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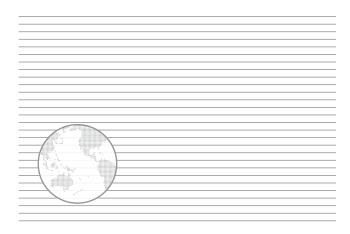## Working Paper Series

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Unconstitutional Changes of Government – New AU Policies in Defence of Democracy

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Unconstitutional Changes of Government –
New AU Policies in Defence of Democracy

Ulf Engel *

Abstract

In this paper first results of a mid-term research project which looks into how the African Union is implementing parts of her new peace and security architecture are presented. The project focuses on the African Union's normative framework, its institutional capacities and the emerging mediation practice in response to cases of so-called unconstitutional changes of government. The paper is based on case studies on Mauritania, Guinea-Bissau, Guinea, Niger and Madagascar. The sample period is mid-2008 to mid-2010. In general, the African Union has started to actually live up to expectations and implement her policy norms – though selectively. In this process the Union is cultivating traditional, and underestimated, diplomacy instruments. Systematic policy harmonization with RECs, the UN and other international partners adds a new dimension to this policy. Policy solutions privilege power-sharing arrangements which often do not address the respective root causes of conflict (Mauritania, and probably also Guinea and Niger). The results of the African Union's policy on unconstitutional changes of government are mixed: Besides military intervention the instruments applied so far could not redress unconstitutional changes of government when putschists bluntly refused to cooperate (Madagascar, Guinea-Bissau).

Key words: *African Union, mediation, unconstitutional changes of government, peace and security*

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1 Why developing new policy approaches?
The problem of unconstitutional changes of government

In principle, research assumes that a certain level of consolidation of democratic transitions has been achieved in Africa (cf. Gyimah-Boadi 2005). Poser and Young (2007: 126), for instance, argue that the "formal rules of the game are beginning to matter in ways that they previously have not." They substantiate this position with reference to the increasing number of cases were presidents failed to change constitutions to allow them a third term of office and the decrease of the percentage by which presidents have left power by coup or assassination (which was 70% in the 1980s as opposed to 19% in the mid-2000s). This general view on the state of democratic consolidation in Africa is supported by data from the *Polity IV* series which is collected by Monty G. Marshall at the Center for Systemic Peace (see tab. 1). On average African countries have clearly moved from bordering the category "autocracy" to the upper end of what *Polity IV* calls "anocracies", i. e. a hybrid regime type on a scale somewhere between "autocracy" and "democracy". And importantly, this trend seems steady and stable, at least when we look at the aggregated data.

Tab. 1: Authority trends 1990–2008 in Africa (according to Polity IV series data)					
(N=50)	1990	1995	2000	2005	2008
Average	-5.38	-1.50	-0.82	+0.38	+1.34

Source: www.systemicpeace.org/polity/polity4.htm (accessed: 4 August 2010).
Note: Autocracies (-10 to -6), anocracies (-5 to +5) and democracies (+6 to +10).

This picture also seems to be supported by *Freedom House* assessments (see tab. 2). The number of African countries which are regarded by Freedom House as "free" has stabilised at nine, the number of countries seen to be "partly free" has increased to 24 and the number of countries which are "not free" has clearly gone back (in the period of 20 years from 30 to 20).

Tab. 2: Freedom House ratings for African countries 1990-2008					
(N=53)	1990*	1995	2000	2005	2009
Free	4	9	9	11	9
Partly Free	18	20	25	24	24
Not free	30	24	19	18	20

Source: www.freedomhouse.org/template.cfm?page=1 (accessed: 4 August 2010).
* Note: In 1990 there were 52 African countries.

So the general idea of rule by the people remains attractive: "But popular attachment to the specific institutions of a democratic regime", as Bratton argues, "is a much more varied and tentative matter" (Bratton 2007: 109). This variation is clearly demonstrated when one goes beyond the aggregated data and compares the development of *Freedom House* scores and status of each single country. Comparing *Freedom House* ratings 2009 against 2005 (see tab. 3) the more

detailed analysis reveals that although a number of countries achieved better scores and one even improved its status, the general picture is different: five countries slid in the general rating in terms of *Freedom House* status. And 23 countries got worse assessment of the state of "political rights" and "civil liberties" in 2009 as compared to 2005!

Tab. 3: Declining Freedom House ratings, 2009 vs. 2005	
countries in 2009 with a better score than in 2005	8
countries in 2009 with a better status than in 2005	1
countries in 2009 with a poorer status than in 2005	5
countries in 2009 with a poorer score than in 2005	23

Source: Own compilation.

There are basically two developments responsible for this regression in the quality of democracy in Africa: (1) coups d'etat and other forms of what the African Union has labelled *unconstitutional changes of government* and (2) election-related violence, with Zimbabwe and Kenya as the most often cited cases.[2]

2 Evolving African Union policies: Case studies 2008–2010

In this paper I will look at the latter. My interest is in the emerging policy of the African Union on unconstitutional changes of government. This is a policy field which has been developed since mid-2008 and in response to five coups d'etat and other unconstitutional changes of government. The following cases under review:

Mauritania where, on 6 August 2008, the head of state, President Sidi Ould Cheikh Abdallahi, was arrested by the military after he had dismissed some generals which he suspected to be behind a parliamentary revolt. The officers set up a High Council of State led by Gen. Mohamed Ould Abdel Aziz, the Commander of the Presidential Security Battalion and personal Chief of Staff of the president. After initial negotiations with the African Union and other stakeholders, the president was transferred on 13 November 2008 from imprisonment in the capital to his home village. Following a series of meetings with AU-led mediators, the High Council on 3 June 2009 signed a Framework Agreement which paved the way for a consensual transition and the establishment of an Independent Electoral Commission. On 18 July 2009 presidential elections were held in what observers described as a "free and fair" manner. The elections were won by the *putschist*, Gen. Aziz.

Guinea where, following the death of dictator Lansana Conté on 23 December 2008 the military under Capt. Moussa D. Camara established a National Council for Democracy and Development. A transitional government was established on 14 January 2009 under Prime Minister Kabine Komara. Elections, as called for by the African Union and others, were postponed. On 28

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2 On electoral violence see AU Panel of the Wise (2009) and – with case studies on Kenya, Tanzania and Zimbabwe-Laakso (2007); on Zimbabwe see also Bratton / Masunungure (2008) and Masunungure (2009); on Kenya see also AU PSC (2008); AU PSD (2008) and Juma (2009).

September 2009 the armed forces caused a massacre among demonstrators against the military regime and also raped numerous women. Subsequently sanctions were imposed on the country by ECOWAS, the EU and the African Union. It was only after Camara was shot and wounded by a presidential guard on 3 December 2009 and went for treatment to Morocco that the Minister of Defence, Gen. Sekouba Konaté, took over and negotiated a return to the constitutional order. Through the Joint Declaration of Ouagadougou (15 January 2010) a government of national unity was created which organised presidential elections. In the first round, held on 27 June, Cellou Diallo and Alpha Condé qualified for a second, decisive round which was supposed to be held on 19 September 2010, but than postponed due to political-infighting.

Guinea-Bissau where President Joao Bernardo "Nino" Veira, was murdered on 2 March 2009 by a member of the army, apparently in revenge for the murder of the chief of the army, Tagme na Wai, the day before. The armed forces took over power and, in accordance with the constitution, allowed the Speaker of the National People's Assembly, Raimundo Peirera, to be sworn-in as interim president. Presidential elections were organised and, in the second round, won by Malam Bacai Sanhá of the Partido da Africa Independencia da Guinea-Bissau and Cape Verde (PAIGC). However, tensions in Guinea-Bissau continued as indicated by the brief detention of Prime Minister Carlos Gomes Junior and the Chief of Staff in an apparent coup attempt on 1 April 2010. A few days later the US government accused the head of the air force and the former head of the navy to be "drug kingpins" and masterminds of drug trafficking in Guinea-Bissau (both were also accused to have plotted a coup d'etat in 2008).

Niger where actually more than one unconstitutional change of government happened: first, on 26 May 2009, President Mamadou Tandja dissolved the parliament which did not comply with his intention to change the constitution to grant him a third-term (on 4 August a manipulated referendum was held which allowed the incumbent a third term); and second, on 18 February 2010, the army under Major Salou Djibo detained the revolting president and called for a restoration of constitutional order. Mahamadou Danda was appointed Prime Minister in a transitional government on 1 March 2010; in addition a National Transitional Council was appointed on 7 April. The junta announced a transition of power to civilian rule by February 2011; militaries were barred from standing for presidential elections to be held in December 2010.

Madagascar where, on 17 March 2009, the mayor of the capital, Andry Rajoelina, with the support of the army and highly mobilised civilian supporters, forced President Marc Ravalomanana to resign from office. Although international, AU-led mediators managed to negotiate for a return to constitutional order (Maputo Agreement, 8-9 August 2009 as well as Addis Ababa Additional Act, 6 November 2009), Rajoelina successfully boycotted further meetings and stalled any progress. Thus, Ravalomanana as well as opposition party leaders Didier Ratsiraka (president from 1975 to 1991 and 1997 to 2001) and Albert Zafy (president from 1991 to 1997) are hanging out in the cold, while Rajoelina unilaterally pushes ahead deals with small parties.

2.1 Principles

Already the Organisation of African Unity (OAU), predecessor to the African Union from 1963–2002, had adopted – though hardly implemented (Williams 2007) – policy norms on unconstitutional changes of government. Based on the principles enshrined in the African (Banjul) Charter on Human and Peoples' Rights (1981) the OAU Heads of State and Government in 1999 unanimously rejected "any unconstitutional change as an unacceptable and anachronistic act, which is in contradiction of our commitment to promote democratic principles and conditions".[3] Under the OAU Mechanism for Conflict Prevention, Management and Resolution there was a sub-committee on unconstitutional changes of government which was re-activated by the OAU Council of Ministers in 1999.[4]

The following year, at the 36th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held on 10–12 July 2000 in Lomé, Togo, two major documents were adopted: the *Constitutive Act of the African Union* and the *Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government*. The Constitutive Act condemns and rejects unconstitutional changes of government [AU 2000: 4(p)]. And Article 30 simply states that "Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union".[5]

The *Lomé Declaration* (OAU 2000) represents a comprehensive a set of common values and principles for democratic governance. The declaration was adopted because of a resurgence of coup d'etats in Africa at the time (in general see McGowan 2003; Ngoma 2004). It provides a definition of what constitutes an unconstitutional change of government; it also details the measures and actions which the OAU would progressively take to respond to unconstitutional changes of government. The *Lomé Declaration* also outlines an implementation mechanism. Accordingly the following situations are considered as situations of unconstitutional change of government:

- "military coup d'etat 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;
- the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections."

At the 8th Ordinary Summit of the AU, held in Addis Ababa, …, a fifth element for defining unconstitutional change of government was added. The *African Charter on Democracy, Elections and Governance* stated that "… any amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government" also constitutes an unconstitutional change of government (AU 2007: §23[5]). As of late July 2010 a total of 35 member states have signed the charter, but only six – Mauritania, Ethiopia, Sierra Leone, Burkina Faso, Lesotho and Rwanda – have ratified it (15 ratifications are required for it to enter into force).

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3 35th Ordinary Session of the OAU Assembly, Algiers, 12–14 July 1999, AHG/Dec. 141 (XXXV) .

4 70th Ordinary Session of the OAU Council of Ministers, Algiers, 8–10 July 1999, CM/Dec.483 (LXX).

5 Other important documents which govern the continent's approach on elections and democracy are the "NEPAD Framework Document" (2001); the OAU Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002; the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, AHG/235 (XXXVIII), Annex I, 2002; and the decision on "Objectives, Standards, Criteria and Indicators" for the African Peer Review Mechanism (2003). For an overview see Issue Paper no.2 prepared for the so-called Kempton Park meeting, held in Johannesburg 17–19 December 2006; PSD/EW/EXP5(I), as reproduced in AU CMD (2008a).

Based on the developments in Mauritania, Guinea and Guinea-Bissau the 12th AU Assembly on 2 February 2010 expressed its concern about another resurgence of coups d'etat in Africa.[6] Among other threats to peace and security in Africa, unconstitutional changes of government remained high on the agenda of the African Union and "Special Session on the Consideration and Resolution of Conflicts in Africa" which was held from 30-31 August in Sirte, Libya (see AU Assembly 2009a, 2009b, 2009c, 2009d).

In general, the emerging African Union policy on unconstitutional changes of government is in line with the norm shift underlying the new peace and security architecture (cf. Engel 2008; Engel/Gomes Porto 2009, 2010a) and the trend to move away from "regime security" in favour of a broader conception of "human security" (cf. Hutchful 2008; Murithi 2007, 2009; Mwanasali 2008).

2.2 Policy instruments

Still operating as the OAU, the continental body defined in July 2000 a set of policy standard responses to unconstitutional changes of government. The *Lomé Declaration* states that whenever these takes place in a member state, the

> *Current Chairman of the OAU and our Secretary-General … should immediately and publicly condemn such a change and urge for the speedy return to constitutional order. The Current Chairman and the Secretary-General should also convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognized by the OAU (OAU 2000).*

Thereafter the Central Organ of the OAU Mechanism – and after 2004 the Peace and Security Council (PSC) – should convene as a matter of urgency. Then a two-fold approach is developed. Firstly, the perpetrators of the unconstitutional change should be given a period of up to six months to restore constitutional order. During this time, the government concerned should be suspended from OAU/AU activities.[7] Secondly, the Secretary-General is tasked to "gather facts relevant to the unconstitutional change of Government and establish appropriate contacts with the perpetrators with a view to ascertaining their intentions regarding the restoration of constitutional order in the country"; he should also "seek the contribution of African leaders and personalities in the form of discreet moral pressure on the perpetrators of the unconstitutional change in order to get them to cooperate with the OAU and facilitate the restoration of constitutional order in the Member State concerned". In this endeavour, the Secretary-General should also "enlist the collaboration" of the relevant Regional Grouping (or Regional Economic Community, REC). In order to implement the *Lomé Declaration*, a Central Organ sanctions sub-committee of five members should be established.

These rules were continued by the African Union. The *Protocol Relating to the Establishment of the Peace and Security Council*, adopted in Durban, South Africa, on 9 July 2002, in its Preamble refers to the AU instruments on unconstitutional changes of government. In Article 7(g), devoted to the powers of the PSC, the so-called *PSC Protocol* stipulates that the it "shall institute sanctions whenever an unconstitutional change of government takes place in a Member State, as provided for by the Lomé Declaration". In the same vein, Rule 37 of the *Rules of Procedure* of the Assembly of the African Union entitled "Sanctions for Unconstitutional Changes of Government", which incor-

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6 Assembly/AU/Dec. 220 (XII), 2 February 2010.

7 This does not refer to obligations such as paying membership fees, but to the participation in the Assembly, the Council of Ministers and the Central Organ or the Peace and Security Council, respectively.

porates the provisions of the *Lomé Declaration*, states in paragraph 5 that "the Assembly shall immediately apply sanctions against the regime that refuses to restore constitutional order."

After seven years the response mechanism to unconstitutional changes of government was refined. The *African Charter on Democracy, Elections and Governance*, adopted by the summit in 2007 (AU 2007), strengthens to a large extent the penalties to be applied in cases of unconstitutional change of government. In addition to the suspension of the country concerned, the *Charter* provides, in cases of unconstitutional change, the following measures:

- non-participation of the perpetrators of the unconstitutional change in the elections held for the return to the constitutional order and the ban on them from occupying senior positions in the political institutions of their state,
- their trial by the competent bodies of the AU,
- and the possibility for the AU Assembly to apply other forms of sanctions, including economic sanctions.

Furthermore, the *Charter* provides for the possibility of imposing, by the AU Assembly, sanctions against any state party that foments and supports an unconstitutional change of government in another state, refusal by the states parties to receive or to grant asylum to the perpetrators of unconstitutional change of government, and the signing of bilateral agreements as well as the adoption of legal instruments on extradition and mutual legal assistance.

And, finally, on 13 March 2009 the PSC decided to establish a committee on sanctions in conformity with §8(5) of the *PSC Protocol* which was meant to take over the role of the respective institution under the OAU's Central Organ.[8]

2.3 Practices

Thus, a set of norms has been consolidated which forms the basis for policy responses of the African Union to a specific problem, i.e. unconstitutional changes of government. The new norms are inscribed into the new peace and security architecture of the African Union (see Engel/Gomes Porto 2009, 2010a). At the same time they call for the elaboration of a specific practice and the enactment of parts of the new peace and security architecture. Indeed, in all five cases under review the African Union responded to what she labels "unconstitutional changes of government". And, in general, the policy responses followed the script laid out in the relevant policy documents (see tab. 4).

Obviously, the emerging practice on unconstitutional changes of government is linked to some new instruments the African Union is designing in the process of implementing the *PSC Protocol* (AU 2002).[9] However, so far the operationalisation of the policy on unconstitutional changes of government is not linked to the mediation pillar of the new architecture, the Panel of the Wise (cf. Abdellaoui 2009; Murithi/Mwaura 2010; Nathan 2005).[10]

In the following a number of preliminary observations on the emerging African Union policy on unconstitutional changes of government will be made, highlighting inconsistencies and variations

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8　PSC/PR/Comm.3 (CLXXVIII), 13 March 2009.
9　On the state of implementation see AU Assembly (2009a), AU PSC (2006) and Report of the Chairperson of the Commission (2004)
10　On African mediation see Khadiagala (2007a, 2007b) and Nathan (1999).

Tab. 4: Developing a policy script on unconstitutional changes of government						
	condemn	suspension	spec envoy	ICG	AU/REC	sanctions
Mauritania 06/08/08	07/08/08	07/0/08	--	22/09/08	--	22/12/08
Guinea 23/12/08	23/12/08	29/12/08	29/12/08	30/01/09	co-chair	17/09/09
Guinea-Biss. 02/03/09	03/03/09	--	03/09	--	Joint Assessment	--
Niger 26/05/09 04/08/09	--	_	on request of ECOWAS	--	ECOWAS lead	--
18/02/10	19/02/10	19/02/10	03/03/10	--	ECOWAS	--
Madagascar 17/03/09	17/03/09	20/03/09	already in place	30/04/09	SADC	17/03/10

Source: Own compilation.

of policies implementation. Furthermore policy outcomes will be summarised and discussed with regard to the African Union's contribution to sustainable conflict resolutions.

Inconsistencies: The present practice of the African Union on unconstitutional changes of government shows of number of inconsistencies. Just four days after the coup d'etat in Mauritania, the parliament in Cameroon scraped constitutional limits on the presidential term to allow President Paul Biya a third term in office (10 April 2008). The same year, on 11 November, Algerian President Abdelaziz Bouteflika pushed through parliament a change of the constitution to allow him a third term in office (the election was held on 9 April 2009). In both cases, the African Union did not respond (with reference to past indifferences Ikome 2007 talks of "good coups" and "bad coups").

Other inconsistencies can be found in the assessment of political situations: On Niger the African Union did not respond to the dissolution of parliament by President Mamadou Tandja on 26 May 2009. In contrast to ECOWAS it did not regard this act, which clearly was meant to prepare for a third term in office which was not foreseen in the country's constitution, as an unconstitutional change of government.[11] It was only when the military ousted Tandja on 18 February 2010 with the intention to restore democracy in Niger that the African Union invoked her policy on unconstitutional change of government. Promptly Niger was suspended (19 February 2010) and an immediate return to the constitutional order as was before *4 August* was called for.[12] In the case of Mauritania at least doubts were raised on the sequencing of the African Union's policy when, on

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11 ECOWAS suspended Niger on 21 October 2009 as it violated the *ECOWAS Protocol on Democracy and Good Governance.* ECOWAS also imposed sanctions imposed. The African Union, however, endorsed this move. See communiqué of the 207th PSC meeting, PSC/AHG/COMM.3 (CCVII), 29 October 2009.
12 Communiqué of the 216th PSC meeting, PSC/PR/COMM.2 (CCXVI), 19 February 2010.

29 June 2009, lifted the suspension of that country and the sanctions even *before* the presidential elections – which consolidated Gen. Mohamed Ould Abdel Aziz grip to power – were actually held on 18 July 2009.[13]

Variations: The mediation of the African Union in the five cases shows important variations. Firstly, the intensity cooperation with RECs and international partners differs: In the cases of Mauritania, Guinea and Madagascar the African Union has established International Contact Groups (ICG) through which the Union coordinates and harmonises her efforts with the United Nations, the relevant REC and other regional bodies as well as the permanent and the African members of the UN Security Council.[14] However, no ICGs were set-up to deal with the unconstitutional change of government in Guinea-Bissau and Niger. Secondly, the *modus operandi* within an ICG differs. In the ICG the African Union established on Mauritania the most relevant REC – ECOWAS – was not a member.[15] Although the ICG dealing with Guinea was co-chaired by the African Union and ECOWAS, the REC which was a member in the ICG was the Community of Sahel-Saharian States (CENSAD) – and not ECOWAS. And on Madagascar talks are held "under the auspices of the AU and facilitated by the International Joint Mediation led by former President Joaquim Chissano, the SADC-appointed Mediator" (AU Assembly 2009d: 7) – the other REC represented on the ICG was the Common Market for Eastern and Southern Africa (COMESA). In the case of Guinea-Bissau there is no ICG, but the African Union and ECOWAS developed new forms of joint activities (including a joint stabilisation mission, a joint assessment mission and a planned Joint Liaison Office); and on Niger ECOWAS was (is) in the lead of coordinating African responses to the conflict (actually calling on the African Union to become engaged and appoint a Special Envoy of the Chairperson of the AU Commission).

Tab. 5: Composition of AU-led International Contact Groups				
	UN	REC	other regional bodies	other states
Mauritania	UN	--	OIC, LAS, OIF, EU	permanent and African members UNSC
Guinea	UN	ECOWAS (co-chair)	CENSAD, OIC, OIF, EU, MRU	permanent and African members UNSC
Madagascar	UN	COMESA	IOC, OIF, EU	permanent and African members UNSC, Libya* (AU, PSC chair)

Source: Own compilation.
*Note: CENSAD (Community of Sahel-Saharian States), COMESA (Common Market for Eastern and Southern Africa), ECOWAS (Economic Community of West African States), EU (European Union), IOC (Indian Ocean Commission), LAS (League of Arab States), MRU (Mano River Union), OIC (Organisation of Islamic Conference), OIF (Organisation international de la Francophonie), SADC (Southern African Development Community), UN (United Nations), UNSC (UN Security Council). *2009 only.*

The way the African Union dealt with Guinea in practice actually raises the question of whether this case can be treated as an unconstitutional changes of government at all. On the one hand the

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13 Communiqué of the 196th PSC meeting, PSC/MIN/COMM. (CXCVI), 29 June 2009.
14 This instrument is also used in other conflicts. For instance, there is an ICG on Somalia.
15 See communiqué of the 151st PSC meeting, 22 September 2008, PSC/MIN/Comm.2 (CLI).

communiqué issued after the PSC meeting on 3 February 2009 the African Union clearly referred to the assassination of President Vieira as an "unconstitutional change of government".[16] On the other hand, after the president was assassinated the military issued a declaration in which they indicated their intention to respect the constitution of the country; and in accordance with the constitution the Speaker of the National People's Assembly was sworn-in as interim president. Thereafter all parties agreed to held elections which were conducted on 28 June and 26 July 2009, respectively. The political crisis in this country, however, continued – and the PSC decided "to remain seized of the matter".

Policy outcomes: The results of the African Union's policy on unconstitutional changes of government are mixed (see tab. 6): Besides military intervention the instruments applied so far could not redress unconstitutional changes of government when putschists bluntly refused to cooperate (Madagascar, Guinea-Bissau). In Mauritania and, at least so it seems, in Niger the junta has an interest in re-democratising the country. In these cases the African Union tends to be supportive. However, in Madagascar the African Union clearly is shown the limits of organising collective responses to unconstitutional changes of government.

Tab. 6: Policy outcomes	
Mauritania	• 03/06/09 Framework Agreement • 29/06/09 African Union lifted suspension and sanctions • 18/07/09 presidential elections (won by Gen. Mohamed Ould Abdel Aziz)
Guinea	• 28/09/2009 massacre and mass rapes committed by military • 03/12/2009 junta leader shot, replaced by Min Defence • 15/01/2010 Joint Declaration of Ouagadougou • 27/06/2010 presidential elections (2nd round scheduled for 19/09/2010)
Guinea-Bissau	• 28/06 & 26/07/2009 presidential election (won by M. B. Sanha, PAIGC) • 01/04/2010 brief detention of PM by military • conflict over control of narco-economy continues
Niger	• 01/03/2010 appointment of a transitional authority under PM M. Danda • 7/04/2010 appointment of a Transitional Council to organise elections • presidential elections scheduled for 26/12/2010
Madagascar	• 09/08/2009 Maputo Agreement • 11/08/2010 new agreement, rejected by 3 major opposition parties

Source: Own compilation.

Conflict resolution: The political solutions emanating from African Union mediation seem to privilege power-sharing arrangements. These are generally discussed as not unproblematic as the very existence of power-sharing as the preferential mode of conflict resolution in Africa provides strong incentives for spoils politics (cf. Mehler/Tull 2005; Mehler 2009; Moghalu 2008; Sisk 1996; Spears 2000; Sriram 2008). The sustainability of the political solutions negotiated on cases of

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16 Communiqué of the 174th PSC meeting, 3 March 2009, PSC/PR/Comm.5 (CLXXIV).

unconstitutional changes of government is of key importance. So far, it seems that the policy solutions found for Mauritania, but probably also Guinea and Niger, do not address the root causes of the respective conflicts and thus contribute little to the African Union's aims at of so-called structural conflict prevention (see AU Assembly 2009c, 2009d).

3 Preliminary conclusions and future research directions

As stated before, this paper provides first results from ongoing research on the emerging African Union policy on unconstitutional change of government. Some preliminary conclusions can already be drawn, but more detailed, systematic research needs to be carried out on a number of issues.

The African Union has consolidated a set of policy norms to respond to the apparent regressions in the consolidation of democracy on the African continent. Since mid-2008 these norms have been translated into a policy practice within the framework of the new peace and security architecture. In general, the Union has started to effectively live-up to the expectations which were created in Africa and elsewhere by adopting these norms in the first place – though selectively: In some cases the African Union kept a rather muted stance (Algeria, Cameroon and Niger May 2009). The Union is cultivating traditional, and often underestimated diplomacy instruments (such as mediation), and develops best practices. Systematic policy harmonization with RECs, the UN and other international partners adds a new dimension to this policy. The policy solutions negotiated thus far seem to privilege power-sharing arrangements, e. g. in the form of governments of national unity (Mauritania, and probably also Guinea and Niger). The problem with this approach is that the respective root causes of conflict are often not addressed. The sustainability of such an approach may be questionable. So far the results of the African Union's policy on unconstitutional changes of government are mixed: The rather successful policy on Mauritania and, mostly likely Niger, is faced by lack of progress on Madagascar and Guinea-Bissau. Besides military intervention the instruments applied so far failed to redress unconstitutional changes of government when *putschists* bluntly refused to cooperate. Seen from the perspective of the new peace and security architecture, the African Union's emerging policy on unconstitutional changes of government needs to be harmonised with other policy approaches on peace and security (as it is currently planned within a so-called *Conflict Prevention Policy Framework*).

There are, at least, five directions this research project will explore in far more depth in future. Firstly, more research is needed to explain the inconsistencies and contradictions of the African Union's policy emerging on unconstitutional changes of government, such as selective policy implementation. In order to understand the different *modus operandi* followed in the practical implementation of this policy interviews will be carried out with relevant policy actors. Obviously, there are different degrees of leverage the African Union can exert on countries after unconstitutional changes of government (again: Guinea, Madagascar vs. Niger, Guinea-Bissau).

Secondly, the factors determining the Union's leverage are also still to be analysed by systematic case-to-case comparison. By way of hypothesizing, research carried out so far indicates that the following factors may play a role:

- the balance of power / interests within the military juntas concerned[17]

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17 After the massacre and mass rapes in Conakry on 28 September 2009, splits within the junta became apparent. After Cpt. Camara was shot by a senior member of the presidential guard, he was flown to Morocco for treatment; Defence Minister Gen. Sekouba Konaté than seized the opportunity to initialise a new course of action which, finally,

- the existence of additional external pressure exerted by the EU and the USA[18]
- the availability of funding from illicit trade in drugs (as opposed to external rents such development assistance which can be cut-off)[19]
- differences of interests among mediators in the ICGs.[20]

A third area for future research concerns the exact division of labour between the African Union and the RECs: The collaboration on unconstitutional changes of government needs to be scrutinised with a view to identify role conceptions, interests and comparative advantages of RECs in the mediation of conflict in Africa (cf. Attuquayefio 2009; Gomes 2008; Söderbaum/Hettne 2010, Söderbaum/Tavares 2009).

Fourthly, the analysis of the emerging African Union policy on unconstitutional changes of government allows for – up to now – extremely rare insights into the dynamics of the AU Commission itself as well as into the articulation and negotiation of different interests between actors. So far extremely little is known about variations of interest between the AU Commission on the one hand and RECs, member states, international partners and permanent members of the UN Security Council on the other (for a rare exception see Witt 2010 on the different interests of member states; for an analysis of differences within the OAU see van Walraven 1999, 2010).

Finally, this kind of research will provide conclusions on the determinants for lasting policy interventions by the African Union. Ultimately, these conclusions will allow to test and develop further some of the existing theoretical approaches on conflict in Africa (this goes for the question of policy leverage, but also with regard to the root causes of conflict).

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paved the way for the Joint Declaration of Ouagadougou (15 January 2010) and the preparation of steps to restore democracy.

18 For instance the opening, on 20 October 2008, of consultations under Article 96 of the *Cotonou Agreement* by the EU with a view to impose sanctions on Mauritania; or the arms embargo and targeted sanctions imposed by the EU on Guinea on 27 October 2009.

19 Dynamics in Guinea-Bissau are heavily influenced by the involvement of key actors in the country's narco-economy. The West African country is a key transit pint for illicit drugs. The political economy is dominated by organised crime syndicates and high-ranking officials in government and the military are involved. The USA has named the head of the air force and the former navy chief "drug kingpins". Both are covered by the military. See UNSC statement, S/PRS//2008/37 of 15 October 2008; UN Office on Drugs and Crime (2008) and BBC report dated 9 April 2010 (http://news.bbc.co.uk/2/hi/africa/8610924.stm; accessed: 25 August 2010).

20 France, for instance, welcomed an announcement made by Rajoelina in the context of the Pretoria talks (28–30 April 2010) which were facilitated by South African president Jacob Zuma that he would not run for presidency and that there would be separate presidential and parliamentary elections – despite the fact that the African Union opposed separate election dates. In general, it seems, France has weakened potential leverage of the Union. See Report of the Chairperson of the Commission on the Situation in Madagascar (2010b), dated 21 July 2010.

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