each report focuses a selected theme and sub themes identified by the African Union Assembly of Heads of State and Government as strategic priorities of the Union. It enumerates commendable practices in those selected governance themes, identifying challenges and submits recommendations for action by the African Union, Regional Economic Communities (RECs) and AU member states.

The Africa Governance Report 2023 (AGR23) on Unconstitutional Changes of Government (UCG) in Africa is an amalgamation of findings, analysis, and recommendations from thirteen reports: six country-targeted review reports on lessons learnt from UCG; five thematic analysis reports on catalysts, causes and triggers of UCG, and two consultative reports on the efficacy and effectiveness of normative frameworks for sanctions regimes on UCG. The report comprises the following:

#### **Chapter 1: Mandate and Background**

summarises the phenomenon (resurgence) and developments within the AU that culminated in designation of the theme of unconstitutional changes of government (UCG) for the AGR23. It presents a trend analysis of UCG events, the instruments, the actors, and the AU institutional responses to recent UCG events in Africa. A summary of the approach and methods and methodology used to obtain the information necessary to undertake the analyses of UCG and make recommendations is also presented. Accordingly, the chapter also presents a summary of the key findings emanating from the thematic analysis, lessons learned from targeted reviews and the consultations on the review of normative frameworks for sanctions regimes on UCG. In concluding, the chapter outlines key recommendations for action by AU, the RECs, and member states.

#### **Chapter 2: Evolution of the Normative Frameworks on Unconstitutional Change of Government**

presents a historiography, and legal and institutional analysis on the evolution of key frameworks and/or instruments that have guided and instructed the response of the AU to the incidence of UCG. The historiography covers the six decades from the inception of the Organisation African Union (OAU) in May 1963 to the establishment of the AU in July 2002, to developments as recent as 2022. Additionally, the chapter presents a nuanced examination of the instruments and frameworks developed and applied by RECs in response to UCG events in their respective regions, drawing heavily from the experience of ECOWAS. An assessment of the coherence and complementarity of the AU and REC frameworks on UCG is also presented here.

### **Chapter 3: Trends, Causes and Dynamic of Unconstitutional Change of Government**

presents and interrogates trends and dynamics of UCG in Africa in the period between 1999 and 2022. The analysis focuses on the catalysts, causes and triggers of UCG along five themes derived from the Accra Declaration of March 2022 and the Malabo Declaration on Terrorism and Unconstitutional Changes of Government in Africa of May 2022. These are: Integrity of democratic elections, diversity management and human rights, constitutional order and state legitimacy, economic governance and public sector accountability, and popular uprising, militarisation, and terrorism. An account of the role that these aspects have played in influencing, causing, exacerbating and/or mitigating the effects of UCG on governance and peace and security is outlined in this chapter. In the final analysis, the chapter presents recommendations on measures the African Union, RECs and member states can institute to prevent, manage, and mitigate against UCGs.

**Chapter 4: Lessons from Targeted Reviewed Country Experiences** presents national official (state) and country public (citizen) perspectives on the causes, dynamics and implications of UCG across six AU member states that underwent an APRM targeted review. The chapter presents consolidated and definitive accounts of citizens' perceptions of the foundational causes of UCG in their countries and the opportunities to address them. In the final analysis, the chapter presents policy-actionable recommendations on measures to prevent, manage and mitigate UCG.

**Chapter 5: Efficacy and Effectiveness of Sanctions Regime on UCG** presents an analysis of perspectives from experts of the United Nations Security Council Secretariat Branch, the Africa Group of the UN and the United States government departments of state and treasury, on the efficacy and effectiveness of African Union Sanctions regime. The chapter analyses the efficacy and effectiveness of the regime through a comparative analysis with the UN normative framework for sanctions and an assessment of provisions in the institutional procedures for implementation of sanctions outlined in the Protocol on the Establishment of the Peace and Security Council of the African Union. Accordingly, the chapter outlines the key findings and recommendations for action at various levels of governance – continental, regional and state.

**Chapter 6** consolidates the recommendations

advanced in the outcomes of the targeted reviews on UCG, the consultative missions on sanctions and the thematic analysis. The recommendations are also classified for action at national, regional and continental levels, while acknowledging the political economy contexts that pertain to each.

This report was subjected to rigorous reviews undertaken in collaboration with AGA-APSA Secretariat. The review process involved validation by the African Union - APRM at continental and national levels. It included the African Union Commissioner for Political Affairs and Peace and Security, the APR Panel of Eminent Persons, the APR Committee of Focal Points and APRM Committee of National Secretariats and National Governing Councils Continental Consultative Committee. From 13th to 16th November 2022, the APRM Continental Secretariat presented the preliminary findings of the AGR23 to the APR Panel of Eminent Persons that were joined by the AU Panel of the Wise (PoW) and to the APRM National Secretariats Coordinating Committee and National Governing Councils Continental Consultative Committee. On 16th and 17th November 2022, at the 5th Annual APRM Methodology Forum the report was presented to the APRM community. On 28th November, the report was further enriched by submissions from 32 academics and practitioners at the 5th Africa Governance Seminar by selected academics. On 7 December 2022, the APRM Continental Secretariat, in collaboration with AGA-APSA Secretariat convened all AGA Platform Members at Technical Level for validation of the key findings and recommendations. Subsequently, the report was validated at the highest levels of the African Union. On 13th and 14th January 2023, the Permanent Representatives Committee – Sub-Committee on Human Rights, Democracy and Governance considered the report and presented its observations. On 8th February 2023, the Peace and Security Council of the African Union reviewed the report for validation. On 9th February 2023 a High-Level Political Validation meeting of Heads of States and Government from the Targeted Review Countries considered the report with a focus on the lessons learnt from countries with relevant experiences.

Finally, the report presents key outcomes from the High-Level Political Validation of the six UCG Countries that underwent targeted reviews and from the APR Forum of Heads of States and Government. These outcomes comprise a set of recommended practices that can be considered and adopted at both the level of the African Union and member states. ■



## HONOURABLE COMMISSIONER PROF. RÉMY NGOY LUMBU

Chairperson of the AGA Platform and Chairperson,  
African Commission on Human and People's Rights

January 2023

## ACKNOWLEDGEMENTS

The Chairperson of the African Governance Architecture (AGA) Platform and the Chairperson of the African Commission on Human and People's Rights, Professor Remy Ngoy Lumbu, would like to acknowledge, with gratitude, the guidance and contributions made to the development of the third edition of the Africa Governance Report 2023: 'Unconstitutional Change of Government in Africa'. The report was produced by the African Peer Review Mechanism in collaboration with the Africa Governance Architecture-African Peace and Security Architecture Secretariat (AGA-APSA).

Profound gratitude goes to the African Union (AU) Panel of the Wise, the AU Permanent Representatives Committee (PRC), the AU Peace and Security Council (PSC) and the African Union Commission (AUC), for their guidance towards the development of this report.

The African Peer Review Mechanism would also like to express its profound appreciation to the APR Panel of Eminent Persons who provided leadership to the five UCG Targeted Review Missions. For the Republic of Lesotho, the lead panel member was Ambassador Aly Hossam El -Din El Hefny Mahmoud who was supported by Mr Tseliso Lesenya a national consultant and Professor Migai Akech an international expert. For the Targeted Review Mission of the Republic of Sierra Leone, the lead panellist was Ambassador Inonge Mbikusita-Lewanika, supported by Dr. Hindowa Momoh a national consultant, and Professor Migai Akech and Dr. Wole Olaleye the international experts. The Union of the Comoros Targeted Review Mission was led by Dr. Ousmane Diallo the lead panel member for the country supported by Mr. Faicoil Mohamed Djitihadi a national consultant, Professor Yedoh Sebastien Lath, Professor Saliou Faye and Professor Pacifique Manirakiza the international experts. For the Targeted Review Mission of the Republic of Chad the lead panellist was Dr. Honoré Mobonda, supported by Dr. Alfred Ramadji a national consultant, Professor Babacar Gueye, Professor Fousseyni Doumbia and Dr. Babarinde René Aderomou the international experts. Lastly the Targeted Review of the Republic of Guinea was guided by the lead panel member for the country Ambassador Hamed Arita Ali supported by Dr. Issaka Souaré a national consultant, Dr. Babarindé René Adérérou, Dr. Salliou Faye, Professor Lath Yedo and Mr. Sandjima Dounia the international experts.

The targeted review processes were coordinated by Dr Rachel Mukamunana, the Acting Director of Country Reviews and Assessments at the APRM supported by the following country coordinators: Ms. Ejigayhu Tefera, Dr. Valery Yao Yao, Mr. Hassan Mahamat Ahmat and Mr. Bachir Salifou Oumarou.

Our profound appreciation also goes to the delegation that undertook the Consultative Mission to the United Nations Security Council Secretariat Branch and United States Government State Department and Treasury Department to review the AU Normative Frameworks on Sanctions Regimes for Unconstitutional Change of Government. This delegation was led by Mr. Kwasi Asante, Chair of the PRC, Peace and Security Committee of Experts for the month of October 2022, who was deputised by Dr McBride Nkhalamba of the APRM. The Delegation was comprised of Experts, Prof. Justice Gerard Niyungeko, the Alternate Sanctions Commissioner at the African Development Bank, Dr Andrews Atta-Asamoah, the Programme Head at the Institute for Security Studies, Ms. Maureen Lufongo, the Mission Rapporteur. The mission also included APRM Secretariat staff researchers: Ms. Karabo Chadzingwa, Mr. Onesime Alain Ndi Bitan and Ms Nonkululeko Masoek.

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The development of the AGR 2023 was coordinated by a team led by Dr McBride P. Nkhalamba, the Ag. Director of Governance and Specialised Reporting comprising of Dr Misheck Mutize APRM, Ms Sufiya Bray, Ms. Nonkululeko Masoek and Mr. Majane Maile. ■

## LIST OF ACRONYMS

<b>ACDEG</b>	African Charter on Democracy, Elections and Governance
<b>ACHPR</b>	African Union Peace and Security Council
<b>AGA</b>	Africa Governance Architecture
<b>AGR</b>	Africa Governance Report
<b>APRM</b>	African Peer Review Mechanism
<b>AU</b>	African Union
<b>AUDA-NEPAD</b>	African Union Development Agency- New Partnership for Africa's Development
<b>AUPSC</b>	African Union Peace and Security Council
<b>CENSAD</b>	Community of Sahel-Saharan States
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CSO</b>	Civil Society Organisations
<b>DRC</b>	Democratic Republic of Congo
<b>EAC</b>	East African Community
<b>ECOWAS</b>	Economic Community of West African States
<b>ECOSSOC</b>	Economic, Social & Cultural Council
<b>EU</b>	European Union
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IGAD</b>	Intergovernmental Authority on Development
<b>OIF</b>	International Organization of the Francophones
<b>OAU</b>	Organisation of African Unity
<b>PAIPD</b>	Pan-African Inter-Party Dialogue
<b>RECs</b>	Regional Economic Communities
<b>SADC</b>	Southern African Development Community
<b>UMA</b>	Arab Maghreb Union
<b>UN</b>	United Nations
<b>UNSC</b>	United Nations Security Council
<b>USA</b>	United States of America

## AGR 2023 REFERENCE GUIDE TO AFRICAN UNION AGREEMENTS

Agreement	Year	Place
Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government	2000	Togo
Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol)	2014	Equatorial Guinea
ACCRA Declaration on Unconstitutional Changes of Government In Africa	2022	Ghana
The African Charter on Democracy, Elections and Governance (ADEG)	2007	Ethiopia
The Constitutive Act of the African Union	2000	Togo
African Charter on Human and Peoples' Rights	1981	Kenya
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	1998	Burkina Faso
African Union Declaration on Principles Governing Democratic Elections in Africa.	2002	South Africa
SADC Principles and Guidelines Governing Democratic Elections and the SADC Parliamentary Forum Norms and Standards for Democratic Elections	2015	South Africa
SADC Protocol on Gender and Development	2008	South Africa
SADC Electoral Commissions Forum Principles and Guidelines on the Independence of Election Management Bodies in the SADC Region	2007	Angola
The Protocol on Democracy and Good Governance of the Economic Community of West African States (ECOWAS).	1993	Berlin
African Charter on the Rights and Welfare of the Child	1990	Ethiopia
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	1969	Ethiopia
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	2003	Mozambique
African Charter on Values and Principles of Public Service and	2011	Ethiopia
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa	2009	Uganda
Protocol on the Statute of the African Court of Justice & Human Rights	2008	Egypt
Protocol Relating to the Establishment of the Peace and Security Council of the African Union	2002	South Africa
The African Union Convention on Preventing and Combating Corruption	2003	Mozambique
The Algiers Declaration on Unconstitutional Changes	1999	Algeria
The Conference on Stability, Security, Development and Democracy	1999	Libya
The OAU/AU Declaration on Principles Governing Democratic Elections	2007	Ethiopia
The African Union Post-Conflict and Reconstruction Policy Framework	2022	Ghana
The New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic & Corporate Governance	2002	South Africa
The Kigali Declaration on Human Rights in Africa	2003	Rwanda
The Solemn Declaration on Gender Equality in Africa	2004	Ethiopia
The Mechanism for Conflict Prevention, Management and Resolution	1992	Senegal
Peace and Security Council (PSC) protocol	2002	South Africa
African Economic Community (AEC)	2000	Nigeria
OAU Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes	1990	Ethiopia
The Cairo Agenda for Action (1995)	1995	Ethiopia
International Covenant on Civil and Political Rights (ICCPR)	1966	USA
Basic Principles on the Use of Force and Firearms	1990	Cuba
AU Master Roadmap of Practical Steps for Silencing the Guns in Africa (AUMR)	2016	Zambia

# DRAFT AU ASSEMBLY DECISION

## Draft decision on the Africa Governance Report 2023

The Assembly,

TAKES NOTE WITH APPRECIATION of the presentation of the Third Africa Governance Report by H.E Julius Maada Bio, President of the Republic of Sierra Leone and Chairperson of the African Peer Review Forum of Heads of States and Government;

COMMENDS H.E Julius Maada Bio, President of the Republic of Sierra Leone for his sterling leadership of the APRM, including his excellent presentation of the Africa Governance Report- 2021 (AGR-2021) on behalf of the APRM;

RECALLS Assembly/AU/Dec.720 (XXXII) in which the Assembly decided that the Africa Governance Report shall be developed by the APRM, in collaboration with the Africa Governance Architecture (AGA), and presented to the Assembly every two (2) years for consideration during its ordinary session;

FURTHER RECALLS Assembly/AU/Dec.720(XXXII) in which the Assembly during its 32nd Ordinary Session welcomed the Africa Governance Report 2019 and encouraged member states to consider the recommendations presented. Also Assembly/AU/Dec.765(XXXIII) in which the Assembly decided that the APRM should develop, in collaboration with AGA, the African Governance Report and present it to the 34th Ordinary Session of the Assembly scheduled to take place in February 2021;

REAFFIRMS The statement made by H.E Cyril Matamela Ramaphosa, President of the Republic of South Africa and Outgoing Chairperson of the APR Forum at the 35th Ordinary Session of the Assembly held in February, 2022, expressing concern to the resurgence of military coups d'état on the continent and affirming the APRM unwavering conviction that all kinds of unconstitutional changes of governments undermines the gains realised so far by the AU in areas of good governance, democracy, peace, security and stability.

COMMENDS the APRM for developing the Third Africa Governance Report in collaboration with AGA, pursuant to Assembly/AU/Dec.720 (XXXII), Assembly/AU/Dec.765(XXXIII) and for ensuring that it is presented to the 36th Ordinary Session of the Assembly;

WELCOMES the development of the Africa Governance Report 2021 under the theme, 'Unconstitutional Change of Government in Africa', and COMMENDS the APRM, AGA, the Joint Task Force, Country Targeted Review Teams and Thematic Experts for the commendable work done in developing the African Governance Report 2023 Unconstitutional Changes of Government in Africa;

AFFIRMS that the Africa Governance Report 2023 'Unconstitutional Change of Government in Africa' inspires us to accelerate efforts towards full realisation of the Vision of the African Union (AU) for 'An integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena,' as well as the AU Agenda 2063 Aspirations, and its Ten-Year Implementation Plans;

URGES member states to consider and examine the recommendations contained in the report with a view to enhancing good governance and peace and security, and sharing good practices at both national and continental levels;

ENCOURAGES member states to develop and conduct their own research on catalysts, causes and triggers of unconstitutional change of government as a self-assessment tool towards the realisation of Agenda 2063's Aspiration 3 for 'An Africa of good governance, democracy, respect for human rights, justice and the rule of law,' and Aspiration 4 for 'A peaceful and secure Africa'

REQUESTS the APRM, in collaboration with AGA, to continuously conduct targeted reviews, research and tracking on governance in relation to constitutional order, integrity of elections, diversity management and human rights, public sector accountability and popular uprising and militarisation in line with the recommendations of the Report;

FURTHER ENCOURAGES AND REQUESTS the APRM, in collaboration with AGA, to officially launch and widely disseminate the Report, and for all AGA Platform members, Regional Economic Communities and other Continental bodies to incorporate the Report in their strategic framework and Annual Work Programmes;

AFFIRMS that the Africa Governance Report shall be developed by the APRM in collaboration with AGA and shall be presented to the Assembly every two (2) years for consideration by the Assembly during its ordinary sessions; and

DECIDES that the APRM, in collaboration with AGA, should develop the Fourth Africa Governance Report with a focus on a theme to be decided by the Executive Council as delegated by the Assembly should be developed and presented at the 38th Ordinary Session of the African Union Assembly of Heads of State and Government.



# CHAPTER 1

## MANDATE AND BACKGROUND

The African Peer Review Mechanism (APRM) is an institution of the African Union (AU). It is an African-owned and African-led platform for self-assessment, peer-learning, and experience-sharing in democracy and good governance. The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practices.

The mandate of the APRM is to ensure that policies and practices of African states that have acceded to the mechanism conform to agreed political, economic, and corporate governance values, codes, and standards of the African Union. In this regard, the APRM encourages the states to implement the African Charter on Democracy, Elections and Governance (ACDEG), the AU Declaration on Democracy, Political, Economic, Corporate Governance and other relevant instruments; and promote democracy and good governance on the continent.

The APRM in collaboration with the AGA Platform members produced the first Africa Governance Report (AGR-19) and presented it to the Assembly in February 2019. The second Africa Governance Report (AGR-21): Africa Governance Futures for the Africa We Want which followed was presented and adopted by the Assembly at its Ordinary Session that took place in February 2022.

The authority for the choice of unconstitutional change of government (UCG) in Africa as the theme for the third edition of the Africa Governance Report (AGR 2023) is derived from AU Assembly decisions and Summit outcomes. These decisions and outcomes were necessitated by a series of UCG events and their historiography including the actors and institutional responses to these events are summarised in this section. Also presented in this section is the approach and methodology used to obtain the information necessary, undertake the analyses and make recommendations.

The African Union Assembly of Heads of State and Government (Assembly), through Decision Ext/Assembly/AU/Dec.1(XI) adopted at its 11th Extraordinary Session held in November 2018 in Addis Ababa, Ethiopia, directed the APRM to develop a report on the state of governance in Africa in collaboration with the African Governance Architecture (AGA). Subsequently, at its 32nd Ordinary Session held in February 2019 in Addis Ababa, Ethiopia, the AU, through Decision Assembly/AU/Dec.720(XXXII), further directed that the Africa Governance Report shall be developed by APRM in collaboration with the African Governance Architecture (AGA), and that the report shall be presented every two (2) years for consideration by the Assembly at its Ordinary Sessions. This mandate is also stipulated in Article 6 (1) (c) of the APRM Statute (2020) which states that the APRM has a function to prepare the African Governance Report in collaboration with AGA and present it to the Assembly for consideration at its Ordinary Session every two (2) years.

The Africa Governance Report 2023 theme on Unconstitutional Changes of Government in Africa derives from the following Assembly decisions and Summit outcomes. Firstly, preceding the call for a thematic focus on unconstitutional change of government, at its 35th Ordinary Session through Decision Assembly/AU/Dec. 818(XXXV), decided that the APRM, in collaboration with AGA, should develop the Third Africa Governance Report with a focus on the nexus between Governance and the 4th Industrial Revolution (4IR). However, owing to developments on the continent and concerns from policy organs of the African Union, the theme of the AGR23 was revised to focus on Unconstitutional Changes of Government. At the 35th Ordinary Session of the Assembly held in February 2022 through Decision, Assembly/AU/Dec. 815(XXXV), the Assembly expressed concern about the resurgence of UCG in Africa. The Assembly called on member states to uphold constitutionalism and fully respect all AU shared values, normative instruments, and legal instruments, particularly the AU Constitutive Act and the African Charter on Democracy, Election and Governance (ACDEG).

Pursuant to the Assembly Decision, Assembly/AU/Dec. 815(XXXV), the APRM proposed to AGA Platform Members that the AGR23 focus on UCG on the continent. The AGA Platform Statutory Political Meeting, held virtually on 10 March 2022, welcomed the proposal, and requested that the theme be considered and adopted by AU Policy Organs. The AGA Political Meeting further requested that the APRM incorporate the outcomes of the African Union Reflection Forum on Unconstitutional Changes of Government held in Accra, Republic of Ghana from 15 to 17 March 2022. The Forum had recommended that member states be encouraged to:

- Explore the full ratification, implementation, and domestication of the instruments that embody the AU Shared Values in the African Charter on Democracy, Elections and Governance (ACDEG).
- Promote intergenerational and inter-stakeholder communication and dialogue on UCG.
- Renew and sharpen AU, REC, RM and Member State mechanisms and methods to address UCG.
- Ensure consistency and timeliness in the response to UCG and other security challenges.

- Prioritise, support, and help manage political transitions in Africa to prevent UCG.
- Support the development of AU guidelines and standards on the judicious amendment of national constitutions within the framework of the ACDEG to ensure that no constitutional amendments to prolong tenure of office are permissible, and that no amendments infringe the charter's principles on democratic change of government and the integrity of democratic elections.

The Reflection Forum also recommended that the AGR23 focus on the topic of UCG in Africa. To further develop the Concept of the AGR23, the AGA Platform Consultative Meeting held in Cape-Town from 25-26 March 2022, adopted the proposals by the APRM Continental Secretariat on the methodology for the development of AGR23. Consequently, on 28 May 2022, in Malabo, Republic of Equatorial Guinea, at the 16th Extraordinary Summit on Terrorism and Unconstitutional Changes of Government, H.E Julius Maada Bio, President of the Republic of Sierra Leone and Chairperson of the APR Forum of Heads of State and Government, with the support of other Heads of State and Government of APRM Participating States, submitted a proposal for AGR23 to focus on UCG.

A month earlier, the AU Peace and Security Council (PSC) at its 1,061st Meeting held on 27 January 2022, (PSC/PR/COMM.1061(2022)), had also described the resurgence of unconstitutional changes of government in Africa, as a phenomenon that undermines democracy, good governance, peace, security and stability, and the collective quest to silence the Guns in Africa by 2030. The PSC stressed the urgent need to address the underlying causes of unconstitutional changes of government, including governance deficits, mismanagement of diversity, marginalisation, violation of human and peoples' rights, refusal to accept electoral defeats, manipulation of constitutions, illegal review of constitutions, among other factors, are triggers of unconstitutional changes of government in Africa.

In this regard, the PSC requested the AU Commission to undertake an in-depth analysis of the 2000 Lomé Declaration on Unconstitutional Change of Government and the AGA, with a view to ensure these frameworks and instruments respond appropriately to the challenges that the continent is currently facing and submit to the PSC for consideration. The PSC also underscored the importance of enhancing the capacity of the African Peer Review Mechanisms (APRM)

to continue supporting Member States in the promotion of democracy and good governance with a view to prevent constitutional related crises. The PSC further decided to hold a brainstorming session/seminar of the PSC and other relevant stakeholders on unconstitutional changes of government in Africa and welcomed the offer made by Ghana to host the event.

Subsequently, the PSC at its 1062nd Meet held on 31 January 2022 (PSC/PR/COMM.1/1062(2022)), on the Situation in Burkina Faso, reiterated its call for a comprehensive and objective analysis of the root causes and impact of unconstitutional changes of government in the continent. The PSC affirmed the recommendations of the 8th High Level Seminar on Peace and Security in Africa held in Oran, Algeria in December 2021, which called for the review of the African Governance Architecture (AGA) and the Lomé Declaration on unconstitutional changes of government. The PSC underscored the need for such an analytical review to also examine existing AU instruments on democracy and good governance, with a view to factoring in contemporary challenges to African peace and security and modalities to address the surge in unconstitutional changes of government in Africa, and report to the Council within two months, with practical recommendations on steps to be taken.

The rationale for the proposed focus of the AGR-23 to focus on unconstitutional changes of government on the continent is premised on two key pursuits. First is the urgent need for the African Governance Architecture as a comprehensive and institutional political framework for the promotion of democracy, good governance, and human rights in Africa to address the resurgence of unconstitutional changes of government. Secondly, there is an the urgent need for the AU system to address the phenomenon of unconstitutional changes of government which is of great concern to member states and all stakeholders. This is because unconstitutional changes of government can be destructive for the development of a democracy, maintenance of peace and stability, and sustenance of development agendas at national, regional and continental levels. UCGs often create leadership vacuums and governance deficits time periods without a legitimate government ruling the country, can breeds anarchy and disrupts national development programmes, plans and projects.

In addition to this, UCGs often derail and reverse national democratisation processes as they are a threat to the entrenchment of democracy.

In the long-term, UCGs breeds a political culture of unconstitutional removal of governments as citizens ultimately develop entrenched beliefs and feelings that whenever they have lost confidence and trust in the political system, they have to overthrow the government through popular protests or other unconstitutional means. This weakens the role of elections and constitutionalism as democratising tools that allow for peaceful transfer of power.

To this end, and as called for by the AU Assembly and the PSC, the AGR-23 development process sought to inform and undertake on the following in addressing the phenomenon of unconstitutional changes of government. First, the need for a comprehensive and objective analysis of the root causes and impact of unconstitutional changes of government in the continent. Secondly, the need for an in-depth analysis of the 2000 Lomé Declaration on unconstitutional change of government and the AGA by the AU Commission, with a view to ensure these frameworks and instruments respond appropriately and effectively to the challenges that the continent is currently facing, with submissions of the findings to the PSC for consideration. Third, the urgent need to review of the African Governance Architecture (AGA) and the Lomé Declaration on unconstitutional changes of government as well as the examination of all existing AU instruments on democracy and good governance, with a view to factoring in contemporary challenges to African peace and security and modalities for addressing the surge in unconstitutional changes of government in Africa. And lastly, the need to enhance the capacity of the African Peer Review Mechanisms (APRM) to continue supporting Member States in the promotion of democracy and good governance with a view to preventing future constitutional related crises.

Thus, the AGR-23, therefore, is to promote and ensure adherence to the sacrosanct principles of the AU namely: respect for democratic principles, human rights, the rule of law and good governance and condemnation and rejection of unconstitutional changes of governments. This directly contributes to the need to ensure the realisation of Agenda 2063 namely: Aspiration 3: An Africa of good governance, democracy, respect for human rights, justice and the rule of law and Aspiration 4: A peaceful and secure Africa. Ultimately, the AGR-23, is overall aimed at promoting constitutionalism, democracy, and inclusive governance to strengthen peace, security, and stability on the continent.

## AN EXPERT-LED, EVIDENCE-BASED PROCESS

In order to meet these aims and goals, the APRM established an expert-led and evidence-based process, combining complementary research approaches such as: (i) examination, critical analysis, and synthesis of existing information and data from published reports, decisions, statements and other official pronouncements on unconstitutional changes of government; (ii) consultations with key stakeholders in member states, AU Organs and institutions, REC/RMs, Think Tanks, and other stakeholders (private sector; civil society organisations, prominent persons); and (iii) supplementation of these with targeted, selective surveys. A four-pronged approach was employed.

The first prong applied a targeted review methodology and deployed country field review missions to obtain primary data on official and public perspectives on the causes of and response to UCG from countries affected by UCG. The targeted Reviews involved country assessments in six UCG countries using the APRM-tested approach of targeted reviews conducted in Republic of Sierra Leone, the Kingdom of Lesotho, the Republic of Mali, the Republic of Chad, the Union of Comoros, and the Republic of Guinea. The AGR23 also incorporated the outcomes of The Governance Gap Analysis of the Republic of Sudan undertaken in December 2020.

The second prong was a thematic analysis undertaken primarily through a literature review. The analysis involved an examination and critical analysis of five themes through a literature review from published reports, decisions, statements, and other official pronouncements on UCGs. The aim was to analyse the causes, catalysts, and triggers of UCG that had been identified and inferred to in the Accra and Malabo Declarations.

The thematic analysis covered five themes: i) diversity management and human rights, ii) constitutional order and state legitimacy, iii) integrity of democratic elections, iv) economic governance and public sector accountability, and v) popular uprising, militarisation, and terrorism.

The third prong was a review of the United Nations, African Union, and Regional Economic Community normative frameworks on sanctions regimes for unconstitutional change of government. The process involved Technical Review Meetings and Key Informant Interviews involving high-level consultations with experts and officials from the UN Headquarters, Security Council Secretariat Branch, and the State Department, and the Department of Treasury of the USA Government. The process sought to review the AU normative framework for sanctions regime on UCG. The review applied institutional assessments, legislative review, and policy analysis approaches to examine the efficacy and effectiveness of the said sanctions regimes. The APRM also consulted with technical experts at the UN Headquarters in New York, USA and European Union Headquarters in Brussels Belgium and the Republic of France.

The fourth and final prong was a review and analysis of independent Opinion Survey reports produced by the United Nations Development Programme (UNDP) and the AU's Economic, Social and Cultural Council to obtain citizen's concerns and perception. The Public Opinion Surveys involved assessments of citizen's perceptions on UCG undertaken by ECOSOCC, Afro-Barometer and the UNDP. The findings were triangulated with citizen perceptions from the UCG targeted reviews to map out citizen perception trends on the causes and redress of UCG.

The development process generated six UCG targeted Review Reports, five UCG Thematic Reports and reports on the Efficacy and Effectiveness of Normative Frameworks on Sanctions Regimes. All twelve reports were considered and contributed to the AGR-23.

Table 1 is a summary of unconstitutional change of government events in Africa since the establishment of the African Union. The table summarises the event and the AU institutional response.

**Table 1: Summary of UCG Incidents 2003 – 2022 in Africa and AU response**

<b>Date of UCG</b>	<b>Country</b>	<b>UCG Event</b>	<b>AU response (Peace and Security Council decision)</b>
March 2003	Central African Republic	Military Chief of Staff, François Bozizé, and mercenary group Séléka Rebel Coalition overthrow President André Kolingba.	Immediate suspension
February 2005	Togo	At the death of Gnassingbé Eyadema, Faure Gnassingbé comes to power with the support of the military and after a review of the Constitution.	Immediate suspension (Prior to the PSC decision, Togo was suspended by ECOWAS, which also imposed sanctions on Togolese authorities)
August 2005	Mauritania	The military led by Colonel Ely Ould Mohamed Vall overthrows President Maaouiya Ould Taya.	Immediate suspension
August 2008	Mauritania	President Sidi Ould Cheick Abdallahi is overthrown by Mohamed Ould Abdel Aziz, Head of the Presidential Guard.	Immediate suspension
December 2008	Guinea	Military officer, Captain Moussa Dadis Camara, assumes the Presidency by force following the death of President Lansana Conté.	Suspension within five days at a second meeting of the PSC on Guinea
March 2009	Madagascar	Military overthrows President Marc Ravalomanana and installs opposition leader Andry Rajoelina, from the Young Malagasies Determined, as President of the High Transitional Authority of Madagascar (HTA) by a military council.	Immediate suspension
February 2010	Niger	Military overthrows President Mamadou Tandja led by Colonels Djibrilla Hima Hamidou, Tillabery Dosso and Harouna Adamou.	Immediate suspension
March 2012	Mali	Captain Amadou Sanogo of the National Committee for the Reinstatement of Democracy and the Restoration of the State overthrows President Amani Toumani Touré.	Immediate suspension
April 2012	Guinea-Bissau	The military overthrows interim President Raimundo Pereira led by Mamadu Ture Kuruma, Chairman of the Military Command of Guinea-Bissau.	Immediate suspension
March 2013	Central African Republic	Michel Djotodia, leader of the Séléka Rebel Coalition, overthrows President François Bozizé and declared himself President.	Immediate suspension and sanctions
July 2013	Egypt	Following attempts by President Mohamed Morsi to consolidate power by placing the powers of his office above the constitution, massive protests erupt and result in his removal.	Immediate suspension
September 2015	Burkina Faso	Army Chief of Staff, General Honoré Nabéré Traoré, declares himself transitional head of State after President Blaise Compaore flees the country. A few hours later, Yacouba Isaac Zida, then Deputy Commander of the Regiment of Presidential Security (RSP), assumes power ceded to Michel Kafando, a former UN ambassador, and took on the role of prime minister. General Gilbert Diendéré overthrows transitional President Michel Kafando but he is reinstated.	Immediate suspension and sanctions
April 2019	Sudan	The military under General Awad Ibn Auf, deposes President Omar al-Bashir and dissolves the government following civilian protests. A Transitional Sovereignty Council, comprising military and civilian representatives, takes power. Former UN ECA diplomat Abdalla Hamdok, chosen by the civilian groups' alliance, was appointed Prime Minister.	Delayed suspension: Military given 2 weeks to hand over power to civilians. Deadline extended to 60 days. Following unrest, PSC suspends Sudan 3 weeks before the new deadline.
August 2020	Mali	The military under Colonel Assimi Goita deposes President Ibrahim Boubacar Keita following public protests against the regime. Former Minister of Defense, Bah N'daw is appointed Transitional Interim President.	Immediate suspension
May 2021	Mali	The military under Vice President Colonel Assimi Goita of the Interim Transitional Government, deposes President Bah N'daw and declares himself interim President.	Immediate suspension
September 2021	Guinear	President Alpha Conde is deposed by the military under Colonel Mamady Doumbouya who declares himself interim President.	Immediately suspension.
January 2022	Burkina Faso	President Roch Marc Christian Kabore is deposed by the military under Paul-Henri Sandaogo Damiba who declares himself interim President of the Transitional government.	Immediate suspension and sanctions
September 2022	Burkina Faso	Transitional government Interim President Paul-Henri Sandaogo Damiba is deposed by the military led by Captain Ibrahim Traoré. He declares himself Interim President, dissolves the transitional government and suspends the Constitution.	Sustained suspension and sanctions

Source: Compiled from various African Peer Review Mechanism (APRM) and African Union Commission Reports, 2003-2022.



# CHAPTER 2

## EVOLUTION OF THE NORMATIVE FRAMEWORKS ON UNCONSTITUTIONAL CHANGE OF GOVERNMENT

### 2.1 INTRODUCTION

Global norms for preventing and managing unconstitutional change of government (UCG) are based largely upon the ever-changing interpretations of the concepts of regional and international peace and security in international law and statutes. The roots of the OAU/AU normative framework on UCG, however, are embedded in a paradigm shift of the continental organisation that emerged after 1991, in the aftermath of the Cold War. The preamble of the OAU Charter recognised that ‘freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples’ but did not make explicit reference to them as part of the core mandate of the organisation. The main agenda of the Charter was decolonisation, territorial integrity and economic development and the binding principle for enabling that agenda was unity and solidarity among Africans and their independent governments. Imperatives such as democracy, free and fair elections, human rights, and the rule of law were not mainstream concerns of the continental organisation at the time.

The end of the Cold War, however, placed these imperatives at the centre of the OAU and a broad consensus emerged recognising democratisation and the consolidation of democratic institutions as requirements for economic and social development and continental integration. Accordingly, the OAU Summit held in Addis Ababa in 1990 adopted the *Declaration on the Political and Socio-economic Situation in Africa and Fundamental Changes taking place in the World*. The Declaration noted that,

*... the socio-economic situation of our continent remains precarious today despite the many efforts made by our countries, individually and collectively... we are fully cognizant that in order to facilitate this process of socioeconomic transformation and integration, it is necessary to promote popular participation of our peoples in processes of government and development. A political environment which guarantees human rights and observance of the rule of law, would assure high standards of probity and accountability, particularly on the part of those who hold public office. In addition, popular based processes would ensure the involvement of all including women and youth in development efforts. We accordingly commit ourselves to the further democratization of our society and to the consolidation of democratic institutions in our countries.<sup>1</sup>*

The Declaration was the first comprehensive statement of a changing world view by the continental organisation. It marked its evolution from an organisation that espoused sovereignty and non-interference to one upholding the principles and ideals of democracy, human rights, and the rule of law.

<sup>1</sup> Declaration on the Political and Socio-Economic Situation in Africa and Fundamental Changes taking Place in the World (AHG/Decl.1 (XXVI), 1990. <https://archives.au.int>

The Declaration deepened the continent's commitment to constitutionalism, democracy, the rule of law, human rights, and inclusive governance and called for African solutions to African problems reflected in the OAU Mechanism for Conflict Prevention, Management and Resolution adopted at the OAU Cairo Summit in June 1993, whose objectives centred on the anticipation and prevention of conflicts on the continent. Subsequently, a diverse set of initiatives and norm setting were codified in the Constitutive Act as the founding Treaty of the African Union which provided the foundation for the Lomé Declaration on Unconstitutional Change of Government, the African Charter of Democracy, Elections and Governance (ACDEG) of 2007 and establishment of the African Governance Architecture ('AGA) in 2011.

It must be noted that the normative framework for the defence of constitutional order and democracy was not conceived out of the pre- and post-Cold War conflict and security dynamics alone but also by challenges to peace, security, stability, and constitutional order on the continent. The first event occurred in the Comoros where a group of mercenaries, led by Bob Denard, overthrew the government of President Said Mohammed Djohar on 28 September 1995. The coup was quelled by a controversial French military intervention a few days later but the OAU played an important role in brokering a compromise arrangement that led to the reinstatement of the deposed President, albeit in diminished circumstances. At the time, the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution, which preceded the AU Peace and Security Council, intervened at a low-key level in accordance with its mandate to address the series of internal conflicts that ravaged the continent.

The subsequent Harare Declaration was premised on developments in the aftermath of the coup in Sierra Leone. The 66th Ordinary Session of the Council of Ministers, held in Harare in July 1997, adopted a decision that 'strongly and unequivocally condemned the coup d'état in Sierra Leone and called for the immediate restoration of constitutional rule'. It further 'requested the Economic Community of West African States (ECOWAS) to take all necessary measures to assist the people of Sierra Leone to restore constitutional order to the country'. ECOWAS acted accordingly and accompanied this process through its policy of subsidiarity and complementarity that emphasised support and reinforcement for the efforts of regional organisations.

After two more coups in Niger and Sao Tome in April 1999 the OAU Summit held in Algiers

in July 1999 adopted two decisions regarding UCG, including AHG/Dec.142 (XXXV) through which a decision was made that 'member states whose governments came to power through unconstitutional means should restore constitutional legality before the next Summit'. Moreover, the Council of Ministers, prior to the Summit, mandated the Central Organ of the OAU on Conflict Prevention, Management and Resolution to 'reactivate, as a matter of urgency, the Committee on Unconstitutional Changes, in order to finalise its work in the light of the Harare Declaration, in particular, the measures to apply in coup d'état situations occurring in member states'. The Algiers Summit Decisions set the pace for the then General Secretariat of the OAU to develop the Draft Policy Document that was consolidated in the Lomé Declaration on Framework for an OAU Response to Unconstitutional Change of Government adopted by the Assembly of Heads of State and Government at its Thirty-Six Ordinary Session held in Lomé, Togo, from 10-12 July 2000.

Several of the instruments and frameworks adopted after the Lomé Declaration are key in shaping the broader AU frameworks governing the prevention and management of UCGs on the continent. The Protocol Relating to the Establishment of the Peace and Security Council of the African Union – which was adopted in July 2002 and entered into force in December 2003 – was fundamental in establishing the PSC as an institutional framework to address UCG; PSC objectives and principles include promoting and encouraging democratic practices, good governance and the rule of law, protecting human rights and fundamental freedoms. The dedication and commitment of member states to the pursuit of these objectives and principles remains imperative in preventing and combating UCG in Africa.

As the AU continued to strengthen measures to prevent and manage UCGs, the adoption of the Ezulwini Framework for the Enhancement of the Implementation of Measures in situations of UCGs in Africa in December 2009 assisted in presenting strategies and measures that sought to strengthen the existing legislative frameworks, principles and institutional arrangements for preventing and combating UCG on the continent. The AU Assembly also adopted the *Decision on the Resurgence of the Scourge of Coups D'état in Africa* (Assembly/AU/Dec.220(XII) in 2008, which strongly condemned coups that had taken place in Mauritania (in August 2008), Guinea (in December 2008) and an attempted coup in Guinea Bissau (in August 2008).

To supplement and complement the normative framework governing UCG on the continent, the *AU Master Roadmap of Practical Steps to Silence the Guns in Africa by 2020* (Lusaka Master Roadmap 2017) also highlighted practical steps and modalities for mobilising action towards Silence the Guns in Africa by preventing UCGs through the adoption of values and instruments on democracy, good governance, human rights, culture of constitutionalism as well as imposition of sanctions/punitive measures in cases of proven violation of AU relevant instruments relating to peace, security, conflict, democracy, elections, good governance and human rights. The AU Master Roadmap of Practical Steps for Silencing the Guns in Africa has since been extended for a period of ten (10) years (2021-2030), in line with the Decision of the 14th Extra Ordinary Session of the AU Assembly of Heads of State and Government of the African Union (Ext/Assembly/AU/Dec.1(XIV) adopted in Johannesburg, South Africa on 6 December 2020.

In light of the resurgence of UCG in Africa in recent years, the AU-convened Reflection Forum (comprising members of the AU PSC, representatives of AU member states, RECs/Regional Mechanisms, AU Organs institutions, the academia, civil society and other professional associations) adopted the *Accra Declaration on UCGs in Africa* in April 2022 which proposed several measures that are essential in addressing UCG in Africa. Subsequently, the *AU Declaration on Terrorism and Unconstitutional Changes of Government in Africa* was recently adopted at the 16th Extra-Ordinary Session of the AU Heads of State and Government in Malabo, Equatorial Guinea on the 28th of May 2022. The Declaration expressed 'unequivocal condemnation of all forms of unconstitutional changes of government in Africa and reiterated [our] zero tolerance in this regard', with AU member states agreeing to 'strengthen national, regional and continental mechanisms on early warning and conflict prevention, as well as the interface between the African Governance Architecture (AGA) and the African Peace and Security Architecture (APSA), to consolidate good governance, particularly constitutionalism and the rule of law through multi-level engagements'.<sup>2</sup>

The AU normative framework for preventing and combating UCG continues to evolve to address the structural causes, drivers and triggers behind UCG and find effective deterrents and response mechanisms to prevent and mitigate its effect.

## 2.2 THE LOMÉ DECLARATION AND FRAMEWORK ON UCG

The Lomé Declaration is the arrowhead of the AU normative frameworks on Unconstitutional Changes of Government in Africa.<sup>3</sup> It is complemented and augmented by other legislative frameworks such as the African Charter for Democracy, Elections and Governance (2007) and the Malabo Protocol on Amendments to the Protocol on the Statutes of the African Court of Justice and Human Rights. The Lomé Declaration, however, is the primary source of reference for instituting measures against UCG.

The Declaration has four basic components: i) a set of common values and principles for democratic governance; ii) a definition of what constitutes UCG; iii) measures and actions that the OAU/AU would progressively take to respond to unconstitutional change of government; and iv) the implementation mechanism through which the measures are implemented.

The Lomé Declaration is rooted in the desire of African leaders 'to provide a solid underpinning to the OAU's agenda of promoting democracy and democratic institutions...through the elaboration of a set of principles on governance to be adhered by all member states of the OAU.' These values and democratic principles included: (i) adoption of a democratic constitution; its preparations, content and method of revisions should be in conformity with generally acceptable principles of democracy; (ii) respect for the Constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament; (iii) separation of powers and independence of the judiciary; (iv) promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process; (v) the principle of democratic change and recognition of a role for the opposition; (vi) organisation of free and regular elections, in conformity with existing texts; (vii) [the] guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders; (viii) constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights and the African Charter of Human and Peoples Rights]; and (ix) the guarantee and promotion of human rights.

Beyond these principles and values, there are pragmatic considerations regarding security

<sup>2</sup> AU Declaration on Terrorism and Unconstitutional Changes of Government in Africa, Malabo, Equatorial Guinea (Ext/Assembly/AU/Decl.(XVI), 28th of May 2022, pp.1-8.

<sup>3</sup> Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, AHG/Decl.5 (XXXVI), 2000.<http://archives.au.int/handle/123456789/571>. AU Common Repository Home.

and stability on the continent. Rejection of UCG enables stable government which all governments on the continent espouse, particularly when there is a heightened threat of military coup.

The values and democratic ideals contained in the Lomé Declaration are embedded in the Constitutive Act in the provisions of Article 4(p) and Article 30 which excludes governments that come into power through UCG from participation in the activities of the AU. This was reinforced by AU resolutions, decisions, structures, instruments and frameworks such as the African Charter of Democracy, Elections and Governance of 2007 that came into force in 2012, the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) Solemn Declaration of 2000 and the Memorandum of Understanding (MoU) adopted by the 1st Standing Committee of Head of States and Governments in 2002, the Declaration of Principles governing Democratic Elections in Africa in 2002, the Declaration on Observing and Monitoring Elections (2002), the NEPAD Declaration on Political, Economic, and Corporate Governance, the African Charter of Human and Peoples Rights, the Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in situations of UCG (2009), the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002), the Decision on the Resurgence of the Scourge of Coups D'état in Africa (Assembly/AU/Dec.220(XII) of 2008, the AU Master Roadmap of Practical Steps to Silence the Guns in Africa by 2020 (Lusaka Master Roadmap 2017 and the AU Master Roadmap of Practical Steps for Silencing the Guns in Africa (2021-2030), the Accra Declaration on UCGs in Africa (April 2022), and the AU Declaration on Terrorism and Unconstitutional Changes of Government in Africa (May 2022).

### 2.3 THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE (ACDEG) AND OTHER INSTRUMENTS

At its inception, the Lomé Declaration was the only AU official framework for addressing issues related to UCG in Africa. When the provision dealing with manipulation of constitutions was removed it narrowed the focus of the Declaration which led to a perception that it was an insurance policy for incumbent leaders who sought to extend their tenure indefinitely.

The preamble of the African Charter on Democracy, Elections and Governance (ACDEG) which was adopted in 2007 and came into effect on 15 February 2012, states that member states are 'concerned about the unconstitutional changes

of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa'.<sup>4</sup> One of the objectives of the Charter is to 'prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development'.<sup>5</sup> The Charter addressed the gap created by the removal of the provision dealing with manipulation of constitutions in the Lomé Declaration and strengthened the framework of UCG in three ways.<sup>6</sup>

Firstly, Article 23 of the ACDEG extended the provisions of UCG to include 'Any amendment or revision of the constitution or legal instruments, which is an infringement of the principles of democratic change of government'.<sup>7</sup> This is key considering the high incidence of abusive constitutionalism used to facilitate UCG with incumbents seeking sanctuary in legal disguise, particularly through manipulative presidential term-limit amendments and various other forms of unconstitutional review of constitutions. These constitutional coups are almost always in pursuit of narrow political interests, and are often motivated by the desire to make incumbents difficult to dislodge through elections.

Secondly, Article 24 stipulates that the PSC would be a guarantor of the sanctions regime by providing that 'if a situation arises in member states that may affect its democratic, political and institutional arrangement or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order and in accordance with relevant provisions of the Protocol Relating to the establishment of the Peace and Security Council of the African Union'.<sup>8</sup>

Thirdly, Article 25 stipulates that the perpetrators of the UCG shall not be allowed to participate in elections held to restore democratic order or hold any position of responsibility in political institutions of the state. Article 25 presents the prospect of criminalising UCG and states that perpetrators of UCG may be tried in a competent court of the Union. This provision on indictment or criminal prosecution of coup perpetrators embodied in the Protocol strips UCG plotters of any form of immunity that may also act as a deterrent. Furthermore, the Charter extends the scope of sanctions regime associated with UCG to include actors who instigate or support UCG.

4 African Charter on Democracy, Elections and Governance (ACDEG) of 2007, pp.1.

5 Ibid, pp.3

6 Ibid

7 Ibid.

8 Ibid.

Accordingly, the AU Assembly of Heads of State and Government at the 14th AU Summit held in Addis Ababa in January/ February 2010 adopted Assembly /AU/Dec.269 (XIV) Rev.1 that stressed 'the need for a comprehensive approach to the issue of UCG based on zero tolerance for coup d'états and violations of democratic standards, the persistence and recurrence of which could result in unconstitutional changes of government.'

The Malabo Protocol on the Amendment to the Protocol on the African Court of Justice and Human Rights adopted in July 2014 further consolidates the definition<sup>9</sup> of UCG through Article 28E(e and f) of the Annexed Statute of the Court of Justice that regards as illegal 'Any amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government or is inconsistent with the constitution' and "Any substantial modification to the electoral laws in the last six months before elections without the consent of majority of political actors.' These provisions of the Protocol indicate that UCG is a crime. Despite its extensive scope, however, the Malabo Protocol is yet to enter into force eight years since its adoption in July 2014, as only 15 of the AU 55 member states have signed on to the Protocol.

### 2.3.1 Implementation and enforcement mechanisms

The success of any policy, legal or normative framework lies in its effective implementation and compliance. With regards to the normative framework governing the prevention and management of UCGs in Africa, ensuring observance and compliance with the instruments remains a critical challenge.. The grand question remains: 'When, how and what must be done in cases of transgression?' The associated sanctions regimes are an important part of the question because rules are effective only when failure to abide by and comply with those rules attract determinate consequences. Only such will ensure the achievement and attainment of the stated objectives of the UCG normative frameworks and instruments.

In this regard, the Lomé Declaration outlines the processes and procedures to be taken in case of unconstitutional change of government, including measures needed to facilitate a peaceful restoration of constitutional order. These steps are sequenced in an 'escalation ladder' as follows:

**Condemnation.** When a case of UCG occurs<sup>10</sup> the Chairperson of the Union and the Secretary-General (now Chairperson of the AU Commission) immediately and publicly condemn the change and call for restoration of constitutional order.

**Warning.** Both the Chairperson of the Union and the Secretary-General (now Chairperson of the AU Commission) then make it clear that in no circumstances will the illegal usurpation of power be tolerated or recognised.

**Constructive engagement.** The Chairperson of the AUC then proceeds to establish appropriate contacts with a view to ascertain the intentions of the perpetrators and also seek the support of African leaders and personalities to exercise discrete moral pressure on the perpetrators to facilitate restoration of constitutional order and return to constitutional rule. This facilitates the collective, active and participatory search for sustainable solutions during UCGs crises rather than hurried enforcing of regional and continental norms and frameworks.

**Coordination and triangulation.** The AU measures in this regard are coordinated with other bilateral, inter-state, sub-regional and international bodies to ensure uniformity and consistency of actions and to give universal character and force to the sanction efforts.

**Ultimatum and suspension.** The perpetrator(s) are given six months to restore constitutional order during which the government concerned is suspended from participating in the activities of the AU. This exclusion does not affect membership of the Organisation and does not preclude the country from fulfilling its basic obligations to the AU, including financial contributions to the regular budget.

**Smart sanctions.** After six months, if legitimate democratic civilian rule is not restored, a range of limited and targeted sanctions are deployed against the perpetrators. These may include denial of visas for perpetrators, restriction of government-to-government contacts, and trade restrictions, etc. Sanctions are applied in a manner that ensures that ordinary citizens do not suffer disproportionately on account of enforcement of sanctions.

<sup>9</sup> Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.

<sup>10</sup> As determined by the Peace and Security Council of the AU.

The sanctions regime derived from the Lomé Declaration has two main characteristics.

First are diplomatic and political engagement which exclude considerations of application of force interventions. The need for such consideration was highlighted in Articles 23 to 25 of ACDEG as the responsibility of the AU PSC.

Second, the sanctions regimes derived from the Declaration and Charter are complementary, designed to build on each other as a framework for collective deterrence and dissuasion, drawing strength from the escalation ladder, and applied consecutively and cumulatively to pressure the perpetrators. It begins with relatively simple actions such as condemnation and warning accompanied by exclusion from activities of the Organisation, that is also in conformity with Article 30 of the Constitutive Act of the Union. The Union coordinates with other bilateral, inter-state, sub-regional and international bodies to maximise threats and take action to reinforce the impact of its demands.

This is supplemented by **constructive engagement** through diplomatic contacts intended to persuade perpetrators that it is in their interest to take necessary measures to return to constitutional order. The phase of constructive engagement has two interacting components. On one hand, it involves exclusion from the normal activities of the continental body and isolation from other state actors within the AU system and its outside sympathisers. On the other, it involves subtle and selective diplomatic contacts and discreet measures designed to persuade the perpetrators that the status quo is not sustainable. A six-month timeline is provided to enable the offender(s) to comply.

Only after the six-month period is the Union permitted to inflict a range of punitive measures to compel appropriate behaviour and concordant action. It must be highlighted here that there are no provisions for expulsion of the offending government or State party in the Lomé Declaration. The escalation ladder accommodates the promise of innovation and flexibility as it suggests that more steps could be adapted to the ladders as the situation demands.

Additionally, Article 7(g) of the Protocol Relating to the Establishment of the Peace and Security Council (PSC), adopted in Durban, South Africa, in 2002 empowers the PSC to 'institute sanctions whenever an unconstitutional change takes place in a State, as provided in the Lomé Declaration'. To this effect, a Committee on Sanctions was established on 15 March 2009 in conformity with the provisions of Article 8(5) of the PSC Protocol,

but the Committee was largely dormant. The activation of the Committee on Sanctions would constitute an effective sanctionary framework needed in preventing and managing UCGs. The expert advice of the Committee on Sanctions will be critical in ensuring that there is more consistency, predictability and effectiveness in pre-sanctions empirical assessments, imposition, enforcement and compliance assessment, implementation monitoring and review of sanctions against UCGs in AU member states.

## 2.4 REGIONAL ECONOMIC COMMUNITY (REC) INSTRUMENTS

Regional Economic Communities (RECs) are voluntary associations of mostly geographically contiguous states that have grouped within their respective subregions for greater economic and political integration and cooperation. Whilst the primary purpose of African RECs has been to facilitate regional economic integration between and amongst member states, most RECs have broadened their mandate over time to include the coordination of peace, security and governance issues, having acknowledged and recognised the fact that peace, security and stability are a sine qua non and important ingredient for regional integration and development.

Apart from the AU, therefore, most of the eight African RECs recognised by the AU have developed strategies and instruments to promote democracy, the rule of law and human rights and to prevent and constrain UCG.<sup>11</sup> Some RECs have more advanced and more comprehensive instruments than others for the prevention, management and resolution of conflicts, including UCG.

For instance, over and above their respective founding treaties, the **Southern African Development Community (SADC)** has the Protocol on Politics, Defence and Security Cooperation of 2001, the SADC Principles and Guidelines Governing Democratic Elections of 2015, the SADC Mutual Defence Pact of 2003 and the Strategic Indicative Plan for the Organ on Politics, Defense and Security Cooperation (SIPO II) of 2004 (revised in 2010).

<sup>11</sup> The African Union recognises the following eight RECs as building blocks towards the African Economic Community (AEC). These are: the Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern African Development Community (SADC).

**Economic Community of West Africa African States (ECOWAS)** has the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of 1999 as well as the ECOWAS Democracy and Good Governance Protocol of 2001.

The **Intergovernmental Authority on Development (IGAD)**, has a Protocol on Democracy, Governance and Elections; a Protocol on the Conflict Early Warning and Response Mechanism (CEWARN) of 2002 and a Draft Protocol on Conflict Prevention, Management and Resolution (CPMR).

**Economic Community of Central African States (ECAS)** has a Protocol Relating to the Peace and Security Council of Central Africa (COPAX) of 2000 and the Standing Orders of the Central African Early Warning Mechanism (MARAC) of 2002.

The **East African Community (EAC)** has the Conflict Prevention, Management and Resolution Mechanism of 2012, the Protocol on Peace and Security of 2013, a Draft Protocol on Good Governance and a Draft Conflict Early Warning and Response Mechanism.

The above complement AU instruments in promoting peace and security, democracy, good governance, human rights, the rule of law, and constitutionalism, and assist in preventing and managing the phenomenon of UCG on the continent. The instruments are operationalised within the context of the 2008 Protocol on Relations between the RECs and the AU and the Memorandum of Understanding (MoU) on Cooperation in the Area of Peace and Security between the AU and RECs.

The interaction between the AU and RECs in implementing these instruments is overseen by the Protocol Relating to the Establishment of the Peace and Security Council of the AU, specifically Article 16 which provides that Regional Mechanisms for Conflict Prevention, Management and Resolution are part of the overall security architecture of the AU, which has the primary responsibility for promoting peace, security and stability in Africa.

The Economic Community of West Africa African States (ECOWAS) has a pride of place in this regard. ECOWAS was established in 1975 to facilitate economic integration, trade, and development in the West African sub-region. It soon became apparent, however, especially in the face of coups and civil wars in Sierra Leone and Liberia that economic prosperity would only thrive in an atmosphere of peace, security and stability. Thus, in 1999 ECOWAS adopted the Protocol on

Democracy and Good Governance designed to support constitutional order based on the rule of law, democracy, and common principles. This was followed in 2001 by the Supplementary Protocol – the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.<sup>12</sup> The Supplementary Protocol was adapted to address problems associated with coups and other forms of unconstitutional change of government. It also includes a mechanism for automatic suspension of states in the event of unconstitutional change of governments and has provisions relating to electoral laws and constitutional transfers of power.

The Protocol outlines constitutional convergent principles shared by all member states comprising the following:

- Separation of powers – executive, legislature and judiciary.
- Empowerment and strengthening of parliaments and guarantee of parliamentary immunity.
- Independence of the Judiciary: Judges are to be independent in the discharge their duties.
- The freedom of the members of the bar shall be guaranteed without prejudice to their penal of disciplinary responsibility in the event of contempt of the court or breaches of the common law.

Article 1(b) of the Protocol maintains that ‘every accession to power must be achieved through free, fair and transparent elections’ while Article 1(c) states zero tolerance for power obtained or maintained by unconstitutional means. The Protocol also emphasises popular participation in decision-making, strict adherence to democratic principles and decentralisation of powers at all levels of governance.

Article 2 focuses on elections and given its centrality in the Supplementary Protocol, it stipulates that there shall be ‘no substantial modifications to the electoral laws in the last six months preceding an election, except with the consent of a majority of political actors and that all the elections shall be organised on the dates and periods fixed by the Constitution or the electoral laws.’

Article 9 provides that ‘the party or candidate who loses elections shall concede defeat to

<sup>12</sup> Protocol A/SPI/12/01 on Democracy and Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. <https://www.eisa.org> or [ecpf.ecowas.int](https://www.ecpf.ecowas.int).

the political party or candidate finally declared the winner following the guidelines within the deadline stipulated by law

In particular, the Supplementary Protocol demands that the armed forces must be apolitical and must be under the command of constituted political authority: no serving member of the armed forces shall seek to run for elective political office. Other provisions on the conduct and behaviour of security forces include Article 20 (1–2) which provides that the armed forces, the police, and other security agencies shall be under the authority of legally constituted civilian authorities and that ‘the civilian authorities shall respect the apolitical nature of the armed forces and police’. The provision also forbids all political or trade union activities and propaganda in the barracks and within the armed forces.

Article 45 of the Protocol focuses on sanctions and states that in the event that democracy is abruptly brought to an end by any means or where there is massive violation of human rights in a Member State, ECOWAS may impose sanctions on the state concerned. The sanctions which shall be decided by the Authority may take the following forms, in order of severity:

- Refusal to support the candidates presented by the member states concerned for elective posts in international organisations.
- Refusal to organise ECOWAS meetings in the member states concerned.
- Suspension of the member states

concerned from all ECOWAS decision-making bodies. During the period of the suspension the Member State concerned shall be obliged to pay its dues for the period.

- During the period of suspension, ECOWAS shall continue to monitor, encourage, and support efforts being made by the suspended Member State to return to normalcy and constitutional order.
- On the recommendation of the Mediation and Security Council, a decision may be taken at the appropriate time to proceed as stipulated in Article 45 of the Protocol of 10 December 1999.

The Supplementary Protocol resembles the Lomé Declaration and the ACDEG in provisions such as that on amendment of constitutional modifications in six months prior to the elections. Its escalating ladder is in the form of a list of punitive measures ‘in order of severity’.

Finally, and in practice, both ECOWAS and the AU tend to reinforce each other on sanctions, which indicates that the circle of punitive measures is reinforced by cooperation, complementarity, and subsidiarity. Support for the framework is not restricted to the continent as both ECOWAS and the AU have often, individually, and collectively, requested and obtained the support of actors in the international community, such as the UN, EU and US, examples of situations where the whole is greater than the sum of its parts.

## 2.5 OTHER REGIONAL MECHANISMS

Although other sub-regional bodies have not yet acquired the same stature as ECOWAS, they are nevertheless AU entities and subject to the AU framework. The treaties establishing these regional communities, therefore, underline their commitment to democracy, good governance, the rule of law and commitment to protection of human rights.

This is particularly true of the Southern Africa Development Community (SADC), which, despite the absence of an explicit framework for dealing with UCG is committed to democratic values and principles as reflected in both its Declaration and Treaty of 1992 and the Agreement Amending the Treaty of the South African Development Community in 2001.<sup>13</sup>

The SADC's 1992 declaration underlines the importance of popular participation and recognises that 'Regional integration will continue to be a pipe dream unless the peoples of the region determine its content, format and direction and are themselves active agents'.<sup>14</sup> This is also reflected in Article 5 (c) of the Amendment to the Treaty that commits the Community to promote common political values, systems and other shared values which are democratic, legitimate, and effective and to consolidate, defend and maintain democracy, peace, security, and stability. In addition to this, one of the objectives of the SADC Protocol on Politics, Defence and Security Cooperation of 2001 is to prevent, contain and resolve intra-state conflicts in member states by peaceful means as well as 'promote the development of democratic institutions and practices within the territories of state parties and encourage the observance of universal human rights as provided for in the Charters and Conventions of the OAU and UN respectively'.<sup>15</sup> Similarly, the SADC Principles and Guidelines Governing Democratic Elections of 2015, as one of its objectives, seeks to 'promote and enhance adherence to the principle of the rule of law premised upon the respect for, and supremacy of, the Constitution and constitutional order in the political arrangements of the respective Member State holding elections'.<sup>16</sup>

13 See Consolidated Text of the Treaty of the Southern Africa Development Community SADC, 21 October, 2015. <https://www.sadc.int>.

14 SADC Declaration and Treaty of the Southern African Development Community, pp.8. [https://www.sadc.int/sites/default/files/2021-11/Declaration\\_Treaty\\_of\\_SADC\\_0.pdf](https://www.sadc.int/sites/default/files/2021-11/Declaration_Treaty_of_SADC_0.pdf)

15 See SADC Protocol on Politics, Defence and Security Cooperation of 2001, pp.4. [https://www.sadc.int/sites/default/files/2021-08/Protocol\\_on\\_Politics\\_Defence\\_and\\_Security20001.pdf](https://www.sadc.int/sites/default/files/2021-08/Protocol_on_Politics_Defence_and_Security20001.pdf)

16 SADC Principles and Guidelines Governing Democratic Elections of 2015, pp. 3-4. <https://www.sadc.int/historical-events/revised-sadc-principles-and-guidelines-governing-democratic>

One of the 13) Principles for Conducting Democratic Elections to which SADC member states commit themselves to in the SADC Principles and Guidelines Governing Democratic Elections is that they agree to 'condemn and reject unconstitutional change of government and non-acceptance of results, after due process, as announced by the legally competent authorities'.<sup>17</sup> Further, the SADC Mutual Defence Pact of 2003, which seeks to promote peace, security and stability through collective self-defense and security amongst member states unifies member states whenever there are acts of destabilisation in the region, including 'any act or activity aimed at changing the constitutional order of a State Party through unconstitutional means'.<sup>18</sup> Accordingly, SADC does not condone UCG and has intervened in the Democratic Republic of the Congo (DRC) and Lesotho in 1998 to restore a democratically elected government. SADC has also suspended Madagascar from all SADC institutions until constitutional order was restored.

Similarly, although the **East African Community (EAC)** has no explicit framework, its Treaty Establishing the EAC commits members to democratic values through Article 3 (3b) which sets the criterion for admission to membership stating that it shall include 'adherence to universally accepted principles of good governance, democracy, the rule of law, observance of human rights and social justice'<sup>19</sup>. Likewise, the fundamental principles of the community in Article 6(d) 'include 'good governance, adherence to principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality as well as the recognition, protection of human and people's rights in accordance with the African Charter of Human and People's Rights'.

The REC also has a Conflict Prevention, Management and Resolution Mechanism of 2012, the EAC Protocol on Peace and Security of 2013, a Draft EAC Protocol on Good Governance and a Draft Conflict Early Warning and Response Mechanism. It is the Draft Protocol on Good Governance, which is upgrade of the EAC Good Governance Framework, that is expected to directly address UCG issues in the Partner States through its focus on promoting democracy and democratisation, rule of law, human rights and constitutionalism. Through the Draft Protocol

17 Ibid, pp.5

18 SADC Mutual Defence Pact of 2003, pp.2. [https://www.sadc.int/sites/default/files/2021-08/SADC\\_Mutual\\_Defence\\_Pact2003.pdf](https://www.sadc.int/sites/default/files/2021-08/SADC_Mutual_Defence_Pact2003.pdf)

19 The Treaty for the Establishment of the East African Community. <https://www.eac.int>

on Good Governance, EAC Partner States undertake to promote constitutionalism and rule of law through 'upholding the principle of constitutionalism by 'ensuring compliance with the established constitutional provisions and acknowledge supremacy of national constitutions'<sup>20</sup> whilst also promoting democracy and democratisation through 'developing mechanisms to facilitate democratic elections, political transitions and peaceful transfer of power within a specified timeframe between conclusion of elections and assumption of office'.<sup>21</sup> Although it may not be very elaborate, the Draft Protocol on Good Governance – as complemented by the EAC Protocol on Peace and Security of 2013 - will be valuable in creating conditions necessary for the prevention and management of UCGs. There are three other regional economic communities, namely, the Arab Maghreb Union (AMU), the Intergovernmental Authority on Development (IGAD) and the Community of Sahel-Saharan States (CENSAD) have recently developed comparable Protocols on Democracy, Governance and Elections which are yet to gain traction.

## 2.6 APPLICATION OF THE NORMATIVE FRAMEWORK AND OPPORTUNITIES FOR ENHANCEMENT

Recent UCG events, advances in technology and the emergence of a multipolar world place new demands on the AU and member states. An analysis of the evolution of the AU Normative Framework on UCG must be undertaken in the context of UCG experiences, and the impact or implications of the AU response to the same. The efficacy of the framework notwithstanding, such an analysis asks the following questions: How has the AU framework fared in practice? Does the framework command internal legitimacy within the continent.? How can we rate the effectiveness and the efficacy of its sanctions regime? Is the implementation process consistent and credible? Are the outcomes consequential? Some of these questions are addressed in detail in subsequent chapters but a summary of probable conclusions is presented below.

To begin with, it is apparent that the AU Framework continues to command legitimacy on the continent. Elin Hellquist argues that the regulatory norms are in-group rather than out-group determined.<sup>22</sup> Sanctions imposed within it are based on mutually agreed standards of behaviour and community-derived rules that the offending party had previously agreed to.<sup>23</sup> Thus, the application of the framework is based on the notion of a peer review mechanism. As Hellquist posits, 'when the AU addresses issues in this context, it presents itself not as an external intervener but as a peer overseeing commitment to commonly agreed standards'<sup>24</sup>. Also, relations between the affected states and the wider AU community could remain positive as they engage in a series of interactions and strategise together to find ways of resolving the situation in the midst of sanctions, mediation meetings, the activities of special envoys, emissaries and the setting up of International Contact Groups (ICGs). This dovetails appropriately with the requirement of continuing contacts and constructive engagement between AU authorities and member states on how to restore constitutional order.

The lesson from experiences on the continent is that rather than challenge the validity of the norm, almost all states that transgress, prefer to engage the AU initially to contest charges of illegality and/or make a plea for understanding and tolerance and thereafter to negotiate the penalties and ultimately the price of their re-admission into the fold. The issue may be resolved within days, months or even years but in almost all cases the endpoint is a return to constitutional order in one form or another.

Furthermore, the AU often seeks universal support for its efforts. Since its ability to pressurise perpetrators of UCG are at times limited and may not be sufficient to compel them to relinquish power, in the short run, success is hinged on the extent to which the AU can influence other actors with close ties or relations with the affected AU member states to take appropriate action to reinforce the AU measures within the scope of the escalation ladder. This has resulted in enhanced collaboration, formal and informal, with other regional and international actors including the UN.

According to UN secretary-general, António Manuel de Oliveira Guterres:

20 The East African Community Protocol on Good Governance (DRAFT), pp. 6. <https://meaca.gov.ss/wp-content/uploads/2022/08/Pdf-Draft-Protocol-on-Good-Governance.pdf>

21 Ibid, pp.10

22 Hellquist, Elin (2021). Regional sanctions as peer review: The African Union against Egypt (2013) and Sudan (2019). *International Political Science Review*, 42(4), pp.451-468.

23 Ibid.

24 Ibid.

*Cooperation between the United Nations and the African Union (AU) is stronger than ever. However, major challenges remain. Over the past 20 years, the United Nations and the African Union have developed a unique partnership, rooted in the principles of complementarity, respect and African ownership – a partnership that has become a cornerstone of multilateralism.*

#### **UN secretary-general, António Manuel de Oliveira Guterres**

Mr Guterres listed highlights in their cooperation, including initiatives to support the return to constitutional order in Burkina Faso, Guinea and Mali, conducted jointly with the West African regional bloc, ECOWAS.<sup>25</sup>

In some cases, application of the framework has been uneven and inconsistent, with divergences in reaction to military coups and unconstitutional retention of power that affect credibility and lead to charges of operational bias. AU responses to military coups are more consistent and follow a clear format involving condemnation, warning, exclusion from AU activities and targeted sanctions.

In contrast, responses to incumbents who retain power illegally by refusing to concede defeat after losing elections, are delayed and in some cases absent. The case of President Mamadou Tandja in Niger is instructive in this regard. Having served his two constitutional terms in office, President Tandja sought to extend his rule unconstitutionally on the basis that he needed three more years to complete 'his' reforms. Members of the National Assembly, opposition parties and the civil society opposed these efforts. Articles 36 and Article 39 of the Niger Constitution of 1999 prohibit such revisions. President Tandja resorted to a referendum to create a Sixth Republic of the Niger which allowed removal of term limits to enable him to retain power even though the Constitutional Court ruling declared the referendum illegal. In this case, the AU did not respond but ECOWAS suspended Niger in October 2009. However, after a military coup led by General Salou Djibo overthrew President Tandja on 18 February 2010, the AU intervened.

Another area of concern focused on AU reaction to incumbent leaders involved in electoral malpractice that sets the pace for post-election violence. This was the case in 2007/2008 in Kenya and Zimbabwe. The AU Observer Mission considered Zimbabwe's harmonised elections

of 2008 to have fallen short of the accepted AU standards in the context of the AU Declaration on the Principles Governing Democratic Elections in Africa, mainly due to the experiences of election violence and existence of a political environment that was not conducive to free, fair and democratic elections.<sup>26</sup>

The AU Observer Mission thus recommended constructive dialogue as a way forward for ensuring peace, stability and development in Zimbabwe. Similarly, allegations of electoral fraud and irregularities experienced during the December 2007 General Elections in Kenya – which resulted in post-election violence – made several election observer missions to conclude that the Kenyan elections had fallen short of key international and regional standards for democratic elections. In both cases, the AU supported arrangements for post-election mediation which ultimately resulted in the formation of successful transitional power-sharing governments of national unity comprising a coalition of major political parties. These, however, enabled the incumbent administration to retain power in the long run.

Although such interventions by the AU are plausible as pragmatic solutions in circumstances of disputed election outcomes, a more sustainable approach may be recommended on the part of the AU in consistent with the African Charter on Democracy, Elections and Governance (ACDEG) as well as the Lomé Declaration on the Framework for the Organisation of African Unity (OAU) Response to Unconstitutional Changes of Government (UCG) of 2000 in order to prevent similar or related forms of UCGs whereby incumbent governments refuse to relinquish power to the winning party after free, fair, and regular elections. Such an approach will entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections.

There are selected instances in which the AU could have implemented the framework with greater rigour and consistency. Article 25 of ACDEG stipulates that the perpetrators of the UCG shall not be allowed to participate in elections held to restore democratic order or hold any position of responsibility in political institutions of the state. This provision was not evoked in Mauritania in 2009 when General Abdel Aziz participated in the transitional elections and subsequently became President after he orchestrated a coup that resulted in UCG.

25 UN News. Global Perspective Human Stories. Guterres: UN-African Union partnership a 'cornerstone of multilateralism'. <https://news.un.org/en/story/2022/10/1129452>

26 African Union Office of the AU Observer Mission to the Presidential Run-Off and House of Assembly By-Elections in Zimbabwe Preliminary Statement of the African Union Observer Mission. <https://aceproject.org/regions-en/countries-and-territories/ZW/reports/zimbabwe-preliminary-statement-by-au-on>

General Mohamed Ould Abdel Aziz seized power after President Abdallahi issued a decree dismissing General Aziz and three other senior military officers. The country was officially run for eight months by a 12-member High State Council (HSC) composed entirely of military officers. For the first time in the history of Mauritania, the coup encountered considerable opposition both nationally and internationally. On 15 April 2009, Aziz resigned from the government and the army and announced his presidential candidacy for elections on 6 June 2009, which were boycotted by main opposition leaders and ultimately rescheduled. A Government of National Unity was instituted on 27 June 2009, followed by President Abdallahi's voluntary resignation in compliance with the Dakar Accord negotiated under the aegis of Senegalese President Wade, the African Union, and an International Contact Group and signed on June 4. Aziz scored a first-round victory in elections organised on July 18. Elections results were recognised by the international community, and President Aziz was inaugurated on 5 August 2009.<sup>27</sup>

The AU normative framework for preventing and managing UCGs is yet to stipulate the compliance threshold, which a member state in default would be required to meet as a condition for readmission into the African Union. The incoherence in design and application of sanctions between the AU and the RECs is also yet to be rationalised. For example, there are instances when ECOWAS lifts sanctions against a state while AU sanctions against the same state remain in force; the opposite is also true and this affects the mutual credibility of both regimes. This was the case when a military coup d'état was experienced in Mali in August 2020 which led to the forced resignation of President Ibrahim Boubacar Keita. After imposing sanctions on Mali, ECOWAS lifted the sanctions on the 5th of October 2020 – through a Declaration of the Authority of ECOWAS of Heads of State and Government on Mali - when Mali appointed a civilian Prime Minister, Moctar Ouane and following 'notable advances towards constitutional normalization'.<sup>28</sup> The AU maintained its sanctions on the country for a while, and lifted them later in the same month.

## 2.7 CONCLUSION

In general, application of the AU normative framework on UCG has consequences. The framework has been applied for 23 years and it remains significantly pertinent today. The attention given to the deterrence of UCG has altered the character of Pan African politics and has influenced the creation of the African Governance Architecture. This focus has entrenched the value of constitutionalism and the correlative importance of transparent, free, and fair elections as the indispensable legitimate prerequisites for acquiring power. The AU has also influenced the introduction of informal anti-coup legislations in other regional organisations such as the International Organisation of the Francophones (OIF).

*The international community increased pressure on the military junta that has seized power in Mali, as the Organisation Internationale de la Francophonie (OIF) suspended the nation from its membership Tuesday. Its leadership agreed to the move at an extraordinary session held via videoconference, while adding that it would maintain any cooperation that would help the civilian population and a transition to democracy. The decision came a day after envoys from the West African bloc ECOWAS and the new military rulers said they had failed to agree on a timetable to return Mali to democratic rule. The OIF also called for the liberation of the ousted president Ibrahim Boubacar Keita, who stepped down from power last week after the military revolt, saying he wanted to avoid bloodshed. And they called for the establishment, as soon as possible, of 'a transition government led by a civilian authority'. The OIF said it would be sending a high delegation to Mali in the coming days.*<sup>29</sup>

Beyond this, the operational framework of UCG has had far reaching effects and the normative framework has contributed to a reduction by almost half of UCGs on the continent since the turn of the 21st century.<sup>30</sup> 'Coups attempts dropped by nearly 60 per cent from Pre-AU levels and nearly 50 per cent from the post-cold war period immediately preceding the AU'.<sup>31</sup>

27 US Department of State. ARCHIVED CONTENT. Information released online from January 20, 2009, to January 20, 2017 Mauritania (09/09) <https://2009-2017.state.gov/outofdate/bgn/mauritania/129314.htm>

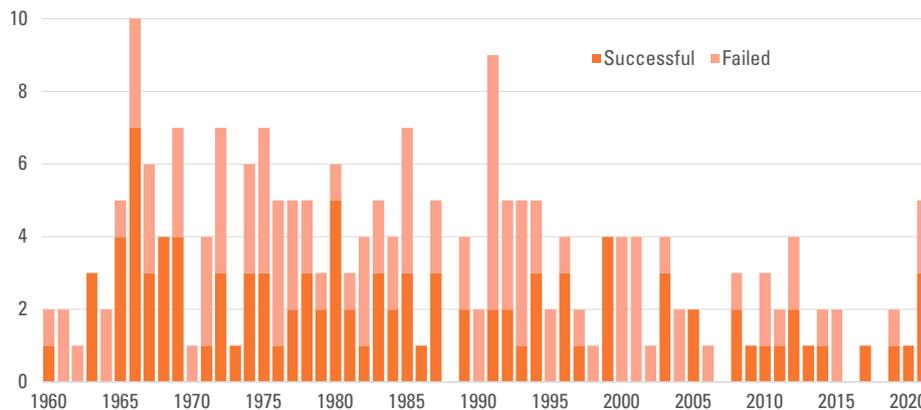
28 Declaration of the Authority of ECOWAS of Heads of State and Government on Mali, 06 October 2020. <https://ecowas.int/?p=44454>

29 International Francophone Organisation suspends Mali's membership over coup. <https://www.france24.com/en/20200826-international-francophone-organisation-suspends-mali-membership-over-coup>

30 Issaka Souare 'The AU And the challenge of Unconstitutional Changes of Government in Africa' Institute of Security Studies (ISS) Paper197, August 2009. See also 'the African Union as a norm entrepreneur on military coup detats in Africa 1952-2012: An Empirical Assessment' *Journal of Modern African Studies*, 52 (1) pp66-94

31 Souare, op cit.

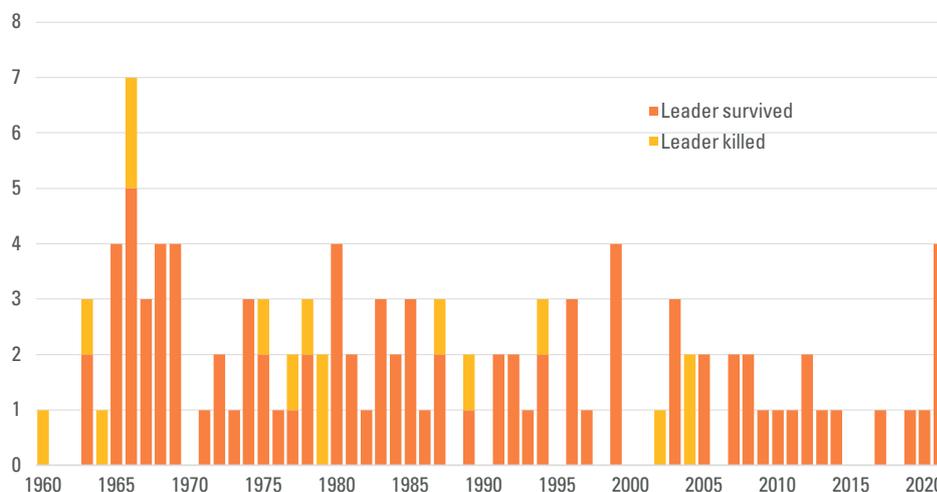
Figure 1: Coups and attempted coups in Africa 1960–2020



Source: Jonathan Powell and Clayton Thyne (2022) *A New Coup Era for Africa?*

The AU framework has also reduced the brutality and savagery associated with coup-making in Africa and encouraged restraint in the process of its execution. In 12 of the 67 (18%) successful Cold-War-era coups the leaders of the incumbent administration were killed. In the post-Cold-War era from 1991 to 2001, only two leaders were killed. Under the AU from July 2002 no leader has been killed in the execution of UCG. The framework norms have deterred violence and bolstered restraint among coup plotters.

Figure 2: Leaders of incumbent administrations killed or survived during coups (1960-2020)



Source: Jonathan Powell and Clayton Thyne (2022) *A New Coup Era for Africa?*

A long-held belief assumed that the AU normative framework deals effectively and efficiently with selected forms of UCG in Africa, especially coups. However, a recrudescence of coups in parts of West Africa between 2020 and 2022 shattered this illusion. It indicated that the normative framework may be losing its gravity as an instrument of collective deterrence and dissuasion for UCG and that unless urgent action was taken all the progress to develop a democratic culture, promote the rule of law, and protect human rights in Africa would be lost and the continent could slip back into the ‘jackboot era’.

A focus on deterrence of UCG has altered the character of Pan African politics and has influenced the creation of the African Governance Architecture. It has entrenched the value of constitutionalism and the correlative importance of transparent, free, and fair elections as indispensable legitimate prerequisites for the acquisition of power.

The AU has also influenced the introduction of informal anti-coup legislations in other regional organisations such as the International Organization of the Francophones (OIF). A historiography, and legal and institutional analysis of the evolution of key frameworks and/or instruments that have guided and instructed the response of the AU to the incidence of UCG demonstrate that both AU and RECs have invested tremendous effort in building a robust framework to prevent and manage responses to UCG on the continent since May 1963.

The trends and pattern of UCG on the continent since 1963 suggest that existing UCG-related normative frameworks and instruments may contribute to reducing UCG incidents and force UCG perpetrators to exercise caution and restraint in executing UCG plans and strategies.

Six main gaps, limitations and shortcomings have been identified:

- A limited scope of the definition of UCG.
- Inconsistencies in responses to UCG of the AU and RECs.
- Challenges relating to the decisive action by the AU in response to UCG situations where there is refusal by incumbent governments to relinquish power to the winning party or candidate after free, fair and regular elections.
- A lack of robust mechanisms to act on cases where amendments or revisions of the constitution or legal instruments take place in line with the constitutional procedures laid down in national constitutions but where such acts are manipulative and involve the abuse of parliamentary majority as well as use of patronage networks.
- Delayed ratification and domestication of UCG-related AU legal instruments.
- Lack of harmonisation of UCG frameworks at AU level with those at RECs level and apparent variances in UCG frameworks amongst RECs; some RECs have more advanced frameworks and instruments than others.

All these insights are noteworthy and provide an opportunity for the further strengthening, development and refinement of the frameworks and instruments so that they remain relevant and effective in pursuit of the AU anti-UCG thrust. In light of the strengths and shortcomings of the existing AU normative frameworks and instruments for preventing and managing incidents of UCG, it is also imperative to examine the causes, drivers and triggers of UCG in Africa.

The following chapter will undertake a comprehensive systematic investigation of the causes, drivers and triggers of UCG on the continent. Such an undertaking is essential not only in producing evidence-based empirical legal, policy, operational interventions to prevent UCG in Africa but also facilitating the generation of findings that may be considered in the review of the existing AU normative frameworks and instruments for preventing and managing UCG.

### 3.1 INTRODUCTION

According to the Lomé Declaration on the Framework for the Organisation of African Unity (OAU) Response to Unconstitutional Changes of Government (UCG) adopted in July 2000, UCG is considered an unacceptable and anachronistic act that goes against the OAU commitment to promote democratic principles and conditions. The declaration lists situations of UCG as follows: '1) military coup d'état against a democratically elected government; 2) intervention by mercenaries to replace a democratically elected government; 3) replacement of democratically elected governments by armed dissident groups and rebel movements; and 4) the refusal by an incumbent government to relinquish power to the winning party after free, fair, and regular elections (OAU, 2000). The definition of UCG has been expanded in the African Charter of Democracy, Elections and Governance (ACDEG) to include 'manipulation of constitutions and legal instruments for prolongation of tenure of office by (an) incumbent administration'.

This chapter analyses the dynamics and phenomena considered to be the catalysts, causes and triggers of UCG in Africa. Analyses are presented along five thematic themes identified during consultations held by the AU on the issue of UCG. These are: i) integrity of democratic elections; ii) diversity management and human rights; iii) constitutional order and state legitimacy; iv) economic governance and public sector accountability; and finally, v) popular uprising, militarisation and terrorism. The chapter summarises the role that various factors and dynamics in these areas have played in influencing UCG and the trends thereof.

### 3.2 INTEGRITY OF DEMOCRATIC ELECTIONS

An unconstitutional change of government is an overthrow of a constitutionally elected government. Elections are therefore an integral aspect of the definition of UCG. Under article 23 of the African Charter on Democracy, Elections, and Governance, the concept of UCG is defined as: (a) any putsch or coup d'état against a democratically elected government; (b) any intervention by mercenaries to replace a democratically elected government; (c) any replacement of a democratically elected government by armed dissidents or rebels; (d) any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair, and regular elections; or (e) any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government. In all five instances the notions of a 'democratically elected' government, fairness of elections and interference with electoral laws in the constitution are referenced.

This report employs the term 'integrity of elections' interchangeably with 'electoral integrity' and thus considers the definition offered by a 2012 report of the Global Commission on Elections, Democracy and Security – *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*.

The report defines electoral integrity as ‘any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle.’<sup>32</sup>

This report analyses UCG from a perspective of deficits electoral integrity as a cause of UCG. In universal terms, an election is determined as having been conducted with integrity if it is based on the democratic principles of universal suffrage and political equality as reflected in international standards and national constitutional and legal frameworks in which the freeness and fairness of the process are guaranteed. Its management must also reflect that constitutional and legal imperative and respect for human rights such as freedom to form political parties, freedoms of expression, association, and of the press among others. In the AU these standards must necessarily be enshrined in national constitutions. There is however an ongoing debate over a single, universal definition of electoral integrity, but it can generally be defined as ‘any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle.’<sup>33</sup>

### 3.2.1 Relevant AU Instruments

The abovementioned report enumerates principles guiding electoral integrity and posits that the principles require a legal and institutional system to encourage and protect fair and equitable elections as well as the application of specific measures to protect integrity based on democratic election standards and best practices. It not only recognises that the appropriate measures must be adapted to the social and political context of each country but also that the basic objectives are the same and derive from the imperatives of credible elections. These principles are: i) respect for principles of electoral democracy; ii) ethical conduct; iii) professionalism and accuracy; iv) institutional safeguards; v) oversight and enforcement; and vi) transparency and accountability. This report makes due reference to these principles in its examination of the AU normative framework on UCG.

32 Annan, Kofi A., Zedillo, E., Ahtisaari, M., Albright, M. H., Arbour, L., Helgesen, V. & Wirajuda, H. (2012). *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*. Stockholm: Global Commission on Elections, Democracy, and Security.

33 Ibid.

The Lomé Declaration on the Framework for an OAU Response to UCG, the African Charter on Democracy, Elections and Governance and the Constitutive Act of the African Union are the three most important documents on the subject of UCG, within which integrity of elections or lack thereof as a cause of UCG can be examined. Other relevant documents are the African Charter on Human and Peoples’ Rights; the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights; the OAU/AU Declaration on Principles Governing Democratic Elections in Africa.

The AU partners with Regional Economic Communities (RECs) in the execution of these instruments in various regions of the continent. As a result, some RECs have developed their own instruments complementing those of the AU. These include the SADC Principles and Guidelines Governing Democratic Elections and the SADC Parliamentary Forum Norms and Standards for Democratic Elections; the SADC Protocol on Gender and Development; and the SADC Electoral Commissions Forum Principles and Guidelines on the Independence of Election Management Bodies in the SADC Region; and the Protocol on Democracy and Good Governance of the Economic Community of West African States (ECOWAS). Although electoral laws and constitutional provisions governing the conduct of democratic elections vary from one African country to another, all African states have committed to observe the principles governing the conduct of democratic elections at regional level and/or the OAU/AU Declaration on Principles Governing Democratic Elections in Africa.

The AU and REC instruments are supplemented by UN instruments and all provide for the conduct of elections with integrity. They are anchored in respect for the rule of law, separation of powers, transparency, equality, and human rights. Among the objectives of the Constitutive Act of the African Union, for example, are the promotion of peace, security, stability, democratic principles and institutions, popular participation, and good governance on the continent (see Article 3 and Article 4). The ACDEG aims to promote the principles of democracy, the rule of law, the supremacy of the Constitution and ‘constitutional order in the political arrangements of the State Parties’. It also promotes ‘the holding of regular free and fair elections to institutionalise legitimate authority of representative government as well as democratic change of governments’; the establishment of independent and impartial election management bodies (see Article 17);

good electoral practices and management of elections; mechanisms for timely election related dispute settlement; and the prohibition, rejection, and condemnation of unconstitutional change of government' (emphasis added). The Charter also provides that the process of constitutional amendment or revision must be by national consensus (see Article 10). Under Article 25 (4) of the Charter perpetrators of unconstitutional changes of government will not be permitted to auto legitimate i.e., to run in elections meant to restore democracy in the member state or to participate in the government to follow. The remaining challenge, however, is that there are still nine AU member states which are yet to sign the African Charter on Democracy, Elections and Governance (these include Botswana, Cameroon, Egypt, Eritrea, Libya, Malawi, Morocco, Seychelles, and Tanzania) whilst 36 out of the 46 signatories to the Charter have ratified it.<sup>34</sup> The expedited signing and ratification of this instrument by AU member states that have not yet done so will assist to domesticate and implement the Charter in a manner that will contribute towards the holding of free, fair, regular and democratic elections conducted by impartial, independent, all-inclusive, competent and accountable electoral institutions.

The overarching aim of the continental normativity is for legitimate accession to power to be only through free, fair, and transparent elections. In June 2014, the African Union (AU) Assembly of Heads of State and Government meeting in Malabo, Equatorial Guinea, adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (The Malabo Protocol).<sup>35</sup>

The Malabo Protocol is a crucial legal instrument that will extend the jurisdiction of the yet-to-be-established African Court of Justice and Human Rights (ACJHR) to crimes under international law and transnational crimes. Originally, the ACJHR was conceived as a court with two sections: i) a general affairs section; and ii) a human rights section. The Malabo Protocol introduces a third section: the international criminal law section.

If the Malabo Protocol comes into force, the ACJHR will have jurisdiction to try the following 14 crimes: genocide, crimes against humanity, war crimes, the crime of unconstitutional change of government, piracy, terrorism, mercenarism, corruption, money laundering, trafficking in

persons, trafficking in drugs, trafficking in hazardous wastes, illicit exploitation of natural resources, and the crime of aggression. In essence, the international criminal law section of the ACJHR will serve as an African regional criminal court, operating in a manner akin to that of the International Criminal Court (ICC) but within a narrowly defined geographical scope, and over a massively expanded list of crimes. An absence of immunity for those involved in UCG crimes will address impunity and act as a deterrent to prevent UCG in Africa.

### 3.2.2 Key findings

In most AU member states constitutional and legal frameworks for elections align with regional, continental, and international norms for the conduct of democratic elections. There is a general acceptance and institutionalisation of the principles of electoral integrity and democratic transition of power through free and fair elections.

**Departure from constitutional and legal frameworks.** This may occur if the rule of law and popular participation in electoral processes are absent, when electoral processes are irregular, or in the absence of human rights and fundamental freedoms. When the rules governing elections are not strictly adhered to it may compromise the principles and benchmarks for electoral integrity.

**Instability may result if elections are not considered credible** or if the will of the people is subverted by the incumbent administration as was the case in Nigeria (1993), Ivory Coast (2012), Kenya (2017) and Malawi (2019).

**Political party and campaign financing** can affect electoral integrity and may result in UCG.

**Provisions of the African Charter.** The AU's normative framework on UCG and electoral integrity is robust and meets universal standards. The following provisions are intended to prevent UCG:

- Article 23(4) on refusal by incumbents to relinquish power after losing a free and fair election.
- Article 23(5) on self-serving constitutional amendments.
- Article 25(4) proscribing auto-legitimation of UCG perpetrators.
- Article 23(5) providing for trial of UCG perpetrators.
- Article 23(6) on sanctioning of states participating in UCG.

<sup>34</sup> Countries that have Signed, Ratified/Acceded to the African Charter On Democracy, Elections and Governance, 25 March 2022.

<sup>35</sup> Decision on the Draft Legal Instruments, Assembly/AU/Dec.529(XXIII)

### 3.2.3 Conclusion

This report concludes that the constitutional and legal framework for elections in most African Union member states is largely in alignment with regional, continental, and international norms for the conduct of democratic elections. There is a general acceptance and institutionalisation of the principles of electoral integrity and democratic transition of power through free and fair elections.

There are, however, departures from the constitutional and legal frameworks evident in the absence of the rule of law and popular participation in electoral processes; irregular conduct of electoral processes; and absence of human rights and fundamental freedoms. Examples of instability resulting from elections not thought to be credible, or subversion of the will of the people by incumbent administration elites can be found in Nigeria (1993), Ivory Coast (2012), Kenya (2017) and Malawi (2019).

The AU's normative frameworks on UCG and electoral integrity are robust. This report highlights provisions of the ACDEG, specifically Article 23(4) on refusal by incumbent to relinquish power after losing an election; Article 23(5) on self-serving constitutional amendments; Article 25 (4) proscribing auto legitimation of UCG perpetrators; Article 23(5) providing for trial of UCG perpetrators; Article 23(6) on sanctioning of states participating in UCG; and the Annex to the Malabo Protocol which criminalises UCG. These provisions render UCG an unattractive enterprise, at least on paper.

Another aspect of electoral integrity that affects UCG is political party and campaign financing. International standards and global norms governing the appropriate conduct of elections agree on the need for transparent and accountable political financial systems as this enhances election integrity and strengthen electoral democracy. This is because many of the values and principles that underpin electoral integrity are at stake.

The nature and form of political finance regulation are not dictated by continental and regional bodies; rather, it has been left for member states to adopt international best practices in such, guided by the broad principles of transparency, accountability and democracy.

The irresponsible use of the digital and social media is yet another area of interest. Social media may alert voters to irregularities which may cause civil unrest and instigate a coup. Social media and new information technology are prone to abuse and misuse as conduits of electoral manipulation, distortions, disinformation and mass surveillance, through what has been termed 'digital authoritarianism'.

Thus, the challenge of integrity deficits in democratic elections in Africa presents avenues for triggering UCGs on the continent.



### 3.2.4 Recommendations

The Global Commission on Elections Democracy, and Security<sup>36</sup> identified prerequisites for electoral integrity: the need to build the rule of law to substantiate claims to human rights and electoral justice; the need to build professional, competent electoral management bodies (EMBs) with full independence of action to administer elections that are transparent and merit public confidence; the need to create institutions and norms of multiparty competition and division of power that bolster democracy as a mutual security system among political contenders; the need to remove barriers – legal, administrative, political, economic, and social – to universal and equal political participation; and the need to regulate uncontrolled, undisclosed, and opaque political finance.<sup>37</sup>

The recommendations allude and infer to elements of these challenges. The ratification, domestication and implementation of the OAU/AU Declaration on Principles Governing Democratic Elections in Africa, the ACDEG, and other regional instruments aimed at ensuring the conduct of democratic, free and fair elections remains indispensable in preventing election-related and election-induced UCG on the continent.

#### INTEGRATE ELECTORAL INTEGRITY GUIDELINES INTO THE UCG FRAMEWORK

Develop guidelines for monitoring of the implementation of electoral integrity principles within the normative framework of UCG. The African Charter establishes a robust foundation for the AU to oversee and guarantee free and fair elections. The AU is one of the world's most sophisticated regional organisations in terms of its purpose and the mechanisms it has adopted to develop, preserve, and promote democracy among its member states, hence preventing UCG. Article 44(2)(A)(a) of the African Charter emphasises this issue, stating that 'the [AU] Commission should create benchmarks for implementation of the commitments and principles of this Charter and review conformity by State Parties.'

Such benchmarks and reviews provide the basis for the AU Commission to develop clear and consistent guidelines that will not only allow it to monitor elections but also state the conditions under which it will declare any elections that it monitors as free and fair. This also gives the Commission the authority to set criteria for determining whether any constitutional amendments or changes to election rules violate the principles of democratic change of government or are inconsistent with the constitution. In brief, the African Charter requires properly drafted rules to permit monitoring of its implementation by ratifying governments.

The following are some of the actions that the AU may take under Article 44(2)(A)(a) of the African Charter to address electoral integrity-related avoid some of the causes of UCG:

- Establish minimum standards for recognition of credible and effective Election Management Bodies.
- Establish minimum standards for election administration.
- Adopt guidelines establishing minimum standards for amending the constitution and any laws affecting democratic governance and free and fair elections.
- Establish minimum standards for promoting multipartyism, particularly the recognition and protection of political parties in a way that promotes inclusivity and popular participation in governance.
- Establish minimum standards for judicial independence, particularly for courts with jurisdiction to deal with pre- and post-election disputes. Strict observance of the electoral law must be encouraged. This entails professional and impartial personnel to conduct elections. An impartial and independent judiciary and an impartial and independent security force.
- Fund private media so that there is equitable and diverse news coverage (see article 37 of the ECOWAS Protocol). There is also a need to combat disinformation on digital platforms through civic and democracy education.

<sup>36</sup> Annan, Kofi A., Zedillo, E., Ahtisaari, M., Albright, M. H., Arbour, L., Helgesen, V. & Wirajuda, H. (2012). *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*. Stockholm: Global Commission on Elections, Democracy, and Security.

<sup>37</sup> Ibid.

### DEVELOP GUIDELINES AND PRINCIPLES FOR POLITICAL PARTY FINANCING

Improvement of the political funding laws and regulations will level the electoral playing field and circumvent the commoditisation of votes. The AU is encouraged to consider promoting the establishment of public funding of political parties as a norm and standard and to establish stringent legal standards for registration of political parties to ensure that only distinctly qualified individuals and political parties are legible to register and access public funding. Such standards (laws) must proscribe foreign and criminal donations to political parties. Donations should be capped to prevent vote buying. Importantly, party financing disclosure requirements must be given greater importance and comprise critical criteria for electoral integrity. Demonstrable mechanisms for enforcement and verifiable records on the same by an independent apolitical body must comprise such a standard.

Given the undeniable potentiality of political party financing in undermining the integrity of elections as discussed above, it is recommended that the AU develops Guidelines and Principles for Political Party Financing guided by international best practices. Electoral integrity in Africa is undermined by unregulated political party funding; a lack of transparency on political party funding may give some incumbents the advantage of state funding during election campaigning which dissuades citizens from voting as an effective constitutional mechanism for effecting a change of government. An unlevel playing field in political party election campaigning undermines the integrity of elections, and may trigger UCG.

Associations such as the Organization for Economic Cooperation and Development (OECD) have developed manuals, frameworks, and guidelines for political party financing regulations. The AU may develop such in order to provide guidelines to member states on how they can adopt and adapt their respective political party regulation mechanisms and rules so as to enhance electoral integrity and address electoral integrity-related root causes of UCG on the continent.

### NORMALISE REPRESENTATION QUOTAS

The AU is encouraged to adopt guidelines that normalise the requirement to establish, through legislation, quotas for women and minorities in national electoral systems. Variations of proportional representation could be considered. Where possible, the measures towards inclusivity should include diaspora voting and special voting for personnel on special services such as election and security officials, persons with disabilities, pregnant women, and prisoners. With respect to the introduction of quotas for women and minority populations, the AU already has the Protocol to the African Charter on Human and People's Rights on the Rights of Women (2003) in Africa and a number of RECs have existing instruments that promote representation of women in politics and governance, for instance, SADC Protocol on Gender and Development of 2008 and the EAC Gender Policy of 2018. The challenge, however, is that some member states have neither signed nor ratified the instruments, which slows down implementation. Six AU member states are yet to sign the AU Protocol to the African Charter on Human and People's Rights on the Rights of Women and seven of the 49 signatories to the Protocol have not ratified it.<sup>38</sup>

With regard to diaspora voting, the African Charter on Human and People's Rights; Article 4d of the Constitutive Act of the AU; Article 3(7) of the African Charter on Democracy and Elections and other instruments support effective participation of citizens in democratic and development and in governance of public affairs, including the diaspora communities. Countries such as Mozambique have granted voting rights to their citizens living abroad, albeit in selected countries (Eswatini, Malawi, Kenya, South Africa, Tanzania, Zambia, Zimbabwe, Portugal and Germany) and Kenya extends diaspora voting rights to its citizens in 12 selected countries. Member states of the AU should be encouraged to ensure that diaspora rights are recognised and practiced.

<sup>38</sup> List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

### 3.3 CONSTITUTIONAL ORDER AND STATE LEGITIMACY

Constitutional order in the context of UCG is defined herein as a reasonably stable set of institutions through which a nation's fundamental decisions are made over a sustained period, and the principles that guide those decisions. These institutions and principles provide the structure within which ordinary political contention occurs. It is both the institutions and principles that constitute a constitutional order. On the institutional level, constitutional order extends well beyond the supreme court and includes the national political parties, parliaments, and the presidency.<sup>39</sup>

The normative framework for UCG comprises sanctions regimes that are attainable internationally. This calls for an understanding of constitutional order as it manifests at international level. Thus, this report highlights the centrality of the notion of international constitutional order, defined as consisting of an international community, an international value system and rudimentary structures for its enforcement.

The fundamental substantive elements of the international constitutional order include the value system of the international legal order, meaning norms of positive law with a strong ethical underpinning (notably human rights norms) that have acquired a special hierarchical standing vis-à-vis other international norms through state practice. They include the subjects of the international legal order that form the international community and provide mechanisms for the enforcement of the international value system. The international community is composed predominantly of states, which remain central to international law-making and enforcement.<sup>40</sup>

In mature democracies, where state legitimacy is settled citizens – while not always agreeing with the actions of state actors – rarely question their decision-making powers and authority. In nascent democracies, however, trust in institutions is often shallow and the authority of the state remains contested.<sup>41</sup> In examining the sources of state legitimacy, Carter (2011) states that 'legitimacy can refer to political leaders, the regime, the government, or the state, and refers to Lipset<sup>42</sup> who proposes that 'legitimacy involves the capacity of a political system to engender and maintain the belief that existing institutions are the most appropriate or proper ones for the society'.

Max Weber's conceptualisation of legitimacy assists our understanding of the relationship between state legitimacy and UCG, specifically in cases where loss of government legitimacy is becoming a common cause of UCG in Africa. Weber identifies three types of legitimate authority: traditional, rational-legal and charismatic.<sup>43</sup>

In **traditional legitimacy** political leaders and governing authorities are considered legitimate if they respect long-standing traditions (tradition-based rule) that specify the character of the government and the ways of assuming power (that is, if they inherited their throne or are ordained to the throne regardless of their qualifications or merit) while in **charismatic legitimacy**, citizens recognise the authority of political leaders because of their exceptional or extraordinary personal qualities or charisma. **Rational-legal legitimacy** is derived from laws or societal rules, which is the case in modern democracies where power, authority and leadership are secured through democratic elections.

In understanding the dynamics of legitimacy as a cause of UCG, it should be noted that Weber is inclined towards input or procedural legitimacy, that is, legitimacy determined by compliance with procedures establishing a political authority. Thus, in democracies, input legitimacy is conferred when and if governments or leadership are elected in accordance with the constitution, relevant laws and electoral procedures.

Output or performance legitimacy is conferred by citizens on a government if and when they deliver or perform (effective and inclusive service delivery, broad-based and people-centred economic development, social protection, security provision, peace, and stability, etc.). Citizens cooperate with the government, generally obey rules and directives without coercion and justify the exercise of power by governments.

39 Tushnet, Mark, 2009. The new constitutional order. In *The New Constitutional Order*. Princeton University Press.

40 Ibid

41 Carter, D., 2011. Sources of state legitimacy in contemporary South Africa: a theory of political goods. *Afrobarometer*.

42 Lipset, S.M., 1959. Some social requisites of democracy: Economic development and political legitimacy. *American political science review*, 53(1), pp.69-105.

43 Weber, M. and Cohn, G., 2006. *Weber*. London: Routledge.

In Africa, output legitimacy often matters more; governments are expected to create an environment where citizens can enjoy better living standards, with decent jobs, human development, peace, security and stability. Not every citizen shares the belief that electoral democracy creates legitimacy even when elections are conducted in the most free, fair and credible manner in consistent with national, regional and international laws, norms and standards.

In the context of UCG, legitimacy is considered as evaluative in that citizens judge whether political institutions are acceptable, thus rendering state legitimacy as citizen evaluations of the institutions of the state and their perceptions of these institutions' right to rule.<sup>44</sup> Every state should aspire to ensure that both input and output legitimacy are attained to prevent UCG.

Constitutional order, state legitimacy, and constitutional change of government are fundamentally dependent on the nature of the polity's constitution and whether it provides a solid foundation for the promotion of constitutionalism, state legitimacy, and any form of opportunistic political behaviour that seeks to undermine the rule of law. Origins of African states and successive external interventions have distorted and destabilised the legitimacy of the state in UCG-affected societies. States experiencing legitimacy crises are associated with interrelated and multiple societal ills, such as conflict, state crises, limited human development opportunities, environmental degradation, youth unemployment and migration, and external intervention.

The origin and structure of these states is often colonial in nature and laid the groundwork for the difficult history of the political transition from a national liberation culture to a post-colonial liberation liberal democratic culture, as well as the distortion of state and government legitimacy in Africa.

This report identifies the following constitutional order and state legitimacy factors driving UCG:

- **Crisis in state–society.** Examples of this can be seen in the case of Mali in 2020 when the government lost the legitimacy to govern and in Guinea in September 2021 when a coup elicited no visible public opposition and the downfall of Conde's government was greeted by widespread celebrations on the streets of Conakry. Opposition leader Cellou Dalein Diallo welcomed the coup for bringing the demise of the dictatorial administration.
- **Lack of effective separation of powers and checks and balances.** In Guinea, so much power was concentrated in the executive arm of government that parliament and the judiciary were rendered ineffective in placing checks on the executive authority. It should be noted that the Constitutional Court certified the highly contested constitutional referendum that paved the way for Conde's third term. This situation underscores the need to entrench the Montesquieu principle of separation of powers that provides for effective division of labour, functions, power and responsibilities among the three arms of government -executive, legislature and the judiciary -to prevent oppressive and arbitrary rule, a threat that is usually posed by the executive branch of government.
- **Governance issues in the security sector.** Concerns in the security sector are evident in the breakdown of the civil–military relationship, a lack of professionalism in the army, weak command and control structures in the military, and politicisation of the security sector. An example of this is Sudan, where the army was entangled in politics. Other cases of coups also highlight the poor state of professionalism of the security sector, particularly the army. When the army arrogates the role of arbiter of politics and seeks redress by overthrowing the incumbent government and seizing power it demonstrates abuse of power and control of the means of violence.
- **Absence of political and constitutional procedures.** When there is no democratic or constitutional option for changing leadership or holding the administration responsible, people are more likely to resort to popular uprisings and seek military involvement to stage a coup. Although most political systems on the continent exist with constitutions, many suffer from constitutionalism – a well-institutionalised governance system – which is a factor responsible for UCG in Africa. Any constitution without constitutionalism can cause a disconnect between the state and the citizen, making it increasingly difficult for the citizen to rely on the state and create opportunities for those ready to subvert democratic norms and the rule of law.

44 Ibid

- **Failure of credible, free and fair elections.** An election is held in a highly tense and charged political environment, with a playing field skewed decisively in favour of the incumbent, may be viewed as a stage-managed exercise to provide a semblance of democratic legitimacy for extending an incumbent president's political mandate. This has direct implications for the legitimacy of the leaders that emerge and their ability to navigate the governance challenges they face.
- **Terrorism and violent extremism.** In coups in Mali and Burkina Faso, governments faced violent extremism from ISIS and al-Qaeda branches in the Sahel. According to the African Union Algiers-based African Centre for the Study and Research on Terrorism (ACSRT), between 2012 and 2020, terrorist attacks on the continent increased four-fold, while there were 508 terrorist strikes across the continent in 2012 that resulted in 2,563 casualties. The number of attacks increased to 2,034 in 2020, resulting in 8,631 deaths, representing increases of 400% and 237% in attacks and deaths, respectively. Women, children and the youth often bear the brunt of terrorist attacks as victims and sometimes as perpetrators.
- **Influence of foreign powers.** The involvement of Russia and China, and to a lesser degree Turkey and Gulf powers like Qatar, in the recent coups in Africa, cannot be overlooked. Foreign governments may not necessarily promote coups but they use instability to maintain administrations that enable them to wield power, legitimise anti-democratic systems, and seize resources.
- **Military as guardians of states.** Another element related to UCG is the belief that the military is the custodian of the state (e.g., Mali, Burkina Faso, and Guinea), where citizens believe constitutional processes are insufficient to support good governance and that the military offers a credible alternative to political elites who may have betrayed their trust. This drives the influence of the military in politics and legitimisation of military takeovers. However, it is unclear in these cases how the military plans to manage state-society relations and translate the goodwill of citizens into long-term socioeconomic benefits.



### 3.3.1 Relevant AU Instruments

The **African Union** plays a significant role in entrenching constitutionalism, state legitimacy and reversing UCG by creating normative continent-wide norms for acceptable political conduct, the rule of law, and maintenance of law and order. The drive for constitutionalism and state legitimacy is based on 23 normative frameworks and visions derived from standards, principles and practices enshrined in the various AU Shared Values instruments that the AU member states have committed. These are:

The **Constitutive Act of the African Union** establishes the AU and defines its objectives, and in particular, commits to promote democratic principles and institutions, popular participation and good governance.

The **African Charter of Democracy, Elections and Governance** commits member states to adhere to universal values and principles of democracy and respect for human rights. It seeks to promote the rule of law, free and fair elections, and the rejection of UCG.

The **African Charter of Human and People's Rights** recognises the rights, duties and freedoms that accrue to all Africans and commits member states to undertake to adopt legislative or other measures to give effect to those rights.

The **African Charter on the Rights and Welfare of the Child** recognises freedom from discrimination, inherent rights, and the need to protect children on the continent.

The **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa** defines the term 'refugee' and ensures that asylum seekers will be protected.

The **Protocol to the African Charter establishing the African Court on Human and Peoples' Rights** provides for the Court's functions, responsibilities and jurisdiction, along with the process for submitting to the Court.

The **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** requires State Parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. It also commits State Parties to modify the social and cultural patterns of conduct of women and men to eliminate harmful cultural and traditional practices and all other practices based on the idea of the inferiority or superiority of either sex or stereotyped roles of women and men.

The **African Charter on Values and Principles of Public Service and Administration** aims to ensure quality and innovative service delivery that meets the requirements of all users while encouraging the efforts of member states to modernise administration and strengthen capacity for improving public service.

The **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa** establishes a legal framework for preventing internal displacement and protecting and assisting internally displaced persons in Africa while providing durable solutions to displacement.

The **Protocol on the Statute of the African Court of Justice and Human Rights** aims to merge the African Court on Human and People's Rights and the Court of Justice of the African Union. It establishes the Court and defines its organisation, jurisdiction, and procedures.

The **Protocol Relating to the Establishment of the Peace and Security Council of the African Union** is a standing decision-making organ for the continent's prevention, management and resolution of conflicts.

The **African Union Convention on Preventing and Combating Corruption** acknowledges the damaging effects of corruption on the continent. It promotes the development of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.

The **Africa Youth Charter** protects African young people from discrimination and ensures freedom of movement, speech, association, religion, owning property and other human rights while committing to promoting youth participation throughout society.

The **Algiers Declaration on Unconstitutional Changes** addresses the importance of strengthening the capacity of the AU to deal with the scourge of unconstitutional changes of government.

The **Lomé Declaration on Unconstitutional Changes of Government** affirms and updates the Algiers

Declaration, committing to the AU's rejection of unconstitutional changes in government.

The **Conference on Stability, Security, Development and Democracy (CSSDCA) Memorandum of Understanding** reaffirms the fundamental link between stability, human security, development and cooperation in a manner that reinforces each other.

The **OAU/AU Declaration on Principles Governing Democratic Elections** provides for democratic elections as a basis of the authority of any representative government and states the principles for such elections, including guidance for observers and monitors.

The **African Union Post-Conflict and Reconstruction Policy Framework** sets out an African agenda for post-conflict reconstruction, which aims to, among other things, address the nexus between the peace, security, humanitarian and development dimensions of post-conflict reconstruction and peacebuilding.

The **New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic & Corporate Governance** commits to ensuring that Heads of States' respective national constitutions reflect the democratic ethos and commit support to democracy and good political governance; economic and corporate governance; socio-economic development; and the African Peer Review Mechanism.

The **Memorandum of Understanding on the African Peer Review Mechanism (APRM)** establishes partnerships with States that have signed on to the mechanism and commits to implementing the shared commitments as established in the Constitutive Act.

The **Kigali Declaration on Human Rights in Africa** reaffirms that all human rights are universal, indivisible, interdependent and interrelated. It reaffirms member states' commitments to upholding and protecting these rights.

The **Solemn Declaration on Gender Equality** reaffirms the commitment to gender equality and agrees to accelerate the implementation of measures to combat discrimination and ensure women's full and effective participation in peace processes.

The **Declaration on the Theme of the 2012 Summit, 'Towards Greater Unity and Integration through Shared Values'** establishes AGA and commits the African Union to implement and affirm its Shared Values.



### 3.3.2 Key findings

**Several instances cited demonstrated significant challenges regarding constitutional order and state legitimacy.** Evidence from some countries suggests that the public supported coups and that effective separation of powers and checks and balances was lacking. It was also suggested that power is concentrated in the executive arm of government, which renders the constitutional roles of the legislature and the judiciary ineffective in placing checks on the executive authority.

**Foreign interference in electoral and security matters.** In accordance with Article 3(b) of the AU Constitutive Act of 2000 – to defend the sovereignty, territorial integrity and independence of its member states – and Article 3(f) of the Constitutive Act – to promote peace, security, and stability on the continent – the report notes concern regarding foreign interference in electoral and security matters as a trigger for UCG. In decision Assembly/AU/5(XXXIII),<sup>45</sup> Clause 25 strongly condemns ‘all forms of foreign interference in the internal affairs of the AU member states, which undermines the efforts of the Continent to silence the guns and aggravate crises with devastating effects on Africa’s development and stability. The Assembly requests that the PSC remain seized with the matter and activate its policy of ‘naming and shaming the peace spoilers’.<sup>46</sup> In Clause 89 of the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, for the Period February 2019 – February 2020, the PSC notes: ‘The situation in Libya has largely been marked by recurring violations of the ceasefire by the forces allied to Government of National Accord and those of the Libyan National Army (LNA) led by General Haftar. The situation is further compounded by the increasing foreign political and military interference in the country.’<sup>47</sup>

### 3.3.3 Conclusions

UCG is one of the biggest threats to constitutionalism, state legitimacy, the rule of law, and governance in Africa. Most post-independence states were destabilised by UCG.

The AU Constitutive Act marked the beginning of a new era in Africa’s support of constitutionalism, democratic values, the rule of law, and good governance. Although member states have made progress in embracing democratic norms, the previous decade has seen reversals of constitutional change of government, ascribed to both historical and contemporary factors. The culture of coups d’état, altering or changing constitutions to keep a leader in power, has produced a situation that, if not addressed properly, may lead to political, constitutional and governance crises, including failed states.

The phenomenon of UCG is an emergency that the AU cannot ignore. The AU must update its legislative framework on constitutional change of government and improve its enforcement mechanism to ensure that states follow democratic norms when amending their constitutions. Finally, the question of how the AU is financed is central to the fulfilment of this agenda. The AU is hampered by insufficient resources and isolation from the regional contexts where these norms are most needed.

45 Report of the Peace and Security Council on its activities and the State of Peace and Security in Africa, for the period from February 2019 to February 2020.

46 [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjnuqr61uAhVXhP0HHcX7DgAQFnoECB0QAO&url=https%3A%2F%2Fau.int%2Fsites%2Fdefault%2Ffiles%2Fdecisions%2F38180-assem-bly\\_au\\_dec\\_749-795\\_xxxiii\\_e.pdf&usq=AOvVaw11VwsqdlX-z7iPpDv0PFNgY&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjnuqr61uAhVXhP0HHcX7DgAQFnoECB0QAO&url=https%3A%2F%2Fau.int%2Fsites%2Fdefault%2Ffiles%2Fdecisions%2F38180-assem-bly_au_dec_749-795_xxxiii_e.pdf&usq=AOvVaw11VwsqdlX-z7iPpDv0PFNgY&opi=89978449)

47 Report of the Peace and Security Council on its activities and the State of Peace and Security in Africa, for the period from February 2019 to February 2020.

### 3.3.4 Recommendation

**Regulate constitutional reforms.** Frequent making, unmaking and remaking of constitutions, whether by revision or crafting of new constitutions should be avoided. Member states are encouraged to undertake all constitutional amendments on presidential term limits through a permanent constitution review mechanism in which no political party dominates or has exclusive powers to review and recommend amendments to the constitution.

**Legislate presidential term limits.** Member states are encouraged to put in place or restore definitive provisions for presidential term limits and limit presidential appointment powers with strict criteria for appointment and promotion of public official

**Guarantee judicial independence and credibility.** To depoliticise judicial appointments, less than half of the members of appointment committees should have direct or indirect links to the executive and the legislature. Member states should broadcast and televise judicial appointment hearings by public representatives. To enhance the credibility of judicial rulings from the perspective of equity and perception of fairness, member states are encouraged to ensure proportional representation of women in the judiciary.

**Mitigate foreign influences on security and UCG.** The AU and RECs are encouraged to implement the recommendations included in the PSC report on the State of Foreign Military Presence in Africa: Implications on the Implementation of the Common African Defence and Security Policy.

## 3.4 DIVERSITY MANAGEMENT AND HUMAN RIGHTS

Human rights violations that incite UCG include denial of political space to political opponents and restriction of access to information and internet access; police brutality in the form of arbitrary arrest and illegal detention; extrajudicial execution, torture, forced confession, kidnapping, female genital mutilation and other harmful practices including rape, harmful funeral rites and denial of women's inheritance to women, child labour and the use of child soldiers. Contenders for presidential office in Senegal and Benin were denied electoral space. In Burkina Faso, Mali, DRC, and Sudan, violent attacks were carried out on civilians by armed groups and security forces.

Ordinary citizens can also abuse the right of fellow citizens to a political preference. The Kenyan Commission on Human Rights reported abuses of freedom of expression in the forms of hate speech and propagation of false information on social media under pseudonyms during the 2022 Kenyan presidential election. Similar abuses are evident as Nigeria's 2023 presidential election campaigns gain momentum. Such human rights violations have taken place despite abundant constitutional and legal provisions, institutional mechanisms and policies for respect, protection, and promotion of human rights.

Pre-colonial empires and colonial legacies, the nature of the post-colonial and the intensifying globalisation have saddled Africa with a plurality of identity groups. The United Nations Economic Commission for Africa (UNECA) Report on Diversity Management in Africa: Findings from the African Peer Review Mechanism and a Framework for Analysis and Policy-Making of 2011 defines identity as 'real or imagined (often socially constructed) markers that social groups attribute to themselves or to others in order to set themselves apart from others (we/they) and to distinguish others from one another.'<sup>48</sup>

Identities can be characterised by 'primordial and social identity markers'<sup>49</sup> such as those based on ethnicity, race, clan, kinship, religion, region, nationality, citizenship, language, gender, age, and origin (indigenous, migrants, refugees, etc.);

48 United Nations Economic Commission for Africa (2011). Diversity Management in Africa: Findings from the African Peer Review Mechanism and a Framework for Analysis and Policy-Making. UNECA Governance and Public Administration Division. Addis Ababa: Ethiopia., pp.2. <https://archive.uneca.org/sites/default/files/PublicationFiles/3-diversity-management.pdf>

49 Dakas, D.C., 2019. *Our Common Humanity: Towards Harnessing Nigeria's Diversity for Sustainable Peace and Development*.

other identities are based on modes of production, social classes, institutional systems, occupations, political affiliation, professional organisations, and civil society organisations. Other new forms of identity continue to emerge. The plurality of these identity groups is therefore the definition of diversity, which basically describes social, economic, cultural, and political variations.

Although different identities can co-exist peacefully and cooperate in local and national governance within communities and at national level, managing diversity remains a challenge in Africa. Governance deficits and absence of progressive and substantive policies to manage diversity relations can result in marginalisation of some identity groups, denial of human rights and restricted access to opportunities to such identity groups, and identity-based discrimination and exclusion. Poor diversity management may result in intractable and destabilising inter-identity or diversity-based conflicts, often divisive due to exaggerated differences (real and imagined) between identities.

In African politics, poor diversity management allows political parties to emerge along identity markers; appointments in senior government positions and national security institutions have also been driven by clan politics, kinship politics, politics of autochthony, politics of regionalism, politics of belonging as well as exclusion and marginalisation of critical components of the society such as the youth and women.<sup>50</sup> This can cause instability and polarisation, especially when competition for access to power, domination, opportunities and resources intensifies. A failure to build consociational democracies with political and economic governance structures that facilitate effective diversity management and nation-building may cause some politicians and army generals (who may be disillusioned, ambitious and/or feeling deprived) to seize the opportunity effect UCG.

Therefore, the inability of political elites to manage diversity with adequate respect for human rights can be exploited by self-interested military officers and/or external powers to effect UCG rudely ending the euphoria of political independence, democratic rule, the hope of expanding popular participation and respect for human rights.

When it comes to human rights, Aspiration 3 of the AU Agenda 2063 envisages 'An Africa of good

governance, democracy, respect for human rights, justice and the rule of law'. Member states of the AU commit to respect and promote human rights through various instruments such as the African Charter on Human and Peoples' Rights, the Kigali Declaration on Human Rights in Africa, the Protocol on the Statute of the African Court of Justice and Human Rights, the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Solemn Declaration on Gender Equality in Africa; the African Charter on the Rights and Welfare of the Child, the African Youth Charter and the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa. For Shivji (1989:69), the conceptualisation of human rights needs to be 'historically situated and socially specific.'<sup>51</sup> This means that human rights are historically and ideologically constructed. They express the ideology of the advantaged and disadvantaged as well as the struggle of disadvantaged people. As such, rights are taken, not given. These conceptual insights should inform ideas of human rights in contrast with the unidirectional connection whereby ideological perspectives direct practice.

Although there is a general tendency to over-emphasise the importance of first-generation human rights (civil and political liberties, the right to life, equality, freedoms of speech, religion, property rights, voting rights and right to fair trial) and second-generation human rights (economic, social and cultural rights, right to employment, food, healthcare, housing, social security and unemployment benefits); it has to be stated that third-generation human rights (such as group and collective rights, the right to self-determination, socio-economic development, healthy environment, natural resources, inter-generational equity and sustainability and communication rights) are also fundamental as their deprivation, violation and alienation have often resulted in legitimacy-deficits in governments thereby fuelling UCG tendencies. If governments fail to understand the different priority human rights demands and grievances of the different identity groups (including the poor, vulnerable, disadvantaged, marginalised and minorities) such as the demand for transformation, equitable wealth distribution, decent employment, living wages, land redistribution, among other

50 Atta-Asamoah, A., 2012. Overview of the Nature and Management of Diversity in Africa. Prepared for the Office of the Special Adviser on Africa (OSAA).

51 Shivji, I.G., 1989. The concept of human rights in Africa. African Books Collective.

human rights demands, it creates social and political conditions that foment UCGs. The mismanagement of diversity, therefore, affects human rights and can create conditions that lead to UCG.

In Nigeria, UCG through a military coup d'état occurred less than six years after political independence. Masterminded by Lt. Colonel Murtala Muhammed and many northern military officers, the coup began as a mutiny at roughly midnight on 28 July 1966: a reaction to the killings of northern politicians and officers by some soldiers on 15 January 1966. The main cause was failure by political leaders to manage inter-elite rivalry – fuelled by ethnic diversity – for political power. Coups such as this, emanating from poor diversity management during the post-colonial state formation phase, began intermittent and sometimes long periods of military rule, suspension of the constitution and human rights abuses in Africa. More recently, UCG occurred in Burkina Faso, Mali, Guinea, and Sudan, and failed coups occurred in Niger and Sudan.

Of significance also, are a series of constitutional term limits amendments undertaken in 13 African countries since 2015 to enable the incumbent to continue in power. Given that all these countries are multiethnic to varying degrees it is logical to conclude that poor diversity management remains a critical factor in these attendant political monopolies. This assertion is supported by an established connection between the diversity management challenges or limitations and political violence in Africa in countries like Rwanda, DRC, Nigeria, and Cote d'Ivoire.

### 3.4.1 Relevant AU instruments

The Charter of the OAU (later the AU) paid attention to human rights and conflict resolution. Its first institutional framework for conflict resolution was the Mechanism for Conflict Prevention, Management and Resolution established in 1993. In 1981, the OAU subsequently established the African Charter on Human and Peoples' Rights, which came into force in 1986. The African Court on Human and Peoples' Rights established in 1998 reinforced the role of the Charter, which Odinkalu, as cited in Naldi,<sup>52</sup> describes as being 'mostly positive and sometimes even innovative.' The Lomé Declaration or Convention, a legal instrument that forms the bedrock of the normative framework on

UCG, was also adopted by the OAU in 2000. The AU has built on the efforts of OAU through new instruments and processes.

Article 25 of ACDEG outlines the institutional procedures to be activated through the Peace and Security Council of the African Union in the event of an unconstitutional takeover of power in a member state' (Nkhalamba 2022:3).<sup>53</sup> Its Article 23 also contains prohibition of UCG with sanctions. Article 7(g) of AU Peace and Security Council (PSC) protocol has the same provision. More importantly, ACDEG encourages states to conform legislations to the Charter and translate its objectives into 'national policies and strategies' (Forst 2007:11).<sup>54</sup> This proactive approach follows on from the aim of ACDEG to reinforce the AU's engagement with member states to protect democracy, rule of law and human rights, without which UCG is a logical consequence. The ACDEG draws from the tools of United Nations Organization and Organization of American States declaration on democracy. Its two mechanisms – one smooth and the other more containing with sanctions – are complementary.

The ACDEG thus expects national human rights institutions (NHRIs) to lead implementation of its provisions in their countries at three levels.

- **Global approach** – lobbying their states to ratify and ensure translation of ACDEG into local and national languages for familiarisation of their people with them.
- Help to get states to translate clauses of ACDEG into national legal codes; sensitise government and non-government actors to secure commitment to ACDEG; provide training and education in the areas of elections and promotion and respect for democracy and also help with incorporating human rights and democratic principles and values into courses and curricula.
- **Monitor and report commitment of states** in the area of implementation of continental provisions on human rights and submit reports to intergovernmental organisations to create pressure on governments (Forst 2007).<sup>55</sup>

52 Naldi, G.J., 2002. Interim Measures of Protection in the African System for the Protection of Human and Peoples' Rights. *Afr. Hum. Rts. LJ*, 2, p.1.

53 African Charter on Democracy, Elections and Governance (Decision EX.CL/Dec.31(III)) adopted in Maputo, Mozambique, in July 2003 and Decision EX.CL/124(V) adopted in Addis Ababa, Ethiopia, in May 2004 respectively.

54 Clear, T.R. and Frost, N.A., 2007. *Informing public policy*. *Criminology & Pub. Pol'y*, 6, p.633.

55 Ibid.

### 3.4.2 Conclusion

One of the most potent motivating forces for actuating and mobilising political and economic resources for development is national cohesion. Lack of diversity may exacerbate governance problems and challenges and result in UCG. National cohesion is a product of improved relations between genders, ethnicities, classes, faiths, and different regional populations. Challenges in managing diversity and respect for human rights may render countries vulnerable to exploitation by self-interested military officers and/or external powers, who may pursue UCG.

### 3.4.3 Recommendations

To improve diversity management and promote human rights as a measure to prevent the phenomenon of UCG on the continent, the following recommendations are suggested for adoption by AU member states at national, regional and continental levels.

- i. **Promote and institutionalise inclusive political participation.** Member states are encouraged to adopt more inclusive political systems that allow participation of all registered political parties and encourage a culture of power sharing.
- ii. **Domesticate human rights instruments into law.** The normative instruments for managing diversity and ensuring respect for human rights need to be strengthened and given domestic force of law in the AU, EU, UN, and RECs. Member states are encouraged to strengthen those laws and regulations such as freedom of information, assembly and association, and asset disclosure by public officials that empower citizens to hold public officials to account.
- iii. **Operationalise the responsibility to protect.** Article 4(h) of the African Union Constitutive Act of 2000 establishes the right of the Union to intervene in a member state to prevent grave violations of human rights, namely: war crimes, genocide and crimes against humanity. The AU is encouraged to consider integrating provisions for military intervention into the escalation ladder of sanctions for countries where UCG has taken place and where there is evidence of gross and severe threats to civilian life, particularly that of women and children.
- iv. **Introduce political education.** AU organs and member states are encouraged to legally recognise human rights as a tool and product of the dignity of Africans, at home and globally. Member states are encouraged to introduce political education across all levels of education, beginning in primary school. The AU is encouraged to introduce a continental programme that champions police reforms and retraining throughout Africa, based on a protocol and agreed guidelines.
- v. **Protocol on free movement of persons, right of residence and right of establishment.** Domestication of the protocol will ensure protection of human rights of displaced populations and prevent socioeconomic and political disenfranchisement that may compel such populations to join mercenary groups and become destabilising elements.

### 3.5 ECONOMIC GOVERNANCE AND PUBLIC SECTOR ACCOUNTABILITY

Economic governance refers to the system of institutions, policies, and procedures with which governments manage the economy and promote economic and social progress for citizens.

Accountable public sector institutions, organs, and agencies are open, transparent, and responsive, and governments explain or justify their acts and omissions, and enforce standards of accountability when maladministration, errors of judgement, abuses of power or injustices occur.

Weak performance of African countries in various aspects of economic governance and public sector accountability, including natural resources governance, public finance management, public services delivery, debt management, money laundering and illicit financial flows, and corruption are reflected in poor economic performance and outcomes that can be measured by different economic indicators. The limitations in achieving development goals and dissatisfaction of the public with the administration and its policies that result, coupled with erosion of confidence towards institutions are fertile ground for political instability that could lead to UCG.

Therefore, it can be inferred that there is a two-way relationship between the different elements and issues related to economic governance and public sector accountability on one side and UCG on the other although the literature in this area, particularly for Africa, is still scant. Thus, the main objective of this thematic analysis is to study the nexus between economic governance and public accountability and unconstitutional change of government (UCG) in Africa. In other words, how the different aspects economic governance and public accountability act as causes, catalysts, and triggers of UCG in Africa, as well as the implication of UCG on these different aspects.

Most recent instances of UCG have occurred in contexts of weak economic performance and governance, that result in high inflation, growing budget deficits and debt, poverty, inequality, unemployment, and low growth rates coupled with pervasive corruption and lack of transparency and accountability. Growing fragility, conflict, violence, and sustained political instability resulting from UCG also contribute to weak economic performance which affects government finances and severely impacts upon basic service delivery and infrastructure, hampering the development process.

A review of the 11 country case studies highlights their similarities and aids in identifying the triggers for UCG that may result in political instability.

Firstly, most countries experienced UCG in the form of military coups, which demonstrates

the power of the military in those countries. Secondly, all the countries have structural problems that hamper economic governance and public sector accountability in them. Thirdly, the key triggers of those coups common to most of the studied countries, are rampant corruption, and absence of de facto rule of law, extreme poverty, unemployment, inequality, poor economic conditions and high inflation, underdeveloped infrastructure, dependence on exports of primary goods, and mismanagement of natural resources.

Although some countries have undergone reforms to overcome these problems, efforts have been blocked by an absence of political will to sustain reforms, neglect in reform policies of the root causes of structural problems, and weak institutional frameworks for implementing and monitoring reforms.

External shocks such as the COVID-19 pandemic and the Russia–Ukraine war have further intensified poverty and inequality and worsened economic performance. Political instability and insecurity, resulting from UCG, also hamper economic and political transformation. There is thus a reflexive relationship between UCG and economic governance and public sector accountability that is confirmed in literature and by the case studies presented in this report.

The problem of UCG which threatens so many countries in Africa with destabilisation, and erosion of democracy should not be seen in isolation. and sustainable solutions with a holistic approach to the crisis need to be addressed and studied.

International organisations also play an important role in promoting economic governance and provide technical and financial assistance to member countries in pursuing sound economic policies that promote growth through low inflation, sound and prudent monetary and fiscal policies and a sustainable balance of payments position. However, in the context of changed economic environments and external global shocks, it is necessary to broaden the scope of the economic policies to include other elements that are vital for economic growth, financial stability, and development. These include:

#### ELEMENTS VITAL TO ECONOMIC GROWTH, FINANCIAL STABILITY, AND DEVELOPMENT

- Reduced extravagant and unproductive government expenditure.
- Higher spending on primary health and education
- Adequate social protection for the poor, the unemployed and other vulnerable underserved sections of the society
- A level playing field for private sector activity achieved by increasing openness, stepping up the privatisation process, reducing the power of monopolies through appropriate legal and administrative measures, and setting up more transparent and simpler legal and regulatory systems and frameworks;
- A stronger banking sector that protects small savers and other depositors, and reduce risks for shareholders and creditors by enforcing stricter prudential standards and information disclosure requirements;
- Reform of tax systems to make them more efficient, effective, equitable and fairly comprehensible;
- Greater transparency and accountability in government and corporate affairs.

These elements constitute the basic framework of good economic governance.

### 3.5.1 Relevant AU Instruments

The normative framework for economic governance and public sector accountability derives from several key declarations, protocols, and treaties to galvanise regional and national efforts geared at ultimately improving national economic governance and public sector accountability. These instruments and resultant programmes, if poorly implemented, may cause UCG; if diligently implemented they may prevent it. Equally important, as will be argued in Chapter 5, these instruments can also be employed in the application of economic sanctions and targeted sanctions if fashioned appropriately.

In their quest for economic integration and governance since the establishment of the OAU, African countries have introduced the following initiatives and have made substantial progress in many areas.

- The **Treaty establishing the African Economic Community** (AEC) of 1991, commonly known as the Abuja Treaty, seeks to create the AEC through six stages

culminating in an African Common Market using the Regional Economic Communities (RECs) as building blocks.

- The **OAU Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes taking place in the World** (1990) underscored Africa's resolve to seize the initiative, to determine its destiny and to address the challenges to peace, democracy, and security.
- **Africa's Priority Programme for Economic Recovery** (APPER) of 1985 is an emergency programme designed to address the development crisis of the 1980s, in the wake of protracted drought and famine that had engulfed the continent and the crippling effect of Africa's external indebtedness.
- The **Cairo Agenda for Action** (1995), a programme for relaunching Africa's political, economic, and social development.

Economic integration is the overarching goal within which concerted governance of national economies is pursued. To promote economic integration as well as private sector development the AU is implementing several key flagship projects under Agenda 2063 as well as promoting the adoption of the African Continental Free Trade Area (AfCFTA) and the Free Movement Protocol as drivers for regional economic integration and development. Private sector development is of particular significance to this effort.

To promote private sector engagement the AU has implemented programmes that seek to form strategic partnerships with the private sector through Public Private Partnerships. In this regard, the African Economic Platform (AEP) was launched as a multi-stakeholder meeting to bring together the African political leadership, the private sector, academia, and civil society to reflect on how to accelerate Africa's economic transformation by harnessing its vast resources to enhance the development of the African people. The forum discusses key opportunities as well as the constraints that hamper economic development and proposes measures to be taken to realise the Aspirations and goals of Agenda 2063.

The AU has also pursued the establishment of the financial services infrastructure needed to achieve this. **African Continental Financial Institutions** have been created to accelerate integration and socioeconomic development to mobilise resources and manage the African financial sector. Financial institutions tasked with promoting

economic integration are African Investment Bank, Pan African Stock Exchange, African Monetary Fund and African Central Bank.

The AU promotes the use of African data sourced from authoritative national sources to enhance the use of verified statistics and data for development.

The **African Charter on Statistics**<sup>56</sup> promotes the use of statistics for development in Africa and sets out the methodological and ethical principles to guarantee real time, quality, harmonised statistics to meet the needs and standards to certify their use as Africa's statistics of reference.

The **African Institute for Remittances (AIR)** of the AU is charged with promoting reforms to reduce remittance transfer costs; improve the capacity of member states for statistical measurement, compilation, and reporting of remittance data; and assisting member states to design strategic tools to leverage remittances for social and economic development. The AIR is hosted by the Kenya School of Monetary Studies (KSMS) in Nairobi.

The **Economic Affairs Department** promotes the work of the AU in economic integration and private sector development and engagement, proposes policy solutions for resolving Africa's debt problem and provides a framework for the use of harmonised statistics. The department is leading the AU's efforts to establish the AU Institute for Statistics and the Statistics Training Centre.

Most notable is the challenge of harmonising the principles and mechanisms across these instruments to prevent UCG.

### 3.5.2 Key findings

**Illicit financial flows and weak economic governance.** Evidence from the UCG targeted-review countries demonstrates a link between UCG, illicit financial flows, and weak economic governance, reflected in high inflation, growing budget deficit and debt, poverty, inequality, and unemployment, as well as low growth rates and pervasive corruption and lack of transparency and accountability. From a procyclical perspective, growing fragility, conflict, violence and sustained political instability resulting from UCG also contribute to weak economic performance, which

adversely affects government finances, basic service delivery and infrastructure, and further hampers development.

### 3.5.3 Conclusion: Economic governance and public sector accountability

Unconstitutional change of government is putting the continent at risk, and the majority of countries in Africa are threatened with destabilisation, and democracy is progressively disappearing. One of the key drivers behind the increase of UCG in Africa recently is the failure of political leaders to exercise good governance including economic governance. To face this problem sustainable solutions with a holistic approach to the crisis need to be addressed and studied. Thus, studying the economic governance and public sector accountability causes, triggers, and catalysts of UCG and its implications for Africa are highly important,

This section provided a conceptual framework for UCG and economic governance and public sector accountability, and the links between them. This was followed by literature review on theoretical and empirical studies that tackled the impact of different aspects of economic governance and on political instability, and how this instability in turn affects economic performance and governance. This is not restricted only to African countries but also in other countries in Asia. It was clear that poor economic governance and lack of public sector accountability results in poor political outcomes and increases the probability for UCG to take place. This dynamic is procyclical as UCG also has detrimental effects on economic outcomes in the country.

Analyses of 11 country case studies of targeted reviews on UCG present an overview of their economic and institutional performance, identify the main constraints on economic governance, and elements that trigger political unrest and instability that may lead to UCG. The findings show that structural problems that hamper economic governance and public sector accountability are the main catalysts for political instability, rampant corruption, extreme poverty, unemployment, inequality, poor economic conditions and high inflation, underdeveloped infrastructure, mismanagement of the country's natural resources, and trade imbalances. Worsening economic performance (and governance) also inhibits political transformation in these countries.

<sup>56</sup> [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi7vJvMv\\_b9AhVeTKEAHYRRBZIQFn0ECAwQAw&url=https%3A%2F%2Fau.int%2Fsites%2Fdefault%2Ffiles%2Ftreaties%2F36412-treaty-african\\_charter\\_on\\_statistics\\_eng.pdf&usq=AOvAw2E4\\_VWNk1tnQPXwjPyl0Ny](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi7vJvMv_b9AhVeTKEAHYRRBZIQFn0ECAwQAw&url=https%3A%2F%2Fau.int%2Fsites%2Fdefault%2Ffiles%2Ftreaties%2F36412-treaty-african_charter_on_statistics_eng.pdf&usq=AOvAw2E4_VWNk1tnQPXwjPyl0Ny)

### 3.5.4 Recommendations

**Reconcile economic governance instruments with the sanctions regime.** The AU is encouraged to consider the different aspects of economic governance when reformulating the framework on UCG. The AU should also consider targeted economic sanctions to ensure that the cost of sanctions outweighs the benefits of maintaining the UCG status quo.

**Improve policy transparency and efficacy.** Member states are encouraged to strengthen transparency in policy making and institutions and build their capacity to enhance economic governance policies by promoting debate and establishing a broad and inclusive economic policy community that includes national entrepreneurs and industrialists within and beyond the respective states. Technical assistance and foreign aid will be rendered more effective by improving public administration, revisiting terms of grants and loans and paying greater attention to implementation of policy measures that enhance sound public finance management, inclusive growth, competitiveness, export trade and diversification of the economy.

**Strengthen the capacity and autonomy of public accountability institutions** (for example, anti-corruption commissions and financial intelligence agencies) to fight corruption and money laundering. Bold natural resource governance measures in accordance with the relevant Continental Framework, such as Africa Mining Vision (AMV) and the AUDA-NEPAD Regional Energy Infrastructure Programme, will facilitate prudent exploitation of African natural resources. This will improve people's lives and fosters inclusive community development through value addition, beneficiation, and industrialisation.

**Review national legislation on control of illicit financial flows.** Member states are encouraged to strengthen legislation and institutions responsible for combatting illicit financial flows used to fund UCG. This includes legislation governing central banks, public financial management, financial intelligence services, revenue authorities, commercial banks, and mineral commodities exchange authorities.

**Increase public investment in social services.** By increasing their public social investment, member states can improve per capita expenditure in health, education, public security, and other social protections for the improvement of welfare, particularly of women and children and vulnerable groups.



### 3.6 POPULAR UPRISINGS, MILITARY INTERVENTIONS AND TERRORISM

Member states of the AU are witnessing an upsurge in popular uprisings like the Arab Spring, coups, and terrorism because of deficiencies in border management, and organised nationalism, which has had a significant impact on the widespread spread of transnational organised crime associated with international terrorism. The recent wave of coups in West African countries such as Mali and Burkina Faso, however, has led to the call by continental and international bodies to examine this phenomenon. Unlike the first three decades after independence, which were characterised by indifference in the face of coups, African leaders are now determined to stem the tide through a combination of continental and sub-regional norms and collective action.

This section on popular uprisings, military interventions, terrorism, and change of government deals with conceptual and historical issues and analyses the doctrines that underline some of the traditional and modern security models, and the comparative politics pertaining to them. This is key to understand and locate African coups, which oscillate between the realistic, organisational and praetorian models of the civil-military relationship. In contrast with its predecessor, the Organisation of African Unity (OAU) the African Union demonstrates commitment to reverse the tide of coups and consolidate a culture of democracy and good governance.

Here we enumerate and analyse factors at state and regional levels, coupled with the interests of foreign actors, that have conspired to limit the ability of continental bodies to deal effectively with UCG. Because they predominate at the state level it is prudent to examine the nature and shape of the African state, which must be addressed first by the continent.

In concluding, this section refers to findings and offers recommendations to the AU, regional economic communities and member states.

#### 3.6.1 Popular uprising

The AU notes that the phenomenon of popular uprisings within the context of UCG but is yet to definitively characterise the elements pertaining. The AU Assembly through the 50th anniversary of the Solemn Declaration (May 2013) reiterated the rejection of Unconstitutional Changes of Government, including through any attempts to seize power by force but recognise the right of our people to peacefully express their will against oppressive systems.

In exploring the definitive elements of the phenomenon popular uprising may be classified according to its purpose and distinctive characteristics, and according to what is regarded as the driving force behind it. The theoretical basis in this report considers popular uprisings as a phenomenon and an object of investigation, by analysing the algorithm (stages), and chronology of a revolution (herein referred to as popular uprising). In this regard, the report draws from the following classification and concepts of popular uprisings:

- i. **A national liberation revolution:** If a popular uprising occurred in the context of a national liberation struggle.
- ii. **A fundamental revolution:** If the popular uprising occurred in a country for the first time with the aim of resolving major issues reflected in the size and duration of the social confrontation and following the different stages within one revolution.
- iii. **A correction revolution:** If the popular uprising takes place in a country where a revolution has already taken place and aims to change certain current conditions.

### 3.6.2 Militarisation

In examining the notion of militarisation, this report confines the phenomenon to the aspect of military interventions which deals with three areas of understanding and analysis: the military doctrine for local intervention, military behaviour in situations of crisis and military doctrine in popular uprisings. These are applied to member states that witnessed popular uprisings and military coups and thus focuses on the countries reviewed.

In all three areas of understanding the report employs the lens of non-conformity and proportionality in the use of force as stipulated in:

- Article 4 of the International Covenant on Civil and Political Rights
- General Comment No. 29 of the UN Human Rights Committee on exceptions to Article 4 during a state of emergency
- Article 21 of the International Covenant on Civil and Political Rights through the Human Rights Committee's drafting process of General Comment No. 37 in accordance with paragraph 107 of the current draft General Comment No. 37
- The report also considers the new Guidance on Less-Lethal Weapons for Law Enforcement that draws on the most relevant and up-to-date international documents in the field, the United Nations Code of Conduct for Law Enforcement Officials, and the United Nations Basic Principles on the Use of Force (1990).

Equally pertinent to the analysis is the application of international standards for the use of force by uniformed forces during popular uprisings which cover:

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana - Cuba - August 27 to September 7, 1990);
- Principle 22.

### 3.6.3 Terrorism

In the African Governance Report 2023 'terrorism' refers to the phenomenon that accompanies and results from situations created by security chaos which is enabled by weaknesses in the security and military forces of a country. Terrorism can also be defined as a security breach or breaches with implications for actual and perceived insecurity for the state and citizens. A security breach may result from the proliferation of terrorist groups and armed militias prevalent in African countries.

Many AU member states, particularly those that have witnessed popular uprisings and military coups, have seen a growth in the number of operations of terrorist groups. Events have taken different paths and forms, in terms of targeting by terrorist organisations and because of the different environment incubating terrorist organisations, which produced a new organisational structure for terrorist organisations.

This dynamic of the intersection between popular uprising, militarisation and terrorism is explored in this report.

Finally, in defining terrorism the report classifies terrorist operations according to their targets. These include: security forces of the army and police, a country's infrastructure, the private sector, tourist attractions, judges and courts, and the public. Article 1(3)(a) of the OAU Convention on the Prevention and Combating of Terrorism, which was adopted in July 1999 and entered into force in December 2002, defines a terrorist act as follows:

*'[A]ny act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to (i) intimidate, put in fear, force, or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon, a particular standpoint, or to act according to certain principles, (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency, or (iii) create general insurrection in a State'.<sup>57</sup>*

<sup>57</sup> OAU Convention on the Prevention and Combating of Terrorism, July 01, 1999, pp.3-4. [https://au.int/sites/default/files/treaties/37289-treaty-0020\\_-\\_oau\\_convention\\_on\\_the\\_prevention\\_and\\_combating\\_of\\_terrorism\\_e.pdf](https://au.int/sites/default/files/treaties/37289-treaty-0020_-_oau_convention_on_the_prevention_and_combating_of_terrorism_e.pdf)

### 3.6.4 Popular uprisings, military interventions and terrorism as drivers of UCG

In exploring the dynamics of popular uprisings in Africa from the perspective of the claim of the dilemmas in the AU response, and the AU's categorical determination when military coups take place, the report notes that the AU is yet to define its position on solidarity with citizens where a government is facing public protests on account of repression. This challenge reflects the AU's severe limitations regarding securing member states adherence to credible democratic standards and practices in such circumstances. Preliminary findings suggest that the AU is yet to respond effectively in terms of protecting people's rights during uprisings by playing a central role in terms of enforcement and follow-up on issues related to good and responsible governance to prevent popular uprisings.

The international response during the popular uprisings is a challenge because of the principle of sovereignty and the prevailing singular focus on election-based democracy. There are few to no standards to guide the AU response during political transitions arising from mass movements and limited scope on the role of the army and its understanding of its doctrine in the context of popular uprisings.

The military is the most critical actor in the preservation of an administration; without its participation in uprisings citizens would be more likely to succeed in removing the leadership from office.

The current trends in popular uprising suggest that selected African countries face profound state/nation building challenges and, in some cases, these have been interrupted by coups d'état, while in others has never taken root since decolonisation. There is faint evidence of collective strong African leadership in this regard, as there are no shortcuts to achieving a sustainable, citizen-centred, peaceful, and stable environment, and this requires bold and visionary leadership with the necessary political will to change society to improve the lives of ordinary people.

The report also notes that because continental bodies have only recently adopted more stringent measures against UCG the degree to which these bodies can assert the principles with certainty to deal effectively with UCG is still limited and many countries have not yet ratified all the instruments.

It was also noted that while the AU consistently

condemns coups and insists on a return to constitutional order, there are disparities in the application of standards, such as those regarding the return of deposed leaders, that need attention and treatment.

A transition from the politics of rhetoric of democracy and good governance to concrete actions is yet to take place and the AU is yet to develop tools to implement its democracy agenda and provide a better framework for the strong participation in this regard. The challenge of enforcement, the institutionalisation of the culture of democracy and good governance and its consolidation, and the accountability of member states, are stipulated in Article 44 and Article 49 of the ACDEG.

Challenges persist with regard to the role of the African Union Peace and Security Council (AUPSC) under Article 5(2) of the African Union Act, and the terms of reference of the AUPSC on membership and modalities for intervening with respect to popular uprising to restore peace and security persist. Similarly, the jurisdiction and capacity of the African Standby Force and the monitoring and intervention missions under the specified circumstances is yet to be revisited.

### 3.6.5 Relevant AU Instruments

In the context of the AGR 2023, several instruments are considered.

Decisions on the responsibility to protect (R2P), the protection of civilians, United Nations Security Council Resolutions S/RES/ 1970 and 1973, subsequent decisions of the same context refer to the controls on the use of force, the objectives of the intervention, and its logical reasons in accordance with the implementation of resolutions 1970 and 1973. These include Declarations and Decisions of Lomé AHG/Decl.1-6 / XXXVI) Lomé, AHG/Dec. 143-159, (XXXVI), AHG/OAU/AEC/Dec.1 (IV) / Concerning Unconstitutional Changes of Government in Africa CM/2166 (LXXII), African Charter on Democracy, Elections and Governance.

A number of instruments are considered in this section as the premise for the analysis:

**The International Covenant on Civil and Political Rights.** The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social, and Cultural Rights, are considered the International Bill of Human Rights.

The ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights, such as the right to life and human dignity; equality before the law; freedom of speech, assembly, and association; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right family life and family unity; and minority rights. The Covenant compels governments to take administrative, judicial, and legislative measures to protect the rights enshrined in the treaty and to provide an effective remedy. The Covenant was adopted by the U.N. General Assembly in 1966 and came into force in 1976.

#### **Domestic Legal Framework on the Right of Peaceful Assembly Constitutional Provisions.**

For instance, Article 27 of the 1996 Constitution of Chad guarantees 'to all' the rights of assembly and to demonstrate, as it states that 'the freedoms of opinion and of expression, of communication, of conscience, of religion, of the press, of association, of assembly, of movement, of demonstration and of procession are guaranteed to all'.<sup>58</sup> These rights may only be limited to the respect of the freedoms and the rights of others and by the imperative to safeguard the public order and good morals. The law determines the conditions of their exercise. There are two legal national legislation instruments from the 1960s that regulate assemblies in Chad which are the 1962 Ordinance on unlawful gatherings and a 1962 decree on demonstrations on the public highway. For South Africa, under the country's Domestic Legal Framework on the Right of Peaceful Assembly Constitutional Provisions, Chapter 2 of its Constitution of 1996 has the Bill of Rights whose Section 17 provides that 'Everyone has the right to peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions'.<sup>59</sup>

According to the **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**<sup>60</sup> in dispersing assemblies that are 'unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the

minimum extent necessary'. All force used by police and other law enforcement agencies must be necessary for a legitimate law enforcement purpose and proportionate to that purpose.

National legislation states that the 1962 Ordinance allows the police to use force to disperse an unauthorised gathering.

**Article 123 of the 2017 Criminal Code** prohibits in any public place any armed gathering or 'any unarmed gathering that could disturb the public order'. A crowd is said to be armed when the individual members carry or conceal weapons or any objects, in plain sight or not, 'for use as weapons.

Pertaining to the Firearms by Law Officials international legal rules state that according to the 1990 United Nations Basic Principles, in the dispersal of violent assemblies, a law enforcement official may only use a firearm against a specific individual where this is necessary to confront an imminent threat of death or serious injury or a grave and proximate threat to life.

Whilst the national legislation state there is no specific regulation of police use of firearms in Chad, State Compliance with its Legal Obligations, Views, and Concluding Observations of United Nations Treaty Bodies. In its 2014 Concluding Observations on Chad, the Human Rights Committee expressed its concern about 'reports of numerous obstacles faced by many human rights defenders in exercising the freedom to demonstrate.

**Article 28e of the Malabo Protocol; Decisions of the African Court for the period 2020 to 2022 on individual countries and Articles 13 (1) Article 10 (2), Article 17, Article 26, and Article 22(1) of the ACDEG** also cover related aspects of the theme of the popular uprising, militarisation, and terrorism.

Other instruments include the International Covenant on Economic, Social and Cultural Rights and Articles 2, 3, 4, 13, 14, 15, and 40 of the final draft of the Public International Law Committee for the year 2001.

58 Chad's Constitution of 1996 with Amendments through 2015, pp.9. [https://constituteproject.org/constitution/Chad\\_2015.pdf?lang=en](https://constituteproject.org/constitution/Chad_2015.pdf?lang=en)

59 Constitution of the Republic of South Africa. pp.8. <https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf>

60 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August, to 7 September 1990

### 3.6.2 Key findings

**The principle of sovereignty and election-based democracy.** The AU response to popular uprisings is a challenge because of the principle of sovereignty and the focus on election-based democracy. There are thus few standards to guide the response during political transitions arising from mass movements. There is also limited scope on the role of the army during a popular uprising.

**Nation-building challenges.** The trend of popular uprisings in Africa suggests that there are profound state- or nation-building challenges in the countries concerned. In some cases, nation-building has been derailed and interrupted by coups d'état, while in those where no coups have taken place since decolonisation, uprisings are the result of discontent with diversity mismanagement and human rights abuses, such as sexual violence against women and children, the child soldier phenomenon, destruction of family structure and society, economic exclusion, poor public sector accountability or questionable credibility of elections.

**Intervention in popular uprisings.** There are challenges with respect to the role of the African Union Peace and Security Council (AUPSC) under Article 5(2) of the Constitutive Act of the African Union, on the one hand, and the terms of reference of the AUPSC on membership and modalities for intervening with respect to popular uprising to restore peace and security on the other. Similarly, the jurisdiction and capacity of the African Standby Force and the monitoring and intervention missions under the specified circumstances are yet to be revisited.

**Overlapping mandates.** There is a strong suggestion of an overlap of mandates between the AU and ECOWAS in responding to military coups. The two institutions must thus coordinate their efforts, especially in matters of defence and security considering the spread of coups in the continent in recent months, as well as the constant security threats.

**Civil–military relations.** It is important to manage civil–military relations not only in the context of UCG and member states in transition but also with respect to broader governance issues. On 18 May 2022, the African Union (AU) Peace and Security Council (PSC) was briefed on civil–military relations as a factor for peace and security in Africa, an item on the agenda of its 1,085th session. The briefing preceded the Extraordinary Summit on Unconstitutional Changes of Government (UCG) on 28 May 2022. At the PSC's 996th session, which addressed the power grab by the military in Chad following the death of President Idriss Deby Itno the council emphasised the imperative of clear separation of roles of a state's military body which ensures defence and security and the transitional government, which concentrates on political and other public policy issues.

At the 1,000th session convened after the coup in Mali on 24 May 2021 and the 1,030th session addressing the 5 September 2021 coup in Guinea, the PSC urged the militaries of each of these member states to refrain from interfering in political processes and stressed that political affairs fall outside the scope of military powers. At its 1,041st session the council requested that the Sudanese military respect their constitutional mandate following the military takeover of power on 25 October 2021, and further requested at its 1,016th session on the situation in Chad and 1,064th session on the situation in Guinea that the military abstain from taking part in elections at the end of the transition periods.

**Criminalisation of UCG.** The extension of jurisdiction of the yet to be operationalised African Court of Justice and Human Rights over crimes under international law and transnational crimes, including unconstitutional changes of government through the adoption of the Protocol on Amendments on the Protocol on the Statute of the African Court of Justice and Human Rights by the AU is a laudable initiative. The criminalisation of unconstitutional changes of government by the AU will certainly deter perpetrators of UCG once the Court is operationalised. This is due to the fact that it is almost impossible to bring to justice leaders that have come to power through UCG in national Courts.

### 3.6.3 Conclusion

To date, the responses of the African Union are articulated in the **Lomé Declaration** and the **Constitutive Act of the African Union** both of which deal with UCG and the response to popular uprisings. However, the extent and quality of cooperation and coordination between the African Union and the Regional Economic Community (REC) in efforts to restore constitutional order in countries that witness popular uprising and military coups is yet to be effectively attained.

There is a strong suggestion that the AU and ECOWAS differ in their responses to military coups. Africa faces security threats because of competition between the AU and the ECOWAS although they both exist to establish peace and stability. The two organisations must coordinate their efforts, especially in matters of defence and security considering the spread of coups and constant security threats.

The African Court on Human and Peoples' Rights decisions between 2020 and 2022 in respect of criminalisation, to augment sanctions on individual states that have witnessed military coups and UCG is an effective proposition.

### 3.6.4 Recommendations

**An institutional definition of popular uprising.** The existing normative framework should be reviewed to remove ambiguity that arises usually in situations of 'popular uprisings' that lead to UCG. The PSC, at its 871st meeting on 22 August 2019, stressed that the notion of 'popular uprising' is complex, contested and controversial and emphasised the absence of a universally accepted and applicable definition of what constitutes a 'popular uprising'. The PSC highlighted that the concept is not provided in any existing AU normative frameworks, and in this regard, is an invention that needs to be interrogated and reflected upon before it is embraced by the AU. It is therefore recommended that the definition of popular uprisings be developed within the context of the OAU/AU 50th Anniversary Solemn Declaration (May 2013) and The Final Report of the AU High Level Panel for Egypt.

**Para. F (ii) of OAU/AU 50th Anniversary Solemn Declaration (May 2013).** Reiterate our rejection of UCG including any attempts to seize power by force but recognise the right of our people to peacefully express their will against oppressive regimes.

**Para. 83 of the Final AU High Level Panel Report on the Situation in Egypt.** In light of the difficulties encountered in applying the AU norms on UCG, particularly in the context of popular uprisings, the Panel recommends elaboration of a guideline for determining the compatibility of popular uprisings with AU norms on UCG.

Taking into account recent experiences in North Africa, including in Egypt, the Panel recommends the following elements for such a guideline:

- Descent of the government into total authoritarianism to the point of forfeiting its legitimacy
- Absence or total ineffectiveness of constitutional processes for effecting change of government
- Popularity of the uprisings in the sense of attracting significant portion of the population and involving people from all walks of life and ideological persuasions
- Absence of involvement of the military in removing the government
- Peacefulness of the popular protests

It is further proposed that 'popular uprising' be defined based on the AU's responses to different contexts. Four scenarios are considered here:

- **Popular civilian uprisings result in the resignation of an incumbent president.** In this scenario, the AU determines the event an internal affair of the member state and may issue statements stressing the need for a peaceful transition based on the provisions of the Constitution of the country. In this instance, the situation is not that of UCG and any decision by the AU Policy Organs is being warranted.
- **The military steps into the vacuum created by the resignation of the incumbent president.** In these instances, the AU provides the military with a deadline to hand over power to a civilian government. Failure to do so results in the country's suspension from AU activities.

- **The military takes over a civilian mass movement's demand for regime change which leads to removal of a sitting leader by resignation.** The AU categorises such actions as a military takeover and demands a return to civilian rule. Failure to restore civilian rule within the agreed period and terms leads to suspension.
- **A popular uprising evolves into armed conflict or civil war.** The AU may treat this as civil war and launch conflict resolution initiatives from the outset. Thus, the AU may treat such direct military removal of a government differently from cases where popular uprisings trigger military-led change of government.<sup>61</sup>

**Integrate popular uprising into normative frameworks.** The report found that existing AU frameworks do not sufficiently or effectively provide for the response of the AU to popular uprising. Although the ACDEG framework was meant to be the comprehensive and enforceable component of the AU on issues of political transition, it is not clear on situations where change of government results from citizen unrest after deterioration of a peaceful protest.

**Enhance AU–REC cooperation.** The report encourages full coordination between the AU and RECs to avoid conflict in the process of imposing sanctions. The sanctions regime of ECOWAS has proven to be more effective against member states that have experienced military coups compared with those proposed by the AU which may be attributed to a lack of coordination between the AU and RECs. Efforts should be made to harmonise the frameworks of respective institutions.

**Domestication of key AU instruments.** The AU must make domestication of a selected key international and regional instruments and conventions and adherence to agreed standards that guarantee the rights of peoples and prevent any violations against peaceful citizens a priority.

**Legislate and implement measures to professionalise the military.** AU to develop codes of conduct to support member states align military mandates and protocols with constitutional obligations and with international human rights and humanitarian law standards. Professional standards must be updated regularly; technical competence of the military is critical. The military must also be retooled and reskilled. The crisis in civil–military relations should be included in the AU's framework for early warning and conflict prevention.

**Sanction non-compliance with court rulings.** The AU should institutionalise mechanisms to require immediate commitment and compliance with the decisions of the ACHPR, and sanctions in cases of non-compliance. AU member states are encouraged to ratify and domesticate the Protocol on Amendments to the Protocol on Statute of the African Court of Justice and Human Rights.

**Foster the implementation of Article 14 of the African Charter on Democracy, Election and Governance** which aims at strengthening and institutionalising constitutional civilian control over the armed and security forces to ensure the consolidation of democracy and constitutional order. In order to ensure the full realisation of Article 14 of ACDEG, the Members States are encouraged to adopt the draft Code of Conduct for Armed and Security Forces in Africa by AU Members States, This instrument was developed and validated at the expert level on May 2002 under the guidance of the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) as a relevant instrument for the fight against UCGs in Africa.

61 Marks, Z., Chenoweth, E. and Okeke, J., 2019. People Power is Rising in Africa. Foreign Affairs, 14

## SUMMARY: TRENDS, CAUSES AND DYNAMICS OF UCG IN AFRICA

This chapter of the report, has noted that UCG has myriad of causes, dynamics and influences. A review of 11 targeted review country case studies reveals the following similarities when focusing on the five thematic areas: integrity of democratic elections; diversity management and human rights; constitutional order and state legitimacy; economic governance and public sector accountability; and popular uprisings, militarisation and terrorism.

- **Power of the military is a common characteristic.** In countries that experienced UCG in the form of military coups. The military in these countries is heavily politicised and its impartiality in political power struggles is compromised as members of the military use politics to pursue their political ambitions. Poor civil–military relations in the targeted countries is often manifested in the use of military by leaders to maintain their grip on state power, abuse of military institutions to wage violence and coercion, fragmentation in the army, involvement of the army in political party factional battles, and absence of civilian oversight on the military.
- **Structural problems.** All the UCG-affected countries have suffered from structural problems that hamper economic governance and public sector accountability. The indicators for human development, social development and economic development in the UCG-affected countries are all low.
- UCG-affected countries are all characterised by rampant corruption, absence of de facto rule of law, extreme poverty, unemployment, inequality, poor economic conditions and high inflation, underdeveloped infrastructure, dependence on primary goods exports, and mismanagement of the country's natural resources. All this is eroding state output legitimacy and add to grievances of ordinary citizens who then easily express their support for UCGs whenever they occur.
- Although all the countries that have experienced UCG are implementing cross-sectoral reforms, including in the economic sector, the greatest challenges that they have been facing which remain stumbling blocks include absence of political will to sustain these reforms, the neglect for the root causes of these structural problem in the reform policies, the weak institutional framework for implementing and monitoring these reforms, as well as external shocks such as COVID-19 and the effects of the Russia-Ukraine War, among others.

The next chapter analyses data gathered through country-targeted reviews conducted in six countries: Republic of Sierra Leone, the Kingdom of Lesotho, the Republic of Chad, the Union of Comoros Islands, the Republic of Guinea and the Republic of Sudan. The experiences of the country-targeted reviews are critical in understanding the context within which UCG arises; identifying the specific causes and drivers of UCG; establishing the relationships and interrelationships of endogenous and exogenous catalysts of UCG; evaluation the response of the AU and relevant RECs to the UCG; appraising the efficacy of national institutions and legal framework in preventing the UCG; assessing post-UCG measures for restoration of constitutionalism and democracy; and presenting an opportunity for the presentation of evidence-based findings and recommendations for the prevention of UCG in the future.

# CHAPTER 4

## LESSONS FROM TARGETED REVIEWED COUNTRY UCG EXPERIENCES

This chapter analyses data gathered from country-targeted reviews in six countries:

- Republic of Sierra Leone
- Kingdom of Lesotho
- Republic of Chad
- Union of Comoros Islands
- Republic of Guinea
- Republic of Sudan

The country-targeted reviews clarify the context within which UCG arises; identify the specific causes and drivers of UCGs; establish the relationships and interrelationships of endogenous and exogenous catalysts of UCGs; evaluate the response of the AU and relevant RECs to UCG; appraise the efficacy of national institutions and legal framework in preventing the UCGs; assess post-UCG measures for restoration of constitutionalism and democracy; and present an opportunity to present evidence-based findings and recommendations for the prevention of UCG.

The case studies are structured as follows:

- The country context
- UCG historiography and triggers
- Domestic and international responses to UCG, conclusions and policy recommendations



## 4.1 KINGDOM OF LESOTHO

### 4.1.1. Context

Lesotho is a mountainous country bordered by the Republic of South Africa. It became a British protectorate in 1868 until it gained its independence from the colonial power in 1966. The country has faced enormous challenges since then as different groups fought for control. The Basotho National Party (BNP) won the general election of 1965, which formed the first democratic government that ruled between 1966 and 1970. When the results of the 1970 elections were disputed the BNP refused to cede power to the Basutoland Congress Party (BCP). The BNP's subsequent 16-year rule was marked by conflict between the armed forces and the Lesotho Liberation Army (a military wing of the BCP).



Although Lesotho's Human Development Index (HDI) improved from 0.522 in 2018 to 0.527 in 2019, the overall ranking remained flat at 165 for both 2018 and 2019. In the Gender Inequality Index, Lesotho had a flat score of 0.553 in the year 2018 and 2019. Lesotho is one of the most unequal countries in the world with a Gini index of 44.9% as per 2017 data. The data also shows that 50.3% of Lesotho's population lives on less than \$3.20 per day at 2011 international prices adjusted for purchasing power parity (PPP).

The overall loss to the HDI due to inequality was 27.5% in 2018. According to a 2020 Afrobarometer survey, about three-quarters (74%) of Basotho residents rated the country's economic condition as 'fairly poor' or 'extremely poor', up from 60% in 2014, and nearly (70%) described the country's economic condition as 'fairly poor' or 'very poor.' Of them, personal living conditions are poor, and the survey also found that nearly 9 out of 10 respondents said the government was doing a 'fairly poor' or 'very poor' job in managing the economy (87%) and improving living standards for the poor (86%). Even more (95%) opposed the government's performance in creating jobs. The inequality index of Lesotho is correct as an unequal society because women in positions of power are in the minority, men occupy most of the leadership positions, this also translates to income and wealth, women are disproportionately represented in care and factory work, which are not well rewarded and reduce from entering it.

Lesotho is a landlocked country and amongst the least developed countries (LDCs), where the lack of human and material resources have a devastating effect on the country's governance record, the majority of workforce is unemployed and with a relatively small formal economy dominated by the civil service. This has resulted in 75% of the population either poor or weak, and this poverty is especially acute in mountainous areas, and other hard-to-reach areas. The country's poor road network, limits the state's access to these areas, where people maintain their livelihoods through subsistence farming. However, as a result of the increasing regularity of protracted droughts and soil erosion, the scope of this farming continues to shrink, and in addition to the unacceptably high levels of poverty in the country, HIV/AIDS has had a devastating impact on family units and the social cohesion of the community.

These challenges have placed an enormous burden on the state, which has neither financial nor human resources to adequately meet the needs of the most marginalised groups in society, to meet these challenges in a meaningful way, the state needs strong and equitable economic growth. However, this economic growth depends significantly on SACU revenues, the country's dependence on the South African economy is a structural weakness that makes it particularly vulnerable to rand exchange rate fluctuations, although this can also be a strength because Lesotho is insulated from such fluctuations by its economy.

## 4.1.2. Influences, causes and triggers of UCG

Lesotho's vulnerability to UCG is due to four factors that make its politics and governance fragile and volatile: poor economic performance, the Mixed Member Proportional (MMP) electoral system, concentration of executive power in the office of the Prime Minister and militarisation of politics.

### POOR ECONOMIC PERFORMANCE

The first factor is poor economic performance, which leads to high levels of poverty, unemployment, inequality, and a lack of a robust private sector which is weak since manufacturing is in its infancy. The political elite use the state to accumulate wealth and the weak economy has led to contests over the control of the state and an unstable coalition government structure with a negative impact on the prospects for progressive democracy.

### ELECTORAL SYSTEM

Fragmentation in political parties has often led to party splits and unstable governments. The fragmentation is enabled by permissive floor-crossing arrangements that allow constituency-based members of parliament (MPs) to change their political allegiances without losing their seats. Political parties also lack intra-party democracy, which makes them unstable as faction fighting and splits are common. Thus, disgruntled MPs can punish their parties or coalitions by depriving them of numbers, engineering new coalitions, and forcing elections by crossing the floor. For example, the coalition governments established following the 2012 and 2015 elections both quickly disintegrated due to floor crossing. As a result, Lesotho has had four coalition governments since 2012.

The second factor is Lesotho's Mixed Member Proportional (MMP) electoral system, which was introduced in 2002 to resolve the political crisis that arose following the 1998 elections. In that election, which was conducted under a first-past-the-post model, the Lesotho Congress of Democracy (LCD) party won 79 out of the 80 parliamentary seats. The other political parties contested this outcome, which they thought to be fraudulent. Violent protests in Maseru led to weeks of political instability stemmed only when SADC intervened and the establishment of a multiparty Interim Political Authority to assume control of the government, review the electoral process, and organise fresh elections. This is the context in which Lesotho adopted the MMP

model, with the objective of ameliorating the effects of a winner-takes-all electoral system. The MMP system allocates proportional representation (PR) seats for a minimum electoral threshold and seeks to promote representative democracy.

The objective of the MMP was to make the National Assembly more inclusive by ensuring that political parties that had some following among the population were represented in the National Assembly, despite not winning seats under the first-past-the-post electoral model. It delivered this objective and ensured that for the first time in the country's political history 19 political parties got seats in the National Assembly.

However, the MMP system contributed to party factionalism. Under the system, a party that had not won a single constituency could gain a substantial number of PR seats; conversely, a party that had won more constituencies automatically received fewer PR seats. The political parties turned the MMP system into a de facto parallel system, thereby undermining the spirit of proportionality in the allocation of parliamentary seats and the inclusivity of parliament. The result was greater fragmentation among political parties, which facilitated unstable coalition governments. Indeed, the manipulation of the MMP system contributed to various conflicts after the 2007 elections.

In 2011, the MMP system was revised by the enactment of a new National Assembly Electoral Act that replaced the 'two-ballots-two-votes' system applied in the 2002 and 2007 elections with a 'one-ballot-two-votes' principle. Despite this revision, however, the Basotho acknowledge that the country continues to experience an unacceptable level of political instability that undermines the Government's ability to serve the people and promote sustainable development. Apart from floor-crossing, the following issues require attention: party registration and funding, thresholds for representation in the National Assembly, coalition formation, votes of no confidence, prorogation of Parliament, and caretaker governments.

#### CONCENTRATION OF EXECUTIVE POWER IN THE OFFICE OF THE PRIME MINISTER

Concentration of executive power in the office of the Prime Minister gives political elites an incentive to engage in contests over this power. For example, the Prime Minister has the sole power to make appointments to key positions in government and remove officeholders, and act without the consent of the King. However, the Prime Minister can be removed from office through a motion of no-confidence. In practice, disaffections in the coalition governments have led to the National Assembly passing votes of no confidence against the Prime Minister, thereby occasioning frequent elections. Hence, the no-confidence vote has been instrumentalised to resolve political disagreements within political parties and coalition governments

#### MILITARISATION OF POLITICS

Alliances between political elites and the army and police destabilise the political system and create insecurity and have led to the militarisation of politics, and in turn a culture of violence and impunity. The political elite has used the security forces to their political advantage while the security forces participate in politics. As a result, the need for security sector reform has come to occupy a prominent place in national debates. The people see reforming the national security agencies as key to achieving lasting peace, democracy, and a stable political, security, and social environment.

A key challenge affecting national security agencies is the overlapping of mandates and functions. For example, the military shares the mandate of law enforcement with the police. The Lesotho Defence Forces Act of 1996 empowers the military to maintain law and order, thus creating an overlapping mandate between the military and the police. This has resulted in constant interference by the military in democratic rule, which causes instability.

Another key challenge are relationships between the civilian leadership and the leadership of the security sector agencies.

#### 4.1.4 Domestic response

The first profound efforts to address these destabilising cycles of change of government was introduced when the second coalition government unveiled a 'Coalition Agreement for Stability and Reform' upon assuming power in April 2015 and pledged to undertake comprehensive constitutional, institutional and sector reforms, including the review of the laws governing elections and parliament, to address the new reality of coalition politics and ensure political stability. However, the reform process was not initiated. In general, amendments to the Constitution require a majority in the National Assembly. Entrenched clauses require either a two-thirds majority in Parliament, or endorsement of the electorate in a national referendum.

A second attempt at national reform followed when the majority of the 26 political parties that participated in the June 2017 election signed a Reforms Pledge. In this agreement, the political parties committed to prioritising reforms after the elections. The coalition government also committed to constitutional, political, security and administrative reforms in an independent and inclusive reform process, that would entail amending the Constitution. Thereafter, the coalition government presented to the people the details of its national reform agenda in a document that it called *The Lesotho We Want: Dialogue and Reforms for National Transformation (The Lesotho We Want)*. In doing so, the coalition government sought to elicit dialogue and feedback, with a view to ensuring that the people would take responsibility for the implementation of the reforms. The vision of the national reform agenda was 'the transformation of the Kingdom of Lesotho into a just, prosperous and stable country marked by effective and people-focused institutions; national unity of purpose; rule of law, good governance and human rights.

The national reform agenda sought to facilitate the transformation of Lesotho into a just, prosperous, and stable society through: (a) the promotion of long-term national stability, unity and reconciliation; (b) the creation of professional, functioning and effective institutions for the efficient management of public affairs, service delivery and development; and (c) building a national consensus on and implementation of constitutional changes. The review of the Constitution was to be through an inclusive mechanism and the security institutions were to be reformed to ensure they were fit for purpose and responsive to the country's needs. The national reform agenda emphasised that reforms would only succeed if they were fully owned by the Basotho through a consultative process.

Concerning the national security agencies, the national reform agenda proposed the development and adoption by Parliament of a national security policy to provide overall strategic direction and long-term vision for the security sector reform process. It also proposed the establishment of a National Security Council that would be chaired by the Prime Minister and would coordinate issues of national security. To facilitate the realisation of the national reform agenda, the coalition government proposed to facilitate a Multi-Stakeholder National Dialogue (MSND) on *The Lesotho We Want* with two main objectives: (i) to consult the people on issues affecting the country's peace and stability and build consensus on how they could be addressed; and (ii) for a way forward for national unity, healing, and reconciliation.

The coalition government then proposed the establishment of the following structure and process for the national dialogue that would be coordinated by a National Dialogue Planning Committee: i) an inaugural session and national plenary of a multi-stakeholder national dialogue to formally launch the national dialogue; ii) a National Leaders Forum; iii) District consultations to be facilitated by civil society; and iv) National Plenary II to receive feedback from the districts, draw conclusions from the national dialogue, and agree on the way forward to implement its recommendations.

The national dialogue took place during 2018 and 2019. It brought together the voices and inputs of the Basotho through: (i) broad-based in-district conversations, sectoral and diaspora consultations; (ii) 6 National Leaders Forums; and (iii) syntheses and consolidation of the people's views and recommendations that were adopted by National Plenary II.

A National Reforms Authority (NRA) was then established by the National Reforms Authority Act No. 4 of 2019 to implement the reforms. The NRA's mandate is to coordinate, lead and manage the reforms process in the implementation of the resolutions and decisions of Plenary II, initially within a period of 12 to 18 months. The NRA is a two-layered structure consisting of 59 members at the highest level supported by a technical secretariat. The highest structure is headed by a chairperson and has a representation of 35 political parties that were registered by the Independent Electoral Commission in 2019, 18 non-governmental organisations, 3 representatives of Chiefs, and 3 representatives of government. The Secretariat is headed by a Chief Executive Officer and supported by experts (Special Advisors) who provide technical advice under the seven thematic areas on the implementation of the reforms.

These thematic areas are: constitutional reforms, parliamentary reforms, security sector reforms, justice reforms, public service reforms, economic reforms, and media sector reforms.

The NRA produced a draft Omnibus Constitutional Amendment Bill, which seeks to amend the Constitution, and various bills that seek to amend existing laws or introduce new ones. It also developed a number of draft policies, including a draft Media Policy. The NRA forwarded the Omnibus Bill to Parliament in mid-2022, and it was hoped that Parliament would enact it into law before the general elections that were scheduled for October 2022. However, this did not happen, owing to disagreements between the National Assembly and the Senate on aspects of the bill. Parliament was, therefore, dissolved to pave way for the general elections before it could pass the bill.

However, following the intervention from South Africa and SADC, Lesotho's Council of State recommended that Parliament should be reconvened for an urgent session to pass the Omnibus Bill before the elections. The Council of State advised the King to declare a state of emergency on the basis that the failure to pass the bill threatened the country's stability, as this was the only legal way to recall Parliament. The King followed this recommendation and recalled Parliament, which passed a pared-down version of the Omnibus Bill. Unfortunately, the Constitutional Court then declared the Omnibus Bill and the National Assembly Electoral (Amendment) Bill 2022 passed by the reconvened Parliament unlawful following a lawsuit brought by the Law Society of Lesotho.

The political branches respected the decision of the Constitutional Court, demonstrating the government's respect for court decisions and the rule of law. However, the decision brought the national reform process to a halt, hopefully only temporarily. The Omnibus Bill that the NRA forwarded to Parliament was the product of a participatory, deliberative, and consultative process that incorporated the views of the Basotho and provided home-grown solutions to the governance challenges that have dogged the country throughout its history, particularly political instability. It is a process that is owned by the people and is, therefore, legitimate. Accordingly, the government and the people of Lesotho need to be encouraged and supported to conclude and implement the promising national reform agenda. In this respect, it will be necessary to ensure that the process remains faithful to the views of the people as captured in the Plenary II Report.

### 4.1.5 International response

While the United Nations and the African Union closely coordinate and collaborate in decision-making in responding to conflicts in Africa, in Lesotho's case the SADC has played a dominant role in the efforts of international and regional organisations to address the governance crises. In part, the SADC's preeminent role is attributable to the African Union's principle of subsidiarity, by which it prioritises the role of Regional Economic Communities such as the SADC in responding to conflicts in their member states.

The SADC has intervened in Lesotho on several instances on the basis of its decision to avert the undemocratic ousting of legitimate governments in its member states. The SADC takes the approach that regional development cannot occur in the absence of political stability. As we can see below, however, while the SADC has largely been successful in containing and mitigating governance crises in Lesotho, it has been less successful in securing long-term transformation, which could lead to sustainable stable governance in the country. In particular, the country will need to professionalise and depoliticise its security forces as a long-term solution to its perennial instability, as the SADC has recommended on several occasions.

The SADC first intervened in Lesotho after the coup of 1994 because of concerns it would lead to instability in the region. At its meeting held in Gaborone, Botswana, the SADC Summit condemned King Letsie's move to dissolve parliament and disband the democratically elected government, and called for the reinstatement of the legitimate government in Lesotho. In this intervention, South Africa, Botswana and Zimbabwe played a prominent role, and coordinated the return to office of the BCP government. In essence the three countries engaged in preventative or shuttle diplomacy in facilitating a return to constitutional rule.

The SADC's second intervention in Lesotho was at the request of the prime minister following the divisive elections of 1998. The SADC initiated a mediation process that included investigations into the credibility of the elections. The investigations concluded that the existence of electoral fraud. However, the opposition parties rejected this verdict, leading to further instability. The SADC then sent a military force that conducted a seven-month-long operation to restore order. It then brokered an agreement that reinstated the LCD to power but required that a new election be held within 18 months. Under the guidance of the

SADC, a multiparty Interim Political Authority (IPA) was established to review the electoral process and organise the new elections.

The SADC's third intervention in Lesotho occurred after the divisive 2007 elections. As we have noted, the opposition parties rejected the results of this election citing manipulation of the MMP system by the LCD. The result was a two-day strike that brought the capital, Maseru, to a standstill. Opposition parties took their grievances to the SADC's ministerial troika meeting in Maseru and the SADC initiated a regional mediation. Thereafter, the SADC's extra-ordinary summit of Heads of State and Government held in Dar es Salaam in Tanzania resolved that the ministerial committee of the troika would undertake an assessment of the state of affairs in Lesotho and make recommendations to the chairperson of the SADC. Following the assessment, the ministerial committee recommended formal political dialogue and the appointment of an eminent person to facilitate the dialogue process as a mediator. Sir Ketumile Masire, former President of Botswana, was appointed as mediator. The SADC's intervention halted the unrest in Maseru, brought the disputing parties to the negotiating table, and facilitated conversations on electoral and constitutional reforms.

The SADC's fourth intervention in Lesotho in 2014 followed an attempted military coup staged against the backdrop of a fallout in the coalition government, and the subsequent exile of Prime Minister H.E. Thomas Motsoahae Thabane to South Africa. At this time, Lesotho was experiencing unstable governing coalition characterised by inter- and intra-party conflicts, and the instrumentalisation of no-confidence motions in parliament to deal with political disagreements and adversaries. Initially, the intervention took the form of interparty dialogue to resolve coalition tensions facilitated by H.E. Jacob Gedleyihlekisa Zuma, then president of South Africa, and H.E. Hifikepunye Lucas Pohamba, president of Namibia.

When this dialogue failed, the SADC appointed H.E. Matamela Cyril Ramaphosa, the then deputy president of South Africa to develop a roadmap for Lesotho's return to stability and security. The SADC also established a commission of inquiry to investigate the political and security crisis. In line with the recommendations of the commission, Thabane and other top officials were returned, parliament was reconvened, and parliamentary elections that had been scheduled for 2017 were brought forward by two years, and were held on 28 February 2015. To ensure the elections were

held without threats of violence from the security forces, the security chiefs were required to be absent from the country during the elections. In addition, the Lesotho Defence Force was quarantined in the barracks for the period of the elections, with the help of a force deployed by the SADC.

It was also agreed that the government would develop a roadmap on constitutional and security sector reforms, with the assistance of the SADC. The snap elections led to the formation of a coalition government of seven parties with H.E. Bethuel Pakalitha Mosisili as prime minister as prime minister. In May 2015, however, Lesotho was thrown into deeper instability when General Tlali Kamoli, former head of the LDF, was reinstated. The opposition boycotted parliament and called for the removal of Kamoli and former army chief, Maaparankoe Mahao, was assassinated, which created further tensions and unrest.

Once again, the SADC intervened and appointed a commission of inquiry to investigate Mahao's death and recommend how Lesotho's democracy and political stability could be restored. The commission of inquiry produced a report, which, recommended the removal of Kamoli from the post of army chief and the return of exiled opposition leaders. Further, it urged the government to: review the roles of the Lesotho Defence Force and Lesotho Mounted Police to remove any overlaps in their mandates; and, reform the parliamentary rules as they related to coalition governments, motions of no confidence, the prorogation of Parliament, and floor crossing. The Mosisili government initially rejected the report but the SADC prevailed upon it to accept the report. Snap elections were then held in May 2017, but were followed by violent conflict and the assassination of the army chief Lieutenant-General Khoantle Motsomotso and some senior officers of the LDF in September 2017, prompting the SADC yet again to deploy a military force that it called the 'SADC Preventive Mission in Lesotho' (SAPMIL). The SADC also called upon Lesotho to initiate a process of national dialogue. After some prevarication, the government then initiated the Multi-Stakeholder Dialogue in 2018 under the oversight of the SADC.

#### 4.1.6 Key findings

The Kingdom of Lesotho has faced various governance challenges, including UCG, that have prevented political stability and sustained economic growth. The instability has been occasioned by the following key factors: weak state and governance institutions; elite dominance of the political space; continuous splintering of leader-centred political parties that are marked by poor management and weak internal democracy, and the politicisation of the security institutions. Political instability has in turn led to the breakdown of constitutionalism, the rule of law, violations of human rights, underdevelopment, and insecurity. The challenge of securing political stability has been flagged repeatedly and concerns raised about the adequacy of public accountability mechanisms. A common view has emerged that reforming the country must include reviewing its constitution. Constitutional change should address the factors that have contributed to the country's instability. These factors are poor economic performance, the MMP electoral system, the concentration of executive power in the office of the Prime Minister which has contributed to weakening the public service and institutions of accountability, and the militarisation of politics.

The government and the people of Lesotho have expressed a desire to address these sources of fragility and have initiated the national reforms agenda. The African Union, the APRM, and the international community need to encourage and support the government and the people of Lesotho, and the SADC, to conclude and implement the promising national reform agenda. In this respect, it will be necessary for these institutions to work with the government to ensure that the process remains faithful to the views of the people as captured in the national dialogue process.

Vulnerability to UCG is due to four factors, which render the Kingdom of Lesotho's politics and governance fragile and volatile.

- The country's **poor economic performance** has led to high levels of poverty, unemployment, inequality, and a private sector that is very weak because manufacturing is in its infancy.
- **Lesotho's Mixed Member Proportional Representation (MMPR) electoral system** was introduced in 2002 to resolve the political crisis following the 1998 elections. In those elections, which were conducted under a first-past-the-post model, the Lesotho Congress of Democracy (LCD) party won

79 out of 80 parliamentary seats. The other political parties contested this outcome, which they deemed fraudulent. Violent protests ensued in the capital, Maseru, leading to weeks of political instability stemmed only when the SADC intervened. The MMPR system contributes to party factionalism. Under the system, a party that had not won a single constituency could gain a substantial number of Proportional Representation (PR) seats; conversely, a party that had won more constituencies automatically received fewer PR seats. The political parties turned the MMPR system into a de facto parallel system, thereby undermining the spirit of proportionality in the allocation of parliamentary seats and the inclusivity of parliament.

- **Concentration of executive power in the office of the prime minister** gives political leaders an incentive to engage in cutthroat power struggles. For example, the prime minister has the sole power to make appointments to key positions in government and remove officeholders, and act without the consent of the king. However, the prime minister can be removed from office through a motion of no confidence. In practice, disaffections in the coalition governments have led to the National Assembly passing votes of no confidence against the prime minister, thereby occasioning frequent elections.
- **Radicalisation of politics.** Alliances between political leaders, the army and the police destabilise the political system, create insecurity and radicalise politics, which fosters a culture of violence and impunity. Political leaders leverage the security forces, which participates in politics. A key challenge affecting national security agencies is the overlapping of mandates and functions. For example, because the Lesotho Defence Force Act of 1996 empowers the military to maintain law and order, the mandates of the military and the police overlap. Instability has resulted from the constant interference of the military in democratic rule.

## 4.1.7 Recommendations

### **Conclude and adopt a new constitution.**

The government of the Kingdom of Lesotho is strongly encouraged to conclude the process of reviewing its 1993 Constitution initiated by the Multi-Stakeholder National Dialogue (MSND) and implement the resulting constitutional amendments through appropriate policies, laws, and institutional mechanisms.

### **Legislate tenure for coalition governments.**

Government is encouraged to explore the feasibility of establishing a minimum tenure of office to address the challenge of volatility and instability brought about by the unregulated formation and dissolution of coalition governments. It appears that the constitution does not have sufficient provisions to safeguard the tenure of office for a coalition government. The government is encouraged to introduce mechanisms that facilitate and enable all citizens, including those in the diaspora, to exercise their democratic right to vote.

### **Implement recommendations from the National Dialogue.**

Implementation of security sector reforms should be expedited to ensure non-interference of the military in political affairs. Government is further encouraged to ensure the consistent application of the principle of equitable representation of women in all its sectoral reforms.

### **Establish a natural resources concession**

**commission** to address economic inequality led by business, industry, and technical experts, with the mandate to ensure national wealth creation through public shareholding, efficient exploitation of natural resources, taxation, and judicious use of government revenues for the benefit of all Basotho.

## 4.2 REPUBLIC OF SIERRA LEONE

Sierra Leone was identified as a major case study for the UCG targeted reviews because of its historic dynamic experiences with UCG. Although it has not experienced UCG in its recent history, or at least in the period primarily being reviewed in this report, it offers valuable lessons into the causes and implications of UCG in Africa.



### 4.2.1 Context

On 27 April 1961, Sierra Leone achieved independence from Britain by transforming into a republic with an executive presidency under a constitution that embraced governance principles such as the separation of powers, judicial independence, and judicial review. The 1961 Constitution also granted citizenship to all British subjects born in Sierra Leone on the eve of independence. However, this changed in 1962 when the ruling Sierra Leone People's Party (SLPP) amended the Constitution to introduce Negro-African origin as a precondition for citizenship, and reserve membership in parliament for citizens of Negro-African origin. Persons of non-Negro-African descent were thereby deprived of Sierra Leonean citizenship. This remains the state of affairs.

In the lead-up to independence, ethnic differences emerged between the Krios and the 'countrymen,' or inhabitants of the inland protectorate. Krios, who inhabited the western area of the country, were viewed as having a stronger relationship with the British due to their superior standard of living and education compared to their 'countrymen'. Thus, ethnicity and regionalism laid the bedrock for unconstitutional change of government from the inception. Sir Milton Margai, Sierra Leone, first Head of Government (1954–1964), passed away in 1964 and was controversially succeeded by his brother, Albert Margai. During Albert Margai's administration, ethnic tensions grew. The persecution of the opposition and his desire to turn the country into a one-party state contributed to the unpopularity of his administration.

When the Sierra Leone People's Party (SLPP) lost the 1967 elections to H. E Prime Minister Siaka Stevens and the All-People's Congress (APC). The Stevens government took various actions that curtailed the enjoyment of fundamental freedoms. For example, it enacted the Public Order Act 1965 which criminalised libel, allowed paramount chiefs to control public meetings, and mandated the governor-general to proclaim emergency regulations, and the police to disperse crowds and arrest uncooperative persons. In this decade, Sierra Leone also begun experiencing instability, particularly after the 1967 general elections led to a series of military takeovers.

From 1967 to 1968, there were three military coups before Stevens' government was reinstated in 1968. On 21 March 1967, a military coup led by General David Lansana overthrew Stevens on the pretext that the appointment of the prime minister was unconstitutional because elections for twelve paramount chiefs had not been concluded. Two days later, Major Charles Blake overthrew General Lansana, and an eight-member National Reformation Council (NRC) headed by Lt. Colonel Andrew Juxton-Smith took control of government. The NRC dissolved political parties and suspended the constitution. On 3 April 1968, Sergeant-Major Amadou Rogers led a military coup that overthrew the NRC, and announced the formation of a seven-member National Interim Council (NIC). The NIC returned the control of the government to a civilian government led by Stevens but the government remained unstable, and the Prime Minister declared a state of emergency following political violence in Bo in September 1968. In September 1970, Stevens discovered a military plot to overthrow the government and declared another state of emergency.

In 1971, government promulgated the Republican Constitution, which transformed Sierra Leone into a republic. Parliament then elected Stevens as president. The 1971 constitution provided for fundamental human rights and freedoms of the individual, created an electoral commission, and established the Supreme Court as the final appellate court. Further, it barred public officers, members of the armed forces, and holders of public office from contesting parliamentary elections unless they had ceased to hold office 12 months prior to the elections.

In 1974, the APC government amended the 1971 Constitution. One of the amendments empowered the president to appoint three persons to parliament, following which the president appointed the force

commander and the commissioner of police as members of parliament. Legislative elections were held in May 1973 under the 1971 constitution, and the APC won 84 out of 97 seats in the House of Parliament. The subsequent general elections of May 1977 saw the APC winning 70 out of 100 seats in the National Assembly.

Sierra Leone became a one-party state in 1978 following a referendum in which the APC government promulgated a one-party constitution. Under this constitution, candidates for the office of president or member of parliament were required to be members of the APC. In addition, this constitution increased the number of individuals the president could appoint to parliament to seven and allowed the ruling party's secretary general to serve as an ex-officio member of the cabinet. The president had power to appoint or remove the chief justice and other judges at will, and to retire judges who had attained the age of 55. The judiciary also became wholly dependent on the ministry of finance for its finances, and the office of the attorney-general was merged with the minister of justice.

The decade following the promulgation of the one-party constitution was characterised by governmental instability and the government declared states of emergency in 1981, 1987, and 1988 and suppressed a military rebellion in March 1987.

Prior to the outbreak of the war in 1991, Sierra Leone promulgated yet another constitution that sought to enhance governance in various ways. Under this constitution, the appointment and removal of judges required the approval of parliament, and the chair of the electoral commission replaced the chief justice as the national returning officer. This constitution also established the Office of the Ombudsman to deal with governmental maladministration. Above all, this constitution reintroduced multipartyism, and the ban on opposition political parties was lifted in April 1991. However, civil war broke out prior to enactment of the new constitution in 1991. Sierra Leone experienced civil war from 1991 to 2002, following a rebellion by Foday Sankoh's Revolutionary United Front (RUF) against the government of President Joseph Saidu Momoh. The ensuing instability was exacerbated when President Momoh was deposed in a military coup led by Captain Valentine Strasser on 29 April 1992. Captain Strasser was named chairman of the National Provisional Ruling Council (NPRC) (later renamed the Supreme Council of State), which dissolved parliament and suspended political activity. Captain Strasser's tenure was short-lived,

however, and he was deposed by General Julius Maada Bio on 16 January 1996.

Legislative elections were held a month thereafter, and the SLPP won 27 out of 68 seats in the National Assembly. Ahmad Tejan Kabbah of the SLPP was elected president with 59 percent of the vote in the second round of presidential elections held on 15th March 1996. These elections were followed by intensified attacks against civilians and government troops by the RUF, leading to the deaths and displacement of many people. While this was going on, a military coup led by Major Johnny Paul Koroma overthrew President Kabbah in May 1997. A 20-member Armed Forces Revolutionary Council (AFRC) headed by Major Koroma took control of the government. The AFRC abolished the constitution and banned political parties. Major Koroma's tenure was brief, however, and he was deposed by ECOWAS peacekeeping troops on the 13th of February 1998, paving the way for the reinstatement of President Kabbah in March 1998.

A peace and power-sharing agreement signed in 1999 ended the civil war which flared up again in 2000 when United Nations (UN) peacekeepers attempted to seize control of RUF-held diamond mining regions. In 2002, the civil war concluded.

The civil war resulted in an estimated 70,000 deaths and the displacement of 2.6 million individuals.<sup>62</sup> This precipitated a severe refugee problem in West African region. The conflict was marked by horrible violations of human rights, including intentional amputations, rape, sexual slavery, cannibalism, murder, and the devastation of entire communities. Ethnicity, regionalism, and religion were among the motivating elements.

Following peace negotiations, the RUF entered formal politics. In 1997, however, its leader Foday Sankoh was imprisoned in Nigeria. The government and RUF rebels agreed to a cessation of hostilities in May 1999 and signed a peace agreement two months thereafter in Lomé, Togo following negotiations that were facilitated by the United Nations, the Organisation of African Unity, and the Economic Community of West African States (ECOWAS). But the hostilities did not cease after the peace agreement, and the RUF soon assumed its offensive, leading to the signing of a second ceasefire agreement in Abuja, Nigeria in November 2000.

President Kabbah lifted the state of emergency on the 1 March 2002, when the end of the war

<sup>62</sup> United Nations Development Programme (UNDP). Case Study Sierra Leone: An Evaluation to UNDP Conflict-Affected Countries.

was declared. In elections in May 2002, President Kabbah was re-elected with 70% of the vote. The SLPP won 83 seats out of 112 seats in parliament.

In 2004, the UN established a special war crimes tribunal to try both RUF and government war criminals. Thereafter, the United Nations Security Council established the United Nations Integrated Office in Sierra Leone (UNIOSIL) in 2006, to assist the government of Sierra Leone to consolidate peace, security, and the rule of law.

Since the end of the war, the international community has supported the government of Sierra Leone through the combined efforts of ECOWAS and the United Nations Peace Mission in Sierra Leone (UNIPSIL). 2014 marked the official closure of UNIPSIL. Since the conclusion of the civil war, Sierra Leone has experienced stability, witnessed relatively peaceful elections in 2007, 2012, and 2017, and is scheduled to hold another election in 2023.

#### 4.2.2 Influences, causes and triggers of UCG

##### INTEGRITY OF DEMOCRATIC ELECTIONS

Sierra Leone has enjoyed a peaceful transfer of power over the past 20 years. The transition from the All-Peoples' Congress (APC) to the Sierra Leone Peoples Party (SLPP) administration indicates democratic maturity, constitutionalism, and the rule of law. The electoral system characterised by winner-take-all (First-Past-the-Post) has in three elections (1997, 2007 and 2018) produced two rounds of presidential elections, which poses a challenge to the integrity of elections and the constitutional transition of government in Sierra Leone.

Considering that the next general election is slated for June 2023, intra-party politics remains a challenge to the integrity of the election. A political parties regulation agency has stated that continuous internal problems within the principal opposition party hinder the holding of internal party elections, which are a precondition for national elections.

**A multi-party-political system.** Although the legal framework is adequate for holding fair democratic elections and constitutional change of government, the targeted review team identified tribal and ethnic polarisation, independent candidates, participation, and representation of vulnerable groups as areas where the legal framework and the integrity of elections remain a challenge and are potential catalysts for UCG.

**Funding of elections.** The target review team learnt that government has budgetary limits in funding the full voting procedure. This approach is irreconcilable with the AU Elections Principles, which specify that all election processes in African nations must be funded by the national budget. This may and can affect the efficiency of elections.

During the 2018 elections, the Electoral Commission of Sierra Leone (ECSL) released the results four days after the polls closed which escalated tensions, rumours, and disinformation in a nation where two parties navigate a political system based on deeply ingrained regional lines and ethnic identity politics. Rumours, social media disinformation, and tensions induced by slight but frequent delays in revealing the results damaged Electoral Commission of Sierra Leone's reputation by raising doubts about the institution's independence and capacity to execute a genuine and transparent electoral process. Disregard for internal democracy has brought about unprecedented intra-party violence and may prove to be a potent catalyst for UCG.

##### Implementation of an electoral security architecture

After the civil war Sierra Leone established the Office of National Security (ONS) to preserve the integrity of elections and constitutional transitions of power. During elections, all security institutions play a part in aiding the Sierra Leone Police (SLP) in overcoming potential barriers. For example, the Integrated Elections Security Planning Committee (IESPC) chaired by the ONS has established a framework for security sector organisations to be adequately prepared to fulfil their election security commitments.

**Diaspora vote.** Sierra Leone has no constitutional provision for Sierra Leoneans in the diaspora to vote. The diaspora could have a great influence on national politics and security.

##### CONSTITUTIONAL ORDER AND STATE LEGITIMACY

The neutrality and impartiality of established institutions with the mandate to deepen democracy is a critical aspect of constitutional order and state legitimacy. The targeted review noted the constitutional provision for the president's appointment of the heads of democratic institutions such as the Judiciary, Executive, Legislature, Electoral Commission, Office of National Security, the Independent Commission for Peace and National Cohesion, Human Rights Commission and the Anti-Corruption Commission as an effective

mechanism for preventing UCG. Consultations with national stakeholders, on the other hand, revealed that the legitimacy of these institutions could be considerably improved if the president issued public calls for nomination of these heads. As in other African countries, the president may then be given the option of endorsing one of the nominated candidates via internal institutional recruiting processes. Public appointments are a visible and direct source of tension as they speak directly to concerns of patronage and corruption.

A critical deficit in the entrenching of constitutional order regards the independence, and therefore, credibility of the judiciary and legislature both of which are not provided adequate institutional or financial autonomy as the Executive controls resource allocation to Parliament and the appointment of Judges. This significantly threatens the independence of these two arms of government in discharging their respective mandates. Also, since the Executive controls resource allocation to Parliament and the nomination of Judges, the Judiciary and Parliament do not have appropriate institutional or budgetary autonomy. This seriously jeopardises the independence of these two branches of government in carrying out their distinct mandates.

#### DIVERSITY MANAGEMENT AND HUMAN RIGHTS

Mismanagement of regional and ethnic diversity is one of the causes of UCG in Sierra Leone. There are almost 20 different ethnic groups in Sierra Leone, as well as socially constructed categories of Americo-Liberians<sup>63</sup> and indigenous Liberians who all have their own customs for enforcing social order and administering justice. Because the nation's borders were adapted from colonial times and did not follow genuine ethnic divergences, there was substantial ethnic and cultural variety from the beginning.

Party politics became the biggest barrier to national cohesion and identity after the 1947 Constitution combined Sierra Leone's 'two countries' in preparation for independence. The All-People's Congress (APC), which was to become a major opponent of the ten-year-old Sierra Leone People's Party (SLPP) in election

contests, entered the political scene on the eve of independence in 1961. As a result, existing divisions were widened; the targeted review team learnt that ethnicity was used as a recruiting tactic during the civil war.

Removal of libel law and the elimination of the death penalty and the libel legislation is a significant accomplishment in fostering the rule of law in Sierra Leone. On 28 October 2020 President Julius Maada Bio officially assented to a new law that repeals Criminal Libel three months after the Parliament of Sierra Leone unanimously approved the Independent Media Commission (IMC) Act 2020 and repealed the 1965 Public Order Act (POA) that criminalised libel and sedition. The libel law was considered a tool for muzzling and persecution of the media and political opponents a global phenomenon associated with public discontent and anti-government protests. The Attorney General and Minister of Justice ceased pursuing court cases under the old statute.

Although one of the primary causes of the civil war was actual and perceived unfairness and marginalisation, and these merit special consideration, particularly in light of the polarisation of the conflict the populace believes the government should pay more attention to protection of fundamental human rights, notably freedom of speech and peaceful assembly. According to the target review team, the police prohibit the enjoyment of fundamental rights, particularly the right to demonstrate, which was not permitted even under earlier administrations.

Equally concerning is the issue of women's representation and gender equality. Despite advances made in fostering gender equality in programmes to boost women's engagement in the public sector, women are underrepresented in the government. In a national parliament of 148 members, only 18 are women.

#### ECONOMIC GOVERNANCE AND PUBLIC ACCOUNTABILITY

Diminished economic opportunities associated with poor economic governance and poor public sector accountability are a major universal catalyst for UCG. The government of Sierra Leone introduced the Structural Adjustment Programme to address the macroeconomic imbalances and structural restrictions that characterised the Sierra Leonean economy from the 1970s through the 1980s. In the late 1980s, only wealthier families could afford to pay for private tutors, the majority of Sierra Leone's youth were unemployed. A

63 Americo-Liberian people or Congo people are a Liberian ethnic group of African-American, Afro-Caribbean, and Liberated African descent. Their sister ethnic group is the Sierra Leone Creole people, who share similar ancestry and culture. Americo-Liberians can trace their ancestry to free-born and formerly enslaved African Americans who emigrated in the 19th century to become the founders of the state of Liberia where they identified as Americo-Liberians. (Wikipedia)

significant section of Sierra Leone's professional elite emigrated as the country's infrastructure and public morale simultaneously degenerated and some instances even collapsed.

Sierra Leone's youth bulge remains a key source of potential instability with implications for UCG. The International Labour Organization notes that youth unemployment stood at 9.2% and 9.1 in 2016 and 2017 respectively. It declined to 8.9% in 2018 and 8.8% in 2019 which means that progress is being made. Incidentally, less than 50% of the country's labour force participation is youth. This demographic bulge has thus not yielded any demographic dividends.

The government has made efforts to respond to the prolonged economic slump by lowering the number of state employees on its payroll and reducing the number of new recruitments in the public service. This has rendered university graduates particularly susceptible to unemployment. Many early recruits of the Revolutionary United Front (RUF) were youths who were negatively impacted by the country's economic decline and were unemployed or unable to pursue further education. The national uprising and the RUF initiated in 1977 banked on student discontent with the repressive government policies and a perceived degenerating political climate. This group of educated unemployed teenagers provided some of the initial recruits. However, the targeted review noted Sierra Leone's credible efforts to achieve food security through significant investments in agriculture that drew on youth human capital. It is anticipated that this will lower youth unemployment, urban migration, and urban unrest including the crime rate.

Governance of natural resources is a persistent source of public discontent and conflict in Sierra Leone, which is known for its vast mineral deposits which include diamonds, rutile, bauxite, gold, iron ore, limonite, platinum, chromite, coltan, tantalite, columbite, and zircon, as well as promising petroleum potential.<sup>64</sup> Although the Truth and Reconciliation Commission (TRC) report for Sierra Leone concluded that, contrary to popular belief, the exploitation of diamonds did not cause the 1991 conflict in Sierra Leone it confirmed that different factions targeted diamond field to exploit resources to support their war efforts.

<sup>64</sup> Sierra Leone Country Commercial Guide. Department of Commerce. International Trade Administration. United States Government.

During the targeted review stakeholders expressed deep concern over the lack of capacity at the National Mineral Agency (NMA) which has led to failures to hold mining companies to uphold satisfactory safety measures for their workers, increase employment for local people in the operations, and offer satisfactory compensation and relocation packages for people impacted by mining operations notwithstanding an absence of any inclusive business arrangements.

Another aspect of economic governance with implications for UCG is the incomplete decentralisation process which also drives the unequal distribution and mismanagement of national resources, and regional imbalances with control and concentration of resources in Freetown where central government functions and institutions reside. Related issues such as the need for harmonisation of salaries in the public service also emerged during the targeted review which noted that lack of accountability and disproportionate distribution of revenue from the mineral sector was a key contributor to the 11-year civil war in Sierra Leone. While the 2004 decentralisation law was a major shift in the Sierra Leone's approach to inclusive economic governance, full implementation of the decentralisation process would address the issue of regional imbalances, create a sense of ownership of local governance and strengthen accountability.

#### POPULAR UPRISING, MILITARISATION AND TERRORISM

Since popular uprisings are often anchored in youth discontent and agency it is logical to assume that the incomplete demobilisation and disarmament process in Sierra Leone may be a source of unrest and a potential catalyst for UCG. Successive governments have not provided the youth with livelihood skills, which avails them as agents for politicians.

However, there have been recurring uprisings in Sierra Leone: the 1985 student uprising at the University of Sierra Leone, nationwide students demonstrations in 1977, the April 1992 uprising by which young, lower-ranking, and disgruntled soldiers from the war front, which ultimately led to the attack and overthrow of President Momoh's government, and mass demonstrations on 10 August 2022.

Sierra Leone's system of government, particularly from 1969 to 1985, produced a one-party state, monopolised decision-making and conspired further to squeeze out the other institutions that

would ordinarily impose checks and balances on the exercise of presidential power. This created a state characterised by over-centralisation of power, a lack of basic social services, mismanagement of natural resources, injustice and violation of human rights, disregard for the rule of law, and a perceived lack of trust in state institutions, particularly democratic institutions such as the electoral commission, judiciary, and police, all factors that underlying the civil war in Sierra Leone.

The proliferation of small arms and light weapons since the civil war threatens peace, security, and development. Since the war's end, these weapons have remained a key contributor to the expansion of organised crime in the country and a potential catalyst for other conditions for UCG.

### 4.2.3 Domestic response

The Sierra Leonean government responded to the threat of UCG by establishing several democratic governance institutions to deepen constitutionalism and the rule of law. Among the institutions established are the National Commission for Democracy, the Anti-Corruption Commission, the Office of the Auditor General, the Oversight Committees of Parliament, the Office of National Security, the Ombudsman, the Election Management Bodies (EMBs), the National Commission for Peace and Reconciliation, the Legal Aid Board, the Police Complaints Board, the National Youth Commission, the Independent Commission for Peace and National Cohesion, and the Human Rights Commission.

It is the responsibility of the National Commission for Democracy (NCD) is responsible to create an enabling environment where the citizenry is properly educated on citizen's responsibilities and democratic governance. This mandate is enshrined in Act 3 of 1996 (the NPRC Decrees Repeal and Modification Act) following its establishment through the NPRC Decree No. 15 of 1994 with a focus on promotion and consolidation of democratic good governance in the context of constitutionality in the democratic landscape of Sierra Leone. The NCD works and collaborate with other democratic state institutions such as the Anti-Corruption Commission (ACC), the National commission on Civic Education, Ministries and agencies in deepening and imbuing democratic values in citizens.

The Human Rights Commission (HRC) founded in 2006 by an act of parliament has the authority to investigate and probe alleged violations of human

rights. According to the HRC's annual report for 2021, abolition of the death sentence and repeal of the criminal libel statute are a substantial positive development in the country. There is heightened polarisation and hostility between the ruling SLPP and the opposition APC in the run-up to the 2023 elections. Lack of inclusivity in government is pervasive, and the winner-takes-all culture and state control are well ingrained. In addition, vulnerable youth and women continue to be prone to political and ethno-regional manipulation and instrumentalisation, and they are willing to engage in acts of intimidation and violence during by-elections. The December 2021 midterm census was suspicious and heightened political tensions in the nation.

The **Anti-Corruption Commission (ACC)** was created in 2000 by a Parliamentary Act. Its purpose is to take all necessary measures to avoid, eradicate, or suppress corruption and corrupt behaviours. The Anti-Corruption Act of 2000 was revised in 2008 to broaden the scope of corruption offences and give whistleblower protection. According to Transparency International's corruption perception index (CPI) for 2020, Sierra Leone is among those nations that continues to make significant strides in the battle against graft. Sierra Leone climbed from 119 to 117 out of 180 nations examined in 2020, keeping its existing score of 33. It ranks above many African nations, including Nigeria, Cameroon, Kenya, Niger, and Mali.

As the Supreme Audit Institution (SAI) for Sierra Leone, the **Office of the Auditor General** promotes accountability and good governance. The Auditor General is tasked with conducting audits of the economy, efficiency, and effectiveness with which government bodies inspected use their resources to fulfil their tasks. The Auditor General is the impartial auditor who provides reports to parliament. Section 119 of the Sierra Leone Constitution of 1991 grants the Auditor General the authority to audit the public accounts of Sierra Leone and of all public offices, including the courts, the central and local government administrations, the Universities, and public institutions, as well as statutory corporations, companies, bodies, and organisations established in whole or in part with public funds.

**Oversight Committees of Parliament** in Sierra Leone are instruments of parliament to scrutinise laws, monitor and oversee government actions and work as well as budgets of national departments whilst holding them accountable. A parliamentary committee is a small group of Members of Parliament, created and empowered

by parliament to perform a specified task. A committee consists of members drawn from political parties in parliament based on the strength of their representation in the House. Sub-section 2 of Section 93 provides for the establishment of Oversight Committees to parallel and oversee the Ministries, Departments and Agencies (MDA) established by the executive

Since the end of the civil war in 2002, the security landscape in Sierra Leone has evolved dramatically with considerable progress in structural reforms and service delivery. There has been a paradigm shift from state-centric to human security. The Office of National Security (ONS) is positioned to play the critical role of coordinating these efforts as enshrined in the National Security & Central Intelligence Act (2002).

Office of the Ombudsman was established under subsection (2) of section 146 of the Sierra Leone Constitution, which specifies the office's powers. The Office of the Ombudsman is also responsible for investigating allegations of misconduct by government departments and agencies against citizens. Currently, the Office of the Ombudsman is headed by a retired judge. Election Management Bodies (EMBs) in Sierra Leone consist of formal bodies such as the National Electoral Commission (NEC), the Political Party Registration Commission (PPRC), and the Judiciary, as well as informal alternative election dispute resolution bodies such as the Political Parties Code of Conduct and the Monitoring Committees, the Election Peace, and Conflict Mitigation Group (EPCMG), and the Eminent Persons Group (EPG).

With respect to the National Commission for Peace and Reconciliation, the country's house of parliament overwhelmingly passed into law a bill establishing the independent Commission for Peace and National Cohesion on 8 December 2020. This fulfilled a promise made by President Julius Maada Bio upon assuming office in 2018 to form a commission for peace and national cohesion. The Commission is established as an independent Commission for Peace and National Commission to prevent, manage, and resolve conflicts; to develop, promote, and maintain sustainable peace in Sierra Leone; and to address other concerns.

Sierra Leone approved the Legal Aid Act in May 2012, which established the Sierra Leone **Legal Aid Board (LAB)** an independent, non-profit organisation that provides legal aid particularly to low-income Sierra Leoneans. Core services include legal information and education, legal advice and legal representation. Family troubles,

child support, debt, land concerns, criminal cases, domestic violence, rape and defilement, juvenile offences, and commercial disputes are central to its interventions.

The **Independent Police Complaints Board (IPCB)** is an independent civilian oversight body tasked within the security sector with receiving and investigating public complaints, advising the Sierra Leone Police leadership and investigating allegations of police wrongdoing. On 29 April 2022, a riot broke out at Pademba Road Correctional Centre in Freetown, resulting in the deaths of a prison officer and 30 prisoners. Security personnel employed live ammunition when prisoners reportedly set storeroom walls on fire and seized hostages. Sierra Leone Correctional Services (SLCS) said in July that overcrowding, and health limitations were the causes of the disturbance.

The **Independent Police Complaints Board (IPCB)** responsible for investigating police misconduct is an independent civilian oversight mechanism with a mandate within the security sector to receive and investigate complaints from the public and advise the leadership of the Sierra Leone Police. The Board is established to provide: (a) legal aid; (b) accredit persons or bodies to provide legal aid; (c) determine the types of persons and cases for which legal aid may be granted; (d) determine the circumstances in which contributions towards legal aid shall be paid by legally-aided persons and how the contributions shall be calculated; (e) enter into cooperation agreements with legal practitioners, civil society and nongovernmental organisations, university law clinics or law departments; (f) compile and publish information about the functions of the Board and other legal aid providers; (g) cooperate with other bodies as it may determine for achieving its object; (h) carry out other activities conducive to the attainment of the object of the Board; and (i) undertake research into all aspects of legal aid.

The National Youth Commission (NAYCOM) Act of 2009 established a commission charged with implementing the provisions of the National Youth Policy. NAYCOM is responsible for, among other things, creating employment opportunities for youth, initiating youth participation in context youth development programmes, developing a national youth development plan, establishing a network through which young people can gain access to information about beneficial services, and coordinating the activities of youth groups.

#### 4.2.4 International response

The international community, the AU and regional organisations, have all responded to illegitimate transitions of government in Africa in a variety of ways. Although there are a few anomalies, it should be noted that most responses have been shaped by the regulatory norms and values of the affected organisation. One of the ways in which the UN responded to UCG in Sierra Leone, especially during the civil war and its aftermath, was to establish the United Nations Mission in Sierra Leone the largest peacekeeping mission in UN history. The UN supported elections in 2002 and restored security and state authority across the country, including a disarmament and demobilisation program for 76,000 former fighters. A critical success indicator of the UN's intervention in Sierra Leone are the succession of democratic elections held since the end of the civil war in 2002.

The OAU/AU policy position on UCG, including military coups, is one of condemnation and prohibition. The Lomé Declaration deems them unsuitable and archaic, as they run counter to the continent's commitment to developing democratic principles and circumstances. The Economic Community of West African States Monitoring Group (ECOMOG) was deployed by ECOWAS as a regional instrument to end UCG in Sierra Leone. ECOMOG was a 12,000-soldier regional peacekeeping force established to foster an environment favourable to the prompt reinstatement of the legitimate government of Sierra Leone. It was not until 15 February 1998, however, that ECOMOG forces were able to oust the Junta and reinstate Prime Minister Kabbah to office.

#### 4.2.5 Key findings

**A peaceful power transfer.** Sierra Leone has enjoyed a peaceful transfer of power over the past 20 years. The transition from the All People's Congress (APC) to the Sierra Leone People's Party (SLPP) administration indicates democratic maturity, constitutionalism, and the rule of law. Although the electoral management system successfully delivered the 2018 elections, the second party-to-party change in Sierra Leone after the war, the system still presents significant challenges. For instance, the electoral system is based on first-past-the-post. Consequently, the three elections held in 1997, 2007 and 2018 were determined by two rounds of voting. This poses a challenge to the integrity of elections and the constitutional transition of government in Sierra Leone.

**Limited electoral budget.** The target review team learnt of the government's budgetary limits in funding the full voting procedure. This approach does not align with AU election principles, which specify that all election processes in African nations must be funded by the national budget. This may and can affect the efficiency of elections.

**Integrity of elections and constitutional transitions of power.** When Sierra Leone emerged from civil war it established the crucial function of the Office of National Security (ONS) to preserve the integrity of elections and constitutional transitions of power. All security institutions have a responsibility to aid the Sierra Leone Police (SLP) to overcome potential barriers. The Integrated Elections Security Planning Committee (IESPC) chaired by the ONS has established a framework for security sector organisations to adequately prepare for their election security commitments.

**Voting rights for the diaspora.** Sierra Leone has no constitutional provision for Sierra Leoneans in the diaspora to vote. The diaspora could have a great influence on national politics and security. The World Bank estimated that in 2016 the number of Sierra Leoneans in the diaspora was 336,000, 5.5 per cent of the population.

**Constitutional order, the judiciary and the legislature.** A critical deficit in entrenching constitutional order with regard to the independence, and therefore, credibility of the judiciary and legislature, neither of which have adequate institutional or financial autonomy has arisen because resource allocation to parliament and the appointment of judges are controlled by the executive. This significantly threatens the independence of these two arms of government in discharging their respective mandates and neither have appropriate institutional or budgetary autonomy.

**The removal and elimination of the death penalty and the libel legislation** are significant accomplishments in fostering the rule of law in Sierra Leone. On 28 October 2020, President Julius Maada Bio officially assented to a new law that repealed the criminal libel law, three months after the Parliament of Sierra Leone unanimously approved the Independent Media Commission (IMC) Act 2020 and repealed the 1965 Public Order Act (POA) that criminalised libel and sedition. The libel law had been used as a tool to muzzle and persecute the media and political opponents, a phenomenon associated with public discontent and anti-government protests globally.

The **governance of natural resources** remains a predominant and persistent source of public discontent and conflict. Sierra Leone is known for its vast endowment of minerals, which includes diamonds, rutile, bauxite, gold, iron ore, limonite, platinum, chromite, coltan, tantalite, columbite and zircon, as well as petroleum potential. The targeted review expressed concern over the lack of capacity at the National Mineral Agency (NMA) which has resulted in its failure to hold mining companies to satisfactory safety measures for their workers, increase employment for local people in the operations and offer reasonable compensation and relocation packages for people impacted by mining operations, not to mention the absence of inclusive business arrangements.

**Popular uprisings are anchored in youth discontent and lack of agency.** It is therefore logical to assume, in precaution, that the incomplete demobilisation and disarmament process in Sierra Leone may be a source of unrest and a potential catalyst for UCG. Sierra Leone has witnessed several uprisings; nationwide student demonstrations in 1977; the 1985 student uprising and riot at the University of Sierra Leone; an uprising in April 1992 of young, junior officers and disgruntled soldiers from the war front that led to the attack and overthrow of President Momoh's government; and recent mass demonstrations on 10 August 2022.

The **proliferation of small arms and light weapons since the civil war** are a key challenge in Sierra Leone, and pose a threat to peace, security, and development. These weapons are a key contributor to the expansion of organised crime in the country and a potential catalyst for UCG.

## 4.2.6 Recommendations

**Finalise the constitutional review process to address the weaknesses of the 1991 Constitution** promulgated under the one-party regime by considering the recommendations of Justice Cowan's Constitutional Review Commission (2017). Adopting these recommendations will address gaps and ambiguities in the law and ensure that critical issues relating to electoral violence, human rights, the rule of law, and women and youth issues are resolved comprehensively. The review must reflect the will of the people.

**Resource independent arms of state to enhance autonomy.** The judiciary and parliament should be capacitated to discharge their mandates effectively. This will allow the judiciary to deal expeditiously with matters brought before the courts. Democratic institutions like the National Commission for Democracy, the Peace Commission, Human Rights Commission and the Anti-Corruption Commission should be given the legal power and financial resources to promote human rights in all spheres of society in Sierra Leone.

**Strengthen the Political Parties Registration Commission (PPRC)** by giving it the power to hold any political party accountable to democratic rules of behaviour. The institutional mandate and independence of the PPRC are enshrined in Sections 34 and 35 of the 1991 Constitution of Sierra Leone. The government is also urged to implement the Gender Empowerment Act to ensure inclusive political representation.

**Ensure adequate financing of electoral processes.** Increase government investment in election architecture and avoid external support election funding and management that might lead to interference.

**Strengthen Integrity of the concessions process.** Eliminate any opportunity for discretion in the awarding of mineral rights to ensure transparent and fair processes are followed. This would also address the economic drivers of UCG.

**Complete the decentralisation process.** To buttress gains from the above recommendations, it is recommended that the government complete the decentralisation process that was started in 2004, to ensure sufficient finances and human resources at local government and to address regional development imbalances and unequal distribution of resources and mismanagement of natural resources.

## 4.3 REPUBLIC OF CHAD

### 4.3.1 Context

Chad shares borders with Libya to the North, Nigeria, Cameroon, and Niger to the West, Sudan to the East, and the Central African Republic to the South. This is an important aspect for the security of these countries. Chad is also a strategic outpost for France and the United States in the fight against terrorism. Western countries rely on Chad to combat militant Islamist groups, (Boko Haram, Al-Qaeda, and the Islamic State) in the Sahel.



Participants in discussion groups organised by the review mission described UCG in Chad as ‘exogenous’ and referred to ‘the subjection of Chad to France despite its independence obtained since 1960’. Chad’s geopolitical situation has weakened the ability of community organisations such as the AU or CEMAC, the Lake Chad Basin Commission, with regard to efforts to disrupt constitutional order in Chad.

Although Chad experienced a democratic and multiparty phase at the beginning of independence there have been political and community conflicts, armed rebellions, and UCG throughout Chad’s history. The divide between Chadians dates to the colonial period, marked by the emergence of political parties, in this case the Rassemblement Démocratique Africain (RDA) – the African Democratic Rally – and the Chadian Progressive Party (PPT – RDA). From 1947 to 1949, administrative interference in the activities of political parties entrenched instability in the functioning of the country and hatred between the North and the South, notably through the public space and the organisation of elections.

Under the Tombalbaye regime, from independence in 1960 until Tombalbaye’s overthrow in 1975 there was seldom peace or political stability. In 1963, a massacre in the town of Fort-Lamy resulted from differences between the administration and the opposition and in 1964 and 1965, a succession of popular uprisings against established authority led to the creation of FROLINAT in Nyala (Sudan) and Chad entered a vicious cycle of unprecedented violence across the country.

Armed rebellions and coups have characterised the country since its accession to international sovereignty. One analyst remarked that ‘the political system itself lacks real democratic foundation’ (Ramadji, 2017). All the regimes that succeeded that of the first president François

Tombalbaye resulted from coups, the last of which was achieved by the murder of H.E. President Déby in April 2021.

The military coup that ended the reign of Tombalbaye paved the way for a series of succession of military regimes and the birth of politico-military movements. The political history of this country is closely linked to UCG.

A strong marker of UCG in Chad are the boycotts of the elections from 2006 to 2021 (2006, 2011, 2016, 2021) by the opposition which reflects a long break in the dialogue between the opposition and the authorities. The opposition, civil society and the power in place could not agree on the format and conditions of the dialogue.

A Transitional Military Council of 15 generals is set up and led by Lieutenant-General Mahamat Idriss Déby Itno. Pursuant to the constitution, in the event of a power vacuum, the President of the Assembly should exercise his constitutional prerogatives. However, the latter supposedly renounced it voluntarily, due, among other things, to an imminent rebel attack on the capital Ndjamena. A transition charter is approved and promulgated.

A Sovereign National Conference was organised in 1993 to align the country to the tide of the democratic process and lay the foundations for a new constitutional order. A transition period was observed until adoption of the fundamental law of 31 March 1996 referendum and a relative peace was established enshrining a decentralised unitary State. However, it was short-lived; from 2005, a constitutional reform lifted the constitutional clause limiting the number of presidential mandates. The 2018 Constitution set up the full presidential regime of the 4th Republic and established an exclusive and directive institutional leadership of the President of the Republic with

a National Assembly without real powers, an anesthetised and domesticated assembly. This constitution is considered as one of the main causes of the institutional breakdown of the State after the national sovereign conference.

With regard to management of diversity and UCG, there are power conservation strategies by one clan to the detriment of others, or within the purview of violent changes at the helm of the country. The long patrimonialisation of the State by groups with identity tendencies is a serious challenge for the management of diversity and peaceful coexistence.

Although the presidential elections of 1996 and 2001 aroused great enthusiasm within the political class in terms of participation they were distinguished by the boycott of the political opposition. Strong participation of the political opposition in the presidential elections is based on opportunities to achieve change at the helm of the State. The 1996 elections had a highly symbolic and historical significance. It was the first time Chad organised a widely contested presidential election since gaining independence. The election also gave political parties an opportunity to measure their popularity.

In 2006, elections were organised in a context of political and social tension in Chad after an electoral census and a constitutional referendum boycotted by the opposition which was intended to undermine the principle of limiting presidential terms, with a view to an additional term for President Idriss Deby Itno.

Political instability, repeated breakdowns in the constitutional order, civil conflicts and war have considerably slowed economic progress in Chad, exacerbated by the dramatic effects of drought and other natural disasters. Due to the instability of export earnings, the low level of domestic savings, the high level of imported products, Chad is forced into debt and to ask for aid to finance development.

Breaks in the constitutional order and the economic sanctions that sometimes result, nevertheless, are another major obstacle to Chad's economic growth. Military coups have caused foreign investors to choose more stable countries. They have also led to a massive exodus of part of the workforce, slowed down investments, sowed suspicion among foreign investors and caused significant material damage. Coups and attempted coups have aggravated an already difficult economic situation.

The people of Chad demand total respect for political pluralism, effective protection against arbitrariness, participation in the decision-making process that directly concerns them, and a change at the helm of the State. In this country, military recourse seems to be the only way to gain power and retain it, to the detriment of popular uprisings that are often repressed by the defence and security forces. A recent uprising on 20 October 2022, caused at least 50 deaths, among civilians and the Defence and Security Forces (DSF), according to the official press release from the Chadian government.

As soon as he took power on 1 December 1990, Idriss Déby published by Decree No. 001/PR/1991 of March 1, 1991, the National Charter of the Republic adopted by the National Salvation Council on February 28, 1991 and considered as a text with constitutional value. Two years later, the Sovereign National Conference (CNS) will adopt by consensus the Transition Charter as the fundamental law that will govern the life of the Chadian Nation during the transition period. These include Act No. 002/CNS/93 of April 5, 1993, adopting the Transition Charter, published by Decree No. 282/PR/93.

The interviews of the mission with actors and components of the judiciary brought to light an exogenous factor, namely the interference of France, in the withdrawal of the President of the National Assembly to sit-in as interim for two months and to organise a presidential election. According to our interlocutors, 'this scenario was orchestrated by France to allow General Mahamat Itno Déby to succeed his father (October 2022).

### 4.3.2 Influences, causes and triggers of UCG

Chadian constitutionalism was characterised by the return to democratic order, paradoxically, following the coup d'état of Idriss Déby against the dictatorship of Hisséine Habré. As soon as President Deby took power on December 1, 1990, Idriss Déby published through Decree No. 001/PR/1991 of March 1, 1991, the National Charter of the Republic adopted by the National Salvation Council on February 28, 1991 and considered as a text with constitutional value. Two years later, the Sovereign National Conference (CNS) will adopt by consensus the Transition Charter as the fundamental Law that will govern the life of the Chadian Nation during the transition period. These include Act No. 002/CNS/93 of April 5, 1993, adopting the Transition Charter, published through Decree No. 282/PR/93.

Re-elected for a sixth term, after 30 years of power during which organised elections are regularly contested but controlled, President Idriss Déby died in April 2021 when he fell in the line of duty defending the integrity of the territory and the preservation of peace. A Transitional Military Council of 15 generals was set up and led by Lieutenant-General Mahamat Idriss Déby Itno. Pursuant to the Constitution, in the event of a power vacuum, the President of the Assembly should exercise his constitutional prerogatives. However, the latter supposedly renounced it voluntarily, due, among other things, to an imminent rebel attack on the capital Ndjamená. A transition charter is approved and promulgated. With the Constitution suspended, the Charter gives the Transitional Military Council the functions of a body in charge of 'defining and guiding issues of peace, stability and national security'. The President of the TMC holds the functions of President of the Republic, Head of State and Supreme Commander of the Armed Forces. Faced with this situation of continuous unconstitutional change in Chad, the targeted review mission, after conducting interviews and using the documentation put at their disposal, drafted several recommendations on the various themes selected.

### 4.3.3 Domestic response

When the President of the Transition was sworn in in January 2022 he promised to lead this second phase of the transition by 'strengthening democracy' by organising free and fair elections to ensure the return to constitutional order and thus avoid the sanctions provided for in the case of an UCG.

Although the AU has normative instruments such as the Constitutive Act of the AU, the Protocol establishing the Peace and Security Council, the ACDEG and the Declaration on the Framework of the response of the OAU to unconstitutional changes of government, adopted by the 36th ordinary session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo in July 2000 (the Lomé Declaration) it did not apply sanctions against Chad because of 'the country's military contribution to counter-terrorism operations', and agreed to support the transition provided that 'the authorities guaranteed the holding of a presidential election within 18 months.

The AU Peace and Security Council stressed the primacy of dialogue as a viable approach and urged all armed groups that had not yet signed the Doha agreement as well as parties that withdrew from the NID to reconsider their position and participate in the process with a view to establishing a lasting peace.

The body also reaffirmed its call on the transitional authorities to respect the 18-month period for completion of the transition and unequivocally recalled that no member of the Transitional Military Council (TMC) shall be a candidate in the elections at the end of the transition; (Communiqué of the 106th meeting of the PSC held on September 19, 2022, on the Political Transition in Burkina Faso, Chad, Guinea and Mali),

Although the AU at first condemned the violation of the constitution and member states, like Senegal and Algeria, were for an outright condemnation, others, like Egypt and Nigeria, as well as the chairperson of the AU Commission, Moussa Faki, a Chadian himself and close to Déby, pleaded in favour of the TMC. In the name of 'exceptional' circumstances and Chad's role in the fight against terrorism, it did not suspend Chad's membership, contrary to what it had done before during the August 2020 coup in Mali or the seizure of power by another TMC, in Sudan, in April 2019, and its actions in Sudan in October 2021. The AU's only proviso was that it requested a revision of the transition charter to limit the duration of the transition to 18 months (non-

renewable) and to prohibit members of the TMC from standing in the next elections.

Chad engaged in a standoff with the AU, opposing the visit to N'Djamena of its Special Representative for Chad, the Senegalese Ibrahima Fall, and obtaining his replacement.

The position of the UN vis-à-vis this new UCG in Chad consists in working with its African partners, in particular the AU and the Economic Community of Central African States (ECCAS), on a concerted position on the best way to support the country.

Although Chad is a flagship partner of the UN in the fight against terrorism and insecurity in the Sahel, the UN has no political or security mandate in this country.

When clashes between police and demonstrators protesting the military's grip on power erupted on 20 October 2022, the UN called on all public institutions concerned to carry out impartial, rapid and effective investigations into the human rights violations that may have been committed, in particular the apparent use of unnecessary or disproportionate force to disperse the demonstrations which led to at least 50 deaths.

Recent scrutiny of Chad's periodic report on application of the International Convention against Torture was an opportunity for experts of the United Nations Committee against Torture to question the Permanent Mission of Chad in Geneva on the events of October 20 and to condemn the use of violence.

#### 4.3.4 International response

In terms of the external influences of the UCG in Chad, the Chadians met during the targeted review, condemned the role of France (patronage of the Déby regime, and President Macron's support for the TMC, etc.) and the indulgence of the UN and AU with regard to the role played in the Sahel by the Chadian army in the fight against terrorism.

#### 4.3.5 Key findings

**The factors associated with UCG in Chad are multidimensional.** The report found that there is divided public opinion on the probability and significance of the interference of foreign states and actors in the internal affairs of Chad which may have implications for stability. Structural factors include an unskilled youth population, poverty, climate change and external shocks. Other factors are more immediate and derive from poor governance such as faults in the constitutional order, lack of reliability and inclusiveness of elections, nepotism, corruption and misinterpretation of justice.

**The number of factors catalysing the risk of UCGs in Chad are multidimensional.** However, some of these factors are structural (youth of an unskilled population, poverty, climate change and external shocks) while others are temporary and depend more on poor governance (break of the constitutional order, lack of reliability and inclusiveness of elections, nepotism, and corruption, misinterpretation of justice and the DSF, etc.). Commendable practices in the creation of frameworks for dialogue (DNIS, CNP) and the modernisation of the administration and management of diversity are positive acts noted. In terms of prospects, recent tragic events bear witness to a form of radicalisation on both sides. Hence, the urgency of a dialogue that enjoys more legitimacy among the various stakeholders.

### 4.3.6 Recommendations

**Strengthen cooperation on trans-border security.** The government of Chad is encouraged to cooperate with other regional governments to take all necessary measures to disarm civilians and combat the proliferation and illegal possession of weapons. In October 2022, the United Nations Peace Keeping and Office for Disarmament<sup>65</sup> reported that illicit arms trafficking and civilian possession in the Lake Chad Basin (LCB), and the illicit circulation of weapons and ammunition, are the primary drivers of conflict in the LCB (UNDP). This proliferation of arms places the military at the centre of political and economic life.

**Re-establish civilian rule.** Chad is urged to cautiously accelerate the process of re-establishing civilian rule in a measured manner. This will require, among other actions, redefining of the role of the military in national affairs and security sector reforms.

**Rebuild the army to make it truly republican.** The presence of the army in the public space, military coups and armed and rebel groups are identified as having almost permanently favoured the breakdown of the constitutional order in the country.

**Deepen the national reconciliation process.** Chad is encouraged to continue strengthening social cohesion by investing in programmes on social cohesion in schools, religious, and public institutions. Other mechanisms it is encouraged to set up include a Truth and Reconciliation Commission involving all stakeholders (government, civil opposition, armed opposition, civil society, traditional and religious legitimacies, and the private sector) with Chad's partners as observers. Similarly, Chad is encouraged to resume dialogue with the political and armed opposition and to implement the resolutions of the Dialogue Nationale Inclusif et Souverain (DNIS). Additionally, all reconciliation efforts should include matters affecting all social groups affected by UCG, particularly women, children, and youth.

<sup>65</sup> United Nations Department of Peace Operations, United Nations Office for Disarmament Affairs and Lake Chad Basin Commission, 2022. Weapons and Ammunition Dynamics in the Lake Chad Basin. A study by the United Nations Department of Peace Operations and the United Nations Office for Disarmament Affairs In partnership with the Lake Chad Basin Commission. October 2022.



## 4.4 REPUBLIC OF GUINEA

### 4.4.1 Context

Guinea is a West African country with an area of 245,857 km<sup>2</sup>. In 1893, Guinea was declared a French colony independently of Senegal, to which it was previously attached. In 1904 it was integrated into French West Africa (AOF) and 42 years later became an Overseas Territory in accordance with the provisions of the French Constitution of 27 October 1946.

On 28 September 1958, France initiated a referendum for adoption of a new constitution. In the Overseas Territories, this referendum was specifically aimed at the creation of a Franco-African Community. By voting 'no', under the leadership of the Democratic Party of Guinea (PDG) led by Ahmed Sékou Touré, Guinean voters rejected the 1958 French Constitution and immediately opted for full independence. With a 95.2 per cent 'no' vote, Guinea declared its independence on 2 October 1958 and was admitted to the UN.

In its political evolution Guinea has undergone five constitutional texts dated as follows: Constitutions on 10 November 1958, 4 May 1982, 23 December 1990, 10 May 2010, and 6 April 2020 and the Transition Charter of 27 September 2021.

To date, Guinea has undergone unconstitutional changes of government on 3 April 1984 (following the death of Sékou Touré); 23 December 2008 (following the death of Lansana Conté); and 5 September 2021 (following an electoral hold-up by Alpha Condé), which exacerbated an already deep socio-political crisis).

Colonel Mamady Doumbouya, who officially became the Transitional President on 1 October 2021, set up a vast programme to rebuild his country while establishing, by decree on 19 September 2022, a framework for inclusive inter-Guinean dialogue.

In Guinea, the alternation of regimes has occurred mainly through coups d'état. These interventions by the army in the political game were the only occasions that led to alternating regimes. There have also been many failed coups d'état.

Two instances of constitutional manipulation allowed end-of-term presidents to remain in power. On 11 November 2011, a constitutional review by President Lansana Conté led to removal of the term-limiting clause and allowed him to be re-elected and remain in power until his death in 2008. President Alpha Condé used the same



procedure in 2020 to overcome the limitation on the number of presidential terms as prescribed by the Constitution of 7 May 2010. During the exchanges, transitional authorities maintained that they considered these various constitutional manipulations to be civil coups d'état or constitutional coups d'état.

Moreover, although formally democratic, the various Guinean constitutions are fundamentally autocratic. Despite the tendency of successive regimes to endow the Guinean State with a democratic constitution par excellence, the political context in which constitutional texts are drafted and adopted does not encourage construction of a national consensus to serve as a democratic basis for Basic Law.

Constitutional instability is a source of political instability. If a constitution has no socio-political roots, institutions based upon it are fragile and liable to collapse at the slightest crisis.

The historic and contemporary political and constitutional evolution of Guinea is characterised by instability resulting from the recurrence of UCG. There were three military coups and two constitutional manipulations that had allowed presidents to remain in power in violation of the principle of limiting the number of mandates.

Several factors can be identified as the causes of the military coups in Guinea. These factors can be categorised into determining factors and the secondary factors.

The determining factors are the causes that are essential, recurrent, and preponderant in the occurrence of UCG in the Republic of Guinea and are linked to abuses in the construction of the constitutional order, lack of integrity of elections and poor economic governance.

Secondary factors are no less important because they accompany, facilitate, and contribute to increasing the chances of success of military coups. In Guinea, secondary factors are due, on

the one hand, to mismanagement of diversity and fundamental freedoms and on the other, to popular uprisings.

The recurrence and multiplicity of factors of UCG in Guinea requires implementation of effective management processes to guarantee eradication or, where appropriate, mitigation of the generating causes. Regrettably, the internal and external measures taken following the coup's d'état of 3 April 1984 and 23 December 2008, to curb UCG have been ineffective; repetition of the same causes, including constitutional manipulation, systematic violation of fundamental freedoms and socio-economic abuses, led to the coup d'état of 5 September 2021.

As soon as the military announced the seizure of state power, ECOWAS and the AU implemented sanctions TRM mechanisms, mainly the suspension of Guinea from all decision-making bodies. In support of the ECOWAS and AU decision, France strongly condemned the coup d'état and suspended its cooperation with Guinea. The US restricted military assistance but has maintained cooperation with the country.

Confronted with the various pressures they are facing and their declared desire to 'rebuild the State', the new Guinean authorities have taken a number of steps that constitute progress in managing the transition:

- Implementation of a policy of consultation and dialogue between the stakeholders of the Guinean transition.
- Restoration the rule of law, which, among others, consists of the establishment of judicial institutions such as the Court for the Repression of Economic and Financial Offences (CRIEF) and the effective conduct of the trial of 28 September 2009, the objective of which is to fight against impunity.
- Renegotiation of mining contracts by the government in order to increase the resources of the state, public equity and dividends.
- Development of critical transport infrastructure, the start of work on the railway.
- Establishment of contracts for objectives and performance (COP) between the State and ministries.

Other critical efforts include promoting the leading role that women play in the current process of inter-Guinean dialogue and the dematerialisation of local taxation through the digitisation of the taxpayer database.

On the one hand, these measures have helped to strengthen the confidence of the majority of Guinean populations; on the other, they have fostered a rapprochement between the Guinean transition authorities and development partners. All technical and financial partners remained on the ground and did not completely break off cooperation with Guinea. This applies mainly to the UN system and the European Union (EU), which have never suspended their development aid.

#### 4.4.2 Influences, causes and triggers of UCG

##### CONSTITUTIONALISM AND THE RULE OF LAW

Based on the stakeholders' statements during the consultations, the targeted review mission (TRM) observed that the main and root causes of UCG in the Republic of Guinea were linked to drifts in the domestication of constitutionalism. As such, the TRM identified five factors that contribute to UCG in Guinea: misuse of constituent operations, ineffectiveness of institutional checks and balances, virtual impossibility of democratic alternations, poor management of participation of political parties in national political life and the strong interference of the army in the political game.

**The misuse of constituent operations.** The TRM noted that, being intended to establish or revise the constitution, the constituent operations, initiated by the political leaders from 1958 to 2020, have often been misused for personal purposes of preserving power.

**The ineffectiveness of institutional checks and balances.** The TRM noted that the various Guinean constitutions enshrine the principle of the separation of powers and proclaim the attachment of the Guinean people to the democratic republic as a form of organisation of power within the State. In the constitutional texts, in addition to the executive power held by the President of the Republic and the legislative power belonging to the National Assembly, judicial power is entrusted to the courts (i.e., to the Courts and Tribunals). However, the TRM noted that, in the functioning of the institutions, separation of powers is not effective. The strong preponderance of the President of the Republic over other constitutional institutions, coupled with the phenomenon of clientelism, renders ineffective the role of institutional checks and balances.

**The virtual impossibility of democratic alternation.** In retracing the political evolution of Guinea, the TRM noted that since its accession to independence and despite the succession of regimes, Guinea has not yet experienced a democratic alternation of power. Alpha Condé came to power through elections, but did not directly succeed an elected president. Although he came to power democratically, the alternation of power was not democratic between the regime of Lansana Conté and that of Alpha Condé.

**The poor management of the participation of political parties in national life.** The TRM noted that the Constitution of 23 December 1990 enshrined the principle of political pluralism by establishing a multi-party system. During the consultations, several citizens highlighted mistrust of the proliferation of political parties in Guinea. Guinean political parties are, in general, created on regionalist, and even ethnic, bases which contributes to the revival of inter-communal conflicts during the electoral period.

**The interference of the army in the political game.** Based on the principle of the submission of military power to civilian power, the TRM concluded that the role of the army in Guinean society is problematic. In analysing the political evolution of the Republic of Guinea, the TRM noted an interference of the armed forces in national political life – a consequence of instrumentalisation of the army by the political authorities. Successive regimes have relied on armed forces to suppress the exercise of public freedoms and oppress citizens. This use of the defence and security forces for personal or partisan preservation of State power has led to the distortion of the sovereign missions assigned to the military institution.

#### INTEGRITY OF ELECTIONS

**Historically trapped electoral integrity.** From its accession to international sovereignty in October 1958 to the 2010 presidential election, the Republic of Guinea held several types of elections that were characterised by their undemocratic nature.

**Elections in the Republic of Guinea: A people's outlet.** The oppressive exercise of political power from Guinea's accession to international sovereignty until the 2010 presidential election made the elections an outlet for citizens and political actors. These were marked by substantial irregularities and protests and violence. Beyond the facts, what emerges as a lesson in this period of the electoral history of the Republic of Guinea, is that the muzzling of rights and freedoms,

particularly political rights, by the two successive regimes (Ahmed Sékou Touré and Lansana Conté) and the unconventional methods used to build a social contract for a democratic electorate, have made multiparty opening of elections an outlet – even more so since configuration of the electorate of partisan parties and political leaders is largely based on ethnic and/or regional affiliations. This phenomenon goes beyond the scope of this first part of Guinea's electoral history and continues to this day.

**The integrity of elections since 2010: Efforts to build an effective legal and institutional framework.** It was the 2010 presidential election held under the transition of General Sékouba Konaté following the ephemeral seizure of power by Captain Moussa Daddis Camara after the death in 2008 of General Lansana Conté, that marked democratic alternation in the Republic of Guinea. Since then, presidential (2015 and 2020), legislative (2013 and 2020) and municipal (2018, thirteen years after the first of its kind in 2005) elections have been held in accordance with the minimum rules in force. However, the electoral system remains broadly contested and is, from one election to another, seeking ways to mature.

**The institutional pathos of the election management body.** The Republic of Guinea has established an electoral management body which, since its establishment in 1993, has undergone changes in its nature and institutional arrangement. From one electoral cycle to the next, irregularities appeared in the acts of electoral administration and the management body sometimes appeared, according to the stakeholders consulted, subservient to the regime in place.

**Preventive diplomacy: A powerful tool for calming and resolving electoral crises.** The socio-political crisis surrounding the 2015 presidential elections continued, albeit with some lull, until the military seized power in September 2021. It was exacerbated by the 2020 presidential crisis, which required the intervention of a joint (ECOWAS-UA-United Nations) preventive and post-electoral diplomacy mission. Indeed, the October 2020 presidential elections were held in a rather tense national context between the opposition and the majority. Political divisions centred mainly on the constitutionality or otherwise of the outgoing President's candidacy for a third term, as well as on the legal and political relevance of the results of the constitutional referendum that established the Fourth Republic and, incidentally, reset the counter to the limitation of the number of presidential terms to two.

**The internationalisation of electoral tensions.**

The October 2020 presidential election was also marked by the internationalisation of tensions and voters from Senegal and Angola did not participate because they were not enlisted during the revision of the 2019 electoral roll. The CENI explains this situation by the acts of violence perpetrated in the Embassies and Consulates of the Republic of Guinea in Senegal and Angola respectively. The Senegalese authorities had requested a postponement of the census operations and those of Angola had prohibited any Guinean political grouping on Angolan territory.

**Electoral tensions against an ethno-regional and community background.** The instrumentalisation of elective affinities (regional and ethnic) exacerbates electoral violence in the Republic of Guinea. The actors consulted informed the TRM that the instability of the country is not related to the cohabitation at the grassroots, but to the political use of the ethnic and regional phenomenon. This would be explained, according to the actors, by the inability of the political formations to offer the populations credible and mobilising offers of social projects. The conquest of political power is therefore based on legitimisation strategies based on social and even ethnic capital.

**A promising transition, labelled ‘the re-foundation of the State’.** The CNRD authorities call for ‘a transition like no other’. Their project: the re-foundation of the State. In his mission letter dated 18 November 2021 addressed to the Prime Minister, the President of the Transition, Head of State, highlighted the dysfunctions of constitutional institutions, institutionalised poor governance, widespread corruption, the instrumentalisation of justice, the politicisation of public administration, the rise of communitarianism, regionalism with ethnic hints, endemic poverty of populations, among other challenges. As such, point 3 of the projects is to ‘guarantee an inclusive, fair, credible and peaceful electoral process’; this requires a reform of the electoral system and the redesign of the file, the establishment of a technical and independent body for managing elections and the organisation of free and transparent elections from the bottom up.

Overall, the TRM noted that integrity of the elections in the Republic of Guinea is still very problematic. The electoral institutions (the ministry in charge of elections, CENI, the Court and the courts) are strongly contested by the political parties of the Guinean opposition which accuse them of being subservient to the executive and, in complicity, of electoral fraud in favour of the

supporters of power. The politicisation of the electoral management body – the CENI – and its limited expertise are cited as the evils that tarnish its credibility. The recurrent challenge to the results of the elections undermines the legitimacy of the elected representatives, one dragging the other, and sporadically plunges the country into fairly deep socio-political crises likely to lead to unconstitutional changes of government. To this must be added the instrumentalisation, by political entrepreneurs, of ethno-regionalism and communitarianism, factors which exacerbate antagonisms.

ECONOMIC GOVERNANCE AND  
PUBLIC SECTOR ACCOUNTABILITY

**A relatively undiversified economy, structurally vulnerable to exogenous shocks affecting the mobilisation of fiscal resources.**

The Guinean tax system is essentially based on the declaratory principle. That is to say that it is up to the taxpayer (natural or legal person) to prepare the declaration of his income (IS/BIC/BNC/VAT, etc.) or benefit and to attach the corresponding payment. Regarding the mobilisation of fiscal resources at the national level, consultations have shown that this system suffers from the orientation given to national production. Indeed, growth in the non-mining sector is slow. The direction of production is not a function of market outlets and improved marketing. A production polarised by the agricultural powers towards the cultivation of cotton does not serve its economy. Its economy remains relatively undiversified and structurally vulnerable to exogenous shocks, particularly on commodities. The consultations showed that the contribution of the agricultural sector to GDP is relatively modest, although it employs more than half of the labour force. In addition, the secondary sector is mainly dominated by mining activities.

**Nepotism and favouritism, policy instruments at the local level, which undermine efficiency and effectiveness in mobilising local tax resources and delivering public services.**

At the level of local authorities, reconciling local budgetary autonomy with the desire to be re-elected is difficult. Political Mechanisms influence the mobilisation of tax revenues. Local elected representatives who have sought popular support are struggling to find a Mechanism for mobilising tax resources that ensures both tax optimisation and guaranteeing popular support that can promote their future re-election. However, an example of the dematerialisation of local taxation through the digitisation of the taxpayer database in the municipality of Labé is a case of praiseworthy practice that must be followed.

**Tax competition between different levels.** The recent reforms in Guinea aimed at increasing the efficiency of local authorities through decentralisation, composed of three specific components: their representativeness, their financing, and their competences, are struggling to be effective. The process of decentralisation, a process of unitary State management consisting in transferring administrative powers from the State to local entities (or communities) distinct from it, initiated by Guinea, is experiencing problems. The tax choices of the government affect the budgets of prefectures, sub-prefectures, and communes. This is about tax competition. Tax competition occurs when taxes levied by one level of government entitle a tax credit or tax deduction for another level of government, or when two or more levels of government grant tax exemptions, or when several levels of government tax the same tax base, an idea that is used in North American literature under the term concurrent taxation or tax base sharing.

The consultations showed that the central government, through the tax authorities, does not often transfer the municipalities' shares of the shared taxes collected or abolishes taxes. It is also worth noting the abolition by the central State of the minimum tax for local development. These decisions and facts prevent municipalities from facing the development challenges of their localities.

**Public action in the field of infrastructure is still incomplete.** The governance of infrastructure in Guinea does not make it possible to create the conditions for change. Much uncertainty accompanies development projects in Guinea. These uncertainties are related to obstacles, difficulties, corruption and lack of control, according to the consultations conducted, throughout the process that begins with the design of the project until the delivery of the site. Sometimes the project fails even before the work begins. It also happens that the project starts then stops along the way, stops, gets bogged down and ends up not being completed. The consultations indicate that politico-economic collusions characterised by patronage and patronage in public procurement processes have led to the erection of white elephants throughout the country. The contracts contracted for several years are struggling to be completed. Favouritism consists in procuring or attempting to procure an unjustified advantage for others by an act contrary to the laws and regulations governing public contracts and public service delegations.

**Hazardous budget forecasting and budget management.** The budget shall be drawn up within a framework of strategies based on the guidelines of the policy areas, objectives, and performance indicators for measuring the results achieved with a view to improving the effectiveness of public expenditure. This requirement makes it possible to ensure that investments are consistent with political ambition. However, the National Development Plan 2016-2020 has become obsolete. Priorities are not currently oriented towards the development of another development plan to serve as a basis for planning, implementation, and budgetary control. Public action carries the risk of being risky.

**Nepotism in the administration and politicisation of school administration.** Public services are one of the most powerful vectors of equality, offering everyone a fair chance to lead a decent life, regardless of wealth, income or gender. Public administration management remains a topical issue given its ongoing changes linked to its adaptability to everyday realities, induced by socio-economic and cultural conditions.<sup>66</sup> From the point of view of the ethical practices of the administration in Guinea, consultations indicate a politicisation of the school administration that manifests in transfers and de-listing for reasons related to the membership and political choices of certain teachers. The consultations also revealed that promotions in the public administration in Guinea are like a nebula with differentiated constituents and are acted on according to the interests of the families in power.

**Difficulties in controlling regional diversity in the recruitment process in the army.** With regard to recruitment into the army, internal standards determine the geographical framework for recruitment actions. Since the composition of the armed forces, particularly in a conscription system, must reflect the population in its diversity, the recruitment rules endeavour to achieve this by setting quotas by region. The consultations revealed difficulties in controlling and maintaining this diversity in the logic that candidates from some regions manage to recruit on behalf of other regions.

**Rising corruption and impunity at the top of the state.** Money laundering practices and bank accounts held abroad by officials are recognised by all the actors met. Concealment of assets and ill-gotten assets, abroad by some officials of Guinea was revealed by the consultations. Guinea

66 Djimassal, P., 2019. L'administration publique au Tchad à l'ère de la décentralisation. L'administration publique au Tchad à l'ère de la décentralisation, pp.1-350.

before 2021 was characterised by the absence of an adequate judicial space and the search for criminal responsibility of the elites due to the lack of operational mechanisms and political will to punish. The consultations showed that state resources are being squandered by elites to build or buy high-class buildings in Europe and neighbouring countries. The consultations also show that state audits, rather than being used as anti-corruption tools, serve as a deterrent to political competition to ensure that a regime remains in power.

**Poor transparency on public procurement and mining contracts, including tax clauses, infrastructure and production schedules.**

Consultations revealed that contracts do not benefit the State of Guinea and that despite mining contract disclosure practices, there is little visibility on mining contracts, including information on tax clauses, infrastructure, and production schedules, so that citizens can understand, monitor and hold accountable the obligations of government and investors. Public procurement practices are also characterised by a form of favouritism whereby contracts are awarded to the highest bidders and lowest bidders. Even if contracts are sometimes disclosed, the annexes granting exemptions would not be disclosed.

The various institutions and operating rules that more directly affect the economic and financial sphere in areas such as taxation, collection of taxes, ethical practices of public administration, budgetary management, control of public expenditure, trade policy, management of public enterprises, etc. have seen progress and periods of turbulence most often caused by governance errors and by the political system in place since 1958.

The results of this review show that, in the context of Guinea, corruption and economic inequalities such as unequal distribution of national income or the poor redistribution of national wealth cause feelings of injustice and frustration. The army takes the defence of the people by seizing power by force.

The specific analyses of Guinea have made it possible to formulate a contextualised definition of UCG manifested either by the reshaping of the constitution to keep a regime in place, or by coups d'état, followed by installation of a Transitional Military Council, and a Head of State, contrary to the provisions provided for in the law with constitutional value, to maintain the advantages of the group in power. These changes have an impact on economic governance and public sector accountability.

DIVERSITY MANAGEMENT AND HUMAN RIGHTS

**Logic of domination and resistance.** In the Republic of Guinea, the management of diversity and human rights are closely linked to competition for political power. Indeed, in the face of the state enterprise of domination of public space with a view to managing diversity, the expression of political rights and freedoms and respect for human rights are hindered while instrumentalisation of ethnic and regional diversities outbid violent and murderous repressions. The electoral cycle is therefore a perfect picture to paint the whole issue of the management of diversity in the Republic of Guinea as well as the (non-) respect of human rights. Citizens can vote without being intimidated.

**The disproportionate repression of political demonstrations, a mark of institutional failure and an axiom of the political game.**

The consultations of the TRM and the exploitation, among others, of the conclusions of the National Councillors Concertation Mission (Report, April 2022) reveal that the elections organised since the advent of multiparty in Guinea, were marked by pre- and post-electoral violence, resulting from multiple irregularities recorded throughout the electoral cycle process. This has always affected the legitimacy of the leaders and the credibility of the institutions that emerged from the elections.

- There is systematic prohibition of fundamental freedoms (by successive regimes) and recurrent violations of the right to life.
- In prisons, the Ministry of Justice officials told the TRM about degrading conditions of detention such as unhealthy conditions, malnutrition, illnesses, and the lack of general medical care throughout the prison system.
- The challenge of social cohesion persists. There is a traditionally peaceful coexistence of religious, ethnic and regional sensitivities in Guinea; this is based on a socially rooted Guinean ethos as well as on the weight of religion and traditions. However, the consultations revealed the weight of politics in the revival of ethnic and community conflicts during the electoral period.
- The issue of regional disparities remains thorny. Some regions feel neglected in the sense that they receive little public investment.
- The end of impunity and the restoration of the rule of law is a creed of the CNDR. The actions of this transition are highly

emblematic and follow in the wake of the end of impunity and the restoration of the rule of law with an independent and impartial justice. It is the opening of the trial of the massacre of September 28, 2009, the creation of the Court for the Repression of Economic and Financial Offences (CRIEF), etc.

- Overall, the TRM notes that the human rights situation in the Republic of Guinea is very bleak. Violations of civil and political rights and freedoms are rife. They result mainly from the will of the State to dominate the emancipating forces. They also result from the very divided political antagonisms between the supporters of political power and the opposition. Violence has emerged as an axiom of democratic life in Guinea. As for the management of diversity, it arises mainly in its ethnic and regional variations. As such, the construction of a nation-state that would transcend these divides seems to be incomplete. The struggles for political power are taking place against an ethno-regional backdrop. Their exacerbation is one of the factors of UCG.

### 4.4.3 Response to UCG

Guinea has experienced three instances of UCG in the form of a military coup's d'état since independence. These three cases of UCG were managed by different processes in different contexts and at different times.

#### DOMESTIC RESPONSE

Regarding the internal management of UCG, the main characteristic of successive military governments was a complete break with the fallen regime, which resulted in dissolution of the Government, the National Assembly, and the Constitution. Some political leaders have also been arrested and detained (Mamadou Bhoie Bâ, 1998; Alpha Condé, 1998-2001; Sidya Touré, 2003, 2004; Jean-Marie Doré, 2003). For example, the leader of the military junta, who is under pressure from the International Contact Group on Guinea (ICG-G) – a group of states and international institutions established by the AU to support the military junta in its efforts to restore constitutional order in the country – has finally declared his support for the timetable for the transition proposed by the FVN. This timetable called for establishment of a National Transition Council (NTC) in place of parliament, and for holding of parliamentary elections on 11 October and the first round of the presidential election on

13 December, with a possible second round on 27 December 2009.

The advent of the CNRD in power in September 2021 and the flagship actions taken in the management of the transition, particularly concerning the moralisation of public management and the completion of critical infrastructure, are generally welcomed.

Despite general appreciation for the actions of the CNRD, comments were made on the approach to the implementation of some acts, including respect for judicial procedures and standards of preventive detention in the proceedings of the Court for the Punishment of Economic and Judicial Crimes (CRIEF). From the review team's discussions with the CRIEF prosecutor and other judicial officials at the Ministry of Justice, on 28 November 2022, it seems necessary for the judicial institution to communicate more on the merits of some of its actions, including the detention of 11 people out of more than 300 concerned in about 100 cases. CRIEF and the government should also report on the fate of the funds paid by the defendants as guarantors and those recovered and paid into the public treasury. It would be useful for the funds paid to the public treasury to appear as a line in the revenue side of the finance law for the year in question.

#### INTERNATIONAL RESPONSES

At the external level, following each UCG, the international community (ECOWAS, AU, EU, and other development partners) adopted sanctions measures and accompanying measures. ECOWAS condemned Guinea and demanded restoration of constitutional order as soon as possible. At the end of its second extraordinary summit on 16 September 2021, the sub-regional organisation suspended Guinea from all its decision-making bodies, as it had done for Mali. The AU followed suit, by a decision of its Peace and Security Council (PSC) at its meeting of 10 September 2021. This created apparent tension between the firm principled position of ECOWAS and the AU, on the one hand, and, on the other, the feelings of Guinean national actors, both the political class and ordinary citizens. This tension led to the challenge of the first mediator.

The main measures to accompany the transition have been adopted within the framework of the ICG-Guinea. This coordination mechanism held regular meetings in Conakry and sometimes on the margins of ECOWAS or AU summits. It provided an opportunity for the transitional authorities to brief them on the state of

development of the various transitional actions and thus allowed the AU and ECOWAS, as well as the rest of the international community, to advocate for the necessary adjustments, in agreement with the transitional authorities, to better support the process. It is also through this mechanism that resources were mobilised to support electoral processes in the country.

The appointment of former Beninese President Thomas Yayi Boni, following his extraordinary summit on 3 July 2022, as mediator, was welcomed and accepted by the parties.

Targeted sanctions, including asset freezes and travel bans, against several CNRD members could not enter into force due to the agreement in CNRD and ECOWAS.

In conclusion, ECOWAS, the AU, and other development partners are entitled to take the measures required by their legal texts and instruments in the event of a UCG in a member country such as Guinea. However, they must do more in terms of prevention, especially when governments manipulate the constitution, and, in the case of the sanctions they adopt, they must take measures that do not punish the poor, such as closing borders.

#### 4.4.4 Key findings

Despite these notable advances, the Guinean transition continues to face major challenges. Disagreement between the transitional authorities and some political groupings are persistent as are regional disparities. A very broad configuration of the electorate of partisan parties and political leaders based on ethnic and/or regional affiliations, with the corollary of the instrumentalisation of ethnic and regional sensitivities leading at each electoral cycle leads to recurrent violence.

The review noted the following:

- A poor state of economic infrastructure due to irregularities in public procurement procedures.
- A lack of governance and accountability in the management of public resources aggravated by patronage, patronage, and corruption.
- The non-participation of some political parties in the management of the transition.
- The ineffectiveness of the transfer of powers to local authorities, despite the existence of the law on decentralisation.
- The paralysis of some local authorities due

to the freezing of their accounts and the dissolution of their governing bodies.

The review also learned that while hopes were raised by the establishment of the CRIEF, the population was concerned about the length of the procedures and the impact that this might have on national cohesion. Specifically, these aspirations are regarding:

- The establishment of judicial institutions such as the Court for the Repression of Economic and Financial Offences (CRIEF) and the effective conduct of the trial of 28 September 2009 whose objective is to fight against impunity.
- The spirit of openness of the transitional authorities vis-à-vis ECOWAS and the African Union in the common quest for durable transition management solutions.
- The creation of the framework for political and social dialogue is a major step forward, which we hope will help to curb the feelings of rejection and exclusion expressed by the people during the national and regional consultations.
- The renegotiation of mining contracts by the government to increase state resources. The recent agreements with Rio Tinto Simfer and Winning Consortium on the exploitation of Simandou's iron ore, which in Guinea will obtain from these multinationals the realisation of two mega infrastructure projects (railway over 670 km).
- The leading role of women, including the Facilitators, in the ongoing process of inter-Guinean dialogue.
- At the regional level, the dematerialisation of local taxation through the digitisation of the taxpayers' database (typical example of the municipality of Labé, which should be a model): and
- Establishment of contracts for objectives and performance (COP) between the State and ministries.

**Constitutional instability is a source of political instability.**

In its 64 years of independence, Guinea has, on average, adopted a new constitution every 12 years. Since the constitution has no socio-political roots, it cannot serve as a basis for institutions and is thus fragile and liable to collapse at the slightest crisis.

**Ineffectiveness of institutional checks and balances.**

The targeted review mission (TRM) notes that the various Guinean constitutions enshrine the principle of the separation of powers and proclaim the attachment of the Guinean people to the democratic republic as a form of organisation of power within the state. In the constitutional texts, in addition to the executive power held by the President of the Republic and the legislative power belonging to the National Assembly, judicial power is entrusted to the courts (i.e., to the courts and tribunals). The TRM notes, however, that in the functioning of the institutions, the separation of powers is not effective. The concentration of power in the President of the Republic coupled with the phenomenon of clientelism, renders the role of institutional checks and balances ineffective.

**Interference of the army in politics.** Based on the principle of the submission of military power to civilian rule, the TRM concluded that the role of the army in Guinean society is problematic. In analysing the political evolution of the Republic of Guinea, the TRM noted an interference of the armed forces in the national political life. This situation is a consequence of the instrumentalisation of the army by the political authorities. Successive regimes have relied on the armed forces to suppress the exercising of public freedoms and oppress citizens.

**The integrity of elections since 2010 is yet to be underlined by an effective legal and institutional framework.**

The 2010 presidential election that followed the seizure of power by Captain Moussa Dadis Camara after the death of General Lansana Conté in 2008, marked a shift towards democracy in the Republic of Guinea. Since then, presidential elections in 2015 and 2020, legislative elections in 2013 and 2020, and municipal elections in 2018 thirteen years after the 2005 election, have been held with minimum use of force. However, the electoral system remains broadly contested and from one election to another seeks ways to mature.

**Poor capacity of municipalities is a potential cause of UCG.**

The review revealed that the central government, through the tax authorities, either fails to transfer taxes to municipalities, or abolishes taxes. It is also worth noting that the state has abolished the minimum tax for local development. These decisions and facts prevent municipalities from addressing the development challenges of their localities.

**Difficulties in controlling regional diversity in the recruitment process in the army.**

Internal standards determine the geographical framework for recruitment. The composition of the armed forces, particularly in a conscription system, must reflect the population in its diversity, which the recruitment rules endeavour to achieve by setting quotas by region. The consultations revealed difficulties in controlling and maintaining this diversity in the logic that candidates from some regions manage to recruit on behalf of other regions. This is a potential cause of UCG.

**Poor transparency and integrity in public procurement and mining contracts.**

including tax clauses, infrastructure, and production schedules. The contracts awarded for the exploitation of public resources do not benefit the Republic of Guinea. Despite mining contract disclosure practices, consultations revealed that there is little visibility on mining contracts, including information on tax clauses, infrastructure and production schedules; citizens are thus not able to understand, monitor or hold government and investors accountable. Public procurement practices are also characterised by a form of favouritism whereby contracts are awarded to the randomly. Even when contracts are disclosed, the annexes granting exemptions are not.

### 4.4.5 Recommendations

The review encourages the government of Guinea to pursue actions and reforms within the overall framework of precise objectives and coherent actions for the re-foundation of the state through the development of a national strategy. The strategy would focus on addressing the identified catalysts for instability and possible UCG as strategies for national development. Such a strategy would guide the following specific recommendations.

**Accelerate managed transition to democratic rule.** The Republic of Guinea is urged to implement reforms that protect the institutional independence of all arms of government and guarantee the separation of powers as provided by the constitution. Strategies to reduce the risk of a political crisis and improve the conditions for the smooth transition to a new democratic and sustainable constitutional order should also be implemented. In this regard, the review recommends a focus on the continuation of the inclusive inter-Guinean dialogue through establishment of an appropriate framework to include all stakeholders and which explicitly prohibits the interference of the military in national political affairs.

**Implement decentralisation and economic justice measures.** The Republic of Guinea is encouraged to establish a transitional justice mechanism that addresses the consequences of the widespread protests on 28 September 2009 and the old proceedings transferred to the Court for the Repression of Economic and Financial Offences (CRIEF). The continuation and intensification of measures to reduce poverty and redistribute mineral resources equitably among the various populations among others relies on this mechanism. Additionally, the Republic of Guinea is encouraged to implement measures for the effective transfer of administrative and financial powers to municipalities should thus be within a transparent framework of judicial control of local finances.

Improve capacity of the electoral body. The country is encouraged to establish its Independent National Electoral Commission (CENI)<sup>67</sup> to ensure that it is administratively and technically competent, with appropriately skilled staff to improve its efficiency.

67 Commission Électorale Nationale Indépendante



## 4.5 UNION OF THE COMOROS

### 4.5.1 Context

The political history of the Union of the Comoros is punctuated with about 20 UCGs since 1975 when Comoros unilaterally declared its independence from France through the voice of Anjouanais Abderamane Ahmed Abdallah. Less than a month later, on 3 August, President Ahmed Abdallah was overthrown by an inaugural coup d'état, supported by mercenaries led by the Frenchman Bob Denard (whose real name was Gilbert Bourgeaud). Since then, the Union of the Comoros has experienced a series of coups d'état, coups attempts and separatist agitations. The Chief-of-Staff of the Comorian Army, Colonel Azali Assoumani, took power on 30 April 1999 and justified his action by the need to preserve the territorial integrity of Comoros in the face of the serious threat from the Island of Anjouan. This was the last coup d'état recorded.

In the last two decades, the country has embarked on a path of democratic and political stability as well as socio-economic development. It is in view of its political past, Comoros volunteered to share its experiences on UCG.

The mission to Comoros was conducted in two stages. In the first stage, a delegation from APRM in Moroni from 22 to 24 August 2022 sensitised Comorian authorities and other stakeholders on the objectives and methodology of the targeted review of UCG. The mission was received by the Ministry of Foreign Affairs and International Cooperation of Comoros, the speaker of the National Assembly of the Union, the National Commission of Human Rights and Freedoms, the President of the Supreme Court accompanied by the President of the Court of Auditors and the State Prosecutor, civil society organisations and the private sector, as well as general secretaries of the various ministerial departments and development partners. The APRM delegation was received by the President of the Union of the Comoros, His Excellency Mr Azali Assoumani, who commended AU's initiative to conduct targeted reviews on UCG in Africa to identify the catalytic factors of conflicts and address them.

In the second stage, from 10 to 20 October 2022, a Country Review Mission (CRM) of independent African experts in constitutional law, elections, diversity and human rights, economic governance and regional integration consulted with the following stakeholders in the four islands: executive, legislative and judicial powers, independent administrative authorities, local



elected officers, civil society organisations, the private sector, local figures, the media, political groups, the presidential party and opposition parties.

Finally, the preliminary findings of the consultations, contained in a report, were presented to the Head of State, H.E. Azali Assoumani.

#### HISTORY

After the first coup d'état in 1977, the new leader, Ali Soilih, instituted and consolidated newly won independence through a constitutional process that resulted in the adoption of a constitution by the National Popular Council (Conseil National Populaire), on 23 April. This regime, however, was short-lived; on 13 May 1978, in a new military coup staged by Bob Denard and his mercenaries President Ali Soilih was assassinated, and former president, and Ahmed Abdallah, was reinstated as head of state. A referendum led to the adoption of a second constitution on 1 October 1978.

This constitution ended the single state and created a federal state by granting constitutional autonomy to the islands. Article 16 of the constitution imposes the following limitation on the term of office of the president of the Federal State of Comoros: 'The president of the Republic shall be elected for six years by direct ballot. His term of office may be renewed only once'. This constitution, which ushered in the second republic, has been reviewed several times. The first review, under Law 82-018 of 5 November 1982, ended the election of governors and introduced the principle of their appointment. The second review, backed by Law 85-001 of 2 January 1985, abolished the post of prime minister.

On 5 November 1989, President Ahmed Abdallah introduced another constitutional reform that removed the clause on limitation

of the presidential mandate and institution of the post of prime minister. This was approved in a referendum approved by 92.5% of the voters but since he was overthrown in the coup d'état of 26 November 1989, President Ahmed Abdallah could not stand for a third term and the new constitutional provisions could not be implemented, as they were had not been enacted.

Following the coup d'état that overthrew President Abdallah, the president of the Supreme Court, the constitutional successor of Abdallah, was also overthrown and replaced by Saïd Mohamed Djohar, apparently chosen by Bob Denard. Former President Abdallah was assassinated and Saïd Mohamed Djohar became acting president on 27 November 1989.

Following assumption of office, Djohar surrounded himself with young political leaders, forced into exile under the regime of former President Abdallah which facilitated his election on 11 March 1990, with 55% of the vote. Elections were disputed by the party of Mohamed Taki Abdulkarim, his opponent and adversary. On 22 March 1991, a roundtable conference was organised to enable the government and political parties to carry out a constitutional reform. Despite an attempt by the President of the Supreme Court to remove him from office by declaring him unfit to govern, on 3 August 1991, Djohar resisted and pursued the process of national consultation. A pact on national reconciliation was adopted and signed on 27 December 1991 and a national conference was later organised on 8 May 1992.

The consultation process led to the establishment of the Permanent National Electoral Commission (CNEP), in charge of electoral operations based on indications of the resolutions of the National Conference. It facilitated adoption of a new constitution, approved by referendum on 7 June 1992 that maintained the federal system and restored the limitation of presidential mandates to two: 'The Islamic Federal Republic of the Comoros shall be constituted by the islands (...) The President of the Republic shall be elected for five years by direct universal ballot. He shall be eligible for reflection only once'.<sup>68</sup>

On 26 September 1992, while President Djohar was in France on a private visit, an attempted coup d'état led by the sons of former President Abdallah with the support of mercenaries and rebel soldiers took place in Moroni. The soldiers who participated in this operation were not

prosecuted and staged another mutiny on 13 October 1992, in a bid to free their imprisoned leaders. They took refuge in M'beni, stronghold of the main opponent of President Djohar. The army recaptured this locality, took prisoners, and salvaged military equipment. However, most of the rebels escaped and a small group of them were killed on 19 October 1992, in the centre of Moroni, after a violent armed clash. These events took place at a time the country was hit by a serious economic and financial crisis and the social atmosphere was deteriorating. The democratisation process put in place with the election of President Djohar was nevertheless pursued.

On 28 September 1995, Bob Denard overthrew President Saïd Mohamed Djohar. As a result of protests by the international community and Comorian authorities, notably Mr Saïd Ali Allaoui, Minister of Interior of the Djohar Government, France launched a military operation on 4 October 1995, which enabled French troops to take Bob Denard and his mercenaries prisoner. President Djohar was then freed and exfiltrated by French soldiers to the Island of Reunion.

In violation of the constitutional provisions, which stipulate that 'The Prime Minister shall act for the President of the Republic in case of absence or temporary inability of the latter' (Article 27 of the Constitution of 7 June 1992), Caabi El-Yachrouti declared himself acting President. He ostensibly refused to make room for Saïd Ali Mohamed, regularly appointed as Prime Minister by President Djohar, Saïd Ali Mohamed was held detention. Through the intervention of the French Prime Minister, Alain Juppé, he was freed and returned to Comoros.

The regime of President Djohar was marked by financial scandal and economic crisis which facilitated intervention of the military in the political game. Following a coup d'état, the army took power and requested the two leading figures of the Comorian political scene, Mohamed Taki Abdulkarim and Saïd Ali Kemal, to temporarily act for the President of the Republic and organise elections. To avoid a power vacuum, which could plunge the country into a civil war, the two acted as co-presidents.

A presidential election by majority vote in two rounds was held on 6 and 16 March 1996. Mohamed Taki Abdoulkarim, candidate of the National Union for Democracy in Comoros, and Abbas Djoussouf, representing the Forum for National Recovery, won the first round. At the end of the second round, Mohamed Taki Abdoulkarim,

68 Article 22 of the Constitution of 7 June 1992

who was supported by the former co-president Ali Kemal who came third in the first round, was elected president with 64.29% of the votes.

Persistent shortages, and a ban on the enjoyment of certain fundamental freedoms, notably freedom of expression and freedom to form political parties, weakened the regime of Taki Abdoukarim. The situation became worse in 1997, with the separatist movements of the Islands of Anjouan and Mohéli, which condemned 'the absolute illegality' into which the republic was sinking and abandonment of the fundamental text of 1992, adopted at the time by consensus.

It was in this context that the death of President Mohamed Taki Abdoukarim was announced on 6 November 1998. In line with the provisions of Article 10 of the 1996 Constitution, Tadjidine Ben Saïd Massonde, President of the High Council of the Republic acted as interim president. On 30 April 1999, the chief-of-staff of the Comorian army, Colonel Azali Assoumani, took power in a military coup d'état. His justification for the intervention by the soldiers was the need to preserve the territorial integrity of Comoros in the face of serious threats from the separatist movement in the Island of Anjouan.

This was the last military coup d'état recorded in the annals of the constitutional history of Comoros. Subsequently, access to power was through constitutional means, essentially after an electoral process, the results of which determine the holder of the reins of power.

## 4.5.2 Influences, catalysts and triggers of UCG

### CONSTITUTIONALISM

The purpose of constitutionalism is to build a constitutional order to consolidate the authority of the state while ensuring the fundamental freedoms of the citizens. From this point of view, constitutionalism is directly contrasted with UCG.

Relying on consultations with Comorian stakeholders and analysis of documentary sources, the targeted review mission observed a deregulation of the constitutional order through armed interventions. The Comorian constitutional movement is quite recent and still marked by:

- **The stigma of its colonial past.** The unilateral declaration of independence of Comoros, by President Abdallah in 1975, occurred in a context of dissensions between the French and Comorian authorities. This made it impossible for the two parties to define an appropriate framework of cooperation in line with the process of decolonisation, notably in defence and security. The decolonisation was therefore unilateral and uncompleted.
- **Development of a feeling of insularity.** By reason of their isolation and the distances separating them, each of the islands of Comoros has a certain peculiarity. In other words, despite the fact that they share a common language, 'archipelity' of Comoros promotes the development of a feeling of insularity peculiar to each island.
- **Excesses of the struggle for power between political actors.** Competition for the conquest of State power in Comoros is still marked by violence, intolerance, and radicalisation.

The mission also observed that, following the Framework Agreement for reconciliation in Comoros, signed on 17 February 2001 at Fomboni, the country has regained its stability. In fact, in the face of the aggravation of the Comorian crisis, notably the separatist demands of Mohéli, and more particularly of Anjouan, negotiations were organised between Comorian stakeholders in Fomboni, the capital of the island of Mohéli, under the auspices of the African Union, supported by the International Organization of Francophone Countries and the European Union, in the presence of the League of Arab States and the United Nations. These negotiations led to the signing of the 'Framework Agreement

for Reconciliation in Comoros on 17 February 2001'. With this agreement, the parties expressed their determination 'to embark on the task of building a New Comorian Group that adequately meets the need for power sharing between the Group and the islands'. Based on the commitment and resulting consensus, a new Constitution was adopted and promulgated on 23 December 2001. It established two basic principles in the organisation of the Union of the Comoros: rotating presidency, autonomy, and balanced development of the islands.

The institution of rotating presidency has helped to mitigate the fratricidal rivalries between political leaders of the different islands because it guarantees rotation of the central power among the islands. The autonomy of these islands has helped to overcome the separatist demands of the islands of Anjouan and Mohélie, since it assures them that they will take charge of the management of their own affairs within the Union of the Comoros. The balance between the islands was facilitated by the participation of the island representatives in the functioning of institutions of the Union. The president of the Union is thus assisted by two vice-presidents originating from the other islands.

This constitutional order, established in 2001, has enabled the Comorian State to enjoy a relative political stability and put an end to the repetitive coup's d'état. But this newfound stability is still confronted with challenges.

#### INTEGRITY OF ELECTIONS

For two decades, the electoral ritual has largely been shared in Comoros as a mechanism for change of political power. However, since independence, the legislative and regulatory framework for organising elections lacks harmonisation, remains dispersed and relatively consensual, while the institutional framework is losing credibility and the necessary legitimacy. Apart from the 2006 elections deemed transparent, regular, and sincere, as they were sponsored by the international community, with funding from UNDP, observers from the Arab League and protection by a contingent of the South African Army under the flag of the African Union, the electoral cycle in the Comoros is quite worrying according to most stakeholders, particularly political parties of the opposition, the civil society and the media. The latter point to the lack of an institution responsible for organising and managing the electoral process in an independent and transparent manner in accordance with African and international standards. Thus, during the last general elections in 2019, the international

observation missions deployed by the African Union Commission, COMESA, and the East African Standby Fund (EASF) deplored several irregularities that characterised the voting process. There were profound divisions between the political actors as well as lack of support from a section of the political class, boycott of the election by the main opposition parties, lack of a coherent legal framework to win the support of all the actors, etc. Regarding the irregularities observed, the observation missions did not arrive at an objective decision on the transparency and credibility of the election of 24 March 2019.

In this context the Head of State, with sustained political will to harmonise and improve the electoral law and reform the election administration body to prevent or address the crisis-management factors for the elections in 2024 and 2025, initiated the National Inter-Comorian Dialogue to embark on reforms relating to the review of the legislative and regulatory texts, and reform of the Independent National Electoral Commission and electoral boundaries.

It should, however, be noted that the boycott of the national conference, inter-Comorian national dialogue and the different elections by an essential component of the opposition, cannot facilitate the building of consensus around the electoral rules and institutions.

#### MILITARY INTERVENTIONS, POPULAR UPRISING AND TERRORISM

Most UCGs in the Comorian islands were initiated from outside the country. As mentioned above, the mercenary Bob Denard was responsible for nearly all the military coups recorded in Comoros, sometimes with the support of France. In the view of the College of Wisemen constituted by former top government officials and international organisations, this factor is not completely eliminated today, while Mayotte is still under French occupation and falls outside the territorial control of Comoros. Strained relations between the Comoros and France concerning the sovereignty over Mayotte may cause future conflict. In the past, this Mayotte served as the base for the mercenaries. Several separatist leaders also resided in Mayotte during the 1997 separatist crisis.

Moreover, some of those interviewed by the review mission identified two types of impending external threats. One is the rise of Islamic extremism in the North of Mozambique at Cabo Delgado which is rich in natural resources (timber, precious stones, natural gas and ivory) and close to Comoros. Violent and recurrent attacks by an unidentified armed group could have serious

repercussions on regional and international security.

The same applies to the increasing rise of insecurity presently prevailing in the Island of Mayotte. Official data from the French Security Chief-of-Staff point to increasing cases of murder, voluntary violation of individual's physical integrity, other physical attacks associated with theft, burglary, illegal immigration using kwassa boats.

#### MANAGEMENT OF DIVERSITY AND HUMAN RIGHTS

Comorian society is sociologically homogeneous. Indeed, Comorians are a unique people who share the same culture, the same religion, and the same language (Shikomori). This characteristic homogeneity of the Comorian society is enshrined in the Constitution. In the very first paragraph of the preamble of the Constitution: '... the Comorian people solemnly affirm its desire to cultivate a national identity based on one people, one religion (Sunni Islam) and one language'. Similarly, the constitution enshrines Islam as a state religion (Art. 97). In principle, the sociological homogeneity, which is an important asset for management of diversity, promotion, and protection of human rights, is not incompatible with the diversity. Thus, despite this apparent homogeneity, the Comorian society is, like most African societies, diversified.

Although diversity may take several forms, for the purposes of this study, we shall only talk about forms of diversity whose poor management has led to or could lead to UCG in Comoros. They are political diversity, geographical diversity, and social diversity. At the political level, the constitution acknowledges political pluralism, which enshrines a multiparty system. There are six political parties in Comoros and the status of the opposition is recognised.

Geographically, the Union of the Comoros is composed of a group of four islands, namely. Grande Comore (Ngazidja, 1,148 km<sup>2</sup>), Mohéli (Mwali, 424 km<sup>2</sup>) and Anjouan (Ndzuwani, 290 km<sup>2</sup>) and Mayotte (Maoré, 374 km<sup>2</sup>). Only the first three are under the effective sovereignty of the Union, while Mayotte is under French occupation.

At the social level, gender-based diversity is an important indicator of the level of social cohesion and inclusion. In the Comoros islands, contrary to most traditional African societies, women enjoy a very important local status since the matriarchal system exists in the country. They build the conjugal shelters and host their husbands. In terms of marital and family status, succession is to their advantage. They own the family's properties and keep them in case of divorce and

separation. However, they are under-represented in the politico-administrative bodies of the country mainly because of cumbersome traditional, cultural and sometimes religious norms, which limit their effective citizen participation in the management of affairs of the State.

#### ECONOMIC GOVERNANCE AND UNCONSTITUTIONAL CHANGES OF GOVERNMENT

At the economic level, policies implemented since independence in Comoros islands have been inconsistent and have been changed with change of power, generally through coups d'état. Every political instability, measured by the frequency of coups d'état or more precisely by unconstitutional changes of government, is inversely associated with economic growth.

Indeed, the socio-political instability risk indicator has a negative impact on inflows from direct foreign investment and even domestic investment. Political instability increases the uncertainty of the economic environment in which direct foreign investment is dispensed, and does not encourage multinational companies to invest, because the business climate is unpredictable, in terms of future operations of the company and economic policies of the country. Unconstitutional change of government reduces the volume of direct foreign investment and its efficiency. This was profoundly felt during consultations with different stakeholders in the Union of the Comoros.

Corruption is mentioned at several levels of government and heightened by internal political conflicts and competition for resources between administrations of the three islands. Autocratic powers arising from coups d'état only increase corruption and lack of transparency in the management of public affairs, which in turn reduces accountability awareness and increases inequalities.

Moreover, property rights are not well protected, and contracts are poorly applied. The judicial system, based on both the sharia (Islamic law) and the French-inspired civil code, is weak and suffers from political influence.

Unconstitutional change of government also increases the weight of political risk as a determining factor in financial rating of government bonds. Financial rating agencies like Moody's, Fitch and S&P provide information to investors and financial markets to help with risk assessment, which may have a direct impact on the cost of public investments aimed at ensuring sustainable development. Negative investment announcements from rating agencies, in terms of

reviews or prospects, have considerable impacts, relating to increase of the cost of borrowing by the country, since sovereign ratings also often serve as reference at the national level for rating companies, which affects the cost of borrowings and investments on companies.

Unconstitutional changes of government have also had very harmful impacts on the analysis of sovereign loans, which, however, has had harmful effects on the rates of direct foreign investment, and downgrades the rating of sovereign bonds 'Investment grade' to a more speculative level.

The 2018 Constitution ushered in a new era of reforms based on recommendations from the 2017 conference on socio-economic life, but also a change in the management of the presidential rotation, which introduced three major characteristics:

- The possibility of a presidential mandate renewable once after the 2019 elections, which was motivated by the need to ensure continuity of development programmes.
- Centralisation of resources in a central account of the Treasury to notably address the concern of resolving issues of conflicts of competence and rationalise operating expenditures.
- The development of the 2030 Comoros Emergent Plan.

After the 2019 elections, the government carried out some elaborate reforms, but their implementation was compromised by the COVID-19 pandemic.

Generally, it can be said that some reforms yielded results, while others encountered implementation difficulties and remain uncompleted. They led to economic counter-performances, thereby creating a conducive environment for violent unconstitutional political changes.

### 4.5.3 Key findings

Accession of the Union of the Comoros to several RECs is a strategic political choice that constitutes an important asset for the political and diplomatic visibility. Likewise, at an economic level, accession to several RECs promotes the opening of markets and offers various economic opportunities for the state and its citizens, in particular Comorian businesspeople. Politically, multiple membership of RECs brings dividends in terms of peace and stability in the country and the region.

However, it has been observed that potential or actual dividends are hindered by the lack of monitoring and coordination of the multiple membership of Comoros to regional integration organisations. The Union of the Comoros is a member of several regional integration organisations (COMESA, SADC, COI, etc.) and several line ministries are involved in management and monitoring of this membership. A lack of coordination paralyses task tracking and deprives Comoros of opportunities to take full advantage of economic and financial benefits inherent in regional economic integration. For example, meetings with the private sector revealed a high level of ignorance of Comoros' membership of some organisations, notably COMESA, and the benefits of Comoros' membership of RECs for economic operators in the private sector.

A high level of contribution arrears within the RECs owed by Comoros in some organisations is of concern and limits the benefits it is supposed to enjoy. For example, Comoros had accumulated three years of contribution arrears owed to SADC for 2019-2020 (USD 2 488 327, or KMF 1 124 599 387), 2020-2021 (USD 2 556 053, or KMF 1 155 208 153) and the same amount for 2022-2023. Comoros should settle these arrears to enable it to fully benefit from the development programmes of SADC.

Finally, France's membership of the Indian Ocean Commission (IOC) poses a problem. Indeed, although accession of Comoros to the IOC in 1986 has been beneficial, notably since the organisation has always provided assistance for achievement of peace and stability as well as in the area of economic and social development, France's participation as a member state representing the island of Reunion poses a problem. It has made several attempts to get Mayotte to join the IOC as a full-fledged member, unacceptable from the point of view of international and domestic law, which acknowledge Mayotte as an island that is part of the Union of the Comoros.

The targeted review mission enabled the APRM team to understand more about the phenomenon of UCG, which have characterised the country for a greater part the post-independence period. Although the causes were mainly external, it was also noted that internal factors contributed to the perpetration of some coups d'état and the outbreak of political and institutional crises. Even for the coups d'état attributable to external factors, there were always internal complicities which is why presidents who inherited power were always authentic Comorians.

The Union of Comoros has mobilised solutions to UCG inspired by and drawn from Comorian culture in conformity with universal and/or African values, shared and enshrined in international and African legal instruments, particularly those relating to human rights, democracy, and political governance. Founded on the principles of equality and banning of discrimination of any kind, the solutions and reforms adopted embrace Comorian diversity to forestall ICG and other socio-political crises. Recognition of the equality of island entities that compose the Union through institutionalisation of the principle of rotating presidency, considering the rights of women and concerns of the youth through a constitutionally guaranteed representation constitutes the Comorian model of management of diversity, could inspire an African model of diversity management.

Nevertheless, despite the existence of a judicial-institutional infrastructure, discussions with the different target groups and independent personalities revealed that the country still faces demands for greater inclusion, transparency in the management of economic and public affairs of the state and respect of fundamental rights and freedoms. It is in this perspective that the APRM Review team makes the following recommendations.

#### SPECIFIC FINDINGS

**A profound deregulation of the constitutional order through armed interventions.** The Comorian constitutional movement is quite recent and is thus still marked by its colonial past. The unilateral declaration of the independence of Comoros by President Abdallah in 1975, occurred in a context of dissension between French and Comorian authorities, which made it impossible for the two parties to define an appropriate framework of cooperation in line with the process of decolonisation, notably in defence and security. Decolonisation was thus unilateral and incomplete and resulted in insularity. Although the four islands

that make up the Comoros share a common language, their archipelity and insularity lends them social identities that are peculiar to each island. Finally, the excesses of the struggle for power between political actors, and competition for the acquisition of state power in Comoros still results in violence, intolerance and radicalisation.

#### **Most UCGs perpetrated in Comoros were initiated from outside the country.**

As mentioned above, the mercenary, Bob Denard, was responsible for nearly all the military coups recorded in Comoros. In the view of the Collège des Sages constituted by former top government officials and international organisations, this factor is still present. Of the four Islands that make up the Comoros, the island of Mayotte is still under French administrative control and falls outside territorial control of Comoros. There are tensions in the Comoros concerning the sovereignty of Mayotte. The French control of the Island of Mayotte has resulted in security challenges for the Comoros as the Island has allegedly served as a base for mercenaries in the past. Several separatist leaders also resided in Mayotte during the 1997 separatist crisis. On the one hand, important disparities exist between islands and on the other, the latent threat that terrorism poses to the country. With regard to disparities, discussions held on different islands, especially Anjouan and Moheli, touched on social and political marginalisation that have caused resentment and frustration that are likely to provoke irredentist tendencies. This situation is attributed to the weak level of national unity and social cohesion among islands. Civil society organisations and political parties which the review team met in Anjouan and Moheli drew its attention to this aspect.

**Challenges with electoral integrity.** During the last general elections in 2019, the international observation missions deployed by the African Union Commission, COMESA, and the East African Standby Force (EASF) noted several irregularities in the voting process. There were profound divisions between the political actors, some of them boycotting elections.

Regarding the irregularities observed, the observation missions did not arrive at an objective decision on the transparency and credibility of the election of 24 March 2019. A boycott of the national conference, inter-Comorian national dialogue and the different elections, by an essential component of the opposition, meant that Comoros could not facilitate the building of consensus around the electoral rules and institutions.

The 2018 Constitution ushered in a new era of reforms based on the recommendations from the 2017 Conference on socioeconomic life. A change in the management of the presidential rotation introduced three major elements: i) the possibility of a presidential mandate renewable after the 2019 elections, which was motivated by the need to ensure continuity of development programmes; ii) centralisation of resources in a central account of the Treasury to address conflicts of competence and rationalise operating expenditure; and iii) development of the 2030 Comoros Emergent Plan.

Some of these reforms have yielded results; others have encountered implementation difficulties and remain incomplete. The economic counter-performance that resulted has created an environment conducive to violent unconstitutional political change.

**France's membership of the Indian Ocean Commission (IOC) is problematic.** Indeed, although accession of Comoros to the IOC in 1986 has been beneficial, and has helped with achievement of peace and stability, and economic and social development, France's participation as a member state representing the island of Reunion poses challenges. It was alleged that France has made several attempts to get Mayotte to join the IOC as a fully-fledged member state. There were concerns that France pursues this agenda despite international and domestic law's position on the matter, both of which recognise Mayotte as part of the Union of the Comoros.

#### 4.5.4 Recommendations

**Institute a nation-building process.** A permanent framework for dialogue between Comorians, at both central and island levels, which includes all the dynamic forces of the nation, with particular focus on the governorates, political parties of the opposition, youth and women should be implemented. A framework for consultation between political actors and other stakeholders will promote harmonious relations with the opposition, create a conducive environment for future electoral competitions, and consolidate a climate of confidence that will promote peace and stability. The Comoros is also encouraged to develop a policy for enhancing national sentiment among Comorian populations, particularly those of the islands of Mohéli and Anjouan.

**Observe the supremacy of the constitution.** Stringent guidelines to avoid untimely and frequent reviews of the constitution will bolster the country against institutional insecurity, which has the potential to disrupt established institutional balance and compromise effective consolidation of republican values and patriotism. The AU is encouraged to accompany and support the Union of the Comoros in all political, legislative and institutional reforms with a view to ensuring effective democratic governance by the state.

**Improve the elections landscape.** The Comoros is encouraged to establish an independent institution to organise and manage credible, transparent, free and fair elections. Such an entity will facilitate accreditation of civil society organisations and the media as national observers for the electoral process, aided by international observers and facilitate establishment of a new consultation framework before the next presidential elections in 2024, following the Fomboni Declaration. The AU is encouraged to assist the Union of the Comoros to organise transparent and peaceful elections in 2024 and 2025 and, as in the past, act as observer for the next electoral process.

**Combat cross-border terrorism.** Develop and implement development policies that focus on the territorial integrity and territorial justice. This requires security and defence forces (SDF) to be sensitised to the terrorist threat and regional geopolitical issues.

## 4.6 REPUBLIC OF THE SUDAN

### 4.6.1 Context

Political instability has prevailed in Sudan throughout its 60 years of independence since 1956. The country has witnessed three military coups that set up authoritarian regimes that ruled for 48 years with democratic periods that lasted only 15 years. Another feature of Sudan's instability are the civil wars that have continued since independence, except for 11 years of peace, from 1972 to 1983.

Political crises have manifested themselves in coups, wars, economic decline, administrative chaos, and corruption. Instability may be explained by the lack of the ability to reach consensus, to find a compromise. The elites who have long been in power offered nothing to address the country's crisis except a recourse to the military coup as a remedy to political disagreements or military solutions to remedy the demands of marginalised areas, such as the south and Darfur.

There was likewise no solution for the aggravated economic inequality and uneven development. In the face of organised opposition that sought to restore and consolidate democracy, peace, equality, and the rights of citizens, these ruling elites, in addition to resorting to repression, mouthed the slogans of political Islam – in contrast to democracy – as the only solution to the problems that faced the country.

The first civil war between the north and south ended in 1972, but another broke out in 1983. The wars had profound effects on the lives of the people; they suffered famine, and more than four million people were displaced. According to some estimates, over the course of two decades, more than two million were killed or died indirectly because of the war. Peace talks began in 2002 between the Sudan government and the rebel movement of the Sudan People's Liberation Army (SPLA) and ended successfully with the Comprehensive Peace Agreement (CPA) in January 2005. A period of autonomy culminated in a referendum that resulted in the south's separation from the north to form an independent country.

Another war broke out in Darfur in 2003, displacing nearly a million people and causing hundreds of casualties. Until at least June 2016, the United Nations, in cooperation with the AU, still has a large peacekeeping operation in Darfur; UNAMID, established on 31 December 2007, struggles to stabilise the situation. Under



various governments, there has been constant, intense political conflict over the constitution. The federal system dominated the debate before and after independence. Even though the military government of the 1958 regime suppressed freedoms, discussions on constitutional issues continued. The October 1964 revolution reopened the door for that discussion after the restoration of democracy.

The post-1964 discussion focused on the sort of constitution the country should adopt: Islamic or secular. The constitution committees of the first and second constituent assemblies dealt intensively with this issue.

Right-wing parties traditionally adhere to the Islamic constitution option, as opposed to the secular camp, which is associated with modern forces and urban elites and a better-educated population led by leftist intellectuals. The decision to dissolve the Communist Party and expel its deputies from parliament in November 1965 can be understood as an expression of the Islamists' growing power. They aimed to diminish the influence of the Communist Party and other modernist forces that emerged strongly after the October 1964 revolt, backed by professionals and educated people who had gained representation through graduate constituencies – created in response to demand for more representation for people with secondary education.

Parliament abolished these special constituencies in 1968. The advocates for an Islamic constitution were also those who had rejected a federal system for the south, which had been promised at the declaration of independence. They belonged to the political parties who preferred a centralised rather than a decentralised system and a presidential system with extensive powers for the president and limited powers for a prime minister, rather than a parliamentary system.

On 25 May 1969, Colonel Gaafar Numeiri led a coup against the supporters of an Islamic constitution. The country entered a new era, and the regime issued its own secular constitution, which restricted freedoms and political action under a one-party system. In 1983, however, Numeiri turned his back on secularism, announcing 'the application of Islamic Sharia laws' and began to impose harsh Islamic penalties. These laws threatened national unity; civil war broke out again in the south in 1983. Numeiri was overthrown in April 1985 by a popular uprising supported by the army. The democratically elected government of Sadiq al-Mahdi endeavoured to reach a peace agreement with the rebels in the south. Efforts were halted by the Islamist military coup in June 1989 led by Brigadier General Omer al-Bashir.

Omar al-Bashir ruled the country in coalition with various Islamist groups until December 2018, when a peaceful popular uprising erupted in Sudan and led to his downfall in April 2019 and an end to the 30-year authoritarian rule by the Islamist National Congress Party (NCP).

Two years later, On 25 October 2021, Lieutenant-General Abdul-Fattah al-Burhan staged a military coup that stalled Sudan's political transition towards civilian rule, dissolving government and declaring a state of emergency.<sup>69</sup> Abdul-Fattah al-Burhan took what he called 'corrective action'. Prime Minister Abdulla Hamdok was placed under house arrest and four figureheads of the civilian component of the government were detained, and some were beaten up.

Hours after the arrests, the general appeared on national television explaining that he saw no other option than to take power to correct the course of the revolution and prevent a civil war. He declared a state of emergency and dissolved the transitional government by cancelling crucial articles of the constitutional declaration. Al-Burhan also announced the appointment of a new transitional government of technocrats within a week to lead Sudan to elections in July 2023.<sup>70</sup>

69 Anette Hoffmann. Military coup betrays Sudan's Policy Brief revolution: Scenarios to regain the path towards full civilian rule. Netherlands Institute of International Relations. November 2021.

70 Ibid

## 4.6.2 Influences, causes and triggers

The conclusion of targeted review, a Gap Analysis of Sudan, indicates that a majority of the influences and causes of UCG are in the domain of diversity management and human rights, and economic governance and public sector accountability with the exception of gender inequality.

### MILITARY-OWNED BUSINESS

The targeted review revealed that the Sudanese military has vast business interests in almost all the sectors across the economy. Consultations suggests that this is a key contributor to economic distortions; security-sector linked businesses enjoy tariff exceptions, tax exemptions and superior networks, and crowd out private-sector competition. Representatives of the private sector believe Sudan will not see significant debt relief unless it manages the parallel economy of security-controlled businesses.

Sudanese recently undertook a review of the status of industrial and commercial companies owned and controlled by the security sector. The targeted review confirmed with the Ministry of Finance and Economy that there are ongoing discussions with the military on the work model of the defence industries system to establish mechanisms of joint governance between the corporations and the government. It is crucial for the government of Sudan to expedite the transfer of non-security-related commercial companies from military ownership under the civil and commercial laws to remove the market distortions, crowding out of the private sector investment.

There is urgent need to bring accountability and transparency to businesses controlled by the military through credible auditing processes. Although the government has planned changes in the military business sector, the opening of business space for private sector to fair competition is critical to bring efficiency to the economy. In addition, the stepping back of Sudan's security sector from non-related economic activities will attract foreign investment and will be significant milestone in the country's structural reforms in tariff and tax exemptions.

### NON-PERFORMING ECONOMY

Sudan needs to address its immediate economic challenges to ensure stability and chances of success of the transitional government. It also needs to build a strong fiscal structure to support

budget. The targeted review noted that, because of current economic conditions, the popular sentiment that people were better off during the previous regime is growing and will continue to grow if economic challenges are not addressed. This could be a cause for conflict in the future.

The UNDP Multidimensional Poverty Index for Sudan reports that 53.4% of people living in Sudan are living in multidimensional poverty, characterised by poor access to health services, education services and low living standards.<sup>71</sup> On the UNDP Human Development Index (HDI), Sudan is ranked 172 out of 192 countries in the world (36 out of 55 in Africa)<sup>72</sup> despite its significant reserves of petroleum, iron ore, gold, silver, tungsten, copper, chromium ore, zinc, uranium, gypsum, marble and mica. Sudan also has some of the biggest crude oil reserves in Africa. Individuals in civil society and the private sector warn that current prevailing conditions are the same as those that led to the revolution that overthrew the previous regime of former President al Bashir.

#### CORRUPTION

As with many other African countries, corruption is a challenge in Sudan, compounded by the complex corruption networks of the former government. The country is ranked 160 out of 180 countries in the world on the Corruption Perception Index (CPI) rankings.<sup>73</sup> Addressing corruption is critical to support revenue mobilisation for the fiscus, which should be the most urgent priority for the government. The government has set up an Anti-Corruption Government Committee, which the targeted review confirmed, led by individuals of integrity and has already recovered substantial amount of assets. The Anti-Corruption Committee is encouraged to continue its support for the auditor-general to access financial statements of all public companies and

#### POOR INFORMATION MANAGEMENT SYSTEMS AND DATA ABSENCE

The Central Bureau of Statistic is faced with many challenges – gaps in data provision,

fragmented and out of-date data that are being untimely supplied, absence of time series data, lack of standards in data production, and lack of uniform development across the various statistical systems. The method used by the Central Bureau of Statistics for the production of the Sudan national account statistics is not in conformity with the international standards. Sudan is still using the National Account System 1968 (NAS1968) for elaboration of its national account statistics and the data on the national account statistics are not up to date.

Sudanese citizens call for openness and inclusivity in public policy matters to enhance trust and confidence between the government and civilians. The lack of data and critical information about government has created conditions for corruption to thrive in government, as there is no room for public scrutiny. A clear strategy for e-Government and information sharing among state structures for public information dissemination is a necessity.

The challenges in collecting data on macro-economic variables and other government statistics is a result of lack capacity in the National Bureau of Statistical to effectively collect critical statistics for dissemination to citizens and relevant decision makers. In addition, a few ministries have digital platforms and websites to share information with the public and most of them do not update information on their websites. The general sentiment from citizens is that, rather than lack of resources, there is no political will to engage citizens in national issues.

#### GOVERNMENT CAPACITY CONSTRAINTS

The Ministry of Labour and Social Development acknowledged during the targeted review that there is a significant lack of technical competency and skills, especially in key institutions such as government departments, to effectively implement the mandates assigned to their institutions. This is compounded by employing unskilled people on the basis of their membership of a political party. Lack of skills have also created an environment conducive to illicit financial flows, which is supported by the high level of corruption, lack of transparency, porous borders, weak capacity in government institutions to tackle tax avoidance, tax evasion, false invoicing, illegal markets and money laundering.

#### FEDERAL CENTRALISED PLANNING

There is lack of coordination in planning between the federal government and the states. In consultations with the states, the general

71 UNDP (2022c). Multidimensional Poverty Index 2022: Unpacking deprivation bundles to reduce multidimensional poverty. Briefing note for countries on the 2022 Multidimensional Poverty Index. pp.2. <https://hdr.undp.org/sites/default/files/Country-Profiles/MPI/SDN.pdf>

72 UNDP (2022a), op.cit.

73 Transparency International (2022). Corruption Perceptions Index 2021. <https://www.transparency.org/en/cpi/2021/index/sdn>

sentiment was that the federal government is neglecting and marginalising them in decision-making, national planning and resource allocation. This is an area of concern that could lead to conflict in the future as states believe they are not considered in the federal government's national plans. The budget-making process should be consultative, bottom-up and non-discriminatory.

#### WEAK PUBLIC INSTITUTIONS

Weaknesses in public institutions has contributed to a huge loss of public resources into the hands of a few politically connected individuals. It is unclear whether these resources were kept in the country or expatriated, thereby feeding into the illicit financial flow phenomenon. The targeted review confirmed with the Ministry of Labour and Social Development that the private sector and civil society are optimistic that the government is prioritising building and strengthening institutions to address corruption and facilitate the recovery of large sums of financial resources embezzled during the previous regime.

Where institutions of accountability and transparency exist, they are often weak and unable to function effectively due to capacity constraints. The collapse of key institutions was a main reason for rampant corruption, economic distortions, sectoral imbalances and patronage networks which eroded public trust.

#### 4.6.3 International response

Regional and sub-regional institutions involved in intra- and inter-state conflict have collaborated on a few major accomplishments: restoration of relative peace and stability; the success of the mediators in facilitating signing of the Political Agreement and Constitutional Declaration; readmission of Sudan into the AU; the ultimate formation of a transitional government; and the regaining of confidence in the transitional government by the international community the power sharing deal.

**The African Union:** The AU played an instrumental and impactful role in addressing the post-coup crisis in Sudan. One of its most decisive actions on 6 June 2019 was to suspend Sudan from participating in all AU activities, a decision of the AU Peace and Security Council (PSC) at the 854th Meeting in Addis Ababa, Ethiopia, in line with the AU Constitutive Act and African Charter on Democracy, Elections and Governance, specifically Article 7 (1) (g) of the Protocol Relating to the Establishment of the Peace and Security Council of the AU, which provides that

the PSC may 'institute sanctions whenever an unconstitutional change of Government takes place in a Member State, as provided for in the Lomé Declaration'. However, the Country Review Mission (CRM) noted that the readmission condition was that Sudan needed to establish a civilian-led transitional authority.

#### Intergovernmental Authority on Development (IGAD)

has played a key role in Sudan's peace process. In its preamble, the Agreement Establishing the IGAD affirms the desire by member states to promote 'peace, security and stability, and eliminate the sources of conflict as well as prevent and resolve conflicts in the region'. The organisation has intervened in several capacities as explained below.

- The **IGAD Mediation Support Unit** convened a Strategic Thinking Workshop for Women from South Kordofan Regions of Blue Nile and Nuba Mountains with the aim of providing a platform for the women from various sectors, to dialogue and generate a common position towards an agenda for increased inclusion, participation and representation in the various spheres of sustainability and more importantly, in nation-building.
- Importantly, the **IGAD Security Sector Program (SSP)** successfully conducted a five-day national training workshop in Khartoum, with high level officials of the Sudan government to contribute to the development of security and justice sector policy framework. The training was conducted with financial support from the European Union Trust Fund (EUTF) through the IPPSHAR Program that implemented by IGAD SSP and the Austrian Development Agency (ADA). Having noted the efforts from IGAD, the CRM noted the need for Sudan to set up an institutional framework to address issues of national building and social cohesion.
- Within its mandate of providing mediation support and building the normative capacity of member states, the **IGAD Mediation Support Unit** convened youth and young people from Nuba Mountains, Funj, and Blue Nile Region with the objective of enhancing their mediation and negotiation skills. This training for the youth and young people living in areas controlled mainly by SPLM-N and/or PLM/A-N comes at a time when the Sudan Transitional Government has initiated peace talks with several parties. The CRM observed that negotiations on the Two Regions (South

Kordofan/Nuba Mountains and Blue Nile) have almost been completed although details related to economic issues, the return of displaced within the state, and the states' shares of national revenues are yet to be agreed on. It appears that a comprehensive peace agreement is required to ensure the sustainability of peace across all affected regions in Sudan.

- The establishment of the Office of the High Commissioner for Human Rights (OHCHR) country office in Sudan, and the establishment of a new United Nations (UN) political mission in Sudan, the UN Integrated Transition Mission in Sudan (UNITAMS) by UN Security Council (UNSC) Resolution S/RES/2524 of 4 June 2020 will make significant contribution to peace building Sudan.
- Enhanced cooperation between the Transitional Government and the International Criminal Court (ICC) led to the recent transfer of Ali Muhammad Ali Abd-Al-Rahman, former Janjaweed leader to the ICC on 9 June 2020, under an ICC arrest warrant since 2007. However, CRM findings noted a lack of clarity on the criteria of sending perpetrators of atrocities to the ICC. Furthermore, despite the constitutional charter transitional justice provisions, neither the institutions and legislations guiding the transitional justice process nor the financial resources for reparations have been established or secured.

**Arab League:** The Arab league, a 22-member regional organisation formed in March 1945 by Arab states from the Middle East, North Africa and Horn of Africa made efforts to contribute to the Sudan peace process. On 16 June 2019, the Secretary General of the Arab League, Ahmed Aboul-Gheit, held talks with the Transitional Military Council's Burhan and FFC leaders in Khartoum, mounting pressure for a civilian led government. However, the Arab League supported negotiations by encouraging dialogue. Before the TMC–FFC negotiations resumed, an Arab League initiative led by the Egyptian President al-Sisi met the deputy head of the TMC, Mohammed Hamdan Dagalo, on 29 July 2019 in Cairo, to discuss the security situation in Sudan. In August 2019, the Arab League issued a statement welcoming the signing of the Constitutional Declaration by the TMC and the FFC, reiterating its support of the transitional government.

#### 4.6.4 Key findings

The targeted review noted that a leading public governance challenge for the transitional government is lack of financial resources. Hence, the government seeks to expand the tax base through the rationalisation of tax exemptions and regulating the informal sector.

Although there have been important strides in developing a temporary constitutional framework for the transitional government, the targeted review observed that the disagreements and lack of trust present challenges that are beginning to seriously affect the speed and quality of the transitional process.

The targeted review noted that the three core principles of public governance in recent Sudanese political discourse and policy formulation, have been the subject of negotiation and debate over the past two decades. These have been applied with mixed success. These core principles of public governance are:

- The devolution and decentralisation of power
- The safe-guarding of human rights
- The separation of religion and state

##### **Devolution and decentralisation of power:**

From the interactions with different ministries, civil society and businesses, the targeted review established a general view that the dissolution of former President Omar Hassan Al-Bashir's government was a timely and necessary step towards realising a tangible devolution and decentralisation of power in the Republic of Sudan. The ensuing revolution that saw the formation of the Forces for Freedom and Change set in motion the next step in this very necessary process of devolution and decentralisation of power. It granted civilians an important voice in public governance and ensured their significant representation and participation in the transitional government.

However, the targeted review established that the history of military dominance over the politics of Sudan, devolution and decentralisation of power has proven to be a difficult step to make. The apparent connection between the military elite and previously warring factions, as well as their economic hold on resources in their respective states leaves little or no access to power for civilians. As a result, despite the seemingly even distribution of power between civilian and military representatives within the Sovereign Council, consultations by the targeted review revealed that the military representatives within the council tend

to have more influence in the final decisions made on crucial aspects of reform and governance, most likely because they took the presidency of the Sovereign Council.

**Safe-guarding of human rights:** The Draft Constitutional Charter for the 2019 Transitional Period does well to address core human rights concerns and challenges and key pieces of legislation affecting the welfare of women and children were in November 2020. Furthermore, the targeted review noted that the participation of previously marginalised groups in decision-making process related to public governance has grown exponentially, which bodes well for the affirmation and sanctity of human rights in the Republic of Sudan.

However, the targeted review observed a lack of female representation through civil society, in the highest structures of power such as the Sovereign Council, which disenfranchises the majority of citizens in the Republic of Sudan. In interviews with prominent civil society groups, the targeted review noted increasing levels of discontent due to the economic challenges, not only in the cities, but also in rural towns and villages where the recent government reforms are slowly implemented.

The targeted review further established that civil society and private sector feels that the continued influence of the military elite in accessing vital natural resources erodes the progress made by the transitional government to address accountability and human rights violations, which is undermining peace and stability in the country.

**Separation of religion and state:** The recent milestones and agreements of the transitional government of Sudan are laudable as it is encouraged to continue the drive to cease hostilities from armed groups. However, the mission observed that there is still debate and disagreement regarding the separation of religious doctrine and practice from the functions of government despite a clear distinction regarding separation within the ministerial work of government in Sudan and reference to that in the transitional constitution.

Civil society groups attribute this confusion to a strong cultural bias toward Islamic law and Arabic culture in Sudanese society. Officials from the Ministry of Federal Government and Ministry of Religious affairs insist that there are no problems in making this distinction. However, according to observations of the targeted review this was an important reason why recent negotiations between the Sudan People's Liberation

Movement – North North (Al-Hilu Faction) and the transitional government of Sudan stalled. Furthermore, it corroborates the reasoning behind the outcry regarding Islamist influence over curriculum preparation, and the subsequent resignation of Dr Omer El Garrai.

Notwithstanding the interests of the military elite, the unsaid primacy of Islamic Law and Arabic culture in defining their motivations is an ominous sign that conservative customary remnants of the previous political regime will linger on. This, as established by the mission, will seriously affect the sanctity of democratic, public governance, peace and stability in Sudan.

#### SPECIFIC OBSERVATIONS

##### **Military dominance over the politics of Sudan**

persists, and devolution and decentralisation of power have proven difficult. The apparent connection between the military class and previously warring factions, as well as their economic hold on the resources in their respective states, has granted little or no power to civilians. As a result, despite the seemingly even distribution of power between civilian and military representatives within the sovereign council, the military representatives within the council tend to have more influence in the final decisions made on crucial aspects of reform and governance. This is most likely because the military holds the presidency of the sovereign council.

##### **The Sudanese military has vast business interests in almost all economic sectors.**

Consultations suggests that this is a key contributor to economic distortions in the country because security-sector-linked businesses enjoy tariffs exception, tax exemptions and superior networks, which crowd out private-sector competition. Representatives of the private sector believe Sudan will not achieve significant debt relief if it fails to rationalise the parallel economy linked to security-sector-controlled businesses. Sudan recently undertook a review of the status of industrial and commercial companies owned and controlled by the security sector, which is known to have an economic presence and business interests in most sectors.

**Economic challenges foster conflict.** The review learnt that the popular public sentiment – that people were better off during the previous regime – will continue to grow if economic challenges are not addressed and could be a cause for conflict in the future of Sudan. Individuals in civil society and the private sector warn that the prevailing conditions resemble those that led

to the revolution that overthrew the al-Bashir regime. The review further established that both civil society and private sector believe that the continued influence of the military class over access to vital natural resources is eroding the progress made by the transitional government to address accountability and human rights violations, which undermine peace and stability.

**Weak planning between the federal government and the states.** The general sentiment of the states was that the federal government neglects and marginalises them in decision-making, national planning and resource allocation which may lead to future conflict. The budget-making process should be consultative, bottom-up and non-discriminatory.

**Profound weaknesses in non-security-sector public institutions** contribute to a huge loss of public resources and concentration of wealth in the hands of a few politically connected individuals. It is unclear whether these resources are kept within the country or expatriated to other countries, thus feeding into the illicit financial flow phenomenon.

**An absence of key institutions of accountability and transparency;** where these do exist, they are often weak and unable to function effectively due to capacity constraints. The collapse of key institutions also caused rampant corruption, economic distortions, sectoral imbalances, and patronage networks and led to loss of public trust.

The review received confirmation from the Ministry of Labour and Social Development that the private sector and civil society are optimistic that the government is prioritising building and strengthening institutions to address corruption and facilitate recovery of large sums of financial resources embezzled during the previous regime.

## 4.6.5 Recommendations

**Revive the national peace and reconciliation process.** By adopting a permanent constitution that follows a nationwide process run by an independent Constitutional Commission (Office of the Prime Minister, mediators, representatives of the African Union, UN) government can bring rebel groups on board. The government is also encouraged to initiate the Demobilisation and Disarmament National Programme in Sudan which should also ensure that the participation of the military in the economy, politics and civilian life is effectively regulated. Accordingly, the government is encouraged to develop and implement agreements on nation-building that minimise external influence on the peace process in Sudan and represent the various sectors of society in the peace-building process. Efforts should reinforce the role of national experts in the peace-building process and implement key provisions of the Juba Peace Agreement. Government is also encouraged to set up a Sudan Transitional Development Fund to finance key provisions of the peace agreement.

**Broaden participation in the armed forces.** Owing to the centrality of the military in the Sudanese society, the government is encouraged to undertake an audit of the participation of all social groups at various levels and professions in the military, particularly women.

**Build capacity for elections and reconstruction** that includes training of political parties and civil servants on how to maintain peace and security (parliament, public service commission, international experts, African Union and the UN). Community centres should be developed in all regions for healing and psychological support to the victims of war such as Peace Commission, Higher Peace Council, Ministry of Social Development and other related bodies may include Peace Commission, Transitional Justice Commission, Refugees Commission, Reparations Authority (Parliament, Ministry of Justice, Judiciary).

**Reforms in government procurement and contracting.** An urgent review of the laws and rules for procurement, contracting and surplus disposal is required to match and harmonise them with international and national standards for procurement. To achieve this, the Sudanese Government needs to also invest in the information and communication technology to facilitate public service delivery and offer cost-effective solutions (Ministry of Culture and Information). This also involves strengthening the capacity of the National Bureau for Statistical collect and publish data for transparency (Ministry of Finance).

## 4.7 SUMMARY OF TARGETED REVIEWS ON SELECTED COUNTRIES

This chapter has presented a review of the six African Union member states that underwent targeted reviews, namely the Republic of Sierra Leone, the Kingdom of Lesotho, the Republic of Chad, the Union of Comoros Islands, the Republic of Guinea and the Republic of Sudan.

In all the countries, the causes and drivers of UCG are multiple but in all six countries UCG was preceded by challenges relating to economic governance and lack of human and socioeconomic development.

The following issues emerged from the empirical analysis of the targeted reviews:

- Absence of strong and independent state institutions that are capable of carrying out their mandate without undue political interference.
- Blurred separation of powers between and among the three arms of government (executive, judiciary and legislative).
- Failure to uphold constitutionalism and the sacrosanctity of the constitution.
- Poor civil-military relations and politicisation of the national army.
- Failure to conduct democratic credible, free and fair elections.
- Absence of independent and competent election management bodies.
- Absence of good governance and erosion of state legitimacy.
- Poor service delivery and generally low living standards which are forcing substantial sections of the society to express their support of coups and UCGs with the hope that their plight will change.
- Lack of political will and commitment to implement reforms and recommendations of various commissions.
- Lack of inclusive and representative governments.
- Poor diversity management and marginalisation of some groups of the society.
- Tendency to abuse parliamentary majority to manipulatively amend constitutions in order to extend presidential term limits.
- Non-prioritisation of nation building, social cohesion programmes and inclusive dialogues.
- In a number of cases: external interference or influence.

Although the response of the AU and relevant RECs has not been consistent across all the UCG cases examined, interventions have assisted to provide incentives for restoration of constitutional order and legitimacy following UCG experiences.

The recommendations provided in this Chapter (for adoption at national, REC and AU level) will assist in strengthening the institutional, legal, policy and normative frameworks for preventing, managing and responding to UCG.

Whereas UCG causal and driving factors have been discussed, together with the evolution of the AU normative framework for managing UCG; there is a need to evaluate whether the AU and REC response mechanisms are watertight and functional enough to deter UCG and incentivise post-UCG constitutional restoration.

The following chapter, therefore, evaluates the AU sanctions regimes on UCG to establish their efficacy and effectiveness in light of the resurgence of coups and the recent wave of UCG on the continent.

# CHAPTER 5

## EFFICACY AND EFFECTIVENESS OF AFRICAN UNION SANCTIONS REGIMES ON UCG

### 5.1 INTRODUCTION

The High-Level African Union–African Peer Review Mechanism (AU-APRM) Consultative Mission to the United Nations and United States Government on Review of Normative Frameworks on Sanctions Regimes for Unconstitutional Change of Government took place from 16 to 23 of October 2022 in New York and Washington DC in the United States.

Consultations were part of African Governance Report 2023 which focuses on Unconstitutional Change of Government in Africa. The Africa Governance Report (AGR) is a biennial publication of the AU on the state of governance in Africa. It is produced by the APRM Continental Secretariat in collaboration with members of the African Governance Platform (AGP) of the Africa Governance Architecture (AGA) pursuant to the AU Assembly Decision Assembly/AU/Dec.720 (XXXII). Broadly, the AGR selects key themes related to governance in Africa to highlight best practices in governance for peer sharing; identify governance constraints and challenges; and make recommendations for take-up and enhanced governance by AU member states.

The AGR-2023 theme derives from two AU Assembly Decisions. The first is Assembly/AU/Dec. 815(XXXV) of the 35th Ordinary Session of the AU Assembly held in February 2022, Addis Ababa, which 'expressed concern on the resurgence of unconstitutional changes of government in Africa. The Assembly called on member states to uphold constitutionalism and fully respect all AU shared values, normative instruments, and legal instruments particularly the African Union Constitutive Act of 2002 and the African Charter on Democracy, Election and Governance (ACDEG)'. The second is the Decision of the 16th Extraordinary Summit of the AU Assembly on Terrorism and Unconstitutional Changes of Government held in Malabo, Equatorial Guinea which 'directed the African Peer Review Mechanism (APRM) and the African Governance Architecture (AGA) Platform to remodel the third edition of the bi-annual Africa Governance Report (AGR 23) to reflect issues related to unconstitutional changes of government on the continent'. It is on the basis of the significance of sanctions as a response to UCG that the consultative missions to review the normative frameworks for UCG were undertaken.

The AU-APRM Mission team comprised of the Chairperson, Committee of Experts of the African Union Committee of Experts of the Peace, and Security Council for the month of September 2022 and independent experts that included:

- Prof. Justice Gerard Niyungeko, the current Alternate Sanctions Commissioner at the African Development Bank and Former Legal Counsel of the AU. Former Judge at the African Court on People's and Human Rights and Former President of the Constitutional Court of Burundi.
- Dr Andrews Atta-Asamoah, Head, African Peace and Security Governance programme, Institute for Security Studies (ISS),
- Mr. Tseliso Lesenya, Deputy Secretary of African Policy Engagement and Analysis Centre (APEAC)
- Ms Maureen Lifongo, Chief Rapporteur, Expert on Regional Organisations and Democracy, University of Johannesburg, South Africa.

The purpose of the mission was to obtain information, perspectives from the UN and US government on the impact, and challenges, proposals for reform of sanctions regimes on UCG and specifically, to undertake an expert analysis of the efficacy and effectiveness of the African Union and RECs normative frameworks on sanctions regimes for UCG.

It was envisaged that the consultations would inform the development of recommendations to inform considerations regarding the ongoing AU institutional processes on review of guidelines for sanctions on UCG, and recommendations pertaining to the conditions and human rights of affected populations in situations of UCG.

Consultations held with the UN Security Council Secretariat Branch (SCSB) which directly supports the daily work of the Council, especially its rotating presidency, facilitates the holding of formal and informal meetings and other activities, manages the Council's monthly and daily programme of work, provides procedural advice, and supports Council missions to countries and regions of concern. The SCSB also contributes to drafting key official documents including the Security Council's Annual Report to the General Assembly, the Volumes of Resolutions and Decisions, and the list of matters of which the Council is seized.

The mission also held consultations with the Africa Group of the Security Council (A3) which consists of three non-permanent members of the Security Council. The A3 coordinates its efforts on various topics, ranging from health and migration to issues of peace and security and holds regular meetings to receive briefings from guests and UN officials and discuss on UN resolutions and topics to arrive at a common African position.

The A3 is chaired by an ambassador from a member state with the position rotating monthly. Additionally, to obtain perspectives on targeted sanctions the mission held consultations with the US Department of State which advises the president and leads the nation in foreign policy issues, including sanctions. The State Department negotiates treaties and agreements with foreign entities and represents the United States at the United Nations. The mission also met the US Department of Treasury which develops and implements economic sanctions.

Lastly, the mission held extensive consultations with representatives of permanent missions to the United Nations who preside in various Security Council Sanctions Committees. The representatives are responsible for organising and coordinating their member states participation in the work of the Organisation.

A total of ten key informant interviews were conducted and five expert review meetings held. Individual Key Informant Interviews were conducted using a qualitative in-depth guide.

## 5.2 BACKGROUND

Within the multilateral system and institutions, and among member states of the UN and AU, the pathway pursued in response to UCG includes the application of sanctions. According to the UN, sanctions are interventions that may be imposed on individuals, groups, businesses, institutions, or governments following violation of a law or binding oath. Sanctions in international public law are defined as 'a broad range of reactions adopted unilaterally or collectively by the States against the perpetrator of an internationally unlawful act in order to ensure respect for and performance of a right or obligation'.<sup>74</sup> They are also increasingly being used to support peace efforts, and to ensure that elections are held, or to demobilise armed groups that may be an impediment to the peace process.

Sanctions may include travel bans, transport control, asset freeze, military sanctions, arms embargoes as well as, diplomatic, cultural, trade and financial sanctions. Sanctions regimes have been imposed on countries by the United Nations (UN) Security Council, which implements sanctions to maintain or restore international peace and security under Chapter VII of the United Nations Charter. Specifically, Article 41 of the UN Charter states:

*The [United Nations] Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.*<sup>75</sup>

However, it must be noted that sanctions – whether in the form of complete or partial measures – are a last resort for addressing massive human rights violations, curbing illegal smuggling or stopping extremism groups. The idea is to change undesirable behaviour of state governments, limit opportunities for undesirable behaviour and/or deter other countries from choosing an undesirable course of action.

<sup>74</sup> Decaux, E., 2008. The definition of traditional sanctions: their scope and characteristics. *International Review of the Red Cross*, 90(870), pp.249-257.

<sup>75</sup> United Nations Charter. 26 June 1945. <https://www.un.org/en/about-us/un-charter/chapter-7>

### 5.2.1 Sanctions at the United Nations

The principal crisis-management body of the UN, the Security Council, responds to global threats primarily and almost exclusively by severing economic ties with state and non-state groups. A sanctions resolution must pass through the 15-member council by a majority vote and without a veto from any of the five permanent members: the United States, China, France, Russia, and the United Kingdom. The UN sanctions that are binding for all member states are asset freezes, travel bans, and arms embargoes.

According to Article 41 of the United Nations (UN) Charter, the Security Council has the authority to implement a variety of measures, such as regularly creating subsidiary organs, to support or enforce its decisions. Among the most common of these measures are sanctions, implementation of which is monitored by a committee, as well as panels and/or groups of experts.<sup>76</sup>

UN sanctions regimes are typically managed by a special committee and a monitoring group. The global police agency, Interpol, also assists selected sanctions committees but the UN has no independent means of enforcement and relies on member states, many of which have limited resources and little political incentive to prosecute noncompliance. Views shared by UN experts during the consultative mission suggest that enforcement of UN sanctions is often weak

Prior to 1990, the UN Security Council imposed sanctions against just two states: Southern Rhodesia (1966) and South Africa (1977). However, since the end of the Cold War on 26 December 1991, the council has applied sanctions in 28 instances: the former Yugoslavia (2), Haiti, Iraq (2), Angola, Rwanda, Sierra Leone, Somalia and Eritrea, Eritrea and Ethiopia, Liberia (3), Democratic Republic of Congo (DRC), Côte d'Ivoire, Sudan, Lebanon, Democratic People's Republic of Korea (DPRK), Iran, Libya (2), Guinea-Bissau, Central African Republic (CAR), Yemen, South Sudan and Mali, as well as against ISIL (Da'esh) and Al-Qaeda and Taliban.

As of December 2022, there are 14 UN sanctions committees<sup>77</sup> with jurisdiction through the sanctions list to be effective at national, regional, continental, and international levels. For instance, the UN counter-terrorism sanctions regime

<sup>76</sup> United Nations Security Council, 2022, United Nations <https://www.un.org/securitycouncil/content/repertoire/sanctions-and-other-committees>

<sup>77</sup> United Nations Security Council, 2022, Sanctions, United Nations <https://www.un.org/securitycouncil/sanctions/information>

implemented in 2001 on Al-Qaeda and the Taliban intensified sanctions regimes. The unprecedented increase caused the 2002 Sanctions Committee charged with overseeing the counterterrorism sanctions regimes to issue guidelines on how to pursue delisting through a state. This ability to make a large impact increases the need to re-examine the UN's conflict-resolution practices, including sanctions.<sup>78</sup>

Despite the collaborative and cooperative fashion in which sanctions are conceived, they are often divisive, reflecting deep-seated ideological differences and the competing interests of world powers. For instance, since 2011, Russia and China vetoed several Security Council resolutions concerning the conflict in Syria.<sup>79</sup> This is the case with all the other United Nations Security Council permanent members. Since 1946 – as of 22 December 2022 – Russia/Union of Soviet Socialist Republics (USSR) used its veto 124 times, the US 82 times, the UK 29 times, China 18 times, and France 16 times.<sup>80</sup>

Although decisions on imposing sanctions are supposedly made in the interests of maintaining international peace and security in accordance with the principles and purposes of the UN, the reality is that of political self-interest and geopolitical interests. Even the United Nations Security Council Report of December 2020 noted that '[United Nations Security Council] permanent members use the veto to defend their national interests, to uphold a tenet of their foreign policy or, in some cases, to promote a single issue of particular importance to a state'.<sup>81</sup>

The subordination of political self-interests and geopolitical interests ahead of consideration of continental peace and security is ideally the best approach in the AU. Notwithstanding their good intentions and motive, sanctions may have unintended and undesirable social, economic, political and humanitarian consequences in the form of unforeseeable collateral damage. They are considered 'blunt' foreign policy instruments and their efficacy in some contexts and circumstances is often debatable, hence their

application should always be preceded by a careful and meticulous cost and benefit analysis.<sup>82</sup> For example, in 2022, the year of food security at the AU, the impact of banking and finance sanctions on Russia in June 2022 led to a delay in payments for agricultural exports to the continent.<sup>83</sup>

Ensuring the legitimacy and effectiveness of UN sanctions regimes may thus have to consider, among others, facilitating the a) protection, respect, and promotion of independent reviews of sanctions eligibility, b) ensuring that debates on working methods in the Security Council include discussion of working methods of sanctions committees, and c) exploring the implementation of preventive action through the Security Council towards more comprehensive solutions.<sup>84</sup>

The imposition of sanctions by the Organisation of African Unity (OAU) has been continued in the formation of the African Union (AU). Article 23 of the Constitutive Act of the AU stipulates that the appropriate sanctions may be imposed on any member state that fails to comply with the decisions and policies of the Union. Furthermore, the Constitutive Act specifies non-compliance regarding a) Non-payment of Budgetary Contributions (Article 23(1)), b) Failure to Comply with AU Decisions and Policies (Article 23(2)) and c) Unconstitutional Change of Government (Article 30).

78 Carisch, E., Rickard-Martin, L. and Meister, S.R., 2017. *Evolution of UN Sanctions*. Cham: Springer.

79 Masters, J., 2019. *What are Economic Sanctions?* Council on Foreign Relations.

80 United Nations, 2022. United Nations Security Council Meetings & Outcomes Tables. 22 December 2022. <https://research.un.org/en/docs/sc/quick>

81 United Nations, 2020. United Nations Security Council Working Methods: The Veto. 16 December 2020. <https://www.security-councilreport.org/un-security-council-working-methods/the-veto.php>

82 Haass, R., 1998. Economic sanctions: Too much of a bad thing. Brookings Institution.

83 Fabricius, P., 2022. Africa must separate the wheat from Russia's geopolitical chaff. ISS Today. Institute of Security Studies (ISS). <https://issafrica.org/iss-today/africa-must-separate-the-wheat-from-russias-geopolitical-chaff>

84 Cockayne, J., Brubaker, R. and Jayakody, N., 2018. *Fairly Clear Risks: Protecting UN sanctions' legitimacy and effectiveness through fair and clear procedures*. United Nations University.

## 5.2.2 Current AU normative framework for sanctions regime

The following instruments comprise the normative framework for the imposition of sanctions in the African Union. These are the Constitutive Act of the African Union (2000); the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lomé Declaration, 2000); the Rules of Procedure of the Assembly of the Union (2002); the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2003);<sup>85</sup> and the African Charter on Democracy, Elections and Governance (2007, ratified in 2012).

## 5.2.4 Sanctions and UCG in Africa

The AU employs the above instruments and frameworks to prevent and manage UCG and mitigate its effects. Primary instruments include the Lomé Declaration; the Protocol Relating to the Establishment of the Peace and Security of the African Union; the AU Constitutive Act; and, the African Charter on Democracy, Elections, and Governance (ACDEG).

**Chapter 8 of the ACDEG entitled ‘Sanctions in Cases of Unconstitutional Changes of Government’.** The AU defines UCG in Article 23 of the AU Peace and Security Council (PSC) and empowers the body to impose sanctions against member states in (Article 24). The protocol also details the types of sanctions that could be imposed against the member states and perpetrators in Article 25. The PSC evokes the powers stipulated in Article 7 (g) of its Protocol to respond to UCG. To date, Article 7(g) has been evoked by the PSC 21 times. The PSC has imposed sanctions on member states for various reasons but mostly because of unconstitutional changes of government. The PSC has on two occasions imposed targeted sanctions that include denial of visas, travel ban and asset freeze.

In ensuring the effectiveness of sanctions imposed by the AU, the PSC under Article 8(5) of the PSC Protocol established a PSC Sub-Committee on Sanctions to monitor sanctions. The Sanctions Sub-Committee was established based on the outcome of the Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Changes of Government in

Africa (2009). The Ezulwini Framework proposed a structure for the Committee and identified other measures for enhancing the effectiveness of AU sanctions regimes and characterised the Committee on Sanctions as a subsidiary standing body of the Peace and Security Council established pursuant to Articles 7 (g) and 8 (5) of the Peace and Security Council Protocol and within the broad framework of relevant AU instruments.

However, the PSC Sub-Committee on Sanctions is yet to be operationalised and the PSC at its 1,100th meeting, on 15 August 2022, directed the Commission to put in place a solid sanctions infrastructure using the available resources in the Political Affairs, Peace and Security Department to support the work of the PSC Sub-Committee on Sanctions, as well as a monitoring and evaluation group to assess implementation of the sanctions imposed on member states. The PSC also underlines 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; in this regard, requested the 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 collaborative 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.

Subsequently, the Declaration and Decision on Terrorism and Unconstitutional Changes of Government adopted by the 16th Extraordinary Session of the Assembly of Heads of State and Government of the African Union, in Malabo, Equatorial Guinea on 28 May 2022, highlighted the consolidation of the AU member states’ efforts to strengthen national, regional, and continental mechanisms for early warning and conflict prevention. The declaration takes cognisance of the interface between the African Governance Architecture (AGA) and the African Peace and Security Architecture (APSA) towards facilitation of good governance, constitutionalism, and the rule of law through multi-level engagement. To this end, and among others, AU countries were encouraged to join the African Peer Review Mechanism (APRM) to ensure execution of these priorities.

<sup>85</sup> Other documents which deal with peace and security are: Common African Deference and Security (CADSP), 2004; Modalities for the Functioning of the Panel of the Wise; A New Partnership for Africa’s Development (NEPAD).

## 5.3 KEY MISSION FINDINGS

### 5.3.1 Degree of involvement of UN and AU Committee Experts

From the mission's examination of the extent to which the experts consulted were involved in the development of sanctions guidelines and committee mandates, and their degree of participation, it was established that the Africa Group has not been involved in either sanctions policy formulation or implementation at any level (regional or the UN) and their knowledge on sanctions stemmed from their interactions with sanctioned regimes, unilateral sanctions imposed by member states or having closely followed UN-imposed sanctions.

By contrast UN experts and staff demonstrated comprehensive knowledge and involvement of sanctions as many of them have been involved in creating various Sanctions Committees although they had not participated in the development of and implementation of either AU- or UN-level guidelines on sanctions for UCG as this area is considered a function of regional economic communities. The focus of the UN is on developing guidelines for the violation of human rights, arms embargoes, and sexual violence, amongst others.

### 5.3.2 Coherences between UN and AU Regimes

The Africa Group and the UN experts and staff conceded that the safeguarding of human rights is a commonly shared value between the AU and the UN despite their different approaches. They reaffirmed that human rights are universal rights and should not be relegated to a particular organisation and its enforcement needs to be widened. A pertinent issue mirrored by both the Africa Group and UN experts and staff was that while it is advisable for the AU to learn from the UN model of sanctions, the AU must be careful not to replicate the UN's mistakes. The establishment of an original, African model to reflect African realities was strongly encouraged.

The Africa Group highlighted that the fundamental principles of peace, security, and the respect for human rights for the establishment of sanctions between the AU and the UN are the same although their approaches are different. Differences arise from the enforcement mechanisms of each organisation as decisions made by the AU are carried out by Heads of States through the Peace and Security Council

while those of the UN are carried out by the Security Council through Expert Panels. The AU Group also indicated that unlike the UN, it faces challenges in enforcing sanctions particularly in illicit trafficking had been defined in the African Union's Special Declaration on Illicit Financial Flows (IFFs), Assembly/AU/Decl.5. (XXIV), adopted by the Heads of State and Government at the 24th Summit in 2015 should form part of such a Panel of Experts.

The AU Group stressed that UN sanctions on Africa are often unfair when it comes to targeted economic sanctions and leaders of member states are faced with unrealistic demands with stringent timeframes from the UN, especially about the verification of relevant data used in listing for targeted sanction. Also, the Africa Group opined that for sanctions not to be resisted, they should be the last resort after all mediation avenues have been exhausted. The Group reiterated the importance of using informal mediation channels (in contrast to formal channels in the UN) to resolve Africa's problems as they are uncomfortable in addressing their issues publicly. Camaraderie is an important aspect of Africa's history and Africans can easily relate with each other informally.

Another challenge voiced by the AU Group was inadequate public information on the grounds and rationale for sanctions across states and the populations of sanctioned countries and neighbouring states. They felt that this results in limited effectiveness in the enforcement of sanctions, especially when sanctioned authorities use the media to promote competing narratives on the rationale of sanctions, making them unpopular and ineffective.

The AU Group emphasised the lack of effective synergy between AU and ECOWAS sanctions regimes, and that of the UN, especially in addressing conflict issues, due to differences in approaches and resources. The group indicated that unlike the AU, the UN has sufficient resources and stronger mechanisms. Additionally, and unlike the AU, the UN publishes a list of the names of armed groups leaders which is referred to the International Criminal Court of Justice at the Hague for prosecution. This is an effective practice since most leaders do not want to be stigmatised and would like to remain unknown. The UN experts and staff also stated that the reparation of assets of UCG leaders to the victims of violence should be formalised and enforced especially at the sub-regional level for it to be effective.

Another area of concern regarding the comparative effectiveness of the two regimes highlighted was the implementation of discretionary arrangements. UN experts and staff highlighted that although commonalities such as asset freeze and arms embargo are found in AU and UN sanction regimes in their application of embargoes, each sanction regime (determined by committee) is unique in rationale, area and/or modality.

Other limitations on AU sanctions highlighted by the UN experts and staff include mistaken identity (failure to verify identities), porous borders which compromise travel bans, the fear of alienating the major powers backing the UCG ushered administration and lack of resources or capacity to implement sanctions. The UN experts and staff further stated that sanctions on arms embargo are difficult to enforce when the source of the arms are major powers, and this dynamic is often a factor in UCG. Even though one way to address the issue of mistaken identity is to provide the images and details of individuals, the lack of biometric systems at the UN and AU compounds the issue as they rely on Interpol to upload images on their website.

A nuanced perspective of AU sanctions by both the AU, the UN, and the RECs suggests that sanctions by ECOWAS were considered more effective than those of the UN. One such case cited was that of the UN sanctions against Mali which in contrast to those of ECOWAS which were broader and swift. They included a ban on use of air space in neighbouring countries. The experts concluded that ECOWAS sanctions were quicker compared to the UN and that travel bans sanctions from ECOWAS may be very effective if applied by neighbouring states.

The UN experts and staff also insisted that the lack of political will impedes successful implementation of sanctions. They alluded that the popularity of the change of government also has an impact on the nature of sanctions and the obligation to implement the arms embargo, for example, lies with the regional states. RECs are thus critical to implementation of sanctions regimes.

### 5.3.3 Efficacy of AU Sanctions

In rating the efficacy of legislation and instruments on normative frameworks for sanction regimes in Africa, therefore, the Africa Group stated that ECOWAS has more accomplishments than the AU in supporting democratic and governance efforts in West Africa. For the AU to be more

effective, its approaches need to be coordinated on a larger scale with the inclusion of sub-regional organisations. In addition, the AU Group cautioned that failure to enforce sanctions during the transition phase could lead to the targeting of individuals, thus affecting the escalation ladder.

The AU Group also concluded that the AU legal framework for sanctions is robust but hampered in its swift enforcement by bureaucracy. In this respect, the Group insisted on enhancing the understanding of critical elements of the escalation ladder. The AU Group stated that having relevant knowledge and proper monitoring are important aspects before escalation. Additionally, the Group highlighted that the widening of the sanctions framework to include bans on major events and sports competitions as most member states are either involved in all or at least one of the above.

The Africa Group cautioned against the introduction of economic sanctions, arguing that they exact a heavy toll on developing countries, especially in Africa. They highlighted that although it is inevitable in some instances, caution should be taken to avert adverse effects on a larger section of the population. If incorrectly implemented, economic sanctions could instead offer an opportunity for leaders who have taken power through UCG to mobilise the population against the AU sanctions, which would be counterproductive. The Group, however, called for the internationalisation of sanctions as most African member states have geo-political alliances abroad that may offer them protection in defiance of sanctions.

The AU Group applauded the fact that with limited material resources, the AU has made great strides in promoting peace and security and in particular sanctioning UCG in Africa. The AU Group acknowledged that a lack of financial capital impedes the creation of different Sanction Committees and Panels of Experts. The Group also noted that implementation of the *African Continental Free Trade Area* (AfCFTA) to help bolster African economies is an important strategy for availing much-needed financial and material resources outside without external assistance.

Also, they noted that although UN sanctions regimes have stronger reach due to resources availability, engaging the AU can enhance its effectiveness since the AU has a broader understanding of the context and its alignment with the realities on the continent. Similarly, African conflicts are global conflicts and must thus be treated within a wider scope. The Group

insisted, however, that Africa has the capacity to resolve its challenges without UN intervention which is often experienced as interference; given space and time to apply its robust sanctions framework, with its nuanced understanding of contextual realities, the continent can deliver effective deterrents against and redress for UCG.

In reference to the potential complementary role of the UN Security Council, UN experts and staff highlighted that there is no UN Security Council Resolution on UCG and that UCG therefore does not qualify as a listing requirement in for sanctions. Reference was made to Article 50 on unintended consequences of sanctions measures and what to do in case of violation. To this end, UN experts and staff reaffirmed the need to create awareness about sanction violations as sanctions are merely a political tool and that considerations are often not based on judicial process but political realities.

Accordingly, UN experts and staff indicated that there is an urgent need for the AU to create a due diligence process as part of the mechanism for application of sanctions to provides a judicious path to the determination and application of sanctions. Such a process would include identifiers and/or details required before the designation of individuals as candidates for listing. The absence of a UN due diligence process was justified as a measure to avoid alerting and affording listing candidates an opportunity to evade and hide assets. Although the UN has a post due diligence process through the office of the United Nations Ombudspersons to Sanctions Committees which consists of verification, dialogue, and a decision-making phase UN experts and staff expressed concerns over the adequacy of the process.

The Office of the Ombudsperson states that the mandate of ombudsperson is limited to designations made by the UN Security Council Sanctions Committees. However, the due process rights of individuals designated for sanctions by other UN Sanctions Committees are fundamentally the same as those covered by the Security Council Resolution 1267 regime. The office states that although such individuals have access to the Focal Point located in the UN Secretariat to forward petitions to relevant sanctions committees, the Focal Point process is considered by many as inadequate to address the legitimate due process concerns of individuals designated by other UN Sanctions Committees. It highlights that 'litigation in domestic and regional courts is increasingly challenging the legality of the implementation of the UN's targeted

sanctions on individuals in other sanctions regimes' and that the development of context-sensitive review mechanisms for non-1267 sanctions regimes, taking into consideration the differences between regimes applying sanctions in situations of armed conflict and sanctions related to the nuclear proliferation activities of UN member states was necessary. However, the extension of the mandate of the Ombudsperson review mechanism to other sanctions regimes has not been possible in the current political climate at the Security Council.<sup>86</sup>

UN experts and staff also stressed the importance of strong liberal institutions for the successful enforcement of sanctions. They added that since UCG is not limited to Africa, sanctions should not be punitive a form of deterrent even though they have a punitive component. They reiterated that since most effective sanctions severely affect the population, targeted sanctions are the best options as they send a clear message regarding actions considered errant. They suggested that for successful enforcement of sanctions, individual targeted sanctions are the ideal step-by-step process especially in managing UCG in Africa.

The UN experts and staff underscored the need to establish different travel ban and asset freeze criteria for individuals because these could assist in sending strong signals and act as a deterrent to 'would be' leaders of UCG. They added that suspending a member state from AU activities should be the last resort, when the AU has exhausted all avenues for mediation after a UCG.

UN experts and staff also called for other regional countries to fully ratify the AU legal instruments to gain legitimacy and for sanctions to be enforced successfully. This is important because many regional states do not fully commit to implement sanctions, which makes enforcement difficult. While the legal framework of ECOWAS for instance is solid and sanctions effective, it can still be enhanced by more compliance and mediation.

UN experts and staff suggested that the AU Sanctions regime should consider adopting the regime by the UN and to achieve this, they must ensure that it garner the support from a permanent Security Council member (P5) for that region, (possibly the United States and/or Russia and China) because sanctions can be easily evaded when their jurisdiction application is not global. They explained that the challenge in getting the AU-designated list of travel ban for UCG on

<sup>86</sup> Biersteker, T.J., Van den Herik, L. and Brubaker, R., 2021. *Enhancing due process in UN Security Council targeted sanctions regimes.*

a UNSC listing is that the primary listing criteria must be a security issue of global proportion and the UCG has other causes and manifestations that are not security in nature. In cases of non-compliant states in the enforcement of sanctions such as travel bans, there are no consequences as the sanctions cannot extend to such states.

#### 5.3.4 Key points

**The mission found that there is coherence between UN and AU regimes.** The Africa Group (A3) and UN experts and staff conceded that the safeguarding of human rights is a shared value of the AU and the UN, despite their different approaches. They reaffirmed that human rights are universal rights that should not be relegated to a particular organisation and that the enforcement of human rights needs to be widened. A pertinent issue mirrored by both the Africa Group and UN experts and staff was the idea that while it is advisable for the AU to learn from the UN model of sanctions, it must be careful not to replicate the UN's mistakes. The establishment of an original, African model to reflect African realities was strongly encouraged.

The Africa Group highlighted that the fundamental principles of peace, security and respect for human rights for the establishment of sanctions between the AU and the UN are the same, although their approaches are different. These differences arise from the enforcement mechanisms of both organisations as decisions made by the AU are carried out by heads of state through the Peace and Security Council, while those of the UN are carried out by the Security Council through expert panels.

The mission also found **a lack of effective synergy between the AU and ECOWAS sanctions regimes and that of the UN**, especially in addressing conflict issues, which, they argued, was due to differences in approaches and resources. The group indicated that, unlike the AU, the UN has sufficient resources and stronger mechanisms. Additionally, and unlike the AU, the UN publishes a list of the names of leaders of armed groups, which are subsequently referred to the International Criminal Court of Justice at The Hague, for prosecution. This is an effective practice since most leaders do not want to be stigmatised and would like to remain unknown. The UN experts and staff also stated that the repatriation of assets belonging to leaders of UCG to the victims of violence ought to be formalised and enforced especially at the sub-regional level for it to be effective.

Regarding the efficacy of AU sanctions, in respect of legislation and instruments on normative frameworks for sanction regimes in Africa, the Africa Group stated that **ECOWAS has more accomplishments than the AU in supporting democratic and governance efforts in West Africa.** For the AU to be more effective, the Africa Group pointed out that its approaches need to be coordinated on a larger scale and include sub-regional organisations. In addition, the Africa Group cautioned that failure to enforce sanctions during the transition phase could lead to the targeting of individuals thus affecting the escalation ladder.

The Africa Group also concluded that the **AU legal framework for sanctions is robust but is hampered in its swift enforcement by a bureaucracy** that involves several entities delegated by the Assembly, all of which apply intricate decision-making processes. Additionally, the experts and the A3 indicated that while the consensus approach to decision making is considered the most optimal principle in the AU, the lack of a voting option creates significant delays in decision making.

The A3 and experts further highlighted the **absence of an institutionalised entity** within the AU that has permanent staff contingent of sanctions experts with the responsibility of examining situations and determining the type and scope of sanctions. Among others, the group indicated that the absence of such an entity limits the understanding of critical elements of the escalation ladder, and application of expert knowledge. The lack of a specialised entity also affects capacity for proper monitoring of efficacy and evaluation of the effectiveness of sanctions. They also highlighted that the sanctions framework excludes bans on major events and sports competitions as most member states are either involved at least one of the above sanctions.

**The Africa Group cautioned against the introduction of broad economic sanctions**, arguing that they exact a heavy toll on developing countries, especially African countries. They highlighted that although adverse effects are inevitable in some instances, measures must be taken to minimise their effect on the population. They pointed out that if indiscriminately implemented, economic sanctions could provide political capital for UCG leaders to mobilise the population against AU sanctions, which would be counterproductive. Additionally, the group pointed out that the lack of globally corroborated application of AU sanctions may accord UCG

leaders in African member states protection in defiance of sanctions.

Another key finding of the report was that while sanctions are a tool to encourage change toward positive behaviour that is beneficial for the development of a nation, they must be part of a broader package of response to deviation from agreed norms as they are not as effective if they are applied alone. The package may comprise different types of measures such as visa restrictions, debt and/or financial embargos, and many other measures such as trade and export controls, which may not necessarily be classified as sanctions.

**The private sector was identified as an important entity in the application of sanctions**

by states, particularly in instances of financial sanctions, which are coordinated by central banks. Such measures as those applied by the central banks to compel the private sector to corroborate sanctions are significant in this effort.

**It was observed that counter terrorism (CT) sanctions are comparatively enforced more diligently and rigorously than those for UCG.**

The CT framework can inform how similar AU sanctions and related frameworks may be implemented to prevent UCG.

As indicated earlier, sanctions are important measures applied by the United Nations because of the need to safeguard world peace and security. In the context of the African Union, however, sanctions have been instituted as a deterrent to UCG among its member states.

A considerably comprehensive framework of legal instruments amongst which include the 2000 Lomé Declaration to Unconstitutional Changes of Government; the 2000 Constitutive Act of the African Union; the 2002 Rules of Procedure of the Assembly of the Union; the 2003 Protocol Relating to the Establishment of the Peace and Security Council of the African Union and the 2007 African Charter on Democracy, Elections and Governance amongst others, is in place for AU Sanctions against the unconstitutional change of government.

Responses from key informant interviews and high panel discussions conducted with the UN experts and staff and the Africa Group highlighted the rationale behind sanctions and how they should be enforced. A common thread from the interviews revealed that the UN experts and staff have a comparatively much more comprehensive knowledge of sanctions regimes due to regular and consistent involvement in the establishing of

guidelines for different Sanctions Committees or as participants in those Sanction Committees.

The Africa Group, in contrast, possessed limited knowledge on sanctions and participation thereof. Some of their knowledge stemmed from their interactions with sanctioned regimes, reading about UN sanctions or being members of the A3 in the UN Security Council with limited involvement.

The Africa Group and the UN experts and staff reaffirmed the existence of commonly shared values between the UN and AU for the attainment of peace, security and the respect of human rights although their approaches are different.

The Africa Group pointed that in contrast with the UN which possess a wide range of resources, the AU, with its limited financial resources, has made greater strides in terms of promoting peace and security and in particular sanctioning UCG within the continent. They even proposed that the continent could fund their sanction committees and Panel of Experts by exploiting the untapped resources from the continent. They believed that the AU's understanding of the context and alignment with the realities of the continent could have a positive effect unlike the UN which uses a wider approach, and which is always problematic.

The Africa Group unanimously stated that Africa should be allowed to resolve its own problems and presence of other organisations (like the UN) should be limited. They suggested that Africa be allowed to fully utilise its informal channels which have worked and are still working to address its problems. After all, camaraderie is an important aspect in Africa's history and Africans can easily relate with each other informally.

The Africa Group emphasised the need for equal treatment between Africa and the rest of the world during the meeting out of sanctions. This aspect is important as they felt that Africa is being targeted by most rich countries when it comes to how sanctions are rolled out.

The Africa Group explained that sanctions should have a finite timeframe as longer sanctions usually lose momentum although the UN and US government disputed this fact with the reason being it is a detrimental to the sanction regimes for UCGs. The AU Group also proposed the adding of other sanctions such as sport bans and major events on AU list of sanctions.

A pertinent issue mirrored by the Africa Group, UN experts and staff was the idea that while it is advisable for the AU to learn from the UN model of sanctions, they must be careful not to replicate

the UN mistakes. The establishment of an original, African model to reflect African realities was emphasised.

Although the UN Experts/Staff pointed out the need for regional involvement for the successful enforcement of sanctions, they were quite concerned about its humanitarian impact. They lauded ECOWAS' swift reaction in dealing with unconstitutional changes of government and they believed that the sub-regional organisation could be more effective if its sanctions were adhered to by all neighbouring states.

The UN experts and staff advised the AU to seek the adoption of a UN Security Council Resolution on UCGs since it is not listing requirement to expedite actions on sanctions. Above all, the UN Experts/

Staff and the AU Group reaffirmed the importance of the creation a Sanction Committee for any sanction to be effective.

Furthermore, the UN experts and staff emphasised that although the focus of the AU PSC is on the unconstitutional change of government, other issues such as human rights violations and the illicit trafficking of natural resources should be included in their mandate as they are most often the main drivers of conflict and a factor in UCG in the region. They also proposed that for sanctions to be effectively imposed, the AU should devise a means to get rid of the system of consensus in decision making as it delays the decision-making process.

From the general overview, it is evident that the AU normative framework on sanction regimes for unconstitutional change of government is exhaustive in its principles and procedures. However, caution needs to be applied when sanctions are enforced to avoid it being used as a political tool. The impact of targeted sanctions remains debatable, lessons learnt from previously implemented sanctions would help the AU to close the gaps/limitations that existed to avoid repeating the same mistakes.

## 5.5 RECOMMENDATIONS

The consensus from both the UN experts on sanctions and the Africa Group respondents converged on two broad sets of recommendations consequential to all others: firstly, that AU sanctions must be supported by the UN and secondly, that the AU sanctions regime institutional arrangements need to be revisited.

The first set of recommendations encourages the AU Sanctions regime to consider adopting selected elements of the UN sanctions regimes. Consultations highlighted that the first critical step, therefore a general recommendation, is to ensure that the AU sanctions regime and Permanent Members of the Security Council (P5) make provisions for engaging with one another. Such engagements should consider the relationship between the P5 member and the African member state in question. The rationale for this derives from the recognition that sanctions are often, and easily, evaded when applied to a confined political and economic jurisdiction, when the application of sanctions is not corroborated globally. In cases of non-compliant states in the enforcement of sanctions such as travel bans, there are no consequences as sanctions cannot extend to such states.

Engagement of the P5 would enhance the efficacy of sanctions in cases where the AU and RECs face challenges in getting designated travel ban lists for UCG on the United Nations Security Council Consolidated List which includes all individuals and entities subject to measures imposed by the Security Council. Each sanctions committee established by the United Nations Security Council publishes the names of individuals and entities listed in relation to that committee as well as information concerning specific measures that apply to each listed name. Names are included on one Consolidated List to facilitate implementation of measures, and neither implies that all names are listed under one regime, nor that the criteria for listing specific names are the same. For each instance where the Security Council has decided to impose measures in response to a threat, a Security Council Committee manages the sanctions regime.<sup>87</sup>

<sup>87</sup> United Nations, 2022. United Nations Security Council Consolidated List. <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>

The consultations did, however, reveal a significant legislative challenge regarding this recommendation: that the primary listing criteria in the United Nations Security Council is that the event must qualify as a security issue of **global** proportions whereas UCG has causes and manifestations that are not necessarily related to security.

The second set of recommendations highlights the need to revisit institutional architecture and review institutional procedures to establish new entities to ensure that decisions made by committees are based on accurate assessments of the evidence and an expert understanding of the sanctions regime. A major aspect of institutional procedures highlighted by the Africa Group was that of a finite timeframe for sanctions. The group indicated that long periods of sanctions usually lose their ineffectiveness because of loss of momentum. The UN and US government's position was that removal of sanctions before demanded reforms are in place is detrimental to the sanction regimes, especially for UCG.

Specifically, the following recommendations on the nature and scope of sanctions, as well as those pertaining to the review institutional procedures within the African Union were proposed by both the UN experts and the Africa Group:

**Globalise the African Union Sanctions Regime and enhance the credibility of UN Sanctions.** Both the African Group and UN experts recommend that the AU pursue adoption of a UN Security Council Resolution on UCG as it is not a listing requirement for the UN. The recommendation recognises the efficacy limitations of AU sanctions when applied within the confines of Africa. However, the experts cautioned that such a process must also address the need to enhance the impartiality of UN sanctions to ensure that standards are applied consistently to reduce discretion, which is often based on political inclinations as opposed to agreed principles. The concern was raised by the Africa Group, which indicated serious biases against Africa in the application of sanctions.

**Balance the Principle of Responsibility to Act and state sovereignty.** The mission recommends that the AU Security Council revisit its institutional procedures, particularly regarding the introduction of sanctions. Specifically, the AU is encouraged to introduce provisions and mechanisms that allow member states, through the judiciary or other mechanism, to resolve their UCG situation internally before the introduction of sanctions by

the AU. The recommendation seeks to create a balance between the principle of sovereignty and non-interference in domestic affairs and that of 'responsibility to act'. The AU is thus encouraged to consider revising Article 24 of the African Charter on Democracy Elections and Governance.

**Broaden and deepen the scope of sanctions.**

The mission deriving from the conclusion of consulted parties recommends that the AU broaden the spectrum of its sanctions and consider all forms of sanctions including economic, natural-resource-related and human rights criteria. Other sanctions proposed included sport bans and bans from participating in major global events. The need to formally factor the humanitarian caveat into the architecture on the imposition of sanctions is emphasised. The AU will need to further define the legal and administrative elements of UCG to allow for targeting of leaders in power retaining power unconstitutionally. This will involve redefining and sequencing the escalation ladder to reflect clear parameters and actions targeting the leadership of UCG.

Accordingly, the African Union is encouraged to introduce an elaborate Due Diligence Process that enumerates the requirements for listing and/or designating individuals. Institute shorter term timeframes for sanctions and ensure they are constantly monitored. The mission was encouraged to consider recommending the adoption of the 2014 Report of the African Union Commission of Inquiry on South Sudan developed under the guidance of H.E Olusegun Obasanjo. UN Experts indicated that the report was uniquely authoritative and should be replicated.

**Constant and regular monitoring and assessment of sanctions.** It is recommended that the AU constantly and regularly monitor sanctions imposed on member states to ensure that it is up to date on political, peace and security developments in the sanctioned states and that once conditions for lifting sanctions are achieved or met, the imposed sanctions are lifted in a timely fashion without extending any negative impact on citizens or any section(s) of the population.

**Introduce inter-agency meetings with UN.** Both the UN experts and Africa Group recommend formal and regular meetings between the African Union Peace and Security Council and the United Nations Security Council to improve institutional coherence and synergy.

**Revise the institutional architecture of the Sanctions Regime.** The mission recommends and encourages the AU to pursue reform of the Peace and Security Council. To enhance efficacy, the mission recommended the following:

- **Introduce voting.** The Africa Group recommends that in the interest of a more efficient sanctions regime, the AU consider the introduction of a voting element to facilitate a timeous agreement process. The voting process would augment the established process based on the principle of consensus. A request to the UN to provide the AU with resources to facilitate its efforts on sanctions is also recommended.
- **Introduce specialised entities in the PSC.** The AU is encouraged to establish different sanctions committees for each member state and situation under sanction. Additionally, the AU is encouraged to establish Committee of Experts or Expert Panels with the allocation of different experts appointed on merit. Such committees or panels may borrow from Article 41 of the United Nations Charter gives the Security Council the authority to use a variety of measures to enforce its decisions. The Council regularly creates subsidiary organs to support or implement these measures. Among the most common are those measures that are known as ‘sanctions’, which are generally supported by a committee, as well as Panels/Groups of Experts or other mechanisms to monitor implementation of the sanctions.
- **Institute evaluation mechanisms.** The AU is also encouraged to publicise the rationale and modalities for sanctions across the continent and ensure that the AU is involved in monitoring the progress of implementation of the sanctioned regime. This would also allow the AU to examine the impact of sanctions from all levels.
- **Regular engagement of member states on peace and security issues.** It was suggested that AU member states consider convening regular forums (within their respective regional economic communities and at continental level) to discuss peace and security issues, including matters relating to UCG to facilitate identification of pertinent peace and security threats within member states, at regional and continental level that may be essential for deploying preventive measures and early responses especially to peace and security situations that may escalate to UCG. Such forums and engagements will also create platforms for the regular review of the AU sanctionary frameworks and other related normative instruments on UCG to strengthen their efficacy.
- **African Union unified approach on UCG Sanctions at the United Nations.** The AU and A3 Group were encouraged to have a unified voice at the UN relating to sanctions imposed on member states after UCG incidents. It is also recommended that the AU – through the A3 of the UN Security Council – ensures prioritisation of the goals and aspirations of the AU, particularly those concerning sanctions.

## 5.6 SUMMARY

The following recommendations on the nature and scope of sanctions, as well as those pertaining to the review of institutional procedures within the AU are proposed. The AU is encouraged to strictly implement instruments that are already in place, namely: the Constitutive Act, the Lomé Declaration, the PSC Protocol, African Charter on Democracy, Elections and Governance, Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in situations of Unconstitutional Changes of Government in Africa and to focus on preventive measures. To ensure an effective sanctions regime against UCG, the AU is encouraged to pursue the following:

- **Swift and consistent imposition of sanctions** by the AU.
- **Application of effective targeted sanctions against perpetrators of UCG and their associates.** The AU should broaden the spectrum of its sanctions and consider all forms of sanctions, including targeted sanctions, trade-in-minerals bans, weapons import bans, and human-rights-related criteria; such criteria, which must emphasise the centrality of the rights of women and children, should be a benchmark for the escalation ladder.
- **Establishment of an Expert Group** to support the PSC Sanctions Committee.
- **Enhanced coordination on the sanctions imposed by the AU with RECs and the international community.** The efficacy of the AU sanctions regime is limited when applied within the confines of Africa. AU sanctions need to be corroborated by and implemented jointly with RECs, the UN and other powerful actors within the international community.
- **Redefining and sequencing the escalation ladder** to reflect clear parameters and actions targeting the leadership of UCG and associates.
- **Monitoring and lifting sanctions in a timely manner.** The AU should constantly monitor countries under sanctions to assess the extent to which the objectives of the sanctions have been attained. This will also mitigate the impact of sanctions on the population that was not targeted.

# CHAPTER 6

## PAN-AFRICAN PERCEPTIONS OF UNCONSTITUTIONAL CHANGE OF GOVERNMENT

### 6.1 INTRODUCTION

A diversity of voices and perspectives is vital to a balanced and comprehensive view of the causes and consequences of UCG and possible interventions. This report has considered this as imperative and has thus sought to balance the findings from the previous chapters, particularly Chapter 3 on the causes, influences and triggers of UCG; Chapter 4 on lessons from targeted review missions and Chapter 5 on efficacy and effectiveness of the AU sanctions regime on UCG.

Citizens' voices and citizen's participation matter in all policy engagements, including peace and security discourse on the continent, given that citizens are not only beneficiaries of peace and security policies and initiatives, but are also affected disproportionately whenever member states encounter peace, security, and governance challenges, which includes UCG. Youth, children and women are particularly vulnerable. The AGR23 thus recognises the centrality of public perceptions in addressing the phenomenon of UCG and represents the opinions of citizens from the entire spectrum of African society. Citizen's voices or perceptions – the 'voice of the people,' – are considered in this report as the manifestation of the collective conscience and expression of a people on a matter. In the AGR23, citizen's voices comprise people's ideas, reflections and opinions on political will, government policies, actions, and capabilities in preventing, managing, and mitigating UCG.

This chapter focuses on public perceptions of UCG and aims to represent the views and opinions of different stakeholders across the continent. In this context, the 'voice of the people' is a collective expression of people's ideas, reflections and opinions about the government and its policies on social, economic, and political matters and how it affects the quality of the lives of the general citizenry, which can have a significant impact on the survival of government administrations at any given time, and may lead to citizens executing or supporting a coup d'état. One of the purposes of an effective system of capturing public opinion in a democracy is to inform public policymaking, which allows for participatory governance, and stability over time.

Thus, none of the findings and recommendations of this report will bear fruit unless they are centered in the needs, interests and aspirations of ordinary citizens. The incorporation of their voices is a step in the right direction of participatory democracy, a central principle of good governance.

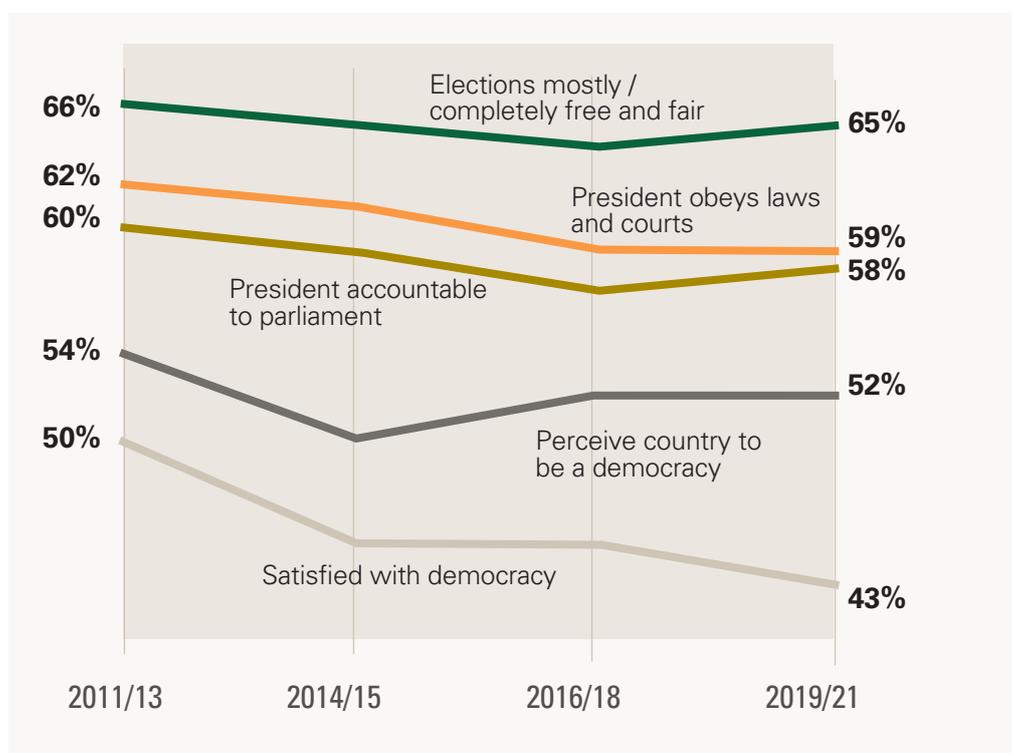
## 6.2 BACKGROUND

The many consultations held by the African Union aimed to gain a comprehensive view and understanding of how citizens are impacted by UCG and be engaged in governance processes for peace, as well as socioeconomic security for all. Four groups of consultations were held, namely, the Citizen’s Forum on Democracy and Unconstitutional Change of Government; the African Governance Seminar Series; the Democracy, Human Rights and Governance Trends, Prospects and Challenges 11th High-Level Dialogue; and, the Youth and Gender Pre-forum Consultations.

### 6.2.1 Citizens perceptions reflected in opinion polls

Opinion polls succinctly present the views of the public to government leaders who make decisions that affect society. The table below summarises citizen perceptions on key areas that relate to UCG and corresponds with the thematic analyses in Chapter 3. The themes in Chapter 3 were identified by the African Union Reflection Forum convened from 15 to 17 March 2022 in Accra, Ghana to discuss the resurgence of UCG in Africa, along with other AU meetings. The components that make up the graph below on ‘supply of democratic institutions’ converge with the five broad areas that relate to UCG in Africa.

Figure 3: Supply of democratic institutions (2011-2021)



Source: Afro Barometer, *The Role of Citizen Polling in Building Democratic Resilience* (2022)

The ‘Election mostly/completely free and fair’ indicator aligns with the ‘Democratic Elections and Unconstitutional Changes of Government’ thematic analysis. The indicator, ‘President obeys laws and the courts’ deals with key elements presented in ‘Constitutional Order’ and the indicator, ‘President is accountable to parliament’ corresponds with ‘Economic Governance and Public Accountability’.

‘Perceive country to be a democracy’ and ‘Satisfied with Democracy’ match with the thematic analysis on ‘Popular Uprising, Military Interventions and Terrorism’. These perceptions complement the analysis in Chapter 3 on the provision of space for citizen-driven development processes on the continent. The graph shows a noticeable decline in citizen confidence from an analysis of perceived levels of democracy in countries from 2011 to 2021.

### CITIZENS' FORUM ON DEMOCRACY AND UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA LUSAKA, ZAMBIA, 11 AND 12 JULY 2022

To gather informed insights, the Economic Social and Cultural Council (ECOSOCC), and the APRM organised the Citizens' Forum on Democracy and Unconstitutional Changes of Government in Africa on with the participation of over 200 representatives of AU organs and institutions, academics, think tanks, faith-based organisations, media, strategic partners and civil society organisations. The objective was to provide citizens with a platform for in-depth reflection on social, economic and political contexts given the recent upsurge of UCG in Africa. The forum also aimed to enhance the understanding of AU institutional and normative frameworks on UCG by all stakeholders, and highlight the potential role of non-state actors and civil society can play in implementation of these important agendas.

The forum focused on structural drivers of UCG, which include the erosion of public trust in state institutions, socioeconomic exclusion and marginalisation, corruption, inadequate accountability, limited participation and the sub-optimal inclusion of citizens in governance processes. Importantly, a civil society organisation road map to support entrenchment of democratic values across the continent was developed as a key outcome of this engagement, among other recommendations.

### YOUTH PRE-FORUM CONSULTATIONS AT THE 11TH HIGH-LEVEL DIALOGUE ON DEMOCRACY, GOVERNANCE AND HUMAN RIGHTS: COTONOU, BENIN, 14-22 NOVEMBER 2022

The APRM held consultations with the youth to hear their perspectives on issues affecting their lives and highlight the role of youth in addressing UCG on the continent. The focus was centred around the analysis of AU and REC normative frameworks against UCG and how it affects youth; meaningful inclusion of youth in political and socio-economic systems, and youth leadership: fostering the next generation of political leaders and inclusive implementation of the Accra and Malabo declarations. Also highlighted were AU development frameworks that seek to empower and encourage youth participation in governance, such as the African Union Youth Charter, the Youth Decade Plan of Action, and the ACDEG, among others.

### GENDER PRE-FORUM CONSULTATIONS AT THE 11TH HIGH-LEVEL DIALOGUE ON DEMOCRACY, GOVERNANCE AND HUMAN RIGHTS COTONOU, BENIN, 14-22 NOVEMBER 2022

A platform for systematic conversations that attend to the realities of African women and register their contributions and recommendations for addressing UCG was an important aspect of listening to citizen perceptions. Participants in pre-forum consultations on gender included gender-focused organisations working on democracy, governance, and human rights; AU member states, including representatives of national institutions, agencies that focus on good governance, democracy, and human rights; selected think tanks and academic research institutions with experience on issues of democratic governance, peace, and security; media practitioners; artist, cultural, and heritage organisations; international organisations, development partners, UN agencies; and the diaspora. The forum also noted the increased constraints faced by democratic institutions and how the peace and security challenges specifically affect women on the continent.

There was unanimity on the fact that UCG reverses gains made in the promotion of women's political participation in member states, particularly the absence of women in transition governments, and socioeconomic opportunities as a whole. The need to popularise AU normative frameworks and policies to enable implementation for impact to ensure that Africa fully harnesses its demographic dividend was noted and it was thus recommended that the AU organise a forum that includes women at grassroots and leadership levels. It was also suggested that AU and the RECs enhance and strengthen cooperation with civil society organisations to develop better solutions for women's inclusion in decision-making.

## 6.2.2 Findings

The forum discussions registered that civil society organisations request governments to invest in addressing structural root causes that lead to UCG, by rebuilding public trust in governments, accountability of state institutions, equitable development, service delivery and effective participation and inclusion of citizens in decision-making. Member states were also encouraged to tackle the issue of sustainable financing to reduce reliance on external funding that may be tied to vested partisan and geopolitical interests that do not align with Pan Africanism and national interests.

The civil society as well as the youth forum noted the need to address challenges that relate to the public access to information and increase accountability by availing and easing access to public information by African citizens on the state of governance. The proliferation of fake news was also noted as a challenge in addition to propaganda leading to misinformed citizens and misguided actions by the youth. Despite strides taken at national, regional and constitutional frameworks to tackle UCG, the selective and inconsistent application of policy frameworks has contributed significantly to the recurring use of UCG.

Overall, the civil society forum highlighted the need to improve socio-economic opportunities to strengthen social cohesion through avenues like value addition, the creation of conducive business environments for micro, small and medium-sized local businesses. This was reiterated by the youth consultation which raised awareness of how concerned as a demographic they are about UCG and how it undermines opportunities for businesses to operate in conducive environments. The adverse effects relating to how UCG drives away foreign business interests and related opportunities, which heightens economic instability in contexts of widespread poverty, and contributes to creating politically volatile environments were noted.

Of importance to the youth are increasing occurrences of UCG in Africa over the past decade, which are dismantling governance systems, weakening state institutions and undermining development at the national, regional and continent levels. The consultation helped to raise awareness on how concerned the youth as a group are about UCG and how it undermines opportunities for businesses to operate in conducive environments. It also focused on how UCG drives away foreign business interests and associated opportunities, which heightens economic instability in contexts of widespread poverty, and contributes to creating environments susceptible to UCG.

Findings from the gender forum included the perception that the enhancement of women's participation in politics and decision-making processes is not only an assurance of Africa's commitment to progress but also a mechanism to de-escalate possible security challenges and curtailing UCG. Challenges considered to hinder the participation of women included cultural norms and traditional beliefs and institutional structures that limit participation in political leadership. These result in the inadequate recognition of women's contribution to peace, security and development at a national, subregional and continental level.

## 6.3 RECOMMENDATIONS

A number of critical recommendations were suggested for action, targeted at different stakeholder groups based on their strategic positioning to connect results from various actors and collectively address the rise of UCG by ensuring inclusive political and socioeconomic benefits for African citizens.

### 6.3.1 Civil Society Forum

Recommendations of the Civil Society Forum emanated from critical discussions regarding the challenge of UCG. A proposal was made for the African Union to consider collaborating and partnering with non-state actors to provide technical support to member states to build sustainable democratic governance. Specifically, civil society organisations made explicit their interest to be engaged in areas of justice, peace and development on the continent, through the implementation of the AU Transitional Justice Policy and the African Continental Free Trade Area (AfCFTA). This was suggested as part of efforts to address what are perceived to be structural root causes of UCG, such as citizen disenfranchisement, especially amongst young people.

Further, it was recommended that the African Union support member states to undertake country structural vulnerability and resilience assessments. The forum also agreed that there was a need to encourage the development and implementation of guidelines regarding mitigation stages that would provide some clarity concerning when the AU can intervene. In order to utilise existing AU instruments effectively, it was suggested that the APRM peer and targeted reviews be employed to pre-empt potential Unconstitutional changes of government as well as support peace building within the framework of the 2030 flagship initiative of silencing the guns.

To further advance implementation of the AU frameworks, the Civil Society Forum made recommendations that included the consideration of reflections from civil society in the processes of establishing a PSC Sub-Committee on UCG in line with Article 8(5) of the PSC Protocol. Citizens requested increased involvement and engagement in African Union processes through the ECOSOCC and AGA Platform, and in the envisaged finalisation of the AU Guidelines for the Amendment of National Constitutions, in line with existing frameworks on constitutionalism and rule of law.

### 6.3.2 African Union

At national level, member states were requested to invest in addressing structural root causes that lead to UCG such as rebuilding public trust in governments, accountability of state institutions, equitable development and livelihood provision, quality and sustainable service delivery and effective participation and inclusion of citizens in decision making. Member states were also encouraged to tackle the issue of sustainable financing to reduce reliance on external funding that may be tied to vested partisan and geopolitical interests that may not align with Pan Africanism and national interests.

In fostering a culture of democracy, AU member states were called upon to comply with their commitments on AU shared values, in particular the universal ratification of the ACDEG by 2025 as well as, the reporting obligations. This would also entail addressing challenges that relate to public access to information and thereby increase accountability by availing and easing access to public information to African citizens. These measures would serve to improve socio-economic opportunities for social cohesion through public, private and active citizen engagement as well as promote sustainable livelihoods through economic and livelihood opportunities by creating conducive business environments for local businesses.

### 6.3.3 Africa Governance Architecture (AGA)

Towards augmented participatory governance of an Africa driven by its own citizens, the African Governance Architecture (AGA) and the African Peace and Security Architecture (APSA) were cited by the Citizens' Forum as key mechanisms towards the nurturing of robust and participatory governance environments responsive to the persistent and emerging challenges in the continent. The Civil Society Forum called a platform to ensure their perspectives and inputs are considered in the process of reviewing the implementation of both AGA and APSA in fostering participatory governance on the Continent that is driven explicitly by its citizens.

This has the potential to strengthen the independence and effectiveness of judicial institutions and quasi-judicial mechanisms to safeguard the rule of law, constitutionalism and human rights at national levels. Additionally, the Civil Society Forum encouraged civil society to engage in joint advocacy campaigns targeting member states with the aim of achieving the universal ratification for the ACDEG by 2025.

Overall, the citizens called for greater, and structured, engagement with AU structures including engaging and collaborating with civic empowerment bodies to strategically promote and enhance citizens' awareness, sensitisation, tracking implementation, and technical support to member states on AU Shared Values that address UCG. This includes the operationalisation of citizens, youth and gender engagement strategies including Annual High-Level Dialogues to promote and enhance meaningful participation and engagement of citizens in democratic governance to address UCG, among other issues.

### 6.3.4 Strategic partners

Global development partners were called upon by the Civil Society Forum to work closely with stakeholders on the continent to address the challenge of UCG. African Development Bank and the United Nations Development Programme were called upon to support implementation of the CSO Programme of Action for the Non-Recurrence of UCG in Africa that was adopted at the Forum and engage in the process of addressing UCG by generating and producing knowledge, and dissemination of policy guidance on addressing the issue Africa in collaboration with African think tanks, universities, and policy institutes. To further cement this progress partners should popularise and support implementation of the African Union Transitional Justice Policy, including providing technical and financial support to ECOSOCC, and civil-society-led initiatives through the African Transitional Justice Legacy Fund. Finally, towards utilising existing dialogue platforms, they should revive and facilitate the annual interfaith dialogues and mediation processes on conflict prevention through, among others, the King Abdullah bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue Centre (KAICIID) and the All Africa Conference of Churches (AACC-CETA).

## 6.3.5 Youth Forum

### AFRICAN UNION

From the matters discussed, several recommendations were made by the Youth Forum. The first was expanding the narrow conceptualisation of UCG which was also raised by the thematic analyses on popular uprisings presented in Chapter 3. The argument was that the current definition of UCG is narrow and may result in missed opportunities for the AU to act and arrive at solutions that encompass the varying dimensions of this phenomenon beyond military takeovers.

It was further recommended that the African Union increase its absorption capacity of youth all aspects of governance, particularly in civic training which has a net effect of increasing the number of youths that are trained and empowered to effect change in member states.

### MEMBER STATES

It was recommended that member states increase youth participation and adopt quotas to ensure adequate representation of youth in political spaces and platforms at national, regional and continental levels. To increase meaningful participation of youth, AU member states governments were also requested to educate youth on issues of governance, and specifically the constitution, towards more deliberative democracies. Furthermore, governments were called upon to support the operations of national youth councils at the different levels with financial and technical assistance. Finally, governments were encouraged to continue to design mechanisms and create a conducive environment for effective participation of youth in peace and development processes.

### YOUTH

Youth across the continent were urged to get involved in their local spaces and seek requisite capacity building to become active and impactful citizens with or without a leadership positions. Overall, the youth were implored to engage those in marginalised and rural areas to share information and insights for critical mass. Emphasis was also placed on the need for young people to pursue and advocate for the ratification and domestication of protocols and normative frameworks to intensify the voice of young people at a continental level.

### 6.3.6 Gender consultation

#### AFRICAN UNION

In gathering citizens' perceptions, the APRM considered it important to create a platform for conversations that attend to the realities of African women and register their contributions and recommendations for addressing UCG. Gender-focused organisations working on democracy, governance, and Human Rights; AU member states, including representatives of National Institutions, agencies that focus on good governance, democracy, and human rights; selected think tanks and academic research institutions with experience on issues of democratic governance, peace, and security; media practitioners; artist, cultural, and heritage organisations; international organisations, development partners, UN Agencies; and the diaspora were invited and participated. The forum noted the increased challenges faced by democratic institutions and how these peace and security challenges especially affect women on the continent.

#### MEMBER STATES

The meeting also suggested that inclusion of key normative frameworks on women's rights and women's representation in political spaces as well as in the education curricula as an effective way of promoting domestication and ownership of these frameworks by African citizens. To escalate the issue of women participating in governance and being given a chance to address the issue of UCG, AU member states were urged to strive to implement tangible policies that ensure women's representation, such as quota systems. To achieve this, the imperative of forging partnerships with the diaspora for them to be technical and financial resource partners towards implementing programmes that can empower women and increase their socio-political participation was emphasised.

#### WOMEN

It was recommended that women lobby and advocate for ratification of AU shared values and instruments, in particular the ACDEG and the Maputo Protocol to strengthen women's empowerment and political participation. To improve meaningful engagement, it was highlighted that there is a need to empower and harness the knowledge and experiences of women who have not necessarily acquired formal education as a key component of promoting good governance, peace and security.

### 6.4 SUMMARY: CITIZENS' VOICES ON UCG IN AFRICA

The general view emerging from consultations was that although youth, women and the ordinary citizens face many challenges because of UCG it impacts differently on youths, women and other vulnerable groups.

Youth noted the proliferation of fake news and propaganda misinforming and misleading youths; the threat of selective and inconsistent application UCG normative frameworks, which is contributing significantly to the recurrence of UCG; that UCG is undermining opportunities for businesses by disrupting the operating environment and drives away foreign business interests and associated opportunities while heightening economic instability, increasing poverty, and perpetuating conditions conducive to UCG.

For women, the Chapter highlighted concerns over cultural norms and traditional beliefs and institutional structures that limit women's participation in political leadership and contribution to peace, security, and development at a national, subregional and continental levels.

Citizens' voiced the need for the reflection of citizens' views in the PSC Sub-Committee on UCGs; increased involvement and engagement in AU processes through the ECOSOCC and AGA Platform; addressing root causes of UCG; structured engagements and dialogue between youths and women and AU structures on peace and security; finalisation of the AU Guidelines for the Amendment of National Constitutions, in line with existing frameworks on constitutionalism and rule of law; as well as the introduction of quotas for youths and women in politics and governance institutions on the continent.

# CHAPTER 7

## SUMMARY OF KEY RECOMMENDATIONS

### 7.1 INTRODUCTION

This chapter consolidates the recommendations advanced in the outcomes of both the targeted reviews on UCG, the consultative missions on sanctions and the thematic analyses, of which the conclusions were examined for coherence, relevance, and sufficiency against the ACDEG and Protocols Establishing the Peace and Security Council. The analyses also identified incoherencies and deficiencies, upon which the following recommendations were developed.

The recommendations are conceived against a background of a growing recognition among African countries that the narrowly defined sovereignties that dominated the post-independence period inhibited cooperation and integration. What is evident in the recent wave of UCG is the regionalisation of the phenomenon, which requires collective approaches and responses. Through new notions of non-indifference and sovereignty with responsibility, African states can move toward renegotiating sovereignties in the context of regional institutions. The AU should continue to promote strong regionalism with increased African ownership of its constitutional and governance challenges because RECs have a thorough understanding of the cultural and political dynamics in their sub-regions.

For ease of consideration, the recommendations are categorised into the following three sections.

- **African Union.** These are directed to the Peace and Security Council as well as the Political Affairs, Peace and Security Department of the African Union Commission and other relevant bodies that are part of the PSC architecture and deal with UCG and the application of sanctions.
- **Regional Economic Communities** such as the East African Community, the Economic Community of West African States, the Intergovernmental Authority on Development, the Arab Maghreb Union, the Common Market for Eastern and Southern Africa, the Community of Sahel-Saharan States and the Southern African Development Community for application to their respective normative frameworks.
- **Member states** who have experienced UCG and those that have not but are part of the African Union.

The UCG targeted review reports, thematic reports and high-level consultative reports all present findings on perceptions on the causes of and proposals for prevention, management, and mitigation. Essentially, the reports present recommendations as below.

The **UCG targeted review countries**

recommended that national governments undertake the following:

- Conclude any outstanding processes of reviewing national constitutions through broad-based consultations and ensure that the constitutional amendments manifest in appropriate policies, laws, and institutional mechanisms.
- Address economic inequality through rule-based wealth creation premised on equitable and efficient exploitation of natural resources, just taxation and judicious use of government revenues for public services and socio-economic development.
- Strengthen democratic institutions like the National Commission for Democracy, the Peace Commission, Human Rights Commission and Anti-Corruption Commission by giving them the necessary legal powers and financial resources to execute their mandates for the benefit of all spheres of society.

The independent UCG targeted review experts also recommended that countries that had experienced UCG related to militarisation and terrorism consider undertaking the following:

- Reform the security sector and the army, to enhance its national army stature and respect political pluralism to ensure that every citizen has equal protection against arbitrary prosecution.
- Sign peace agreements and proclaim amnesty laws to allow return to the country of exile, the release of possible political prisoners and the reintegration of former combatants.
- Continuous dialogue with the opposition was highlighted as necessary for peace and tracked by a monitoring committee.

The findings from the consultative missions on review of normative frameworks held with the United Nations, Security Council Secretariat Bureau, Africa Group, and the US Government indicate that there is a general information deficit among African states. The mission also found that although the values and principles guiding the sanctions regimes in the UN and AU are coherent, there are significant differences in the mechanisms and modalities for application. This incoherence, they argued, diminishes the versatility of sanctions, since they can only be effective if they are collaborated globally.

Accordingly, the UN and Africa Group, among others, encouraged the African Union increase its efforts to consolidate the normative frameworks by explicitly defining common values, principles and mechanism for compliance regarding democratic governance, anti-corruption, and economic governance.

The UN and Africa Group encouraged the AU to consult formerly sanctioned member states such as the Republics of Burundi and South Sudan, to share their information on the measures they applied to have sanctions lifted to provide detail on the processes undertaken and suggestions on what could have been done better to avoid a recurrence of UCG.

The UN and Africa Group strongly recommended that the AU gazette and publicise the rationale for sanctions including the modalities for their implementation to all member states. In the same vein, the AU should be involved in monitoring progress of the sanctioned administration.

To achieve the above, the Africa Group recommended that the AU further define the legal and administrative elements of UCG and consider targeted sanctions for those who retain power unconstitutionally. The UN also noted that unlike the UN Security Council, the AU has a single committee for sanctions and no expert panels. The UN thus recommended that the AU establish dedicated sanctions committees for each country's situation, and establish depoliticised expert panels on merit to advise the committees accordingly.

For overall guidance, the UN and Africa Group encouraged the AU to adopt the 2014 Report of the African Union Commission of Inquiry on South Sudan, developed under the leadership of H.E Olusegun Obasanjo. They characterised the report as authoritative and insisted it should be replicated.

## 7.2 AFRICAN UNION

The sanctions imposed by the African Union on member states should have a determined and limited period to put in place a constitutional government because unlimited periods reduce effectiveness.

The concept of UCG in Africa should be revisited and broadened, as the current definition in AU texts does not conform to the realities on the continent.

There is need to ensure uniformity of the application of sanctions according to pre-defined standards.

There is need to build on Article 44(2)(A)(a) of the African Charter, which states that ‘the [AU] Commission should create benchmarks for implementation of the commitments and principles of this Charter and review conformity by State Parties.’ This lays the groundwork for the AU Commission to not only monitor elections but also develop criteria for determining whether any constitutional amendments or changes to election rules violate the principles of democratic change of government or are inconsistent with the constitution.

Towards a more proactive Peace and Security Council, it would be beneficial for the African Union member states to develop clear and pre-determined guidelines and laws on how to deal with the various scenarios that may result in UCG.

AU Instruments should include issues of terrorism and popular uprisings towards a mechanism to address them at a continental level.

The AU may need to convene regular forums that engage member states and other relevant stakeholders to discuss peace and security issues, including matters relating to UCGs. This will assist to identify peace and security threats in a timely manner, especially those that may escalate and result in UCG. Forums will therefore act as platforms to collectively intervene to prevent UCG and proactively manage threats to peace and security in member states before they result in UCG.

In line with Article 44(2)(B) of the African Charter, which mandates the AU Commission to design a framework for collaboration with the RECs to execute its provisions, the African Union should initiate closer collaboration towards a layered and connected process of addressing the issue of UCG.

The AU should develop a coherent position on promoting peaceful and democratic transfer of power in popular uprising contexts, and provide guidelines on Governments’ Response to Peaceful Protesters as well as guidance for Protesters and Guidance on the Role of Security Institutions

The AU has should develop a mechanism to avoid the conflicting of African Court rulings with sanctions imposed by the African Union.

The AU may need to broaden the scope of its sanctions to allow for application of sanctions by other actors on UCG countries to enhance the efficacy of sanctions. For instance, the private sector is an important entity in application of sanctions by states, particularly in instances of financial sanctions coordinated by central banks. Measures such as those applied by the central banks to compel the private sector to corroborate sanctions are significant in this effort. Thus, the AU may need to explore the possibility of allowing the private sector to also apply sanctions on UCG countries. In the same vein, the AU may also need to consider allowing other AU member states to apply different forms of sanctions (formal and informal) on UCG-sanctioned countries.

## 7.3 REGIONAL ECONOMIC COMMUNITIES

Other African RECs are encouraged to regard and replicate the ECOWAS regime and practices as best practise since it has proven effective, as demonstrated by the past events and cases of military coups in the West African sub-region.

AU RECs are also urged to adopt as best practice, Article 37 of the ECOWAS Protocol, which requires that states provide financial assistance to privately-owned media during elections to ensure media pluralism and independence of the media, which augment the role of the media in promoting democratic principles and ideals of transparency, accountability and human rights.

## 7.4 MEMBER STATES

AU member states are encouraged to prioritise economic governance, public sector accountability, constitutional order, rule of law, human rights, and enhance state legitimacy (both input legitimacy and output legitimacy) as collective measures to discourage UCG. Ultimately, states' efforts should assist to address poverty, unemployment, inequality and human development.

Governments of AU member states should provide public funding of political parties during elections to support multipartyism and democratic participation while levelling the electoral playing field to reduce the risk of election-induced UCG.

To manage UCG-related challenges that arise from political party financing, AU member states should ensure that compliance with financing rules disclosure of donations be enforced by an independent, apolitical body.

In line with Article 21 of the International Covenant on Civil and Political Rights, AU member state governments are encouraged to put in place effective controls that allow peaceful citizens to exercise their rights to assembly without the threat or possibility of violence from the state.

Although AU member states have always adopted and adapted different voting systems (including first-past-the-post, part-list proportional representation, two-round system, mixed-member proportional representation, mixed-member majoritarian proportional representation and plurality-at-large voting, etc.), it is recommended that states adopt voting systems that are more representative of various demographics to ensure the effective and equitable inclusion of marginalised populations and minorities in parliaments across the continent, including women, youths, racial minorities, people living with disabilities, and others. AU member states need to consider voting systems that facilitate greater accountability and representation whilst minimising risks and threats to stability in national governance.

For broader inclusivity, and to ensure the exercise of everyone's human right to participate in national politics and governance, measures should be taken by AU member states to allow national populations in the diaspora to vote while provisions are made to facilitate special voting for persons with disabilities, pregnant women, prisoners, and security officials.

Governments of AU member states should reduce the power of monopolies through appropriate legal and administrative measures, and set up stronger banking sectors to protect small savers and other depositors towards strengthened economic governance.

Governments need to implement institutional frameworks that reduce unpredictability and uncertainty in decision-making processes that guide economic policy making and execution in AU member states.

AU member states need to constructively align their national constitutions with provisions and principles of the African Charter for Democracy, Elections and Governance to ensure effective implementation and compliance.

It is recommended that the Pan-African Inter-Party Dialogue (PAIPD) project be activated in accordance with the conceptual memorandum of May 2021. Governments are encouraged to invest in the education of disadvantaged ethnic, racial or religious groups to achieve relative parity of diverse groups involved in government service.

## 7.5 CONCLUSION

The Africa Governance Report, AGR23, presents an analysis of the influences, causes, drivers and triggers of UCG in Africa identified by organs of the AU and verified by an elaborate process of country-targeted reviews. These were presented across the five themes of integrity of democratic elections, diversity management and human rights, constitutional order and state legitimacy, economic governance, and public sector accountability, and finally, popular uprising, militarisation and terrorism.

The report also presented findings on the efficacy and effectiveness of the AU normative framework and instruments that govern, prevent, and manage responses to UCGs. From the findings and evidence-based recommendations preferred in the report it emerged that although the normative frameworks on preventing and managing UCG have evolved and have been strengthened in the process there are still gaps and shortcomings that may facilitate perpetuation of UCG and other multiple and interrelated factors that explain the recent wave and resurgence of UCG.

To sustainably prevent and effectively coordinate responses to UCG requires collective and collaborative efforts at member-state level, REC level and AU level to enhance integrity of democratic elections; improve diversity management and promote human rights; uphold constitutional order and enhance state legitimacy; strengthen economic governance and public sector accountability; implement security sector reforms to professionalise and depoliticise the military in AU member states; execute counter-terrorism measures to prevent and combat terrorism; tighten and broaden the scope of sanctions to deter member states from engaging in UCGs; adopt solid institutions to promote constitutionalism and prevent amendments or revisions of constitutions in ways that infringe upon the principles of democratic change of governments; expedite the ratification and domestication of UCG-related protocols and conventions at AU and REC levels; and, introduce mechanism for inter-agency collaboration and platforms for regular engagements on UCGs, peace and security matters.

The AGR23 should assist in providing a basis for evidence-based policy engagements at all levels to address the scourge of UCG and create a conducive environment for continental development, growth and prosperity.



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