

Appraisal of the AU's Peace and Security Council Post-2020 Responses to the Military Coup D'etat's in AU Member States

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ABSTRACT

Conferring the form of military coup d'états, the sudden overthrow of incumbents post-2020 in Africa has become an epidemic. In the years following 2020, African states had five successful coups and two failed coups in seven member countries, equal to the total number of coups in the ten years prior, from 2010 to 2019.

The AU's normative Framework on military coups d'état faces legal and practical challenges, and Africa's quest for democratic power transfer is at a crossroads with the resurgence of military coups. Under this backdrop, it is pertinent to assess and investigate the capability and adequacy of the AUPSC and whether or not the council's responses to military coups in post-2020 AU member countries are compatible with the AU's normative frameworks and institutions on military coups d'état.

As a result, the paper argues that the AUPSC responses to military coups were inconsistent, self-contradictory, lacking guidance on the causes of military coups, and selective. Most importantly, the PSC protocol falls short of connecting with the norms of UCG, particularly military coups and the underlying factors.

Keywords: *AU, AU member states, Military Coup d'Etat, Norm, Post-2020.*

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I. INTRODUCTION

The non-recognition of military coup d'etat in Africa has been the central norm and lynchpin principle of the OAU and AU since 1995.¹ The African Union is employing its norms and institutions in rejecting, prohibiting, condemning, and sanctioning military coup d'etat. It utilizes the norms and institutions that have been part of the AU's heavy investment in good governance and democratization since the (Constitutive Act) CA's adoption in 2002. However, in the post-2020, the wave of military takeover has grown. Five African states have experienced successful military coups and two attempted coups in seven countries in post-2020 while this paper is being written.²

In response to the wave of military coups d'état, the AU has suspended four countries from the Union's activities until constitutional order is restored and power is restored to the civilian leader. As part of its structural responsibility to prevent military coups d'état, the AU Commission has condemned military coups and expressed its deep concern about the resurgence by stating condemnation via the chairman of the Union.

In addition, it has been playing a preventive diplomacy role by sending out its emissaries as part of fact-finding missions to facilitate the restoration of constitutional order in countries that have experienced military coups.

The justification for the rise of military coups in the post-2020 period stems from internal and external factors. Internally, the long-ruling leaders, who use the central power

¹ Julia Leininger, 'Against All Odds: Strong Democratic Norms in the African Union' in Tanja A Börzel and Vera van Hüllen (eds), *Governance Transfer by Regional Organizations: Patching Together a Global Script* (Palgrave Macmillan UK 2015) 5.

² 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' <<https://www.securitycouncilreport.org/monthly-forecast/2022-07/in-hindsight-the-security-council-and-unconstitutional-changes-of-government-in-africa.php>> accessed July 17 2022.

to preserve their status quo through the exclusion of potential and supposed challengers through any means possible, insurgency, terrorism, impoverishment, gross human rights violations, corruption, constitutional manipulation, deficits in democratization, and a rigged election system were some of the notable factors.

Most importantly, the perception of the coup leaders that the advantages of participating in a military coup outweigh the harm caused by AU norms on military coup d'etat and that the AU and regional organizations have become lax in enforcing the AU norms against military coup d'etat.³ Externally, developed nations extended geopolitical interests and competition are factors.

The study's objective is to appraise whether the AUPSC's responses to military coups in post-2020 AU member countries are compatible with the AU's normative frameworks and institutions on military coups d'état. Against this background, it critically assesses the capability and adequacy of the AU's peace and security architecture in responding to a military coup d'état. To this end, the study covers all four complementary organs of the Security Council except the Peace Fund.

In order to arrive at a sound conclusion, the study employed a qualitative legal research approach. A legal analysis of AUPSC's decisions on military coup d'états was made in light of its instruments. Besides, a rigorous literature review was conducted on military coups from books, journals, published and unpublished materials, and internet sources.

This article proceeds as follows: Following this introduction, section one discusses the AU's normative Framework on unconstitutional changes in government. Section two delves into literature reviews. The third section is devoted to analyzing the AU's peace

³ Amani Africa - Media and Research Services, 'Critical Reflections on the Challenges to and Means of Strengthening the AU Norms Banning UCG' (Amani Africa, 2021) Special Research Report 10 3.

and security council and its complementary bodies' responses to the case studies about the AU's law on military coup d'état. Finally, a brief concluding remark is provided.

II. AU's NORMATIVE FRAMEWORK ON UNCONSTITUTIONAL CHANGE OF GOVERNMENT

a. Unconstitutional Change of Government: Overview of the Concept

i. Definition

The definition of (unconstitutional change of government) UCG has yet to be made in the AU and other laws; instead, all laws are limited to mentioning the components of UCG. The Lomé "Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government" that had been adopted in Lome, Togo, at the thirty-sixth ordinary session of the OAU Assembly in 2000 defined UCG for the first time in the history of African documents on UCG.⁴ As per the declaration, UCG occurs in four instances. These are a military coup d'état against a democratically elected government, intervention by mercenaries to replace a democratically elected government, the replacement of a democratically elected government by armed dissident groups and rebel movements, and the refusal of an incumbent government to relinquish power to the winning party after a fair, regular election.⁵

African Charter on Democracy, Elections, and Governance (ACDEG), which was approved in Addis Ababa during the AU's eighth regular meeting in January 2007, added one more component element of UCG to the original four components under the Lome

⁴ Declaration on the Framework for an OAU Response to Unconstitutional Change of Government 2000 para.1.
⁵ Ibid. para. 14.

declaration as part of the AU leaders' renewed commitment to combating UCG. The charter enumerates, "[a]ny amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government".⁶

Furthermore, the Malabo protocol has also come up with two profound changes to the AU normative frameworks on unconstitutional change of government. First, it added one more component of UCG to the already stipulated definition under the ACDEG. The added element was: "Any substantial modification to the electoral laws in the last six months before the election without the consent of the majority of the political actors."⁷ Second, in the history of international criminal law, the Protocol considered an unconstitutional change of government as a crime in which international criminal jurisdiction could be asserted.⁸

Of all these forms of UCG, the paper focuses on the first, a military coup d'état against a democratically elected government. To this effect, it is worth noting that the French term "coup" means "a sudden blow or strike".⁹ Except for the etymological definition, "military coup d'état" has not been defined in any OAU or African Union laws. other than incorporating it as one strand and constituent of an unconstitutional change of government under the several OAU/AU laws, including but not limited to the Lome Declaration and ACDEG. As per the script of the Lome declaration, UCG includes a military coup d'état against a democratically elected government.¹⁰ The definition of "military coup d'état" under either law was undefined, save from defining "UCG". Scholars, including Ikome

6 African Charter on Democracy, Elections, and Governance 2007 art 23(5).

7 Protocols on amendments to the Protocol on the statute of the African Court of Justice and Human Rights 2014 art 28E(f).

8 Ibid 28A (4).

9 Francis Nguend Ikome, *Good Coups, and Bad Coups: The Limits of the African Union's Injunction on Unconstitutional Changes of Power in Africa* (Institute for Global Dialogue 2007) 7.

10 Declaration on the Framework for an OAU response to unconstitutional change of government para 14.

and Samuel Huntington, have defined coup d'état in light of the essential facts of what transpires during and after a military coup.

As per Ikome in his paper on “Good and Bad coups”, a military coup d'etat is the unexpected overthrow of a government against the general will be expressed by the majority of the populace.¹¹ It is usually carried out by a small, well-organized group that threatens or uses force to destabilize the state's top levels of authority. Furthermore, it is carried out by capturing control of some active sections of a country's government structures, which are military, while neutralizing the remainder of the armed forces. Typically, coup plotters kidnap or remove leaders and seize physical control of key government offices, strategic communication channels, and physical infrastructure.¹²

b. The African Union Laws on Unconstitutional Change of Government

Since the decolonization era between the 1950s and 1960s, of the 486 attempted and successful coups worldwide, Africa has seen 214, exceeding all other continents with 106 successful coups.¹³ Out of 54 members of the AU, 45 of them had seen one attempt the intricate horrors of the coup in Africa since 1950.¹⁴ Furthermore, sixty-one successful coups took place between the OAU's founding in 1963 and the end of 1989, and more than half of its member states were ruled by military administrations that maintained power by ousting civilian governments.¹⁵

11 Ikome (n 9) 7.

12 Ibid.

13 Megan Duzor and Brian Williamson, ‘By the Numbers: Coups in Africa’ <<https://projects.voanews.com/african-coups/>> accessed July 15, 2022.

14 ibid.

15 Monty G. Marshal (2006). Systematic Peace, Conflict Trends in Africa Cited in Eki Y Omorogbe, 'A Club of Incumbents? The African Union and Coups d'Etat' [2011] Vanderbilt Journal of Transnational Law Vanderbilt Journal of Transnational Law 33, 5.

Until the end of the Cold War, a military coup was the epitome of regime change on the continent. Subsequently, after the Cold War, there was intense pressure on the OAU to change its policy and include participatory democracy progressively. At the conference held under the auspices of the UN Economic Commission, participatory democracy was a thematic topic in which diverse stakeholders, including African leaders, actively participated in the summit.

The summit adopted the African Charter for Popular Participation in Development and Transformation, which highlighted the importance of participatory democracy in the political and socio-economic development of African countries. Nevertheless, the illegal overthrow of incumbents increased and remained high.¹⁶ Against this background, the OAU issued two fundamental decisions against military coups.¹⁷

The Organizations of Africa Unity's commitment to rejecting UCG was explicitly stated at the Algiers summit in 1999.¹⁸ The summit was held in response to the military coups in Congo Brazzaville, Guinea-Bissau, Comoros, and Niger and served as a lynchpin for the development of the AU norms against the UCG.¹⁹ Most importantly, the summit served as a baseline for adopting the Lomé Declaration on the Framework for an OAU response to an unconstitutional change of government, which banned an unconstitutional change of government ('Herein after the Lomé Declaration').²⁰

¹⁶ Kalkidan N Obse and Christian Pippan, 'Collectively Protecting Constitutionalism and Democratic Governance in Africa: A Tale of High Hopes and Low Expectations?' (2015) 4 Cambridge International Law Journal 344, 353–354.

¹⁷ Stef Vandeginste, 'The African Union, Constitutionalism and Power-Sharing' (Institute of Development Policy and Management 2011) 7.

¹⁸ Decision [AHG/Dec.142 (XXXV)] adopted by the OAU's Assembly of Heads of state and government, on its Thirty-Fifth Ordinary Session held from 12 to July 14, 1999, at Algiers, Algeria.

¹⁹ *Ibid* 1.

²⁰ Solomon Ayele Dersso, 'Unconstitutional Changes of Government and Unconstitutional Practices in Africa' [2016] African Politics 5, 3.

According to the declaration, constitutional methods are the only instrumentalities of government change on the continent.²¹ For the first time, the declaration defined the constituents of UCG and the sanctions that could be imposed. Furthermore, the OAU's stance against military coup d'état is embraced in the Banjul Charter's Article 13 on the right to participation in the government.

In addition to the 2000 Lomé declaration, the transformation of the OAU into the AU in 2002 brought about a strong adherence of the AU leaders to democratic governance, human rights, and the rule of law. Most importantly, regarding military coups, the AU has shown its commitment to democratic values by adopting and establishing comprehensive norms and institutions.

The AU Assembly adopted a normative framework against UCG that included military coups, including but not limited to the Protocol establishing the AU's peace and security, the African Charter on democracy, election, and governance in Africa ('Herein after the Addis Charter'). This 50th-anniversary solemn declaration recognized a peaceful expression of protest against oppressive regimes, the Ezulwini framework on the enhancement of the implementation of measures of the African Union in situations of UCG (Herein on Ezulwini framework) established a sanction committee under the PSC protocol articles 7(g) and 8(5) of the PSC protocol,²² and the Malabo protocol that criminalizes the perpetrators of UCG. It has also recently adopted the ACCRA declaration in response to the increased wave of military coups post-2020 in Africa.

21 Ibid.

22 PSC, 'Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Change of Government' 10.

i. Protocol Relating to the Establishment of the AU's Peace and Security Council

The African Union Peace and Security Council was the first to be established after adopting an amendment protocol by the African Union Peace and Security Council. The restructured African Union established the African Peace and Security Council through a more robust and comprehensive protocol than the previous ones established in 2004. Further, the council is a permanent decision-making body for conflict prevention, management, and resolution. It serves as a collective security and early-warning mechanism to help Africa respond to conflict and crisis circumstances promptly and effectively.²³

The council functions in the areas of early warning and preventive diplomacy.²⁴ It also performs the role of promoting peace through the use of good offices, mediation, conciliation, and investigation.²⁵ The council also assists in peacekeeping and enforcement by deploying peace support operations and intervention under Articles 4(h) and 4(j) of the Constitutive Acts.²⁶

In addition, the council assists in post-conflict reconstruction and development.²⁷ The council's tasks are not confined to those listed in Protocol Article 6 (Article 6). Instead, the Assembly may add new functions to safeguard the continent's peace and security.²⁸

The Peace and Security Council protocol established subsidiary organs that may aid the African Union's goal of conflict prevention, management, and peacekeeping on the continent. Subsidiary organs such as the AU Commission, Continental Early Warning System, African Standby Force, peace fund, and panel of experts are named in the

23 Protocol Relating to the Establishment of the Peace and Security Council of the African Union 2004 art 2(a).

24 Ibid 6(b).

25 Ibid 6(c).

26 Ibid 6(d).

27 Ibid 6(e).

28 Ibid 6(g).

Protocol establishing the PSC as organs that support the AU's peace and security council in sustaining the continent's peace and security.²⁹

The PSC protocol is also the cornerstone peace and security arrangement that acknowledges coup d'état, electoral violence, and illegitimate constitution-changing threats to the peace and security of the continent.³⁰ Indeed, it is an organ that spearheads the AU in imposing sanctions and orders to restore constitutional order in a state that experienced UCG.³¹

c. AU's Institutions on Unconstitutional Change of Governments

AU's Assembly
<ul style="list-style-type: none"> • Imposing sanctions in the event of PSC suspension and diplomatic intervention failure on states experienced military coup d'Etat • Imposing sanctions on the states violates the policies and decisions of the AU.
The PSC
<ul style="list-style-type: none"> • Imposing and lifting suspension measures on member states from the activities of the Union experiencing a military coup d'état
AU's Commission
<ul style="list-style-type: none"> • Implementing the decisions of the PSC and AU Assembly regarding the military coup d'état • Monitoring the implementation of measures and sanctions imposed by the AU Assembly and PSC regarding the military coup d'état • Issuing a statement condemning the military coup d'état • Facilitating the negotiation and mediation process in the return of constitutional order in a member state that experienced a military coup d'état
African Court of Justice and Human Rights
<ul style="list-style-type: none"> • judicial authority over the perpetrators of the military coup d'état

Source.³²

29 Protocol Relating to the Establishment of the Peace and Security Council of the African Union 2004 art.2(2).
 30 Leininger (n 1) 15.

31 Ahmed Idris and others, 'The African Union Peace and Security Council' 288, 145.

32 See, Lome Declaration, AUCA, ACDEG, and PSC Protocol.

III. LITERATURE REVIEW

Military coup d'état is a severe barrier to the African states' fulfillment of a wealthy and peaceful continent. In particular, it negatively affects democratic institutions, which are essential to nations' political, social, and economic advancement. Countries that have undergone military coups would become the epicenter of global issues, and ruling elites would become preoccupied with maintaining their power at all costs. Political unrest, racial strife, religious turbulence, and protracted civil wars will undoubtedly follow.

The African Commission Chairperson, Commissioner Rémy Ngoy Lumbu, stated, "the Africa we have is not the Africa we want."³³ Africa's majority of nations face the threat of destabilization, and democracy is gradually vanishing. Despite accepting the African Charter on Democracy, Elections, and Governance, military coups continued in Guinea, Mali, and Burkina Faso.³⁴

The AU integrated laws and policies opposing military coups into its Constitutive Act and other subsidiary legal frameworks in light of this, considering the detrimental effects of military coups on peace, security, and economic development. This has resulted in a profound shift in the governance system of the AU leaders in the last two decades. However, in post-2020, AU member states saw a surge in military coups, which was a trend of the post-independence era.

Several authors have written about the recent surge of coups. In rejecting, criticizing, and discouraging UCG across the continent, the writers openly ignored the AU's peace and security council role. The African Union's PSC protocol is a bureaucratic and all-

³³ 'ACHPR71: Recommendations to Prevent Unconstitutional Changes of Government in Africa' (ISHR, April 29 2022) <<https://ishr.ch/latest-updates/unconstitutional-changes-of-government-in-africa-impact-human-rights/>> accessed November 12 2023.

³⁴ Ibid.

encompassing legislative framework with institutional channels for resolving disputes at the local level across the continent.

According to Dersso, the recent rise of military coups emanates from two pillar problems.³⁵ He asserted that the five instances comprising UCG are poorly defined and formulated, arguably the most important. The second significant flaw concerns the definition of when constitutional order is said to have been restored. When applying the UCG rule, the AU's consistent approach must be clarified.³⁶ The studies neglected what the AU apparatus had been doing during the epidemic of military coups on the continent. The recent spike in military coups has little to do with deficiencies in the legislation; instead, it results from inconsistent and negligent steps adopted by the AU when coups erupt.

The African Union's Commissioner for Political Affairs, Peace, and Security, Ambassador Bankole Adeoye, stated that the unconstitutional change of government should not be viewed in a vacuum and that we must address the crisis holistically, as well as related issues like terrorism and population uprisings, by implementing sustainable solutions.³⁷ Even if the statement had addressed the underlying causes of the military coup, it failed to link those issues to the AU's peace and security organization.

Abubakar Yusuf offered a more compelling case for the dysfunction of the AUPSC. He noted that the AU PSC adopts a "fighting approach" and is reactionary; it does not act until UCG occurs.³⁸

35 Dersso (n 20) 3.

36 Ibid.

37 'ACHPR71: Recommendations to Prevent Unconstitutional Changes of Government in Africa' (n 34).

38 Col Festus B Aboagye, *A comprehensive review of African Conflicts and Regional Interventions* (2016): *The Ivorian Conflict: An assessment of ECOWAS Mission in Cote d'Ivoire* (2016) 40

Military coups typically result from significant deficiencies in constitutionalism, the rule of law, respect for people's and human rights, and democratic government. Crucially, when there are flagrant violations of these standards, the AU must specify what steps or actions it must take because of this, rather than taking preventative action against UCG, the AU's measures have remained reactive. However, the extent to which member states sacrifice sovereignty to oversee adherence to UCG principles, such as the Lome Declaration and ACDEG, will decide the AU UCG reaction.³⁹

The African Governance Architecture and the AU Legal Counsel should be granted additional power as a solution to the state's compliance with governance norms so that the AU can better oversee compliance. For the PSC to respond swiftly to UCGs, non-political units inside the AU can monitor and provide early warning advise.⁴⁰

The disparity in size and resources between the Political Affairs Department, which prioritizes conflict prevention, and the Peace and Security Department, which focuses on conflict management, is a problem for the council.⁴¹

39 ISSAfrica.org, 'Can the AU Respond Effectively to Unconstitutional Changes of Government?' (*ISS Africa*) <<https://issafrika.org/pscreport/psc-insights/can-the-au-respond-effectively-to-unconstitutional-changes-of-government>> accessed November 12, 2023.

40 Ibid.

41 Jakkie Cilliers and Kathryn Sturman, 'CHALLENGES FACING THE AU'S PEACE AND SECURITY COUNCIL' (2004) 13 African Security Review 97, 98.

a. Case Studies

Mali	• May 2021/Successful Military Coup D'état
Sudan	• October 2021/Successful Military Coup D'état
Burkina Faso	• January/September 2022 two-Successful Military Coup D'état
Chad	• April 2021 /Military take over of Power
Niger	• January 2022 /Attempted Military coup D'état
Guinea	• September 2021/Successful Military coup D'état
Guinea Bissau	• March 2021 /Attempted Military coup

Source: ⁴²

IV. AN IN-DEPTH ANALYSIS OF THE AU'S PEACE AND SECURITY RESPONSES TO THE CASE STUDIES VIS-A-VIS THE AU'S NORM ON MILITARY COUP D'ETAT

The African Union's Peace and Security Council is crucial to global peace and security administration. The council inculcated an administrative and technological framework for conflict resolution and prevention. In contrast to other AU structures on peace and security, the council confers the cornerstone of a peace and security agreement that acknowledges coups, electoral violence, and illegitimate constitution-changing as threats to the continent's peace and security.⁴³ It is also an organ that spearheads the AU in

42 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' (n 3).

43 Leininger (n 1) 15.

imposing sanctions and orders to restore constitutional order in a state that experienced UCG.⁴⁴

In the milieu of its mandate, the council condemned and suspended countries that experienced military coups and expressed its deep concern over the wave on the continent. Four of five countries that have experienced successful military coups in the post-2020 period were suspended, namely Burkina Faso, Sudan, Mali, and Guinea.⁴⁵ Despite the PSC responses needing to be more consistent, self-contradictory, and selective, the complementary organs of the PSC are challenged by inadequate infrastructure, finance, logistical, and normative expertise. Most importantly, the peace and security architecture of the AU has disregarded the AU norms of rejecting UCG and the underlying factors.

The following sections of the article critically assess the AUPSC's responses to the case studies in light of the AU norms and institutions on military coup d'Etat. It has to be noted that the selected countries under the case studies, namely Burkina Faso, Sudan, Mali, and Chad, have ratified the key normative documents of the AU on unconstitutional change of government.

a. Inconsistent and Self-Contradictory Responses

The AU norms on rejecting unconstitutional government changes are founded on preserving the people's right to peacefully protest against oppressive regimes and safeguarding the rights of the people in the electing system of governance.⁴⁶ In the chorus, the norms have defined UCG and the appropriate measures when UCG takes place in

44 Idris and others (n 31) 145.

45 Gelmo Dawit, 'AU Members Condemn Coup Surge in Africa' (VOA) <<https://www.voanews.com/a/au-members-condemn-coup-surge-in-africa/6429874.html>> accessed September 21 2022.

46 Dersso (n 20) 1.

order. Against this background, the Constitutive Act, the PSC establishing Protocol, and the Addis Charter enshrined the measures of condemnation and suspension of the new administration gradually under the Lomé Declaration and the measures outlined under the PSC Protocol Article 7(1)(g).

Condemnation and suspension are the first measures taken against a country that experienced UCG, as illustrated under the Lomé Declaration and the PSC Protocol. Whereas in the other forms of UCG that were not covered by the said frameworks, the CA stipulates what action needs to be taken, such as the denial of transport and communication links with other member states and other measures of a political and economic nature to be determined by the AU Assembly.⁴⁷

Five instances of the PSC's responses to the case studies are briefly used to demonstrate its inconsistencies and self-contradictions. The first relates to the response to the crisis in Chad, where they fell short of imposing measures enshrined in the normative frameworks on UCG. Second, the contradictory justification given to military coups against undemocratically elected governments in the countries that experienced counter-coups. Third, the endorsement of power-sharing agreements in the states that have experienced coups. Fourth violation of member countries' constitutional provisions in Mali and Chad. Lastly, the absence of guidance in the AU manuals is the fundamental cause of military coups, which explains the PSC's normative silence.

i. The PSC's Responses to the Chad Military Coup D'Etat.

The incidental death of Chad's long-serving President, Idris Debbie, in the war fought between the Chadian army and the FACT resulted in the dissolution of the Chadian

47 Constitutive Act of the African Union 2002 art 23(2).

national Assembly and the government.⁴⁸ As a result, the transitional military council led by the late President's son, Mahamat Kaka, replaced the Idris Debbie regime.⁴⁹ In the incident, the PSC condemned the death of the late President Idriss Debbie and emphasized the urgent need for a thorough investigation into the circumstances surrounding his death.⁵⁰

Subsequently, in its second communique, the PSC strongly condemned the acts of mercenaries, foreign fighters, and rebels in order to control political power in Chad.⁵¹

In terms of taking the measures enshrined under the AU normative frameworks in the event of a military coup, the PSC has not condemned the actions of the military, which has controlled power in the events after death, and did not take any measures stipulated under the AU's normative frameworks against UCG.

The council's silence stems from a severe split among council members about whether or not to adopt the measures mandated by AU law, as well as the belief that Chad's instability and insecurity require extra prudence and response.

The Lomé Declaration, Constitutive Act, ACDEG, and the PSC establishing Protocol under art.7(1)(g) enshrined the measures of condemnation, rejection, and suspension of member states that experienced UCG. However, the PSC abstained from suspending Chad while the military group's actions were a clear violation of the AU normative frameworks adopted to enhance democratic governance, the rule of law, and constitutionalism, notably, Article 23(1) of the ACDEG was violated by the Chadian

48 'Chad', *Wikipedia* (2022) <<https://en.wikipedia.org/w/index.php?title=Chad&oldid=1098435905>> accessed July 22 2022.

49 *Ibid.*

50 AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 993rd Meeting (PSC/BR/COMM.2(CMCXIII) Held on April 22, 2021, Addis Ababa, Ethiopia.' para 3.

51 AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 996th Meeting (PSC/BR/COMM.(CMXCVI) Held on May 14 2021, on the Consideration of the Report of the Fact-Finding Mission to the Republic of Chad, at Addis Ababa, Ethiopia.' Art 3.

military group. Other than condemning the military's actions and suspending Chad from Union activities, the PSC opted to express deep concern only about the actions of foreign fighters, whom it referred to as mercenaries.⁵² Moreover, it endorsed the TMC's power for 18 months, contravening the tenets of the AU norms against UCG.

The PSC's response was again contrary to the previous positions of the PSC reactions. In Togo, the AU condemned, suspended, and threatened to sanction Faure Gnassingbe Eyadema, the late General and President Gnassingbe Eyadema's son, in 2005 because of his succession.⁵³ The double standard is also linked to the fear that adopting literal normative measures may result in Chad becoming a failed state, with the repercussions of growing the power and spread of jihadists and mercenaries.

There was ample evidence that FACT shifted allies in Libya in 2019, siding with Khalifa Haftar in exchange for assisting Haftar's campaigns; the organization relocated to Al Jufra Airbase, where it got training and equipment.⁵⁴ The station also housed Russian Wagner Group mercenaries, former Blackwater allies, and personnel from the United Arab Emirates Armed Forces.⁵⁵ As a result, implementing the literal measures would cause instability and turn the entire region into a terror-safe zone. The AU maintains that to maintain peace and stability, it is necessary to disregard the application of AU norms on UCG, which was not the case in Togo in 2005.

In principle, the PSC should have been required to condemn the acts of the military and implement the measures outlined in the frameworks without demonstrating additional facts about the benefits of military power sustaining itself smoothly.

52 Ibid 1.

53 Eki Omorogbe, 'A Club of Incumbents? The African Union and Coups d'Etat' 138–139.

54 Declan Walsh, 'Where Did Chad Rebels Prepare for Their Own War? In Libya.' *The New York Times* (April 22 2021) <<https://www.nytimes.com/2021/04/22/world/africa/chad-rebels.html>> accessed November 20 2023.

55 Ibid.

Given the particulars of the circumstance, it may have enforced the sanctions outlined in Article 23(2) of the Constitutive Act, but it went on without taking any measures. In recognition of the PSC's inconsistent position, one argues that the PSC demonstrates the double standard and selective application of its norms, as well as the act of deliberately supporting military coups. The inconsistent response of the PSC would reverse the democratic gains of the past two decades under the AU. It could have a bad precedent in the subsequent measures of the council and halt the constitutional transition of power.

ii. The Legitimacy of Coup D'Etat Against Undemocratically Elected Government

The PSC responses to the military coups experienced in the selected case studies were again in contravention of the AU definition of UCG. The Lomé Declaration and the Addis Charter stipulate the definition of military coup d'etat. As per the scripts of the ACDEG, UCG occurs when any putsch or coup d'état is perpetrated against a democratically elected government.⁵⁶ This indicates that the AU cannot consider the coups against leaders who came into office by undemocratic means as UCG. The script of the provision has two facets. First, it considered the argument of good and bad coups. This means that after a military coup, a democratic government may form in which the incumbents close all doors of constitutional power transfer. Second, there would remain the same as long as the former and the latter held power through bullets, not ballots.

The AU's rules are faulty in defining what constitutes a military coup when it is considered a coup and the status of incumbents who came to office by the same means. In a nutshell, the AU laws were deafeningly silent on countercoups. Even though it appears to be a blatant breach of AU regulations, the steps adopted under the legislation must be consistent and refrain from legitimizing a previous coup.

56 African Charter on Democracy, Elections and Governance art 23(1).

The overthrown leader of Burkina Faso in 2021, Roch Marc Christian Kabore, who won the country of Burkina Faso's general election in 2015, was the target of the military coup d'état. In Sudan, the coup in 2019 against Al-Bashir was against a democratically elected leader; in Mali's 2021 coup was against the democratically elected administration of Idriss Boubacar Keita; and in Chad in April 2021, the overthrow was made against Idriss Debbie through his assassination was the immediate cause.

All four of these leaders were elected through democratic means. By leaving aside how the election was made, the procedural legality of the election, and the surrounding facts, even if only nominally, they were elected through an election, and there were no illegal mechanisms used to keep them in office. As a result, the proscription of the military coup against these leaders as a military coup is in line with the AU definition of UCG. Nevertheless, the deviates from this norm and considers the countercoups experienced in Mali, Burkina Faso, and Sudan as Military coups in contravention of the AU Framework definition of UCG.

The PSC responded to the countercoups as if they were one strand of UCG stipulated within ACDEG. For instance, in Burkina Faso, Lieutenant Colonel Paul-Henri Sandaogo Damiba came to power through coups against the Kabore government in January 2022, and the regime was in transition under Lieutenant Colonel Paul-Henri Sandaogo Damiba. Under these circumstances, Ibrahim Traore toppled Lieutenant Colonel Paul-Henri Sandaogo Damiba in a countercoup in September 2022. However, when it became clear that Burkina Faso was in transition and that Damiba himself was installed in office through a coup, the AU Commission chairperson, Moussa Faki Mahamat, unequivocally

condemned the act of the military and the PSC treated the counter coup as if it had been carried out against democratically elected governments and that it was a coup.⁵⁷

In the same vein, the PSC treated the counter coup in Sudan in 2021 against Abdalla Hamdock as if it had been carried out against democratically elected governments and that it was UCG. The PSC, in its communique, suspends the Republic of Sudan from the activities of the Union until the restoration of constitutional order,⁵⁸ It is clear that Sudan was in transition and that Abdalla Hamdock was installed in office through the Juba agreement. In Mali, too, the PSC considered the counter coup of Assimi Goita as UCG. The PSC suspended the Republic of Mali from the activities of the Union until standard constitutional order is restored and endorsed the ECOWAS decisions taken on May 30, 2021, in Ghana, Accra,⁵⁹ when it's known that Bah Nadew himself came to power through a military coup without holding a free, fair, and periodic election.

The PSC's legitimization of unelected leaders transgresses the definition of the AU normative frameworks. It implies creating a haven for governments that came to power through unconstitutional means. Furthermore, it would offer future coup plotters confidence that by participating in UCG, they would not face severe scrutiny from the council, and all efforts would be focused on timing and methods to plot incumbents. Given this chasm, the AU should thoroughly assess the actual coup plotters and their fate in future political involvement.

⁵⁷ AU Commission, 'The Chairperson of the African Union Commission Unequivocally Condemns the Second Takeover of Power by Force in Burkina Faso.' (September 30 2022) 1 <<https://au.int/sites/default/files/pressreleases/42233-pr-> accessed October 4 2022.

⁵⁸ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 1041st Meeting (PSC/PR/COMM.1041) Held on October 26 2021 at Addis Ababa, Ethiopia.'

⁵⁹ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 1001 St Meeting (PSC/PR/COMM. (2021) Held on June 1 2021, on the Situation in Mali at Addis Ababa, Ethiopia.' paras 1–3.

iii. The PSC's Advocacy for Power Sharing Agreements Violates the AU's Normative Frameworks on a Military Coup D'etat

In the first phase of its measures against military coups, the AU condemns and suspends member states that experienced coups. The suspension from AU activities would be imposed until the return of the constitutional order and before the AU Assembly imposes sanctions. The return of constitutional order is a requirement before imposing sanctions. Nonetheless, neither the AU nor sub-regional organizations have defined what it means to restore constitutional order and how it is returned. The absence of a precise dimension has created divergent policies among international and regional actors.⁶⁰

In practice, the AU, and sub-regional organizations such as ECOWAS see constitutional order restoration as a return to the constitutional status quo ante and elections, possibly preceded by temporary power sharing.⁶¹ In doing so, on a case-by-case basis, the AU has been imposing either of the two measures as a transition to constitutional order in a country that has experienced military coups. In the interim period between the suspension from AU activities and the return of constitutional order, either through election or the reinstatement of deposed leaders, countries establish a transitional government ruled by a transitional Charter that includes power-sharing provisions among coup plotters and other potential groups. In Sudan, coup plotters and others were ruled by transitional charters that included power-sharing agreements between coup perpetrators and other potential groups.

The PSC has also advocated and welcomed proposed transitional charters. Nevertheless, the PSC's advocacy of a power-sharing agreement between the military and

⁶⁰ Amani Africa - media and research services, 'The Quest for Restoration of Constitutional Order in Mali' (Amani Africa - media and research services 2020) 6.

⁶¹ Stef Vandeginste (n 17) 12–13.

civilian groups runs against the AU's normative frameworks against UCG in three dimensions.

First, granting political power to military groups: ACDEG Article 14 upholds the civilian control of the armed and security wings of the AU member states. The adherence strongly condemns the engagement of the military wings in political activities. It confines the military exercises under the auspices of protecting the peace and security of the nation only. The presence of clear and strict relations between civil and military groups in a given nation could potentially prevent the military's involvement in political gains through unconstitutional means. Nonetheless, by leaving aside this norm, the PSC, under the guise of power-sharing, decided and welcomed the grant of power to the military faction, which would have inherently needed to entertain security issues only, though for a shorter period.

This conflicting approach stems from the belief that, in such extreme circumstances, until power is transferred to a civilian leader, the only choice is to delegate control to the military through a power-sharing agreement. This helps avoid the power buildup and instability resulting from post-military coups to maintain incumbency.

In Sudan, the PSC demanded the imperative of a civilian and consensual transition in line with the Juba agreement and constitutional declaration. In Chad, the PSC welcomed and endorsed the formation of a TMC led by the late President's son. Specifically, in the Juba agreement signed in 2019, TMC was awarded extended political power. For instance, 30% of power had been given to it in a Darfur region comprised of myriad actors in the region, and it was represented by ten members comprised of 20 members in the

Protocol signed between TMC and the third front-Tamazuj to integrate third front Tamazuj and proper implementation of the agreement.⁶²

The chairman of the TMC has unrivaled control over the other transitional institutions, including the government, under the existing transitional structure.⁶³ In Mali, too, the PSC requested adherence to the 18-month transitional period stipulated in the first transition.⁶⁴ Even if the sharing of power to the military could temporarily ease the situation in the UCG-affected nations, in the long run, it might make the military the last arbiter of all national problems and forbid the transfer of authority to a political party led by civilians.

Militaries usually offer a timetable for transitioning to a civilian government following fair, free, and impartial elections. However, they have failed to keep their promises, as was the case in Egypt in 2013, when the military promised a transition but later ousted the elected President, Morsi, and has remained in control ever since.⁶⁵ The second-round military coup of Mali was the quintessential of this fact. In May 2021, the interim President, Bah Ndaw, the prime minister, Moctar Ouane, and Souleymane Doucoure were arrested by a military force under Assimi Goita, the interim vice president.⁶⁶ Limiting the involvement of the military to its inherent duties is necessary, given the PSC's recent practice of welcoming and encouraging military personnel to

62 'JUBA AGREEMENT FOR PEACE IN SUDAN BETWEEN THE TRANSITIONAL GOVERNMENT OF SUDAN AND THE PARTIES TO PEACE PROCESS'(2020)

63 ISSAfrica.org, 'The AU Reneges on Its Stance against Coups d'état' (ISS Africa) <<https://issafrica.org/pscreport/psc-insights/the-au-reneges-on-its-stance-against-coups-detat>> accessed July 22 2022.

64 AU's Peace and Security Council [AU PSC], 'COMMUNIQUÉ of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 1001 St Meeting (PSC/PR/ COMM. (1001(2021) Held on June 1, 2021, on the Situation in Mali at Addis Ababa, Ethiopia.' para 5.

65 George Derpanopoulos and others, 'Are Coups Good for Democracy?' (2016) 3 Research & Politics 2 <<http://journals.sagepub.com/doi/10.1177/2053168016630837>> accessed September 19 2022.

66 2021 Malian Coup d'états, *Wikipedia* (2022) <https://en.wikipedia.org/w/index.php?title=2021_Malian_coup_d%27%C3%A9tat&oldid=1091918661> accessed 8 August 2022.

participate in the power-sharing agreement. Even if a nationwide election is held, the military's role must be limited to maintaining peace and security. Unless the military eventually becomes autonomous and less accountable for the oversight of civilian rules.⁶⁷

To avoid the phenomenon of power-sharing agreements, which are highly inclined to share significant executive power with the military faction, the PSC should strongly and consistently support the transfer of power for a civilian-led transition in a shorter period.

Secondly, adherence to and advocacy for power-sharing agreements might promote armed conflict and insurrections as the best way to control state power. For instance, the Juba Accord included rebel and insurgent organizations in power-sharing, including the armed struggle movements in Darfur, Al-Jebaha Al-Talitha, Masar Al-Shamal, and Masal Al-Sharaq.⁶⁸ All the insurgents' signatories to the agreement can rule Sudan until a nationwide election is held and the power is given to a civilian leader. In addition, the prospects of participating in the election held to restore constitutional order are better than those of coup plotters, as per Article 25(4) of the Addis Charter. In the same vein, the Chad National dialogue held on August 20, 2022, promised to include 40 rebel groups in the upcoming election and promised to get underway before October 20, 2022.

Tull and Mehler contend that insurgents and dissatisfied groups use UCG as a platform for power negotiations in Africa and that this pattern is encouraging and reproducing additional insurgent violence by those seeking access to authority and power.⁶⁹ Although power-sharing might temporarily enhance peace, it would also set a

⁶⁷ Laura-Stella Enonchong, 'Chad's "Covert Coup" and the Implications for Democratic Governance in Africa' (*The Conversation*) para 7 <<http://theconversation.com/chads-covert-coup-and-the-implications-for-democratic-governance-in-africa-159725>> accessed September 21 2022.

⁶⁸ 'JUBA AGREEMENT FOR PEACE IN SUDAN BETWEEN THE TRANSITIONAL GOVERNMENT OF SUDAN AND THE PARTIES TO PEACE PROCESS' (n 63) 11.

⁶⁹ Tull D. M and Mehler A, The Hidden Cost of Power Sharing: Reproducing Insurgent Violence in Africa, (*African Affairs*, 2005) Cited in Chika Charles Aniekwe, 'Regional Organisations and the Enforcement of Constitutionalism: Reflections on the Implementation of Chapter 8 of the African Charter on Democracy Elections and Governance (ACDEG)' [2015] SSRN Electronic Journal 6 <<https://www.ssrn.com/abstract=2995696>> accessed October 19 2022.

bad precedent that contradicts the AU norms on UCG, which may not ensure long-term stability. As a result, to avoid such a quick path to control and share power, the PSC should carefully consider its position on power-sharing agreements, and all efforts should be directed toward giving power to the civilian leader following a nationwide election and ensuring the accountability of the coup plotters.

Third, adherence and advocacy to an extended period of transition by the order of the military council. The power-sharing agreements detail how powers will be divided among prominent organs, including those involved in the military coup, and how long it will take to transition and hold elections to restore constitutional order. According to the Lomé Declaration, nations that had an unlawful change of government have six months to restore constitutional order before sanctions are imposed if they disobey the council's directive. Even though the six-month period is not legally binding, the PSC is seen as agreeing to an extended period through power-sharing agreements, which amounts to holding the people hostage for a more extended time under a regime that was not democratically elected.

The Ezulwini framework on the enhancement of the implementation of measures of the African Union in situations of UCG (Hereinafter Ezulwini framework) shortened the period of suspending a member state, which was stipulated under the Lome framework, from six months to three months.⁷⁰

In the case studies, for instance, the PSC supported the following: the 18-month transition period in Chad, which went into effect on April 1, 2022, and that extended for the next two years under the leadership of Idriss Deby Itno; the 18-month transition period

⁷⁰ PSC, 'Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Change of Government' para 5(1).

in Mali, which the military under Assimi Goita extended for up to five years; and the transition in Sudan, which plans to hold national elections in July 2023. The Sudanese people have been under military rule for three years, anticipating a civilian takeover without even imagining that the military may go through counter-coups again.

The method of maintaining a more than Six-month transition period before transferring power to civilian governments would allow coup plotters to create a quick period to strengthen their chairs and, later on, either manipulate the election held to restore constitutional order or disobey the transfer after they ensure that their chairs are strong enough and cannot be easily withheld even though a shorter period would not be sufficient to undertake all fractures in following coups and preparation for a nationwide election.

Thus, the PSC should balance considering the facts on the ground and prolonging the coup plotters' lives in the palaces to distort the reality on the ground while proposing and approving power-sharing arrangements.

iv. The PSC Responses Violate Member States' Constitutional Principles

As per Article 3(2) of the Addis Charter, access to the central power has to be made through the instrumentality of constitutions and the rule of law. Contrary to the mentioned provision, the PSC responded to the military coups in the case studies in a manner that violated their domestic constitutions. In its response, the PSC has violated the constitutional provisions of member states under the guise of a power-sharing agreement signed between coup plotters and other groups in which the actual power-sharing agreements themselves are a transparent reflection of the actors' aspirations to create new constitutions.⁷¹ Furthermore, it serves as a short-term quasi-constitutional framework and

⁷¹ Stef Vandeginste (n 17) 12.

a long-term, comprehensive constitutional procedure.⁷² The PSC renders the constitutions of the member states experiencing military coups arbitrary and subject to suspension without regard to the law or the people's will.

In the case studies, the council welcomed the transitional government charter signed between the military group and the civilian faction, contrary to what their Constitution stipulates.

In Chad, the immediate cause of the de facto military takeover was the death of President Idriss Deby Itno and the immediate appointment of the deceased President's son as interim President for 18 months.⁷³

The military faction has left aside the Constitution of the Chad Republic, article 81, which states that in the absence of the President, his/her powers are exercised provisionally by the President of the National Assembly.⁷⁴ In addition, by leaving aside the script of the Chad constitution, the PSC, in its second communique, welcomed the establishment of a transitional military council (TMC) and urged the military to restore the constitutional order.⁷⁵ Such inconsistencies in the council's reactions demonstrate its inability to compel member states to respect AU principles and its proclivity to accept proposals from powerful armed groupings no matter what, acting contrary to AU norms' precepts on UCG.

72 Ibid.

73 Laura-Stella Enonchong, 'Chad's "Covert Coup" and the Implications for Democratic Governance in Africa' (*The Conversation*) <<http://theconversation.com/chads-covert-coup-and-the-implications-for-democratic-governance-in-africa-159725>> accessed July 27 2022.

74 Ibid.

75 ISSAfrica.org, 'The AU Reneges on Its Stance against Coups d'état' (*ISS Africa*) <<https://issafrica.org/pscreport/psc-insights/the-au-reneges-on-its-stance-against-coups-detat>> accessed July 21 2022.

Furthermore, Chad's Constitution, Article 67, states that only people over 45 can become President of the nation.⁷⁶ Nonetheless, the deceased President's son was 37 years old when he controlled the power. The PSC's affirmation of the TMC was a clear violation of the Chadian Constitution and is against the will and whim of the people of Chad.

The Malian Constitution had been violated in the same way. The PSC reiterated its condemnation of the military takeover and called for the prompt restoration of constitutional order through adherence to the Malian Constitution and people's aspirations in the first communiqué. However, it welcomed the constituted TMC led by Assimi Goita and urged the military and other stakeholders to observe the conditions of the transitional charter during the second military takeover.

The Constitution of Mali article 36 provided that in the event of an unexpected absence of the President, the head of the National Assembly would take over power.⁷⁷ However, the military group established a temporary transitional council by disregarding the constitution's orders. One may argue that the late incumbent leader ordered the dissolution. However, IBK decided to force the dissolution of the government and the Constitution under threat from the military. He could not have ordered the dissolution had he not been threatened. In the ensuing same position, the PSC welcomed and encouraged tolerance for the transitional period.

v. The PSC Responses Lack Guidance on Fundamental Causes of Military

Coup D'état's

The increased influence of insurgent and extremist groups, along with weak institutions and the failure of incumbents to consolidate democratic values, and political parties, are the leading and immediate factors for the recent wave of military overthrow in Africa.

76 Chad Constitution (2018) art 67.

77 The Constitution of the Republic of Mali (1992) art 36.

This can be exemplified by the famous (primarily young) group's expression of support in the streets by holding flags and pictures of the coup leaders, which was a clear indication of the people's displeasure with the toppled governments' treatment in Mali, Burkina Faso, and Guinea.

In a recent research report by Amani Africa, the increased military coups are directly linked to the democratic principle's deficits.⁷⁸ Indeed, the report argues that the AU is enforcing and executing UCG norms in a separate context from the underpinnings of human rights, good governance, and the rule of law.⁷⁹ The Freedom House report provided supporting findings to the research report. According to the 2021 Freedom House Report, the number of countries that are not free has increased from 14 in 2006-2008 to 20 in 2021, and only seven countries are ranked free.⁸⁰

The military overthrow of the Kabore government in Burkina Faso was brought about by the Jihadist groups' influence over the local populace and the government's subsequent failure to deal with this expanded and protracted influence. In the same vein, the main factors that led to the overthrow of Ibrahim Boubacar Keita in Mali were the populace's displeasure with how the government handled the Jihadist insurgency, claims of rising corruption, and the country's troubled economy.⁸¹

Above all, the expansion of terrorist organizations is an anchoring factor in the recent wave of military coups. Al-Qaeda and the ISS have recently shifted their influence from

78 Amani Africa - Media and Research Services (n 4) 6.

79 Amani Africa - media and research services, 'Critical Reflections on the Challenges to and Means of Strengthening Te AU Norms Banning UCG' (Amani Africa - media and research services) Special report 6.

80 Amani Africa - media and research services, 'Addressing the Recent Resurgence of Unconstitutional Change of Government: Policy Recommendation for the AU Extraordinary Summit'.3.

81 'Ibrahim Boubacar Keïta: Ousted Mali President Dies Aged 76' BBC News (January 16 2022) <<https://www.bbc.com/news/world-africa-60015898>> accessed August 10 2022.

Iraq and Syria to their branches in East and West Africa.⁸² The recent declaration endorsed by the AU Assembly on establishing the counter-terrorism unit under the auspices of the ASF and implementing a fund to fight terrorism and violent extremism is promising in the fight against UCG and the underlying factors.⁸³

As per Amani's recent report, to tackle the factors leading to military coups UCG, it is required to implement the 432 PSC session decisions on expanding the definition of the UCG in relation to popular uprisings against oppressive regimes.⁸⁴ The implementation assists the council in distinguishing between popular uprisings that are legitimate expressions of opposition against authoritarian governments and those oppositions masterminded by coup plotters and amount to military coups. Against this background, the council has presented its adherence to genuine popular uprisings against oppressive regimes under the 50th Anniversary solemn declaration of the OAU and the AU. The declaration rejected any attempt to seize power and recognized the people's rights to express their will against oppressive regimes.⁸⁵

In the first-round military coup in Sudan against the Al-Bashir regime, the PSC condemned the acts of the military and recognized the legitimate aspirations of the Sudanese people to open political space in order to be able to democratically design and choose institutions that are representative and respectful of freedoms and human rights.⁸⁶

82 'Is Africa Overtaking the Middle East as the New Jihadist Battleground? - BBC News' (2022) <<https://www.bbc.com/news/world-africa-55147863>> accessed September 5 2022.

83 INFORMATION & COMMUNICATION DIRECTORATE, 'African Leaders to Scale up Efforts against Unconstitutional Changes of Government; Terrorism and Foreign Mercenaries' (African Union 2022) Press release 1.

84 Amani Africa - media and research services, 'Addressing the Recent Resurgence of Unconstitutional Change of Government:Policy Recommendation for the AU Extraordinary Summit' 6.

85 Art F(ii)
<https://au.int/sites/default/files/documents/36205-doc-50th_anniversary_solemn_declaration_en.pdf> accessed 20 October 2022.

86 AU's Peace and Security Council [AU PSC], 'COMMUNIQUÉ of the by the Peace and Security Council Adopted at Its 840th Meeting (PSC/PR/COMM.(DCCCXL)) Held on April 15 2019, at Addis Ababa, Ethiopia.'

As a result, unless the PSC is active enough to work on the root causes, military coups cannot be eliminated from the continents.

In general, the UCG must be seen in collaboration with and needs to address the problem of the member states holistically to avoid concerns from the grassroots level. This could be done by including the root causes for the UCG under the definition of UCG.

b. AU's Peace and Security Council Complementary Organs Responses to the Military Coup d'etat

i. *The AU's Early Warning System in Responding to Military Coups.*

The Continental Early Warning System of the AU (CEWS) has a mandate of conflict prevention through the instrumentality of gathering information and anticipating potential conflicts through early warning mechanisms and tools.⁸⁷ The CEWS, as part of averting UCG, is duty-bound to assess and scan the vulnerabilities of potential factors that could lead to a military coup d'etat and take urgent preventive diplomacy.⁸⁸ This could be done by including human rights indicators and governance failures in the central early warning system.

Even though CEWS can avert military coups before they erupt, the system has been ineffective at preventing and anticipating military coups in the member states. The reason stems from the member states' utilization of sovereignty as a shield and denials of credible early warning reports. To that end, the council urges the Commission to use trigger mechanisms and indicators as an objective threshold to determine which phenomena in

87 Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 16(2).

88 'Open Session on Promoting Constitutionalism, Democracy and Inclusive Governance to Strengthen Peace, Security, and Stability in Africa – Amani Africa' <<https://amaniafrica-et.org/open-session-on-promoting-constitutionalism-democracy-and-inclusive-governance-to-strengthen-peace-security-and-stability-in-africa/>> accessed September 6 2022.

member countries require immediate action.⁸⁹ Furthermore, member states and regional economic communities must effectively utilize the AGA modalities, including APRM and the African Commission on Human and People's Rights.

The most recent initiative of the APRM in cooperation with the AGA platform to review the AU missions on UCG is the progressive success of the AGA in combating UCG.⁹⁰ This review is part of developing the African Government Report for consideration. It will be presented to the AU Assembly of Heads of State and Government for consideration at its ordinary session every two years.⁹¹

The situation room was kept according to former AU peace and security department adviser remarks. However, the CEWS was destroyed due to the AU-wide reform in 2021, which established the new departments of political affairs and peace and security.⁹² The specialized early warning location has since been eliminated due to aging and structural issues.⁹³ As a result, the center's main tasks will be hampered and forced to grapple with structural difficulties.

In the case studies, the central early warning system could have correctly predicted the primary and immediate causes of the military takeover. The continuous popular protest and the existence of terrorists and insurgent groups in the Republic of Sudan, Mali, Chad, and Burkina Faso would provide the CEWS more than enough time to effectively prevent the experienced UCG in the member states, and the PSC could have taken

89 Amani Africa - media and research services, 'Monthly Digest on the African Union Peace and Security Council' 5.

90 'DEPLOYMENT OF TARGETED REVIEW MISSIONS ON UNCONSTITUTIONAL CHANGES OF GOVERNMENT AS PART OF THE DEVELOPMENT OF THE AFRICAN GOVERNANCE REPORT-2023' (APRM) para 1 <<https://www.aprm-au.org/publications/deployment-of-targeted-review-missions-on-unconstitutional-changes-of-government-as-part-of-the-development-of-the-african-governance-report-2023/>> accessed September 22 2022.

91 Ibid.

92 Ulf Engel, 'The African Union's Conflict Early Warning System Is No More. What Now?' (*The Conversation*) <<http://theconversation.com/the-african-unions-conflict-early-warning-system-is-no-more-what-now-183469>> accessed August 28 2022.

93 Ibid.

preventive diplomacy measures before the occurrences. Shirah and Ryan contend that a regime's failure to uphold democratic principles, restrictions on rights and liberties, and ongoing policies and practices that undermine democracy and good governance lead to widespread dissatisfaction and even uprising.⁹⁴

In the second round of coups taken against Abdalla Hamdock in Sudan on 25 October 2021 by the military group led by Abdel Fettah al-Burhan, there was a clear indication of fragility and tension between the two groups that had been expanding for more than a year on foreign policy, on the manner of cooperating with the ICC in the crimes committed in Darfur and on the reform of the security sector.⁹⁵ These indicators could have served the early warning system as a potential indicator of the countercoup. The failure of Roch Marc Christian Kabore in preventing the expansion of Jihadist groups, as well as the frustration of Burkinabe over the jihadist attack, may serve the CEWS to take precautionary diplomatic measures before the public protest is hijacked by the military group and turned into a full-blown coup d'état.

In Mali, too, in the second-round military coup headed by Assimi Goita against the acting President Bah Ndaw in May 2021, the central early warning system might have predicted what would happen if the military ran the transitional military council. Indeed, the people of Mali could have been far more negatively impacted by the ECOWAS painful sanctions and have become irate at the travel ban and restrictions on financial transactions across ECOWAS member states.⁹⁶

94 Ryan Shirah, 'Authoritarian Backsliding in New Democracies' [2012] Africa Spectrum 23, 10.

95 Amani Africa - media and research services, 'Emergency Session on the Situation in Sudan – Amani Africa' (2022) <<https://amaniafrica-et.org/emergency-session-on-the-situation-in-sudan-2/>> accessed September 6 2022.

96 'Unconstitutional Changes in Africa. A New Trend?' (*Foundation Office Ethiopia / African Union*, March 9 2022) <<https://www.kas.de/en/web/aethiopien/static-contents-detail/-/content/verfassungswidrige-regierungswechsel-in-afrika-1>> accessed 9 August 2022.

In the Burkina-Faso counter-coup, according to Abdul Fatau Musah, ECOWAS Commissioner for Political Affairs and Security, there has been a high level of suspicion and division among the militaries since the first coup, which was to be expected.⁹⁷ However, the CEWS provided no information about the reality on the ground or the politics of holding a seat among military officials rather than participating in reviewing the first coup to the AU Commission.

ii. The AU's Commission in Responding to Military Coup D'état's

The AU's Commission, led by the chairperson of the AU, undertakes an active role in rejecting UCG by implementing and monitoring the PSC's decisions, including mounting, and deploying peace support missions in countries experiencing UCG. As per the Addis Charter: "The Commission shall develop benchmarks for implementing the commitments and principles of this Charter and evaluate compliance by State Parties".⁹⁸ In the same token, the Commission is also mandated to regularly review member states' democratization processes in the structural prevention of UCG as per the order of the PSC. This mandate was awarded to the Commission through the instrumentalities of the declaration on shared values.⁹⁹

In the case studies, the Commission, as part of its responsibility in preventing military coup d'état structurally, has condemned military coups and expressed its deep concern about its resurgence by stating condemnation via the chairman of the Union. In addition, it has been playing a preventive diplomacy role by sending out its emissaries as part of

97 James Butty, 'ECOWAS Speaks Out Against Burkina Faso Coup 2.0' (VOA) <<https://www.voafrika.com/a/ecowas-speaks-out-against-burkina-faso-coup-2-0/6773397.html>> accessed October 4 2022.

98 African Charter on Democracy, Elections and Governance art.44(2)(a).

99 Ulf Engel, 'The African Union and Mediation in Cases of Unconstitutional Changes of Government, 2008–2011' [2012] African Conflict and Peacebuilding Review 25, 22.

fact-finding missions to facilitate the restoration of constitutional order in countries that have experienced military coups.

The Commission has sent out its emissaries to Chad in the event next to the death of Idriss Deby. The high-powered fact-finding mission was mandated to investigate the causes of the late President's death and to ascertain the manner of restoring constitutional order.¹⁰⁰ In addition, the PSC has recommended that the Commission dispatch its emissaries to facilitate the restoration of the constitutional order in Sudan.¹⁰¹ Further, the council ordered the Commission, through his high representative and head of the AU mission in Mali and the Sahel, to continue to monitor the situation closely with close coordination with ECOWAS.¹⁰²

Although it is reactionary, the Commission effectively condemned and dispatched fact-finding missions' emissaries. Moreover, the Commission is doing its best to resolve post-military coups situations compared to the other PSC entities. However, the emissary team lacks expertise and competence in mediation.¹⁰³ The AU should finance, strategize, analyze, and cooperate to increase the capacity of the mediators in the mediation process from the traditional usage. Furthermore, the Commission should disregard Western expectations to react to the UCG more adequately and be aware of African solutions to African challenges.

100 AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 993rd Meeting (PSC/BR/COMM.2(CMCXIII) Held on April 22 2021, Addis Ababa, Ethiopia.' (n 43) para 3.

101 AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 1041st Meeting (PSC/PR/COMM.1041) Held on October 26 2021, at Addis Ababa, Ethiopia.' (n 49) para 9.

102 AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 941 St Meeting (PSC/PR/COMM.(CMXLI) Held on August 19 2020, on the Situation in Mali, at Addis Ababa, Ethiopia.' para 9.

103 Engel (n 99) 24.

Engel questioned the AU's mediation process in the UCG event. Who is framing mediation knowledge regarding perceived real problems and desirable solutions? Sometimes, the impression has been created that African mediation responds too strongly to European or US role expectations.¹⁰⁴ Engel's concern could materialize in areas like West Africa, which has already seen two counter coups and one successful coup since 2020. In this region, the interests of great powers such as France and Russia are high. In such situations, the AU should take a firm position on behalf of those being addressed while acting as though mediation is taking place.

For instance, the agreement reached after four months of negotiations between rebels from Chad in Qatar did not represent an African solution to an African problem – even though the AU expressed its willingness to involve Qatar in the mediation process. Also, the AU commission should have referred the case to itself and mediated as an organ directly responsible for the concern. The disregard, however, demonstrates the actors' lack of confidence in the capacity of the AU mediators. This does not imply that outside parties should not participate in efforts to resolve the continent's turmoil.

iii. The African Standby Force in Responding to Military Coup D'état's

The ASF is responsible for facilitating the Peace and Security Council's performance concerning intervention concerning grave circumstances envisaged under Art. 4(h) and 4(j) of the AU charter.¹⁰⁵ The ASF helps the AU normative works on UCG through the instrumentalities of Art. 24 of the Addis Charter. The Addis Charter provision awarded the council the responsibility to undertake its responsibilities in a situation that may affect

104 Ibid. 24.

105 Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 13(1).

democratic and constitutional arrangements to maintain the constitutional order under relevant provisions of the Protocol.¹⁰⁶

The scent of the provision depicts that the council could interfere in the member countries experienced UCG under the guise of maintaining constitutional order. Despite the charter upholding the principle of non-intervention in member states, this restriction does not rule out the possibility of AU interference in the event of UCG.¹⁰⁷ The amended PSC protocol awards ASF to intervene in a situation of “...serious threat to legitimate order to restore peace and stability in a member state...”.¹⁰⁸ The Protocol did not address whether this intervention includes the occurrences of UCG. So far, the AU has yet to go into detail about how to intervene in the event of UCG government or whether the ACDEG's article 24 refers to intervention in situations covered by article 4(h)(j) of the PSC protocol for the UCG.

According to Leininger, the provision reflects the charter's proactive prevention and promotion of democratic governance and leaves the interpretation to the council and member states.¹⁰⁹ Nevertheless, a coherent interpretation of the provision could give the ASF authority to intervene to restore constitutional order.¹¹⁰ Implementing the clause might improve the democratic power transfer among the participating nations. In support of this claim, Baimu and Sturman stated that Article 24 of the Addis Charter should be interpreted following the textual context and pro-democratic telos of the AU principles.¹¹¹

106 African Charter on Democracy, Elections and Governance art.24.

107 Omorogbe (n 53) 12.

108 Protocol on Amendments to the Constitutive Act of the African Union. 2003 art.4(h).

109 Leininger (n 1) 11–12.

110 Omorogbe (n 15) 13.

111 Leininger (n 1) 13.

Therefore, armed action would need to be used to defend the populace from their regime.¹¹²

Besides the role of the ASF in preventing and managing conflicts in the member countries, the ASF still needs to be challenged with the lack of sufficient resources, logistics, armaments, and full-fledged experts in the field of peace and security while deploying and intervening. So far, the ASF deployment in peacekeeping has been duly dependent on UN and European Union provisions. As a result, in order to establish an effective ASF in combating the wave of military coups on the continent, member states must provide financial and logistical support, as well as instill expertise and political personnel capable of putting the ASF's mandates under the PSC protocol and ACDEG into action.

iv. The AU's Panel of Wise in Responding to Military Coup D'état's

The panel members support the initiative, the endeavors of the council, and the chairperson in maintaining peace and security on the continent at the request of the chairperson and the PSC or on their own.¹¹³ In combating the resurgence of military coups, the PSC, the Commission, and even the panel itself were not seen. At the same time, it employed the panel members in the mediation process of states that have experienced military coups. This emanates from the overlapping of mandates in the structure of APSA. The Protocol did not mention the role of the panel members in preventing UCG.

In the case studies, the PSC and the Commission have assigned special envoys instead of panel members. Though there was no prohibition to that end, properly utilizing this organ could influence the AU's adherence to good governance and constitutionalism

112 Ibid.

113 Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 11(4).

norms. They were considering their extensive knowledge of the personalities of the panel members on how to handle the power scramble and its adverse consequences on the Peace and Security of the Continent.

V. CONCLUSION

Post-2020, seven AU member countries experienced military coups d'état. In line with the occurrence, the African Union made a response to the coups. Although the African Union responded to the coups as per the power entrusted to it by the member states, the responses were inconsistent, self-contradictory, selective, and ran against the normative frameworks of the AU. Moreover, the AU's Peace and Security Council's complementary organs were challenged due to insufficient resources and logistics, the absence of regulatory laws and guidelines, and political unwillingness.

The inconsistent, legal, and practical challenges of the council's responses to the military coups could harm the council's credibility and certainty. They could also make it easier for member states to use the council's normative Framework for their political ends. Given the AU's responses to the wave of military coups d'état in the years succeeding 2020, the following recommendations should be implemented in order to prevent military coups d'état from occurring and thereby strengthening the AU's peace and security architecture in its endeavor to entrench democratization, the rule of law, and constitutional power transfer.

I. The sanction committee established in 2009 by the PSC under the Ezulwini framework has to undertake its duty effectively by including additional guidelines on imposing and exempting sanctions in the event of a military coup d'état.

II. The AU Peace and Security Council should oversee the inclusion of stringent provisions in the power-sharing agreements by member states that have experienced military coups d'état in the interim period of restoring constitutional order.

III. The AU normative frameworks must do away with the boundaries between military coups d'état, serious human rights breaches, and democratic values deficits.

IV. The CEWS of the AU must use trigger mechanisms and indicators as an objective threshold to determine which phenomena in member countries require immediate action.

V. Operationalizing of the Ezulwini framework's methods to improve the way the AU's measures are put into action when there is a military coup d'Etat.

VI. The AU should finance, strategize, analyze, and cooperate to increase the capacity of the mediators.

VII. Member states must provide financial and logistical support and instill expertise and political personnel capable of putting the ASF's mandates under the PSC protocol and ACDEG into action.

VIII. The AUPSC's Protocol establishing the roles of panel members in the event of a military coup d'état should provide this information.

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