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## **ASSEMBLY OF THE AFRICAN UNION**

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### **INTERIM REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE PREVENTION OF UNCONSTITUTIONAL CHANGES OF GOVERNMENT THROUGH APPROPRIATE MEASURES AND STRENGTHENING THE CAPACITY OF THE AFRICAN UNION TO MANAGE SUCH SITUATIONS**

**INTERIM REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE  
PREVENTION OF UNCONSTITUTIONAL CHANGES OF GOVERNMENT  
AND STRENGTHENING THE CAPACITY OF THE AFRICAN UNION  
TO MANAGE SUCH SITUATIONS**

**I. INTRODUCTION**

1. The Assembly of the Union meeting in its 12<sup>th</sup> Ordinary Session in Addis Ababa, Ethiopia, from 1 to 4 February 2009, adopted Decision Assembly/AU/Dec.220(XII) on the Resurgence of the Scourge of Coups d'état in the Africa. In that Decision, the Assembly expressed its deep concern over the resurgence of the scourge of coup d'état in the continent which, it emphasised, constitutes not only a dangerous political downturn and a serious setback to the ongoing democratic processes but also poses a threat to peace, security and stability in Africa. The Assembly called on Member States to react firmly and unequivocally to put an end to this scourge.

2. The Assembly:

- (i) strongly condemned the coups d'état that took place in the Islamic Republic of Mauritania on 6 August 2008, and in the Republic of Guinea on 23 December 2008, as well as the attempted coup d'état in the Republic of Guinea Bissau on 23 November 2008;
- (ii) supports the Decisions taking by the Peace and Security Council (PSC) on these three countries, particularly those related to the immediate return to constitutional order, and requested the Commission to see to the strict implementation thereof;
- (iii) reiterated the firm commitment of the African Union (AU) to the provisions of Articles 4(p) and 30 of the Constitutive Act, the Protocol Relating to the Establishment of the Peace and Security Council, the July 1999 Algiers Declaration and the Lomé Declaration of July 2000 on Unconstitutional Changes of government; and
- (iv) urged Member States that have not yet signed/ratified the African Charter on Democracy, Elections and Governance to do so in order to ensure that this important instrument enters into force.

3. The Assembly requested the Chairperson of the Commission to submit concrete recommendations for implementation of the appropriate preventive measures against unconstitutional changes of government, and for enhancement of efficiency and early warning capacity building, good offices and mediation, including the Panel of the Wise. It also requested AU's partners to lend their strong support for the decisions on unconstitutional changes of government, taking by the PSC and other relevant AU organs.

4. This report which is being submitted in pursuance of the above mentioned decision constitutes a preliminary reflection geared to facilitating Assembly deliberations and enabling the Commission to enrich its document, and thereby submit more exhaustive recommendations to the next Ordinary Session of the Assembly scheduled to hold in January 2010. The report first gives an update of AU's instruments on unconstitutional changes of government, followed by an account of AU's response to the unconstitutional changes of government that occurred since August 2008. It then concludes with observations regarding the measures that the AU could take to better sanction and prevent unconstitutional changes of government.

## **II. OAU/AU'S INSTRUMENTS ON UNCONSTITUTIONAL CHANGES OF GOVERNMENT**

5. The OAU started seeking responses to the problem of unconstitutional changes of government as far back as the late 90s as part of the initiatives to deepen the democratization processes in the early days of the decade. For instance, at its 35<sup>th</sup> Ordinary Session held in Algiers, Algeria, from 12 to 14 July 1999, the Assembly of Heads of State and Government of the OAU adopted two decisions on the question of unconstitutional changes of government.

6. In decision AHG/Dec.141(XXXV), the Assembly, after reaffirming the provisions of the OAU Charter and the African Charter on Human and Peoples' Rights and recalling the Universal Declaration on Democracy adopted by the Inter - Parliamentary Council at its 161<sup>st</sup> Ordinary Session held in Cairo, Egypt, on 16 September 1997, as well as the spirit of the Harare Decision on Unconstitutional Removal of Governments recognized that the principles of good governance, transparency and human rights are essential elements for building representative and stable governments and contribute to conflict prevention. In its Decision AHG/Dec.142 (XXXV) the Assembly, having affirmed its determination to promote strong and democratic institutions that will safeguard the principles mentioned in Decision AHG/Dec.141 (XXXV):

- (i) decided that Member States whose Governments came to power through unconstitutional means after the Harare Summit (June 1997) should restore constitutional legality before the next Summit, failing which the OAU would impose sanctions against such Governments until democracy is restored;
- (ii) called upon the OAU Secretary-General to be actively seized of the development in those countries and to assist in the programmes intended to return such countries to constitutional rule and democracy, and to report on the progress made in this regard, to the Ordinary Sessions of the Council of Ministers and the 36<sup>th</sup> Assembly of Heads of State and Government.

7. The above decisions were taken in a context characterized by the coup d'état that occurred in The Comoros in April 1999 in the aftermath of the Inter-Comorian Conference held in Antananarivo convened by the African Union with a view to finding a

solution to the secessionist crisis in Anjouan, as well as the coup d'état that took place in Niger on 9 April of the same year. In the latter, the overthrow of President Bare Mainasara was compounded by his assassination in conditions that generated a lot of indignation.

8. At its 36<sup>th</sup> Ordinary Session in Lomé, Togo, from 10 to 12 July 2000, the Assembly of Heads of State and Government of the OAU adopted the Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government. That Declaration represented an important stage in the formulation by the continental organization of a global approach to the problem of unconstitutional changes of government, particularly coups d'état. The Declaration is structured around four elements, namely: a set of common values and principles for democratic governance; a definition of what constitutes an unconstitutional change; measures and actions that the OAU would progressively take to respond to an unconstitutional change of government; and an implementation mechanism.

9. With regard to the first element, the declaration retained the following principles as vital elements of the common values and principles for democratic governance in the countries of the continent:

- (i) adoption of a democratic constitution, the preparation, content and method of revision should be in conformity with generally accepted rule principles of democracy;
- (ii) respect for the constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament;
- (iii) separation of powers and independence of the judiciary;
- (iv) promotion of political pluralism or any other form of participatory democracy and the role of the civil society including enhancing and ensuring gender balance in the political process;
- (v) the principle of democratic change and recognition of a role for the opposition;
- (vi) organization of free and regular elections, in conformity of the existing texts.
- (vii) guarantee of the freedom of expression and freedom of the press, including guaranteeing access to the media for all political stakeholders;
- (viii) constitutional recognition of the fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and African Charter on Human and Peoples' Rights of 1981;
- (ix) guarantee and promotion of human rights.

10. The declaration emphasises that strict respect for the above principles and the strengthening of democratic institutions will reduce considerably the risks of unconstitutional changes of government in the continent. Indeed, experience has shown that unconstitutional changes of government has sometimes the culmination of political and institutional crisis arising from non respect for the common values and principles for democratic governance.

11. The declaration provides a definition of situations that could be considered as situations of unconstitutional change of government:

- (i) military coup d'état against a democratically elected government;
- (ii) intervention by mercenaries to replace a democratically elected government ;
- (iii) replacement of democratically elected governments by armed dissident groups and rebel movements; and
- (iv) refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.

12. The declaration stipulates that whenever there is unconstitutional change of government in a Member State, the current Chairperson and the Secretary-General, on behalf of the OAU, should immediately and publicly condemn such a change and call for a speedy return to constitutional order. The current Chairman and the Secretary-General of the OAU 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. In that regard, the current Chairman and the Secretary-General should urge for consistency of action at the bilateral, sub-regional and international levels. The Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution should thereafter convene, as a matter of urgency to discuss the matter.

13. After this initial response of condemning unconstitutional change by the Central Organ, the following measures are envisaged:

- (i) A period of up to six months should be given to the perpetrators of the unconstitutional change to restore constitutional order. During the six month period, the government concerned should be suspended from participating in the policy organs of the OAU. Apart from the sanctions provided for under Article 115 of the OAU Financial Rules and Regulations, the Governments concerned should not participate in meetings of the Central Organ and Sessions of the Council of Ministers and the Assembly of Heads of State and Government. However, its exclusion from participating in the OAU Policy Organs should not affect the country's membership of the OAU and therefore

will not preclude it from honouring its basic obligations towards the Organization including financial contributions to the OAU regular budget;

- (ii) The Secretary-General should, during this period, gather facts relevant to the unconstitutional change of government and establish appropriate contacts with the perpetrators with a view to ascertaining their intentions. The Secretary-General should 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 list the collaboration of the regional grouping to which the country in crisis belongs.

14. At the expiration of the six month suspension period, a set of limited and targeted sanctions against the regime that stubbornly refuses to restore constitutional order will be adopted. These sanctions may include denial of visas to perpetrators of unconstitutional changes, restriction of contacts with the *de facto* authorities, trade restrictions, etc. In applying the regime of sanctions, the AU should enlist the cooperation of Member States, regional groupings, the UN, and the rest of the international community. For these measures to be effective, the Declaration states, in particular, that the Central Organ at its three levels (Ambassadorial, Ministerial and Heads of State and Government levels) shall be the instrument responsible for implementation of the measures. In this regard, it was agreed to establish a Sanctions sub-Committee of the Central Organ, composed of 5 members chosen on the basis of the principle of regional representation.

15. Also adopted at the Lomé Summit, the Constitutive Act of the AU unambiguously enshrines the categorical rejection by the AU of unconstitutional changes of government. Article 30 of the Act stipulates that "*Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.*" It is in line with this provision and, more generally, the commitment of the AU to promote democratic principles that the Protocol Relating to the Establishment of the PSC, adopted in Durban, South Africa, in July 2002 refers, in its preamble, to the African Union instruments on unconstitutional changes of government. In Article 7 (g), devoted to the powers of this body, the Protocol stipulates that the PSC "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 Union entitled "Sanctions for Unconstitutional Changes of Government," which incorporates 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".

16. In January 2007, the Assembly of the Union adopted the African Charter on Democracy, Elections and Governance. The Charter adds to the definition of unconstitutional changes of Government, as contained in the Lomé Declaration: "Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government" [Art 23 (5)]. It strengthens to a large extent the penalties to be applied in cases of unconstitutional change. 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 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 Union, and the possibility for the Assembly of the Union to apply other forms of sanctions, including economic sanctions.

17. The Charter further provides for the possibility of imposition, by the Assembly of the Union, of sanctions against any State Party that foments and supports an unconstitutional change in another State, refusal by the States Parties to receive or to grant asylum to the perpetrators of unconstitutional changes, and the signing of bilateral agreements as well as the adoption of legal instruments on extradition and mutual legal assistance. Twenty-eight Member States have signed the Charter and two have ratified it. Fifteen ratifications are required for it to enter into force.

### **III. CURRENT SITUATION OF UNCONSTITUTIONAL CHANGES OF GOVERNMENT AND AU RESPONSE**

18. As indicated above, the decision adopted by the Assembly of the Union was motivated by the resurgence of the scourge of coups d'état, with unconstitutional changes occurring in Mauritania and Guinea, in addition to the attack on the residence of the Head of State of Guinea-Bissau following the legislative elections of 16 November 2008. After the Assembly of the Union session, Madagascar experienced unconstitutional change in March 2009, while the Head of State of Guinea-Bissau was assassinated in early March 2009.

19. In **Mauritania**, the coup of 6 August 2008 overthrew the democratically elected government of President Sidi Ould Cheikh Abdallahi. The Assembly will recall that the election of President Sidi Ould Cheikh Abdallahi had crowned an exemplary transition supported by both the AU and other members of the international community. The coup d'état was staged in a context marked by high tension between the President and the parliamentarians belonging to the presidential majority. On 6 August, very early in the morning, the President decided to dismiss the generals suspected of being the real instigators of the parliamentary revolt. Shortly after the publication of the decree, the officers arrested the Head of State and his Prime Minister among others, and set up a High Council of State (HCE) headed by General Mohamed Ould Abdel Aziz, until then the Commander of the Presidential Security Battalion (BASEP) and personal Chief of Staff of the President of the Republic. The Constitution remains in force and, apart from the Presidency of the Republic, other institutions (National Assembly, Senate and Judiciary), as well as political parties, have been retained.

20. As a justification for what it called "correction", the HCE invoked, among other reasons, institutional deadlock, worsening living condition of the people and the spread of terrorism, worsening corruption and attempts to divide the defense and security forces, allegedly represented by the decision of the President to dismiss the key leaders of these forces and replace them with other officers. For their part, the political forces opposed to the coup formed a National Front for the Defence of Democracy (FNDD) to

work towards the restoration in office of President Sidi Ould Cheikh Abdallahi, who, thereafter, issued an account of his tenure as head of state, stating that the efforts deployed by his Government had resulted in improved economic situation, unprecedented financial assistance and respect for civil liberties. President Sidi Ould Cheikh Abdallahi said he would spare no effort to bring Mauritania out of its current ordeal, and to this end, he called for the cooperation and support of all so that, "smoothly and without violence, but far from the dishonest compromises and solutions that do not really address the root cause of the problem, constitutional order may be restored by ensuring the failure of the coup d'état of 6 August 2008".

21. Immediately after the coup, the Chairperson of the Commission issued a Press Release condemning the unconstitutional change. Meeting on 7 August 2008, the PSC also condemned the coup and demanded the return to constitutional legality. The PSC recalled the relevant AU instruments which, in particular, provide for the automatic suspension of the country concerned from participation in AU activities until constitutional order is restored. The PSC subsequently met seven times to discuss the crisis in Mauritania (151<sup>st</sup> meeting held in New York on 22 September 2008, 156<sup>th</sup> meeting on 11 November 2008, 163<sup>rd</sup> meeting held on 22 December 2008, 168<sup>th</sup> meeting held on 5 February 2009, 182<sup>nd</sup> meeting on 24 March 2009, 186<sup>th</sup> meeting held on 6 May 2009 and 192<sup>nd</sup> meeting held on 10 June 2009).

22. Pursuant to the communiqué of the 151<sup>st</sup> PSC meeting encouraging the Chairperson of the Commission to pursue consultations with partners to consider actions to be taken for a rapid exit from the crisis, the Commission established an International Contact Group on Mauritania comprising the Organization of Islamic Conference (OIC), the League of Arab States (LAS), the International Organization of the Francophonie (OIF), the United Nations (UN) and the European Union (EU) as well as the permanent and African members of the Security Council. The Group held its inaugural meeting in Addis Ababa on 10 November 2008 and has subsequently met four times (Addis Ababa, 21 November 2008 and 28 January 2009, Paris, 20 February 2009, and Dakar on 2 June 2009).

23. At these meetings, the Contact Group expressed support for the efforts deployed by the AU and accordingly proposed possible ways of ending the crisis, namely: involvement of all stakeholders, participation of President Sidi Ould Cheikh Abdallahi in his capacity as head of state, the promotion of consensus and respect for the Mauritanian Constitution, it being understood that such a solution could lead to early presidential elections. It is also noteworthy that the Chairperson of the Commission, the Commissioner for Peace and Security and other AU envoys paid several visits to Mauritania, alone or with representatives of the Chairperson of the Union or other members of the international community. The Commission also maintained close contacts with the Mauritanian parties at the AU Headquarters. As per the communiqué of the Contact Group meeting held in Paris inviting the Mauritanian parties to an inclusive political dialogue under the auspices of the Chairperson of the Union, Colonel Muammar Kaddafi received representatives of the Mauritanian parties in Libya, and subsequently visited Nouakchott.



24. Given the lack of progress in finding a solution to the crisis, the PSC, at its 163<sup>rd</sup> meeting, decided that unless constitutional order was restored by 5 February 2009, measures, including travel restrictions and freezing of assets, would be imposed on all persons whose activities are designed to maintain the unconstitutional *status quo*. On 5 February 2009, the PSC decided that the sanctions provided for in its communiqué of 22 December 2008 would enter into force, stressing at the same time the need to continue with the efforts deployed by the Mauritanian parties for speedy return to constitutional order in the country. On 24 March 2009, the PSC reaffirmed its decision to impose sanctions. At its meeting of 6 May 2009 devoted to a review of the implementation of its decisions, the PSC welcomed efforts made by the AU, with the support of its partners, to find a consensual solution to the crisis in Mauritania. The PSC encouraged the Chairperson of the Commission to pursue his efforts.

25. It is against this backdrop that a political dialogue between the Mauritanian parties was held in Dakar from 27 May to 2 June 2009, under the auspices of President Abdoulaye Wade of Senegal and the Contact Group on Mauritania, chaired by the AU. It resulted in a Framework Agreement to end the crisis, which was initialled in Dakar on 2 June and signed in Nouakchott on 4 June. In the Agreement, the parties agreed *inter alia* on:

- a consensual transition in accordance with Article 40 of the Constitution (to be marked essentially by enactment by President Sidi Mohamed Ould Cheikh Abdallahi, of a decree forming a Transitional Government of National Unity, announcement and formalization of his voluntary decision regarding his mandate, the President of the Senate acting as President of the Republic);
- the holding of an early presidential election, the first round of which is set for 18 July 2009 and the second round, if necessary, for 1 August 2009;
- the establishment of an Independent National Electoral Commission (INEC);
- a commitment to undertake all appropriate actions for the immediate implementation of appeasement and confidence-building measures during the transitional period ; and
- the continuation of the Inclusive National Dialogue after the presidential election.

26. Meeting on 10 June 2009, the PSC welcomed the conclusion of that Framework Agreement, noting with satisfaction that it was consistent with the consensual crisis exit elements articulated in its relevant communiqués. The PSC urged the Mauritanian parties to abide by the letter and spirit of the Framework Agreement, and requested the Chairperson of the Commission to take all necessary steps to assist in implementing the Agreement. The PSC also urged the international community to provide all assistance necessary for effective implementation of the Framework Agreement and to enable it to

fully play, under the aegis of the AU, the role expected of it in ensuring a consensual resolution of the crisis in Mauritania.

27. **In the Republic of Guinea**, a coup d'état occurred following the death, on 23 December 2008, of President Lansana Conté. It is noteworthy at this juncture that the Guinean Constitution stipulates that the President of the National Assembly shall act in the event of vacancy of the office of President. The authorities emanating from coup d'état announced that they had set up a National Council for Democracy and Development (CNDD), suspended the Constitution and all political and labour union activities, and also dissolved State institutions, justifying their decision to seize power by the inability of State institutions to resolve the crisis the country had been facing, the desperation on the part of the population, the need to embark on a process of economic recovery and fight corruption. Later, Captain Moussa Dadis Camara proclaimed himself "President of the Republic", and promised to organize free, fair and transparent elections in December 2010, which coincides with the end of Late President Lansana Conté's term of office.

28. Pursuant to the Lomé Declaration, the Chairperson of the Commission issued a Press Release condemning the coup d'état and calling for restoration of constitutional order. As a follow-up to that Press Release, the PSC met on 24 and 29 December 2008, respectively, and also strongly condemned the events which had taken place in Guinea. The PSC decided to suspend Guinea's participation in AU activities until constitutional order was restored, and reaffirmed its determination to take, as necessary, all measures provided for by the Lomé Declaration to hasten the return to constitutional legality. The PSC expressed satisfaction at the coordinated action taken by the AU and ECOWAS, and encouraged the Chairperson of the Commission, in close cooperation with the countries of the region, to continue the efforts already initiated, including contact with perpetrators of the coup d'état with a view to speedy return to constitutional order. It should be noted at this juncture that, on the sidelines of the funeral of President Conté, the Chairperson of the Commission met with the CNDD President to inform him of the AU's position.

29. The Chairperson of the Commission later appointed a Special Envoy in the person of Mr. Ibrahima Fall, former Senegalese Foreign Minister and former Assistant Secretary-General for Political Affairs at the United Nations. Furthermore, on the Commission's initiative, a consultative meeting on the situation in Guinea was held in Addis Ababa on 30 January 2009. On that occasion, participants agreed to set up an International Contact Group on Guinea (ICG-G), co-chaired by AU and ECOWAS and comprising CENSAD, the United Nations, OIC, OIF, the EU, the Mano River Union, current PSC and ECOWAS Chairpersons, as well as permanent and African members of the United Nations Security Council. The objective is to monitor the situation with due attention and continue to coordinate and harmonize the efforts of Group members at speedy restoration of constitutional order, on the basis of the relevant elements of the communiqué adopted by the extraordinary session of ECOWAS Authority of Heads of State and Government held in Abuja on 10 January 2009, namely:

- establish a National Transitional Council (CNT), a deliberative body of civilians and the military, to work towards the attainment of the objectives of the transition ;
- establish an inclusive consultative forum bringing together all components of the Guinean civil society, to serve as a framework for dialogue enabling the people of Guinea to strengthen national cohesion ;
- conclude the transition process with the conduct of free, fair and transparent elections in 2009 ;
- CNDD members, the transitional Prime Minister and members of his government not eligible to contest the elections slated for 2009 ; and
- commitment by the transition authorities to uphold human rights and the rule of law, as well as combat impunity and drug trafficking.

30. At its inaugural meeting held in Conakry from 16 to 17 February 2009, the ICG-G took note of CNDD President's statement with regard to the conduct of a transition period based on a four-stage programme (establishment of a transition framework and organs, setting up a truth, justice and reconciliation commission, instituting constitutional reforms and enactment of electoral laws), as well as his pledge that neither he, the Prime Minister nor CNDD members would be eligible to contest the upcoming elections. At its second meeting which was also held in Conakry on 16 March 2009, the ICG-G welcomed the pursuit of political dialogue between all stakeholders and the CNDD. It also noted CNDD's readiness to cooperate with the platform proposed by the *active forces*. The Group also took note of the commitment by CNDD President to set up the transition institutions in consultation with the *active forces*. On 28 March 2009, the CNDD President issued a Press Release indicating CNDD's approval of the proposals put forward by the *active forces* on management of the transition and related calendar.

31. The 3<sup>rd</sup> meeting of the ICG-G held in Conakry from 4 to 5 May 2009, noted with satisfaction CNDD's Press Release of 28 March 2009 indicating its approval of the timetable proposed by the *active forces* for organization of legislative and presidential elections, that is: 11 October 2009 for the legislative election and 13 December 2009 for the first round of the presidential election and 27 December 2009, for the run-off. The Group urged the Guinean party to honour its commitment in respect of financing the elections and reiterated its request to INEC and the Ministry of Regional Administration and Political Affairs (*MATAP*) to present a detailed budget for holding the elections.

32. Since December, the PSC has held three meetings to discuss the situation in Guinea (169<sup>th</sup> meeting held on 10 February 2009, 183<sup>rd</sup> meeting held on 26 March 2009 and 192<sup>nd</sup> meeting held on 10 June 2009). At its 192<sup>nd</sup> meeting on 10 June 2009, after recalling its previous communiqués on the situation in Guinea and the commitment by the authorities emanating from the coup d'état to conclude the transition process before the end of 2009, the PSC requested the Guinean parties to take all appropriate steps to respect this roadmap and urged the international community, including AU Member

States, to provide the financial and technical assistance required to prepare and conduct the legislative and presidential elections expected to conclude the transition.

33. The political situation in **Madagascar** started degenerating early in the year following a series of incidents which pitted the capital city's mayor, Andry Rajoelina against the President of the Republic, Marc Ravalomanana. The crisis reached its climax on 17 March 2009, when the President of the Malagasy Republic, under pressure from the civilian opposition and the army, resigned from office, handing power to a Military Directorate which, in turn, transferred power to the former mayor of the Malagasy capital, who, in the mean time, was dismissed from office.

34. The Chairperson of the Commission issued several Press Releases strongly condemning the unconstitutional change that has taken place in Madagascar, and underscored the urgent need for a speedy return to constitutional legality through a consensual process involving all Malagasy political players and based on compliance with the relevant provisions of the Malagasy Constitution. He also sent emissaries to *La Grande Ile* (Madagascar) for talks with the concerned players on the modalities for a rapid and consensual return to constitutional order. These emissaries include Mr. Amara Essy, who had been, among other things, Foreign Minister of Côte d'Ivoire and Interim Chairperson of the AU Commission from 2001 to 2003; the Commissioner for Peace and Security, as well as Mr. Ablassé Ouedraogo, former Foreign Minister of Burkina Faso, and currently the AU's Special Envoy for Madagascar.

35. For its part, the PSC has, since February 2009, held three meetings on the situation in Madagascar (169<sup>th</sup> meeting on 10 February 2009, 179<sup>th</sup> meeting on 16 March 2009 and 181<sup>st</sup> meeting on 20 March 2009). At its 181<sup>st</sup> meeting, the PSC observed that following President Marc Ravalomanana's resignation on 17 March 2009 owing to pressure from the civilian opposition and the army, power was transferred in flagrant violation of the relevant provisions of the Malagasy Constitution, and that subsequent decisions to confer the duties of President of the Republic to Mr. Andry Rajoelina was tantamount to unconstitutional change of Government. The Council strongly condemned this unconstitutional change of Government and, accordingly, decided, pursuant to relevant AU instruments, to suspend Madagascar from participating in AU activities until constitutional order is restored in that country. The PSC also expressed its determination to take all measures laid down in that connection, including sanctions, against the perpetrators of the unconstitutional change and all those helping to sustain the illegality, unless constitutional order is restored. The PSC also requested all AU Member States and the international community at large to unequivocally reject this change and to abstain from taking any measure that could strengthen the illegal regime in Madagascar. Furthermore, the PSC invited the Chairperson of the Commission to work closely with SADC and all AU partners, especially the United Nations and the Security Council, the EU and the OIF, to achieve speedy restoration of constitutional order and to take such initiatives as it deems necessary in this regard.

36. As a follow-up to this decision, and for more effective coordination of international community initiatives for early return to constitutional order in Madagascar, the

Commission set up, under the aegis of the AU, an International Contact Group on Madagascar. The inaugural meeting of the Group took place in Addis Ababa on 30 April 2009. Apart from the AU, this meeting was attended by the following countries and organizations: permanent and African members of the Security Council, the Indian Ocean Commission (IOC), SADC, the Common Market for East and Southern Africa (COMESA), the United Nations, IOF and the EU. Libya, in its capacity as the country of the current chairpersons of both the AU and the PSC, was also represented.

37. Participants strongly condemned the unconstitutional change of Government in Madagascar and underscored the urgent need for rapid return to constitutional legality. They reaffirmed their respective organizations' and countries' readiness to accompany, under the auspices of the AU, the process of return to constitutional order consistent with the following objectives and principles: a precise timetable for free, fair and transparent elections involving all stakeholders, under the supervision of a neutral body composed of representatives of all political groupings; contribution of all political and social players in the country, including President Marc Ravalomanana and other national figures, to the search for a solution; promotion of consensus among the concerned Malagasy parties; respect for the Malagasy Constitution, relevant AU instruments and Madagascar's international commitments.

38. To this end, it was agreed that the AU Special Envoy for Madagascar, in close collaboration with representatives of the international community in Antananarivo, should get in touch with all Madagascan parties to agree with them on the ways and means to bring about speedy return to constitutional order. In line with this decision, the UN Special Envoy, in close collaboration with the Special Envoys of SADC, the UN and OIF, resumed mediation efforts on 13 May 2009. Negotiations among the four political parties headed by Messrs. Albert Zafy, Didier Ratsiraka, Marc Ravalomanana and Andry Rajoelina, were centred, inter alia, on the principles of an inclusive political agreement aimed at achieving a neutral, peaceful and consensual transition.

39. **Guinea-Bissau** presents yet another coup d'état situation, characterized by the recurrence of the scourge of political assassinations. Noteworthy in this regard was the attack on the residence of President Joao Bernardo Vieira on 23 November 2008, a week after the legislative elections seen as satisfactory by all international observers. At its 163<sup>rd</sup> meeting held on 22 December 2009, the PSC condemned the attack.

40. In early March 2009, President Nino Vieira and the Bissau-Guinean Army Chief of Staff were murdered by elements of the army. Meeting the same day, the PSC adopted a communiqué in which it condemned this heinous act in the strongest possible terms. After having reaffirmed the principles enshrined in the Constitutive Act, particularly respect for the sanctity of human life, the condemnation and rejection of impunity and political assassinations, as well as its unequivocal rejection of unconstitutional changes of Government, the PSC took note of the declaration issued by the armed forces of Guinea-Bissau indicating their intention to respect the Constitution of the country. The PSC called for investigation to shed light on these murders and bring the perpetrators to justice. In accordance with the Constitution of Guinea-Bissau, the Speaker of the National People's Assembly, Mr. Raimundo Pereira, was sworn in as Interim President

of the Republic. Thereafter, the country's political stakeholders agreed to schedule elections for 28 June 2009.

41. Given the unfolding situation, the Chairperson of the Commission, in March 2009, appointed a Special Envoy for Guinea-Bissau in the person of Mr. João Bernardo de Miranda, former Foreign Minister of Angola, who proceeded to Bissau from 21 to 27 April 2009, for consultations with the concerned parties. Similarly, a PSC mission went to Bissau on 26-27 April, where it held talks with the country's key political players. The Special Envoy was again in Bissau from 1 to 5 June for further consultation with the country's authorities and the stakeholders in the electoral process.

42. However, the situation in the country remains fragile as evidenced by the assassination, on 5 June 2009, of Mr. Baciro Dabo, a presidential candidate, and Mr. Helder Proenca, former Defence Minister, as well as the acts of violence and other threats meted against the other presidential candidates. At its 192<sup>nd</sup> meeting held on 10 June 2009, the PSC strongly condemned these acts. It underscored the need for a credible and independent investigation of the string of political assassinations perpetrated in that country since March 2009, and reiterated its support for establishment of a Commission of Inquiry. The PSC further underscored the need to create conducive conditions of security and stability required for holding free, fair and transparent elections.

#### **IV. OBSERVATIONS**

43. As indicated above, the African Union has, over the past decade, adopted a number of instruments on the issue of unconstitutional changes of Government. The idea has all along been to strengthen the effectiveness of the AU (adoption of stricter measures against unconstitutional change of government, formulation of a Charter on Democracy, Elections and Governance aimed at giving greater legal force to AU instruments on the subject, etc.). This trend underscores the willingness of African leaders to consolidate the democratic processes that was begun in the early 1990s. It also attests to the recurrence of the scourge of unconstitutional changes and the need to keep up efforts at finding more appropriate solutions to the problem.

44. Indeed, a decade after the adoption of the Algiers Decision and the Lomé Declaration, unconstitutional changes of government, particularly military coups d'état, have persisted as one of the most serious threats to the democratization process in the Continent and, hence, to peace, security and stability in Africa. The unconstitutional changes of Government that occurred in Mauritania, the Republic of Guinea and Madagascar, as well as the prevailing situation in Guinea-Bissau, reflect the seriousness of the challenges facing the Continent in this area.

45. Faced with this situation, the African Union - that is, the Commission, the CPS and other competent organs of the Union - invested relentless efforts to facilitate the return to constitutional order in the countries concerned. These efforts are anchored on the relevant AU instruments and the total rejection by the continental organization of all unconstitutional changes of Government. In concrete terms, the AU took the following

actions: immediate suspension of the participation of the countries concerned from participation in AU activities, adoption of sanctions when the *de facto* authorities persist in hampering the return to the constitutional order, sustained consultations with the parties concerned to find consensual solution, while respecting existing constitutional provisions.

46. In accordance with relevant provisions of the Lomé Declaration, the AU has sought to mobilize support from international partners. It is significant to note that the AU has been generally successful in rallying partners within International Contact Groups to its position. The role of these Contact Groups has proved invaluable, as could be seen in the Presidential Statement adopted by the Security Council on 5 May 2009. In this Statement, the Security Council expressed its deep concern over the recent resurgence of unconstitutional changes of Government in some African countries as well as over the possible violence that could accompany such events, and their negative impact on economic and social welfare of the people and the development of affected countries. The Security Council highlighted the importance of expeditiously restoring constitutional order, including through open and transparent elections. It welcomed the remarkable efforts of the African Union and sub regional organizations have continued to deploy, in line with Security Council resolutions and decisions, to resolve the conflicts and promote human rights, democracy, the rule of law and constitutional legality in Africa. The Security Council also welcomed the decision of the Twelfth Ordinary Session of the Assembly of the African Union, as well as the preventive measures taken by the African Union and sub regional organizations against unconstitutional changes of Government.

47. There is no denying, however, that the results achieved so far have been mixed. Whereas a consensual solution to the crisis is emerging in Mauritania, despite the initial difficulties in implementing the Framework Agreement of 4 June 2009, the modalities for the return to constitutional order are still being discussed by the parties in Madagascar. As for Guinea, although the parties concerned have reached agreement on the broad outlines of the process for restoring constitutional order, there are still implementation difficulties, which, coupled with the problems of funding the electoral process, could jeopardize the conclusion of the transition process before the end of 2009. In this connection, it is vital that the Assembly of the Union reaffirm its support for the efforts undertaken, welcome the progress made and highlight the need, in each of these crises, to find solutions that are consensual and respectful of the Constitutions of the countries concerned.

48. Beyond these efforts, the recurrence of the scourge of unconstitutional changes of Government highlights the importance of enhancing AU effectiveness in dealing with such situations. The aim should not necessarily be to develop new instruments - given that the AU is very prolific in this respect - but rather to ensure the effective implementation of existing texts. In recent years, the OAU/AU has produced many instruments dealing specifically or generally with the issue of unconstitutional changes of Government. It is in this spirit that the following options could be discussed and enriched. They revolve around three areas: enhancing the effectiveness of AU response to unconstitutional changes of Government; more dynamic preventive action; and more effective coordination at regional and international levels.

### **Enhancing the effectiveness of AU response to unconstitutional changes**

49. To further prevent the risk of unconstitutional change, it is important for the AU to significantly strengthen its response to such situations whenever they occur. It is clear that those tempted to seize power by illegal means would think twice before acting if they knew that the AU would react strongly against any unconstitutional change of Government and that their action would have no chances of success. In this regard, it should be underscored, as indicated above, that the African Charter on Democracy, Elections and Governance has considerably strengthened the regime of sanctions in cases of unconstitutional change. Obviously, this instrument is more likely to deter potential perpetrators of unconstitutional changes from putting their plans into action.

50. In the light of the foregoing, it is needful to:

- (i) Intensify efforts to ensure the signing and ratification of the Charter on Democracy, Elections and Governance. The Charter has so far been signed by twenty-eight Member States and ratified by only two, whereas fifteen ratifications are required for this instrument to enter into force. The Assembly should reiterate its appeal to all the Member States concerned to take urgent steps as required of them to become parties to the Charter. The Commission, on its part, in collaboration with the competent structures of the Union particularly the Pan-African Parliament, should step up its efforts to raise the awareness of all the players concerned to speed up the Charter ratification process;
- (ii) Where the required number of ratifications is not obtained between now and the next Summit, the Assembly of the Union should consider adopting a decision to reiterate the provisions set out in Chapter VIII of the African Charter on Democracy, Elections and Governance with the following heading: "Sanctions in Cases of Unconstitutional Changes of Government". This decision should be adopted in accordance with the conditions laid down in the Lomé Declaration which it will replace, and it should serve as the framework for action by AU in the event of unconstitutional change;
- (iii) Point out that the stand taken by the AU with regard to unconstitutional change of Government is strengthened by the coherence of the Organization's doctrine and the virtually automatic nature of the decisions to be taken, notably immediate condemnation, the suspension of the country concerned from the activities of the organs of the Union and the imposition of targeted sanctions. This stand will acquire more authority and be more effective if, in each case, it is accompanied by the direct support



by the Heads of State and Government which would be expressed either at the PSC meeting at Heads of State level or through the highest authority of the AU which is the Assembly.

### **More effective prevention of Unconstitutional Changes of Government**

51. In recent years, OAU/AU has adopted a number of instruments on Democracy, Elections and Governance. Mention should be made, *inter alia*, of the Solemn Declaration on Security, Stability and Development in Africa (CSSDCA) and the Memorandum of Understanding adopted by the Assembly of the OAU Heads of State and Government meeting in Durban, South Africa on 8 and 9 July 2002. The provisions of these two documents which deal with issues of stability contain specific commitments on the promotion of democracy and good governance; the various instruments adopted within the framework of NEPAD commitments including the African Peer Review Mechanism, the African Charter on Human and Peoples' Rights and its various Protocols as well as the OAU Declaration on the Principles Governing Democratic Elections in Africa. These instruments and the provisions of the Constitutive Act attest to the commitment of Member States to democratic governance.

52. Since the late eighties, African States have undoubtedly made perceptible progress in the democratization of their institutions. The regular organization of elections, efforts to set up institutions that actually function, the progress recorded in the field of freedom of the press and the birth of a dynamic civil society are factors which attest to this encouraging development. At the same time, it should be recognized that much remains to be done to truly consolidate the values of democracy and good governance in our continent. It is therefore advisable to work towards a better fulfilment and effective follow up on the commitments made by the States, since, as the Lomé Declaration underscores, profound changes in the democratization process will considerably reduce the risks of political crises that are likely to cause unconstitutional changes.

53. In view of the foregoing:

- (i) The Assembly of the Union should strongly underscore the importance of implementing the commitments made by Member States as concerns democracy, good governance and elections, and invite them to take all steps necessary for their effective implementation at national level;
- (ii) The Commission and the other structures concerned should launch an awareness-raising campaign to popularize the relevant AU instruments in order to heighten the awareness of the various stakeholders and facilitate their appropriation thereof at national and regional levels;

- (iii) The PSC should review on a regular basis the progress achieved in the democratisation process, in light of the annual report to be prepared by the Commission with the support of other competent AU structures and some partner institutions. This review is in line with Article 7(m) of the Protocol Relating to the Establishment of the PSC, which stipulates that this body, in conjunction with the Chairperson of the Commission, shall “follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by Member States”. This action would make it possible for report to be made on regular basis on the status of the democratisation efforts in the continent, and to identify both the advances so far made and the challenges that are yet to be tackled;
- (iv) it is important to build AU’s proactive capacity, through a much more dynamic preventive action. What needs to be done in this regard is, among other things, to rely on the information gathered through the Continental Early Warning System, establishment of which is at an advanced stage, to make full use of the Panel of the Wise and other eminent African personalities to defuse tensions and crises that could culminate in unconstitutional changes of Government. Similarly, the Chairperson of the Commission should use the powers conferred on him by the Protocol establishing the PSC to contribute more effectively in preventing the crises and tensions that could result in unconstitutional changes.

### **More effective coordination at regional and international levels**

54. AU’s action on unconstitutional changes must, to be effective, have the full support of the Regional Mechanisms for conflict prevention, management and resolution and of AU’s international community partners. Here, it is noteworthy that the Lomé Declaration stipulates that, in the event of unconstitutional change, the current Chairperson of the Union and the Chairperson of the Commission should urge for consistency of action at the bilateral, inter-state, sub-regional and international levels.

55. With regard to Regional Mechanisms more especially, the Protocol Relating to the Establishment of the PSC stipulates, in Article 16, that the Regional Mechanisms are part of the overall security architecture of the Union, which has the primary responsibility for promoting peace, security and stability in Africa. In this respect, the Peace and Security Council and the Chairperson of the Commission, shall harmonize and coordinate the activities of Regional Mechanisms in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union.

56. In view of the aforesaid:

- (i) The Assembly of the Union could underscore the primacy of the Union’s responsibility in promoting peace, security and stability in the continent. On this score, it is important that, each time the AU takes a decision on a

situation of unconstitutional change, the Regional Mechanisms and the AU act in harmony, bearing in mind the relevant provisions of the AU instruments and the primary responsibility devolving on the PSC and the Union in general. In this regard, it is needful to ensure regular consultation between the continental and regional levels within the framework of the Protocol on Cooperation between the AU and the Regional Mechanisms in the field of peace and security;

- (ii) the Assembly of the Union could make an urgent appeal to AU's bilateral and multilateral partners to lend their unwavering support to the decisions taken by the AU in situations of unconstitutional change and to refrain from any action which could undermine AU efforts and send conflicting signals to the perpetrators of unconstitutional change. On this score, the two presidential Statements in support of AU's efforts on the question of unconstitutional changes of Government adopted by the United Nations Security Council on 19 August 2008 and 5 May 2009, respectively, could serve as basis to look forward to more concrete international community support for AU's decisions on this issue.

57. As mentioned earlier, this report is only a preliminary reflection on Decision Assembly/AU/Dec.220(XII). The Commission intends to enrich its report drawing from the deliberations of the ongoing Ordinary Session of the Assembly, and thereby submit a more exhaustive document in January 2010, a document on which the Assembly could rely to take the appropriate decisions.

2009-07-03

# Interim Report of the Chairperson of the Commission on the Prevention of Unconstitutional Changes of Government Through Appropriate Measures and Strengthening the Capacity of the African Union to Manage Such Situations

African Union

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