

BRIEFING NOTE No. 171

The fragility of the African governance agenda: A crisis of legitimacy

October 2023

By Nneka Okechukwu

Summary

Six members of the African Union (AU) are currently suspended due to unconstitutional changes of government. The recent spate of coup d'états ostensibly gives credence to assertions of the demise of democracy in Africa, despite the fact that a major strength of the AU in the past few decades has been in coup deterrence. This note takes a closer look at the pillars of Africa's normative framework against unconstitutional changes of government and the legitimacy dilemmas that confront it.

The note argues that recent coup d'états have been enabled by gaps in the existing normative framework, waning political consensus against unconstitutional changes of government by other means, and an overemphasis on security to the detriment of governance. These factors have led to a crisis of legitimacy in a number of countries and the African governance agenda more generally. The note reviews each of these points in turn and explores what, if anything, the AU and its international partners could do to reverse this trend.

Introduction

On 30 August, a group of senior military officers in Gabon announced that they had seized power (Al Jazeera 2023a). This was the latest in a string of coups in Africa over the past few years (seven others since 2020) that have stretched across the Sahel ‘from the Atlantic in the west to the Red Sea in the east’ (Hoinathy 2023). Reactions to the coups have ranged from vociferous condemnation of the 26 July coup in Niger – including the imposition of sanctions and the threat of military intervention by the Economic Community of West African States (ECOWAS) – to rather muted criticism of the takeover in Gabon (Ronceray 2023), and compromise on the 2021 Chad coup (Handy and Djilo 2021).

These coups occurred despite the existence of strong policy frameworks alongside extensive continental and regional instruments against unconstitutional changes of government (UCGs). A number of reasons could be advanced for this increased spate of coups. Firstly, the existing normative framework on UCGs remains reactive, failing to actually prevent military putsches on the Continent. Second, the definition and application of the policy against UCGs is narrow and has loopholes that are frequently exploited by leaders with some – but rarely decisive – pushback from the African Union or relevant Regional Economic Communities (RECs). Third, and most importantly, the trend of constitutional manipulation by some political leaders to ensure third-terms or the elimination of term limits is rarely penalised. Taken together, these factors suggest a governance agenda that is more interested in maintaining incumbents in office, no matter the cost. Indeed, some have referred to the recent spate of coups as evidence of deficiencies in Africa’s architectures for peace, security and governance (Handy and Djilo 2023).

This briefing note argues that the legitimacy of a growing number of governments, and indeed of the agenda itself, could be put to question if the widening cracks of the African governance agenda are not effectively addressed. In particular, it notes that gaps in the normative framework, waning hard lines with regard to UCGs, and an overemphasis on security at the cost of governance have contributed to the current environment of coup resurgence.

The note will introduce the major pillars of the African normative framework against UCGs. It will then proceed with a discussion of the legitimacy dilemmas that confront this agenda, including gaps in these governing instruments and recent emphasis on security over governance that is beyond the conduct of elections on the continent. Taking into consideration the justifications put forward for the recent coups, the note briefly touches on the question of whether there can be such a thing as a 'good coup'. Finally, this briefing note will suggest concrete steps that might be taken by the African Union and its international partners in addressing this current phenomenon of coups.

The African normative framework on UCGs

Africa has a broad normative framework against UCGs. The three main pillars of this normative framework against UCGs are: the Constitutive Act of the African Union (AU N.d.), the 2000 Lomé Declaration on Unconstitutional Change of Government (OHCHR 2000), the 2007 African Charter of Democracy, Elections and Governance (ACDEG)(AU 2007). Several additional instruments were also adopted to address the issue – including the establishment of the African Governance Architecture – but these three remain of primary importance. Despite this host of policy and legal tools, the incidences of coups have not been eliminated on the continent, and there has in fact been a resurgence in recent years. This raises the question of whether gaps exist in this framework, or if the tools themselves are insufficient to address incidences of UCGs.

The Lomé Declaration is of particular note because it outlines, not just a set of common values and principles for democratic governance, but also a definition of UCGs and measures and actions with which the OAU/AU may respond to them. The Declaration outlines four situations that would be considered UCGs:

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

This definition has been instructive for the AU in identifying instances of UCGs and reacting to them through the progressive implementation of the measures outlined in the Declaration. Nevertheless, there are **a number of gaps in the situations outlined**. For instance, there is the question of whether military coup d'états against autocratic governments, as was the case in Sudan and Gabon, would not be considered to be UCGs? How about a military takeover in the event of a vacuum in power, as was the case in Chad? Also, apart from singular interventions by ECOWAS, the fourth definition is difficult to operationalise due to the contested nature of recent elections. Another glaring omission in the Declaration was that it excluded the recently more fashionable 'soft coups' of constitutional manipulation from this list. Indeed, expert accounts of the negotiations around the Declaration have explained that attempts to include constitutional manipulation – as was most recently the case in the Central African Republic – as a fifth definition were rejected at the negotiations at Lomé (Djinnit 2021).

While the Constitutive Act, which is the foundational instrument of the AU, similarly upholds the principles outlined in the Lomé Declaration, **the ACDEG introduced an expanded definition for UCGs**. The ACDEG, Africa's leading instrument on the continent's governance agenda (Ronceray et al. 2022), strengthens the normative framework on UCGs in a number of ways: 1) it includes constitutional amendments in infringement of the principles of democratic change as a fifth definition of UCGs; 2) it explicitly places the responsibility of ensuring the restoration of constitutional order on the AU's Peace and Security Council, rather than the Chairperson of the Union as was formerly the case; 3) it prevents perpetrators of UCGs from taking part in elections to restore the constitutional order; 4) it further floated, for the first time, the possibility of criminal prosecution of coup perpetrators by a body of the AU, such as the yet to be established African Court of Justice and Human Rights (ECDPM 2023a); and 5), it extends the application of sanctions to other member states which support or instigate a coup in another.

The RECs, on their part, have varying mandates and frameworks on governance. 4 of 8 RECs have adopted instruments on democratic governance (Okechukwu & Ronceray 2023). But ECOWAS has the most detailed instrument (ECOWAS 2001) and a strong track record on reacting to crises. It has also applied a variety of tools when responding to UCGs, conflicts and human rights violations in the

region (Ronceray et al. 2023). For instance, following the coup in Mali, ECOWAS imposed short-lived sanctions on members of the military junta and closed its borders (Melly 2022). It even threatened military intervention following the Niger coup. This might explain the difference in responses to the coups in Niger and Gabon. Niger is a member of the ECOWAS, while Gabon is a member of the Economic Community of Central African States (ECCAS), which has no explicit mandate (ECCAS 2023b) or instrument relating to governance. Even so, the coup in Niger has changed the geopolitical landscape in West Africa, with four of the fifteen ECOWAS members (Burkina Faso, Guinea, Mali and now Niger) now forming an alliance of transitional governments that came into power in the past three years (Sow 2023).

This normative framework, while progressive, has still been unable to stem the tide of UCGs. This is partly due to the vague nature of the fifth definition of UCGs. Ratification of the ACDEG is also not widespread (Ronceray et al. 2022). However, even with widespread ratification, enforcement of African normative provisions on UCGs remains difficult for a number of reasons that will be further explored.

A problem of legitimacy

In addition to the gaps in the policy framework around the rejection of UCGs discussed above, there is waning political leadership on governance at the continental level. In particular, incumbent governments fail to tackle issues of corruption, natural resources distribution, addressing foreign interference and other governance challenges. Moreover, political instability and conflicts have also resulted in crises of legitimacy in some countries on the continent. Taken together, these events have encouraged and lent popular legitimacy to military takeovers. These issues point to a need for a multi-pronged approach to UCGs encompassing: closing the gaps in the instrumental framework, more forceful political action against UCGs in all its forms (both forceful and soft), and addressing the failure in applying the thick definition of the rule of law and governance (Okechukwu 2023) – including addressing the socio-economic and human aspects.

Filling the gaps in the governing instruments

While the ACDEG expanded the definition of UCGs in the Lomé Declaration to include constitutional amendments ‘in infringement of the principles of democratic change’, **it does not explicitly prohibit constitutional manipulation to amend or end term limits**. This means that, in countries where there is an existing constitutional term limit, amending the constitution to end these constitutional provisions will not be a direct violation of ACDEG, as long as the democratic procedures are followed. This has enabled and legitimised the practice of third-termism in many countries. Illustratively, in a move that garnered insufficient continental and international attention, President Faustin-Archange Touadéra of the Central African Republic ensured the lifting of presidential term limits in the Constitution by the forced retirement of the Chair of the Constitutional Court, who had declared the planned 30 July referendum as unconstitutional (Hoinathy 2023). This move was not only a clear breach of the separation of powers, a fundamental underpinning principle of the rule of law in the country (Okechukwu 2023), but it also manoeuvred around the AU's existing (narrow) definition of UCGs.

Additionally, the AU has displayed inconsistent application of the existing norms, which might have emboldened later coup instigators in other countries.

It has been criticised for allowing the 2019 coup plotters in Sudan to remain as part of the Transitional National Government (Handy and Djilo 2023). The subsequent 2023 outbreak of civil war between the Sudanese Armed Forces and Rapid Support Forces – as well as the earlier coup against the civilian part of the transitional government in 2021 – marked the failure of the negotiated settlement in that country that had been mediated by a number of regional and international players. Similarly, when there was a UCG in Chad in 2021, the AU decided not to sanction or suspend Chad. This was partly due to the unwillingness of Chad's neighbours to sanction it due to the country's role in security in the Sahel and Great Lakes. Moreover, there was lack of clarity of how this UCG – which involved taking advantage of a power vacuum – actually fit into the traditional definition of UCGs. The AU's response to Chad undermined the credibility of the AU, and also highlighted its inconsistencies in the implementation of the normative framework around UCGs, further eroding the preexisting consensus (Handy and Djilo 2021).

These events highlight the ‘toothless’ nature of the AU's normative framework against UCGs. The AU's enforcement capacity relies on sanctions – since forceful

intervention is very much a last resort. This emboldens coup leaders, who have realised over time that they can get away with their actions and as such now mostly ignore the AU.

The AU and RECs have struggled to demonstrate a clear, unified and consistent response to recent UCGs. A review of the AU's policies with regard to UCGs, including, but not limited to military coup d'états, is therefore necessary.

The overlooked security and governance aspects of UCGs

A number of **challenges have worked together to create a crisis of legitimacy and governance** among African leaders. This is partly driven by rising insecurity on the continent, which increasingly demands focus, to the detriment of governance, and in particular the normative and political aspects of accountable governance. These failures are often exploited by coup instigators to justify their putsches.

It should be acknowledged that the recent coups (apart from that in Gabon) took place against the backdrop of dire security concerns, the threat of terrorist and jihadist groups, as well as dissatisfaction with governments, RECs and the AU. This highlights the **inescapable role of security as a root cause of UCGs** on the continent.

While insecurity in many African countries have both local and regional causes, they have also been undoubtedly influenced by global trends such as the global war on terror. More recently, the situation in Libya, transnational organised crimes and global geopolitics have played into the political and security crisis in the Sahel region. These realities have led many countries to focus on state security which in some cases has hyper militarisation aspects at the expense of investing in political and socio-economic governance.

Additionally **poor governance, beyond the conduct of elections, has had a role to play in the resurgence of coups**. The most recent coups have occurred in countries which are 'disproportionately poor, have a recent history of coups, and face ongoing dilemmas of democratic consolidation' (Chin and Kirkpatrick 2023). In fact, the mismanagement of state resources through corruption and elite capture, identity crises, and a growing discontent of increasingly connected

youth, among other factors, have undermined human security, fuel popular grievance and deepened political fractures within countries.

Polls have shown that a slight majority (53%) of adults across 28 African countries are pro military interventions in politics in the event of abuse of power by elected leaders (Afrobarometer 2023). The numbers rise to 56 per cent among young adults between 18 and 35 years of age. These numbers are surprising when one considers that strong majorities of Africans support core democratic institutions and norms, such as term limits for presidents (73%) and election of leaders (75%). Moreover, almost two-thirds (63%) of Africans believe that government accountability is even more important than effectiveness.

For example, the coup in Gabon took place within the context of 'deep resentment' of 'dynastic-style politics' (Al Jazeera 2023b). Gabon, a member of Opec, produces more than 200,000 barrels of oil a day. Despite having one of Africa's highest incomes per capita – more than one-third of the population of 2.3 million are thought to be living below the poverty line, according to the UN Development Programme.

These two factors – the impact of insecurity and lack of accountable governance – were at play in the recent coups. Coup leaders in Burkina Faso and Mali tied their actions to the obvious deteriorating security situation and poor economic and social governance. More subtle aspects of the same issues hold true in Niger despite the international media's portrayal of the Nigerien case as the overthrow of a 'legitimate' government (Annor 2023). Popular frustrations were simmering at a government for its outward-looking international cooperation on migration orientation while domestic issues such as economic growth, provision of services including security affected the population more directly (Bisong et al. 2023). There were also internal power struggles (IISS 2023), and political rivalries among the political and security leadership and clashes of personal interests (Aksar et al. 2023). All of these factors risked a coup, but were not proactively addressed by President Bazoum.

African leaders should therefore not lose sight of the **need to create debate, peer pressure and diplomacy in and around governance alongside peace and security matters when addressing UCGs**. Some level of recognition of this seems to have caught on. The AU held an Extraordinary Session on Terrorism and

Unconstitutional Changes of Government in May 2022, at which a Declaration was passed which reiterated the AU's "unequivocal condemnation of all forms of unconstitutional changes of government" (AU 2022). Additionally, the AU reinvigorated the African Governance Architecture and recently requested the African Peer Review Mechanism (APRM) to focus its 2023 African Governance Report on UCGs (APRM 2023). Nevertheless, more needs to be done to ensure real action on the issue beyond debates and declarations.

The foregoing shows that the normative and policy framework against UCGs has been consistently undermined by a narrow interpretation and application mostly against military coups alone, while constitutional coups and poor governance were tolerated. This eroded the credibility of those frameworks by those who were supposed to uphold them, reflecting on the limitations of legal frameworks, the application of which depends upon political will and progressive interpretation.

'Good coups' versus 'bad coups'?

The recent coups raise the question: if a civilian government has failed in fulfilling its basic duties in line with the social contract, what good is it to the general population? Especially relevant for external actors and development partners is if a civilian government should be granted support regardless of its governance scorecard.

Moreover, are some coups more 'justified' than others, for example if against an authoritarian regime? This has reignited debates around so-called 'good coups' and 'bad coups' (Souaré 2009). Earlier iterations of this argument suggested that some coups are acceptable, particularly in instances where elections were rigged or the coup is to remove 'African despots' from power.

While the rationale behind such arguments is not difficult to understand, the assertion that 'good coups' could serve the interests of accountable governance bears some examination. Firstly, history has shown that governments that came into power through unconstitutional means have governed just as badly as – if not worse than – those they removed from power. As has been noted (Souaré 2009), "unconstitutional changes of government generally lead to the

establishment of unconstitutional regimes."Secondly, it is not possible to identify when a coup might be 'good' going into the situation. Such positive reviews can only be carried out in retrospect, if at all. Of course, by the time a coup has been reviewed to be 'bad', reversal would be next to impossible. A third and very pertinent point is the fact that, while regimes that came into power through constitutional means might abuse that power, constitutional means to remove such regimes exist. However, regimes that come to power through UCGs are invariably more difficult to peacefully remove from power or even get to respect the constitutional order.

Therefore, an argument in favour of coups on the basis of the governance failings of the prior governments cannot hold water.

Conclusion: From reaction to prevention

The African governance agenda has always been a 'house of cards'. Nevertheless, the recent spate of coups present a whole other level of challenge to the African Union, the origins of which can be traced back to the continent's firm rejection of coups. In putting governance back on the continental agenda, the AU should: i) reevaluate its existing normative framework against UCGs to address loopholes; ii) take a firm stand on its normative foundations rather than accommodating coup instigators; iii) re-evaluate the effectiveness of the governance agenda beyond elections and the presence or absence of coups; and iv) invest as much political and legal attention to constitutional manipulation, corruption, human security and corruption.

It is time to critically reassess the existing instruments on preventive diplomacy, governance and subsidiarity, to fill the gaps and loopholes that contributed to this recent round of coups on the continent. This will involve the streamlining of instruments as well as bringing regional instruments on governance up to par with the AU's standard on UCGs in order to augment the mandates of the respective institutions. More specifically, the AU should encourage member states to sign and ratify the Malabo Protocol on Amendments to the Statute of the African Court of Justice and Human Rights which fulfils the ACDEG recommendation to criminalise UCGs on the continent. Ratification by states should be accompanied by the imposition of sanctions that actually 'bite' when

violations occur, in order to send a clear message that UCGs in all its forms will no longer be tolerated on the continent.

The recent spate of UCGs indicate that the AU's and RECs' approaches up until now of resorting to reactive sanctions mediation and suspension are insufficient. This is partly due to the fact that enforcement is often dependent upon external pressure or inducement, which often came up against popular support for these coups within the countries. A proactive and preventive approach is therefore appropriate and necessary.

An early-response approach should also be taken to at-risk countries (ISS 2023b). There is a role for civil society in this regard, in bringing at-risk countries to the attention of the AU through existing mechanisms such as the Conflict Early Warning System (CEWS) which now also includes an assessment of structural vulnerabilities, the APRM and the African Governance Architecture.

Finally, the AU should promote among its member states the principle that governance goes beyond mere politics and elections to include the socio-economic elements of stability, service delivery and economic performance. It should also rethink its hyper militarised approach to counter-terrorism, power of government and military. This will involve a critical assessment of security partnerships with external actors, including EU, France, Russia and Gulf countries. In this regard, it should not give in to other agendas in play, as it is well known that counter-terrorism shapes popular and international tolerance to coups.

Acknowledgements

This brief was produced for The Charter Project Africa, which is co-funded by the European Union. Its contents are the sole responsibility of ECDPM and do not necessarily reflect the views of the European Union. This publication also benefits from the structural support by ECDPM's institutional partners: Austria, Belgium, Denmark, Estonia, Finland, Ireland, Luxembourg, The Netherlands and Sweden.

References

Afrobarometer. 2023. [Young Africans show tolerance for military intervention – a wake-up call, Afrobarometer CEO tells German leaders](#). 31 March 2023.

Aksar, M., Lewis, D. and Gauthier-Villars, D. 2023. [Insight: Behind Niger's coup, a feud over the former president's legacy](#). Reuters. 7 August 2023.

Al Jazeera. 2023a. [A 'coup' in Gabon: Who, what and why?](#) 30 August 2023.

Al Jazeera. 2023b. [Mapping Africa's coups d'état across the years](#). 30 August 2023.

Annor, I. 2023. [Does Niger's Coup Affirm Democratic Backsliding Theories in West Africa?](#) Voice of Africa. 31 July 2023.

APRM (African Peer Review Mechanism). 2023. [Africa Governance Report 2023 – Unconstitutional Change of Government in Africa](#). 12 July 2023.

AU (African Union). N.d. [Constitutive act of the African Union](#).

AU (African Union). 2007. [African Charter on democracy, elections and governance](#). 30 January 2007.

AU (African Union). 2022. [Declaration on terrorism and unconstitutional changes of government in Africa](#). 28 May 2022.

Bisong, A., Jegen, L. and Mounkaila, H. 2023. [What does the regime change in Niger mean for migration cooperation with the EU?](#) Briefing note 168. 11 September 2023. Maastricht: ECDPM.

Chin, J.J. and Kirkpatrick, J. 2023. [African coups in the COVID-19 era: A current history](#). In *Sec. Peace and Democracy. Volume 5 – 2023*. 27 March 2023.

Djinnit, Ambassador S. 2021. [The Case for updating the African Union Policy on Unconstitutional Changes of Government](#). Accord. 22 October 2021.

ECDPM. 2023a. [African Court on Human and Peoples' Rights & African Court of Justice](#). May 2023. Maastricht: ECDPM.

ECDPM. 2023b. [ECCAS – Summary snapshot](#). May 2023. Maastricht: ECDPM.

ECOWAS (Economic Community of West African States). 2001. [Protocol A/SPI/12/01 on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security](#). December 2001.

Handy, P-S. and Djilo, F. 2021. [AU balancing act on Chad's coup sets a disturbing precedent](#). ISS. 2 June 2021.

Handy, P-S. and Djilo, F. 2023. [Niger: another symptom of Africa's weak crisis-response capacity](#). ISS. 28 Augustus 2023.

Hoinathy, R. 2023. [Touadéra's perilous referendum project](#). ISS. 28 June 2023.

IISS (International Institute for Strategic Studies). 2023. [The coup in Niger](#). August 2023.

ISS (Institute for Security Studies). 2023a. [Is the AU failing coup countries?](#) PSR Report. 1 September 2023.

ISS (Institute for Security Studies). 2023b. [Peace & Security Council Report](#). August 2023.

Melly, P. 2022. [Mali coup: How junta got Ecowas economic sanctions lifted](#). BBC news. 6 July 2022.

Okechukwu, N. 2023. [Rethinking EU support to the rule of law: Taking a stand for sustainable development](#). 6 February 2023. Maastricht: ECDPM.

Okechukwu, N. and Ronceray, M. 2023. [Interactive tool: Mapping the African Governance Architecture](#). Guide. 22 May 2023. Maastricht: ECDPM.

Ronceray, M., Tadesse Shiferaw, L. and Wutz, I. 2022. [A guide to the African Charter on Democracy, Elections and Governance](#). 28 February 2022. Maastricht: ECDPM.

Ronceray, M. 2023. [Can ECOWAS still defend democracy in West Africa after the Niger coup?](#) Commentary. 11 September 2023. Maastricht: ECDPM.

Ronceray, M., Tine, L., Salzinger, M. and Bakari, R.M. 2023. [The ECOWAS democracy agenda: Channels, lessons and digital technologies for civil society engagement.](#)

Sow, D. 2023. [ECOWAS must look beyond the use of force in Niger.](#) ISS. 9 August 2023.

OHCHR (Office of the United Nations High Commissioner for Human Rights). 2000. [Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government.](#) July 2000.

Souaré, I.K. 2009. [The AU and the challenge of unconstitutional changes of government in Africa.](#) ISS paper 197. August 2009.