

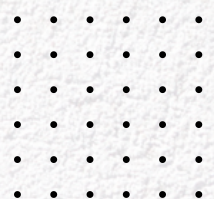
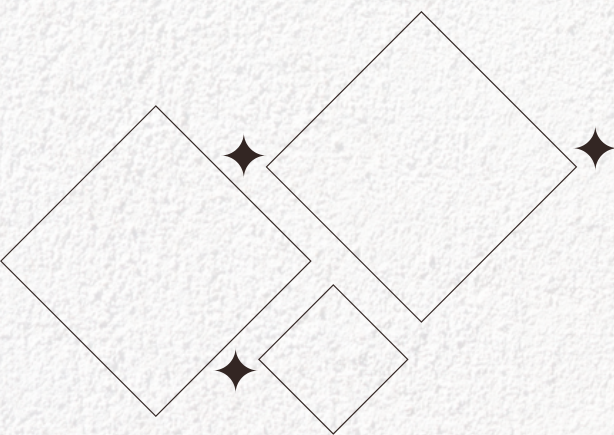


Discussion Paper

Extra-Constitutional Changes of Government in Africa: The Dilemmas of Mischaracterised Political Convulsions

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Abstract

This paper examines unconstitutional and extra-constitutional changes of government in Africa as legal, political, and geopolitical phenomena that are frequently mischaracterised when analysed solely through domestic constitutional doctrine or conventional coup typologies. It argues that contemporary political convulsions on the continent are shaped by the interaction of external intervention, post-colonial state formation, elected authoritarianism, institutional capture, and contested regional legal norms. Focusing on the African Union's governance architecture, the African Charter on Democracy, Elections and Governance, and the Malabo Protocol, the paper assesses the promise and limits of criminalising unconstitutional change of government while identifying unresolved tensions between constitutional order, popular resistance, the duty to disobey manifestly unlawful orders, and the right to protest unjust governance. It concludes that durable responses require a stronger supranational governance framework, harmonised legal standards, and a more coherent account of the political economy conditions that produce unconstitutional transitions.

1. Introduction

There is broad and enduring agreement that nations should be governed through orderly constitutional arrangements, because disorder runs counter to basic human and political instincts. Constitutions provide the guiding principles for orderly governance in Africa and elsewhere. A central function of constitutionalism is to regulate the peaceful transition from one government to another, principally through elections. Conversely, transitions that occur outside constitutional frameworks are generally regarded as antithetical to orderly governance.

In Africa, however, unconstitutional and extra-constitutional changes of government are not straightforward phenomena. Various actors have invoked political, historical, and legal arguments to justify unconstitutional or extra-constitutional transfers of power. These claims create dilemmas for those who regard constitutional principles as the minimum standard for government transitions. Such justifications have appeared in past and current political upheavals across the continent. Schools of thought that validate unconstitutional seizures of state power increasingly normalise, popularise, and entrench methods that bypass constitutional architectures and mechanisms. It is therefore increasingly evident that orderly constitutional transitions in Africa are in deep contestation vis-à-vis disorderly methods that set constitutions aside. This is a critical governance issue because unconstitutional and extra-constitutional changes of government have multiplied rather than receded. Although analysis, advocacy, and policy reform have largely focused on internal

factors that explain the overthrow of elected governments and leaders, external factors are increasingly significant. This adds a geopolitical dimension to government transitions in Africa.

To examine the internal and external dimensions of unconstitutional changes of government in Africa, this discussion paper addresses three interrelated questions. First, how do geopolitical factors shape and influence unconstitutional changes of government? Second, how has Africa sought to address the issue through legal and institutional approaches? Third, what gaps remain in these approaches? The visible manifestations of the deeper problem are insurrections, rebellions, uprisings, and coups across large parts of the continent. These developments arise from deep-seated political economy problems that are closely linked to international, regional, and domestic legal structures. To provide a more nuanced account, the paper begins with external factors and their domestic implications before turning to internal sources of action, which themselves often have external dimensions.

2. External Drivers of Unconstitutional Changes of Government

2.1 Colonial Legacies, State Formation, and Cold War Contestation

The first exogenous factor is Africa's fraught history, which continues to shape its uncertain political future. A core challenge in contemporary unconstitutional changes of government stems from the unfinished and uneven processes of state- and nation-formation and the subsequent state- and nation-building. The seeds were sown during transitions from colonialism to independence, which coincided with the ideological proxy wars of the Cold War. During that period, struggles for political power involved mercenaries, dissidence, rebellions, military coups, popular uprisings, legal-political engineering of governance systems, and constitutional amendments. These are the very methods for assuming, seizing, consolidating, and extending power that contemporary legal frameworks now seek to criminalise. The difficulty is illustrated by post-colonial cases in which actors who came to power by force were also associated with projects of revolutionary transformation or liberation: Thomas Sankara seized power in Burkina Faso through a coup, while Yoweri Kaguta Museveni and several other liberation-movement leaders waged armed struggles to overthrow authoritarian regimes.

2.2 External Interests and Internal Vulnerabilities

Second, the exogenous and endogenous root causes of the problem are inseparable. There has been a proclivity for analysts to entirely lay the blame for coups on domestic political, economic, and cultural factors and actors. It is not that such analysis is entirely wrongheaded. The problem is that external factors and actors that prey on and fuel internal conflict are often bracketed out of the equation. Propitiously, many discerning analysts are beginning to shed light on the inextricable and entangled intersection of external and internal drivers that have become the bane of Africa's misgovernance. Together, exogenous and endogenous factors have created a complex national and global political-economic environment conducive to unconstitutional politics. On the external side, imperial and colonial powers retained interests forged through geopolitical competition. These practices have continued in new guises in current times, employing far more sophisticated strategies to control African societies. This dynamic has correctly been labelled neo-colonialism.

Emerging powers entered the arena from the beginning of the new Millenium. Analysts have accurately pointed out that the so-called emerging powers or rising powers are different from imperial powers in their engagement with Africa only in method, not substance. Global powers and the rising powers aspire to the same hegemonic tendencies that imperial powers have refined in Africa in the context of the twenty-first century. Despite contestations to the contrary, the emerging powers exhibit identifiable neo-colonial characteristics.

When you combine the mutation of imperial powers from the unambiguous exercise of power over Africa to the often-subtle control systems, and the entry of the new powers, often invoking Global South sentimentality, you appreciate the significance of external factors in Africa's governance. This manifests in the unconstitutional change of governance phenomenon.

2.3 Coup Patterns and the Historical Record

The historical record of unconstitutional changes of government and attempted changes underscores the role of external forces on the continent. Available coup datasets record several hundred successful and attempted coups globally since 1950. In the 1960s, Africa experienced repeated coup attempts, and by the 1970s, many African states had experienced a coup in one form or another. West Africa has remained one of the continent's most coup-affected regions (Powell and Thyne 2011; Powell and Thyne Coup Dataset).

Some observers argue that the decline in coups after the Cold War reflected a democratic dividend following the fall of the Berlin Wall and the collapse of the Soviet empire and the sphere it presided

over. This is a misleading characterisation. Evidence suggests that exogenous factors drove many coups in the pre-unipolar era. Of all coups between 1965 and 1996, more than 80 per cent were linked to externally driven regime change. In many cases, targeted leaders stood outside the Western ideological bloc and embraced socialism, which led to their being labelled dictatorial. The assassinations of post-independence leaders illustrate this pattern: Patrice Lumumba in Congo in 1961, Thomas Sankara in Burkina Faso in 1987, and Samora Machel in Mozambique in 1986. Related examples include the ouster of Kwame Nkrumah in Ghana in 1966 and the assassination of Amílcar Cabral in 1973, on the eve of Guinea-Bissau's independence from Portugal. Global powers, including the United States, France, and Portugal, have been implicated in these political assassinations.

The reverse logic reinforces the argument that the early 1990s "dawn of democracy" was not the principal cause of the decline in coups. Countries aligned with the Western bloc experienced fewer coups even when they were openly authoritarian. Zaire, now the Democratic Republic of Congo, under Mobutu; Malawi under Kamuzu Banda; and Kenya under Daniel Arap Moi are illustrative examples. These regimes eluded coups not because they were democratic, but because they were Western-aligned and therefore less vulnerable to externally manufactured coups. Even in coup-prone countries, leaders aligned with the West often ruled for longer periods. Uganda and Nigeria are instructive. Idi Amin and Sani Abacha were among the worst dictators of the Cold War era. Amin's coup against Milton Obote in 1972 was tolerated, at least initially, because of his alignment with the West. The West similarly did not move decisively to end Abacha's dictatorship.

Ironically, as Africa reassesses its independence-era leaders and political icons, figures once vilified by the West or associated with the Eastern Bloc are increasingly being valorised. A more persuasive explanation for the decline in regime-change activity is that the emergence of a unipolar order reduced the appetite of France, the United States, Portugal, and the United Kingdom to intervene. The post-1996 decline in unconstitutional changes of government is therefore better understood as the result of shifting ideology-driven geopolitical competition between Western and Eastern blocs, rather than as evidence of a wholly endogenous democratic transformation.

2.4 Constitutionalism for Self-Preservation

The third factor follows from the second. In many African countries, post-colonial state- and nation-building was framed as constitutionalism for self-preservation rather than as a matter of principled conviction. The constitutional political culture adopted by many autocratic leaders was often a defensive response to fears of externally induced regime change. The result was the entrenchment of constitutionalism as legal text, while in practice, many leaders governed as sovereign autocrats. This helps explain developmentalism driven largely by one-party statist ideologies in the post-

colonial African state. Many leaders strove to showcase developmental projects and to foreground development as far more important than democratic governance ideals. It was a case of the ends justifying the means.

Dissent was treated as an unaffordable luxury in the face of the external threats faced by newly independent states, and particularly their leaders. Pro-Western African leaders therefore became Western allies externally and dictators domestically. Sovereign autocracy, implemented through one-party statist ideologies, indiscriminately framed dissent and opposition as subversion, insurrection, and criminality. Opposition to autocracy was often equated with communism, a term carrying negative connotations that provided cover against some of the negative Western tendencies. In many African countries, being labelled communist was sufficient for politicians and other opinion shapers to be bundled out of the political system. In many cases, the communism label was a death sentence, literally. External support for such arrangements was abundant in a Cold War order marked by deep contradictions and polarisation within and beyond states. This produced extensive repression, oppression, and impunity, which in turn generated resistance, revolt, and outright insurrection.

2.5 Geopolitical Balancing and Regional Political Economy

Fourth, African countries engaged in competing geopolitical balancing acts. State-level, geopolitically inspired contradictions were embedded in a regional political economy marked by ideological asymmetries and external colonial allegiances. The Western bloc held a collective advantage over the Eastern bloc in African countries' ideological orientations. Former British colonies looked to London to prop up sovereign autocracy, while Francophone countries consumed and used templates from Paris. With most countries being former French colonies, West Africa was largely within the Francophone sphere of influence, while eastern and southern Africa were generally in the British ambit. These alignments were further complicated by the rise of Washington as the global centre of Western ideology. Anglophone African leaders had to account for both London and Washington, while Francophone leaders navigated Paris and Washington. The few countries that maintained socialist orientations balanced between Moscow and Beijing, while often avoiding actions that might provoke Western-backed regime change.

State-level institutions and processes were therefore not only captured or mortgaged to external geo-economic and geopolitical interests; regional processes also became vulnerable to suggestion, control, and manipulation by competing global powers. This reflects failures of internal institutions, politics, processes, and leadership at the altar of external influence. If you look at the landscape of

unconstitutional changes of government from the 1960s to the mid-1990s, you see a clear pattern of global ideological competition manifesting at the domestic level.

2.6 International Criminal Justice, Sovereignty, and Regime Security

The fifth issue also links exogenous and endogenous factors. A major development in the post-Cold War era was the establishment of the International Criminal Court (ICC), designed as an international mechanism for addressing intra-state human rights abuses, with the Global South generally, and Africa specifically, often perceived as the principal sites of abuse. One early ICC test case was the 2009 arrest warrant for former Sudanese President Omar Hassan Ahmad al-Bashir for crimes against humanity and war crimes, followed by a second warrant in 2010 that added genocide charges. African leaders argued that the ICC summonses against al-Bashir and other sitting heads of state represented an excessive exercise of universal jurisdiction. The popular African position was that using the Rome Statute threatened sovereign equality and state independence within the international governance system. These concerns were amplified by critiques of the perceived coloniality of international criminal justice. Although opposition to the ICC was generalised, fears of externally induced changes of government were a major driver. This was the case particularly after ICC proceedings involving Kenyan leaders Uhuru Kenyatta and William Ruto over the 2007–2008 post-election violence (ICC 2009; ICC 2010; AU Assembly Decision 245(XIII) 2009; ICC Kenya Cases).

The consequence was that international law became a theatre of contestation between external actors seeking regime change in African countries and African leaders seeking self-preservation in power. These muddled circumstances are the most recent sources of complications for leadership transitions in Africa. The unresolved external-internal legal contradictions continue to unfold today.

3. Intra-African Legal and Institutional Responses

3.1 The Malabo Protocol and the Criminalisation of Unconstitutional Change

Concerned about the fate of their peers, African leaders and states responded through a 2009 African Union decision not to cooperate with the ICC in the al-Bashir matter. They instead advanced the Malabo Protocol, which reconfigured the African Court of Human and Peoples' Rights with three forms of jurisdiction: human rights, general affairs, and international crimes. Article 28A catalogues several traditional and core crimes, including genocide; crimes against humanity; war crimes; unconstitutional change of government; piracy; terrorism; the use of mercenaries; corruption; money laundering; trafficking in persons; trafficking in drugs; trafficking in hazardous waste; illicit

exploitation of natural resources; and aggression. Article 46C further establishes corporate criminal accountability. Thus, unconstitutional change of government is both an independent crime and a phenomenon linked to other crimes that enable it or are enabled by it. It often involves the intersection of several crimes and the concerted action of state and non-state actors (Malabo Protocol 2014, arts 28A, 28E, 46C).

To some extent, the Malabo Protocol reflects both proactive and reactive internationalism. Article 28E seeks to establish an African criminal jurisdiction over the sui generis crime of “unconstitutional change of government”. It defines an unconstitutional change of government as the commission, or ordering of the commission, of specific acts aimed at illegally accessing or maintaining power (Malabo Protocol 2014, art 28E). Unconstitutional acts of government change per the Protocol are:

- (i) A putsch or coup d’état against a democratically elected government.
- (ii) Intervention by mercenaries to replace a democratically elected government.
- (iii) Replacement of a democratically elected government by armed dissidents, rebels, or political assassination.
- (iv) Refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair, and regular elections.
- (v) Amendment or revision of the constitution or legal instruments that infringes the principles of democratic change of government or is inconsistent with the constitution.
- (vi) Substantial modification of electoral laws in the six months before elections without the consent of the majority of political actors.

3.2 Ambiguities in the Definition of “Democratically Elected Government”

The acts of unconstitutional change of government enacted in the Malabo Protocol are saddled with conceptualization problems. A key problem is that the provisions contain several ambiguities. The phrase “democratically elected government” is not clearly defined. How, for instance, do we treat an ostensible democratic election exercise, which, nonetheless, fails to meet a democratic threshold? If massive voter suppression is at play, for instance, the democratic processes that underlie such an election are hollow, putting the results within the reach of unconstitutionality. The postponement of elections is also not addressed, leaving the legitimacy of a government in power open to contestation as anticipated in paragraph (iv). Under paragraph (v), an incumbent government may refuse to reform an uneven political playing field or skewed electoral laws, thereby achieving precisely the mischief the statute seeks to remedy.

Article 23 of the African Charter on Democracy, Elections and Governance (ACDEG), read together with the Malabo Protocol, effectively renders “unconstitutional change of government” a supranational crime subject to the jurisdiction of the African Chamber. This raises several

jurisprudential and practical questions: (i) is there a concomitant right to foreign intervention in internal political affairs; (ii) does this definition outlaw pre-existing constitutional rights to rebel; and (iii) what are the transactional dimensions of the crime of unconstitutional change of government? (ACDEG 2007, art 23; Malabo Protocol 2014, art 28E).

Article 46H envisages an African court complementary to domestic jurisdiction. The implication is that domestic jurisdiction remains paramount, creating the possibility that a state may reject the African court's decisions. This is materially similar to the grounds on which the African Union has rejected certain ICC decisions (Malabo Protocol 2014, art 46H).

Modern jurisprudence intersects with the ambitions of the Malabo Protocol in several respects, and these intersections are central to understanding how and why the African Union has responded, or failed to respond, to various instances of unconstitutional change of government. These are questions of law, institutional structure, and realpolitik. They are intricate, intersecting, and difficult to resolve. Three analytical levels can help move debates towards a better understanding and ameliorative action.

3.3 Unconstitutional Constitutional Amendments and the Basic Structure Problem

First, it may seem like an oxymoron to talk of “unconstitutional constitutional amendments” until one considers several incipient developments from nations across the continent. In law, there is a fine distinction between the power to make a constitution, or primary constituent power, and the power to amend an existing constitution, or secondary constituent power. The amendment power cannot be exercised in a manner inconsistent with the spirit and intent of a constitution. This principle is captured in the basic structure doctrine. In other words, duly passed and ratified constitutional amendments may be unconstitutional if they conflict with a constitutional norm or extra-constitutional value or principle. This would be the case even if not expressly prohibited by the constitutional text. This issue was central to the Kenyan Building Bridges Initiative (BBI) litigation and arose, in a different form, in Zimbabwean litigation concerning the extension of the retirement age and tenure of the Chief Justice. The outcomes, however, should be stated with precision.

In Kenya, the Supreme Court ultimately held that the basic structure doctrine was not applicable to the 2010 Constitution's amendment framework, even as it invalidated the BBI process on other constitutional grounds. In Zimbabwe, the High Court initially held that the tenure-extension amendment could not benefit judges already in office, but the Constitutional Court later overturned that outcome. The dispute therefore turned principally on the effect of section 328(7) and judicial

tenure, rather than a wholesale judicial rejection of the basic structure doctrine (*Attorney General v Ndii* 2022; *Kika v Minister of Justice* 2021; *Mupungu v Minister of Justice* 2021).

In these cases, it is evident that unconstitutional constitutional changes are emerging as new fronts for power transitions. In the Kenyan case, as an example of similar cases across the continent, the intent was to re-engineer a political dispute by tinkering with the constitution. In the Zimbabwean case, it was the elongation of a stay in an official judicial position. The Zimbabwean case mirrors constitutional changes in Uganda that have enabled the stay in power of President Yoweri Kaguta Museveni.

3.4 The Right to Rebel, the Duty to Disobey, and the Right to Protest

Second, the right to revolution, rebellion, and protest versus the proclivity for regimes to preserve longevity in power is an equally important power transition paradox. Several constitutions recognise forms of resistance to unconstitutional, oppressive, or anti-democratic rule. These include Benin, Ghana, Cape Verde, Mali, and others. The Honduran Constitution describes this as the “right to insurrection”. Rwanda’s first post-genocide constitution granted citizens the right to defy orders from a superior authority where those orders constituted a serious and manifest violation of human rights and public freedoms. The West German Constitution recognised a “right to resist”, which survived reunification and remains in Germany’s Basic Law. The 1789 Declaration of the Rights of Man and of the Citizen in France, later incorporated into the preamble to the post-revolutionary Constitution of 1793, recognised the “right to resist oppression”. Article 350 of Venezuela’s 1999 Constitution contains a right to disown any regime, legislation, or authority that violates democratic values, principles, and guarantees or encroaches on human rights. The right to revolution or rebellion is the right or duty of the people to alter or abolish a government that acts against their common interests or threatens their safety without cause. The former section 69 of the Thai Constitution similarly recognised the right to peacefully resist any act undertaken to obtain power by means not provided for in the Constitution (German Basic Law, art 20(4); ICRC Customary IHL Rule 154; Murphy 2025).

The interrelationship between the right to rebel, the duty or right to disobey immoral or unlawful orders, and the right to protest unjust governance lies in their shared normative concern: the preservation of constitutional legitimacy when formal legality is used to entrench domination, impunity, or grave injustice. The right to protest operates as the ordinary, peaceful, and public means through which citizens contest unjust governance within a constitutional order. The duty to disobey manifestly unlawful orders addresses the position of state agents, especially security personnel, who may otherwise become instruments of unconstitutional repression. The right to rebel or resist is more exceptional and arises only when ordinary constitutional remedies have been exhausted,

captured, or rendered meaningless. Read together, these doctrines create a graduated theory of resistance: protest seeks correction within the system; disobedience prevents participation in illegality; and rebellion or resistance challenges the legitimacy of a system that has itself become structurally unlawful. This relationship is central to any African legal framework that seeks to criminalise unconstitutional change of government without simultaneously criminalising legitimate resistance to authoritarian or unconstitutional rule (German Basic Law, art 20(4); ICRC Customary IHL Rule 154; Murphy 2025).

In some cases, the recognition of a constitutional right to resist has served to provide post facto validation for coups by regimes that seized power through revolt or armed insurrection. The leaders of the 2021 Guinean coup, for example, claimed that their putsch sought to redress severe governance deficits, rising inequality, and endemic corruption, and to restore democracy. This idea of “coups for democracy” warrants close analysis, particularly given the increased incidence of soldiers being cheered by large numbers of young people and ordinary citizens. It also raises questions about external infiltration and manipulation in domestic political crises.

3.5 Regime Change and External Intervention

Third is the kind of regime change, understood as the forcible or coerced replacement of one governing order with another. It may involve the removal of a state’s political leadership, administrative apparatus, or, broadly, the institutional system. Regime change has two principal forms: domestically driven change through revolution, coup, or post-conflict reconstruction; and externally driven change through invasion, covert or overt intervention, or coercive diplomacy. Historical and contemporary examples include Russian-, US-, and French-backed interventions over the years and in different parts of the world. Russia has been associated with episodes involving Ukraine, Georgia, Montenegro, and Mali, while the United States has been linked to cases including Panama, Honduras, Nicaragua, Haiti, Iraq, the Democratic Republic of Congo, and Yugoslavia.

Questions continue to linger about the legality of external intervention in domestic circumstances. Many countries invoke the principle of non-interference in the domestic affairs of sovereign states to oppose external intervention. On the other hand, external actors often cite the principle of responsibility to act or protect the citizens of a beleaguered state as justification enough for foreign intervention.

3.6 Elected Authoritarianism and Executive Capture

Fourth is elected authoritarianism and executive capture. The notion of a “democratically elected government” is often contested, particularly where state institutions have been repurposed to give

anti-democratic rule an electorally backed veneer of legitimacy. In such contexts, local comprador elites and international enablers, including corporations and states, may help recycle political elites who protect specific interests, especially in the extractive sector. This dynamic is especially significant amid the new scramble for Africa and the resurgence of multipolar geopolitics. Continental security—whether cyber, military, social, health, food, human, or economic—cannot be understood without accounting for excessive external influence, control, and mortgaging of state authority.

Elected authoritarianism and disputed regime legitimacy must therefore be analyzed alongside violent extremism, state fragility, and social disintegration. Although these dynamics vary across local, national, and regional contexts, their consequences are often comparable. Violent extremism, for instance, may be based on the exploitation of angst against regimes that are propped up by elites benefiting from the extraction of minerals by foreign governments and multinationals. A case in point that has spilled into electoral politics in recent times is Mozambique, with the Cabo Delgado region as the epicentre. Africa's so-called coup belt of the Sahel is another case in which factors of state fragility have mingled with violent extremism and opposition to foreign powers to spawn numerous unconstitutional changes of government. The Sahelian case is quite similar to Somalia, where the same factors have rendered an effectively failed state status, with the government controlling only a patch of territory around the capital, Mogadishu. Social disintegration, when analysed from an ethnic angle, is at play in the DRC, where communities in the eastern region have scant recognition of the government, headquartered in geographically far-away Kinshasa.

3.7 Limits of the Current Legal Approach

Fifth, the current legal approach remains conceptually and operationally incomplete. Article 28E of the Malabo Protocol seeks to prohibit coups, mercenary intervention, dissidence, rebellion, incumbents' refusal to relinquish power, failure to transfer power after elections, and legal-political manipulation. Yet the provision addresses mainly the procedural forms of unconstitutional change of government, rather than the deeper conditions that generate it. Its focus is on protecting democratic decision-making, preventing gross human rights violations, curbing illicit self-perpetuation in power, preserving electoral integrity, safeguarding the state, and limiting tenure elongation or "thirdism". However, it does not clearly criminalise gerrymandering, address inequities in campaign finance or party support, or adequately confront incumbency advantage, militarised governance and policing, or judicial capture. As a result, the crime defined in the Malabo Protocol does not fully capture the complex interaction of global, regional, national, corporate, technological, informational, diplomatic, and state power that often underpins unconstitutional changes of government (Malabo Protocol 2014, art 28E; García-Casas 2021; Mushoriwa 2024).

4. Solutions: Toward a Coherent Regional Governance Architecture

The exogenous and endogenous factors that inform unconstitutional changes of government in Africa show that these are complex transnational problems requiring transnational solutions. Accountability must operate at both domestic and external levels. Strengthening the regional architecture and empowering the African Union as a supranational body are now unavoidable. Given the scale and speed of the security and governance threats posed by unconstitutional changes of government, a patchwork of regional institutions operating primarily by consent and consensus is unlikely to meet the challenge. Nor will efforts to enforce shared values be effective without stronger institutional authority. Africa's relationship with the rest of the world must therefore be redefined in a structured and urgent manner. The ad hoc nature of Africa's engagement in international relations partly explains the AU's fragmented responses to unconstitutional changes of government. Much depends on the goodwill, or lack thereof, of powerful donor states and international actors. This also leaves the African Union poorly positioned to defend member states facing pressure from powerful external actors. As a stop-gap measure, three priorities require strengthening: (i) the AU governance architecture as an empowered mechanism capable of meaningful preventive diplomacy and early crisis response before governance crises become security crises; (ii) the integration of AU shared values into a single protocol or legal instrument with consistent and harmonised definitions and procedures; and (iii) the reconsideration of subsidiarity and complementarity doctrines in light of the Malabo Protocol and the need to eliminate inconsistencies in how the AU addresses violations of the Constitutive Act and its shared values agenda.

References

1. African Union. 2007. *African Charter on Democracy, Elections and Governance*, adopted 30 January 2007, entered into force 15 February 2012.
2. African Union. 2009. *Assembly/AU/Dec.245(XIII): Decision on the Report of the Commission on the Meeting of African States Parties to the Rome Statute of the International Criminal Court*, Sirte, 1–3 July 2009.
3. African Union. 2014. *Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights* (Malabo Protocol), adopted 27 June 2014.
4. García-Casas, María. 2021. "The Crime of Unconstitutional Change of Government: Concept and Main Hurdles in Its Implementation." *Journal of International Criminal Justice* 19(3): 565–581.
5. International Criminal Court. 2009. *Warrant of Arrest for Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, 4 March 2009.

6. International Criminal Court. 2010. *Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, 12 July 2010.
7. International Criminal Court. *The Prosecutor v. Uhuru Muigai Kenyatta*, ICC-01/09-02/11; and *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, ICC-01/09-01/11.
8. International Committee of the Red Cross. *Customary International Humanitarian Law, Rule 154: Obedience to Superior Orders*.
9. Murphy, Shannonbrooke. 2025. *The Human Right to Resist in International and Constitutional Law*. Cambridge: Cambridge University Press.
10. Powell, Jonathan M., and Clayton L. Thyne. 2011. "Global Instances of Coups from 1950 to 2010: A New Dataset." *Journal of Peace Research* 48(2): 249–259.
11. Powell, Jonathan M., and Clayton L. Thyne. *Global Instances of Coups, 1950–Present*, updated coup dataset.
12. Federal Republic of Germany. *Basic Law for the Federal Republic of Germany*, art 20(4).