

POLICY BRIEF

**ADDRESSING THE RECENT
RESURGENCE OF UNCONSTITUTIONAL
CHANGES OF GOVERNMENT: POLICY
RECOMMENDATIONS FOR THE AU
EXTRAORDINARY SUMMIT**

AMANI AFRICA

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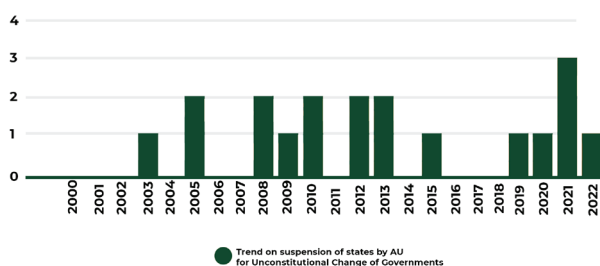
I INTRODUCTION

On 28 May, the African Union (AU) Assembly of Heads of State and Government are scheduled to hold the 16th extraordinary session in Malabo, Equatorial Guinea. One of the two major agenda items for the extraordinary summit will be to deliberate on and adopt measures to address the resurgence of unconstitutional changes of government (UCG) that the continent experienced during the past few years.

Over the past year, the spike in UCG in Africa has provoked much concern in policy debates and discussions both at the level of the AU and Regional Economic Communities (RECs), particularly in the Economic Community of West African States (ECOWAS).¹ In addition to providing evidence demonstrating the return of military coups in Africa, this policy brief aims to present a precise outline of the key drivers of the upsurge in UCG in Africa and existing lacunae in norms banning UCG as well as challenges in their implementation. Having identified these essential underlying factors facilitating the return of coups as instruments of politics in the continent, the brief recommends a list of eleven policy measures for addressing them.

II THE YEAR OF RETURN OF MILITARY COUPS

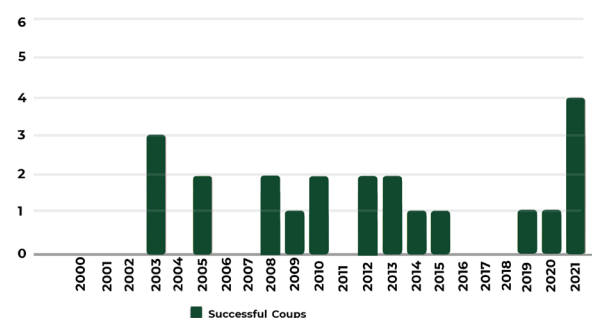
It is the first time for the AU to have four countries suspended from the AU for UCG in a period of less than one year. The graph below shows the trend in AU decision suspending member states for UCG.



¹ Amani Africa Special Research Report No. 10, *Critical Reflections on the Challenges to and means of strengthening the AU norm banning unconstitutional changes of governments (UCG)* (September 2021).

The research that we did at Amani Africa shows that the year 2021 is the first when Africa experienced the largest number of military coups since 2003. As the United Nations (UN) Secretary General (UNSG) pointed out, we have come to witness during this period an **'epidemic of coups'**. Between April 2021 and February 2022, in a period of 10 months, Africa has experienced five coups, with three of them in the ECOWAS region.

As the graph below shows,² prior to 2021 the maximum that Africa experienced a coup since 2000 was in 2003. Since then, there were a few years (2005, 2008 and 2012) when a maximum of two coups occurred, with several years passing without coups. 2021 has become the year of the return of military coups.



Moreover, until 2021, the trends in the occurrence of coups in Africa is largely characterized by decline despite its sporadic occurrence in a range of one to two coups per year. While no one knows how this return of military coup d'état in Africa will evolve in 2022 and beyond, with five successful military seizures of power in less than a year, the likelihood of coups taking place in other countries encouraged by the success of these coups and the presence of conditions that make its occurrence possible has significantly increased.

III WHAT ACCOUNTS FOR THE UPSURGE IN COUPS IN AFRICA?

Apart from the broader context of the democratic backsliding or recession that is characteristic of this period, there are nine factors that account for and constitute the drivers of the resurgence of coups in Africa.

1) *Democratic backsliding*: Like other parts of the world,³ democratization in Africa has continued to

² Amani Africa Special Research Report No. 11, *The major peace and security issues in Africa in the year the AU marks its 20th anniversary* (March 2022).

³ Freedom House. (2019). *Democracy in retreat*.

deteriorate. According to the 2021 report of Freedom House, the number of countries in Africa that are 'not free' has increased from 14 in 2006-08 to 20 in 2021 and only seven countries, mostly small island countries, on the continent are ranked 'free', the lowest figure since 1991. The 2020 Mo Ibrahim African Governance Index, finds that over the past decade, 20 countries, home to 41.9% of Africa's population, have experienced declines in indicators that measure security & rule of law (-0.7) and participation, rights & inclusion (-1.4), even while achieving progress in human development (+3.0) and foundations for economic opportunity (+4.1).⁴

2) Crisis in state-society relationship: the first driving factor of coups in Africa is the damaged relationship between state and the society, with governments facing increasing loss of public legitimacy. As exemplified in the 05 September 2021 coup in Guinea, the absence of visible public opposition and the widespread celebrations of the downfall of Alpha Conde's government were clear indications of this lack of public legitimacy of the government.

3) contested elections: Another driver of UCG in Africa is the severely weakened role that election plays in holding governments accountable and in facilitating change of leadership. Not only are elections in African member States usually held under tense political contexts, the manner in which security sector is deployed to intimidate and harass oppositions as well as the questionability of electoral management bodies' impartiality result in rejections and contestations of electoral results. This inevitably creates a fertile ground for the perpetration of coups. The case of Guinea could once again serve as a good example here as the public reaction to the UCG of 05 September 2021 signifies that the election conducted in October 2020 was far from free and fair.

4) Unlimited power of executive branch of government: One feature of the different cases of military seizure of power or popular uprisings is the hegemonic dominance of the executive organ of government in the power relationship of the different arms of government. This involves the concentration of unlimited power in the hands of the executive branch of government, to the point of both dominating and rendering ineffective the constitutional roles of the parliament and the judiciary to put checks on

executive authority.

5) Ineffectiveness of constitutional and political mechanisms: the lack of effective constitutional mechanisms for effecting change of government such as election, impeachment and recall serves as yet another factor paving the way for the occurrence of coups. Where the possibility for using political and constitutional procedures for change of leadership and holding the government accountable is absent, it forces the public to resort to popular uprising or creates the context for the military to orchestrate a coup d'état.

6) Governance issues in the security sector: a fifth driving factor for coups in Africa is the crisis in civil-military relationships. This manifests itself in the poor level of professionalism of the army, its embeddedness in politics, and lack of functioning command and control that firmly subordinates the army to civilian oversight. Military coup is also a manifestation of the politicization of the security sector. As in cases such as Sudan, it also highlights a concern on the part of the army to avoid loss of its economic interests in the reform that the public is clamoring for. That the army arrogates the role of being the arbiter of politics and hence deciding when to play the role of correcting the wrong in the politics of the country (by ousting the incumbent government and seizing power) is the most prominent manifestation of the military's abuse of its control of the means of violence.

7) Violation of the rights and freedoms of people: Despite the growing support for democratic governance and human rights among the African public, the continent, as other parts of the world,⁵ has continued to witness the shrinking of the civic space and repression of political freedoms⁶ as well as decline of the socio-economic wellbeing of increasing number of people. Not only do frustrations over such violations set the stage for popular uprisings, they also create a situation whereby the military, usually in collaboration with political elites, very easily manipulates public grievances over violations of human rights and freedoms to overthrow the government of the day.

⁵ Jean Bossuyt & Martin Ronceray, *Claiming back civic space: Towards approaches fit for the 2020s* (ECDPM, 2020).

⁶ David Kobe, *Civic space restrictions in Africa*, *Conflict Trends 2018/1* (ACCORD) available on <https://www.accord.org.za/conflict-trends/civic-space-restrictions-in-africa/>

⁴ 2020 Mo Ibrahim African Governance Index.

8) *Mismanagement of response to security threats:* The other factor is the changes in the security situation of some countries leading to enormous gap between the capacity of national security institutions and the violence resulting from the growing attacks from insurgent groups including those identified as terrorist. The mounting pressure that security forces are put under due to the increase in the attacks and causality rate from the attacks, in a context in which the civilian leadership of the affected states are charged with corruption and failure to provide effective leadership and support for enabling the security forces to discharge their responsibilities, is one of the key factors that accounts for the coups in Mali and Burkina Faso.

9) *Leadership crisis:* Finally, there is also the crisis of leadership that has become pervasive on the continent. At the heart of the democratic backslide that the continent experienced is this crisis of leadership, with more and more leaders becoming divorced from the ideologies and vision for the socio-economic and political advancement of the masses of our people on the continent and becoming more and more transactional, with widespread tendency of personalization of the service to which public office is put.

IV THE GAPS IN THE AU NORMS ON UCG AND IN THEIR IMPLEMENTATION

While the above list of factors illustrate drivers of the recent resurgence in coups Africa has witnessed, it is important to distinguish between these factors and the gaps in AU norms on UCG and their implementation. As explored in more depth in Amani Africa's special research report on the topic,⁷ despite the richness of AU norms and instruments on UCG, there are also gaps in these norms and in their implementation which hinder their effective realization, resulting in the repeated cycle of coups. These gaps are elaborated in the following two sub-sections.

Gaps in AU norms on UCG

There are four gaps in the AU norms on UCG that partly account for the challenge to implementation of

the AU law banning UCG. It is thus critical that this moment for reform and strengthening of the AU law on UCG focuses also on addressing these gaps.

1) *Disconnect between norms on UCG and the background context causing them:* as captured above, governance and democratic deficits and breaches of human rights and freedoms are among the main driving factors of coups in Africa. However, while a clear framework has been established for sanctioning the occurrence of UCG, the AU has not provided any enforcement mechanisms for addressing serious violations of democratic principles and human rights⁸ aside from the acknowledgement of the importance of democratic values for averting coups.⁹ This has resulted in the application of norms against UCG in a manner detached from these broader underlying issues.

2) *Lack of mechanisms for dealing with manipulation of term limits or 'constitutional coups':* the amendment of constitutions for the extension of term limits by incumbent presidents has become common place in Africa, deepening the trend of regression of democratization on the continent. While Article 23(5) of the African Charter on Democracy, Elections and Governance (ACDEG) envisages that 'any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government'. However, there is no clarity from a legal perspective when amendment or revision of constitution constitutes 'infringement on the principles of democratic change of government'. Thus, there has not been an instance in which the AU directly invoked the application of this provision. This has created an environment in which 'constitutional coups' are perpetrated with no concern for any legal or diplomatic consequences from the AU.

Broadly speaking, one can also identify three major adverse consequences of amending or removing constitutional term limits:

i) First, in many of the countries in which the constitutional clause on term limits was successfully changed or removed, the democratic space has

⁸ Solomon Ayele Dersso (2012), *The adequacy of the APSA to deal with serious democratic deficits: Lessons from North African uprisings*, 21 (3) *African Security Review*, 4-23, 13.

⁹ *Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lomé Declaration)*, AHG/Decl.5 (XXXVI) (2000).

⁷ *Amani Africa Special Research Report No. 10, note 1 above.*

been stifled as the hegemonic control of the political processes by the incumbent is entrenched. Not only that extension of term limits in many of the countries has entrenched the patronage network of the incumbent and undermines the institutionalization of the exercise of public power by increasing the personalization of power, but it also frustrated the possibility for leadership change and competitive politics. For example, African Peer Review Mechanism (APRM)'s Uganda report linked 'the increasing evidence of mounting authoritarianism and rapidly escalating corruption in the country' with the controversial constitutional amendment which was adopted 'despite strong opposition'.¹⁰

ii) The second consequence of effecting change to constitutional clauses on term limit has been the eruption of a constitutional crisis and/or political instability and violence. For example, it was disputes over third termism that triggered political crisis in Burkina Faso and Burundi in 2014 and 2015, respectively.

iii) Third, a politically manipulated extension of term limits also creates the context for the occurrence of coups. Examples in this respect include Niger in 2010 and Guinea in 2021. Indeed, one of the issues that the recent epidemic of coups highlighted is this issue of politically manipulated constitutional amendment for removing term limits.

3) *Lack of clarity on application of AU norms banning UCG in cases of popular uprisings:* as exemplified in the cases of Egypt and Tunisia during the 2011 and 2012 popular uprising in North Africa, the AU has been faced with the challenge of determining whether the regime changes in these cases qualified as UCG. Years from then, AU norms still fail to provide guidance on how to navigate cases of democratic popular uprisings separate from cases of UCG, resulting in unpredictable decision-making with regards to popular uprisings. In a session that was dedicated to the subject of UCG and popular uprisings in Africa held on 29 April 2014, one of the issues raised was the definition of popular uprisings and the rules or guidelines for determining the compatibility of mass protests with the AU norm on UCG. In the press statement issued after the meeting, the PSC called for 'appropriate refinement of the

definition of unconstitutional changes of government, in light of the evolving challenges facing the continent, notably those related to popular uprisings against oppressive systems, taking into account all relevant parameters'.¹¹ Former AU Commissioner for Peace and Security, Ambassador Lamamra aptly summed up the seriousness and importance of this issue when he remarked:

[t]he uprisings in North Africa exposed a dangerous vacuum in the arsenal of AU instruments that needs to be urgently filled by putting in place appropriate response mechanisms that will enable the continental body to timely respond to such phenomena with the required robustness and effectiveness.

4) *Lack of clarity on conditions required to establish restoration of constitutional order:* while AU norm banning UCG insists on the restoration of constitutional order and makes it a precondition for lifting of sanctions imposed, it fails to clarify under what conditions a country affected by UCG is said to have achieved return to constitutional order. This lack of clarity becomes more apparent in those cases where sanctions imposed against a member State affected by UCG are lifted before the conduct of elections and formation of new government, despite the consideration of these two factors as the main indications of restoration of constitutional order.¹²

Gaps in implementation of AU norms on UCG

1) *Declining deterrent effect of sanctions:* the recent consecutive military coups in west African countries – Mali, Guinea and Burkina Faso respectively – is perhaps the best representation of the fading deterrence effect of sanctions and suspensions against UCG. Not only does the close sequence in occurrence of coups in these countries demonstrate lack of serious regard to suspensions and threat of sanctions imposed by AU and ECOWAS, it gives the impression that the militaries in these countries were emboldening one another. This stands as a serious challenge to the implementation of norms banning UCG.

2) *Absence of consistent enforcement of continental*

¹⁰ African Peer Review Mechanism (APRM), Uganda Second Country Review Report (January 2018) available on <https://www.aprm-ou.org/wp-content/uploads/2021/01/APRM-Uganda-Country-Review-Report-II.pdf>

¹¹ African Union, Press Statement of the 432nd session of the PSC, SC/PR/BR.(CDXXXII) 29 April 2014.

¹² See Amani Africa, *The quest for restoration of constitutional order in Mali*, Policy Brief 2 (August 2020).

and regional anti-coup norms: a factor further compounding the declining effectiveness of the threat of suspension and other sanctions is the lack of consistent application of continental or regional norms against UCG. This is best exemplified by AU's failure to suspend Chad after the 20 April 2021 military seizure of power, which exposed the AU for charges of selective application and double standards. There is also inconsistency in the application of the well-established norm which bans coup makers from participating in elections to automatically legitimize their militarily seized power.

3) *Weakened resolve on rejection of coups:* indications are that today the level of consensus that AU member states had two decades ago or during the first decade of the AU on the total rejection or condemnation of coups without any qualifications has become weak. Thus, unlike in the past when the application of the anti-coup norms was widely accepted and automatic, in recent times the application of anti-coup norms whenever a military seizes power is no longer automatic. For instance, it took unprecedented number of hours for the AU PSC to decide on the use of Article 7(1)(G) of the PSC Protocol for suspending Sudan after the 25 October coup.

4) *Lack of coordination between the AU and RECs:* this lack of coordination applies not only at the operational level in terms of response to coups but also in terms of possession of similar UCG standards. Three regions, notably Central, North and East Africa regions lack the kind of standards that ban UCG available at the AU and ECOWAS. The case of Sudan and the three cases in West Africa (Mali, Guinea and Burkina Faso) also highlights the absence of common standards at sub-regional levels. While in west Africa the presence of anti-coup standards similar to the one in the AU has facilitated policy coherence, the absence of such similar standard in the Horn of Africa under IGAD means that it is not possible for the AU to coordinate the enforcement of its anti-coup norms with the regional body. The same can be said of the Central and North Africa regions as well.

V CONCLUSION AND RECOMMENDATIONS

The foregoing analysis on the drivers of coups in Africa and the gaps both in AU norms established to address UCG and their implementation demonstrates that military seizure of power, popular uprisings, and manipulation of term limits all share certain features in common. First, each manifest the poor state of health of the democratic process of the states in which each takes place. While there are context specific factors that explain each case of military coup, popular uprising or manipulation of term limits, broadly speaking all are expressions of the deepening trend in the democratic governance deficit that has become characteristic of the politics of many countries on the continent. Second, despite the existence of sufficient AU norms aimed at addressing the issue, there is need for review of these norms to address their gaps and to adopt measures to rectify the challenges in their implementation, a point already well emphasized at the 2021 Eighth High-Level Seminar of the PSC on Peace and Security in Africa, held in Oran Algeria.

i) Addressing democratic deficits

Taking into account PSC's admission, in the context of the crisis in Burkina Faso, on 'need for renewed efforts towards conflict prevention, based on the relevant AU instruments and [the] Council's communiques', the AU should enhance efforts at addressing deficits in the democratic and constitutional practice of member states through effective utilization of all the governance and human rights mechanisms of the AU and the assessment and monitoring of the democratic practice of member states.

To this end the AU should develop working processes that facilitate the initiation of relevant governance reforms in member states based on the assessment of the African Governance Architecture (AGA) institutions such as the APRM and African Commission on Human and Peoples Rights (ACHPR).

The AU also needs to work on supporting and enhancing the independent functioning of constitutionally established democracy and rule of law supporting independent institutions such as national human rights commissions and electoral bodies, the media, civil society and organisations.

ii) Enhanced early warning and early response

Learning the lessons from its engagement on Burkina Faso in 2014¹³ and Guinea in 2021, the AU needs to rectify the gap in taking early action from the time early warnings are issued and before the situation reaches a crisis level.

There is a need for early warning processes to focus on analysis of warning signs of coups including problems in civil-military relationships and the degradation into dysfunction of constitutional and political mechanisms for separation of powers and checks and balances, political repression and produce early warning specific to risks of coup.

iii) The need for clarifying the criteria for the implementation of Article 23(5) of ACDEG

Perhaps the most viable option in dealing with the effects of attempts at amending presidential term limit on peace and security as well as democratization is for the AU to elaborate the conditions that legitimate revision of constitutions should meet and to play a role in overseeing such processes. Accordingly, drawing on existing AU instruments relating to constitutional amendments and those relating to term limits, it is worth to elaborate specific guidelines on amendments of constitutions akin to AU's guidelines on elections. This should focus on spelling out clear criteria for determining when amendment or revision of constitution constitutes "infringement on the principles of democratic change of government".

Additionally, there is also a need to ensure that the process for making such assessment (such as a monitoring mission or an expert body) is also put in place.

¹³ On 31 October 2014, Burkina Faso witnessed what can be called its 'Arab spring' moment. Waves of massive and sporadically violent protests led to the demise of the regime of one of Africa's long serving presidents, Mr Blaise Compaore. This was the result of Mr Compaore's attempts to tamper with the constitutionally sanctioned term limit and run for a third term despite strong oppositions. AU's reaction in that case came into the picture only once the situation descended into a crisis. This demonstrates that the AU does not always intervene before the eruption of the situation into a crisis, indicating that its preventative engagement remains very weak.

iv) Use of preventive diplomacy

Going further, the AU could, as part of its early warning process, scan and assess the vulnerability of AU member states to potential troubles relating to attempts at changing or removing constitutional term limits and plan and deploy timely **preventative diplomacy** for dissuading member states from engaging in contested constitutional revision process. This can be initiated either by the Chairperson of the Commission or through the PSC.

v) The need for revisiting the approach of election observation processes of the AU

It is important to change election observation processes of the AU. This is critical in order to reduce the legitimization of flawed elections of the kind that took place in Guinea noted above, which created the context for the military coup.

vi) Implementation of PSC's decision of the 432nd session

The decision of the PSC's 432nd session which called for expanding the definition of UCG vis-à-vis popular uprisings against oppressive systems of government is also essential. This will pave the way for elaborating the criteria,

vii) Enhancing enforcement of sanctions against UCG

It is critical that the use of sanctions against UCG is implemented within the framework of the parameters set in the Lomé Declaration on UCG. It has to be anchored on a political strategy that addresses the underlying conditions and the drivers of UCGs such as coups. It necessitates that the AU designates mechanisms for robust engagement with national stakeholders in all cases of UCG beyond the adoption of suspension of the country as it did for Sudan in 2019.

Critical also to the efficacy of sanctions is the level of consensus among member states and their strong resolve to enforce the measures fully and collectively. It is critical that when applying Article 7(1)(g) of the PSC Protocol for suspending a member state for UCG

efforts are deployed to enlist the firm support of all the states whose backing for the measure is a critical factor for success. Given the recent weakening of AU member states zero tolerance to coups, it is critical that the AU summit reaffirms zero tolerance to coups and the need for the military to keep itself totally out of politics at all times.

viii) Enhancing coherence between the AU and RECs

This requires that RECs without relevant instruments banning UCG take steps towards adopting legal instruments banning UCG along the lines of the ECOWAS Protocol on Democracy and Good Governance.

ix) Ensuring a consistent, predictable and credible implementation of the norms by the PSC

One of the factors that contributed to the spate of coups has to do with the lack of consistent application by the AU of its norms. A prime example of this is the failure of the AU to apply Article 7 (1)(g) of the PSC Protocol and suspend Chad following the military seizure of power and the suspension by the military junta of the constitution of the country.

In terms of addressing the crisis of credibility facing the AU norm banning UCG, the current normative hierarchy that assigns different consequences to UCG and to serious human rights and democratic deficits should be eliminated. The sanctions applicable in cases of UCG should be made applicable to cases involving systematic and widespread violations of rule of law, human and peoples' rights and basic democratic principles. It is therefore high time to heed the counsel of the former AU Peace and Security Commissioner, Ramtane Lamamra, who in a statement at the 284th meeting of the PSC, observed '[t]he AU should have the necessary capacity to enforce compliance by all Member States with all its instruments. This should be coupled with credible deterrent measures against non-compliance and violation of AU instruments and frameworks by member states.'¹⁴ For this, it is

¹⁴ Statement of former AU Commissioner for Peace and Security, Ambassador Ramtane Lamamra at the AU PSC 275th meeting (26 April 2011) available on https://au.int/sites/default/files/newsevents/workingdocuments/26458-wd-commissioners_statement_-_275_psc_ministerial_meeting_26.4.11.pdf

imperative the recommendations of the AU human rights and governance bodies including those contained in the country reports of the APRM should be used and can serve as the basis.

Similarly, a consistent application of the norm on UCG demands standardizing the approach on the ban on UCG at the level of RECs/RMs. As the experience of policy coordination between ECOWAS and AU on the coup in Guinea shows, it is of significance that all RECs/RMs have complementary standards proscribing and sanctioning UCG.

x) Guarantee of non-recurrence of coups

Ensuring non-recurrence demands that measures of accountability and relevant reforms are implemented.

- *The need for holding coup-makers accountable:* Article 25 of the ACDEG, particularly under sub articles (5), (7), (8) and (9) provides the rules for ensuring that perpetrators of UCG are held accountable for their actions. Holding coup-makers to account through the proper implementation of these legal standards is an important part of averting the recurrence of coups.
- *Ensuring initiation and effective implementation of relevant reforms:* it has become clear that the response from international actors including the AU to the coups should go further than the suspension of the concerned country from participating in the activities of the AU and the accompanying restriction of its international relations, the establishment of a transitional administration & the convening of election. Experience shows that these measures do not guarantee the non-recurrence of coups. It is thus imperative that the response should, among others, address the deeper problems of the democratic governance deficit generally focusing among others, on the problematic of the extension of term limits in the face of popular opposition and lack of political consensus, the imperial executive power and weak checks and balances and the segregation of the army and the security sector broadly from politics.

xi) Establishing AU expert body on UCG that advises and reports to the PSC

Within the framework of the foregoing, in order to ensure a robust, principled, consistent and transparent implementation and enforcement of the norm banning UCG, the PSC should establish as its subsidiary body an expert group on the implementation of the AU norm on UCG. This is a body that offers technical support in assessing the occurrence of UCG, the nature of UCG that occurred in a country, the conditions that should be met for restoration of constitutional order and of lifting of sanctions imposed due to UCG and the best strategy for ensuring that the application of the norm on UCG on a country is able to induce speedy return to constitutional order. The group may consist of a representative of PSC members from each of the five regions, two representatives of the AU Commission one of them from the Office of the Legal Counsel and two independent experts consisting of a legal expert and a representative of a civil society group on the promotion of constitutional governance.



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We support the pan-African dream of peaceful, prosperous and integrated Africa through research, training, strategic communications, technical advisory services, and convening and facilitation.

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