



***Unconstitutional Change of Government in Africa and AU's  
Response: The Case of Egypt***

**BY: Solomon Tolera Sebeta**

**Advisor: Getachew Assefa W. (PhD), Associate Professor**

**A Thesis Submitted to**

**School of School of Law, Addis Ababa University**

**Presented in Partial Fulfillment of the Requirements for Degree of Master of  
Laws [LLM] in Public International Law.**

***January, 2018***

***Addis Ababa, Ethiopia***

**Addis Ababa University, College of Law and Governance**  
**School of Law**

***Unconstitutional Change of Government in Africa and AU's  
Response: The Case of Egypt***

**BY: Solomon Tolera Sebeta**

**Advisor: Getachew Assefa W. (PhD), Associate Professor**

**A Thesis Submitted to**

**School of School of Law, Addis Ababa University**

**This is to Certify that Thesis prepared by Solomon Tolera, entitled: *Unconstitutional Change of Government in Africa and AU's Response: The case of Egypt*; and submitted in partial fulfillment of the requirements for the Degree of Master of Laws [LLM] in Public International Law complies with the regulations of the University and meets the accepted standards with respect to originality and quality.**

**Signed By the Examining Committee:**

**Name**

**Signature**

- 1. Advisor: Getachew Assefa (PhD), Associate Professor, \_\_\_\_\_**
- 2. Examiner: Mizanie Abate (PhD), Assistant Professor, \_\_\_\_\_**
- 3. Examiner: Biniam T., (Lecturer), \_\_\_\_\_**

**Mizanie Abate (PhD), Assistant Professor, Associate Dean for Graduate Programs \_\_\_\_\_**

## **Declaration**

**I, Solomon Tolera Sebeta**, declares that the work presented in this Thesis is original. It has never been presented to any other university or institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. In this regard, I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements for the award of the LLM Degree in Public International Law.

### **Declared by**

Name: Solomon Tolera

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Acknowledgment**

A big thank you! My Advisor Dr. Getachew Assefa W. [Associate Professor]: not because it is customary to thank Advisor, but because truly you have been my mentor throughout the writing of this thesis.

I have a very special thank you for my friends; and I am very grateful to have been surrounded with you. I am also thankful to my fellow students who made the journey enjoyable.

Yes, I'm saving the best for the last: My family. Thank you my family who encouraged me and prayed for me throughout my life. Thank you and God bless you.

## *Abstract*

Unconstitutional change of government under AU norms refers not exclusively to Coup D'état-the sudden overthrow of a government, but it also encompasses the subversion of a democracy as expressed by the will of the people through election, refusal to relinquish power after losing election, and manipulating the supreme law-the constitution, in order to extend the incumbency of serving government. Coup d'état is by far the most challenge to the continuity of regimes and has been a source of political instability in Africa. Though the 1990s and 2000s witnessed a decrease in the number of military Coup d'état, the coup d'état phenomenon still looms over African continent. The 2013 Coup d'état in Egypt by Field Marshal Adel Fatah Al-sisi, now a President, against elected President Mohamed Morsi, is a living proof. To combat unconstitutional change of government including coup d'état, the African union (AU) and its predecessor, the Organization of African Unity (OAU) has begun to articulate a Policy on unconstitutional change of government in 1997. Since then AU has adopted a robust of legal instruments on unconstitutional change of government. However, in practice, the OAU/AU/ response to the phenomenon lack consistency and uniformity.

Thus, this thesis aims at briefly examining the existing OAU/AU legal regime on unconstitutional change of government. It will then investigate OAU/AU's response to unconstitutional change of government delving into the consistency of the response. In considering these issues, the thesis examines the response of the African Union to the 2013 Coup D'état in Egypt, in which AU Reinstated Egypt's membership on June 17, 2014, though constitutional order was/is not restored formally. The thesis concludes by arguing that AU's response to unconstitutional change of government is paradox to its legal norms.

**Key words:** African Union, Unconstitutional Change of Government, Norm, Coup D'état, Egypt.

# TABLE OF CONTENTS

<u>Topic</u>	<u>Page</u>
Acronyms	
<b>CHAPTER ONE: INTRODUCTION.....</b>	<b>1</b>
1.1. Background of the Study .....	1
1.2. Literature Review.....	3
1.3. Research Questions.....	5
1.4. Hypothesis of the Study.....	5
1.5. Scope of the Study .....	5
1.6. Objectives of the Study .....	6
1.7. Research Methodology.....	6
1.8. Significances of the Study .....	6
1.9. Outline of the Study.....	7
<b>CHAPTER TWO: AU’S NORMATIVE FRAMEWORK ON UNCONSTITUTIONAL CHANGE OF GOVERNMENT IN AFRICA</b>	
2.1. An Overview of Unconstitutional Change of Governments in Africa.....	8
2.1.1. Definition of Unconstitutional Change of Government.....	8
2.1.2. Forms of Unconstitutional Change of Government. ....	9
2.1.2.1. Coup D’état.....	9
2.1.2.2. Removal of Democratically Elected Governments by Mercenaries.....	12
2.1.2.3. Removal of Democratically Elected Governments by Armed Rebels.....	13
2.1.2.4. Refusal of an Incumbent to Relinquish Power.....	14
2.1.2.5. Amendment of Constitutional and Electoral Laws to Prolong Terms in Office.....	16
2.2. Revolution Vs Coup D’état.....	17
2.3. AU’S Normative Framework on Unconstitutional Change of Government.....	19
2.3.1. Introduction.....	19
2.3.2. Evolution of AU’s Norms on Unconstitutional Change of Government.....	20
2.3.2.1. The Harare Decision.....	20
2.3.2.2. The Algiers Decision.....	21
2.3.2.3. The Lome Declaration.....	21
2.3.2.4. The Constitutive Act of the African Union.....	23
2.3.2.5. Protocol Relating to the Establishment of the Peace and Security Council of the Africana Union.....	25
2.3.2.6. African Charter on Democracy, Elections and Governance.....	26

2.3.2.7. The Malabo Protocol on the Amendment to the Protocol Creating the African Court of Justice and Human Rights.....	27
---	----

**CHAPTER THREE: UNCONSTITUTIONAL CHANGE OF GOVERNMENT IN AFRICA AND AU’S RESPONSE: THE CASE OF EGYPT**

3.1.The wave of the 2011s North African Popular Uprising.....	29
3.2.The Domino Effect of the 2011s North Africa Popular Uprising on Egypt.....	32
3.3.Post 2011 Revolution Political Development in Egypt.....	35
3.4.The 2013 Change of Government in Egypt: a Coup d’état or Popular Uprising?.....	38
3.5.The AU’s Response to the 2013 Change of Government in Egypt: a Policy of Exceptionalism and a Pernicious Precedent?.....	42
3.6.Restoration of Constitutional Order under the AU Norms on Unconstitutional Change of Government: Constitutional <i>Status Quo Ante</i> or Holding Masqueraded Electoral Processes?.....	46
3.7.The Legitimacy of Change of Government Through Popular Uprising under the AU Norms on Unconstitutional Change of Government.....	48
3.8.The Legitimacy of Coup D’état Against Unelected Government under the AU Norms on Unconstitutional Change of Government.....	51
3.9. Concluding Remarks.....	54

**CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS.....55**

4.1. Conclusion.....	55
4.2. Recommendations.....	56

**Bibliography.....58**

**ANNEX**

## Acronyms

- AU-African Union
- OAU-Organization of Africa Unity
- UN-United Nations
- UNSC- United Nations Security council
- AUPSC-African Union Peace and Security Council
- UCCG-Unconstitutional Change of Government
- ACDEG-African charter on Democracy, Election and Governance
- PAP-Pan African Parliament
- EU- European Union
- ECOWAS- Economic Community of West African States

## CHAPTER ONE

### INTRODUCTION

#### 1. Background of the Study

Africa is once more at the crossroads of democratization.<sup>1</sup> The great hopes unleashed by the democratic wave that swept across the continent just over four decades ago as a result of a combination of internal and external forces have begun to fade. Part of the result of this trend is an astronomical growth in the number of democratic refugees in many African countries.<sup>2</sup> Instead of popular empowerment, participation, competition and legitimacy, the democratization process in some African countries seems to have engendered a feeling of dispossession and growing alienation among the people.<sup>3</sup> African leaders who came to power after independency began to treat their own citizens as consumers rather than as primary stakeholders in the democratization processes. This leads to the betrayal of the high hopes that attended the celebration of a new dawn of democracy in Africa and resulted in democratic regression. The threat of democratic regression can be partly discerned in the growing phenomenon of unconstitutional Changes of Government.<sup>4</sup> This phenomenon of Unconstitutional Change of government has different forms of manifestation. None of the OAU/AU instruments on Unconstitutional Change of Government did provide definition to Unconstitutional Change of Government, rather listed elements of the phenomenon. The Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government adopted in July 2000, defined Unconstitutional Change of Government as; military coup d'état against a democratically elected government; intervention by mercenaries to replace a democratically elected government; replacement of democratically elected government by armed dissident groups and rebel movements; and the refusal by an incumbent government to relinquish power to

---

<sup>1</sup>J.Shola Omotola, 'Unconstitutional Change of Government in Africa; What Implication for Democratic Consolidation?' Nordiska Afrika institute, Uppsala, 2011, P-7.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

the winning party after free, fair and regular elections.<sup>5</sup>This definition was expanded in January 2007 through the African Charter on Democracy, Elections and Governance to include: any amendment or revision of the Constitution or legal instruments, which is an infringement on the principles of democratic change of government.<sup>6</sup> Among all these forms of Unconstitutional Change of Government the African continent is mostly characterized by Coup d'état.

The rampage of Coup d'état in the African continent began in 1963 with Togo's president Sylvanus Olympio being the first major victim to be assassinated during a military coup in Africa.<sup>7</sup> On 13 January, 1963 president Sylvanus Olympio was assassinated in capital city, Lome by perpetrators of the coup d'état.<sup>8</sup> This was the first successful coup d'état in African continent. Many African leaders condemned the attack and the coup d'état. They had to do nothing than condemning the coup because there was no legal basis to take punitive measures. The recent reincarnation of military coups as experienced in Mauritania and Guinea in 2008 Guinea-Bissau and Madagascar in 2009; Niger republic first in may 2009 and second in February 2010; Egypt in July 2013; the failure of incumbents to relinquish power to victorious opposition candidates/parties, most recently in cote d'Ivoire with the refusal of president Laurent Gbagbo to concede defeat in the 8 December 2010 election and Rwanda's constitutional amendment to extend president Paul Kagame's term limits as well as president Pierre Nkurunziza's defying the constitution to run Burundi for the third term are manifestation of unconstitutional change of government in Africa.

With regard to legal measures to be undertaken in case of unconstitutional change of government the African Union has developed its own legal framework. Article 4 paragraph 16 of the Constitutive Act of AU provided condemnation and rejection of unconstitutional changes of governments as a main principle of the AU. Besides, both the Lome Declaration on the framework for an OAU response to unconstitutional changes of Government adopted in July

---

<sup>5</sup>Lome Declaration on the Framework for an OAU Response to Unconstitutional Change of Government, Adopted at the 36<sup>th</sup> ordinary session of the assembly of Heads of state and governments held on from 10-12 July, 2000, at Lome, Togo.

<sup>6</sup> African Charter on Democracy, Election and Governance, adopted by the 80<sup>th</sup> Ordinary Session of the Assembly of the African Union held on 30 January, 2007, in Addis Ababa, Ethiopia, Article 23(5).

<sup>7</sup>. David De Boer, *Unconstitutional Change of Government: Analysis of the 2012 Mali Coup D'état*, Master thesis, Tilburg University, 2014, P.9.

<sup>8</sup> Ibid.

2000 and the African charter on Democracy, Elections and governance entitled AU primarily to condemn the change and order the perpetrators to restore constitutional order within six months and to suspend the said state party from participating in the activities of the union in accordance with the provisions of articles 30 of the constitutive Act and Article 7 (g) of protocol relating to the establishment of the peace and security council of African union when the perpetrators failed to restore constitutional order. Though the African Union succeeded in creating a robust normative framework on unconstitutional change of government, still there is a weakness and gaps in the existing AU normative framework. Notably, there is a legal gap on how to treat change of government through popular revolution/uprising; as to when constitutional order is said to have been restored in case unconstitutional change of government taken place; whether undemocratic government or undemocratically elected government can be changed through extra-constitutional means.

Beyond all these legal gaps, pragmatically AU's response to the phenomenon is inconsistent with its relevant instruments. For instance, Recently on 3 July 2013, Egyptian army chief General Abdel Fattah Al-sissi led a coalition to remove the only democratically elected president of Egypt, Mohamed Morsi, from power and suspended the Egyptian constitution. The AU subsequently condemned the change on 5 July 2013; and suspended Egypt from the exercise of its right to participate in the activities of the African Union. But, the Egyptian authorities, including General Abdel Fattah Al-sissi, who has toppled a democratically president Morsi, claimed that the change is not a coup d'état rather a popular revolution. They further continued to pressurize AU to lift its suspension. After a year, On 17 June 2014, the AU's Peace and Security Council unanimously agreed to unfreeze Egypt's membership to the 54- member bloc even though the perpetrators of coup d'état didn't restore the constitutional order; a decision which is clearly against the principles and norms of the African union.

## **2. Literature Review**

Several authors have written on unconstitutional change of government in Africa and the OAU/AU response, but only few on the 2013 change of government in Egypt. The focus of many writers is unconstitutional change of government through coup d'état which is the main feature of African continent since the period of independence. Among those unconstitutional changes of government taken place in Africa through coup d'état, the 2013 change in Egypt is a

recent phenomenon. Dr. Solomon Ayele and Dr. Zeray Yihdego have addressed specifically the 2013 coup d'état in Egypt. Dr. Solomon, in his article; "the AU on Egypt; between a rock and hard place" published on 6 June, 2014 analyzed the change of government in Egypt and the AU response to the change. He has examined the AU's decision to suspend Egypt's membership in line with the relevant AU instruments on unconstitutional change of government. Since this work was written before the AU lift the suspension on June 17, 2014, it did not address issues in relation to AU'S decision to reinstate Egypt's membership to the African Union. Similarly, Dr. Zeray Yihdego, a prominent scholar on the African Union issues in his article titled "Democracy, Peoples uprising and unconstitutional change of government in Egypt: the AU principles and response" published on June 8, 2013, he analyzed the AU'S norms on unconstitutional change of government and its decision to suspend Egypt from the union. However, those literatures written by both scholars on the area lacks the in depth analysis required of it. For instance, in the works of both scholars issues such as: the nature of governmental change in Egypt; whether its coup d'état or popular uprising; whether change of government through popular uprising/revolution, though its extra-constitutional means, is legitimate or not under the AU'S norm; whether a removal of undemocratic or undemocratically elected government through extra-constitutional means is legitimate or not under the same norm; and what situation would constitute restoration of constitutional order under AU'S relevant instruments are not addressed. In addition to these gaps, as I have stated here in above, the work of many writers, including the above, focused on the AU'S decision to suspend Egypt's from participating in the activities of the African Union and its decision to reinstate Egypt's membership is not comprehensively analyzed. Thus, this research work unlike previous research work on this area mainly focuses on the AU'S decision to reinstate Egypt's membership to the African union and analysis both the communiqué<sup>9</sup> of the AU'S peace and Security Council.

### **3. Research Questions**

Thus, the writer of this study addressed the following questions in this thesis:-

1. Is Egypt's 2013 change of government a popular revolution/uprising or coup d'état?
2. What was the African Union's response to the 2013 change of government in Egypt?

---

<sup>9</sup> AU'S Peace and Security Council Communiqué PSC/PR/COMM (CCCLXXXIV), adopted at its 384<sup>th</sup> meeting held on 5 July 2013 and PSC/PR/COMM.2 (CDXLII) adopted at its 442<sup>th</sup> meeting held on 17 June 2014.

3. Is African Union's decision to reinstate Egypt's membership consistent with its relevant legal instruments on unconstitutional change of government?
4. What would be the implication of AU'S decision to reinstate Egypt's membership though constitutional order was not formally restored yet?
5. What is the legitimacy of change of government through popular revolution or uprising under AU'S normative framework on unconstitutional change of government?
6. What constitutes restoration of constitutional order under AU norms on unconstitutional change of government?
7. Does coup d'état against government which is not democratically elected considered as unconstitutional change of government under the AU norms?

#### **4. Hypothesis of the Study**

This research is based on the following hypothesis:-

- 4.1. The removal of President Mohamed Morsi was not through a popular revolution/uprising rather it was a coup d'état.
- 4.2. AU'S decision to reinstate Egypt's membership to the African Union is paradox with its relevant instrument on unconstitutional change of government.
- 4.3. AU'S norms are unclear on as to when constitutional order is said to have restored in case unconstitutional change of government taken place.

#### **5. Scope of the Study**

The scope of this research paper is limited only in discussing AU'S response to unconstitutional change of government. In doing so, the writer will stick to available AU'S legal framework on unconstitutional change of government and practical case. Specifically AU'S decision to suspend and reinstate Egypt's membership to the African Union is analyzed in light with AU's relevant normative framework.

#### **6. Research Methodology**

The research approach of this study is a doctrinal type. Thus, AU's Decisions on unconstitutional change of government are analyzed in light of its legal instruments. A broad overview of all available literature was consulted, including books and journal articles on the topic.

#### **7. Objectives of the Study**

The objectives of this study are:-

1. To examine available AU'S legal framework on unconstitutional change of government.
2. To analysis the difference between unconstitutional change of government and popular uprising.
3. To determine whether the 2013 change of government in Egypt is coup d'état or popular Uprising.
4. To Analyze AU'S response on unconstitutional change of governments: specifically the case of Egypt.
5. To analyze the effectiveness of the Union's decision on unconstitutional change of government
6. To identify weakness and legal gab in the existing AU normative framework on unconstitutional change of government.
7. To forward recommendations based on the finding of this study.

## **8. Significance of the Study**

In opinion of the writer this study would be significant for the African union as a continental institution and for the AU'S peace and Security Council which has the responsibility to maintain peace and security within the continent of Africa. The lesson that would drawn from this study can provide a starting point for AU and its peace and security council to assess its response on unconstitutional change of government within African continent and to undertake further legal and institutional reform.

## **9. Outline of the Thesis**

This thesis starts with an introduction, and the writer analyzed AU's normative framework on unconstitutional change of government under the second chapter. General overview of unconstitutional change of government in Africa; forms of unconstitutional change of government; and available AU legal instruments on unconstitutional change of government are examined under same chapter. Under the third chapter, which is the main focus area of this thesis, the writer examined the 2011 Northern African popular uprising, its domino effect on Egypt and post Mubarak political situation in Egypt. Furthermore, under this chapter, the writer tried to determine whether the 2013 change of government in Egypt was coup d'état or popular uprising. AU'S response to change of government in Egypt and its implication is also analyzed under this chapter. The final chapter of this thesis is conclusion and recommendation. Under this

chapter the writer summarized the discussion and forwarded recommendations based on the finding of this research.

## CHAPTER TWO

### AU'S NORMATIVE FRAMEWORK ON UNCONSTITUTIONAL CHANGE OF GOVERNMENT IN AFRICA

#### 2.1. An Overview of unconstitutional Change of Governments in Africa

##### 2.1.1. Definition

None of the OAU/AU legal instruments adopted on unconstitutional change of government has provided a clear definition of an unconstitutional change of government. Rather all instruments adopted by OAU/AU attempted to define the phenomenon by way of describing what constitutes unconstitutional changes of government. Accordingly, among all OAU/AU instruments, the most comprehensive instrument that highlights all forms of unconstitutional change of governments is the *Malabo Protocol on the Amendments to the Protocol creating the African Court of Justice and Human Rights*, adopted in Malabo on July 2014. Pursuant to Article 28E of the *annexed Statute of the African Court of Justice and Human Rights*; A putsch or coup d'état against a democratically elected government; an intervention by mercenaries to replace a democratically elected government; any replacement of a democratically elected government by the use of armed dissidents or rebels or through political assassination; refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; an amendment or revision of the Constitution or legal instruments, which is 'an infringement on the principles of democratic change of government' or is inconsistent with the Constitution; and any substantial modification to the electoral laws in the last six months before the elections without the consent of the majority of the political actors would amounts to an unconstitutional change of government. The following sections will analyzes each forms of unconstitutional change of government as provided by the Malabo protocol and other OAU/AU instruments.

## 2.1.2. Forms of Unconstitutional Change of Government

### 2.1.2.1. Coup d'état

According to *Ikome*, a coup d'état, or simply a coup, is the sudden overthrow of a government against the general will (*volonté générale*) formed by the majority of the citizenry.<sup>10</sup> He further explained coup is usually carried out by a small, but well-organized group that threatens, or effectively uses, force to replace the top power echelons of the state. On the other hand *Edward Uttwak* asserts that a coup consists of infiltration of a small but critical segment of state apparatus, which is then used to displace the government from its control of the remainder.<sup>11</sup> Therefore, according to Edward Uttwak some coups plotters may not necessarily use military force to replace the incumbent government, rather they may use extra-military tactics and such changes are still considered as a coup d'état. Furthermore, *Jonathan M. Powell* and *Clayton Thyne* also defined coup d'état as “illegal and overt attempts by the military or other elites within state apparatus to unseat the sitting executive.”<sup>12</sup> According to this definition coup d'état may be undertaken by any other elite who is part of state apparatus including civilian members of government officials.

Based on its objective, some scholars classified Coups as ‘Good coup d'état’ (also democratic coup) and ‘Bad Coup d'état’. *Varol, Ozan* asserts that, those coups which directed or plotted against authoritarian regimes are ‘good coups’ since the aim of such coups is to bring democratic transition by removing undemocratic regime ; and coups d'état that directed against democratic regime are bad coups since the objective of such coups is to place military regime in power by removing democratic and civilian government.<sup>13</sup> However, while the assertion of good coup d'état may be appealing as *Fundikila wazambi*<sup>14</sup> argued, there is no guarantee that coup plotters

---

<sup>10</sup> Francis Nguendi Ikome, ‘Good Coups and Bad Coups: The limits of the African Union’s injunction on unconstitutional changes of power in Africa’ Johannesburg Institute for Global Dialogue, Occasional paper No 55, 2007, P-7.

<sup>11</sup> Edward Luttwak, *Coup D'état: a Practical Handbook*, Cambridge, Harvard University Press, 1968, P-21.

<sup>12</sup> Jonathan Powell and Clayton Thyne, ‘Global Instances of Coups from 1950 to 2010: A New Dataset’, *Journal of Peace Research*, 2011, P-252.

<sup>13</sup> Ozan O. Varol, ‘The Democratic Coup D'état’, *Harvard International Law Journal*, Vol. 53, 2012, P- 297.

<sup>14</sup> See also, *Fundikila wazambi*, ‘Military Coup D'état against Democratically Elected government in Africa and International Law: The Recent Cases of Mali and Egypt’, 2015, P-16.

would govern the people better than the regime they replaced; and in the opinion of this writer coups are generally bad as they are not successful in engendering durable democratic institutions.

In Africa, the post-colonial political transition was mainly characterized by coup d'état. Coup d'état represents the most form of unconstitutional change of government that Africa has experienced. With advent of independence in the late 1950s and early 1960s, the euphoria and new hopes swept through Africa as nation after nation attained self-government. There were new dreams and expectations as the colonial masters packed their bags and handed over the instruments of power to the indigenous peoples. African has got the chance to be ruled by their own ruler than the colonial one.

However, the euphoria of independence in the 1960s was shattered and quickly followed by a long succession of military coups which in turn caused political instability all over the continent. African ruling elites established unitary and one party system and their attitude towards opposition has remained one of paranoia. These Sit-tight dictators had shut all avenues for citizen participation in national affairs. Furthermore, they established arbitrary and fragmented national institutions and rules, alongside bureaucratic structures and behavior that have impeded national dialogue. As a result, coup d'état were seen as the only means of removing these authoritarian regimes and were applauded by majority of the citizens.

Since the post-independence era of the 1960s, more than 200 coup d'état took place in Africa, with 45% of them being successful and resulting in the displacement of the head of state and government officials, and/or the dissolution of previously existing constitutional structures.<sup>15</sup> West Africa came top for the number of coups, both successful and failed; Central and East Africa followed; while Southern Africa had the least<sup>16</sup>. In Africa, the period between 1960 and 1970, and slightly beyond has been generally called the decades of coups.<sup>17</sup> Once coups started it swept through the entire continent at an alarming high speed. Sylvanus Olympio's Togo experienced the first coup d'état in post-independence Africa On 13 January, 1963, when the

---

<sup>15</sup> Habiba Ben Barka and Mthuli Ncube, 'Political fragility in Africa: are military coups d'état a Never-Ending Phenomenon', African Development Bank publication, September 2012, P-1.

<sup>16</sup> Ibid

<sup>17</sup> Decalo Samuel, *Coups and Army Rule in Africa*, New Haven, Yale University Press, 1976, P-3.

perpetrators assassinate President Sylvanus Olympio in the capital city, Lome.<sup>18</sup> It was followed by the October 28, 1963 coup d'état that staged against Hubert Maga, the then President of Dahomey [now Benin].<sup>19</sup> Then, the wave of coup d'état continued to engulf the whole African continent.

The 2000s, however saw a comparative decline of the coup d'état. A more liberalized political environment across Africa has generally waned public support for coups.<sup>20</sup> The emergence of a growing culture of the rule of law, constitutionalism and the democratic dispensation across the continent has also largely taken away the appetite for coups. Instead of cheering coup plotters like in the past, the people are now involved in campaigning for political parties and candidates of their choice to win power through elections. Furthermore, AU's shift from the principle of non-interference to the principle of non-indifference by adopting legal instruments that even criminalize unconstitutional change of government including coup d'état has also contributed for the decline of coup d'état.<sup>21</sup>

However, though compared to the past, the pattern of military coup d'état in Africa have dramatically changed since the establishment of AU; due to AU's inconsistent response to coup d'état and coup plotters, Africa is still contending with fresh coups and the legacy of past coup d'état, as illustrated by successful coups registered in Mali (22 March, 2012), Guinea Bissau (12 April, 2012) and in Egypt (3 July, 2013). Leaders in these countries assume power through military force; launder and repackage themselves as democrats after masqueraded electoral processes, which they claim landslide victories. Then, though their governance style still does not belie from the cloth they cut from, how they initially come to power cease to be an issue, and welcomed by AU on the overly generous assumption that they have reformed. The case of Abdel Fatah Al-sisi, of Egypt is a relevant example for the case in point.

---

<sup>18</sup> Emma Birikorang, 'Coups D'état in Africa- a Thing of the Past?', Kofi Annan International Peace Keeping Training Centre, Policy Brief No.3, 2013, P-2.

<sup>19</sup> Japhet M., 'Military Coups and Military Regimes in Africa', South African Journal of Military Studies, Vol. 8, No.4, 1978, P-1.

<sup>20</sup> Alan Wells, 'The Coup D'état in Theory and Practice: Independent Black African', American Journal of Sociology, Vol. 79, 1994, P-878.

<sup>21</sup> See also the Constitutive Act of the African Union adopted by the Assembly of Heads of State and Government at its 36<sup>th</sup> ordinary session held on 11 July, 2000 in Lome, Togo, Article 4(g) and (p).

### **2.1.2.2. Removal of Democratically Elected Government by Mercenaries:**

The traditional notion of a mercenary is ‘a soldier willing to sell his military skills to the highest bidder, no matter what the cause’.<sup>22</sup> By this definition the mercenary can be distinguished from the professional soldiers whose mark is generally a devotion to the external trapping of the military rather than to the actual fighting. Mercenaries are neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict.<sup>23</sup> Even if they were and are used mainly in wars, mercenaries were also used to fight the movements of decolonization. During colonial period, Major colonial power used mercenaries in their attempts to maintain control over their overseas territories.<sup>24</sup> Such special troops were hired to carry out assignment that regular armies would not be called up to perform, such as sabotage operations in rival empires, crushing rebellions, assassinations and scorched earth operations against rebellious subjects.<sup>25</sup>

In Africa, mercenaries such as “Mad” Mike Hoare, Jacques Schramme and Bob Denard were hired by former colonial powers and other external interests to undermine the rights of the people of the Congo [1960s], the Comoros Islands [1970-90s] and Benin [1970s] to choose their leaders and assert their political independence, or to destabilize their sovereignty.<sup>26</sup> They assassinated heads of state of sovereign nation and staged the violent overthrow of governments. They have also contributed to undermining of Africa’s peace and security. At that time the OAU was alarmed and concerned at the danger that the mercenaries constitute to peace and security of the continent. As a result of this danger, the OAU adopted a convention on the elimination of mercenary in 1977<sup>27</sup>, though it was not successful in preventing the danger of mercenaries.

---

<sup>22</sup> O’Brien k., ‘Military Advisory Groups and African Security: Privatized Peacekeeping’ Frank Cass, Vol.5, P-78.

<sup>23</sup> John Stremlau, *The International Politics of Nigerian Civil War*, New Haven, Yale University Press, 1977, P-98.

<sup>24</sup> J ‘kayode Fayomi, ‘Mercenaries and African Conflicts: Critique’, 2004, P-2.

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> OAU Convention for the Elimination of Mercenarism in Africa adopted on July 3, 1977, at Libreville, Gabon.

Later on, the AU, under the Malabo protocol comprehensively defined what constitutes mercenarism. The Malabo protocol also criminalized the act of mercenarism as a discrete crime. Thus, pursuant to the *Malabo Protocol on the Amendments to the Protocol creating the African Court of Justice and Human Rights* a mercenary is:

*“A person specially recruited locally or abroad in order to fight in an armed conflict, motivated by the desire for private gain and, in fact, is promised by or on behalf of a party to the conflict, material compensations.”*<sup>28</sup>

However, since the adoption of OAU/AU norms on unconstitutional change of governments, there has been no successful overthrow of a government by mercenary forces in Africa, except a unsuccessful attempt to overthrow the government of President Teodoro Obiang Nguema Mbasogo in Equatorial Guinea by the British Etonian mercenary, Simon Mann and former South African apartheid military officer in 2004, in which the perpetrators later were captured and sentenced to imprisonment.<sup>29</sup>

### **2.1.2.3. Removal of Democratically Elected Governments by Armed Rebels:**

Revolt against the government in Africa has been a common phenomenon during colonial and post-colonial period. During colonial period the European introduced changes to colonial rule in an effort to exploit African resource and laborers which created resentment among local people. In response to this colonial approach, resistance movements began to rise in Africa and some chiefs organized rebellions against colonial authorities which were established their administration in those colonized African countries. The Maji Maji rebellion that was organized by Kinjtile Ngwale in East Africa is among those rebellion groups that were organized against colonial authorities.<sup>30</sup> In this regard, the Resistance against apartheid in South Africa is a recent phenomenon. On the other hand, the post-colonial rebellion movement was/is against sit-tight dictatorial African leaders. Since African independence, many African liberation leaders and founding fathers, qua dictators and military juntas created one-man, one party state and avoided genuine multiparty democratic process with electoral and constitutional accountability. The

---

<sup>28</sup>Supra Note 3, Article 28h.

<sup>29</sup>Sabelo Gumedze, ‘the Elimination of Mercenarism in Africa: A Need for a New Continental Approach’, Monograph No. 147, Institute for Security Studies, July 2008, P-7.

<sup>30</sup> John Iliffe, ‘The Organization of the Maji Maji Rebellion’, Journal of African History, volume 3, 1967, P-506.

absence of such democratic avenue and constitutionalism hungered citizens and led to revolt against their own government in many African countries. The removal of Central Africa Republic (CAR) government by rebel forces in 2003 and the subsequent removal of this government in 2013 is a recent example of this form of unconstitutional change of government. Following the coup by rebel group, the African Union suspended the Central African Republic's (CAR) membership and imposed sanction on rebel leaders.<sup>31</sup>

#### **2.1.2.4. Refusal of an Incumbent to Relinquish Power:**

Political transition in Africa have consistently been problematic due in part to the fact that incumbent heads of state are too obsessed with retaining political power for life. Many African countries are still struggling with peaceful transfer of power. Leaders who gained recognition during national movements for independence consolidated power and bound their own positions in office with their countries' national identities. At present, three African heads of state are in office for more than three decades: Teodoro Obiang Nguema in Equatorial Guinea, Paul Biya in Cameroon and Yoweri Museveni in Uganda. Many incumbent leaders are unwilling to hand over power even after they lose election. They are obsessed to stay in power for a long time and surprised when they lose election. Ivory Coast and Gambia are good examples for the case in point.

#### **The Case of Ivory Coast:**

Tension arises in Ivory Coast in November 2010, when incumbent Laurent Gbagbo lost the presidential election but refused to relinquish power to Alasane Ouattara, who was widely regarded, and soon broadly recognized as the winner.<sup>32</sup> The constitutional council declared Gbagbo the victor, while the electoral commission said that Ouattara won; and the country found itself with two presidents after election.<sup>33</sup> Subsequently, AU's PSC issued a statement calling on the parties to respect the Ivoirian Electoral Commission's determination of the result.<sup>34</sup> When

---

<sup>31</sup>Judit Barna, 'Coup in the Central African Republic: Chronicle of a fall foretold', European Parliament Publication, 2013, P-1.

<sup>32</sup> International Election Observation Mission to Cote D'Ivoire, final report, the Carter Center, 2011, P-55.

<sup>33</sup>Marina Sharpe, 'From Non-Interference to Non-Indifference: The African Union and the Responsibility to Protect', International Refugee Rights Initiative, 2017, P-25.

<sup>34</sup>C. Riziki Majinge, *Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council*, The Canadian Yearbook of International Law, 2010, P-132

Gbagbo refused, AU suspended the Ivory Coast from its membership pursuant to its relevant instruments on unconstitutional changes of government.<sup>35</sup> On December 7, 2010 the West African regional bloc, ECOWAS also issued a statement which recognize Ouattara as a president and suspended Ivory Coast's membership.<sup>36</sup> However, though many 'multilateral and bilateral measures',<sup>37</sup> were taken to stem the crisis, Gbagbo refuse to relinquish power to Ouattara, and remained in power until forces loyal to Ouattara, supported by French troops and UN peacekeepers, arrested him on 11 April 2011.<sup>38</sup>

### **The Case of Gambia:**

Yahya Jammeh, Gambia's long-time despot, refused to step down after his challenger, Adama Barrow, won the presidential elections held in December 2016.<sup>39</sup> Mr. Yahya Jammeh totally rejected the result of the election and called for a "fresh and transparent elections, which officiated by a God-fearing and independent electoral commission."<sup>40</sup> Initially he accepted the results of the election, whose outcome was seen Africa as a moment of hope. However, later he reversed his position and said he would challenge the result of the election, which he claim it was 'riddled with irregularities', in the country's Supreme Court.<sup>41</sup>

On December 12, 2016, AU's PSC called up on Jammeh to adhere to an earlier speech in which he had accepted Barrow's win. Furthermore, the PSC declared that Jammeh would cease to be recognized as legitimate president and warned him of serious consequences in the event that his action causes any crisis that could lead to political disorder, humanitarian and human rights

---

<sup>35</sup> AU's Peace and Security Council [AU PSC], Communiqué of the Peace and Security Council of the African Union adopted at its 265<sup>th</sup> Meeting (PSC/AHG/COMM. 1(CCLXV), held on 10 March, 2011 at Addis Ababa, Ethiopia.

<sup>36</sup> ECOWAS Final Communiqué, ECW/CEG/ABJ/EXT/FR./Rev.2, December 7, 2010.

<sup>37</sup> See, For Example, United Nations Security Council, Resolution No. 1975, [UN Doc S/Res/1975], adopted on 30 March, 2011.

<sup>38</sup> Askari Kanzu, Ivory coast: the fall of stubborn Laurent Gbagbo, Jamii forums, 2011.

<sup>39</sup> Press Release by Alieu Momar Njai, Chairman of Gambian Independent Electoral commission, December 5, 2016, available at [iec.gm/the-total-of-final-election-results](http://iec.gm/the-total-of-final-election-results).

<sup>40</sup> See <https://www.theguardian.com/world/2016/dec/10/gambian-president-rejectselection-results-yahya-jammeh-adama-barrow>.

<sup>41</sup> Ibid

disaster, including loss of innocent lives and destruction of properties.<sup>42</sup> When Mr. Jammeh persisted, a multinational regional force was assembled by ECOWAS member states and Jammeh was given an ultimatum to depart or face the consequences.<sup>43</sup> Though Barrow was sworn in at the Gambian embassy in Senegal, Jammeh still continued to refuse to step down. Shortly after the UN Security Council endorsed<sup>44</sup> the ECOWAS and AU decisions, the regional force crossed into Gambia, ultimately forced Jammeh to accept his defeat, sign a political agreement and leave the country. In this regard, AU's principled stance against such unconstitutional change of government was lauded by many international communities including the UN.

#### **2.1.2.5. Amendments of Constitutional and Electoral laws to Prolong Terms in Office:**

The attraction of power is still strong, and many African leaders are keen to stay in office for as long as they can. To them, staying in power becomes an all consuming passion, always to the determinant of their own country and people.<sup>45</sup> As coups d'état have become rare, probably due to the AU's consistent and toughening stance against them, some leaders are engineering new methods to stay in power.<sup>46</sup> The first method is Amendment of constitution and electoral law, which becomes a common in order for incumbent president or party to stay in power. In spite of constitutional term limits, many leaders have not resisted the call of power and sought to extend their tenure beyond constitutional term limits in office. Many African states carried out Constitutional amendments either to eliminate the notion of terms or to extend their duration or the number of terms.<sup>47</sup> Leaders that failed to secure a constitutional amendment to remain in office resorted to an indirect strategy- they hand-picked a successor candidate hoping that, once

---

<sup>42</sup> Peace and Security Council of the African Union, 'The 647th meeting of the AU Peace and Security Council on the post-election situation in 'The Islamic Republic of The Gambia'', 13 January 2017.

<sup>43</sup> ECOWAS Final Communiqué, adopted at its 50<sup>th</sup> ordinary session of the ECOWAS authority of heads of state and government held at Abuja, Nigeria on 17 December, 2016.

<sup>44</sup> Resolution No. 2337 adopted by United Nations Security Council on its 7866 meeting, on January 19, 2017.

<sup>45</sup> Mwassa Jingi, 'African states and the challenges of constitutionalism', the citizen, August, 2017.

<sup>46</sup> Prof. Pacifique Manirakiza, "Insecurity implications of unconstitutional changes of government in Africa: from military to constitutional coups", Journal of Military and Strategic Studies, center of military and strategic studies, Volume 17, Issue 2, 2016, pp- 94.

<sup>47</sup> Ibid

he became president, they would be able to control him via their political parties.<sup>48</sup> Recent years have witnessed a number of heads of state attempting to extend their tenure beyond the constitutionally permitted number of terms through constitutional amendments. Recently twelve African countries out of thirty three with term limits across Africa amended their constitution to extend term limits.<sup>49</sup>

In Rwanda, despite the constitutional limits that state, “under no circumstance shall a person hold the office of the president of the republic for more than two terms”,<sup>50</sup> a petition apparently signed by more than 3 million Rwandans requested a constitutional amendment to allow Rwandan President Paul Kagame to run for a third term. Despite internal and external opposition, the Rwandan parliament voted to support the amendment of the constitution in July of 2015, which was subsequently approved by voters in a national referendum in December 2015 and Paul Kagame has since announced that he will seek a third term.

In Uganda, President Yoweri Museveni who has been at the top seat of government for more than 30 years, succeeded in getting the parliament to remove term limits from the constitution in 2005. The former constitution allows a maximum of term office of ten years-two five year terms.<sup>51</sup> Since 2005, President Yoweri Museveni runs three times for presidential campaign which he won in all three occasions. On the other hand, recently a bill which planned to remove age limit from the existing constitution brought to the Ugandan parliament. Under the existing constitution, a Presidential candidate must be under 75 years of age.<sup>52</sup> This provision would make President Yoweri Museveni, now 73, ineligible to stand for the next Ugandan presidential election which will hold in 2021. Thus, to run for another presidential election, despite strong opposition, Mr. Museveni is begging the parliament to scrap presidential age limit from the constitution.

## **2.2. Revolution Vs Coup D'état:**

The idea of revolution as a radical change in history is a modern political concept, which dates back to the French and American revolutions. Before these events, revolution did not indicate

---

<sup>48</sup> Ibid

<sup>49</sup> IPP-ADDIS, can the AU deal with amendments to term limits? 2015, P-23.

<sup>50</sup> Article 101 of the Rwanda's Constitution of 2003 with amended through 2011.

<sup>51</sup> The 1995 Constitution of Ugandan, Article 105.

<sup>52</sup> See also, Article 102 (b) of the 1995 Ugandan Constitution as Amended in 2005.

such a radical transformation, but rather a rebellion or coup d'état, which would not necessarily interrupt the course of history with a new beginning.<sup>53</sup> Originally the term revolution referred to the idea of cycles of government that periodically happen in human history. However, the term today acquired a new dimension used to refer to a structural change of government from the past.

The term Revolution is originally derived from a Latin word, "*revolutio*", to mean "turn-around" and the origin of the word indicates a fundamental change in power or organizational structures that takes place in a relatively short period of time.<sup>54</sup> Many Scholars defined the term revolution differently. For instance, *Jeff Goodwin* defined revolution as "*any and all instances in which a state or a political regime is overthrown and thereby transformed by a popular movement in an irregular, extra-constitutional and/or violent fashion*".<sup>55</sup> In this case revolution is a seizure of state power and such seizure maybe accompanied by use of force such as violence and any other unconstitutional means- also to include coup d'état. On the other hand *Jack Goldstone* also defined revolution as "*an effort to transform the political institutions and the justifications for political authority in society, accompanied by formal or informal mass mobilization and non-institutionalized actions that undermine authorities*".<sup>56</sup> In this regard, both definitions have two elements in common; i.e., changes in the structure of political authority and high levels of mass participation. Thus, revolution is simply a movement of mass population that calls for structural change in government. It is not an end by itself in changing regimes, rather it is a means either to pressurize incumbent regime to reform its policies, or it result in an overthrow of a regime in question through military coup d'état. This is because the protest against incumbent regime increases the probability of coup attempt by the elite group of the society.

At this point, it is worth noting the difference between revolution and coup d'état. The difference between a revolution and coup d'état primarily lies in the use of violence. Many coup d'état are bloodshed and involves an armed conflicts as it may take place among elites from government military apparatus to control the government for themselves or to create new regime. On the

---

<sup>53</sup> Skopcol T., *States and Social Revolution: a Comparative Analysis of French, Russia and China Revolutions*, Cambridge, Cambridge University Press, 1979, P-9.

<sup>54</sup> Ibid

<sup>55</sup> Jeff Goodwin, *No other Way out: States and Revolutionary Movements from 1945-1991*, Cambridge, Cambridge University Press, 2001, P-5.

<sup>56</sup> Jack Goldstone, 'Towards a Fourth Generation Revolutionary Theory', *Annual Review of Political Science*, No.4, 2001, P-87

other hand revolutions are less violent as they take place relatively through a non-violent means such as defiance, demonstration and strikes. Another, difference between revolutions and coups is that revolution may generate dramatic change in society, while coups seldom do so. Furthermore, Contrary to revolution, which usually done by the people, the perpetrators of coup d'état comprises of political figures or high-ranking members of the military officials. While coup d'état takes place suddenly, revolution is a process more than a series of events.

### **2.3. AU'S Normative Framework on Unconstitutional change of Government: From the principle of non-interference to principle of non-indifference**

#### **2.3.1. Introduction**

OAU, the predecessor of the AU, has generally followed the principle of non-interference in the internal affairs of member States and respect for the sovereignty and territorial integrity of each member states.<sup>57</sup> The OAU did not question the internal policies of its member states, even when they maltreated their peoples. The OAU Charter itself impeded the central organ of OAU from responding to internal conflicts. The charter affirmed member states' adherence to a number of core principles including the "principle of non-interference in the internal affairs of sates"<sup>58</sup> and situated the internal conflicts beyond OAU's jurisdiction, except with consent of concerned state. Due to the OAU's adherence to the principle of non-interference, African continent has been a theatre of massive human rights violation such as genocide, crime against humanity, and violent coup d'état in the past few decades. Very recently, OAU's adherence to the principle of non-interference had exhibited in the 1994 Rwandan genocide which could have been avoided or minimize the causality had the OAU intervened. Such OAU's inability to tackle internal conflict is among the major reasons that led to the transformation of OAU into AU in 2001. From the standpoint of unconstitutional change of government, OAU had no legislation to tackle the phenomenon, than oral condemnation and rejection of such change in many occasions.

However, after years of strict adherence to the principle of non-interference in the internal affairs of member states, the organization of African unity (OAU) issued two important decisions on unconstitutional change of government following the Harare and Algiers summits in 1997 and 1999, respectively. These two decisions paved the way to the adoption of the *Lome declaration*

---

<sup>57</sup> The Charter of Organization of African Unity (OAU), Adopted by Heads of African States and Governments, on May 25 1963, at Addis Ababa, Ethiopia, Article III (3).

<sup>58</sup> Ibid, Article III (2).

*on the Framework for an OAU Response to Unconstitutional Changes of Government* in 1999, which is a more comprehensive ‘policy framework’ that still continued to be referred by African Union with regard to unconstitutional change of government.<sup>59</sup> The establishment of African union (AU) in 2000 has also brought a further shift in policy from the principle of non-interference to the principle of non-indifference. This principle is enshrined under Article 4(p), and again articulated in Article 30 of the Constitutive Act of the AU, which provides for suspension of participation in the activities of the AU of any government of a member state that comes to power through unconstitutional means. These provisions strengthened and codified the Harare and Algiers decisions that were adopted by the OAU organs on unconstitutional change of government. AU later adopted numerous legal instruments on unconstitutional change of government which will be discussed in this chapter. Thus the following sections will focus on the evolution of OAU/AU norms on unconstitutional change of governments.

### **2.3.2. Evolution of OAU/AU’s Norm on Unconstitutional Change of Government:**

#### **2.3.2.1. The Harare Decision**

OAU response to the event in Sierra Leone in 1997 was a cornerstone in the evolution of OAU/AU’s normative framework on unconstitutional changes of government in Africa. On May 25, 1997, one-year old government of Tejan Kabbah, which had been democratically elected in March 1996 as part of the peace process ending a six-year civil war, was overthrown by Major Johnny Paul Koromah.<sup>60</sup> At its summit meeting in Harare, Zimbabwe, from May 28 to 31, 1997, the OAU’s Council of Ministers called for a return to constitutional government in Sierra Leone; and encouraged the Economic Community of West African States (ECOWAS) to achieve that goal.<sup>61</sup> The Assembly also called on African states and the international community not to recognize the new regime.<sup>62</sup> This was the first time in the history of the OAU that it had achieved unanimity on the question of refusal to recognize an unconstitutional regime.<sup>63</sup> In February 1998,

---

<sup>59</sup> Stef Vandeginste, ‘the African Union, constitutionalism and Power sharing’, *Journal of African Law*, first view article, 2013, P-3.

<sup>60</sup> Lansana Gberie, ‘The May 25 Coup D’état in Sierra Leone: A Militariat Revolt?’, *Journal of African Development*, Vol. 22, No.3/4, 1997, P-149.

<sup>61</sup> Decision [CM/Dec.357 (LXVI)] adopted by the OAU Council of Ministers, on its Sixty Sixth Ordinary Session held from 28 to 31 May, 1997, in Harare, Zimbabwe.

<sup>62</sup> *Ibid*, Paragraph (b).

<sup>63</sup> Chidi Anselm Odinkalu, ‘Concerning Kenya: The Current AU Position on Unconstitutional Changes in Government’, *Open Society Justice Initiative*, 2008, P-3.

a Nigerian-led ECOWAS force, the Economic Community of West African States Monitoring Group (ECOMOG), removed the junta, and Kabbah was reinstated as President.<sup>64</sup> However, even though it was the turning point for the OAU's response to unconstitutional change of government, the Harare decision did not establish a general policy framework that would enable OAU to tackle unconstitutional change of government that happened since in many African countries. In 1999, General Guei, a former chief of the military forces, overthrew President Henri Konan Bedie's government in Cote d'Ivoire. The OAU, however, failed to adopt any punitive measures. The absence of effective enforcement mechanisms in Harare decision has impeded its utilization against other similar perpetrators of unconstitutional change of government.

### **2.3.2.2. The Algiers Decision**

Two years later after the Harare decision, OAU's general assembly adopted Algiers decision in response to military coup d'état occurred in Comoros, Congo Brazzaville, Guinea Bissau and Niger.<sup>65</sup> Recalling the principles of universal declaration of democracy which was adopted by the inter-parliamentary council, the OAU signaled its constant opposition and intolerance to unconstitutional change of government in its Algiers decision. The assembly called for restoration of constitutional order in countries that change of government took place through unconstitutional means since the Harare decision.<sup>66</sup> Furthermore, the assembly emphasized in this decision on the importance of the principles of good governance, transparency and human rights which are essential elements for building representative and stable government to prevent conflict.<sup>67</sup> By adopting this decision, the OAU reiterated its determination to see Africa governed on the basis of democracy and by governments emanating from the will of the people expressed through transparent, free and fair election. Like the Harare decision, the Algiers decision did not establish a comprehensive policy framework that would have enabled OAU to take necessary measure against perpetrators of unconstitutional change of government, but it served as cornerstone for the evolution of OAU/AU's norm on unconstitutional change of government.

---

<sup>64</sup> Dumbuya, Peter A., "ECOWAS Military Intervention in Sierra Leone: Anglophone- Francophone Bipolarity or Multipolarity?", *Journal of Third World Studies*, Vol. 25, No. 2, 2008, P-13.

<sup>65</sup> 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 14 July, 1999, at Algiers, Algeria.

<sup>66</sup> *Ibid*, Paragraph one.

<sup>67</sup> *Ibid*, Paragraph Five.

### **2.3.2.3. The Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government**

In a further effort to promote democracy, constitutionalism and good governance in Africa, at Lome, Togo, in July 2000, the OAU considered the problem of unconstitutional change of government and adopted the Declaration on the Framework for an OAU Response to Unconstitutional Changes of government (hereinafter referred to as the ‘Lome Declaration’). The resurgence of coup d’état and its threat to continental peace and security were the main driving forces behind the adoption of the Lome Declaration.<sup>68</sup> By adopting the Lome Declaration, the OAU recognized the need of solid legal framework that would enable it to effectively respond to unconstitutional change of government which was, and still is a threat to the peace and security of the continent; and also noted that unconstitutional change of government constitute a very disturbing trend and a serious setback to the ongoing process of democratization in the continent.<sup>69</sup> Furthermore, the adoption of Lome declaration was the first step forward in the process of building constitutional democracy in Africa; and OAU’s commitment in this regard was noteworthy as many of the OAU’s member state governments themselves were coup-born regimes. The Lome declaration provided for the first time what action would constitute unconstitutional change of government to include:

- I) Military coup d’état against a democratically elected Government;*
- II) Intervention by mercenaries to replace a democratically elected Government;*
- III) Replacement of democratically elected Governments by armed dissident groups and rebel movements and*
- IV) The refusal by an incumbent government to relinquish power to the winning Party after free, fair and regular elections.<sup>70</sup>*

As part of the OAU’s effort to tackle coups d’état and other forms of unconstitutional change of government, the Lome declaration provided a variety of measures that could be implemented incrementally when democratically elected governments overthrown through unconstitutional

---

<sup>68</sup> Supra note no.5

<sup>69</sup> Ibid

<sup>70</sup> Ibid

means. The first measure is condemnation and denial of recognition of the change by OAU.<sup>71</sup> Then OAU would require the perpetrators to restore constitutional order within six months and subsequently suspend such governments from OAU policy organ until constitutional order is restored.<sup>72</sup> Refusal to restore constitutional order within six months entails targeted measures by the OAU, including visa denials, restrictions on government-to-government contacts and trade restrictions.<sup>73</sup> In fact the Lome declaration was not only concerned with the response to unconstitutional change of government, but also with ensuring that conditions that increased the risks of unconstitutional change of government were addressed.

Even though it has contributed to the OAU/AU's effort of norm-building, the Lome declaration was not successful in preventing unconstitutional changes of government in Africa. This was mainly attributed to a disputable legal status of the Lome declaration itself. The Lome declaration was a non-binding 'declaration'<sup>74</sup>. Thus, member states of the OAU were not legally obligated to adhere to the principles espoused in the Lome declaration. In fact the Lome declaration later has got higher legal significance and recognition by the Protocol Establishing AU's Peace and Security Council (PSC). This can be envisaged from Article 7(1) (g) of the Protocol which empowers the PSC to institute sanction when unconstitutional change of government takes place in member state 'as provided for in the Lome declaration'.<sup>75</sup> Therefore, by making a cross reference to the Lome declaration, the protocol gave a binding effect to the Lome declaration. The principles of the Lome declaration were later also developed through the African charter on democracy, election and governance.<sup>76</sup> Furthermore, the norms that adopted by the Lome declaration with respect to unconstitutional change of government are firmly enshrined in the AU's fundamental laws.

#### **2.3.2.4. The AU's Constitutive Act**

With view to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law; at its meeting in Lomé from July

---

<sup>71</sup> Ibid

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Pursuant to Article 33(1)(c) of the Rules of Procedure of the Assembly of the African Union, Recommendations, Declarations, Resolutions, opinions etc are not binding and serves only to guide and harmonize the view points of member states.

<sup>75</sup> Ibid

<sup>76</sup> See, Supra note no.5.

10 to 12, 2000, the OAU Assembly adopted the Constitutive Act of the African Union (hereinafter referred to as the 'Act'), which entered into force on May 26, 2001, after ratification by two-thirds of the member states of the OAU.<sup>77</sup> The Act has given emphasis to the realization of human rights, democracy and good governance as a necessary condition.<sup>78</sup> The Act aims, inter alia, to ensure the promotion of democratic principles, popular participation and good governance.<sup>79</sup> It requires member states' commitment to respect democratic principles, human rights, the rule of law and good governance as well as to condemn and reject unconstitutional change of government in any member state.<sup>80</sup> Prohibition of unconstitutional changes in government is a fundamental principle of the Act. In this regard, member states are under obligation to deny recognition to any government that accedes to power through unconstitutional means. The Act also imposes on member states the duty to insure democracy and good governance on the continent where any opposition political party would have the confidence that it could assume political power only through constitutional means.

Compared to the OAU charter, which was primarily guided by the principle of non-interference within member states' internal affairs, the AU's constitutive Act has redefined the defense of sovereignty in which previously member states might have claim to do whatever they please with their people and governments. It introduced a new era in which the sovereignty of states is overridden by the quest for democratic culture and practices, at least theoretically. In this regard, the AU focus on increased engagement among African states which may be said a radical shift from the principle of non-interference to principle of non-indifference so as to protect human rights violations, genocide, war crimes and crimes against humanity.<sup>81</sup> The Act also departs radically from the OAU charter by providing for suspension from participation in the activities of the organization where the government of a member state has come to power through unconstitutional means.<sup>82</sup>

### **2.3.2.5 Protocol relating to the Establishment of AU's Peace and Security Council**

---

<sup>77</sup>Tiyania Maluwa, 'Ratification of African Union Treaties by Law, Policy and Practice', Melbourne Journal of International Law, Volume 13, 2012, P-2.

<sup>78</sup> Supra note no. 19.

<sup>79</sup> Ibid, Article 3(g).

<sup>80</sup> Ibid, Article 4 (m and p).

<sup>81</sup> Ibid, Article 4(h).

<sup>82</sup> Ibid, article 30

The Protocol relating to the Establishment of AU's Peace and Security Council (hereinafter referred to as the 'Protocol') is among AU's legal instruments; and it established the Peace and Security Council of the African Union (AUPSC), which is the standing organ of the AU for prevention, management and resolution of conflicts.<sup>83</sup> The protocol was adopted pursuant to Article 5(2) of the AU constitutive act and entered into force on December 26, 2003. The Peace and Security Council then officially inaugurated on March 25, 2004 as AU's central organ responsible for African peace and security which formerly mandated to OAU's central organ of the mechanism for conflict prevention, management and resolution. The Council may use either diplomatic or coercive means to enforce its mission.<sup>84</sup> While the diplomatic efforts of the PSC include, among other things, developing early warning systems, enquiry, mediation and use of good offices; the coercive means include, among other things, the threat or use of force and sanctions.<sup>85</sup> Like that of UNSC the AUPSC also has fifteen members, all of whom are chosen by the Executive Council on the basis of equitable regional representation and rotation. Respect for constitutional governance, in accordance with the Lomé Declaration, as well as the rule of law and human rights is the main criterion for selection.<sup>86</sup>

With regard to instance of unconstitutional changes of government (UCCG), the AUPSC is the organ that spearheads the efforts of AU in view of restoring constitutional order in the country concerned. Yet since the inauguration of AUPSC, the bulk of UCCG cases have happened in many African countries. The February 5, 2005 coup d'état in Togo was the first test of AUPSC's commitment to eliminate the scourge of unconstitutional change of government from Africa continent. Since its inauguration the AUPSC has been quite forceful and innovative in how to deal with the phenomenon. One innovation that needs to be cherished is the adoption of *Ezulwini framework for the enhancement of the implementation of measures of the African union in situation of unconstitutional change of government in Africa* which introduced a new orientation in the approach of the AU towards UCCG to include zero tolerance not only for coups but also

---

<sup>83</sup>Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Adopted by the Assembly of the Africa Union at its 1<sup>st</sup> ordinary session, held on July 9, 2002, at Durban, South Africa, entered into force on December 26, 2003, Article 2(1).

<sup>84</sup> Protocol on the Amendments to the Constitutive Act of African union, adopted by the assembly of the African Union, at its 1<sup>st</sup> and 2<sup>nd</sup> ordinary session, held on February 3, 2003 and July 11, 2003 in Addis Ababa, Ethiopia and Maputo, Mozambique respectively, Article 9.

<sup>85</sup> Supra note no 19, Article 5(2) (g).

<sup>86</sup>Ibid

for violations of democratic standards, realizing that failure to do so could lead to the persistence and recurrence of unconstitutional changes.<sup>87</sup> In addition to suspension of a member state, the *Ezulwini framework* proposes a number of methods to the AU response.<sup>88</sup> However, despite all its achievements, the AUPSC lacks consistence in applying its legal instruments in many cases. In some cases it stands firmly by its norms and denies recognition for coup makers, while in other cases it recognizes coup plotters who orchestrated election to constitutionalize their ‘coup born’ regime.

#### **2.3.2.6. African Charter on Democracy, Elections and Governance [ACDEG]**

To ‘ensure the Promotion of democratic principles and institutions, popular participation and good governance in Africa’<sup>89</sup>, on 30 January 2007, AU member states adopted the African Charter on Democracy, Elections and Governance in Addis Ababa (henceforth referred to as the ‘Addis Charter’), which reaffirms and specifies AU’s adherence to the rule of law and the principle of constitutionalism. Adds Charter is a restatement of AU’s position on unconstitutional change of governments. It is also a consolidation of previous AU instruments on unconstitutional change of government which includes both Harare and Algiers decisions, the Lome declaration, AU’s constitutive acts and the AUPSC’s protocol. It redefined unconstitutional change of government to include:-

- 1. Any putsch or coup d’état against a democratically elected government,*
- 2. Any intervention by mercenaries to replace a democratically elected government,*
- 3. Any replacement of a democratically elected government by armed dissidents or rebels,*
- 4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or*
- 5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.<sup>90</sup>*

---

<sup>87</sup>Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situation of Unconstitutional Change of Government in Africa adopted by the AUPSC, on December 17-19, 2009, at Ezulwini, Kingdom of Swaziland.

<sup>88</sup>Inter alia to those measures provided by other AU instruments, this framework propose deployment of a peace enforcement mission in case when there is no progress is made towards return to constitutional order.

<sup>89</sup> See, Supra note no. 6, Preamble.

<sup>90</sup> Ibid, Article 23

The Addis Charter expands the definition of unconstitutional changes of government that were provided by previous AU instruments to include “any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government”; which is prohibited and would constitute unconstitutional change of government. Unlike previous OAU/AU instruments, the Addis Charter recognized unconstitutional change of governments as essential causes of insecurity, instability and conflict on African continent.<sup>91</sup> By prohibiting perpetrators of unconstitutional change of government from participating in an election held to restore constitutional government, the Addis Charter added a value to AU norms and has the effect of enhancing the substance of AU response to UCCGS. Furthermore, the Addis Charter provides for the trial of those perpetrators before the competent court of the AU.<sup>92</sup>

While the adoption of Addis Charter marks an important step in the promotion of democratic governance in Africa; the values, principles and objectives of the Charter have still remained a paper value and AU could not move from paper to practice in realizing those principles and objectives enshrined in the charter; and the cumbersome ratification process has contributed to this. Due to the expensive provisions of the charter, to date, among 55 AU members, only 30 AU member states has ratified and deposited the legal instruments, while 15 member states have signed but not ratified and the remaining 10 member states still have not signed yet the charter.<sup>93</sup>

### **2.3.2.7. The Malabo Protocol on the Amendments to the Protocol Creating the African Court of Justice and Human Rights**

In its latest effort to curb the challenges of unconstitutional changes of government in Africa, the African Union criminalized unconstitutional change of government by the Malabo Protocol on the Amendments to the Protocol Creating the African Court of Justice and Human Rights (hereinafter referred to ‘Malabo protocol’). The Malabo protocol is not the first OAU/AU instruments to Define elements of unconstitutional change of government, rather it consolidate those definitions that has already provided in for other OAU/AU legal instruments. The first five elements that give rise to unconstitutional change of government under the Malabo protocol are in *pari materia* with those elements that was defined under the African charter on democracy,

---

<sup>91</sup> Ibid, Article 2(4)

<sup>92</sup> Ibid, Article 25(5)

<sup>93</sup> See, the status of the charter at <https://au.int/en/treaties/african-charter-democracy-election-and-governance>.

election and governance. The only innovation by the Malabo protocol is the addition of the last element, referring to illegitimate amendments of electoral laws closer to the electoral period, which was drawn from Article 2(1) of the ECOWAS protocol on democracy and good governance. By categorizing unconstitutional change of government as a discrete crime, the Malabo protocol is a unique international legal instrument. There is no such crime of unconstitutional change of government under the Rome statute which established international criminal court (ICC).

## CHAPTER THREE

### UNCONSTITUTIONAL CHANGE OF GOVERNMENT IN AFRICA AND AU'S RESPONSE: THE CASE OF EGYPT

#### 3.1. The Wave of the 2010s North African Popular Uprising and its Outcomes

Recently in Africa, Popular uprising against government and government officials are not only a common phenomenon, but they have become a powerful force to instigate major political changes that traditionally were brought about through parliamentary process. In fact resistance and struggle has been a constant feature of African political landscape. In the past Africa experienced two major wave of popular resistance, the first wave was against colonial rule which began after 'the 1884-85 Berlin conference'<sup>94</sup>, and lasted until most African countries regained their independence. Whereas, the second wave of popular protest which brought an end to number of dictatorships and military governments took place between early 1960s and 1990s.<sup>95</sup> At present time, Africa is experiencing the third wave of popular uprising-a quest for constitutionalism, democracy and equality.<sup>96</sup>

Popular uprising that happened in Northern Africa since 2011 comprised a series of events. On 17 December, 2011, *Mohamed Bouzizi*, a Tunisian young man, an unemployed college graduate with children to feed, immolated himself by dousing in gasoline and set himself ablaze in his own city of Sidi Bouzid following the confiscation of his good by the police.<sup>97</sup> Mohamed Bouziz's act of immolation sparked a popular uprising in Tunisia which later expanded to most of North African countries and the Middle East. Of course, Mohamed Bouzizi was not the first Tunisian to set himself alight in an act of public protest. *Abdesslem Trimech*, another Tunisian, set himself ablaze in the town of Monastir on March 3, 2011, after facing bureaucratic hindrance

---

<sup>94</sup>The 1884-85 Berlin Conference was an event at which the most powerful European countries agreed upon rules for laying claim to particular African territories. See Worger, William, Nancy Clark, and Edward Alpers, ed. *Africa and the West: a Documentary History from the Slave trade to independence*. Phoenix: Oryx press, 2001.

<sup>95</sup> Cooper Frederick, *Africa since 1940: the past and present*, Cambridge, Cambridge University, 2002, P-22.

<sup>96</sup> Les Switzer, *Power and Resistance in an African Society*, Madison, the University of Wisconsin Press, 1993, P-17

<sup>97</sup> Lilia Blaise, 'Self-immolation, Catalyst of the Arab Spring, Is Now a Grim Trend?', *The New York Times*, July 9, 2014, P-10.

in his own works as a street vendor.<sup>98</sup> The key difference between the two events was that, in the later case the media fought to get news of what was happening out, and succeeded.

Within two weeks, and ominously for the government, protests began to spread to more prosperous parts of the country. Becoming almost a viral phenomenon, and as it drew more and more people, the centre of online action moved to social media, especially to facebook. The outside world began to play more of a part through social media. They took over the role of sharing information and persuading the world through social media. In fact, Social media didn't cause the revolution, but enabled it. In this regard social Medias, especially facebook, have played a major role in accelerating the revolution. After four weeks of steadily escalating riots across the country, president *Zine el-Abidine Ben Ali* lost his grip on power and fled to Saudi Arabia.

Then after, the effect of the Tunisian revolution spread strongly to five other Arab countries namely- Egypt, Libya, Yemen, Syria and Bahrain. In these countries, either the regime was toppled or major uprising and social violence occurred, including civil wars or insurgencies. Sustained street demonstrations also took place after Tunisian revolution in Morocco, Bahrain, Algeria, Iran, Lebanon, Jordan, Kuwait, Oman and Sudan.<sup>99</sup> A major slogan of the demonstrators in all these uprisings was “*ash-sha'b yurid isqat an-nizam*”, to mean the people want to bring down the aged regime<sup>100</sup>

A power struggle continued after the immediate response to the uprisings. While leadership changed in many of the countries and regimes were held accountable, power went up for grabs across the countries. Ultimately it came down to a contentious battle between a consolidation of power by religious elites and the growing support for democracy in many Muslim majority states.

The main causes behind the onset of these popular uprisings in Northern African countries and the Middle East are related to decades of oppressive and authoritarian political system, failed

---

<sup>98</sup> Nouri, Gana, *The Making of the Tunisian Revolution: Contexts, Architects, Prospects*, Edinburg, Edinburg University Press, 2013, P-127.

<sup>99</sup> Matthew VanDyke, ‘The Arab Spring and the Democratic Domino Theory’, the Freedom Fighter Blog, March 1, 2012.

<sup>100</sup> Abulof, Uriel, ‘What is the Arab third estate’ Huffington Post, March 10, 2011.

economic policies and socially alienated and disaffected population, mainly the youth.<sup>101</sup> Political power in the Arab countries has traditionally been held by the ruling dynasties or families, the military nationalists, secular political party or ‘influential’ tribes.<sup>102</sup> In these countries, ordinary citizens have never been perceived as a crucial player in the process of power transfer except when it comes to endorse what has already been decided for them inside the palace.<sup>103</sup> As a result, majority of the population started to question the legitimacy of these ageing regimes. Furthermore, the protest that started in 2011 could not have evolved into a mass phenomenon had it not been for the widespread discontent over unemployment and low living standards. The Autocratic rulers have failed to meet legitimate economic aspirations of their own people.<sup>104</sup> The state-led development gave place to crony capitalism that benefited only small minority in these countries.<sup>105</sup> The growing issue of human security in the Arab world has also ignited the uprising as government in these countries failed to provide in the field of health, education and nutrition.

The Arab uprisings were able to bring slight changes in those countries where they took place. Notably, it was able to put an end to dictators and quasi-dictators in Tunisia, Egypt, Libya, and Yemen, where the deposed presidents and parts of their cliques were arrested, accused of corruption and state crimes, flee their countries or caught and murdered.<sup>106</sup> It also put countries which affected by the springs on a path toward political transformation. States which feared the domino effect of these revolutions such as Jordan, Morocco and Algeria immediately reconsidered their policies and attempted to boost political liberties and national economy.

However, despite all its achievements, the early hopes that these popular uprisings would end corruption and the ageing dictatorship, increase political participation, and bring about greater economic equity quickly collapsed in the wake of counter revolution moves of the deep state in Egypt, the regional and international intervention in Bahrain and Yemen, and the destructive

---

<sup>101</sup> Ufiem Maurice Ogbonnaya, ‘Arab spring in Tunisia, Egypt and Libya: A Comparative analysis of Causes and determinants’, *Turkish Journal of International Relations*, No.3, Vol. 12, P-242.

<sup>102</sup> Ibid

<sup>103</sup> Gregory F.Gause III, ‘Why Middle East Studies missed the Arab Spring, the Myth of the Authoritarian stability?’, *Foreign affairs*, Vol. 90, No.4, July/August 2011, P-87.

<sup>104</sup> Andrea Ansani, & Vittorio Daniel, ‘About the Revolution: the Economic Motivation of the Arab spring’, *International Journal of Development and Conflict*, V. 3, 2012, P-5.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

civil war in Syria and Libya.<sup>107</sup> It even has brought curses to those countries which were the source of the revolutions as well as to the world community in general. The revolutionary movement created an ideal environment for terrorism to grow and thrive.<sup>108</sup> Terrorist group realized that they could exploit the confusion among Muslim community, and the vacuum in security and power created by the uprisings. They used social media such as facebook and twitter to recruit young Muslim men and women within their country and abroad, to stoke civil unrest and take advantage of the chaos. Terrorist group such as Al-Qaeda started their propaganda by making a radical statement and slathering praise up on the revolution while attempting to manipulate the protestors' message to fit with their pre-existing narratives. They accused the old regimes of being un-Islamic, or even anti-Islamic and acting as puppets of the west.<sup>109</sup> Many young men and women who were disappointed by the outcome of the revolution are radicalized and have joined terrorist groups. Thus, in many Arab countries the purpose of the revolution is hijacked by terrorist group, and the Arab springs now became a terrorist springs. Twenty one terrorist groups and individuals have been added to the U.S list of foreign terrorist organization since the 2011 Arab uprisings.<sup>110</sup>

The uprising has also caused regional instability and state weakness. In countries where Leaders have been toppled has been replete with challenges, including the exacerbation of pre-existing divisions, rendering extremely difficult the creation of strong and functioning states.<sup>111</sup> Many states became failed states and could not deliver social and political goods, and unable to guarantee a basic level of security to their own citizens. The ongoing war in Libya, Yemen and Syria, resulting in a humanitarian crisis, with large numbers of both internally displaced persons

---

<sup>107</sup> Hassan Islam and Dyer Paul, 'The State of Middle Eastern Youth', *Journal of the Muslim world*, Vol. 107, 2017, P-12.

<sup>108</sup> Frank Gardner, 'Is the Arab Spring Good or Bad for Terrorism?' *The British Broadcasting Company* (BBC) Home Page at Mid-East, June 22, 2011.

<sup>109</sup> Ibid.

<sup>110</sup> These are: Army of Islam (AOI), Indian Mujahedeen (IM), Jemaah Anshorut (JAT), Abdallah Azzam Brigades (AAB), Haqqani Network (HQN), Ansar al-Dine (AAD), Boko Haram, Ansaru, al-Mulathamun Battalion, Ansar al-shari'a in Benghazi, Ansar al-shari'a in Darnah, Ansar al-shari'a in Tunisia, ISIL Sinai Province, al-Nusrah Front, Mujahidin Shura Council, Jaysh Rijal al-Tariq al Naqshaband, ISIL-Khorasan (ISIL-K), Islamic state of Iraq and Levan, Al-Qa'ida in the Indian subcontinent and Hizbul Mujahideen (HM). See also U.S State Department Home page on foreign terrorist organization, available at <https://www.state.gov>.

<sup>111</sup> Libya, Syria and Yemen are living examples.

within Syria, Yemen and Libya, and refugees seeking safety in neighboring states and abroad in Europe are curses that were brought by the Arab uprising.

### **3.2. The Domino Effect of the 2011 Tunisian Popular Uprising on Egypt**

The 2011 Tunisian revolution had its own domino effect on the political developments in Egypt. Inspired by the events in Tunisia, Egyptians gathered on a street to protest on January 25, 2011 the national holiday of police day, calling for an end to corruption, injustice, poor economic conditions, and the 30-year-old regime of President Hosni Mubarak. The date was chosen to coincide with the National Police Day to protest against police brutality.<sup>112</sup>

Of course by the early January there was a considerable amount of tension in Egypt, and an increased presence of security forces on the streets, but no clear sense that this would translate into an uprising much less a Successful one.<sup>113</sup> But, after January 25 the street demonstration backed by social media, quickly grew into a national revolutionary movement. There were several attempts to emulate Bouazizi's gesture, not least in Cairo, but none sparked the same outrage in what was widely perceived as a politically apathetic population.<sup>114</sup> The 25 January demonstration was called by independent civil society and trade union groups, but shunned by established political elites, including the Muslim Brotherhood, underscoring the gulf separating them from ordinary Egyptians.<sup>115</sup> Initially the revolution was peaceful and took place through demonstrations, occupations of plazas, non-violent civil resistance, acts of civil disobedience and strikes; however, later it turned into violence.<sup>116</sup> Violent clashes sparked between the security forces and protesters which resulted in death of hundreds of people and thousands more were injured.<sup>117</sup> After 18 days of protest, President Hosni Mubarak and his national democratic party were removed from power on 11 February 2011.

---

<sup>112</sup> Jeremy, M. Sharp, *Egypt: the January 25 Revolution and Implications for U.S Policy*, Diane Publishing Co., 2011, P-2.

<sup>113</sup> El-Mahdi Rabab & Marfleet Philip, *Egypt: Moment of Change*, the American University in Cairo Press, 2009 P-23.

<sup>114</sup> Adrea Tati & Gennaro Gervasio, 'Egypt's Second January Uprisings: Causes and Consequence of a would-be Revolution', Department of Modern History, Politics and International Relations Macquarie University, 2011, PP12-15.

<sup>115</sup> Ibid.

<sup>116</sup> El-Ghobashi Mona, 'the Praxis of the Egyptian Revolution', Middle East report, 2011.

<sup>117</sup> Ibid.

Factors that were behind the 2011 Egyptian Revolution can be summarized into three categories. The primary cause, the prevailing one for the revolution in Egypt, was the regime, which was on power and the Egyptian people's thirst for democracy and legitimate elections. Hosni Mubarak's regime which was characterized by 'sultanistic type'<sup>118</sup> of authoritarianism has ruled the country almost for three decades. The dominance of the Hosni Mubarak authoritarian regime is heavily ensured by the unquestioned and unquestioning loyalty of the military to the President. He perpetuates this loyalty through the maintenance of a system of privilege for military leadership.<sup>119</sup> Five presidential elections were held in Egypt in three decades and Mr. Mubarak, and his National Democratic Party (NDP) had won all of them. Indeed, none of the Egyptian was fooled by the so-called-elections that have taken place during Mr. Mubarak's regime which resulted in a 'musical-chair'<sup>120</sup> effect in Egyptian politics. But, these forged election results and loyalty of the military enabled Hosni Mubarak and his party to maintain a complete control of government and remain in power for so long. Thus, the political motive of the 'January Revolution' was to have a choice, a genuine democracy and rule of law in Egypt.<sup>121</sup>

The Second reason that lead the Egyptian to revolution was related to the economic policies of Mubarak's regime, i.e., increased cost of living and growing visibility of wealth disparity amongst Egyptian classes.<sup>122</sup> During Mubarak's regime the Egyptian economy had been decimated, and there were no substantial job opportunities for the nation's burgeoning new population.<sup>123</sup> This coupled with years of high inflation rates and budget deficits had angered an already restless young population hungry for opportunities and success, and sent them to 'Tahrir Square' to protest against Mubarak's regime.

---

<sup>118</sup> In a Sultanistic type of authoritarianism, the rule of the leader is based on his personal authority, but is not gained through popular ideology, mission, or charisma; loyalty to the leaders is bred by fear and rewards. There are few restraints on the use of power by the leader, and his use of corruption and nepotism are unquestioned.

<sup>119</sup> Lisa, Blydes, *Election and Distributive Politics in Mubarak's Egypt*, Cambridge, Cambridge University Press, 2011, P-48.

<sup>120</sup> According to *Noor Khan* "Musical-chair" in politics is to mean rotating the same people through government over and over again.

<sup>121</sup> Khaled Wahba, 'the Egyptian Revolution 2011: The Fall of the Virtual Wall-the Revolution Systems Thinking Archetype', 2016, P-17.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

Finally, an explosive mix of high population growth of Egypt had its own impact on the January 25<sup>th</sup> Revolution, thereby accelerating the outcome of the Revolution. The number of total population reached 83 million in 2011 and Majority of them were found at a young age what the guardian's *Green Ducan* calls "youth bulge", who were looking for job opportunities.<sup>124</sup> In fact, two-thirds of Egyptians are under 30, and each year 700,000 new graduates compete for 200,000 new jobs.<sup>125</sup> A discontent among racial, ethnic and religious minorities is another social factor that was behind the revolution. Nubians and Bedouins felt deprived from the fruits of development, alienated and not integrated in the Egyptian identity, and further neglected in their demands and aspiration.<sup>126</sup> As for the Christians, they suffered the lack of responsiveness to their religious demands to build and restore churches, as well as setting the rules for Christians converting to Islam and vice versa.<sup>127</sup> Public corruption was also the main social factor that galvanized Egyptian during the January revolution. Furthermore, a quick glance at poverty in Egypt explains why corruption was such a central concern of the January 25 revolution.<sup>128</sup> Economic hardship can be tolerated if the people believe there is a better future ahead, or feel that the pain is a least somewhat equally distributed among all citizens, however, neither was the case in Egypt. New business elites collaborated with the regime to amass fortunes unimaginable to the majority of population.<sup>129</sup> All these factors became a fuel to the January 25 revolutionary fire and brought to an end Hosni Mubarak's regime. The next section will discuss the outcome of this Revolution since the 'overthrow' of President Hosni Mubarak.

### **3.3. Post 2011 Revolution Political Developments in Egypt**

As discussed above, after eighteen days of protests, President Hosni Mubarak handed power over to the military's ruling body, 'the supreme council of the Armed forces'.<sup>130</sup> In this regard, former

---

<sup>124</sup> Green Duncan, 'What caused the Revolution in Egypt?', *The Guardian*, January 17, 2011.

<sup>125</sup> Ibid.

<sup>126</sup> Noha Bakr, *the Egyptian revolution*, Malta, Mediterranean Academy of Diplomats, 2012. P-67

<sup>127</sup> Ibid.

<sup>128</sup> Mohammad Fadel, 'Public Corruption and the Egyptian Revolution of January 25: Can Emerging International Anti-Corruption Norms Assist Egypt Recover Misappropriated Public Funds?', *Harvard International Law Journal*, vol.52, April 2011, P-293.

<sup>129</sup> Primoz Manfreda, 'the reason for Arab spring', thought.co. October 09, 2016,

<sup>130</sup> The supreme council of the armed forces was the statutory body of between 20 and 25 senior Egyptian military officers and was headed by the then Field marshal Abdul Fatah Al-sisi (now a

prime minister of President Mubarak, Ahmed Shafik, was elected to lead the cabinet, and the 1971 constitution of Egypt was suspended and the parliament disbanded.<sup>131</sup> Later on, the military lays out a six month plan to draft a new constitution and hold new parliamentary and presidential election, vowing to transfer power to a newly elected civilian government within that time table. However, there was disagreement among Egyptian opposition political parties as to the reform. Egypt's well-organized Islamist groups wanted to see election first, while the liberals and secularists prefer to write a constitution first. In the end, the Islamist won and parliamentary and presidential election was given priority than drafting the constitution.<sup>132</sup>

Accordingly, on November 28, 2011, Egyptians began to vote for a parliamentary election which took a six week process and resulted with overwhelming victory for the Islamist parties.<sup>133</sup> In the lower house, the Muslim brotherhood, which was banned under Mubarak's regime won the majority of seats, with the 'ultraconservative Salafis' took one fourth, putting religious groups in control of the parliament.<sup>134</sup> In the upper house, Islamists took nearly 90 percent of the seats.<sup>135</sup> This result later enabled the Islamist to wield major influence on the 2012 constitution of Egypt which was drafted by the country's first freely elected parliament. Despite all these ongoing process, still there were protests across the country demanding for a quick transition to a democratic government.

Pursuant to the six month plan set out by the Military Council, the first round presidential election was held on 23 and 24 May 2012. The second round was held on 16 and 17 June, and the Muslim brotherhood's candidate, Mohamed Morsi, was declared as the winner of Egyptian presidential election, which was the second presidential election in Egypt's history with more

---

president of Egypt) and lieutenant General Sedki Sobhi. The council was convened only in cases of war or great internal emergencies. As a consequence of the Egyptian revolution of 2011, the council assumed power to govern Egypt from departing president Hosni Mubarak on 11 February 2011, and relinquished power on 30 June 2012 up on the start of Mohamed Morsi's term as president whom later toppled by the military itself.

<sup>131</sup> Jeremy M. Sharp, 'Egypt in transition', congressional Research Service, February 2012, P-1.

<sup>132</sup> Ibid

<sup>133</sup> Hesham Sallam, *Egypt's Parliamentary Elections, 2011-2012: a Critical guide to a Changing Political arena*, Tadween Publishing, 2017, P-45. See also, the final report of the Carter Centre Mission to witness the 2011-2012 Parliamentary Election in Egypt.

<sup>134</sup> Jasmine Coleman, 'Egypt election result shows firm win for Islamists', 21 January, 2012, *The Guardian*.

<sup>135</sup> Ibid.

than one candidate.<sup>136</sup> Mohamed Morsi, the first Islamist elected as head of state, was also the first civilian leader elected democratically in Egypt. Morsi was sworn in on 30 June, 2012 and officially named democratically elected president of Egypt though his power could last only for a year.

On 29 November, 2012, the Islamist Egyptian parliament finalized the draft constitution which later entered into force on 26 December, 2012, after it was approved by the constituent Assembly on November 30, 2012 and signed by President Mohamed Morsi. This constitution replaced the 2011 provisional constitution of Egypt, adopted in 2011 following the Egyptian Revolution. However, later, the content of the constitution and the manner in which it was adopted became a main cause of the Egyptian's second revolution and it was criticized for sidelining women, Christians and intellectuals and requiring all constitutional rights to be in conformity with Sharia.

Despite all these reforms, Egypt remained highly unstable. The second anniversary of the January Revolution brought renewed mass street demonstrations and violence in late January 2013. Hundreds of thousands gathered in 'Tahrir square' for another protest against President Morsi. New protest movement started on the June anniversary of president Morsi's inauguration. The demonstrators call themselves "Tamarood", which means "rebel", demanded new election and resignation or removal of president Morsi.

In the days leading up to the protests, the Egyptian military had signaled that it would not stand idly by, should the violence ensue. In late June, the Egyptian Defense Minister Abdel Fatah Al Sisi, now president, stated that:

*"The military's patriotic and moral responsibility toward its people compels it to intervene to keep Egypt from sliding into a dark tunnel of conflict, internal fighting, criminality, and accusations of treason, sectarian discord and the collapse of state institutions."*<sup>137</sup>

However, Mohamed Morsi insisted that presidency is above the law and not subject either to judicial review or military ultimatum, and protest ensued with mass demonstration in front of presidential palace. Things just kept on getting worse, and on July 1, 2013, the military stepped

---

<sup>136</sup> Supra Note no. 46.

<sup>137</sup> Statement of the General Command of the Egyptian Armed Forces is available online at <https://www.facebook.com/Egy.Army.Spox/posts/335803989883923>.

in and issued a 48-hour ultimatum to all political forces to reconcile: resolve the political crisis within 48 hours, or they [the military] will step in and resolve it themselves. The military's ultimatum read as:

*“If you have not ‘obeyed the people’<sup>138</sup> after 48 hours, it will be our duty to put forward a road map for the future instead.”*

However, President Mohamed Morsi has rejected the ultimatum issued by the army, saying he would continue with his own plan for nation reconciliation; and remain on power until he was overthrown by the army which he has undermined.

### **3.4. The 2013 Change of Government in Egypt: Coup D'état or Popular Uprising?**

After a long tension and friction between the Egyptian army and President Morsi, on July 3, 2013, Abdel Fatah Al Sisi, Egyptian army commander, now president, appeared on state television, wearing a uniform with his chest covered in medals, announced that the army had deposed the government of Mohamed Morsi. The military placed president Morsi under house arrest, prohibiting him from communicating with anyone.<sup>139</sup> Following the removal of Morsi, the new military leadership, led by Abdel Fatah Al Sisi, suspended the 2012 Egyptian constitution. This move came after the military's ultimatum for the government as quoted here in above.

In this regard, there were mixed international reactions to the change, between admiration and rejection, as well as cynicism. In the morning following the overthrow of Mohamed Morsi, there was no single unified voice coming from international communities. Arab countries were generally supportive or neutral, with the exception of Tunisia who strongly condemned the military's action as a coup d'état against a democratically elected government.<sup>140</sup> Many Arab states were in support of the coup and Saudi Arabia was among those who supported the coup

---

<sup>138</sup> ‘Obeyed the people’ was used to require Morsi to resign pursuant to the people's request him to step down.

<sup>139</sup> Aljazeera News, President Morsi overthrown in Egypt, Available at <http://www.aljazeera.com/news/middleeast/2013/07/20137319828176718.html>.

<sup>140</sup> Chairperson of the Tunisian ruling Islamist party, Ennahda, rejected the change stating that Ennahda rejects what happened and believes legitimacy is represented by President Mohammed Morsi, and no one else.

d'état.<sup>141</sup> On the other hand European countries and the European Union, as an international institution, were awkward on the coup d'état: on one hand they could not applaud the military's intervention in the democratic process since Morsi was a democratically elected president, and on the other hand they did not want to see president Morsi staying in power, as he has not acted in the way the west would like their partners to act.<sup>142</sup> The United States of America has never called the change, a coup d'état, and rather than using the C-word USA required only a democratic transition in the country.<sup>143</sup>

African union was the only international organization which immediately labeled the change as unconstitutional, though refrained from calling it a coup d'état, and called for restoration of constitutional order. At its 384th meeting held on 5<sup>th</sup> July 2013, the African Union Peace and Security Council considered the situation in Egypt, and in the communiqué adopted at the end of its deliberations, the Council recalled the relevant AU instruments on unconstitutional changes of government, notably the Lomé Declaration of July 2000 and the African Charter on Democracy, Elections and Governance of January 2007, which provides for the automatic implementation of specific measures whenever an unconstitutional change of Government occurs, and reiterated AU's condemnation and rejection of any illegal seizure of power, and suspended Egypt from the union.<sup>144</sup> In this regard, the AU has dramatically changed and clarified its position on unconstitutional change of government. The union took no time to call the change unconstitutional and require restoration of constitutional order unlike its previous reaction to similar changes in other member states.

However, the then Egyptian interim authority had rejected AU's decision to suspend Egypt from the activities of African Union characterizing the ouster of Mohamed Morsi as popular revolution. In a note verbal to the Commission, dated 9 July 2013, the interim authorities of Egypt rejected the Council's communiqué, indicating that it was based on a wrong interpretation

---

<sup>141</sup> King Abdullah, the then king of Saudi Arabia, congratulate the military which ousted president Morsi stating: "in the name of the people of Saudi Arabia and on my behalf, we congratulate your [the military] leadership of Egypt in this critical period of its history".

<sup>142</sup>The then European Union foreign policy chief Catherine Ashton on behalf of EU urged the military for rapid return to democratic process and holding of free and fair election.

<sup>143</sup>Barack Obama, the then U.S President, called the Egyptian military to move quickly and responsibly to return full authority back to a democratically elected civilian government.

<sup>144</sup> AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union at its 384<sup>th</sup> Meeting* (PSC/PR/COMM. (CCCLXXXIV), 5 July 2013, paragraph 5

of the ‘popular revolution’, which unfolded in Egypt on 30 of June 2013.<sup>145</sup> Furthermore, the Egyptian authorities blamed the Peace and Security Council (PSC) of African Union for calling the change an unconstitutional, and they claim that the move was a popular revolution and not a coup d’état. They have argued that the Lome declaration should not have applied to the case of Egypt. According to the then Egyptian authority the 3<sup>rd</sup> July 2013 change of government was a full-fledge popular revolution, and describing this development as a military coup d’état or unconstitutional change of government were unacceptable and inaccurate.<sup>146</sup> They cited the first paragraph of the preamble of the 2012 Egyptian constitution, which in their opinion clearly illustrate the supportive role of the armed force in 25<sup>th</sup> January 2011 revolution and exactly similar to the role the military played in the 30 June 2013 revolution, thus, according to them, the armed forces involvement in the July 2013 event emanated from their constitutional obligation to protect the nation and was in line with the demand of the Egyptian people. The Egyptian authorities believed that Mohamed Morsi’s democratically elected but authoritarian regime was subverting the Egyptian’s efforts to consolidate the democratic achievements of the 2011 revolution. To this, they argued if these subversive actions of the president were subjected to the criteria stipulated in the Lome declaration, it would have clearly indicated that the change that occurred in Egypt by no means would constitute unconstitutional.<sup>147</sup>

However, the ouster of Mohamed Morsi was a full-fledged military coup d’état rather than full fledged popular revolution as referred by the interim authority, and in the opinion of this writer it could even serve as the ideal coup d’état. The elements of coup d’état were completed when the appointed commander of the army, field Marshal Abdel Fattah Al-sisi, in military uniform with his chest covered in medals read out the coup d’état communiqué. The July 3, 2013 event cannot be said a revolution by any definition, rather, may be the surrounding situation, and completely different from the January 25, 2011 revolution which overthrow Mubarak’s regime. In the previous case it was the president himself who resigned, realizing that it would be impossible to carry on in the face of a popular will that had paralyzed the state's vital services. But, it was the military leader in uniform that declares the overthrow of democratically elected president in the latter case. The former one was against a president who was not elected in free and fair election

---

<sup>145</sup> Final Report of the African Union high-level Panel for Egypt, 22 July 2014, P-16.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

and without legitimacy in a modern democratic system, whereas, Morsi was a first Egyptian president who was elected by free and fair election, though by a margin of a single vote.<sup>148</sup> In fact there were accusation against Mohamed Morsi for increasing authoritarianism and pushing through an Islamist agenda disregarding the predominantly secular opposition and rule of law. Furthermore, he was accused of using religion for political purpose and resort to violence and terrorism to create division within the country.<sup>149</sup> Nevertheless, all these accusations should have not justified the Egyptian military to go to the ‘Heliopolis’<sup>150</sup> to topple democratically elected president Mohamed Morsi.

Of course there were popular grievances in Egypt at that moment, but such grievance could have been resolved and dealt with through normal democratic and legal means rather than coup d’état. There is no justification for the military’s coup d’état. Change of government through Extra-constitutional means should be reserved only for an exceptional circumstance when the use of legal and democratic avenues for deposing authoritarian or totalitarian government becomes futile. The military should not be allowed to intrude into civilian democratic governance for whatsoever reasons. The role of the army should be limited to defend territorial integrity of the country, and preserves its security<sup>151</sup> as also provided by the Egyptian constitution<sup>152</sup>; and is not established to serve as a king maker and refer in the civilian government or as an agent to democracy. This is because the involvement of military in a democratically elected civilian government would entail the subversion of democracy as expressed by the will of the people through the election ballot. The Egyptian army created a precedent that may not auger well for the future of constitutional rule in the country by overthrowing a democratically elected president.

---

<sup>148</sup> Presidential election in Egypt, Final report, The Carter Center, May-June, 2012, P-61

<sup>149</sup>Alexander G.Markovsky, *Liberal Bolshevism: America did not defeat Communism She Adopted It*, Indianapolis, Dog Ear Publishing, 2016, P-216.

<sup>150</sup> *Heliopolis* is the Egyptian Presidential Palace and Residence. It’s located in the suburb of Heliopolis, Northeast of Central Cairo and East of the Nile in Egypt. It was originally built as the grand Heliopolis hotel in 1910, and now it is for the use of the president of Egypt.

<sup>151</sup>John J. Johnson (ed.), *the Role of the Military in Sub- Sahara Africa*, Princeton, N.J.: Princeton University Press. 1962, P-143.

<sup>152</sup>The Egyptian Constitution adopted on 29 November, 2012 and entered into force on 26 December, 2012, Article 194.

Furthermore, such means of accession to power is also considered as an unacceptable and anachronistic act under the OAU/AU normative framework on unconstitutional change of government. In fact Coup d'état is not defined under AU's relevant instruments, and rather it defines the situations which constitute unconstitutional change of government, to include coup d'état as defined by *Jonathan Powell and Clayton Thyne*.

In a nutshell, the removal of democratically elected Mohamed Morsi was undoubtedly a coup d'état by any definition. It fits with all elements of coup d'état as defined by *Jonathan Powell and Clayton Thyne*; as “illegal and overt act by the military or other elites within the state apparatus to unseat the sitting head of state using unconstitutional means, and seizing and holding power at least for seven days.”<sup>153</sup> The Egyptian army toppled a democratically elected president Mohamed Morsi through the use of unconstitutional means. It was the army that made the president under house arrest and declared the overthrow of the democratically elected president Mohamed Morsi.

### **3.5. AU's Response to the 2013 Change of Government in Egypt: a Policy of Exceptionalism and a Pernicious Precedent?**

In the aftermath of president Morsi's ousting on July 3, 2013, the peace and security council of the African union instantly labeled the event as unconstitutional change of government and suspended Egypt from AU's activities. At its 384th meeting held on 5 July 2013, the Council considered the situation in Egypt further. In the communiqué adopted at the end of its deliberations, the Council recalled the relevant AU instruments on unconstitutional changes of Government, notably the Lomé Declaration of July 2000 and the African Charter on Democracy, Elections and Governance of January 2007, which provide for the automatic implementation of specific measures whenever an unconstitutional change of Government occurs, and reiterated AU's condemnation and rejection of any illegal seizure of power. The council stated:

*“The overthrow of democratically-elected president, Mohamed Morsi did not conform to the relevant provisions of the ‘<sup>154</sup>Egyptian Constitution’ and, therefore, fell under the definition of an unconstitutional change of Government, as provided*

---

<sup>153</sup>Jonathan Powell and Clayton Thyne, ‘Global instances of coups from 1950 to 2010: A new dataset’, *Journal of Peace Research*, 2011, P-252.

<sup>154</sup> Pursuant to the 2012 constitution of Egypt, government can be changed only through democratic election and peaceful transfer of power was a basic principle of the constitution., see also Article 6 and Article 208 of 2012 Egyptian constitution.

*for in the relevant AU instruments. Accordingly, Council decided to suspend the participation of Egypt in the AU's activities until the restoration of constitutional order".<sup>155</sup>*

In this regard, the AU'S PSC decision was hailed by observers as a sign that the organization was capable of taking a principled stance and applying sanctions to all its members, even the most powerful. This decision has left a significant precedent in enforcing AU's norm on unconstitutional change of government; and showed its intolerance to unconstitutional change of government within the African continent. Of course, failing to take legitimate measures against such events would set a pernicious precedent for other African countries. Thus, by suspending Egypt from membership AU has sent notice that such power grabs are no longer tolerated and that membership goes with certain standards and principles and coup D'état is not one of them. Furthermore, AU by this decision made a statement that 'unlike previous years when coup d'état were in fashion and the military had no qualms for their actions, any other means of ascending to power other than through elections are frowned upon and the only game in town is democracy'.<sup>156</sup>

However, AU could not stand firmly by its decision which requires restoration of constitutional order in Egypt before lifting the suspension, and on June 17, 2014 the African Union's Peace and Security Council (AUPSC) passed a decision to reinstate Egypt's membership with a far-reaching consequence. AU lifted Egypt's suspension up on the election of the person who were responsible for the July 3, 2013 coup d'état, Field Marshal Al-sisi. The Peace and Security Council communiqué stated that:

*"The council decides to lift the suspension of the participation of Egypt in AU's activities, as contained in paragraph 6 of communiqué PSC/PR/COMM.(CCCLXXXIV), and invites Egypt to immediately resume its participation in the activities of the AU, 'on the understanding that this does not*

---

<sup>155</sup>AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union at its 384<sup>th</sup> Meeting* (PSC/PR/COMM. (CCCLXXXIV), 5 July 2013, paragraph 5.

<sup>156</sup>Eki Yemisi Omorogbe, 'A Club of Incumbents? The African Union and Coups d'état', *Vanderbilt Journal of International Law*, Vol. 44, 2011, P-138.

*constitute a precedent<sup>157</sup> in terms of adherence to the relevant provisions of Decision Assembly/AHG/Dec.269.(XIV) Rev.1 on the prevention of unconstitutional changes of Government and strengthening the capacity of the AU to manage such situations adopted by the 14th Ordinary Session of the Assembly of the Union, held in Addis Ababa, from 31 January to 2 February 2010,<sup>158</sup> and article 25 (4) of the African Charter on Democracy, Elections and Governance, which stipulate that perpetrators of unconstitutional changes of Governments cannot participate in the elections held to restore constitutional order.”<sup>159</sup>*

AU did give no reason in its decision why it re-instates Egypt’s membership before constitutional order was not formally restored. But, since this decision comes after Egypt held presidential election on May 2014, it’s valid to conclude that the Peace and Security Council considered presidential election as a formal restoration of constitutional order<sup>160</sup>, though constitutional order was not restored as provided by its own norms. Furthermore, the peace and Security Council seems to have convinced that the suspension of Egypt for close to a year has sent a strong message to the Egyptian stakeholders regarding ‘AU’s attachment to its principles and instruments’ as stated in its decision<sup>161</sup>. However, in the opinion of this writer, it was the surrounding political and diplomatic pressure exerted by the Egyptian authority against AU that has shaped the outcome of this decision. Egypt had deployed a robust campaign lobbying the AU commission and the peace and Security Council to ensure that its suspension was ended. In addition, since Egypt is ‘one of the principal financiers of African union’<sup>162</sup>, it seems her absence

---

<sup>157</sup>This caveat of the council by itself indicates that, the council resumed Egypt’s membership having the knowledge that this decision would set a bad precedent.

<sup>158</sup>This decision of the Assembly clearly prohibits perpetrators of unconstitutional change of government from participating in election held to restore constitutional order. See also, paragraph 6 of AU’s General Assembly decision on the prevention of unconstitutional change of government and strengthening the capacity of African union to manage such situation, which was adopted during the 14<sup>th</sup> ordinary session of the assembly held on February 2, 2010 at Addis Ababa, Ethiopia.

<sup>159</sup>AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union at its 442<sup>nd</sup> Meeting* (PSC/PR/COMM. (CCCLXXXIV), 17 June, 2014 paragraph 6 and 8.

<sup>160</sup> Ibid, Paragraph 6 & 7.

<sup>161</sup> Ibid.

<sup>162</sup>Phidile Lukhele and Oghenerobor Akpor, ‘African Union ten years after: solving African problems with Pan-Africanism and the African renaissance’, African Institute of South Africa, 2013, P-10.

was deeply felt by the African union. Thus, the writer's conclusion is that, diplomatic pressure and the importance of Egypt in African union has forced the peace and Security Council to reinstate Egypt's membership.

The decision of the council, however, has many negative outcomes. First, the decision constitutes a direct disregard of the AU norm proscribing the legitimization of unconstitutional change of government through election. All AU'S legal instruments on unconstitutional change of government clearly prohibit change of government through unconstitutional means. These instruments require public condemnation of such change and suspension of the member state from AU'S activities until constitutional order is restored in a concerned member state. However, contrary to AU norms, the Egyptian army chief, Abdel Fatah Al-sisi, toppled a democratically elected president, Mohamed Morsi, held election to legitimize his 'coup-born' regime through election and become the Egyptian president on 2014. Before restoration of constitutional order, which is a precondition for lifting suspension pursuant to relevant AU instruments, the AU'S peace and Security Council reinstate Egypt to the continental organization for the mere fact coup makers legitimize their regime through election. Thus, the Council's decision to reinstate Egypt's membership, though constitutional order was not restored yet, is a clear violation of its own norms which require restoration of constitutional order as a precondition of lifting suspension; and by deciding to reinstate Egypt's membership before restoration of constitutional order, the Council put a precedent of legitimizing 'coup-born' regime through election.

Second, the decision of the council has the prospect of putting a precedent that undermines the legitimization of AU norms on unconstitutional change of government for application in future cases. Contrary to the 'AU norms'<sup>163</sup> banning perpetrators of unconstitutional change of government, Abdel Fatah Al-sisi, who was a perpetrator of the July 2013 coup d'état, participated in the election held to restore constitutional order? Thus, this decision can be interpreted as conferring legitimacy on the election of a president who was responsible for

---

<sup>163</sup>In this case AU norms refers to AU's General Assembly decision on the prevention of unconstitutional change of government and strengthening the capacity of African union to manage such situation, which was adopted during its 14<sup>th</sup> ordinary session held on February 2,2010 and African charter on democracy, election and governance which were the basis of the Council in both decisions. However, it should be noted that Egypt is not party to this Charter.

unconstitutional change of government. Therefore, the Council is wrong to legitimize the presidency of Abdel Fatah Al-sisi, because in the event of such unconstitutional change of government in another AU member state, there is a serious risk that those responsible will cite the case of Egypt as an example to justify the legitimacy of their participation in election held to restore constitutional order.

Thirdly, this decision would subject the African Union to an accusation for using double standard or *policy of exceptionalism* in applying the same rule differently. In certain cases, for instance, in the case of Madagascar, the AU stood firmly by its principle and refused to resume Madagascar's membership until constitutional order was restored; and banned *Andre Rajoelina*, the perpetrators of coup d'état who ousted *Ravalomanana's* government, from participating in the election held to restore constitutional order. On the other hand, there is no argument over the role of President Abdel Fatah Al-sisi in the July 3, 2013 coup d'état that took place in Egypt, and he was a perpetrator of the coup. However, unlike the case of Madagascar, AU has never contested the candidacy of Al-sisi in election held to restore constitutional order in Egypt; rather it recognized and legitimized the candidacy of Al-sisi by sending election monitors to observe the presidential election. Moreover, the AU did not question the legitimacy of President Abdel Fatah Al-sisi before resuming Egypt's participation in the activities of AU. Thus, this shows that AU adopted a policy of exceptionalism and double standard in applying its own norms to similar scenarios.

Finally, the decision of the council would have also the effect of undermining the progress achieved in the ongoing process of constitutionalism in the African continent, which is at its nascent stage, and would constitute a threat to peace and security in Africa. During post colonial era, there was no constitutional or democratic avenue existed to replace an autocratic or authoritarian regime. Thus coups d'état were accepted as the normal way of changing regimes since many sitting governments would in no way hand over power peacefully<sup>164</sup>. After they come into power through such means Coup makers and autocrats felt confident that they could get a pass from their fellow coup makers elsewhere on the continent. However, this trend is changing since the end of 1990s, when the Organization of African Unity adopted a policy

---

<sup>164</sup>Steven Barracca, 'Military Coup in the Post-cold war era: Pakistan, Ecuador and Venezuela', Third world quarterly, vol. 28, no.1, 2007, P-137.

against unconstitutional change of government. Since then, changes have taken place in the constitutional politics landscape of Africa. Politics of the bullet which marked the era of military coups has been replaced by politics of ballot with almost all AU member states holding regular elections. Facing domestic revulsion from their own people and strong outside condemnation, authoritarian and military junta experienced rifts.<sup>165</sup> They are becoming obsolete and have been jettisoned through constitutional engineering of popular uprising as has been witnessed in the northern Africa since 2011. But, AU's decision to resume Egypt's membership before constitutional order is restored would have the effect of undermining all these progress achieved in the field of democratic constitutionalism. AU should have to firmly stand by its norms which ban perpetrators of coup d'état from participating in an election held to restore constitutional order as it did in Madagascar's case, and should have maintained the suspension until constitutional order is formally restored.

### **3.6. Restoration of Constitutional Order under the AU Norms on Unconstitutional Change of Government: Constitutional *Status Quo Ante* or Holding Masqueraded Electoral processes?**

Both the AU's legal instruments and practice on unconstitutional change of government provide different direction, with varying degrees of specificity, on when constitutional order is said to have restored. Both the Lome declaration and African charter on democracy, election and governance (ACDEG) used different wordings. The Lome declaration for instance refers to "a speedy return to constitutional order"<sup>166</sup> which suggests a return to constitutional '*status quo ante*' and potentially the restoration to power of the deposed leader. Accordingly, before AU lift suspension, the perpetrators of unconstitutional change of government have to give back power to the leader whom they deposed through unconstitutional means. Thus, pursuant to the Lome declaration, constitutional order is said to have formally restored when the perpetrators surrender the power which they accessed through unconstitutional means to a democratically elected leader or government.

---

<sup>165</sup>Ibid.

<sup>166</sup>Lome declaration on the framework for an OAU response on unconstitutional change of government adopted on from 10-12 July, 2000, at Addis Ababa, Ethiopia, Paragraph 9.

On the other hand, African charter on democracy, election and governance states that, “the situation that leads to suspension have to be resolved”<sup>167</sup> before lifting suspension. In this case, ACDEG is unclear as to what constitute ‘resolving the situation’ and left undefined. However, it’s not in dispute that this situation implies a range of possible response that encompasses a return of constitutional *status quo ante* and extends beyond it. This provision is based on assumption that an election which excludes the perpetrators will be held to resolve the situation. Thus, pursuant to ACDEG, constitutional order is said to have restored when either the perpetrators give back power to the deposed leader, or when election which exclude perpetrators of the change is hold to restore constitutional order and a leader is elected democratically.

In this regard, the present practice of African union also shows variation in all case of unconstitutional change of government as to what constitute restoration of constitutional order. For instance, in 2008, *Andre Rajoelina* ousted *Ravalomanana*’s government. AU condemned the coups and suspended Madagascar from the activities of the continental organization, and insisted that sanctions would remain in place until elections were held in which neither the deposed president nor the coup maker were candidates.<sup>168</sup> AU firmly stood by its position until constitutional order was restored through election, when *Hery Rajaonarimampianina* was elected on 7 January 2014 as a president of the country through an election held to restore constitutional order. AU instantly resumed Madagascar membership on 27 January, 2014 following the inauguration of democratically elected leader. In this case, constitutional order is said to have restored when a new government or leader is elected through election held to restore constitutional order which exclude perpetrators of the coup.

Contrary to the Madagascar case, AU adopted different approach in the case of Egypt as discussed here in above. Considering the election of Abdel Fatah Al-sisi, who was at the centre of 2013 coup d’état, as a restoration of constitutional order, AU lifted its suspension on Egypt. In this case, restoration of constitutional order for the AU, is holding an election which even did not exclude the perpetrators of the coup d’état. In the same cases, coup makers in the Central African Republic (CAR) (2004), Togo (2005) and Mauritania (2007 & 2009) were elected through an

---

<sup>167</sup>Article 26 of African charter on democracy, election and governance, adopted by the eighth ordinary session of the assembly held at Addis Ababa, Ethiopia on January 30, 2007.

<sup>168</sup> AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union* (PSC/PR/COMM. (CLXXXI), adopted at its 181<sup>st</sup> Meeting, held on March 20, 2009.

election held to restore constitutional order. AU then recognized these coup makers as a legitimate regime by lifting its suspension. In all three cases, AU considered holding legislative and presidential election as return to constitutional rule and as a precondition to lift the suspensions.<sup>169</sup> It was only in the case of Sao Tome and Principe (2003) that constitutional *status quo ante* happened. Thus, to AU, restoration of constitutional order is either constitutional *status quo ante* or holding masqueraded election to legitimize a coup-born regime as the case may be.

However, this is not the purpose that AU norms on unconstitutional change of government ought to achieve. It's obvious that the purpose of these norms is to put a definitive end to unconstitutional change of government which undermines the progress achieved in the ongoing democratization processes and constitutes a threat to peace and security in Africa. The purpose of these norms is not to legitimize coup-born regimes through election, as AU did in the case of Egypt, Togo, Central African Republic and Mauritania. Thus, restoration of constitutional order should be interpreted to mean either constitutional *status quo ante* or holding a democratic election which exclude the perpetrators of the change; and unless otherwise, it would defeat the purpose of AU norms on constitutional change of government.

### **3.7. The Legitimacy of Change of Government through People Driven Revolution under AU's Normative Framework**

The legitimacy of popular uprisings is very debatable. However, many philosophical treatises, historical agreement and practice show moral and legal permissibility, and even necessity, to rise up against abusive regime. For instance, the *Magna Carta Libertatum* agreed by king John and rebelling barons, stipulated that “in the event of offence in any respect against any man and transgression of any of the articles of peace or this security the people had the right to distrain up on and assail[the king] in every way possible.”<sup>170</sup> Thomas Aquinas on the other hand, in his

---

<sup>169</sup> See, AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union* (PSC/PR/COMM. (XXXIII), adopted at its 33<sup>rd</sup> Meeting, held on June 24, 2005, AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union* (PSC/PR/COMM. (XLIV), adopted at its 44<sup>rd</sup> Meeting, held on May 2005 & AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union* (PSC/PR/COMM. (XLVII), adopted at its 186 Meeting, held on July 1, 2009.

<sup>170</sup> The Magna Carta, Agreed to by King John of England, on June 1215, at Runnymede, England, Article 61.

treatise stipulated that, “If the authorities command an act of sin contrary to virtue, people are not only obliged to obey but are also obliged not to obey ungodly tyrants that must be overthrown with the use of just violence, if necessary.”<sup>171</sup> Furthermore, John Locke argued that a social contract between a ruler and ruled can be rescinded by the latter if the government takes away property and enslaves people.<sup>172</sup>

Under international law the precept of self-determination of peoples is enshrined in the United Nations Charter.<sup>173</sup> Moreover, the ICCPR recognizes that political self-determination is a human right and expressly affirms that, “by virtue of that right all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development.”<sup>174</sup> Importantly, the right of self-determination is that of peoples and not that of states, governments, political or religious factions, or terrorist minorities.<sup>175</sup> In fact, an illegal regime, engaged in a strategy of denial of self-determination and violations of relevant human rights, has no right under international law to assure its own survival. Its claims of necessity are illegitimate. Nevertheless, it is hard to conclude that international law comprehensively recognized popular revolution as a legitimate means to regime change.

At continental level, the popular uprising that took place in North Africa since 2011 has come up with an important legal issue which AU was not ready to deal with in a principled manner. In this regard *Jean Ping*, former chairperson of AU commission conceded this reality by stating that:

---

<sup>171</sup>John Locke, *Two Treatises of Government*, in Thomas Hollis (ed.), the Online Library on Liberty1764), P-331.

<sup>172</sup> According to Locke, the purpose of the government and law is to uphold and protect the natural rights of men. So long as the government fulfils this purpose, the laws given by it are valid and binding but, when it ceases to fulfill it, then the laws would have no validity and the government can be thrown out of power. Hence, he advocated a state for the general good of the people and pleaded for a constitutionally limited government. See Manzoor Elahi, what is social contract theory? Available at [www.sophiaomni.org](http://www.sophiaomni.org).

<sup>173</sup> The Charter of United Nations adopted on June 26, 1945, at the San Francisco, USA, Article 1, Paragraph 2, 55, Paragraph c, and Article 56.

<sup>174</sup> International Covenant on Civil and Political Rights (ICCPR) Preamble, Dec. 9, 1966.

<sup>175</sup> Jordan Paust, ‘International Law, Dignity, Democracy and the Arab spring’, Cornell International Law Journal, vol. 46, 2013, P-4.

*“The popular uprisings that occurred in Tunisia and Egypt posed serious doctrinal problems because they do not correspond to any of the cases envisaged by the 2000 Lome declaration on unconstitutional change of government.”<sup>176</sup>*

The 2011 revolution took place in many Northern African countries, but with different features and scales. For instance, in the case of Libya, primarily the uprising was against the four-decade rule of Muammar Qaddafi but later changed to civil war which invited international military intervention through UN Security Council.<sup>177</sup> It involves a full scale armed conflicts and can be categorized as an armed revolution. On the other hand, in the case of Egypt there was no such use of weapon by the protesters against security forces, though the protesters met with violent response from the security forces. In Tunisia, it was the president himself who resigned immediately after four weeks of steadily escalating riots across the country.

There were apparent divisions within the AU over how to respond to these events and the AU encountered difficulties in applying existing norms on unconstitutional change of government. While Many within AU regarded the removal of head of state through popular uprising as unconstitutional change of government [since constitutional democracy only allows for removal by election]; others were reluctant to support ‘citizen’s demand for democratic change’. This apparent division was created due to the incompatibility of existing AU norms with this recent phenomenon; and the popular uprisings of 2011 were not the same as the military *coups* that the AU has acted against earlier.

In this regard, the writer argues that there is a legal *lacuna* in the existing AU normative framework with respect to change of government through popular revolution. Of course there is no such instrument in the AU normative framework which prohibits popular revolution against autocratic regime, but also there is no such AU instrument which legitimizes regime change through popular uprising or revolution. No AU legal instrument(s) to guide the continental organization on this issue. The principle on which the AU’S democracy promotion is founded

---

<sup>176</sup> Jean Ping, The African Union and the Libyan crisis: Putting the records straight, *Letter from the Chairperson*, Issue 1, and November 2011.

<sup>177</sup> The United Nations Security Council Resolution adopted at its 649 meeting, on 17 March 2011 a Resolution by allowing member states to take all necessary measures to protect civilian populated areas under the threat of attack in Libyan Arab Jamahiriya. See also, UN resolution number 1973(2011).

does not provide an adequate response to popular uprising.<sup>178</sup> The principles are the only means to tackle challenges on ‘democratically elected’ governments. They deal with what constitute unconstitutional change of government and what responses such situations required; and they uncovered how to deal with popularly driven changes of government.

Contrary to this writer, Dr. Mehari Tadele, in his article titled ‘The North African uprisings under the African Union’s normative framework’, argued that the existing AU normative frameworks are adequate to address events such as the North African uprisings.<sup>179</sup> According to Dr. Mehari, taking the principle of interpretation based on the *object and purpose* of law, AU’s normative frameworks aim at entrenching constitutionalism and establishing constitutional regimes in Africa.<sup>180</sup> He further argued that, both the letter and the spirit of AU’s normative frameworks support demands asserting the general will of the people and Revolutions should be viewed as *extra-constitutional*, different from *unconstitutional* events.<sup>181</sup>

However, I strongly disagree with his argument. In The absence of such comprehensive normative framework, how AU can determine whether certain change is a popular uprising or unconstitutional change of government in the absence of clear norm which provides for clear criterion? Should a military-led popular uprising against ‘democratically elected’ or only civilian-led popular uprising against autocratic regime be legitimized? How AU would be able to take any measure against incumbent governments which use live bullet against unarmed demonstrators who calls for change? What would be the legal ground for AU to impose sanction against such incumbent government? All these questions are left unanswered by Dr. Mehari’s article. The Existing AU normative framework is also inadequate to address these entire questions. Practically, the AU response to the popular uprising in Egypt and Libya was evident in this regard. AU’S Peace and Security Council made statement which support “the legitimate aspirations of the Egyptian people for democracy”; and also condemned violence and violation

---

<sup>178</sup> Mikael and Eriksson, ‘Dealing with change: EU and AU Response to the uprising in Tunisia, Egypt and Libya’, Swedish Defense Research Agency (FOI), 2013, P-40.

<sup>179</sup> Dr. Mehari Tadele, “The North African uprisings under the African Union’s normative framework”, Horn Affairs English, September 30, 2012, P-2.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid

of international humanitarian law against civilians in Libya”<sup>182</sup>. However, AU’s response did not involve strong legal measure beyond expression of solidarity. As conceded by *Jean Ping*, this inability of AU to respond concretely to these events was due to the absence of legitimate normative framework.

### **3.8. The Legitimacy of Coup D’état Against Unelected Government under the AU Norms on Unconstitutional Change of Government**

All AU instruments on unconstitutional change of government deals with only changes that affect ‘democratically elected governments’<sup>183</sup>; and intentionally excluded any changes that would affect unelected regimes. Thus, it is simple to understand that AU instruments intended to protect only those regimes that came to power through ‘democratic election’. The a *contrario* reading of the ‘relevant provisions of AU norms reveals that the ouster of unelected regimes through unconventional or even violent means such as military coups or armed rebellion may not be considered an unconstitutional change of government’<sup>184</sup>. Thus, any group including the military can topple unelected incumbent government and invoke the relevant provision of AU norms to legitimize their action. In this regard, Mehari Tadele also argued that the reference by AU instruments to “military coup d’état against democratically elected government” can be construed as indicating that coup d’état against any undemocratic government is acceptable; and this would in effect encourage coup d’état against governments perceived as undemocratic, thus becoming a license for dissatisfied military groups.<sup>185</sup>

Here, the AU norms and practice on unconstitutional change of government seems to recognize what many scholars call ‘good coups’ or ‘democratic coup d’état’<sup>186</sup>, and change of undemocratic or unelected government through any extra-legal means would not amount to

---

<sup>182</sup> See Peace and Security Council Communiqué adopted at the 260<sup>th</sup> and 261<sup>th</sup> meetings held on February 16, 2011 and February 23, 2011 respectively.

<sup>183</sup> Supra note no. 5.

<sup>184</sup> Kalkidan N. Obse, ‘The ‘African Spring’ and the Question of Legitimacy of Democratic Revolution in Theory and Practice’, 2013, P-258.

<sup>185</sup> Mehari Tadele, ‘a Coup or a Revolution? The Egyptian Political and Legal Debacle’, Al Jazeera Centre for Studies, 2013, P-5.

<sup>186</sup> According to Ozan O. Varol, although all military coups have anti-democratic features, some coups are distinctly more democracy-promoting than others because they respond to popular opposition against authoritarian or totalitarian regimes, overthrow those regimes, and facilitate free and fair election. See also, Ozan O. Varol, ‘Democratic coup d’état’, Harvard international law journal, volume 53, P-22.

unconstitutional change of government pursuant to the AU norms. The 2011 changes of government in Egypt and Libya are prime examples for this. On February 11, 2011, the Egyptian Armed Forces seized power from President Hosni Mubarak, who was an elected president, but perceived by many Egyptian as undemocratic , through a coup d'état . The coup was staged in response to determined protests over eighteen days by hundreds of thousands of Egyptians demanding the ouster of the autocratic and corrupt Mubarak regime and its replacement with democracy. The military [the Supreme Council of the Armed Forces or SCAF] seized power from Mubarak and assumed control of government power. However, the AU has never called the 2011 change of government in Egypt unconstitutional. In Libya, the rebellions overthrow president Mummer Gaddafi; and the AU in this case also never called the change unconstitutional since there was no election in Libya and Gaddafi was a prominent autocratic and totalitarian president. Therefore, pursuant to AU norms on unconstitutional change of government, the overthrow of unelected or undemocratic government through violent means such as coup d'état is not prescribed.

### **3.9. Concluding Remarks**

The 2011 popular uprising that begun in Tunisia spread out all over the Northern African shores affecting the political dynamics of many countries in this region. In Tunisia, mass civic insurrections led to ousting of the dictatorial and authoritarian regime of President *Zine el-Abidine Ben Ali*. In Libya, the regime was toppled following civil war and outside military intervention. In Egypt, the popular uprising that begun on January 25, 2011, brought an end to the 30-year rule of President Hosni Mubarak. But, as President Mohamed Morsi failed to uphold the democratic values on which a well-rounded democracy depends, the removal of Hosni Mubarak from power could not brought to an end popular protest in Egypt. Rather it continued until the military declare the removal of President Mohamed Morsi from power on July 3, 2013, the action that resulted in suspension of Egypt from the African union on July 5, 2013. While AU's decision to suspend Egypt has obtained praise, it also placed the African union between a rock and hard place as Egypt continued to exert diplomatic pressure on the continental organization so that her suspension would end. Added to her diplomatic pressure, Egypt's importance to the African union, especially her financial contribution, led the African Union to bend its own norms and reinstate Egypt membership, though Adel Fatah Al-sisi, the perpetrator of the 2013 coup d'état, was climbing to power at that time

## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

#### 4.1. Conclusion

Accession to political power in Africa is marred with difficulties. In post-independence era, accession to power was often achieved mainly through unconstitutional means. These took a form of coup d'état, removal of democratically elected government by mercenaries and armed rebels, amendment of constitution and electoral laws to prolong term limit, and refusal to relinquish power after losing election. However, the trend changed somewhat in the 1990s onwards, when the organization of African unity (OAU) started to adopt various legal instruments to address systematically and consistently the problem of unconstitutional change of government. The norm against unconstitutional change of government began with measures require restoration of constitutional order in response to coup d'état in Sierra Leone. It was followed by the 1999 Algiers decision which provided suspension of any governments that comes to power through unconstitutional means from the organization. At its July 2000 summit held in Lome, Togo, the OAU came out with a more comprehensive normative framework, the Lome declaration on the framework for an AOU response to unconstitutional changes of government [Lome Declaration]. When the OAU transformed itself into the AU in 2000, the new organization's founding constitutive Act, AU Constitutive Act, included among its principles condemnation and rejection of unconstitutional change of government. In 2007, an AU summit approved a new African charter on democracy, elections and governance (ACDEG). Among other provisions, ACDEG recognizes the supremacy of constitution and stipulates that any revisions of constitutions be based on national consensus. It also prohibits perpetrators of unconstitutional change of government from participating in subsequent elections and even warns that coup makers may be tried before an African court. The July 2002 protocol relating to the establishment of the Peace and Security Council of the African union; as well as the Malabo protocol on the amendments to the Protocol Creating the African Court of Justice and Human Rights are among those legal instruments that adopted by the OAU/AU. All these instruments provide a framework of norms and principles, whose strict observance would significantly reduce the risk of unconstitutional change of government on the African continent. However,

despite all these normative ramifications, African continent continues to face the challenge of unconstitutional change of government due to various factors.

The first factor is related to OAU/AU's inconsistent, unpredictable and incoherent response to the problem. In some cases, for example in the case of Madagascar, AU suspended the country from participating in AU's activities until constitutional order was restored. Whereas, in the case of Mauritania, where the military seized power, suspended and imposed sanctions on Mauritania. However, AU lifted the suspension and sanctions imposed on Mauritania before election to restore constitutional order was held, a move that consolidated General Mohamed Aziz's grip on power, and raised doubts on AU's response to unconstitutional change of government. Unlike the case of Madagascar, in the case of Egypt, AU did not contest the candidacy of General Abdel Fatah Al-sisi, as it did in the case of Madagascar; and lifted Egypt's suspension for the mere fact that the coup plotters legitimized their regime through election. The second factor is related to legal *lacuna* in the existing AU's normative framework on unconstitutional change of government. The existing instruments are unclear as to when constitutional order is said to have restored; whether change of government through popular uprising, as seen in Northern Africa in 2011, is legitimate or not; whether change of undemocratic and unelected government through unconstitutional means is legitimate or not.

#### **4.2. Recommendations:**

Based on finding of this study the writer forwards the following recommendations:-

- 1. Consolidation of all AU legal Norms against Unconstitutional Change of Government into a Single Comprehensive Legal Framework.** AU norms prohibiting unconstitutional change of government are found in different instruments in a scattered manner. Therefore, the African union should bring together all these norms into a simple and accessible single comprehensive legal framework. This single legal framework should clearly provide: What circumstances constitutes unconstitutional change of government; what measures to be applied in case when such circumstance take place in member states; when constitutional order is said to have restored; as to the fate of regimes that retain government power without holding election (unelected regimes); and when popular uprisings are or are not unconstitutional change of government.

2. **The Establishment of permanent expert body which mandated with the implementation of AU norms on unconstitutional change of government as a subsidiary body to the Peace and Security Council of the African Union.** Primarily the power to implement the AU norms on unconstitutional change of government is mandated to the Peace and Security Council and there is no permanent expert body that is solely responsible to implement these norms. As the AUPSC is responsible for the overall peace and security issues of the African continent, it would be impossible for the PSC to implement these norms effectively. Thus, AU should consider the establishment of permanent expert body which would offer technical support to the Peace and Security Council by assessing and monitoring unconstitutional change of government.
3. **Adoption of a Strong Sanction Regime on Unconstitutional Change of Government that includes the possibility of military intervention:** AU norms provided a variety of punitive measures that could be implemented incrementally when democratically elected governments overthrown through unconstitutional means. The sanction ranges from condemnation to prosecution of the perpetrators. However, the sanctions are not successful in preventing the phenomenon of unconstitutional change of government. Thus, AU should adopt strong punitive measures including military intervention; as it authorized in case of war crime, genocide and crime against humanity.
4. **Consistent, Predictable and Coherent Response to Every Unconstitutional Change of Government.** Both the Organization of African Unity and the African union adopted a robust of norms on unconstitutional change of government, but at practical level AU response shows inconsistency, unpredictability and incoherence. Thus, to overcome the challenges of unconstitutional change of government in Africa, the African Union should respond to each and every unconstitutional change of government in a consistent, coherent and predictable manner, as such approach and stance pave the way for the democratization process in Africa.

## Bibliography

### A. Books

1. W.Friedland and Roseberg, *African socialism*, Stanford University press, 1965.
2. E. Luttwak, *Coup D'état a practical Hand Book*, Harvard University press, 1979.
3. M.Meredith, *The state of Africa: a History of Fifty Years Independence*, Jonathan Ball publishers, 2005.
4. M.Mindzie, *The African Charter on Democracy, Election and Governance: Business as usual?* Handbook of Africa's International Relations, 2014.
5. C.Onwumechili, *African Democratization and the Military Coups*, Greenwood publishing Group, 1998.
6. L.Du Plessis and M.Hough, *Managing African Conflicts: The Challenge of Military Intervention*, Institute for Security Studies, 2000.
7. Samuel, *Coups and Army Rule in Africa*, New Haven, Yale University Press, 1976.
8. John Stremlau, *The International Politics of Nigerian Civil War*, New Haven, Yale University Press, 1977.
9. C. Riziki Majinge, *Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council*, the Canadian Yearbook of International Law, 2010.
10. Skopcol T., *States and Social Revolution: a Comparative Analysis of French, Russia and China Revolutions*, Cambridge, Cambridge University Press, 1979.
11. Jeff Goodwin, *No other Way out: States and Revolutionary Movements from 1945-1991*, Cambridge, Cambridge University Press, 2001.
12. Cooper Frederick, *Africa since 1940: the past and present*, Cambridge, Cambridge University, 2002.
13. Les Switzer, *Power and Resistance in an African Society*, Madison, the University of Wisconsin Press, 1993.
14. Nouri, Gana, *the Making of the Tunisian Revolution: Contexts, Architects, Prospects*, Edinburg, Edinburg University Press, 2013, P-127.
15. Jeremy, M. Sharp, *Egypt: the January 25 Revolution and Implications for U.S Policy*, Diane Publishing Co., 2011.

16. El-Mahdi Rabab & Marfleet Philip, *Egypt: Moment of Change*, the American University in Cairo Press, 2009.
17. Lisa, Blaydes, *Election and Distributive Politics in Mubarak's Egypt*, Cambridge, Cambridge University Press, 2011.
18. Hesham Sallam, *Egypt's Parliamentary Elections, 2011-2012: a Critical guide to a Changing Political arena*, Tadween Publishing, 2017.
19. Alexander G. Markovskiy, *Liberal Bolshevism: America did not defeat Communism She Adopted It*, Indianapolis, Dog Ear Publishing, 2016.
20. John J. Johnson (ed.), *the Role of the Military in Sub- Sahara Africa*, Princeton, N.J.: Princeton University Press. 1962.

## **B. Articles in Journals.**

1. Ozan O. Varol, 'The Democratic Coup D'état', *Harvard International Law Journal*, Vol. 53, 2012
2. Jonathan Powell and Clayton Thyne, 'Global Instances of Coups from 1950 to 2010: A New Dataset', *Journal of Peace Research*, 2011.
3. Japhet M., 'Military Coups and Military Regimes in Africa', *South African Journal of Military Studies*, Vol. 8, No.4, 1978.
4. Alan Wells, 'The Coup D'état in Theory and Practice: Independent Black African', *American Journal of Sociology*, Vol. 79, 1994.
5. O'Brien k., 'Military Advisory Groups and African Security: Privatized Peacekeeping' *Frank Cass*, Vol.5, 1999.
6. John Iliffe, 'The Organization of the Maji Maji Rebellion', *Journal of African History*, volume 3, 1967.
7. Prof. Pacifique Manirakiza, "Insecurity implications of unconstitutional changes of government in Africa: from military to constitutional coups", *Journal of Military and Strategic Studies*, center of military and strategic studies, Volume 17, Issue 2, 2016
8. Lansana Gberie, 'The May 25 Coup D'état in Sierra Leone: A Militariat Revolt?', *Journal of African Development*, Vol. 22, No.3/4, 1997.
9. Dumbuya, Peter A., "ECOWAS Military Intervention in Sierra Leone: Anglophone-Francophone Bipolarity or Multipolarity?", *Journal of Third World Studies*, Vol. 25, No. 2, 2008.

10. Tiyaniana Maluwa, 'Ratification of African Union Treaties by Law, Policy and Practice', *Melbourne Journal of International Law*, Volume 13, 2012.
11. Andrea Ansani, & Vittorio Daniel, 'About the Revolution: the Economic Motivation of the Arab spring', *International Journal of Development and Conflict*, V. 3, 2012.
12. Hassan Islam and Dyer Paul, 'The State of Middle Eastern Youth', *Journal of the Muslim world*, Vol. 107, 2017.
13. Mohammad Fadel, 'Public Corruption and the Egyptian Revolution of January 25: Can Emerging International Anti-Corruption Norms Assist Egypt Recover Misappropriated Public Funds?', *Harvard International Law Journal*, vol.52, April 2011.
14. Eki Yemisi Omorogbe, 'A Club of Incumbents? The African Union and Coups d'état', *Vanderbilt Journal of International Law*, Vol. 44, 2011.
15. Steven Barracca, 'Military Coup in the Post-cold war era: Pakistan, Ecuador and Venezuela', *Third world quarterly*, vol. 28, no.1, 2007
16. Jordan Paust, 'International Law, Dignity, Democracy and the Arab spring', *Cornell International Law Journal*, vol. 46, 2013.
17. Kalkidan N. Obse, 'The 'African Spring' and the Question of Legitimacy of Democratic Revolution in Theory and Practice', 2013.
18. Habiba Ben Barka and Mthuli Ncube, 'Political fragility in Africa: are military coups d'état a Never-Ending Phenomenon', African Development Bank publication, 2012.
19. Sabelo Gumedze, 'the Elimination of Mercenarism in Africa: A Need for a New Continental Approach', Monograph No. 147, Institute for Security Studies, 2008.
20. Judit Barna, 'Coup in the Central African Republic: Chronicle of a fall foretold', European Parliament Publication, 2013.
21. Jack Goldstone, 'Towards a Fourth Generation Revolutionary Theory', *Annual Review of Political Science*, No.4, 2001.
22. Chidi Anselm Odinkalu, 'Concerning Kenya: The Current AU Position on Unconstitutional Changes in Government', Open Society Justice Initiative, 2008.

### **C. Other Archives.**

1. J.Shola Omotola, 'Unconstitutional Change of Government in Africa; What Implication for Democratic Consolidation?' Nordiska Afrika institute, Uppsala, 2011.

2. Mammo Muchie, Phidile Lukhele and Oghenerobor Akpor, 'African Union ten years after: solving African problems with Pan-Africanism and the African renaissance', African Institute of South Africa, 2013.
3. Jeremy M.Sharp, 'Egypt in transition', congressional Research Service, 2012.
4. Fundikila wazambi, 'Military Coup D'état against Democratically Elected government in Africa and International Law: The Recent Cases of Mali and Egypt', 2015.
5. Khaled Wahba, 'the Egyptian Revolution 2011: The Fall of the Virtual Wall-the Revolution Systems Thinking Archetype', 2016.
6. Mattew VanDyke, 'The Arab Spring and the Democratic Domino Theory', the Freedom Fighter Blog, March 1, 2012.
7. Adrea Tati & Gennaro Gervasio, 'Egypt's Second January Uprisings: Causes and Consequence of a would-be Revolution', Department of Modern History, Politics and International Relations Macquarie University, 2011.
8. Abulof, Uriel, 'What is the Arab third estate' Huffington Post, March 10, 2011.
9. Emma Birikorang, 'Coups D'état in Africa- a Thing of the Past?', Kofi Annan International Peace Keeping Training Centre, Policy Brief No.3, 2013.
10. J 'kayode Fayomi, 'Mercenaries and African Conflicts: Critique', 2004.
11. Francis Nguendi Ikome, 'Good Coups and Bad Coups: The limits of the African Union's injunction on unconstitutional changes of power in Africa' Johannesburg Institute for Global Dialogue, Occasional paper No 55, 2007.

#### **D. Legal Instruments**

1. The Magna Carta, Agreed to by King John of England, on June 1215, at Runnymede, England.
2. The Charter of United Nations adopted on June 26, 1945, at the San Francisco, USA.
3. OAU Convention for the Elimination of Mercenarism in Africa adopted on July 3, 1977, at Libreville, Gabon.
4. The Charter of Organization of African Unity (OAU), Adopted by Heads of African States and Governments, on May 25 1963, at Addis Ababa, Ethiopia.
5. Lome Declaration on the Framework for an OAU Response to Unconstitutional Change of Government, Adopted at the 36<sup>th</sup> ordinary session of the assembly of Heads of state and governments held on from 10-12 July, 2000, at Lome, Togo.

6. Constitutive Act of the African Union adopted by the Assembly of Heads of State and Government at its 36<sup>th</sup> ordinary session held on 11 July, 2000 in Lome, Togo.
7. Protocol on the Amendments to the Constitutive Act of African union, adopted by the assembly of the African Union, at its 1<sup>st</sup> and 2<sup>nd</sup> ordinary session, held on February 3, 2003 and July 11, 2003 in Addis Ababa, Ethiopia and Maputo, Mozambique.
8. Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Adopted by the Assembly of the Africa Union at its 1<sup>st</sup> ordinary session, held on July 9, 2002, at Durban, South Africa, entered into force on December 26, 2003.
9. African Charter on Democracy, Election and Governance, adopted by the 80<sup>th</sup> Ordinary Session of the Assembly of the African Union held on 30 January, 2007, in Addis Ababa, Ethiopia.
10. Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situation of Unconstitutional Change of Government in Africa adopted by the AUPSC, on December 17-19, 2009, at Ezulwini, Kingdom of Swaziland.
11. The Malabo Protocol on the Amendments to the Protocol Creating the African Court of Justice and Human Rights.
12. The Egyptian Constitution adopted on 29 November, 2012 and entered into force on 26 December, 2012.
13. International Covenant on Civil and Political Rights (ICCPR), Adopted by the General Assembly of the United Nations, on 19 December, 1966.

### **C. Cases**

1. AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union at adopted its 384<sup>th</sup> Meeting* (PSC/PR/COMM. (CCCLXXXIV), held on 5 July, 2013, at Addis Ababa, Ethiopia.
2. AU Peace and Security Council [AU PSC], *Communiqué of the Peace and Security Council of the African Union adopted at its 442<sup>nd</sup> Meeting* (PSC/PR/COMM. (CDXLII), held on 17 June, 2014, at Addis Ababa, Ethiopia.

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

---

Addis Ababa, Ethiopia, P.O.Box 3243 Tel.: (251-11) 5513 822 Fax: (251-11) 5519 321  
Email: [situationroom@africa-union.org](mailto:situationroom@africa-union.org)

---

PEACE AND SECURITY COUNCIL

384<sup>TH</sup> MEETING

5 JULY 2013

ADDIS ABEBA, ETHIOPIA

PSC/PR/COMM.(CCCLXXXIV)

COMMUNIQUÉ

#

COMMUNIQUÉ

The Peace and Security Council of the African Union (AU), at its 384<sup>th</sup> meeting held on 5 July 2013, in the presence of the Chairperson of the Commission, took the following decision on the situation in the Arab Republic of Egypt:

**Council,**

1. **Takes note** of the update provided by the Commissioner for Peace and Security and the briefing made by the Commissioner for Political Affairs on the situation in Egypt, as well as of the statement made by the Permanent Representative of Egypt to the AU;
2. **Recalls** its previous pronouncements on the situation in Egypt, in particular communiqué PSC/PR/COMM.(CCLX), adopted at its 260<sup>th</sup> meeting held on 16 February 2011, in which Council, among others, noted the deep aspirations of the Egyptian people, especially its youth, for change and the opening of political space, expressed the AU's solidarity with the Egyptian people, whose desire for democracy is consistent with the relevant AU instruments, and recognized the exceptional nature of the situation then prevailing in Egypt. Council **further recalls** press statement PSC/PR/BR.3(CCLXVIII) adopted at its 268<sup>th</sup> meeting held on 23 March 2011, which welcomed the positive evolution of the situation, as well as the relevant paragraphs of the decisions on the reports of the Peace and Security Council on its Activities and the State of Peace and Security in Africa adopted by the Assembly of the Union at its 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> Ordinary Sessions, held in January and July 2012, and in January and May 2013, respectively;
3. **Notes** that, while significant progress has been made in the transition, notably with the election, in June 2012, of a President of the Republic, Egypt continues to face serious challenges, marked by the growing frustration of many Egyptians over the management of the country, cumulative economic difficulties, deteriorating security, political and social polarization and lack of consensus on the best way forward. Council **recalls** the appeals and efforts made by the AU, including the mission undertaken to Egypt by the Panel of the Wise in June 2011, to impress upon the Egyptian stakeholders the need for constructive dialogue and compromise in order to overcome their differences and put the national interest before personal, partisan and ideological considerations;
4. **Further notes** the escalation of the situation over the past few days, which led to the overthrow of the elected President Mohamed Morsi, the suspension of the Constitution adopted by referendum in December 2012, and the appointment and swearing in of a caretaker Head of State. Council **expresses deep concern** at the risks the prevailing situation poses for the long-term stability of Egypt and cohesion of its people, with far-reaching national and regional consequences. Council **endorses** the press statements on the situation in Egypt issued by the Chairperson of the Commission on 3 and 4 July 2013;
5. **Recalls** the relevant AU instruments on unconstitutional changes of Government, notably the Lomé Declaration of July 2000 and the African Charter on Democracy, Elections and Governance of January 2007, which provide for the automatic implementation of specific measures whenever an unconstitutional change of Government occurs, and **reiterates** AU's condemnation and rejection of any illegal seizure of power;

#

#

6. **States** that the overthrow of the democratically elected President does not conform to the relevant provisions of the Egyptian Constitution and, therefore, falls under the definition of an unconstitutional change of Government as provided for in the instruments mentioned in paragraph 5 above. Accordingly, and as mandated by the relevant AU instruments, Council **decides** to suspend the participation of Egypt in the AU's activities until the restoration of constitutional order;

7. **Calls on** all Egyptian stakeholders to embrace the spirit of dialogue and mutual accommodation and to refrain from any acts of violence and retribution. Council **stresses** the obligation of all Egyptian stakeholders to work towards the fulfillment of the legitimate aspirations of the Egyptian people as embodied in the February 2011 Revolution;

8. **Encourages** the Egyptian political actors to persevere on the path of national reconciliation that will contribute to a smooth preparation for elections leading to a return to constitutional order. In this regard, Council **urges** the new Egyptian authorities to engage, without delay, in inclusive consultations towards the adoption of a consensual timeframe for the organization of free, fair and transparent elections;

9. **Emphasizes** the solidarity of the AU with the people of Egypt and its commitment to assist in whatever way possible the process aimed at speedily returning the country to constitutional order, and to support long-term efforts to address the structural problems facing Egypt. In this respect, Council **welcomes** the plan of the Chairperson of the Commission to dispatch a team of high-level personalities to Egypt to interact with the ruling authorities and other Egyptian stakeholders, as they work towards a transition that would lead to an early return to constitutional order. Council **requests** that preparations for the dispatch of this mission be expedited and **encourages** the Chairperson of the Commission to take any other measures that she would deem appropriate to facilitate the resolution of the current crisis and the building of a consensus on the way forward among the Egyptian stakeholders;

10. **Appeals** to AU partners, both bilateral and multilateral, to lend their full support to AU's efforts and to work towards a coordinated approach on the situation. In this respect, Council **requests** the Chairperson of the Commission, under the AU's leadership, to establish an International Consultative Forum that would bring together Egypt and relevant international stakeholders to facilitate coordinated action in support of a transition leading to the restoration of constitutional order, the deepening of the democratic process, and the mobilization of economic and financial support commensurate with the needs of Egypt and the challenges facing the country;

11. **Decides** to remain actively seized of the matter.

#

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

---

Addis Ababa, Ethiopia, P.O.Box: 3243 Tel.: (251-11) 5513 822 Fax: (251-11) 5519 321  
Email: [situationroom@africa-union.org](mailto:situationroom@africa-union.org)

---

PEACE AND SECURITY COUNCIL  
442<sup>TH</sup> MEETING  
17 JUNE 2014  
ADDIS ABABA, ETHIOPIA

PSC/PR/COMM.2 (CDXLII)

COMMUNIQUÉ

## COMMUNIQUÉ

The Peace and Security Council of the African Union (AU), at its 442<sup>nd</sup> meeting held on 17 June 2014, adopted the following decision on the situation in the Arab Republic of Egypt:

### **Council,**

1. **Takes note** of the final report of the AU High-Level Panel for Egypt [PSC/PR/3.(CDXLII)], established by the Chairperson of the Commission on 8 July 2013, on the implementation of its mandate, as well as of the presentation made by the Commissioner for Peace and Security;
2. **Recalls** communiqué PSC/PR/COMM.(CCCLXXXIV), adopted at its 384<sup>th</sup> meeting held on 5 July 2013, and press statements PSC/MIN/BR.2(CCCLXXXVII), PSC/PR/BR.2(CCCLXXXIX), PSC/PR/BR.(CCCXC) and PSC/PR/BR.(CCCXCV) adopted at its 387<sup>th</sup>, 389<sup>th</sup>, 390<sup>th</sup> and 395<sup>th</sup> meetings held on 29 July, 14 August, 16 August and 13 September 2013, respectively, as well as communiqué PSC/AHG/COMM.3(CDXVI) adopted at its 416<sup>th</sup> meeting held on 29 January 2014 and press statement PSC/PR/BR.(CDXXIX) adopted at its 429<sup>th</sup> meeting held on 16 April 2014. In this regard, Council **reaffirms** the correctness of its decision characterizing the events of 3 July 2013 in Egypt as falling under the definition of unconstitutional changes of Government as stipulated in the relevant AU instruments;
3. **Recalls** the provisions contained in Article 7 (2, 3 & 4) of the Protocol Relating to the Establishment of the Peace and Security Council and the obligation of all AU Member States to comply with the decisions taken by Council in the discharge of its mandate;
4. **Commends** the members of the High-Level Panel, namely former Presidents Alpha Oumar Konaré of Mali and Festus Mogae of Botswana, as well as former Prime Minister Dileita Mohamed Dileita of Djibouti, for the commitment and dedication with which they discharged the mandate entrusted upon them;
5. **Expresses its appreciation** to the Egyptian stakeholders, as well as to the concerned African and international actors, for the cooperation extended to the High-Level Panel in the discharge of its mandate;
6. **Notes** the steps taken in the implementation of the Roadmap announced by the Egyptian interim authorities on 3 July 2013, including the holding of presidential elections on 25, 26 and 27 May 2014, as well as the preliminary statement issued by the AU Elections Observer Mission;
7. **Welcomes** the observations made by the Panel, as contained in paragraphs 63 to 82 of its report, and **endorses** its recommendations, as outlined in paragraphs 83 of the report, in particular with respect to:

- (i) the lifting of Egypt's suspension, considering (a) the progress made in the formal restoration of constitutional order, (b) the fact that the suspension of the country for close to a year has sent a strong message to the Egyptian stakeholders regarding AU's attachment to its principles and instruments, and (c) the need for the AU to remain engaged with Egypt and to accompany the efforts of the Egyptian authorities for the full implementation of the Roadmap,
- (ii) the need to promote national reconciliation and a political process that is representative of all sections of the Egyptian society, so long as they are committed to a peaceful political dialogue and to broaden the political space,
- (iii) the creation of conditions conducive to the holding of transparent, credible and inclusive parliamentary elections, as well as the signing and ratification by Egypt of all AU relevant instruments, notably the African Charter on Democracy, Elections and Governance, and the implementation of the provisions contained therein,
- (iv) respect for human rights, including the early trial, with due process, of all detainees and the release of those against whom there are no charges,
- (v) the elaboration of guidelines to determine the compatibility of popular uprisings with AU's norms on unconstitutional changes of Government,
- (vi) engagement with partners, for them to extend consistent support to AU's efforts towards the implementation of AU's norms on unconstitutional changes of Governments and the promotion of democracy, human rights and good governance, in line with the strategic partnerships between the concerned international actors and the AU,
- (vii) continued engagement of the AU with the Egyptian authorities and other stakeholders, to effectively contribute to the follow-up and implementation of the recommendations made by the Panel, and the submission of regular reports to Council by the Commission, and
- (viii) the imperative for all Member States to fully accept and comply with the decisions of Council, in line with the relevant provisions of the AU Constitutive Act and those of the Protocol Relating to the Establishment of the Peace and Security Council;

8. **Decides** to lift the suspension of the participation of Egypt in AU's activities, as contained in paragraph 6 of communique PSC/PR/COMM.(CCCLXXXIV), and **invites** Egypt to immediately resume its participation in the activities of the AU, on the understanding that this does not constitute a precedent in terms of adherence to the relevant provisions of Decision Assembly/AHG/Dec.269.(XIV) Rev.1 on the prevention of unconstitutional changes of

Government and strengthening the capacity of the AU to manage such situations adopted by the 14<sup>th</sup> Ordinary Session of the Assembly of the Union, held in Addis Ababa, from 31 January to 2 February 2010, and article 25 (4) of the African Charter on Democracy, Elections and Governance, which stipulate that perpetrators of unconstitutional changes of Governments cannot participate in the elections held to restore constitutional order;

9. **Further decides** that the determination of what constitutes a popular uprising shall be further elaborated by Council at the level of Heads of States and Government, in line with press statement PSC/PR/BR.(CDXXXII) adopted at its 432<sup>nd</sup> meeting held on 29 April 2014;

10. **Decides** to remain actively seized of the matter.