General Conclusion

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Constitutional crises constitute a type of threat to peace and security in Africa in addition to armed conflicts, terrorism, and other international and transnational crimes. These crises are generated by various interdependent causes, such as manipulations of constitutions, presidential third term syndrome, fraudulent elections, refusal of electoral defeat, and other vulnerabilities of African states related to the role of armed forces in politics, underdevelopment and poverty as well as the political and military interference of great powers. In effect, they worsen the security problem of the continent since they increase instability in countries that are already affected by terrorism or protracted civil wars, as is the case of Sudan, Mali, Central African Republic (CAR) and the Democratic Republic of Congo (DRC). They also negatively impact on the functioning of the African Union (AU), first by reducing the ability of affected member states to participate in its activities; and second, by bringing in the heart of the AU's concerns such crises which lead it to deal more with pressing issues of the moment instead of carrying out its socio-economic agenda designed to improve the living conditions of Africans.

The study has covered the continent as a whole and relied on different examples and case-studies from all five African regions, including Burundi, CAR, Comoros, Côte d'Ivoire, Kenya, Mali, South Sudan, The Gambia and Zimbabwe. In their analyses, authors have observed that the AU and its peace and security architecture resort to, *inter alia*, collective sanctions, the use of force through intervention missions and peace support operations, election observation missions, mediation and fact-finding commissions to investigate human rights violations, as a means of dealing with constitutional crises in Africa. In so doing, the AU pursues three main objectives, namely, maintaining and consolidating peace, ensuring the responsibility of perpetrators of human rights violations and restoring the democratic constitutional orders that have broken down. In most of the cases, the AU undertakes its actions in close cooperation with Regional Economic Communities/Regional Mechanisms (RECs/RMs). It also provides support to transition governments put in place with the mandate to organize new elections. Overall, the AU's actions demonstrate that while constitutional crises imply the decline of democracy in the affected countries, there is no other solution to redress the situation than implementing common principles and values of democratic governance. These principles and values are not contested as such but it is the implementation of democracy which is difficult on the ground.

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However, AU's actions are more a reaction against constitutional crises that have already arisen, whilst little attention is paid to preventive measures. Moreover, this reaction has so far ended up with a mitigated result. First, and foremost, several countries which were affected by constitutional crises, such as Burundi, CAR, Mauritania, Guinea (Conakry) and Mali, fell into further crises in spite of AU involvement in their previous situations to restore democracy. In this vein, AU's advices and recommendations have remained empty slogans. Second, in many cases, *de facto* authorities have succeeded to remain in power after organizing new alleged democratic elections with the AU support. Third, the efficacy of AU's measures or those which are imposed by the relevant RECs is sometimes undermined by member states themselves given their unwillingness to comply with them in recognizing the *de facto* authorities or maintaining diplomatic and economic ties with them. In the CAR situation in 2003, it was the Economic Community of Central African States (ECCAS) which did not follow the AU policy of sanction by recognizing the *de facto* government which had overthrown President Félix Ange Patassé. Anyhow, the AU did not adopt sanctions against member states violating its decisions and policies pursuant to article 23 of its Constitutive Act. Fourth, political and military interference of great powers in their geopolitical agenda enable, in some instances, *de facto* authorities to stay in power in a way which reduces the efficacy of decisions and measures which the AU or RECs/RMs adopt. A case in point is Mali where the armed forces have perpetrated two coups d'état between 2020 and 2021 and are proud of the military support they get from Russia – which is in competition with France – in order to fight against terrorism.

Overall, articles in this volume have made some recommendations to improve the efficacy of AU's responses to constitutional crises in Africa. To begin with, authors have underscored the need to strengthen the existing AU legal framework of actions in two ways. On the one hand, Au legal instruments should be revised and adapted to contemporary challenges in order to capture unforeseen cases or new forms of unconstitutional change of government, such as fraudulent or delayed elections to infringe principles of democratic change of government. On the other hand, African states should reach a universal ratification of these instruments, especially the African Charter on Democracy, Elections and Governance (ACDEG) and the Malabo Protocol, and implement them at the domestic levels. The study also recommends to improve the military component of the African Standby Force (ASF) in all its dimensions. As the 2022 Accra Declaration on unconstitutional changes of government in Africa stipulates, there is a need for the full implementation and deployment of the ASF in order to effectively carry out its mandate,[1] such as intervention missions in AU affected member states. However, it must be reminded that in July 2012, the High Level Panel on Alternative Sources of Financing the AU, chaired by Olusegun Obasanjo, former President of Nigeria, noted:

1 African Union, Accra Declaration on Unconstitutional Changes of Government, adopted by the Participants of the AU- convened Reflection Forum, Accra (Ghana), 17 March 2022, para. 8.

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> *Presently, the Union continues to depend heavily on partners to finance its programmes. For instance, Member States contributed just about 7 % of the Programme Budget in 2011 and 2012. Added to this is the problem of arrears in back payment of statutory contributions by Member States. By year 2009 and 2010, Member States arrears amounted to US$ 40 million and US 43 million, respectively. Another problem is the continued dependence of the Union on five countries (Algeria, Egypt, Libya, Nigeria, and South Africa) for financing the bulk of its activities. The five countries each account for 13.272 % of the Union Budget. That is, around 66.36 % of the total Union budget comes from only five countries. The implication of the heavy dependence on a few countries is that failure to honour their commitments by any one of the countries could mean a serious financial trouble for the Union. The 2011 events in North Africa brought this reality to the fore and it provided a strong incentive and justification for spreading the financing web much wider.*[2]

Thus, the AU financial autonomy should quickly become a tangible reality and allow it to cover expenses incurred by its activities and chiefly peace missions, as decided in 2015[3] and 2016.[4] In this regard, nothing would be possible if AU member states, RECs/RMs and leaders do not show their political will to abide by AU decisions and policies.

Furthermore, there is a need for a better coordination and synergy between the AU and RECs/RMs, based on the principle of subsidiarity, in order to minimize the costs and for efficient complementary actions on the ground,[5] particularly in providing "common signals of early warning"[6] against coups d'état to member states. Concerning the follow-up and implementation of sanctions imposed on *de facto* authorities, it is important that the PSC committee on sanctions instituted in 2009 becomes fully operational.

Authors have also underlined the need to build a culture of democracy within AU member states and to promote national ownership of principles and values of constitutional-

2 Assembly of the African Union, 'Progress Report of the High-Level Panel on Alternative Sources of Financing the African Union Chaired by H.E. Olusegun Obasanjo, Former President of Nigeria Consultations with Member States', Assembly/AU/18(XIX), Addis Ababa (Ethiopia), 15–16 July 2012, para. 6.

3 Assembly/AU/Dec.578 (XXV), Decision on the Scale of Assessment and Alternative Sources of Financing the African Union (Doc. Assembly/AU/5(XXV)), 25th Ordinary Session of the Assembly of the African Union, Johannesburg (South Africa), 14–15 June 2015, para. 2 (ii). In this decision, the AU stressed that it aimed to support 100 % of its operational budget, 75 % of its program budget and 25 % of its peace support operations budget.

4 Assembly/AU/Dec.605(XXVII), Decision on the Outcome of the Retreat of the Heads of States and Government, Ministers of Foreign Affairs and Ministers of Finance on the Financing of the African Union, 27th Ordinary Session of the Assembly of the African Union, Kigali (Rwanda), 17–18 July 2016, para. 5(a) (i). The AU Assembly hereby decided "to institute and implement a 0.2 percent Levy on all eligible imported goods into the Continent to finance the African Union Operational, Program and Peace Support Operations Budgets (…)".

5 African Union, note 1, para. 13.

6 Ibid.

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ism. This obviously necessitates sensitization campaigns involving national human rights institutions. The AU and RECs/RMs can also seek the contribution of civil society organizations. The Livingstone Formula on the interaction between the PSC and these organizations provides avenues for this.[7] The AU can use them to support its mandate to settle and prevent crises and conflicts in the continent. In particular, civil society organizations can be involved in AU mediation and the implementation of peace agreements. They can also assist the AU in post-conflict confidence-building, reconciliation processes, reconstruction and development, or provide training sessions in order to impart skills and knowledge on peace and security where such trainings are necessary or required.

Another way to prevent constitutional crises is the better use of the institutions of the African Governance Architecture (AGA), such as the African Peer Review Mechanism (APRM) which is the AU main agency in assessing consenting member states' performance and needs in political, economic and corporate governance as well as development and environment. The AU Peace and Security Council (PSC) recalled this in January 2022 during its open session on "promoting constitutionalism, democracy and inclusive governance to strengthen peace, security and stability in Africa".[8] It underscored the need to enhance the APRM capacity "to continue supporting member states in the promotion of democracy and good governance with a view to prevent constitutional related crises".[9] This presupposes that all AU member states join the APRM,[10] as the DRC already did in 2021. Furthermore, the AU should provide its member states with guidelines concerning constitutional amendments that are based on national consensus and take place in a peaceful environment.[11] In any case, this cannot obscure the need to effectively apply socio-economic measures stipulated in the AU's Agenda 2063 and its implementation programs and plans in order to curb the current under-development of the continent which predisposes most African countries to recurrent constitutional crises.

7 African Union, 'Conclusion on a mechanism for interaction between the Peace and Security Council and civil society organizations in the promotion of peace, security and stability in Africa' (PSC/PR/(CLX)), Retreat of the Peace and Security Council of the African Union, Livingstone (Zambia), 4–5 December 2008.

8 PSC/PR/COMM.1061 (2022), 27 January 2022.

9 Ibid., para. 4.

10 Ext/Assembly/AU/Decl. (XVI), Déclaration sur le terrorisme et les changements anticonstitutionnels de gouvernement. Réponse robuste, approfondissement de la démocratie et sécurité collective, 16th Extraordinary Session of the AU Assembly, Malabo (Equatorial Guinea), 28 May 2022, part B, para. 7.

11 African Union, note 1, para. 16.

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