

AFRICAN UNION

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PEACE AND SECURITY COUNCIL
1100TH MEETING

15 AUGUST 2022
ADDIS ABABA, ETHIOPIA

PSC/PR/CN.1100 (2022)

CONCEPT NOTE

**VIRTUAL MEETING OF THE PEACE AND SECURITY COUNCIL OF THE AFRICAN UNION ON
SANCTIONS AND ENFORCEMENT CAPACITIES: DETERRENCE AGAINST UNCONSTITUTIONAL
CHANGES OF GOVERNMENT**



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I. INTRODUCTION

1. Under the Organization of African Unity (OAU), non-respect for the constitution, which manifested itself through frequent coups d'états and other forms of unconstitutional changes of government, was commonplace. With the transition from the OAU to the African Union (AU), democracy had become the common form of government in most Member States. However, respect for constitutionalism and democratic consolidation has continued to face many challenges, particularly in the form of unconstitutional changes of government (UCGs).

2. The AU has developed several comprehensive normative instruments and operational frameworks to prevent UCGs, which include: the Lomé Declaration, the Protocol Relating to the Establishment of the Peace and Security of the African Union, the AU Constitutive Act, and the African Charter on Democracy, Elections, and Governance (ACDEG). In particular, Chapter 8 of the ACDEG entitled "Sanctions in Cases of Unconstitutional Changes of Government". It defines UCGs in Article (23); it empowers the PSC with powers to impose sanctions against Member States (Article 24); and it details the types of sanctions that could be imposed against the Member States and perpetrators (Article. 25). Notwithstanding the existence of all of these AU legal and normative instruments, the Continent is now experiencing a new and unprecedented wave of unconstitutional changes of government. Recent examples of unconstitutional changes as indicated below.

**II. HISTORICAL BACKGROUND OF SUSPENSION OF MEMBER STATES BY THE PEACE
AND SECURITY COUNCIL FOLLOWING UNCONSTITUTIONAL CHANGES OF
GOVERNMENT**

3. In the past the PSC has continuously evoked its powers as stipulated in Article 7 (g) of its Protocol in response to unconstitutional changes of government as follows:

- **At its 25th Session (25 February 2005):** the PSC suspended the de facto authorities in **Togo** from all AU activities until the restoration of constitutional order, following the coup of February 2005;
- **At its 36th Session (4 August 2005):** The PSC suspended **Mauritania** following the 3 August 2005 coup d'état;
- **At its 165th Session (29 December 2008):** The PSC suspended **Guinea** from participation in all AU activities following the coup of December 2008;

- **At its 168th Session (5 February 2009):** the PSC suspended **Mauritania** for the second time, in condemnation of the 6 August 2008 coup (decision adopted following Council's condemnation of the coup at its 144th Session where it set conditions for a return to constitutional order but refrained from immediate suspension);
- **At its 181st Session (20 March 2009):** The PSC suspended **Madagascar** from all AU activities following the unconstitutional transfer of power which took place in March 2009;
- **At its 204th Session (17 September 2009):** Imposition of targeted sanctions, including denial of visas, travel restrictions and freezing of assets, against the President and members of the National Council for Democracy and Development (CNDD) of **Guinea**;
- **At its 216th Session (19 February 2010):** The PSC suspended **Niger** following the coup of 18 February 2010 and the ensuing forceful seizure of power;
- **At its 252nd Session (9 December 2010):** The PSC suspended **Côte d'Ivoire** as a result of the 2010 election crisis (refusal of then President Laurent Gbagbo to hand over power to the President-Elect);
- **At its 315th Session (23 March 2012):** The PSC suspended **Mali** due to the breakdown of constitutional order following the coup d'état of 22 March 2012 and military seizure of power;
- **At its 318th Session (17 April 2012):** The PSC suspended **Guinea Bissau** from all AU activities following the coup of 12 April 2012, staged two weeks before the scheduled presidential election;
- **At its 363rd Session (25 March 2013):** The Council suspended the **CAR** from all AU activities and imposition of sanctions including a travel ban and asset freeze against the Seleka rebel groups who illegally seized power in the country in March 2013;
- **At its 384th Session (5 July 2013):** The PSC suspended **Egypt** from all AU activities following the overthrow of elected President Mohamed Morsi and suspension of the December 2012 referendum based Constitution
- **At its 544th Session (18 September 2015):** The PSC suspended **Burkina Faso** from all AU activities and measures against perpetrators of the 17 September 2015 coup d'état;
- **At its 551st Session (17 October 2015):** The PSC imposed targeted sanctions (travel ban and asset freeze) against **Burundian** stakeholders perpetuating violence and impeding solution to the 2015 electoral crisis in Burundi;
- **At its 647th Session (13 January 2017):** although the decision of this session did not exactly end with the imposition of a sanction, it is important in that the PSC adopted decisions which firmly underscored the consequences of contravention to the AU

Charter on Democracy, Elections and Governance by the then outgoing President Yahya Jammeh of The **Gambia** and his government.

- **At its 854th Session (06 June 2019):** The PSC suspended **Sudan** from all AU activities following the 11 April 2019 coup which led to the assumption of power by the Transition Military Council which failed to hand power to a civilian-led transitional authority;
- **At its 941st Session (19 August 2020):** The PSC suspended **Mali** from all AU activities following the coup of 18 August 2020.
- **At its 993rd Session (22 April 2021):** The PSC expressed grave concern over the establishment of the MTC in **Chad**, contrary to the African Charter on Democracy, Elections and Governance, as well as the Lomé Declaration, following the military takeover of power on 20 April 2021.
- **At its 1001st Session (01 June 2021):** The PSC, once again, suspended **Mali** from all AU activities following the coup of 24 May 2021;
- **At its 1030th Session (10 September 2021):** The PSC suspended **Guinea** from all AU activities until the restoration of normal constitutional order, following the coup of 5 September 2021;
- **At its 1041st Session (26 October 2021):** The PSC suspended **Sudan** until the effective restoration of the civilian-led Transitional Authority following the events of October 25; and, most recently,
- **At its 1062nd Session (31 January 2022):** The PSC suspended **Burkina Faso** suspended until the effective restoration of normal constitutional order in the country.

III. **BACKGROUND CONTEXT**

4. The foregoing is symptomatic of deep-rooted governance deficits, which have compelled the AU to continue to review the efficacy of its legal instruments and normative frameworks for preventing the phenomenon of unconstitutional changes of government in the Member States. Indeed, it is against this background that the PSC has remained actively seized of the matter. It was also against this background that the PSC dedicated its 1061st meeting held on 27 January 2022, to an Open Session dedicated to the theme: “Promoting Constitutionalism, Democracy, and Inclusive Governance to Strengthen Peace, Security and Stability in Africa. As part of the outcomes of that Open Session, the PSC decided to hold a brainstorming session/seminar with other relevant stakeholders on unconstitutional changes of government in Africa. The PSC also requested the AU Commission to reactivate the PSC Sub-Committee on Sanctions to provide support to the PSC and follow up on the implementation of sanctions imposed by the PSC, as well as to provide necessary support and coordination with the Regional Economic Communities and Regional Mechanisms.

5. In the implementation of the foregoing decision of the PSC, the Accra Forum was convened from 15 to 17 March 2022. The Accra Declaration on Unconstitutional Changes of Government, which was adopted at the end of the Forum, provides an additional advocacy tool for a more robust response to UCGs in Africa. This is why, subsequently, on 18 April 2022, the PSC dedicated its 1077th session to consideration of the Declaration of the Reflection Forum (Accra Declaration) on Unconstitutional Changes of Government. Among others, at the end of the session, the PSC decided to submit the Accra Declaration, for consideration and adoption, by the 16th Extra-Ordinary Session of the AU Heads of State and Government that was to be held in Malabo, Equatorial Guinea on 28 May 2022.

6. The 16th Extraordinary Session of the Assembly of Heads of State adopted a Declaration on Terrorism and Unconstitutional Changes of Government in Africa. Among others, the Assembly unequivocally condemned all forms of unconstitutional changes of government in Africa and reiterated zero tolerance in this regard. The Assembly also recommitted its total adherence to the relevant principles, norms, and shared values contained in the AU Constitutive Act, the PSC Protocol, and African Charter on Democracy, Elections and Governance; the African Charter on Human and People's Rights and the Lomé Declaration. Furthermore, the Assembly took note of the Accra Forum Declaration and decided to strengthen national, regional and Continental mechanisms for early warning and conflict prevention, as well as the interface between the African Governance Architecture and the African Peace and Security Architecture, to consolidate good governance, particularly constitutionalism and rule of law, through multilevel engagements.

IV. RATIONALE

7. It is against this background context of a new wave of unconstitutional changes of Government and, as part of a follow-up to the outcomes of the 16th Extraordinary Session of the AU Assembly of Heads of State and Government that the PSC has decided to convene a session dedicated to "Sanctions and Enforcement Capacities: Deterrence Against Unconstitutional Changes of Government".

V. OBJECTIVES

8. This open session of the PSC is aimed at assessing: (1) the effectiveness of sanctions in deterring UCGs in Africa, as well as (2) the capacities of the existing enforcement mechanisms. More specifically, the session will:

- a) Introspect and review the impact of past PSC decisions/ Sanctions on UCGs and their enforcement;
- b) Assess and reinforce the capacities of Member States, the RECs/RMs and the AU for forecasting and preventing UCGs;

- c) Identify best methods of enforcing sanctions imposed against the Member States;
- d) Examine strategies for leveraging and implementing existing AU legal and normative frameworks;
- e) Promote synergy of efforts and harmonization of frameworks through the adoption of a viable continental early warning strategy and action plan to better prevent and address UCGs;
- f) Provide an update on progress made with regards to the finalization of the AU guidelines for the Amendment of National Constitutions in line with the existing frameworks in constitutionalism and rule of law;
- g) Explore options to implement the recommendations for the establishment of a Sub-Committee on unconstitutional changes of government, in line with Article 8 (5) of the PSC Protocol, to monitor trends and report annually to the Assembly of Heads of State and Government according to the Decision of the 16th Extraordinary Session of the Assembly of the African Union on Terrorism and Unconstitutional Changes of Government in Africa, held on 28th May 2022 in Malabo, Equatorial Guinea.

VI. EXPECTED OUTCOMES

- 9. Among others, it is expected that, as part of its outcomes, this session will:
 - a) Call for systematic implementation of the Accra Declaration and the Malabo Declaration on Terrorism and UCGs;
 - b) Reiterate the need to expedite the full operationalization of the PSC Committee on Sanctions and, the development of the necessary technical capacities to ensure its effectiveness;
 - c) Underscore the urgent need for reviewing and developing of an effective African Union Sanction Framework with the involvement of the RECs/RMs and all other relevant policy organs of the Union;
 - d) Underline the importance of enhanced coordination between the AU, UN, and the RECs in the implementation of sanction measures; and to
 - e) Reaffirm the call for sanctions to be smartly targeted at intended parties and perpetrators of UCGs, terrorism and other forms of insecurity on the Continent;

VII. PARTICIPATION

10. The participants in this virtual session are primarily PSC Members. However, the following entities have been invited to share their perspectives with the PSC during the Open Segment of the Session, namely:

- a) The Regional Economic Communities and Regional Mechanisms (RECs/RMs);
- b) The United Nations; and
- c) The Institute for Security Studies (ISS)

VIII. DATE, VENUE AND LANGUAGE

11. This PSC Session will be held virtually using the ZOOM Online Platform **on 15 August 2022, starting at 10:00 a.m. (10hrs), Addis Ababa Local Time.** The Session will be conducted in English and French languages.

IX. COORDINATION

12. For inquiries, please contact:

- a) PSC Secretariat;
- b) The Directorate Governance and Conflict Prevention (DGCP) of the Department of Political Affairs, Peace and Security (DPAPS) of the African Union;
- c) Constitutionalism and Rule of Law Unit, DCPD.

2022-08-15

Communiqué of the 1100th Meeting of the Peace and Security Council held on 15 August 2022 on Sanctions and Enforcement Capacities.

Peace and Security Council

African Union Commission

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