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Policy Brief

The Loophole in Chapter 8 Article 23 (D) and (E) of the ACDEG: Unconstitutional Changes of Government in Disguise?

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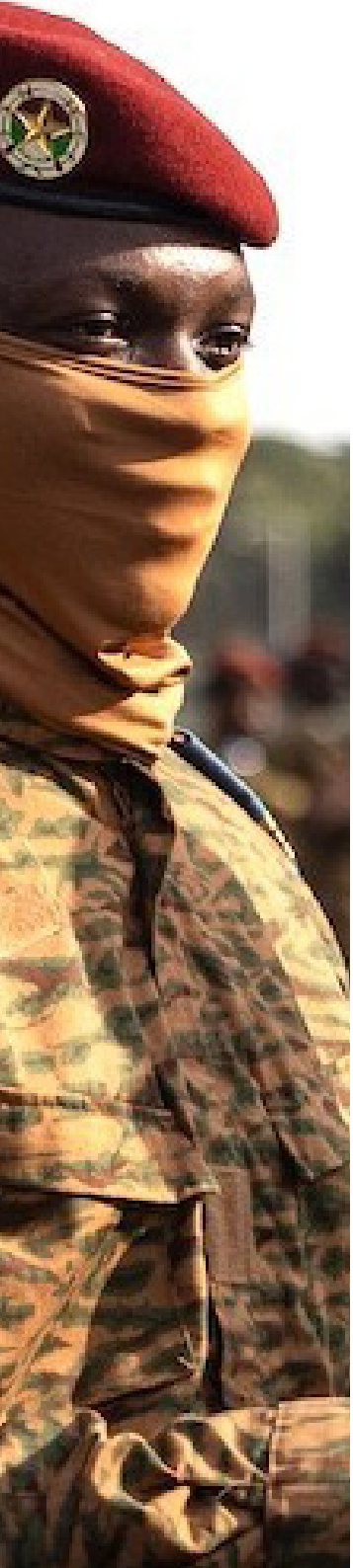
EXECUTIVE SUMMARY



Chapter 8, Articles 23 (d) and (e) of the African Charter on Democracy, Elections and Governance (ACDEG) are clear about the mandate of AU Election Observation Missions (EOMs). However, cases of violations of its provisions have become a major factor in the rising spate of Unconstitutional Change of Government (UCG) in several African countries. Recent African elections are throwing up several paradoxes. The most notable one being governments using their power of incumbency to tamper with election processes and outcomes with the goal of retaining power at all cost. This is done in violation of existing legal and electoral frameworks. This occurrence is what is referred to in this policy brief as "UCG in disguise". The AU seldom responds to such issues despite the clear specification of what "monitoring" is in the Guidelines for African Union Electoral Observation and Monitoring Missions. Monitoring, according to the Guideline, involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedures are being violated or ignored. In reality however, the AU does not have a competent mechanism in place to systematically detect and respond to such issues and gaps, thereby leaving them to the whim and caprices of incumbent governments trying to manipulate electoral processes to achieve a predetermined end. This, as mentioned in this policy brief, puts the AU at the risk of recognising or legitimising problematic electoral processes which not only undermines democratic consolidation, but also its own moral authority as the foremost pan-African inter-governmental institution to speak up on the quality of election processes and outcomes. Overall, such changes in the political behaviours of incumbents need to be accounted for to ensure that the AU is truly in tune with and well prepared to tackle UCG, whether brazen (by way of coup d'états) or in disguise (by retaining power by default).

Key Points

- The African Charter on Democracy, Elections and Governance (ACDEG) is silent on how the manipulation of national and electoral laws or regulations can by themselves disguise UCGs. The drafters of the ACDEG may have recognised that the contentious nature of political competition may lead to an outcome that mirrors UCG, but consider them as "internal political affairs" that AU Member States are too sensitive to acknowledge and accept.

- Chapter 8, Articles 23(d) and 23(e) of the ACDEG can be manipulated to legitimise a flawed electoral process. These manipulations include tampering with the electoral process at any stage by influencing the electoral umpire or judiciary. In this regard, neither the election nor constitution is amended or revised, and the incumbent has indirectly refused to relinquish power. The success of such manipulation raises concerns about the constitutionality of such change of government. There is no concrete system of response and coverage within or outside the ACDEG frame to specifically respond to such issues. As a result, they are left to political expediency or internal judicial mechanisms of the member state. In the event of possible state capture and/or weak public trust in the judiciary, the future of democracy in that country and by extension, its peace and stability is at risk.

- The AU leadership should avoid commenting and endorsing elections in haste, especially ones that show evidence of widespread irregularities that deal directly with the constitutional and legal framework guiding the election. This is vital in protecting the integrity of the AU EOMs and the moral authority of the Union to speak up on the quality of election processes and outcomes.

- Effective action in response to the issues raised in this brief cannot be done in a hurry and it would require deep and extensive introspection to draw lessons from some of the recent African elections. Thus, while the AU engages its regular election observation activities, it should, out of necessity, also invest time and effort into capturing critical lessons learnt to develop a proactive and potent response to UCGs in disguise.

Background

Election Observation Missions (EOMs) are key means through which the sanctity and credibility of elections are verified and endorsed by external actors and by extension, whether or not a process of power succession follows international standard.[1] The African Union (AU) recognises the need for EOMs as enshrined in Chapter 7 of the African Charter on Democracy, Elections and Governance (ACDEG).[2] The mandates of EOMs in the Charter are in accordance with relevant provisions of the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa (AHG/Dec.1 (XXXVII)) adopted by the Assembly of the African Union in July 2002. Other sources of the EOM mandate include: the AU Guidelines for Election Observation and Monitoring Missions, relevant national constitutions and electoral of member states and the ACDEG. These frameworks, when and where they are diligently applied, have become important elements in Africa's democratisation process. They aim for the enhancement of electoral processes and the strengthening of electoral institutions to ensure fair, free and transparent elections.[3]

In a typical year, elections in Africa are held for presidential, parliamentary, national and state houses of assembly as well as referendums on political and constitutional matters. Between 1989 and 2013, the OAU/AU reportedly deployed EOMs to 423 elections; and in the past five years since 2018, have deployed 47 missions to observe general elections.[4] Even if not necessarily consistent "in terms of approach, methodology, framework and status", according to Aniekwe and Atuobi (2016), the mandates of AU EOMs are mainly to assess elections, ascertain the credibility of the results, make their findings known and identify possible areas for improvement.[5] AU's election observation manual expands on what the EOMs should do, how and when, thereby providing clarity on what observation, monitoring, mediation, technical assistance, supervision and

1 Union, African. African Charter on Democracy, Elections and Governance. 30 Jan. 2007 (entered into force on 15 February 2012)

2 Ibid

3 African Union. "Election Observation Missions." Pan-African Parliament, pap.au.int/en/election-observation-missions. Accessed 4 Mar. 2023.

4 Aniekwe, Chika Charles, and Samuel Mondays Atuobi. "Two Decades of Election Observation by the African Union: A Review." Journal of African Elections, vol. 15, no. 1, June 2016, pp. 25–44, https://doi.org/10.20940/jae/2016/v15i1a2. Accessed 8 Oct. 2020.

5 ISS Africa. "Lessons from AU Election Observation in Nigeria and Senegal." PSC Report, ISS Africa, 5 Apr. 2019, www.issafrica.org/pscreport/psc-insights/lessons-from-au-election-observation-in-nigeria-and-senegal. Accessed 4 Mar. 2023.

audit entail.[6] This granular detail in EOMs conceptualisation has, in turn, helped to define the operational scope of EOMs.[7]

Perhaps a major gap, in practice, is the omission of the monitoring element of election observation missions. The Guidelines for then African Union Electoral Observation and Monitoring Missions makes a clear distinction between "observation", "monitoring" and "election assessment". According to the Guideline, observation "involves gathering information and making an informed judgement"; while monitoring "involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedures are being violated or ignored". Election assessment "involves on-spot, preliminary evaluation of the conditions within which elections will take place".[8] The reports and statements demonstrate how observation and assessment is made but the element of intervention in the occasion that "relevant laws or standard procedures are being violated or ignored" does not seem to take the centre-stage as it should in any EOM exercise.

In the recent elections that held in sub-Saharan African countries like Niger, Mali, Gabon, Cameroon, Zimbabwe, Nigeria, among others for example, lacked the appropriate intervention despite evidence of violating relevant laws and standard procedures. Overall, this exposes AU EOMs to unwholesome scrutiny and criticism because of its failure to maintain fidelity to the frameworks from which they derive their mandate.

Furthermore, reports and statements by Observation Missions have become a subject of widespread public ire when they are riddled with inaccuracies and contradictions by virtue of its lack of fidelity to monitoring as a critical component of its work.[9] This omission is responsible for exposing AU EOMs, and by extension, the AU to the potential legitimisation of patently problematic electoral processes.[10]

6 For more details on these processes, see: AUC, African Union Election Observation Manual. Addis Ababa, pp. 8-9.

7 African Union (AU). African Union Election Observation Manual. Addis Ababa: African Union (AU), 2013. https://library.au.int/african-union-election-observation-manual-4

8 See Page 4 of the Guidelines For African Union Electoral Observation And Monitoring Missions Ex.CI/91 (V) Annex II. Available here: https://archives.au.int/bitstream/handle/123456789/2060/Guidelines%20for%20Electoral%20Observation%20and%20Monitoring%20Missions_E.pdf

9 ISS Africa. "Looking Back: The Need for Credible Election Observers." PSC Insights, ISS Africa, 12 Jan. 2018, www.issafrica.org/pscreport/psc-insights/looking-back-the-need-for-credible-election-observers. Accessed 4 Mar. 2023.

10 See EOM reports here and weigh them against the electoral processes in the respective countries: https://au.int/en/election-reports

Incumbency-Manipulated "Elections" and UCGs: An Implausible Paradox?

UCGs have become one of the recurrent drivers of insecurity, instability and violent conflict in Africa.[11] Its mildest impact is increasingly evident in the upsurge of unnecessary political tension that if poorly managed, can end up degenerating into full-blown violent conflicts that may last for longer periods, resulting in external intervention.[12] For the most part however, far more attention is given to the direct dimensions of UCG which is the forceful change of government through coup d'états or the self-serving manipulation of a country's constitution to remove age and term limits to favour an incumbent government to continue in office.

However, recent developments have shown that such forceful and manipulative developments only capture a limited strand of UCGs. There is a myriad of other festering issues that converge to produce exactly the same result that have been ignored. These issues include minimising political competition by eliminating political opponents through extra-judicial killing, abduction, silencing regime critics, denying citizenship or residency regulations in order to invalidate the eligibility of key opponents; or misinterpreting, manipulating and exhibiting gross disregard for constitutional and legal procedures on elections. This can be by postponing elections, disqualifying opponents and/or pronouncing a winner from a flawed and problematic electoral process.[13]

Therefore, it is just as important to focus on the constitutionality and propriety of the processes leading up to any change of government than the current fixation on one-off events that the ACDEG recognise to constitute UCG. In Chapter 8 of Article 23, the

11 Genyi, George A. "Constitutional 'Coups' and Democratic Consolidation in Africa: Wither Democratic Values." African Journal of Politics and Administrative Studies, vol. 8, no. 1, Mar. 2015, www.ajpasebsu.org.ng/wp-content/uploads/2019/03/4-Vol-8-final-Constitutional-"Coups"-and-Democratic-Consolidation-in-Africa-Wither-Democratic.pdf. Accessed 9 Mar. 2023.

12 Note that the cost of intervention for prevention is cheaper than the eventual outbreak of a full-blown violent conflict.

13 John M., Mbaku. "Constitutional Coups as a Threat to Democratic Governance in Africa." Int'l Comp, Policy & Ethics L. Rev, vol. 2, no. 1, 2018, pp. 78–182, www.b868b4d7-784e-49b0-9e2b-ad12bf0e2aad.filesusr.com/ugd/bc0e09_4034f-0dc67da49868cea6d52866eb6e4.pdf. Also see Onapajo, Hakeem, and Muhammad Dan Suleiman. "Why West Africa Has Had so Many Coups and How to Prevent More." The Conversation, 15 Feb. 2022, www.theconversation.com/why-west-africa-has-had-so-many-coups-and-how-to-prevent-more-176577

Charter identifies 5 conditions, namely any: (a) putsch or coup d'état against a democratically elected government; (b) intervention by mercenaries to replace a democratically elected government; (c) replacement of a democratically elected government by armed dissidents or rebels; (d) refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections and (e) amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government. Each prohibition is a UCG on its own. Therefore, a change of government is an UCG if it meets at least one of these conditions.

The reluctance to recognise some of the nagging issues around constitutional provisions on elections and electoral laws leaves a chasm that can easily be exploited. For instance, Article 23(d) which states that "Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections" begs an important question. What if the ruling party or candidate employs unconstitutional measures to ensure that they are announced as winners of the election? Article 23(e), which states that "Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government" raises a second question; In the event that there were no amendment or revision, but omission, violation or soft violation, what mechanisms are in place to determine whether these omissions, violations or soft violations are in breach of the ACDEG's intent?[14]

Furthermore, evidence from all previous responses to alleged issues in previous elections on the continent shows that the AU in many cases leave redress to internal legal mechanisms that may not be as proactive and as effective. On paper, the constitution and electoral laws of most African countries make provision for aggrieved parties to take recourse through legal means to seek redress. In reality however, most of these mechanisms are not sufficiently well equipped and developed to handle contentious electoral issues, while the independence of some may be compromised. The AU is also too handicapped to efficiently respond to these issues, thereby encouraging political expediency which undermines democratisation. In essence, these two provisions of ACDEG, 23(d) and 23(e) can deliberately be circumvented to sabotage the credibility, transparency and eventual outcome of the electoral process without raising an eyebrow

14 Lukianoff, Greg. "More on 'Soft' Violations of Conscience | the Foundation for Individual Rights and Expression." www.thefire.org, 21 Feb. 2005, www.thefire.org/news/more-soft-violations-conscience. Accessed 9 Mar. 2023

from the AU.

The questions raised in relation to Chapter 8, Articles 23(d) and 23 (e) therefore transcends issues around who won or lost an election. After all, there will always be a winner and loser in elections. However, the sanctity of the process that led to the result should be protected as a matter of public good and trust. These values are crucial to the democratic consolidation in Africa.

The ACDEG in its current form is silent on how the manipulation of national and electoral laws or regulations can by themselves trigger UCG. The drafters of the ACDEG may have recognised that the contentious nature of political competition may lead, in the final analysis, to an outcome that mirrors UCG but consider them as "internal political affairs" that AU Member States are too sensitive to acknowledge and accept.

One major factor that blindsides any decisive action on the part of the AU and regional economic communities (RECs) to recognise, acknowledge and frown at incumbent-manipulated elections as UCG, is the extent of state capture in most African countries and the weak attention it receives in the knowledge production space for the AU and RECs to draw from. Extant literature on state capture focuses solely on political-economy dimensions, which is by no means the only dimension.[15] Other aspects of state capture that require keen consideration in policy and academic spaces in the context of elections in Africa, should include the influence and distortion of oversight and accountability functions of democratic institutions like electoral umpires and the judiciary by political actors to promote or protect the interest and actions of public and political officials or contestants in an election.[16]

15 For example, see Graycar, Adam. "Corruption: Classification and Analysis." Policy and Society, vol. 34, no. 2, 2015, pp. 87–96, https://doi.org/10.%201016/j.polsoc.2015.04.001; Smith, Julia, and Kelley Lee. "From Colonisation to Globalisation: A History of State Capture by the Tobacco Industry in Malawi." Review of African Political Economy, vol. 45, no. 156, Apr. 2018, pp. 186–202, https://doi.org/10.1080/03056244.2018.1431213; and Bhorat, Haroon et. al. "Betrayal of the promise: How South Africa is being stolen". State Capacity Research Project, 2017, pp. 1–72, https://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf

16 Fredericks, Jordan, and Nicola de Jager. "An Analysis of the Historical Roots of Partisan Governance within the ANC: Understanding the Road to State Capture." Politikon, vol. 49, no. 1, Dec. 2021, pp. 21–42, https://doi.org/10.1080/02589346.2021.2018119. Accessed 25 Apr. 2022. Also see Hassan, Seid Y. "Corruption, State Capture, and the Effectiveness of Anticorruption Agency in Post-Communist Ethiopia." Economic and Political Studies, vol. 6, no. 4, Oct. 2018, pp. 368–416, https://doi.org/10.1080/20954816.2018.1535757. Accessed 22 Nov. 2019; and Van Niekerk, Tryna, et al. "State Capture in South Africa and Canada: A Comparative Analysis." Public Integrity, Apr. 2022, pp. 1–13, https://doi.org/10.1080/10999922.2022.2046968.

Lessons From The 2023 Presidential Elections in Nigeria

The 2023 General Elections kicked-off with the Presidential and National Assembly Elections held on Saturday, 25 February.[17] There was widespread enthusiasm that the introduction of new technological innovations, especially the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (iREV) would address some of the shortcomings of previous elections. It was also hoped that it would ease voters' experience and ensure public acceptance that the elections were truly free, fair and credible.[18] [19] To incorporate this new technology, the National Assembly amended the Electoral Act 2022, while the Independent National Electoral Commission (INEC) revised its guidelines.[20]

However, public enthusiasm and confidence in the adoption of technology quickly dwindled on the election day; becoming more trenchant and intense as the collation and transmission of results began without recourse to the technologies that were introduced (BVAS and iREV). An outcome that was contrary to what the country's Electoral Act and umpire's manual and guideline instructs. Apart from the glitches and absence of BVAS in many polling units and collation centres to transmit results real-time as promised, several other complaints that quickly dissipated the public support for the INEC included delays in opening polling stations, inadequate election materials, slow pace of accreditation of voters and actual voting, and other logistical and operational failures that paved the way for malpractices, violence and voter disenfranchisement.

As the collation of results from the country's 176,846 polling units across the 776 Local Government Areas began, opposition parties began to lodge complaints over disparity between the result figures they had

17 Arguments, African. "Africa Elections 2023: All the Upcoming Votes." African Arguments, 1 Mar. 2023, www.africanarguments.org/2023/03/africa-elections-all-upcoming-votes/. Accessed 9 Mar. 2023.

18 See 2.9.0 on page 36 of INEC's Manual for Election Officials 2023. Available at: https://www.inecnigeria.org/wp-content/uploads/2023/02/ELECTION_MANUAL-21-01-2023_WITH_ICT_AND_COLLATION_MANUALS_CORRECTIONS-FINAL_ZURU_03-44am-PDF.pdf

19 Yakubu, Mahmood. "Nigeria's 2023 Elections: Preparations and Priorities for Electoral Integrity and Inclusion." Chatham House – International Affairs Think Tank, 17 Jan. 2023, www.chathamhouse.org/events/all/research-event/nigerias-2023-elections-preparations-and-priorities-electoral-integrity. Accessed 11 Mar. 2023.

20 See the Electoral Act 2022 here; https://placng.org/i/wp-content/uploads/2022/02/Electoral-Act-2022.pdf and INEC's Guidelines here https://inecnigeria.org/?page_id=1167

signed and what the INEC Chairman was announcing. Now, whether Nigeria's electoral umpire or judiciary suffers from state capture requires a lengthier analysis that is outside the scope of this policy brief. However, issues such as omission, violation and *soft violation* should have provoked a response from the AU based on the "monitoring" mandate of EOMs as defined in the Guidelines for African Union Electoral Observation And Monitoring Missions, but it did not.

In a significant number of cases, for example, no. 38(ii) of the Independent National Electoral Commission (INEC) Regulation and Guideline for the Conduct of Elections in many polling Units was not fulfilled before the result was announced and a winner declared. Rather, election results were announced without complete verification of transmitted and uploaded results as instructed in the Electoral Act and INEC Manual and Guideline.[21] [22] Other cases include the volume of blurred uploads (18,088) and the destruction of some others.[23] In other instances, election results were released for Polling Units where elections did not hold [*see Appendix 1 for examples of unresolved discrepancies before the announcement*]. These issues were left unaddressed.

Despite the red flags raised by opposition parties which was ignored, and the fact that the Electoral Act provided for a window of 7 days within which the electoral commission can tarry to ensure that substantive issues and complaints were dealt with, the INEC Chairman proceeded to announce the results in the early hours of Wednesday, 1 March 2023 at 0400. He asked any aggrieved party to go seek legal redress through the court of law.

To reiterate, the above issues, especially as it concerns the ACDEG, is not about who won or lost. Rather, it is about the

21 See: (1) Amended Electoral Act, 2022. See Sections 50 (2), 60 (4), 64 (4a, 4b, and (6); (2) Independent National Electoral Commission (INEC) Manual for Electoral Officers 2023 on pages 36-48 (2.9.0 – 2.9.3) and the section on responsibilities of Electoral Officers a (xvii and xviii), as well as Step 11 of counting and recording of votes for Polling Unit, Step 23 of the Ward level and step 12 of Local Government Area (LGA) level; and no. 38(ii) of the Independent National Electoral Commission (INEC) Regulation and Guideline for the Conduct of Elections.

22 Added, Emmanuel. "Chatham House: Nigeria's Presidential Election Not Conducted in Line with INEC's Guidelines – THISDAYLIVE." www.thisdaylive.com, 9 Mar. 2023, www.thisdaylive.com/index.php/2023/03/08/chatham-house-nigerias-presidential-election-not-conducted-in-line-with-inecs-guidelines/ Accessed 11 Mar. 2023. Also see Hoffman, Lena Koni. "Nigeria's Election Results Put Disenfranchisement in the Spotlight." Chatham House – International Affairs Think Tank, 1 Mar. 2023, www.chathamhouse.org/2023/03/nigerias-election-results-put-disenfranchisement-spotlight. Accessed 11 Mar. 2023.

23 John, Beloved. "2023: INEC Vows to Punish Staff Involved in Polls Sabotage." The ICIR- Latest News, Politics, Governance, Elections, Investigation, Factcheck, Covid-19, 4 Mar. 2023, www.icirnigeria.org/2023-inec-vows-to-punish-staff-involved-in-polls-sabotage/ Accessed 11 Mar. 2023. Also see Ochojila, Ameh. "18,088 blurred election results uploaded to IReV portal, witness tells court." The Guardian, 16 June 2023, https://guardian.ng/news/18088-blurred-election-results-uploaded-to-irev-portal-witness-tells-court/

loss of integrity in the electoral process and the public legitimacy of an electoral umpire that should not only be neutral but seen to be so. For a country with a weak socio-political tapestry in terms of substantive generational, religious and ethnic fault-lines, fickle trust in the judiciary and degenerating state-society relations can lead to the breakdown of law and order. This may have ultimately degenerated into post-election conflict.[24]

The AU's Business

As of October 2023, the AUEOM report for the election that held in Nigeria in February 2023 has still not been published. However, there is a preliminary report which clearly spells out the objective of the Mission, as follows:

> *Mission is to promote peaceful, democratic and credible elections in Nigeria through an independent and impartial assessment of the electoral process in line with the 2007 African Charter on Democracy, Elections and Governance; the 2012 OAU/AU Declaration of Principles Governing Democratic Elections in Africa and Agenda 2063.*

Meanwhile, the preliminary report did not cover actual collation and announcement of results- two elements that are crucial and important to determining the gaps in the ACDEG's Chapter 8, Articles 23 (d) and (e) as earlier discussed. This limits the extent to which adherence to the mission and by extension the ACDEG can be examined.

The Statement by the Chairperson of the AU Commission congratulating the announced winner of the Nigerian Presidential Polls in 2023 suggests a posture of endorsement of not just the outcome, but also the process.[25] Endorsement of the process may however be premature because the Apex legal authority for such adjudication in Nigeria, the Supreme Court, was yet to pronounce itself on the matter at the time the congratulatory message was published. There are several scenarios in form of questions that the AU need to ask; not just in the particular case of Nigeria but for other election cases across the continent within the context of the ACDEG:

24 Bjarnesen, Jesper. "Constitutional Coups Have Often Preceded Military Ones - the Nordic Africa Institute." Nordic Africa Institute, 7 Oct. 2021, www.nai.uu.se/news-and-events/news/2021-10-07-constitutional-coups-have-often-preceded-military-ones.html.

25 Union, African. "The Chairperson of the AU Commission congratulates H.E Tinubu for being proclaimed winner of Nigerian presidential polls." 03. Mar. 2023. See https://au.int/ar/node/42652

1. What happens if the independence of the judiciary is proven compromised, and it affects the final judgement of the Apex court?
2. What happens if the Apex court's judgement contradicts the posture of AU's endorsement of the process?
3. What if, regardless of the outcome from the Apex Court, evidence of incumbency manipulated elections are proven in any country?

While Question 1 may be a conflict trigger, Question 2 and 3 call to question the moral authority of the AU to speak up on the quality of election processes and outcomes. Either way, how the AU pronounces itself may eventually undermine the raison d'etre of the AUEOM and the ACDEG.

It is important to note that the AU lacks the institutional wherewithal to effectively respond to electoral outcomes that are directly within the electoral framework of any member state and those that have become a subject of judicial recourse. This is particularly so in cases where allegations of irregularity seem to suggest lack of adherence to the electoral law and guideline. For the sake of institutional integrity, this requires more attention not just from the AU, but also key stakeholders in Africa's democratisation. In Nigeria's case, what happens should the recognition and legitimacy given to the outcome after the initial pronouncement of the result contradicts the eventual verdict of the court? This would have mounted unnecessary scrutiny on the integrity and credibility of the AU's leadership and its EOMs.

Conclusion

Admittedly, the AU's role in promoting the integrity and sanctity of electoral processes and outcomes is still a work in progress that requires meticulous pruning. The ACDEG and the EOM have proven to be crucial tools in ensuring that the AU stays proactive and responsive. Still, the AU must apply itself to the quality of processes leading to electoral outcomes in order to ensure that it does not legitimise, by omission or commission, flawed processes purely on the altar of political expediency.[26] As much as legitimising the pronounced winner might douse political tensions in the immediate, it hurts democratisation and democratic consolidation in the longer term as no system of deterrence to disguised UCGs exist.

Lastly, the AU must recognise that most beneficiaries of a flawed electoral process are less likely to sanitise that process on their way out. If anything, they are more likely to become potential drivers of UCGs in disguise thereby creating a vicious cycle of political tension capable of precipitating violent conflict or direct UCGs like coups in the near future.[27]

Policy Recommendation[28]

For the AU to sustain democratic resilience, avoid legitimising constitutionally skewed electoral processes, and contribute to ending the cycle of electoral manipulation the following should be considered:

- Expand the scope of the ACDEG's definition of UCGs to include disguised UCGs: Institute a means by which the relevant AU departments can detect disguised UCGs and devise a standard method of response for when it is detected. An innovative system to dis-incentivise and deter UCGs in disguise should be included in this process.

26 Mbaku, John Mukum. "Threats to Democracy in Africa: The Rise of the Constitutional Coup." Brookings, 30 Oct. 2020, www.brookings.edu/blog/africa-in-focus/2020/10/30/threats-to-democracy-in-africa-the-rise-of-the-constitutional-coup/. Also see Siegle, Joseph, and Candace Cook. "Africa's 2023 Elections." Africa Center for Strategic Studies, 31 Jan. 2023, www.africacenter.org/spotlight/elections-2023-nigeria-sierra-leone-zimbabwe-gabon-liberia-madagascar-drc/. Accessed 9 Mar. 2023; and Sulaimon, Adekunle. "FULL LIST: Nigeria, Other African Countries 2023 Elections." Punch Newspapers, 3 Jan. 2023, punchng.com/full-list-nigeria-other-african-countries-2023-elections/. Accessed 9 Mar. 2023.

27 Institute for Peace and Security Studies. "Presidential Elections and Coups". Unajua, 11 Oct. 2023, https://ipss-addis.org/download/coups-and-elections_unajua/

28 At the heart of these recommendations should be conflict prevention, people-centeredness, responsiveness.

- Institute a transparent, coherent and coordinated system by which the AU can detect and respond to the sensitivities associated with elections in Member States. To achieve this, there would be a need to anticipate and map these sensitive issues, enhance existing or develop new frameworks to respond to them, and ensure a workable mechanism for implementation.

- Adequately consult a team of country legal experts (in constitutional and electoral laws) from the respective countries where these elections are held and from within the AU, and support them with relevant data to ascertain a reliable degree of constitutional adherence in the electoral process (voting, collation and pronouncement of winners) before releasing congratulatory messages. This way, the AU may satisfactorily respond to the question "was the law followed?" before making press statements that inadvertently endorses a process that is fatally flawed, or perceived to be so. By this, chances of recognising and legitimising a flawed process is drastically reduced.

- Develop an institutional template to deal with election outcomes that have become a subject of judicial recourse (including reports and statements), especially ones that directly deal with the integrity of the constitution of the respective member states and their electoral laws. This is to enhance and not undermine the AU's institutional integrity with respect to elections – instead of leaving it subject to political response by the AU leadership.

- Ensure that the above recommendations are not attempted in a hurry. Rather, ad-hoc arrangements and politically innovative ones should be engaged within the next two years. This is to give adequate time for a robust lessons-learnt exercise to develop policy and programmatic options for the AU to effectively respond to UCGs in disguise in the near future. The Network of Think Tanks for Peace (NeTT4Peace) which was launched by the AU in February 2023 is a ready instrument to take on this task, and the AU should leverage it.

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Appendix 1

[this list is by no means exhaustive. A few examples were handpicked]

Problem	State	Local Government	Ward	Polling Unit	
Mutilated Result	Lagos	Ajeromi/Ifelodun	Wilmer	Junction Of Industrial Rd. (Akogun/Kareem Str.) PU Code: 24/02/03/026	https://inecelectionresults.ng/elections/63f8f25b594e164f8146a213/context/pus/lga/5f0f399d4d89fc3a883de2ba/ward/5f0f3d8f8f77bb3acad0a424
No Election Held But Result Sheet Was Prepared	Rivers	Oru East	Awo-Omamma I	All	https://inecelectionresults.ng/elections/63f8f25b594e164f8146a213/context/ward/lga/5f0f398f4d89fc3a883de1fa
Mutilated Result	Rivers	Obio/Akpor	Rumuomara Open Space	PU Code: 32/15/01/011	https://docs.inecelectionresults.net/elections_prod/1292/state/1/lga/3798/ward/25479/pu/109949/109949-1677524142.pdf
Mutilated Result	Sokoto	Shagari	Kambama	Sabon Gari/Shiyar Magaji - Pri.School/Shiyar Magaji Kanbama Pu Code: 33/14/04/001	https://docs.inecelectionresults.net/elections_prod/1292/state/01/lga/14/ward/04/pu/001/001-1677385023.pdf
Blank Result Sheet	Sokoto	Shagari	Kambama	Rinaye/Shiyar Tudu PU Code : 33/14/04/005	https://docs.inecelectionresults.net/elections_prod/1292/state/01/lga/14/ward/04/pu/005/005-1677387488.pdf
Blurred result	Plateau	Jos East	Shere East	All	https://inecelectionresults.ng/elections/63f8f25b594e164f8146a213/context/pus/lga/5f0f39a74d89fc3a883de35c/ward/5f0f3ea78f77bb3acad0ab51
Unclear Result	Oyo	Atiba	Oke-Afin	Abudu Pu Code: 30/03/01/001	https://docs.inecelectionresults.net/elections_prod/1292/state/01/lga/03/ward/01/pu/001/001-1677417008.pdf
Blank Result	Osun	Ayedaade	Otun Olofi	Orita Oke Offa, Oke Offa Area Gbongan Pu Code: 29/03/04/014	https://docs.inecelectionresults.net/elections_prod/1292/state/1/lga/3706/ward/24413/pu/97200/97200-1677523767.pdf
Blank Result	Imo	Ideato North	Osina	Pri. Sch. Alaogidi Pu Code: 16/05/10/006	https://docs.inecelectionresults.net/elections_prod/1292/state/01/lga/05/ward/10/pu/006/006-1677396424.pdf

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