

The Case for updating the African Union Policy on Unconstitutional Changes of Government



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Executive summary

The African Union (AU) policy on dealing with unconstitutional changes of government (UCG) has generated countless debates, while a large amount of research and many papers have been published on the topic. As an insider who once was deeply involved in the Organisation of African Unity's (OAU) and AU's efforts to address UCG and in the elaboration of their various policy documents, I have always wanted to give my testimony on the matter. The recent wave of coups d'état in Africa, including in Chad, Mali and Guinea, has prompted me to write this paper based on my conviction that for any organisation to move forward, it needs to pay special attention to its institutional memory and past experiences.

The political transformation of Africa since the 1990s

As Chief of Staff to the Secretary-General of the Organisation of African Unity (OAU), I was intimately involved, under the leadership of Salim Ahmed Salim, in the transformation of the OAU, which was until then perceived as a club for Heads of State. A new agenda was defined for the Organisation in the early 1990s focusing on the need to put an end to internal conflicts ravaging the continent, reactivating regional and continental economic integration, embarking on the path of democratisation, opening up to civil society, and recognising the centrality of human rights as an aspiration that was at the core of national liberation struggles in Africa. The call for African solutions to African problems was translated in the adoption of the first OAU Mechanism for Conflict Prevention, Management and Resolution at the Cairo Summit in June 1993.



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New political dynamics emerged in Africa in the late 1990s with a growing civil society and the coincidence of like-minded leaders in the context of a changing world. In fact, the OAU had the wind in its sails with the coming to power of new leaders such as Thabo Mbeki in South Africa, Olesegun Obasanjo in Nigeria, Abdelaziz Bouteflika in Algeria, Oumar Alpha Konare in Mali, Abdoulaye Wade in Senegal, and others whose views largely converged towards the transformation of the continental Organisation based on new paradigms. That momentum was astutely captured by the successive leadership of the OAU General Secretariat and the AU Commission to pursue the agenda of change and transformation of the continental organisation. The proposal by Muammar Gaddafi in September

1999 to establish a federation or confederation of OAU Member States, which was not acceptable to most African leaders, led to the establishment of the AU as a compromise institutional arrangement.

From the early 1990s until the adoption of the African Charter on Democracy, Elections and Governance (ACDEG) in 2007, the continental organisation produced a vast number of policy documents and normative frameworks related to peace and security, economic and political governance. The challenge lay in the implementation of these policies. When Salim Ahmed Salim joined the OAU as Secretary-General in September 1989, he undertook to reduce the number of resolutions submitted to the policy organs and focus on their implementation, among other reforms. More than two decades later, the need to prioritise the implementation of decisions was one of the highlights of Kagame's reform of the AU.

Initial OAU engagement on UCG in 1995

Many refer to the Council of Ministers' decision as endorsed by the Assembly of Heads of State held in Harare in June 1997 which strongly condemned the 25 May 1997 coup d'état in Sierra Leone as the first engagement of the OAU in an issue related to UCG in Africa. While this landmark decision is rightly considered a significant breakthrough in the long march of Africa towards strengthening democracy, the first OAU involvement in a coup d'état situation was, in fact, in September 1995. The Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution, meeting at ambassadorial level, condemned the mercenary-led coup d'état perpetrated in the Comoros on 28 September 1995¹. On that day, a group of mercenaries and Comorian soldiers led by Bob Denard² overthrew President Saïd Mohamed Djohar. A few days later, following a French military intervention, the coup plotters surrendered. The deposed Prime Minister Caabi El Yachroutu took over as interim President of the Transitional Government of National Unity (TGNU). President Djohar was taken into exile by the French troops to Reunion Island.

The then OAU Secretary-General, Salim Ahmed Salim, dispatched me to the region to undertake consultations towards the restoration of constitutional order. During the 1995 Christmas

and New Year holidays, my colleagues and I travelled to the Comoros to meet with various stakeholders. In Reunion, we met the deposed President Djohar, who blamed France for moving him to the island. We suggested to him the holding of discussions between his supporters and the TGNU in Antananarivo, Madagascar and that he should therefore be prepared to travel there at some point. He initially resisted any idea of leaving Reunion as he suspected this could be a manoeuvre aimed at exonerating France from its responsibilities in sending him into exile. For its part, the TGNU was reluctant to have discussions with Djohar’s representatives, comforted as it was by the de facto situation created following the French intervention.

After further consultations, we finally managed to convene the meeting as planned in Antananarivo. The TGNU delegation of key ministers was initially vehemently opposed to any possibility of reinstating Djohar as president, and even excluded any option that would bring him back to the Comoros. Despite the adamant opposition of the TGNU delegation, our last-minute attempt to broker a compromise eventually succeeded. The two parties accepted that President Djohar be reinstated and finish his term in office but would surrender most of his executive powers to the Government.

After the signing of the agreement, I travelled to the Comoros together with the interim Government delegation. The rest of our team stayed behind to organise the logistical arrangements for the return of Djohar to the Comoros. Our intention was to proceed together immediately to the Prime Minister’s office upon our arrival in Moroni and present the compromise reached in Antananarivo. To my surprise, upon our arrival in Moroni, all the ministers quickly dispersed. I had to see the Prime Minister alone. Our encounter was not pleasant, but the Prime Minister admitted that the circumstances had changed.

The OAU facilitated the implementation of the agreement until the end of President Djohar’s term in office. After this episode, the Comoros unfortunately faced a separatist and institutional crisis that plunged the country into a decade of instability beginning in 1997. This was punctuated by the April 1999 coup d’état by Colonel Azali Assoumani and a military intervention in March 2008 by African forces under

the aegis of the AU and in support of the Comorian army to put an end to the rebellion on Anjouan Island. The OAU/AU has played a leading role in assisting the Comoros to overcome its successive crises and has deployed a number of peace operations and electoral missions in the country.

The 1997 Harare decision

In the above-mentioned decision adopted at the 66th ordinary session held in Harare in July 1997, the OAU Council of Ministers “strongly and unequivocally condemned the coup d’état which took place in Sierra Leone” and called for “the immediate restoration of constitutional order”. The Council 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”.



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The reaction of the Council of Ministers was all the more strong as ECOWAS had, with the support of the OAU and the United Nations (UN), deployed sustained efforts to seek a lasting solution to the conflict in Sierra Leone, which culminated in the signing of the Abidjan Agreement on 30 November 1996. While the parties were expected to implement the Agreement scrupulously, a group of soldiers overthrew the Government of President Ahmad Tejan Kabbah, who had been elected in March 1996. In turn, the Harare Assembly of Heads of State took strong exception to this coup, especially as it occurred on Africa Day. It was received as a provocation to the OAU.

Nigerian troops which were stationed in Liberia as part of the Economic Community of West African States Monitoring Group (ECOMOG) were sent to help restore constitutional order in

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Sierra Leone. Following this deployment, ECOWAS ministers met in Conakry on 26 June 1997, with the participation of the OAU Secretary-General. At this meeting, ECOWAS decided “to work towards the reinstatement of the legitimate government by a combination of three measures, namely, dialogue, imposition of sanctions and enforcement of an embargo and the use of force”. Tejan Kabbah was restored as president early in 1998.

The July 1999 Algiers decisions

The 1998 OAU Ouagadougou Summit could not substantially build on the breakthrough in Harare in June 1997.³ Two more coups took place in the Comoros and Niger in April 1999, led by Colonel Azali Assoumani and Major Daouda Malam Wanke, respectively. The coup perpetrated in Niger was particularly brutal with the assassination of President Ibrahim Baré Mainassara on the tarmac at Niamey Airport. However, the momentum was not lost as the issue of UCG attracted special attention at the following OAU Summit held in Algiers in July 1999.

In addition to the growing mood on the continent against UCG, it is a fact that the then newly elected President Bouteflika, who chaired the Summit, had a special interest in the subject. It was a way for him to send a signal to the Algerian military that excluded him from the succession to President Houari Boumediene after he passed away in December 1978.

At the Algiers Summit, the OAU adopted two decisions related to UCG, including AHG/Dec.142 (xxxv), through which it was decided that “Member States whose Governments came to power through unconstitutional means after the 1997 Harare Summit, should restore constitutional legality before the next Summit”. Prior to the Summit, the Council of Ministers mandated the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution to “reactivate, as

a matter of urgency, the Committee on anti-constitutional 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”. Thus, the Algiers Summit decisions paved the way towards an OAU road map and policy against UCG.

Preparation of an OAU draft policy on UCG

As mandated by the Algiers decisions, the OAU General Secretariat immediately began preparing a draft policy on UCG. As a newly elected Assistant Secretary in charge of political affairs, I initiated a series of consultations, including with African civil society organisations and think tanks. At the end of the consultations, we produced a draft policy document in three parts. The policy was anchored on a set of common values and democratic principles, as captured in the first part of the document. These values and principles are also found in a number of OAU documents that were emerging in Africa at the time. Among the emerging values was the principle of limitation of terms in office. Our view at the General Secretariat was that while no limitation should be put on the freedom of the people to elect their leaders, fragile democracies in Africa needed to be nurtured and protected from the autocratic and authoritarian behaviour of the past. This principle was subsequently adopted by the OAU ministerial meeting on the Calabashes of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) in July 2002 in Durban, South Africa, as part of the Memorandum of Understanding (MoU) on security, stability, development, and cooperation in Africa. Item 16 of the MoU covering the limitation on the Tenure of Political Office Holders envisaged the adoption of “a commonly derived Code of Conduct for Political Office Holders” by 2005, which “stipulates among others, an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates and governments should scrupulously abide by it”.

The principle of limitation of terms in office was also implemented with respect to the election of the AU Commission from the July 2002 inaugural AU Summit in Durban. It was agreed that the Commission be composed of competent men and women based on a strict equal gender-balance. It was also agreed that AU Commission members be limited to two terms in office. The term limitation

did not exist under the OAU, and it was introduced as a model of governance that should be emulated in Member States.

The second part of the draft policy dealt with the definition of what was to constitute UCG. The following situations were considered UCG:

- A military coup d'état against a democratically elected government;
- An intervention by mercenaries to replace a democratically elected government;
- The replacement of a democratically elected government by armed dissident groups and rebel movements; and
- The refusal by an incumbent government to relinquish power to the winning party after free, fair, and regular elections.

We also included in the list the manipulation of the constitution to retain power as the fifth case of UCG. In our view, the inclusion of this case was the most critical one and could lend credibility to the policy. Without this component, the policy would run the risk of being perceived as a self-insurance policy for incumbent leaders.

The third part of the draft policy document dealt with the modalities and other concrete steps to be taken by the AU in reaction to a coup d'état and the conditions to be met for the restoration of constitutional order in the country concerned.

The July 2000 Lomé Declaration

The draft policy with the five situations constituting UCG was submitted to the policy organ at the July 2000 OAU Summit held in Lomé. Regrettably, the fifth situation was removed by the Committee of Ambassadors. This was very disappointing, especially as I was personally convinced that the Assembly of Heads of State would not have removed it. Despite this setback, the Lomé Declaration was welcomed as a progressive policy document. It remains the key document guiding the behaviour of the AU with respect to UCG.

I always thought that this fifth component should, at some point, be reinserted in the AU policy on UCG. In July 2003, I was serving as interim Commissioner for peace, security and political affairs. During discussions on the report of our

joint Conference with South Africa on Elections, Democracy and Governance held in Pretoria, South Africa in April 2003, I took the opportunity to inform the July 2003 Executive Council session in Maputo of the Commission's intention to prepare and submit a draft Charter on Democracy and Governance. During a meeting convened by the US Government in Miami in 2003 to compare the experiences of African and South American countries in democratisation, I learnt that the Organisation of American States (OAS) had a Charter on Democracy. I immediately thought that the AU had adopted a number of democratic and governance values and principles that were dispersed in various policy documents. It would make sense to compile them in a single document. In my mind, the preparation of such a draft charter by my colleagues of the political department would also provide an opportunity to enrich the AU's democratic and governance principles and values. One of the changes that could be made was the reinsertion of the fifth component of the AU policy on UCG related to the manipulation of the constitution to retain power.

The 2007 African Charter on Democracy, Elections and Governance (ACDEG)

The Council welcomed our proposal, and this provided the Commission with an opportunity to update its policy framework on UCG during the preparation and adoption of the ACDEG. Unfortunately, the drafting process took a long time, while the momentum towards reform was slowing down.

As a result, the missing paragraph on UCG was not inserted. Instead, the ACDEG included an ambiguous wording on a new situation of UCG: "Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government". Since then, the Assembly has seemed unresolved on whether manipulation of the constitution should be included as a UCG.

In its subsequent decisions on the same subject, the AU Assembly of Heads of State and Government continued to use ambiguous and vague language. For example, decision Assembly/AU/Dec.269(XIV) Rev.1 at the 14th AU Summit held in Addis Ababa in January and February 2010 emphasised "the need for a comprehensive approach to the

issue of UCG based on zero tolerance for coups d' État but also for violations of democratic standards, the persistence and reoccurrence of which could result in unconstitutional changes". This ambiguous language in the AU Summit decisions and the ACDEG did nothing to prevent a number of AU leaders from manipulating their respective constitutions to remain in power.

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After the initial swift build-up of the AU, there have been attempts to reverse the trend. We have seen some setbacks, including in the way the OAU/AU has dealt with UCG. For instance, during the meeting of the OAU Council of Ministers in Lusaka in July 2001, some States requested that the sanctions against the Comoros be removed as some progress had been made towards the restoration of constitutional order. As Assistant Secretary-General in charge of Political Affairs, I had to politely but firmly remind the Council of the policy adopted the previous year in the Lomé Declaration. In view of the strong observation of the General Secretariat, the Chairman of the meeting ruled out the request.

I have always held the view that the most important role of the AU Commission lies in its capacity to make proposals, implement decisions and to act as the custodian of the decisions of the policy organs in the face of attempts by individual Member States or groups of States to renege on previous commitments for reasons of national interest and political expediency.

Conclusion: Update the Lomé Declaration

Previous experiences and more recent situations have shown how the manipulation of national constitutions by some African leaders to perpetuate their power has led the concerned countries to political impasses which, at times, have culminated in coups d'état. This is affecting national cohesion and disrupting the much-needed stability for the sustained development of African countries.

I believe that the Lomé Declaration should be revisited and updated based on lessons drawn from the past and more recent experiences. It is high time that the manipulation of constitutions to retain power be included in the revised policy as constituting an UCG. I also believe that the above-mentioned decision on the limitation of terms in office, as endorsed by the OAU Assembly of Heads of State at its 38th ordinary and last session in Durban in July 2002, could be given effect. Finally, the AU could formalise a practice in which perpetrators of UCG will not be allowed to stand for the following presidential or general elections.

Africa has recently witnessed a peaceful transfer of power in Zambia with the then President Lungu conceding defeat after another presidential candidate, Hichilema's landslide victory. Earlier in 2021, President Mahamadou Issoufou of Niger wisely chose not to change the constitution to remain in power. Despite the shortcomings in the electoral process, Niger, which has seen its share of UCG in the past, has also provided Africa with a good example of a peaceful and democratic change of power. 🌍

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Endnotes

- 1 The September 1995 coup d'état was the 17th recorded attempted coup perpetrated in Comoros since its independence in 1975 according to "Le Monde" of 29 September 1995.
- 2 Bob Denard is a former French soldier who became a mercenary. He participated in a number of destabilisation operations in African countries, including perpetrating some four coups d'état in the Comoros.
- 3 The then President of Burkina Faso, Blaise Compaore, came to power on 15 October 1987, following a coup d'état to overthrow President Thomas Sankara who was killed during the coup.

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