



Regional Organisations and the Enforcement of Constitutionalism: Reflections on the Implementation of Chapter 8 of the African Charter on Democracy Elections and Governance (ACDEG)¹

By

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Introduction

Persistent and widespread coup d'état in Africa in the 1990s prompted the Organization of African Unity (OAU) to respond with the Declaration on Unconstitutional Changes of Government in 1999 in Algiers³, which was subsequently followed by the 2000 Lomé Declaration on the OAU Response to Unconstitutional Changes of Government (UCG)⁴. As a clear shift from the OAU to a new dispensation underpinned by solidarity, democratization, integration peace and development, the OAU transformed into the African Union (AU) in 2000 with a new vision embedded in the Constitutive Act of the Union⁵. The vision proclaimed in the Act promoted further interrogation of how the AU could provide move away from its focus of an end to colonialism to democratisation and the development of other normative instruments that would ensure democratic consolidation on the continent as underpinned by the Constitutive

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³ Decisions AHG/Dec.141(XXXV) and AHG/Dec.142 (XXXV), adopted by the 35th Ordinary Session of the OAU Assembly of Heads of State and Government, held in Algiers, Algeria, from 12 to 14 July 1999

⁴ Adopted by the 36th Ordinary Session of the OAU Assembly of Heads of State and Government, held in Lomé, Togo, from 10 to 12 July 2000 (the Lomé Declaration)

⁵ Details of AU principles are continued in the Constitutive Action of the Union accessible at http://au.int/en/about/constitutive_act

Act. One of those instruments is the *African Charter on Democracy Elections and Governance (ACDEG)* 2007, which came into force in February 2012 after ratification by fifteen (15) Member States⁶. The Charter paid important attention to unconstitutional changes of government in Chapter 8 from Art 23 to 26, outlining the definition of UCG as well as the mandate of the Peace and Security Council (PSC) and the lifting of sanctions. This paper argues that implementation of the provisions of the Charter has been inconsistent. It rarely defends the rights of the citizens against constitutional abuse by incumbents. The paper further argues that AU's response to cases of UCG has been rather reactive rather than proactive.

The African Charter on Democracy Elections and Governance

The African Charter on Democracy, Elections and Governance (*henceforth the Charter*) was adopted on 30 January 2007 in Addis Ababa at the Eighth Ordinary Session of the AU Assembly of Heads of States and Government. This later came into force on February 15, 2012 as a binding AU instrument after 15 states ratified and deposited the instrument as provided in articles 47 & 48. To date, 23 Member States have ratified and deposited their ratification⁷. The Charter in its objectives and principles, amongst other things, clearly stated the intention of the AU to ensure Member States' adherence to universal values, principles of democracy and human rights through respect for the rule of law, credible and transparent elections, and most importantly rejection of UCG.

One of the important attributes of the Charter is its supposedly binding nature and the fact that it derives its authority and legitimacy from the Constitutive Act, which commits AU Member States to participatory democracy, constitutionalism, rule of law, human rights, peace and security, as well as sustainable human development. The Charter also builds on other various AU commitments to democratic governance through various declarations, decisions

⁶ The Charter came into force after ratification by 15 Member States-till date 23 Member States have ratified the Charter. Further details can be find at

<http://au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance.pdf>

⁷ See Status list at

<http://au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance.pdf>

and instruments⁸. In essence, the Charter draws together different and various AU commitments into a legally binding document and as such has become Africa's reference point on democracy, elections and governance.

It has been argued that the underpinning rationale for the Charter lies in the long-standing years of concern about unconstitutional changes of government and the attendant political instability, insecurity and violent conflict⁹. It also underscores the normative shift in African affairs from non-interference, which epitomised the OAU era to non-indifference as contained in the Constitutive Act of the Union. Importantly, provisions in Chapter eight (8) of the Charter are culminations of several decisions and declarations by AU Member States on UCG. Specifically, Chapter eight (8) of the Charter builds on the Union's resolve to enshrine democracy in Africa and to end UCG as decided and declared in Algiers and Lomé in July 1999 and July 2000 respectively.

Recently after the Arab spring, the African Union has been engulfed with the definition of UCG. The Lomé Declaration of July 2000 defines UCG as i) military coup d'état against a democratically elected Government; ii) intervention by mercenaries to replace a democratically elected Government; iii) replacement of democratically elected Government by armed dissident groups and rebel movements; iv) refusal by an incumbent Government to relinquish power to the winning party after free, fair and regular elections. The Charter, added a fifth element to the definition as v) *any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government*. The addition of the fifth element was in recognition of constitutional tampering in Africa by incumbents to extend their tenure.

In Chapter 8 Article (24 & 25), the Charter moves beyond sanctions to the State Party, which are normally in the form of suspension from all African Union related activities to targeted individual sanctions where it provided that perpetrators of UCG shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political

⁸ Matlosa K, (2008) The African Charter on Democracy, Elections and Governance: Declaration vs. policy practice, Policy Brief 53 Centre for Policy Studies, Johannesburg

⁹ Ibid

institutions of the State and that such perpetrators risk trial before the competent court of the Union. These added provisions compared to the Lomé Declarations not only expanded the scope in terms of the consequences of UCG from state party to individual conspirators but also tries to link the perpetrators to the AU legal mechanism at the African Court on Human and Peoples' Rights where justice could be served. In principle, the provisions of the Charter that forbids constitutional tampering by incumbents extended sanctions to serves as a clear commitment by the AU to embrace the culture of constitutionalism and respect of peoples' legitimised power.

By the definition, the AU implies two important elements. The first has to do with seizure of power by military, mercenaries, dissent groups or rebels. This aspect relates to ousting the incumbent and replacing the incumbent with either of the groups mentioned. Within this perspective, consideration is not given to the actions of the incumbent that could have necessitated the seizure neither does it perceive the incumbent to be a perpetrator in the first instance whose action could trigger the action of any of the group mentioned. The second element relates directly to the incumbent in power and raises the question of incumbency exaction of unconstitutional authority either by refusing to relinquish power to credible elected alternative or by manipulatively altering the constitution in order to remain in power longer than originally enshrined in the constitution. For example, the planned third term agenda in Nigeria at the tail end of President Obasanjo's regime and the constitutional amendment in Uganda that allowed further terms of President Museveni in power are few examples of what the last element of the definition of UCG intends to deter. In fact, one could argue that the addition of the provision, which prohibits constitutional tampering by incumbents recognises that the AU in the Lomé Declaration was very silent on the omission and commission of sitting African governments. Beside the Charter expanded the punishment for UCG from state to individual. In essence, what the AU is saying is that it can apply targeted individual sanctions¹⁰. Despite the

¹⁰. In Chapter 8 Article 25, apart from outlining the procedures for suspending and resolving situations of UCG, it also provided for a strong stance against individual perpetrators of UCG. Article 25 (4) reads that "*the perpetrators of unconstitutional change of government shall not be*

normative provision that supports respect for constitution and constitutionalism, AU's response to cases of UCG has been at best inconsistent. The next section provides some examples.

Examples of AU's Response to Cases of Unconstitutional Change of Government

Since the development of the framework on UCG, the AU has invoked it on nine different occasions but in eight different countries. These countries include Togo in 2005, Mauritania in 2005 & 2008, Guinea in 2008, Madagascar in 2009, Niger in 2010, Mali in 2012, Guinea Bissau in 2012 and Egypt in 2013¹¹. In all these cases, the AU has responded constructively albeit differently, but has always moved beyond condemnation and suspension to other steps aimed at restoring constitutional order. However it has applied this differently in different countries based on the country's response to AU diplomatic and political interventions. In some cases, the AU is shrouded in interpretation dilemma as to not only what constitutes UCG but also on what constitute return to constitutional order. Thus, it could be argued that while what constitutes UCG is a contested issue, what constitutes a return to constitutional order is even more contested. This paper identifies some of the inconsistencies and variations in policy implementation by examining a few cases closely.

The Mauritanian case presents a clear case of inconsistency as well as raising questions on AU interpretation. The first Mauritanian case of UCG came in 3 August 2005, when the high members of the army under the Military Committee for Justice and Democracy (CMJD), headed by Colonel Ely Ould Mohamed Vall¹², seized power. The seizure presented a difficult situation for the AU. While the AU

allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State" while Article 25 (5) commits the AU to bringing perpetrators to the judicial book by providing that "perpetrators of unconstitutional change of government may also be tried before the competent court of the Union".

¹¹ The dates are simply the date of the UCG. However suspensions and return to democratic rule often takes months and in some cases years

¹² Colonel Ely Ould Mohamed was the director of national security at that period and led the coup

took its normal procedural steps of condemning and suspending Mauritania from the activities of the Union, Mauritians were in fact engrossed in a jubilant applause for the military for rescuing them from what they viewed as oppressive rule from Maaoya Sid'Ahmed Ould Taya.

The question of inconsistency lies in the manner in which the AU handled the situation. Following the usual condemnation and suspension, the AU took further steps to engage the Mauritanian stakeholders for a return to constitutional order. However, the critical question here was if the AU did actually have a stand on Mauritania or if the AU merely followed the transitional plan to return to constitutional order as unilaterally designed and approved by the same coup plotters?

After condemnation and suspension, the AU set up a delegation to negotiate with the coup plotters on return to constitutional order. The leaders of the coup defended their actions to be defence of democracy and provided the AU with a framework that outlined a timetable on return to constitutional order. The framework consisted of constitutional amendments, but most importantly adherence to Art 25 (4) of the ACDEG. The leaders of the coup in the framework outlined that the process will culminate in a general election in which none of the members of the CMJD, including its president, the prime minister, and all members of government, would be eligible to contest. The timetable presented by the members of CMJD had a timeline of 24 months. Although the framework for return to civilian rule presented by CMJD appears reasonable, the manner in which the AU accepted the justification for the coup left many disappointed in view of maintaining a principled position on UCG and ensuring that disgruntled elements do not use UCG as a means of ousting a democratically elected government or gain temporal access to power. Tull and Mehler argue that disgruntled elements and insurgents use UCG as an opportunity to negotiate power in Africa and the trend is encouraging and reproducing further insurgent violence who intend to gain access to power and authority¹³. Invariably, the AU's

¹³ Tull D. M and Mehler A (2005), The Hidden Cost of Power Sharing: Reproducing Insurgent Violence in Africa, *African Affairs*, 104/416, 375 -398

toned response and acceptance of the position of the coup leaders begs the question whether there are good and bad coups¹⁴.

Years later in 2008, the AU's handling of UCG in the same country took a different dimension. In this case, there was a violation of Art 25(4) of the Charter, which states that perpetrators of UCG shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State. In 2009, the AU readmitted Mauritania when the coup leader was elected as the country's president. This was in stark contrast to the provisions of Art 25(4) and also inconsistent with AU procedural steps. This lack of consistency in one country presented the gaps in the implementation of the AU normative framework and the political mix in the implementation of the frameworks on UCG.

Egypt case is also closely related to Mauritania second case. After the ousting of Morsi through in what described as popular uprising by Egyptians, the African Union differed and pronounced it a coup d'état. Following that pronouncement, the procedural step was for the AU to suspend Egypt from all AU related activities. The step was dully followed. However, following official protest by Egyptian authorities regarding the definition of UCG within the Egypt special context, the AU set up a High Level Panel on Egypt to advice the Africa Union. The panels, work extended until the Presidential Election in Egypt. The election thus brought two important aspects to AU decision. The first is whether AU has accepted that, what happened in Egypt was in fact coup d'état and hence UCG. If that is the case, the chief protagonist to the coup was in line to contest the election in violation of Art 25(4). Although, Egypt is not a signatory to the Charter, the spirit of the Charter assumes that non-signatory Member States should also not contravene the Charter. In addition, Egypt as a Member States is bound by the decision of the AU General Assembly Paragraph 6(1)(b) of the Assembly Decision of February 2010 (Assembly/AU/Dec.269 (XIV) on the Prevention of UCG

¹⁴ Francis Nguendi Ikome (2007) Good Coups and Bad Coups: the limits of the African Union's injunction on unconstitutional changes of power in Africa, Occasional paper No 55, Institute for Global Dialogue (IGD), South Africa

and Strengthening of AU Capacity to manage such situations¹⁵. In few of the above, AU stance should have been that Field Marshall Al-Sisi was not qualified to contest in few of Art 25 (4) of the Charter and the General Assembly decision which bounds Egypt.

The second element is whether the AU accepted the explanation of Egypt and recognised that what transpired in Egypt was popular uprising that Field Marshal was merely carrying out the decision of the Egyptians. Within the frame, the Field Marshall is allowed to run. However clarity should have been provided by the African Union on to confirm that it retains its original position or that its earlier position was taken without due considerations to the peculiar Egyptian context and as such absorb Egypt of all wrong doing and the readmit Egypt into the African Union. Hence the lack of clarity by the AU on its stance on Egypt until the election (which AUEOM observed) provides further of inconsistency in the implementation of AU frameworks on UCG.

The recent events in Burkina Faso only serve to underscore the AU inconsistent response of cases of UCG further as well as the reactive rather than proactive nature of AU response to UCG. As provided in both articles 23 (5) of the ACDEG as well as Article 2(1) of the ECOWAS Protocol, no amendment or revision should be made on constitution or legal instruments in order to retain power. Despite these provisions in both AU and ECOWAS frameworks, Blaise Compaoré long standing schemes to tamper with the constitution of Burkina Faso, was a known fact between both ECOWAS and the AU, yet there was no proactive measure to ensure that such manoeuvre nipped either through high level soft diplomatic engagement or radically by the use of conditional sanctions, despite clear violation of Art 23 (5) of the Charter, which forbids constitutional tampering aimed at tenure elongation. The AU could have declared his action as UCG under Art 23 (5), in which case, the AU would be required to apply conditional sanctions,

¹⁵ The General Assembly decision clearly states that in cases of UCG, in addition to the suspension of the country, the following measure shall apply; a) Non-participation of the perpetrators of the UC in the election held to restore constitutional order, b) implementation of sanctions against any Member State that is provided to have instigated or supported an UCG in another Member State, c) Implementation of the Assembly of other sanctions including punitive economic sanctions.

that could come into effect should he proceed with the plan to change or tamper with certain clauses of the constitution.

The inability to proactively and adequately deal with Burkina Faso case could be linked to the internal mechanism for preventative response with the AU. The AU internal mechanism is prepared for responding to UCG that emanate from coup d'état, mercenary or armed group replacement of democratically elected government. Also, AU's response to UCG so far are around coup d'état and AU is yet to deal with cases of UCG emanating from refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government. Therefore, it could be argued that, it is either the AU lack experience on the cases scenarios or that the AU assumed that incumbents are the likely victims and not the perpetrators. The internal mechanisms and working of the AU is not adequately designed to respond to cases of UCG as a result of the two scenarios. The lack internal mechanism derailed efforts until the events of October 30, 2014. The complacency in responding to the case of Burkina Faso until the outbreak violence implicates the African Union. The interim military leader of Burkina Faso on 7 November 2014 summed up the reactive and complacency of AU r when he asserted to AU threat of sanction that:

"We are not afraid of sanctions..." "We have waited on the African Union in moments when it should have shown its fraternity and its friendship but instead was not there," he said. "It's unfortunate but it's not too late"¹⁶.

The statement by Lt Col Isaac Zida aptly underscores the gap between provisions in the Charter on UCG and AU practical approach to responding to cases of UCG. Zida was referring to the fact that the AU as the continental body was aware of the schemes by former President Compaore to amend the constitution to extend his term. His response is premised on the notion that given

¹⁶ BBC Interview with Interim military leader of Burkina Faso titled: Burkina Faso's Isaac Zida dismisses African Union intervention: Accessed on Nov 9, 2014 at: <http://www.bbc.com/news/world-africa-29948773>

that Mr Compaore's action violates both Art (23) 5 of the Charter, AU response could have been more proactive rather than reactive.

Although, Chapter 10 Article 44 of the ACDEG outlined a mechanism for application of the Charter including mandating the AU Commission (AUC) to develop benchmarks for implementation of the commitments and principles of the Charter and to evaluate compliance by State Parties as well as designating regional focal points for coordination, evaluation and monitoring of the implementation, the AU is yet to fully operationalize that provisions that would ensure a proactive response to potential triggers to cases of UCG. Essentially, the lack of a monitoring mechanism has created gaps in response and as a consequence created unhindered space for violation of Article 23 (5) of the Charter by incumbents, as was the case in Burkina Faso.

In practical terms, the inability of the AU to effectively hold Member States accountable to governance and democratic provisions as contained in the Charter could eventually lead to defiance of its provisions on UCG when the state becomes the oppressor rather than the protector of the people. Shirah¹⁷ argues that regime failure to deliver democratic goods, curtailment of rights and liberties as well as consistent policies and practices that create democratic and governance deficit triggers popular resentment and ***possibly revolt***. He highlighted that these gaps could lead to authoritarian backsliding¹⁸ and argues that it could be accompanied by authoritarian reversal through protest and uprising.

The lack of response to myriads of democratic and governance deficits in Africa are the pathfinder to cases of popular uprising and revolts as was the case in North Africa and recently, Burkina Faso. However, the other side of the argument is that the AU might as well recognize the moral imperative for change in specific situations and decide to politically accept the change as a way of

¹⁷ Shira Ryan (2012), Authoritarian Backsliding in New Democracies

¹⁸ Guillermo A. O'Donnell, (1998) Horizontal Accountability in New Democracies, [Journal of Democracy](#), Vol. 9 No.3 opines that authoritarian backsliding can occurs through sudden end of conventional military coup d'état or or through slow death of a gradual erosion of democratic practice

ending oppressive regimes and promoting democracy as well as preserving the AU's democratic principles—a win-win situation for the AU and the country's citizens as argued by Ikome¹⁹. Invariably, the Mauritania case as earlier illustrated and the case of Egypt tend to support this argument on how authoritarian backsliding within a democratic setting could lead to a nuanced response by the African Union.

There is also an argument that although AU has moved away from the principle of non-interference to the principle of non-indifference, it is yet to fully determine and operationalize the applicability of this later principle in different situations of UCG. The principle of non-indifference still does not allow for sovereign interference but diplomatic negotiation and mediation²⁰. The centrality of the AU passage from non-interference to non-indifference is to allow the AU to respond in grave circumstances such as war crimes, genocide and crimes against humanity and other grave human right abuses. However despite the inclusion passage from the former principle of non-interference to non-indifference, the AU cannot respond unilaterally to situations without explicit approval by the Member State. Hence the rationale for the AU adoption of meditative and diplomatic approach to situations where AU could otherwise intervened. There are also two important elements that accompany the principles of non-indifference. The first is that the Act still retains the principles of non-interference in Art 4 (g), which implies that sufficient consultation by AUPSC is needed for the determination as whether the AU should intervene or not. Such Council consultation in most cases might not be in the interest of the citizens. The second element is the consent of the Member State, which also implies that an erring Member State is unlikely to accept intervention from the African Union. These two elements present the difficulty in the AU activation of the principles of non-indifference as contained in Art 4 (h) of the Constitutive Act of the Union.

¹⁹ Francis Nguendi Ikome (2007) Good Coups and Bad Coups: the limits of the African Union's injunction on unconstitutional changes of power in Africa, Occasional paper No 55, Institute for Global Dialogue (IGD), South Africa

²⁰ Mukundi (2013), The Role of the African Union in Strengthening the Rule of Law and Constitutional Order in Africa, background paper for Kennedy School of Governance

Another important challenges, which has recently surfaced in relation to UCG is the interpretation dilemma. The Arab Spring, particularly events in Egypt, provides a good case on the question of interpretation of UCG. One of the pertinent questions that have come to the fore after the Arab Spring (particularly after the ousting of Morsi) is on the (re) conceptualization of UCG. Clearly, the definition of UCG as provided in ACDEG did not take into account or envisaged the uprisings that took place across North Africa in 2011. The Egyptian case exposed the gap in the AU's definition and/or interpretation of UCG.

On 25 January 2011, Egyptians staged mass demonstrations in the streets of Cairo and other cities in Egypt, which ended with the resignation of the long-time president, Hosni Mubarak. After the reign of Hosni Mubarak, Egypt looked towards a constitutional democracy with the election of parliament in February 2012 and later the election of the first democratic president on 30 June 2012. Although there were questions and uncertainties about the constitutionality of the election²¹, the reign of Morsi was short-lived following persistent protest and counter-protest against his reign as the president, especially after a Presidential Decree overturning the decision of the Supreme Council of the Armed Forces (SCAF) on the dissolution of the People's Council, calling the latter to reconvene²². Eventually Morsi was ousted by the SCAF in what Egypt claimed was a popular protest on 3 July 2013.

In reaction, the AU, at the 384th meeting of the Peace and Security Council (PSC) held in Addis Ababa, Ethiopia concluded that the ousting of Morsi was in fact an UCG²³. The PSC resolved that the ousting of Morsi does not conform to the relevant national laws of Egypt as well as AU instruments and as such constitutes an UCG. Other international players including the United States, the European Union and United Kingdom chose to remain indifferent in what was perceived as

²¹ For more elaborate details, read AUEOM report of Presidential election May 2014 pp 7-10 at <http://pa.au.int/en/AUEOM>

²² Ibid

²³ Communiqué of the Peace and Security Council of the African Union (AU), at its 384th meeting on the situation in the Arab Republic of Egypt - See more at: <http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-384th-meeting-on-the-situation-in-the-arab-republic-of-egypt#sthash.XGdlr3Up.dpuf>

an attempt to ensure continued partnership with Egypt in the fight against terrorism as well as in protection of the interest of Israel.

However, the bigger question is whether the ousting of Morsi was a popular protest or an UCG? The second question, which is more difficult, is what is popular protest and how does that fit into the current AU definition of UCG as provided in the Charter. Egypt was of the opinion that what transpired was a popular protest and that the military action to depose Morsi was in line with AU principles of protecting human rights of Egyptian citizens especially to life as well as the principles of democracy and good governance as contained in both the Constitutive Act and the Charter²⁴. Other commentators argued that what happened in Egypt took the AU by surprise and that the AU Charter and other instruments on UCG do not cover substantially this current and emerging trend of uprising within the context of UCG.

In response to the question of interpretation after the Egypt case, the AU-PSC convened a session on UCG on 29 April 2014 at its 432th meeting. The Department of Political Affairs (DPA) of the AUC submitted a paper in which it argued that there is a gap in the AU instruments. It argued that popular uprising, regime change outside the constitutional provision in strict legal sense constitute an UCG. However, the DPA also pointed out that while popular uprising might not be recognised constitutionally, oppressive regimes and disregard for the rule of law by governments has in fact become the forerunner to uprising. The DPA further argues that until governments become accountable and responsible to the citizens, uprisings may have embedded itself as a means of forcing government to become responsible and accountable²⁵. A resolution by the PSC also reiterated the AU's commitment to constitutionalism and rule of law. It highlighted and emphasised that lack of accountability and governance deficiencies by governments are ready recipe for popular protest. The Council nonetheless appeared sympathetic to the uprising when in its resolutions it stated that:

²⁴Primary interaction with a member of the Egyptian Embassy in Addis Ababa

²⁵ Unconstitutional Change of Government: Revisiting the AU Normative Framework: Discussion paper submitted by Department of Political Affairs to the PSC on 24 April 2014

“In circumstances where governments fail to fulfil their responsibilities, are oppressive and systematically abuse human rights or commit other grave acts and citizens are denied lawful options, Participants and Council expressed understanding, and recalled the 50th Anniversary Solemn Declaration, of 25 May 2013 adopted by the Assembly of the Union, in which the Assembly re-affirmed its rejection of unconstitutional changes of government, including through any attempts to seize power by force but recognized the right of the people to peacefully express their will against oppressive systems²⁶”

The AU’s expression and sympathy towards the Egypt case could also be understood by the deployment of the African Union Election Observation Mission (AUEOM) to observe the May 2014 Presidential Election. In essence, the AU accepted Egypt’s argument of popular uprising in order to deploy an observation mission to observe a return to constitutional order. The AU silent acceptance of Egypt interpretation and the AU threat to Burkina Faso also contradicts itself even when the events are similar. In fact, the report of the AU High Panel on Egypt equally recommended re-admission of Egypt and recognised that the military acted in the interest of Egyptians, which is the same case if not more for Burkina Faso. Others argued that Egypt’s re-admission was based on its financial contribution to the AU. Besides, the two arguments, it is clear that the AU not only applied its response inconsistently but also faced an interpretation dilemma.

Despite the growing pattern of uprisings across Africa, the AU is still grappling with the conceptual confusion associated with UCG and popular uprisings. It also appears that the current definition as provided in both the Lomé Declaration and the Charter leave more questions than answers as to whether popular uprisings constitute an UCG. Although this could provides room for consideration of wide range of factors in determining how uprising could differ from one country to another, nonetheless, a guiding framework that would provides clarity to AU stance with regards to UCG and popular uprising still remains crucial. This was recognised by the AUPSC the reports of its meeting 324 of 24 April 2014 where the

²⁶ Press Statement of the AU-PSC Meeting No 432rd on April 29, 2014 in Addis Ababa, Ethiopia on “Unconstitutional changes of Governments and popular uprisings in Africa – challenges and lessons learnt”

Council mandated the Commission to develop a framework that should include the 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 parameters²⁷. Therefore, the interpreting popular uprising within the context of UCG based on both the Lomé Declaration and the Charter still leaves an unfilled gap and it is expected that the outcome of the new framework on UCG and popular uprising would resolve the interpretation dilemma.

Conclusion

This paper observes that while the African Union has done well in creating and developing normative instruments on democracy, elections, governance, rule of law, constitutionalism and human rights, it still faces an enormous task in ensuring the implementation of those instruments. It is also clear that pertaining UCG, the AU has not only ensured that frameworks are in place but has gone further to apply the instruments on several occasions in different countries.

However, the AU response to UCG has been inconsistent from country to country and in a few cases appears to contradict the very provisions of the framework. The cases of Mauritania in 2008 and Egypt in 2014 have been questioned with reference to its compliance with Art 25(4) of the Charter.

Finally, this paper argued that the gap in responding to situations of UCG by the AU could lead to further abuse of power by incumbents and oppressive regime, which in turn could trigger protests and uprising by citizens as a last resort. Important within this context is that governance deficits in member states has given rise to an unexpected concept- "*popular uprising*- thereby leaving the African Union in an interpretation dilemma.

²⁷ Press Statement of PSC Workshop on Unconstitutional changes of Governments and popular uprisings in Africa – Challenges and Lessons learnt; AUC-PSC, Addis Ababa

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