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**The Response of the African Union to the North Africa Revolutions of 2011:
Critical Analysis on the African Union Normative Frameworks Governing
Democracy, Constitutionalism and Unconstitutional Change of Government**

**Submitted in Partial Fulfillment of the Requirements of the Degree LLM in Public
International Law**

Addis Ababa University, College of Law and Governance Studies

By- Haile Guesh

Advisor- Girma Gizaw (PhD)

March 2013

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DECLARATION

I, Haile Guesh, do solemnly declare that the work presented in this thesis is original. It has never been presented to any other university or academic institution. Where someone's work has been used, due acknowledgment has been given. In this regard, I declare this work as originally mine. I accordingly present this work in partial fulfillment of the requirement for the award of the LLM Degree in Public International Law at the Addis Ababa University.

Haile Guesh

Signature_____

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DEDICATION

I dedicate this work to my family for their constant love and support.

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Acronyms

1. ACDEG African Charter on Democracy Election and Governance
2. ACHPR African Commission on Human and People's Right
3. ACJHR African Court of Justice and Human Rights
4. APRM African Peer Review Mechanism
5. APSA African Peace and Security Architecture
6. ASF African Standby Force
7. AU African Union
8. CADSP Common Africa Defense and Security Policy
9. CDR Constitutional Democratic Rally
10. EU European Union
11. GCC Gulf Cooperation Council
12. HRC Human Rights Council
13. ICC International Criminal Court
14. ICT Information and Communication Technology
15. LAS League of Arab States
16. NATO North Atlantic Treaty Organization
17. NDP National Democratic Party
18. NEPAD New Partnership for Africa's Development
19. NTC National Transition Council of Libya
20. OAU Organization of African Unity
21. OHCHR Office of the High Commissioner for Human Rights
22. OIC Organization for Islamic Cooperation
23. PAP Pan African Parliament
24. POW Panel Of the Wise
25. PSC Peace and Security Council of the AU
26. R2P Responsibility to Protect
27. UK United Kingdom
28. UN United Nations
29. UNGA United Nations General Assembly

- 30. UNHCR United Nations High Commissioner for Refugees
- 31. UNSC United Nations Security Council
- 32. US United States

TERMINOLOGIES

1. Revolution

In its broader definition, Revolution refers to *"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"*.¹ Whereas, according to the narrow definition, *"Revolutions entail not only mass mobilization and regime change, but also more or less rapid and fundamental social, economic and/or cultural change, during or soon after the struggle for state power."*²

2. Uprising

The word uprising refers to *"a revolt by a limited segment of the society against a constituted government or its policies."*³ It also involves localized armed insurrection with narrow popular base.⁴

3. Civil War

Civil war refers to *"an armed combat within the boundaries of a recognized sovereign entity between parties subject to a common authority at the outset of the hostilities"*.⁵

4. Unconstitutional Change of Government

Unconstitutional Change of Government is an illegal emplacement or replacement of a democratically elected government. According to the African Union normative instruments such as the Lomé Declaration on Unconstitutional Change of Government, the African Charter on Democracy, Election and Governance and the Rules of Procedure of the Assembly, unconstitutional change of government can take the following five situations: a military Coup d'état against democratically elected government; intervention by the mercenaries to replace a

¹ Jeff Goodwin, (June 2001), *No Other Way Out: States and Revolutionary Movements, 1945-1991*, Cambridge University Press, p.5

² Ibid

³ Random House, (2000), *Webster's Unabridged Dictionary*, Second Edition (New York, USA Random House)

⁴ Ibid

⁵ Professor David Armitage, (2009), *Civil War and Revolution: What can the study of civil war bring to our understanding of revolutions?*, AGORA, vol. 44, No-2, Harvard University, p. 19

democratically elected government; replacement of democratically elected government by armed dissident groups, and rebel movements; the refusal by an incumbent to relinquish power to the winning party after free, fair and regular election and any amendment or revision of a constitution or legal instrument which is an infringement on the principles of democratic change of government.⁶

⁶ OAU Assembly of Heads of State and Government, *Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government (AHG/Decl.5 (XXXVI))* (hereinafter the Lomé Declaration), The African Charter on Democracy, Elections, and Governance (ACDEG), Article 23(5), and the Rules of Procedures of the Assembly of the Union (Article 37(2))

ABSTRACT

This research thesis is prompted by the North African Revolution of 2011 that toppled President Ben Ali of Tunisia, Hosni Mubarak of Egypt and Muammar Gaddafi of Libya. Exploring the causes, triggers, chronologies and consequences of the North African Revolutions as well as evaluating the response of the African Union to the North Africa Revolutions in general and the Libyan civil war in particular is the central mission of this thesis. Since diplomacy was the pathway followed by the African Union to resolve the Libyan civil war, this paper examines the adequacy and efficiency African Union's diplomacy and political solutions to the Libyan civil war.

One of the major issues which is extensively discussed in this thesis is the relationship between North Africa Revolutions and the African Union normative frameworks and instruments governing democracy, constitutionalism and unconstitutional change of government. Solving the puzzle whether Revolutions are legitimate rights of the people under the African union normative and policy frameworks is the crux matter of this paper. The adequacy and potential of the African Peace and Security Architecture to respond to Revolutions is also inspected.

Concerning the Responses of the African Union to the North Africa Revolution and the Libyan civil war, this paper contends that, even if the support of the African Union to the Revolutions is unequivocally clear, its responses however are slow and weak. Moreover, the African Union was also effectively ignored, marginalized and sidelined by external actors, such as the Western Nations and North Atlantic Treaty Organization.

On the relationship between the North Africa Revolutions and the African Union normative frameworks governing democracy, constitutionalism and unconstitutional change of government, this thesis is of the opinion that there exists no inherent contradiction between the two. Revolutions are morally required and legally permissible under various African Union norms and legal instruments.

Finally, by taking some basic lessons from the nature and consequences of the North African Revolutions, some recommendatory points are forwarded to the African Union and its member states so as to tackle the causes of future Revolutions in Africa. Besides, due to the failures the African Union political solutions to the Libyan crises and the resulting foreign military intervention, some proposals are suggested towards an effective implementation of Article 4(H) of the constitutive act of the African Union which empowered the Union to intervene in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. Lastly, since the Libyan civil war has exposed not only the existence of serious rift between the African Union and Western powers, but also the marginalization of the African Union by the latter, some practical solutions to advance the principle of "African solutions to African Problems" are provided so as to avoid the marginalization of African Union by external actors on matters originally belong to Africa.

Key Words- *Revolution, Democracy, Constitutionalism, Unconstitutional Change of Government*

CHAPTER ONE

1. GENERAL FRAMEWORK OF THE RESEARCH

1.1. Background of the Study

The early days of 2011 were historic and dramatic across Northern African states and the wider Middle East Region. The self immolation of a highly frustrated young man, Mohammad Bouzazi, a well educated 26 years old Tunisian street vendor, who was unable to find a job that would suit his qualifications in the Tunisian town of Sidi Bouzid, triggered the massive explosion of popular protest and Revolution across Tunisia.¹ His death caused an outrage among the villagers of Sidi Bouzid, who took to the streets.²

It was this incident that has triggered the Revolution that engulfed Tunisia and spread like wildfire to Egypt, Libya and the wider Arab world.³ Supported and mobilized by the various tools of Information and Communication Technology (ICT) and social media networks such as Face book and Twitter in collaboration with vibrant satellite Television coverage, the protests which were initially occurred in Tunisia drastically changed to a popular Revolution which is resulted in the fall of most dictatorial and authoritarian regimes of Tunisia, Egypt and Libya.⁴

Following the unprecedented and unpredicted Revolutions in North Africa, the international community as a whole was able to see the making of the new eras across the region. Ben Ali fled Tunisia, while President Hosni Mubarak of Egypt had to leave office after three weeks of defying internal and external calls for his resignation.⁵ The Libyan leader, Muammar Gaddafi,

¹ Gary Decker, (2012), *What's in a Revolution?, The timing of the Tunisian Revolution*, Conflict Management Program, Johns Hopkins University, School for Advanced International Studies, p.7

² Ibid

³ Issaka K. Souaré and Berouk Mesfin, (March 31, 2011) *A critical look at the 2011 North Africa Revolutions and their implication*, A conference report, Institute for security studies (ISS), Hilton Hotel, Addis Ababa, Ethiopia, p.1

⁴ Rita Safraneck, (March 2012), *The Emerging Role of Social Media in Political and Regime Change*, ProQuest Discovery Guides, (March 2012), page 4 available at <http://www.csa.com.discoveryguides/discoveryguides>, Last accessed 7 April 2012

⁵ Amichai Magen, (2012), *On Political Order and the "Arab Spring"*, Israel Journal of foreign Affairs VI : 1, p.1

met an ignominious end in the hands of his captors, and after incessant airstrikes over Libya by the North Atlantic Treaty Organization (hereinafter NATO), lasting nearly eight months.⁶

One of the main basic reason for the transformation of the former Organization of African Unity (hereinafter the OAU) to the brand new African Union (hereinafter the AU) is the need to shift from maintaining colonial independence of African states to a more pragmatic aspects of securing the realization of human rights, democracy, good governance and economic development of the African continent.⁷

In its ten years of existence, the AU has achieved significant accomplishment in the areas of human right, democracy, good governance and rapid economic growth in many member states of the AU.⁸ But this doesn't imply that AU has achieved its mission in totality. The AU has still a long way to go to fulfill its major objectives and policies that are already enshrined in its Constitutive Act and various legal instruments and decisions made by it and its organs so far. Most African states are still suffering from democratic deficiencies, unconstitutional change of governments, bad governance and deeply rooted socio-economic and political problems.⁹ Despite the AU is blessed with sufficient treaties and normative frameworks covering a wide range of issues, many African states are suffering from a glaring deficiencies of democracy, good governance and socio-economic development.

The most recent Revolutions that swept across North Africa have also posed a serious question as to the overall strength of Africa's democratic institutions and governance system. Predominantly caused by widespread governance problem like violation of civil and political rights, the existence of most repressive and authoritarian regimes, unconstitutional use of

⁶ Amichai Magen, Supra note at 5, page 1

⁷ Olympio Francisco K.N., (May 2004), *Transformation of the Organization of African Unity (OAU): A New Vision for the 21st Century, or Political Rhetoric?*, A Dissertation submitted to the Department of Political Science, Universität Trier, Germany, p.124

⁸ The African Union , for instance, has taken an explicit decision not to recognize countries in which democratic governments have been overthrown by coups d'état and other forms of unconstitutional change of government, also the African Peer Review Mechanism (APRM) and the New Economic Partnership for Development (NEPAD) has their rational of strengthening democracies, accountability and economic development

⁹ Rod Alence, (Spring 2009), *Democracy and Development in Africa*, the Journal of INTERNATIONAL INSTITUTE, Volume 16, Issue 2, p.3

governmental power, chronic corruption, unequal distribution of wealth and other issues, the Revolutions indicate the lack of effective implementation and realization of the AU legal and normative frameworks governing democracy, constitutionalism and good governance.

What is more, since Revolutions are rare and extraordinary events whose occurrence is difficult to anticipate, the Revolutions that toppled the three Head of States in North Africa have raised a number of legal, normative and ethical issues on the overall AU's system.

The first issue that demands special consideration in this respect is the response of the African Union to the North African Revolutions of 2011. When unforeseen events like Revolutions happened that will take everybody by surprise, international and regional organizations are expected to respond to such events in a timely and effective way. Accordingly, it is quite essential to see how the AU has responded to the Tunisia and Egypt Revolutions as well as the Libyan civil war. More specifically, the Libyan Revolution which was immediately changed in to disastrous civil war between Gaddafi forces and the opposition rebel forces and resultant military intervention by North Atlantic Treaty Organization (hereinafter NATO) posed many legal and political issues surrounding it. As a result of this, the response of the AU to the Libyan civil war and the consequent NATO military intervention on Libya has raised significant controversies and debates among politicians, large number of intelligentsia and scholars. Therefore, assessing the AU response to the North African Revolutions in general and to the Libyan civil war in particular is the central thrust of this thesis.

In addition to this, the other issue to be discussed is the relationship between the North African Revolutions and the AU normative framework governing democracy, constitutionalism and unconstitutional change of government. Since Revolutions and popular uprisings are very rare phenomena and due to the lack of precedents related to these events, one might curiously question the constitutionality and legality of Revolutions under the AU legal instruments and normative frameworks. So, it is critically important to analyze whether the people in one country have the right to change their government through Revolution like what the Tunisians and Egyptians did in 2011.

Furthermore, since longstanding Heads of States and Government in North Africa were toppled and overthrown by the popular Revolutions (in Egypt and Tunisia) and through bloody civil war

in Libya, it is significantly vital to assess the constitutionality of these change of governments resulted from the Revolutions in each respective country in accordance with various AU legal instruments like the African Charter on Democracy, Election and Governance¹⁰ (the ACDEG) and the Lomé Declarations on Unconstitutional Change of Government.¹¹

Besides, the North Africa Revolutions can also raise issues concerning the potentials and as well as the adequacy of the African Peace and Security Architecture (APSA) to effectively respond to Civilian-led protests and Revolutions.

Lastly, 2011, being the year of change, it has provided some valuable lesson for the AU in general and its member states in particular. The North Africa Revolutions has sent a strong emergency alert for the AU to further look forward towards an effective implementation of its legal instruments and institutions on democracy, constitutionalism and good governance.

1.2. Problem Statement

This study investigates not only the basic causes of the North Africa Revolutions, but also the response of the AU to these Revolutions that have resulted in the removal of Head of States in the region. While this study mainly tries to touch up with the three major Revolutions in Tunisia, Egypt and Libya, it will have a closer look at the response of the AU to the Libyan Revolution since it was characterized by several unique and peculiar features like the resulting civil war and the external NATO military intervention. Analyzing the adequacy and efficiency of the AU response to the Libyan civil war as well as exploring the major factors that have affected, undermined and influenced the responses of AU are one of the major point which is extensively discussed by the author of this paper.

In line with assessing the response of the AU to these events, this paper will also try to investigate the relationship between Revolutions and the AU normative frameworks governing democracy, constitutionalism and unconstitutional change of government. Since Revolutions are

¹⁰ The African Charter on Democracy, Elections, and Governance (ACDEG)

¹¹ OAU Assembly of Heads of State and Government, *Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government (AHG/Decl.5 (XXXVI))*, (hereinafter the Lomé Declaration on Unconstitutional Change of Government)

rare and extraordinary events, it will be very essential to assess them in light of the African Union normative frameworks and legal instruments. So, solving the puzzle whether there exist an inherent contradiction between the North African Revolutions and the AU instruments and normative frameworks is the major aim of this study.

In addition, the Revolutions that occurred in North Africa were unparalleled and posed serious doctrinal problems, because they do not correspond to any of the cases of unconstitutional change of government defined by the Lomé declaration on unconstitutional change of government or other AU legal instruments. Therefore, through the application and interpretation of several AU legal instruments on unconstitutional change of government, the legality and constitutionality of the changes of governments resulting from the Revolutions in Tunisia, Egypt and Libya will be critically examined.

Lastly, taking in to account the main socio-economic, demographic and political factors behind the occurrence of the North Africa Revolutions, the author will forward some concrete suggestions for the AU and its member states to tackle the causes of future Revolutions, unrests and instabilities in African.

So, having all the above mentioned points in consideration, the main research questions to be addressed by this study are listed below:

1.3. Research Questions

- What were the major backgrounds, causes, triggers and consequences of the North Africa Revolutions?
- Were the responses of the AU to the North African Revolutions in general and the Libyan civil war in particular adequate, effective and in conformity with various AU instruments and policies? If not, what are the basic factors which have shaped affected and influenced the response of the AU to the Libyan civil war?
- Was the African Union marginalized or sidelined by international actors like the UN, Western Powers and NATO in the handling of the Libyan civil war?

- Are the North Africa Revolutions compatible with various AU Normative Frameworks on Constitutionalism, Democracy and Unconstitutional Change of Government? Or do the people in one country have the right to change their government through Revolution?
- Were the Changes of governments resulting from the Revolutions in Tunisia, Egypt and Libya Constitutional or not according to the AU legal regimes governing unconstitutional change of government?
- Is the existing African Peace and Security Architecture posses the adequacy and potential to respond to Revolutions?

1.4. Objectives of the Study

1.4.1. General Objectives

This study has the following general objectives:

- Investigating the root causes of the North Africa Revolution of 2011
- Assessing the efficiency and adequacy of the AU response to the North Africa Revolutions of 2011 and tracing the major factors that have shaped, influenced and undermined the response of the AU to the North Africa Revolutions in general and the Libyan civil war in particular

1.4.2. Specific Objectives

This study has the following specific objectives:

- Examining the compatibility of the North Africa Revolution a and the AU normative frameworks governing democracy, constitutionalism and unconstitutional change of government
- Assessing the legitimacy of Revolutions under the AU legal norms and instruments
- Evaluating the constitutionality of change of governments through Revolutions in light of the AU legal regimes on unconstitutional change of governments

- Investigating the potential and adequacy of the African Peace and Security Architecture to respond to crisis such as the North Africa Revolutions
- Providing some concrete mechanisms for the AU and its member states to tackle the causes of future Revolutions, uprisings and unrests in Africa

1.5. Significance of the Study

Being a nascent and recent phenomenon, the events in the North Africa could potentially attract further jurisprudential and academic research in the future. This study could potentially serve as a springboard for other potential researchers to conduct further study in this area. This could in the long run contribute a lot for the progressive realization of democracy, constitutionalism and good governance in Africa by reducing the incidents of future Revolutions, upheavals and unrests in Africa.

1.6. Literature Review

Several authors have written on the various aspects of the North Africa Revolutions of 2011. The focus of most writers has been on the causes and consequences of these Revolutions as well their domino effect on other countries across Africa and the Middle East region. Some research is also conducted regarding the response of the African Union to the North Africa Revolutions.

Timo Behr and Mika Aaltola in "*The Arab Uprising: causes, prospects and implications*" describes the major social, economic and political causes behind the North Africa Revolutions.¹² They argue that the question why the North Africa Revolutions came about should be answered through the acknowledgement of socio-economic, political and demographic imbalances and deficit, that over the course of decades weakened the foundations on which authoritarian regimes of North Africa were built.

The most comprehensive perusal of the Libyan Revolution and civil war is conducted by the International Crisis Group Report on "*Popular Protests in North Africa and the Middle East (V)*:"

¹² Timo Behr and Mika Aaltola, (March 2011), *The Arab Uprising: Causes, Prospective and Implications*, The Finnish Institute of International Affairs

Making sense of Libya".¹³ This study intensively highlights the historical background surrounding the socio-economic, tribal and political nature of the Libya state with regard to the Revolution and the Libyan civil war.

On a more specific note, the response of the African Union to the North Africa Revolutions and its effectiveness has also been the subject of many papers. Roopanand Mahadew, in "*The African Union's responsibility to protect in the Libyan crisis 2011*" contended that the response of the African Union to the Libyan crisis was ineffective and inefficient.¹⁴ He argues that the African Union should have intervened in Libya to accomplish its responsibility to protect the Libyan population.

Kasaija Phillip Apuuli, in his work, "The Principle of '*African solutions to African Problems*' under the spotlight: *The African Union and the Libya Crisis*", poses the question whether the Africa Union's slogan of An African Solution to African problem was effectively applied to the Libyan crisis.¹⁵ He contends that since the response of the African Union was too slow, weak and inefficient, the management of the Libyan crisis by the AU was far from an African solution to Africa's problem.

Kathryn Sturman, in "*The African Union and the "Arab Spring": An exception to new principles or return to old rules?*",¹⁶ argues that even though the AU has one of the most interventionist legal regimes to intervene in member states for the protection of civilians, it however failed to intervene in Libya to protect Libyans from the brutal actions of Gaddafi forces due to its deeply entrenched non-interference and anti-colonial principles.

¹³ International Crisis Group (ICG), (6 June 2011), *POPULAR PROTEST IN NORTH AFRICA AND THE MIDDLE EAST (V): MAKING SENSE OF LIBYA*, Middle East and North Africa Report N° 107

¹⁴ Roopanand MAHADEW, (November 2011), *THE AFRICAN UNION 'S RESPONSIBILITY TO PROTECT IN THE LIBYAN CRISIS 2011*, A dissertation submitted in partial fulfillment of the requirements of the degree LLM in Human Rights and Democratization in Africa, University of Pretoria

¹⁵ Kasaija Phillip Apuuli, (September 2011), *The Principle of 'African solutions to African Problems' under the spotlight: The African Union (AU) and the Libya Crisis*, Open Society Institute, Africa Governance Monitoring and advocacy Project

¹⁶ Kathryn Sturman, (May 2012) *The African Union and the "Arab Spring": An exception to new principles or return to old rules?*, Istituto Per Gli Studi Di Politica Internazionale (ISPI) – Analysis

Concerning the NATO military intervention in Libya, While some consider that this intervention has a clear and genuine application of the norm of responsibility to protect, others like some AU officials, African heads of states and politicians, Non-Western governments and heavy weight writers considered the NATO intervention as a means of achieving forced regime change agenda on Libya which is motivated by their geo-political and economic interest on Libya.

Thomas Weiss regards the intervention in Libya as a genuine application of the responsibility to protect.¹⁷ Likewise, Francis E. Ramoin, in "*Why Intervention in Libya was Justified: A moral, political and operational defense for the coalition's military intervention in the 2011 Libyan uprising*", firmly asserts that the NATO military intervention in Libya was legally, politically and morally justified and also necessitated by the norm of responsibility to protect civilians instead of any other agendas.¹⁸

Contrary to these contentions, Frank O. Okyere & Mustapha` Abdallah, on their article entitled as, "*The NATO Intervention in Libya: Implications for the Protection of Civilians and the AU's Pan-Africanist Agenda*", argued that the NATO military intervention in Libya was motivated by the western nations desire of regime change in Libya under the guise of protection of civilians.¹⁹ Besides, they stress the negative impact of such type of military intervention on the Pan-Africanist agenda of the African Union. Moreover, Theo Neethling, in his research on "*South Africa, the African Union and International Intervention in Libya: A Critical Appraisal*", provides a comprehensive analysis on the response of the African Union to the Libyan civil war and also examines the controversy between the African Union and South African government against the NATO coalitions concerning the implementation of the military intervention on Libya.²⁰

¹⁷ T. Weiss, (2011), *Responsibility to protect (RtoP) alive and well after Libya*, Global Centre for the Responsibility to Protect available at www.globalr2p.org, Last accessed on 30 April 2011

¹⁸ Francis E. Ramoin, (January 25, 2012), *Why Intervention in Libya was Justified: A moral, political & operational defense for the coalition's military intervention in the 2011 Libyan uprising*, e-International Relations Journal

¹⁹ Frank O. Okyere and Mustapha` Abdallah, (June 2011), *The NATO Intervention in Libya: Implications for the Protection of Civilians and the AU's Pan-Africanist Agenda*, Kofi Annan International Peacekeeping Training Centre (KAIPTC),

²⁰ Theo Neethling, (2011), *SOUTH AFRICA, THE AFRICAN UNION AND INTERNATIONAL INTERVENTION IN LIBYA: A CRITICAL APPRAISAL*, A paper Presented at the 34th AFSAAP Conference, *Department of Political Science, University of the Free State, South Africa*, Flinders University

With regard the changes of governments resulting from the North Africa Revolutions, there are some glaring disparities on the determination of the constitutional nature of such changes of governments. For instance, Kathryn Sturman, in *“The African Union and the “Arab Spring”: An exception to new principles or return to old rules?”* argues that the change of government in Libya is constitutional since the Gaddafi regime is disqualified from the broadest definition of ‘democratically elected government’ challenged by unconstitutional change.²¹ However, Dr. Mehari Taddele Maru *“On unconstitutional changes of government: The case of the National Transitional Council of Libya”* dictates that the change of government in Libya is unconstitutional due to the armed nature of the change of government as well as the involvement of mercenaries by both sides of the Libyan civil war.²²

1.7. Research Methodology

This study is descriptive, narrative and analytical. It describes the historical background, causes, triggers, chronology and consequences of the North Africa Revolutions. It narrates and analyses not only the response of the AU to the North Africa Revolutions in general and the Libyan civil war in particular, but also the link between Revolutions and the AU normative frameworks on constitutionalism, democracy and unconstitutional change of government.

Extensive desk research has been carried out in the existing literature through published and unpublished books, journal articles, research papers, official reports, decisions and other scholastic resources. What is more, concerning the factual aspects of the Revolutions, different media outlets, online blogs, magazines and newspapers are largely utilized.

The primary sources reviewed in this study are mainly basic legal instruments of the AU, such as the Constitutive Act of the AU, the Lomé Declaration on Unconstitutional Change of Government, the African Charter on Democracy, Election and Governance (ACDEG), the Peace and Security Protocol and other AU instruments. The Peace and Security Council meetings and

²¹ Kathryn Sturman, (March 2011) *Unconstitutional Changes of Government: The Democrat’s Dilemma in Africa*, SAIIA, Governance of Africa’s Resource Program, Policy Briefing No 30

²² Mehari Taddele Maru, (March 2012), *On unconstitutional changes of government The case of the National Transitional Council of Libya*, African Security Review 21.1

Communiqués have also been important sources. The African Union website is somewhat informative and contains most of these important documents.

This study is premised with the realm of International Law. Article 38 of the ICJ Statute set out four classes as a source of International Law. These are international conventions, international custom, general principles of law recognized by civilized nations and judicial decisions as well as teachings of the most highly qualified publicists.

Three principal AU instruments have been chosen carefully in this study. The Constitutive Act is the founding treaty of the AU hence it lays out the principles, objectives and values regarding democracy, good governance and constitutionalism.

The Lomé Declaration on Unconstitutional Change of Government has been the most essential instrument in defining unconstitutional change of government and responding to them.

The African Charter on Democracy, Election and Governance (ACDEG) which was recently entered in to force on 15 February 2012²³ is also another AU instrument which is utilized in this study. Although it is ratified by only seventeen countries,²⁴ the other remaining non ratifying countries have an obligation to respect this Charter. According to the law of treaties as enshrined in the Vienna Convention on the Law of Treaties, once a state sign a treaty, even if it doesn't ratify it, it must refrain from engaging in the acts that would "defeat the object and purpose of the treaty".²⁵ So, the AU members that have not yet ratified the Charter are expected to conduct their affair in a ways that do not violate the provisions of African Charter on Democracy, Election and Governance. It is based on this assumption that this study employed the African Charter on Democracy, Election and Governance as one basic instrument governing the study at hand.

²³ AFRICAN UNION , *PRESS RELEASE N°003/2012 ENTRY INTO FORCE OF THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE*, available at, <http://www.africa-Union .org>, Last accessed on 3 May 2012

²⁴ AFRICAN UNION , *LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE (ACDEG)*, (2012), available at, <http://www.africa-Union .org> Last accessed on 3 May 2012

²⁵ The Vienna Convention on the Law of Treaties, Article 18

1.8. Limitation of the Study

One of the limitations of this study is concerning the availability of literatures. Though significant amount of scholarly work has already been written in English since the out-break of the North Africa Revolutions, on a subject such as the Arab Revolution, there are also substantial amount of materials written in Arabic language. So, focusing on materials which are written in English, this study will probably miss out insights from the Arab region and how the Arab people themselves understand and explain these events.

Secondly, the question why and how the North African Revolutions came about itself demands a huge research and investigation in itself. Though the author tries to figure out some of the basic causes and triggering factors behind the revolts, it is difficult to make an extensive and deep scientific analysis on how such events have happened and came about.

1.9. Delimitation of the Study

The study shall focus on North African Revolutions that occurred in the early days of 2011. Several protests and unrests across the Middle East region that are inspired by the North African Revolutions are out of the scope of this research. For this reason, this study will not cover any major uprisings that have occurred in Yemen, Bahrain, Syria and several other Middle East countries as a part of the “Arab Spring” or “Arab Awakening”.

Furthermore, this study is confined to assessing the responses of to the AU to North African Revolutions and analyzing them in line with various AU norms dealing with democracy, constitutionalism and good governance. As a result of this, issues such as the subsequent Post-Revolutionary political issues and transition processes in North African countries and the role of AU in facilitating such transitions is purely out of the realm of this study.

1.10. Outline of the Study

This study is composed of five chapters. The First Chapter deals with the background and basic structure of the study including the objective, the significance, methodology, literature review and limitation of the study.

Chapter Two provides a detailed description on the North African Revolutions of 2011. After providing a brief theoretical and conceptual analysis on the essence of Revolution, this chapter extensively explores the background, causes, triggers, chronologies and consequences of the Revolution in Tunisia, Egypt and Libya.

Chapter Three presents the responses of the AU to the North African Revolutions in general and the Libyan civil war in particular. After systematically providing sufficient narratives on the response of the AU to Libyan civil war from the very start of the civil war and NATO military intervention on Libya till the final death of the Libyan Leader Muammar Gaddafi, the author of this study will examine whether the overall responses of the AU to the Libyan civil war were timely, effective and adequate considering the various factors prevailing at that time. Finally, the chapter will end-up by pointing out some of the basic factors that have shaped, influenced and affected the AU response to the Libyan civil war.

Chapter Four analyzes whether the North African Revolutions are incompatible with various AU normative frameworks on democracy, constitutionalism and unconstitutional change of government. In doing so, it examines the legitimacy and constitutionality of Revolutions under the AU context. Moreover, this chapter investigates the constitutionality of change of governments resulting from the North African Revolutions and determines whether the consequent changes of government in Tunisia, Egypt and Libya are constitutional in accordance with AU laws governing unconstitutional change of government. Lastly, this chapter will wind up by critically examining the adequacy and potential of the African Peace and Security Architecture to respond to Revolutions like that of the North African types.

Chapter Five presents the authors conclusion and gives recommendation on how the AU should respond and tackle similar Uprisings in the future. What are expected of the AU and its member states not to witness such Revolutionary scenes is also recommended in this section of the study.

CHAPTER TWO

2. THE NORTH AFRICA REVOLUTIONS OF 2011: BACKGROUND, CAUSES, TRIGGERS, CHRONOLOGIES AND CONSEQUENCES

2.1. Introduction

On December 17, 2010, Muhammad Bouazizi, a 26 year old street vendor, went to work in the provincial town of Sidi Bouzid, a small rural town in Tunisia.¹ He, a graduate who had struggled to find work, had taken to selling fruit and vegetables as a way of feeding his family, and putting his sister through university.² Unfortunately, he had not acquired a license to sell goods, and a policewoman confiscated his cart and produce.³ So Bouazizi, who had had a similar event happen to him before, attempted to pay the fine to the policewoman.⁴ In response, the policewoman slapped him, spat in his face and insulted his deceased father.⁵ Her actions were to have a lasting effect on him. Feeling humiliated and infuriated, Bouazizi went to the provincial headquarters with the intent to lodge a complaint to local municipality officials.⁶ However, he was not granted an audience. Few hours later, Bouazizi returned to the headquarters, doused himself in flammable liquid and proceeded to set himself alight.⁷ After this incident, popular protests and Revolutions immediately broke out across Tunisia and spread like a wild fire to Egypt and Libya and also sparked further civil unrest in over a dozen countries in the wider Middle East. This is the phenomenon which is widely dubbed as the "Arab Spring".⁸

One man's self-immolation appeared to encapsulate a pent up sense of frustration which had been buried deep down inside the populations of the North Africa states concerning a broad scope of

¹ Alasdair Mc Cay, (June 2011), *The Arab Spring of Discontent*, A collection from e-International Relation, P.5, available at <http://www.e-ir.info/author/al-mckay/page/1> Last accessed on 5 June 2012

² Ibid

³ Ibid

⁴ Ibid

⁵ Michael J. Totten, (17 May 2012), *"The Woman Who Blew Up the Arab World"*, World Affairs Journal, p.1

⁶ Ibid

⁷ Ibid

⁸ While Yemen and Syria entered in to a full blown civil war, Bahrain, Jordan, Kuwait, Saudi Arabia, Iran, Iraq, Sudan, Uganda, Malawi, Morocco, Algeria, Mauritania, Burkina Faso, Senegal, Cameroon, Swaziland, Mozambique, and Djibouti witnessed some form of protests that were encouraged by the North Africa Revolutions.

social, economic and political issues.⁹ This is why; the self immolation achieved a mythical importance and marked the symbolic start of the North African Revolution.

The North Africa Revolutions of 2011 took the whole world by surprise. They were extraordinary and startling in their nature, scale, speed and consequences. The Jasmine Revolution of Tunisia led to President Ben Ali being deposed after 23 years in office. After massive popular Revolution, he left Tunisia on January 14, 2011 and fled to Saudi Arabia.¹⁰ Eighteen days of mass protest in Tahrir Square and various cities of Egypt, led to the resignation on February 11, 2011 of Hosni Mubarak, who had held his office for 30 years.¹¹ The Libyan Revolution that started on 15th February 2011 quickly turned in to full-fledged civil war between Gaddafi forces and the opposition rebel groups spearheaded by the National Transition Council (NTC). After eight months of bloody civil war and incessant NATO airstrikes over Libya, the Libyan leader Colonel Muammar Gaddafi¹² finally met a humiliating death in the hands of his captors.¹³

What is striking about the North Africa Revolution is not only their stunning speed and dramatic consequences, but also the role of Social Medias and Information Communication Technologies during the Revolutions. The new social Medias like Face book, Twitter and YouTube along with online bloggers and mobile telephony, all played an important role in communicating, coordinating, mobilizing and facilitating the protests during the North Africa Revolutions of 2011.¹⁴ These Social Media instruments which are usually considered as a main time wasters, served as a basic tool to mobilize and facilitate the Revolutions that toppled long serving head of states in North Africa. Since, the North African Revolutions are facilitated and executed with the help of such Social Media Networks; some have been so bold as to label these Revolutions as “Face book Revolutions” or “Twitter Revolutions”.¹⁵ The role of Satellite Television stations like “Aljazeera” was also very

⁹ Alasdair Mc Cay, Supra note at 1, p.6

¹⁰ Amichai Magen, (2012), *On Political Order and the “Arab Spring”*, Israel Journal of foreign Affairs VI : 1, p.1

¹¹ Ibid

¹² The name of the Libyan leader is spelt in different manner everywhere in various writing, such as Mohammed, Muammar, Gaddafi, Qaddafi, Gadafi, Ghaddafi, etc... In this thesis the name of the former Libyan Leader is spelt as “Muammar Gaddafi”

¹³ Amichai Magen, Supra note at 10

¹⁴ Anita Breuer, (November 2012), *The Role of Social Media in Mobilizing Political Protest: Evidence from the Tunisian Revolution*, German Development Institute, Discussion paper, p.13

¹⁵ Madeline Storck, (December 2011), *The Role of Social Media in Political Mobilization: a Case Study of the January 2011 Egyptian Uprising*, dissertation submitted to requirement for the Degree of M.A., University of St Andrews, Scotland, 20 p.19

instrumental in catalyzing, displaying and communicating these dramatic images of Revolutionary scenes from North Africa to the rest of the world.¹⁶

This Chapter is devoted to provide an extensive overview and narrative on the North African Revolutions of 2011. Commencing by highlighting the definitional, theoretical and typological aspects on the essence of Revolution, the chapter will move on discussing the backgrounds, causes, chronologies, triggers and consequences of the Tunisia, Egypt and Libya Revolution.

The question why the North Africa Revolutions came about was answered through the acknowledgement of socio-economic, political and demographic imbalances and deficit that over the course of decades weakened the foundations on which authoritarian regimes of North Africa were built. With the aim of fully understanding the causes of the Revolutions, this chapter scrutinizes the social, economic and political backgrounds of the Revolutions that happened in Tunisia, Egypt and Libya.

Since each of these Revolutions have their own distinctive features, this chapter also tries to identify the triggers, chronologies and the major consequences that resulted from the Revolutions in these three North African states.

2.2. The Essence of Revolution

2.2.1. Historical Background

According to historians' literature, human beings have witnessed hundreds of Revolutions, rebellions and social movements across all centuries all over all continents.¹⁷ Although many of them have seen glorious moments but many as well have not seen the light of glory.¹⁸ Nevertheless, their characterizations are more or less similar in their life-cycle's dynamism; starting from the deterioration of the socioeconomic, political and financial conditions during the pre-Revolution period, to the way they are born, the reasons of its ignition and the motivations behind the Revolutions, to the actions and reactions in the during-Revolution period and to finally the development of the new era in the post-Revolution time, Thermidorian.¹⁹

¹⁶ Madeline Storck, Supra note at 15

¹⁷ Khaled Wahba, (July 24-28, 2011), *The Egyptian Revolution 2011: The Fall of the Virtual Wall -The Revolution Systems Thinking Archetype*, the 29th International System Dynamics Conference, Washington, DC, USA, p.2

¹⁸ Ibid

¹⁹ Crane Brinton, (1965), *The Anatomy of Revolution*, revised ed. (New York, Vintage Books), p.34

Revolutions have occurred throughout human history, particularly during times of strong population expansion and rapid economic change.²⁰ However, modern Revolution, establish a new, just social order, usually is traced to the *French Revolution* of 1789.²¹ But the *American Revolution*, begun in 1776, provides an alternate, albeit less appreciated, model of modern Revolution.²² The American and French Revolutions, among the most important political events of the modern age, influenced the destiny of generations to come.²³ Both Revolutions championed profoundly important political changes that ultimately were animated by visions of a new kind of political order.²⁴ Other Revolutions include: the European Revolutions of 1848, the Russian Revolution of 1917, the Chinese Revolution of 1927, the Iranian and Nicaraguan Revolutions of 1979 and the 1986 People Power Revolution in the Philippines.²⁵ Apart from the Russian and the Chinese Revolutions, the Eastern European Revolutions following the fall of the Berlin Wall in 1989 saw multi-class coalitions topple seemingly powerful regimes amidst popular demonstrations and mass strikes in non-violent Revolutions.²⁶ Very recently and early in the new millennium, the “Color Revolutions” took place in the Balkan and across former vassal states of the Soviet Union, namely the Bulldozer Revolution in Serbia in 2000, the Rose Revolution in Georgia in 2003, the Orange Revolution in Ukraine in 2004 and the Tulip Revolution in Kyrgyzstan in 2005.²⁷ In 2011, the World has again witnessed a massive Revolutionary wave that brushed away the North African Countries of Tunisia, Egypt, Libya and spread like a wild fire to the wider Arab and Middle East Regions. These Revolutions are commonly dubbed as “The Arab Spring”²⁸

²⁰ Jack A. Goldstone, (July 2002), *Revolutions: Theoretical, Comparative, and Historical Studies*, 3rd Edition, San Diego: Harcourt publishing, p.320

²¹ Magstadt, T.M., (2004), *Understanding Politics: Ideas, Institutions, and Issues*, Belmont, C.A.: Thomas Higher Education, p.438

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Idowu Johnson, (2012), *CITIZEN REVOLUTION IN TUNISIA AND REGIONAL CONTAGION: LESSONS FOR SUB-SAHARAN AFRICA*, Journal of Sustainable Development in Africa, Volume 14, No.7, ISSN: 1520-5509, Clarion University of Pennsylvania, Clarion, Pennsylvania, p.26

²⁶ Ibid

²⁷ Raiser, M. and Kunicova, J, (19 May 2011), *What next for the Arab Spring? Lessons from the ‘Color Revolutions’*, World Bank, [online], Available at <http://blogs.worldbank.org/governance/what-next-for-the-arab-spring-lessons-from-the-color-revolutions> Last accessed on 29 June 2012

²⁸ Various terminologies are given to the North African Revolutions of 2011, like the Arab Awakening, the Arab Revolt, The Arab Uprising, The Arab Refolutions, etc...

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²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Idowu Johnson, (2012), *CITIZEN REVOLUTION IN TUNISIA AND REGIONAL CONTAGION: LESSONS FOR SUB-SAHARAN AFRICA*, Journal of Sustainable Development in Africa, Volume 14, No.7, ISSN: 1520-5509, Clarion University of Pennsylvania, Clarion, Pennsylvania, p.26

²⁶ Ibid

²⁷ Raiser, M. and Kunicova, J, (19 May 2011), *What next for the Arab Spring? Lessons from the ‘Color Revolutions’*, World Bank, [online], Available at <http://blogs.worldbank.org/governance/what-next-for-the-arab-spring-lessons-from-the-color-revolutions> Last accessed on 29 June 2012

²⁸ Various terminologies are given to the North African Revolutions of 2011, like the Arab Awakening, the Arab Revolt, The Arab Uprising, The Arab Refolutions, etc...

2.2.2. Definitions of Revolution

The word Revolution is originally derived from a Latin term, "*revolutio*", to mean "turn-around" and it is the origin of the word which indicates a fundamental change in power or organizational structures that takes place in a relatively short period of time.²⁹

Aristotle described two types of political Revolution:

- *Complete change from one constitution to another*
- *Modification of an existing constitution.*³⁰

The first usage of the term Revolution goes back to 1543 when Copernicus named his treatise on the movements of planets around the sun *De Revolutionibus orbium coelestium (On the Revolutions of Celestial Bodies)*.³¹ Since that time, the word itself refers to radical, transformative change and has many generic uses describing phenomena such as the industrial Revolution, sexual Revolution, Ethnic Revolution, Revolutions of Celestial Bodies, socio-economic and political Revolutions and others.³²

The very first political usage of the word Revolution was the time of United Kingdom civil war in 1688 to describe the replacement of James II with William III. The process was termed "*The Glorious Revolution*".³³

Jeff Goodwin gives two definitions of a Revolution. A broad one, in which he 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*".³⁴ This definition assumes that Revolutions, at least those truly wholly of the name necessarily requires the mobilization of large numbers of people against the existing state.³⁵

²⁹ Aristotle, (1964), *The Politics* V, tr. T.A. Sinclair (Baltimore: Penguin Books, p. 190

³⁰ Ibid

³¹ John Foran, (1993), "*Theories of Revolution Revisited: Toward a Fourth Generation*", *Sociological Theory* 11, p.1-20

³² Ibid

³³ Richard Pipes, *A Concise History of the Russian Revolution*, available at <http://www.chagala.com.russia.pdf> Last accessed on 3 July 2012

³⁴ Jeff Goodwin, (June 2001), *No Other Way Out: States and Revolutionary Movements, 1945-1991*, Cambridge University Press, p.5

³⁵ Ibid

Goodwin gives also a narrow definition, in which *"Revolutions entail not only mass mobilization and regime change, but also more or less rapid and fundamental social, economic and/or cultural change, during or soon after the struggle for state power."*³⁶ In this narrow definition, what counts as "rapid and fundamental change", however, is a matter of degree and the line between it and slow and less basic change can be difficult to draw in practice.

Jack Goldstone on other side defines 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"*.³⁷

Also, Theda Skocpol defined Revolution as *"rapid, basic transformations of society's state and class structures....accompanied and in part carried through by class-based revolts from below"*, attributing Revolutions to a conjunction of multiple conflicts involving state, elites and the lower classes.³⁸

Hague and Harrop defines Revolution as *"a situation when the existing structure of power is overthrown, leading to a long-term reconstruction of the political, social and economic order"*.³⁹

2.2.3. Theories of Revolution

Just as there are many definitions of Revolution, so also there are many theories of Revolution. However, political and socio-economic Revolutions have been studied in many Social Sciences, particularly Sociology, Psychology, Political Science and History. Scholars of Revolutions, like Jack Goldstone, Jeff Godwin, Roberts Gurr and other, differentiate four current 'generations' of scholarly research dealing with Revolutions.⁴⁰ The scholars of the first generation such as Gustave Le Bon, Charles A. Ellwood or Pitirim Sorokin, were mainly descriptive in their approach, and their explanations of the phenomena of Revolutions was usually related to social psychology, such as Le Bon's crowd psychology theory.⁴¹

Second generation theorists sought to develop detailed theories of why and when Revolutions arise, grounded in more complex social behavior theories. They can be divided into three major approaches:

³⁶ Jeff Goodwin, Supra note at 34

³⁷ Jack Goldstone, (2001), *"Towards a Fourth Generation of Revolutionary Theory"*, Annual Review of Political Science 4, p. 87

³⁸ Skocpol T., (1979), *States and Social Revolutions: A Comparative Analysis of France, Russia and China*, Cambridge and New York: Cambridge University, p.4

³⁹ Hague R., and Harrop M, (2004), *Comparative Government and Politics: An Introduction*, New York: Palgrave Macmillan, p.137

⁴⁰ Jack Goldstone, Supra note at 37

⁴¹ Ibid

psychological, sociological and political.⁴² From the sociological perspective, Functionalist Theorist saw society as a system in equilibrium between various resources, demands and sub-systems (political, cultural etc). Although the sociological scholars differed in their definitions of what cause disequilibrium, there is agreement that it is a state of severe disequilibrium that is responsible for Revolution.⁴³

From Political Science, scholars' writers such as Charles Tilly, Samuel P. Huntington, Peter Ammann and Arthur L. Stinchcombe utilized Pluralist Theories and Interest Group Theory to explain Revolution.⁴⁴ Those theories see events as outcome of power struggle between competing interest groups. In such a model, Revolution happen when two or more groups cannot come to terms within a normal decision making process traditional for a given political system, and simultaneously have enough resources to employ force in pursuing their goals.⁴⁵

Lastly, the psychological perspective followed Theories of Cognitive Psychology and Frustration-Aggression Theory and saw the cause of Revolution in the state of mind of the masses.⁴⁶ While they varied in their approach as to what exactly causes the people to revolt, they agree that the primary cause of Revolution is widespread frustration with existing socio-political situations. Implicit in these theories is that relative deprivation breeds a sense of resentment which contributes to political discontent. Relative deprivation is certainly a background factor in many Revolutions.⁴⁷ Revolutions only results from deprivation when combined with a belief that conditions are worse than they could and should be. What matters is not absolute deprivation, a condition which often breeds resigned passivity, but relative deprivations: a sense that rewards fall below expectations or entitlement.⁴⁸ Thus, when relative deprivation is widespread, instability can result. In the same vein, relative deprivation is certainly a background factor in many Revolutions.⁴⁹

⁴² Jack Goldstone, (1980), "*Theories of Revolutions: The Third Generation*", *World Politics* 32, p.425-53

⁴³ *Ibid*

⁴⁴ J. MILTON YINGER, MARK N. KATZ, (Winter 2001), *REVOLUTION: REFINING ITS DEFINING*, *International Journal of Group Tensions*, Vol. 30, No. 4, p.12

⁴⁵ Huntington, S.P., (1968), *Political Order in Changing Societies*, Yale: Yale University Press, p.140

⁴⁶ J. MILTON YINGER and MARK N. KATZ, *Supra* note at 44, p.12

⁴⁷ Gurr T., (1980), *Why Men Rebel*, Princeton, NJ: Princeton University Press, p.4

⁴⁸ *Ibid*

⁴⁹ *Ibid*

The criticism of the second generation of Revolutionary theories led to the rise of a third generation of theories, with writers such as Theda Skocpol, Barrington Moore, Jeffrey Paige and others expanding on the old Marxist class conflict approach, turning their attention to rural agrarian-state conflicts, state conflicts with autonomous elites and the impact of interstate economic and military competition on domestic political change.⁵⁰ Particularly Skocpol's *States and Social Revolutions*⁵¹ became one of the most widely recognized works of the third generation.

From the late 1980s a new body of scholarly work, i.e., the fourth generation, began questioning the dominance of the third generation's theories.⁵² The old theories were also dealt a significant blow by new Revolutionary events that could not be easily explained by them. The Iranian and Nicaraguan Revolutions of 1979, the 1986 People Power Revolution in the Philippines and the 1989 Eastern European Revolutions saw multi-class coalitions topple seemingly powerful regimes amidst popular demonstrations and mass strikes in nonviolent Revolutions.⁵³

2.2.4. Types of Revolution

In social science and literature, scholars have classified Revolutions into different types according to their degree of change and impacts. For example, Alexis de Tocqueville differentiated Revolutions in to three major types: political Revolutions, sudden but violent Revolutions that seek not only to establish a new political system but to transform an entire society and slow but total transformations of the entire society that take several generations.⁵⁴ On other hand, Marxist divides Revolutions into pre-capitalist, early bourgeois, bourgeois, bourgeois-democratic, early proletarian, and socialist Revolutions.⁵⁵ As for Charles Tilly, he differentiated between a coup, a top-down seizure of power, a civil war, a revolt and a "Great Revolution" (Revolutions that transform economic and social structures as well as political institutions, such as the French Revolution of 1789, Russian Revolution of 1917⁵⁶ or Islamic Revolution of Iran).⁵⁷ Other types of Revolutions include the social Revolutions;

⁵⁰ J. MILTON YINGER and MARK N. KATZ, *Supra* note at 44, p.12

⁵¹ Skocpol T., *Supra* note at 38

⁵² J. MILTON YINGER and MARK N. KATZ, *Supra* note at 44, p.12

⁵³ *Ibid*

⁵⁴ Roger Boesche, (2006), *Tocqueville's Road Map: Methodology, Liberalism, Revolution, and Despotism*, Lexington Books, ISBN0739116657, available at, <http://www.books.google.com.books> Last accessed on 30 July 2012

⁵⁵ Charles Tilly, (1995), *European Revolutions, 1492-1992*, Blackwell Publishing, ISBN 0631199039, p.16

⁵⁶ *Ibid*

⁵⁷ *Ibid*

proletarian or communist Revolutions, failed or abortive Revolutions, violent or nonviolent Revolutions.⁵⁸

The term Revolution has also been used to denote great changes outside the political sphere.⁵⁹ Such Revolutions are usually recognized as having transformed in society, culture, philosophy and technology much more than political systems; they are often known as “Social Revolutions”.⁶⁰ Some Revolutions can be global, while others are limited to single countries.⁶¹

2.3. The North African Revolutions of 2011

This section is entirely devoted to explore the main causes, triggers, chronologies and consequences of the North Africa Revolutions of 2011. After providing an extensive coverage on the social, economic, political and demographic factors behind these Revolutions, this chapter will pinpoint the most important consequences of the Revolution in Tunisia, Egypt and Libya.

2.3.1. The Tunisia Revolution

2.3.1.1. Background of the Revolution

Tunisia won its independence after seventy eight years of French administration on 20 March 1956.⁶² On 22 July 1957, the Tunisian Republic was declared and Habib Bourguiba became the first president of the country.⁶³ The Neo-Destour Independence Movement, under the leadership of President Habib Bourguiba installed a de facto single-party regime.⁶⁴ The 1959 constitution gave the president hegemonic power within the state’s institutions.⁶⁵ Political repression in Tunisia was the hallmark of events under Bourguiba.⁶⁶

On 7 November 1987, Tunisia’s then-Prime Minister, General Zine El-Abidine Ben Ali, ousted President Habib Bourguiba, who had been elected president for life, reasoning that his health status

⁵⁸ Charles Tilly, *Supra* note at 55

⁵⁹ J. MILTON YINGER and MARK N. KATZ, *Supra* note at 44, p.18

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² Nebahat TANRIVERDI, (November 2011), *BACKGROUND OF THE TUNISIAN REVOLUTION*, *Alternative Politics*, Vol. 3, No. 3, p.554

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ Idowu Johnson (2012), *CITIZEN REVOLUTION IN TUNISIA AND REGIONAL CONTAGION: LESSONS FOR SUB-SAHARAN AFRICA*, *Journal of Sustainable Development in Africa*, Volume 14, No.7, ISSN: 1520-5509, Clarion University of Pennsylvania, Clarion, Pennsylvania, p.26

required his replacement.⁶⁷ He replaced him through a bloodless coup. This coup which enabled Ben Ali to come to power is commonly referred as “Medical Coup”.⁶⁸ Since then, Ben Ali started running the political life of Tunisia by making promises of democratic transitions that he never kept.⁶⁹

2.3.1.2. Causes of the Revolution

It is difficult to figure out a single grievance that drove the Tunisian protestors to take to the streets against the Ben Ali government. Rather a combination of socio-economic, political and demographic factors, including unemployment, increasing inflation, high food prices, government corruption and a general lack of political freedoms, such as free speech and general civil liberties, led to a point where the people of Tunisia were no longer able, or willing, to live under a regime that deprived them of many basic rights and, which promised no adequate reforms.⁷⁰ For the purpose of clarity, the author of this paper categorizes the cause of the Tunisian Revolution in to three broad categories: Political deficits, Economic deficits and Social/Dignity deficits.

2.3.1.2.1. Political Deficits

When Tunisians fought for their independence in the 1950s, they were told they would be free as soon as they expelled the French colonizers.⁷¹ Some 55 years later, they find themselves having to evict the dictator to be free.⁷² The 23 year rule of Ben Ali was authoritarian and repressive in nature.⁷³ Ben Ali’s dictatorial attitudes led to his political domination, based on electoral fraud.⁷⁴ Ben Ali skillfully ran elections that were ‘largely constrictive, uncompetitive and illiberal’.⁷⁵ Although some opposition parties participated in the elections, the hegemony of the ruling party was so big that opposition parties won less than 3 per cent of the votes. However, they were granted many more seats

⁶⁷ Thomas Schiller, (May 2011), *Tunisia- A Revolution and its consequence*, KAS INTERNATIONAL REPORTS, p.8

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Creamer Media’s Arab Spring Report, (May 2012), *The Arab Spring Causes and consequences for Africa*, p.2, available at, <http://www.polity.org.za/23> Last accessed on 7 July 2012

⁷¹ Issaka K. Souaré and Berouk Mesfin (March 31, 2011), *A critical look at the 2011 North Africa revolutions and their implication*, A conference report, Institute for security studies (ISS), Hilton Hotel, Addis Ababa, Ethiopia, p.3

⁷² Ibid

⁷³ Idowu Johnson, Supra note at 66, P.27

⁷⁴ Issaka K. Souaré and Berouk Mesfin, Supra note at 71

⁷⁵ Ibid

in parliament.⁷⁶ These parties are often referred to as ‘card box’ or ‘decor’ opposition parties as they were granted seats in parliament in accordance with their degree of loyalty to Bin Ali.⁷⁷

Coming to Human Rights, the Tunisian Constitution of 1959 guarantees civil rights “within the limits of the law.”⁷⁸ In practice, however, critical opposition members, independent human rights activists and journalists have regularly been denied their civil rights and suffered from varying degrees of intimidation, repression or unfair trials.⁷⁹ In Bin Ali’s regime, the press was heavily controlled and monitored, helping the regime to build the image of a stable, prosperous and democratic country. Censorship, and, even worse, self censorship, was rife.⁸⁰ Members of the regime systematically rounded up people either suspected of being government opponents or otherwise, and assaulted them as they pleased.⁸¹ The media were totally manipulated and freedom of speech was non-existent.⁸²

Freedom of assembly is formally guaranteed within tight limits or legislation as well as subject to selective permission by the Ministry of the Interior.⁸³ With regard to Internet-based media, Tunisia is Africa’s best-connected country.⁸⁴ Nevertheless, for blocking access to news sites, the country has been numbered among the 12 countries across the world considered “enemies of the Internet” by Reporters without Borders (RSF).⁸⁵

There are no democratically legitimized political institutions under Ben Ali’s regime. Political power is highly concentrated in the hands of the president, both formally and in practice.⁸⁶ There are also no democratic institutions as such.⁸⁷

⁷⁶ Issaka K. Souaré and Berouk Mesfin, *Supra* note at 71

⁷⁷ *Ibid*

⁷⁸ L. Sadiki, (2002), *The search for citizenship in Bin Ali’s Tunisia: democracy versus unity*, Journal of Political Studies No. 50 p.497

⁷⁹ *Ibid*

⁸⁰ Issaka K. Souaré and Berouk Mesfin, *Supra* note at 71, p.5

⁸¹ Institute for Multicultural Affairs, (11 February 2011), *Social revolution in Tunisia and Egypt*, An interim review, p.6

⁸² *Ibid*

⁸³ *Ibid*

⁸⁴ Bertelsmann Stiftung, (2009), *BTI 2010- Tunisia Country Report*, Gütersloh: Bertelsmann Stiftung, p.8

⁸⁵ *Ibid*

⁸⁶ Messaoud Romdhani, *Origins of the Tunisian Revolution*, World Social Forum 2013, Page 3, available at, <http://www.fsm2013.org.socialforum> Last accessed on 9 July 2012

⁸⁷ *Ibid*

2.3.1.2.2. Economic Deficit

Before looking at the economic factors behind the Tunisian Revolution, it is very essential to see the overall economic condition of the country during the Ben Ali regime. Quite obviously, Ben Ali championed economic reforms that strengthened Tunisia's economy and increased foreign investment.⁸⁸ Since Ali ascended to the office of president, Tunisia's per capita GDP has more than tripled from \$1,201 in 1986 to \$3,786 in 2008.⁸⁹ Tunisia is also one of the African "lions" of Economy.⁹⁰ Even more pertinent is the fact that Tunisia was rated first in Africa and 32nd globally out of 139 countries within the context of stable increase in GDP as conducted by Davos World Economic.⁹¹

Even if Ben Ali's Tunisia was considered and hailed as one of the best country in its economic performance, only very little of the vast wealth of Tunisia benefits the masses; that remain poor. Tunisia suffers high unemployment, especially among the youth.⁹² The country was starting to stagnate economically and the job market in particular was unable to cope with the high number of young graduates leaving university each year.⁹³ Youth unemployment and lack of prospects for young Tunisians was becoming a growing problem. Many observers estimated that youth unemployment was at least 30 per cent.⁹⁴ The unemployment among graduates increased people's frustration as they felt they filled their part of the contract by graduating but the government failed to deliver on its part of the contract by not employing them.⁹⁵ The number of unemployed people is over 700 000.⁹⁶ Furthermore, approximately 200,000 of these unemployed were youths holding university degrees.⁹⁷

⁸⁸ Klaus Schwab, (2010-2011), World Economic Forum: the Global Competitiveness Report, available at, http://www.weforum.org/docs/WEF/GlobalCompetitivenessReport_2010-11 Last accessed on 14 July 2012

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

⁹² Nebahat TANRIVERDİ, Supra note at 62, p.558

⁹³ Africa Development Bank, (2011), *Economic Brief: Tackling Youth Unemployment in the Maghreb*, Page 1, available at, www.afdb.org/bank/br Last accessed on 24 July 2012

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

There are a number of key factors that have led to or exacerbated youth unemployment in Tunisia. But the major factor is the problem of a 'youth bulge'. Youth bulge occurs when the young population grows at a faster rate than other sectors of the population.⁹⁸ According to demographers, 'youth bulges' occur in every country at a particular stage of development, when rapid mortality and fertility rates slow down and produce an increase in the 'prime-age' working population relative to dependent groups (children and elderly).⁹⁹ The problem of youth bulge in Tunisia is a severe one. It is important to note that over half of the Tunisian population is under the age of 25.¹⁰⁰ Like Tunisia, youth bulges are a common feature in most developing countries today. The unique character of the youth bulge in the North Africa is its high concentration of graduates.¹⁰¹

Youth bulges present countries with a window of opportunity for rapid economic growth and poverty reduction, so long as they implement sound policies at each stage of the demographic transition.¹⁰² This means providing education and training to develop productive human capital and actively promoting the creation of high value-added jobs that utilize the skills of the burgeoning youth population.¹⁰³ Countries that take full advantage of a youth bulge can enjoy enormous 'demographic dividends' in the form of rising per capita output and enhanced savings and investment, such as the East Asian economies enjoyed between 1965 and 1990.¹⁰⁴ However, there are significant costs to society as well as individuals if decent jobs are not generated to absorb youth into the economy, including wasted human resources, structural youth unemployment, increased informality in the economy and, potentially, social and political instability.¹⁰⁵

In addition to problem of unemployment, the main economic issue that led to the explosion of the Tunisian Revolution is the corruption. Before the Tunisian Revolution, all forms of political,

⁹⁸ Africa Development Bank, Supra note at 93

⁹⁹ Ibid

¹⁰⁰ BBC, *Focus on Africa*, (2011), London, United Kingdom. April –June, Vol. 22, No. 2, available at www.bbc.com, Last accessed on 1 August 2012

¹⁰¹ Ibid

¹⁰² Assaad, R. and Roudi-Fahimi, (2007), *Youth in the Middle East and North Africa: Demographic Opportunity or Challenge?* (Washington, DC: Population Research Bureau) P.15

¹⁰³ Ibid

¹⁰⁴ Bloom, D. and Williamson, J., (1998), 'Demographic Transitions and Economic Miracles in Emerging Asia', World Bank Economic Review, vol. 12, no. 3, p.419

¹⁰⁵ Ibid

economic and even academic corruption grew in extent and importance.¹⁰⁶ The Tunisian regime under Ben Ali was one of the most corrupt governments in the world.¹⁰⁷ Ben Ali and his family was also unusually personalist and predatory in its corruption.¹⁰⁸ The Bin Ali and Trabelsi (Ben Ali's in-laws through his second wife, Laila Trabelsi) families controlled all lucrative businesses.¹⁰⁹ This extensive family was given key positions in all the major companies and sectors in the Tunisian economy.¹¹⁰

As the whistleblower Web site WikiLeaks recently revealed, the U.S. ambassador to Tunisia reported in 2006 that more than half of Tunisia's commercial elites were personally related to Ben Ali through his three adult children, seven siblings, and second wife's ten brothers and sisters.¹¹¹ Generally, although the scale of corruption at the top was breathtaking, Ben Ali's administration did not depend on the kind of accumulation of small bribes that subverted bureaucracies.¹¹² The reality was much more grim: every Tunisians struggled to build livelihoods, while the families of the president and those connected to him enriched themselves and flaunted their wealth.¹¹³

2.3.1.2.3. Social (Dignity) Deficit

The cumulative effect of the above mentioned political and economic traumas caused the regime of Ben Ali put the Tunisian people under significant Social frustration and hopelessness. This is what is called as Social or Dignity deficit. The primary cause of the uprising would seem to lie in the anger and injured pride caused by President Ben Ali's oppressive regimes, which were bottled up for years.¹¹⁴

Government repression, human right violations and the abuse of public authority have been a routine part of daily life in Tunisia. Corruption has been endemic at every level of society, albeit most visible at the top. Youth unemployment was too severe and unbearable. All of these maladies have

¹⁰⁶ Issaka K. Souaré and Berouk Mesfin, *Supra* note at 71, P.4

¹⁰⁷ *Ibid*

¹⁰⁸ Lisa Anderson, (May/June2011), *Demystifying the Arab Spring: Parsing the Differences Between Tunisia, Egypt, and Libya*, FOREIGN AFFAIRS, Hein Online, p. 3

¹⁰⁹ *Ibid*

¹¹⁰ *Ibid*

¹¹¹ *Ibid*

¹¹² Michele Penner Angrist, (January 16, 2011), *Morning in Tunisia: The Frustration of the Arab World Boil Over*, available at, www.ForeignAffairs.com Last accessed on 3 August 2012

¹¹³ *Ibid*

¹¹⁴ Institute for Multicultural Affairs, *Supra* note at 81, p.7

contributed to a widespread feeling of powerlessness, alienation and frustration among the Tunisians, which explains the central themes of “dignity” and “pride” that permeated the messages of the protesters.¹¹⁵

2.3.1.3. Chronology of Revolution

Even though high unemployment, corruption, violation of fundamental human rights and freedoms and social frustrations can be mentioned as the significant causes of the revolution in Tunisia, the most important triggering factor that lighted the starting of the revolution was the a horrifying local incident which nonetheless developed into the recognizable symbol of an unacceptable situation: Mohamed Bouazizi’s suicide.

On December 17, 2010, Muhammad Bouazizi, a 26 year old street vendor, went to work in the provincial town of Sidi Bouzid, which lies 190 miles (300 km) south of Tunis.¹¹⁶ Bouazizi, a graduate who had struggled to find work, had taken to selling fruit and vegetables as a way of feeding his family, and putting his sister through university. Unfortunately, he had not acquired a license to sell goods, and a policewoman confiscated his cart and produce.¹¹⁷ So Bouazizi, who had had a similar event happen to him before, tried to pay the 10-dinar fine (a day's wages, equivalent to 7USD). In response, the policewoman slapped him, spat in his face and insulted his deceased father.¹¹⁸ Her actions were to have a lasting effect on him.¹¹⁹ Feeling humiliated and infuriated, Bouazizi went to the provincial headquarters with the intent to lodge a complaint to local municipality officials.¹²⁰ However, he was not granted an audience. At 11:30 am and only a few hours after his initial altercation with the policewoman, Bouazizi returned to the headquarters, doused himself in flammable liquid, which he had recently purchased, and proceeded to set himself alight.¹²¹ The act itself was particularly brutal and Bouazizi subsequently died of the injuries he sustained on January 4, 2011.¹²² As a result of this, public outrage quickly grew over the incident, leading to popular

¹¹⁵ Institute for Multicultural Affairs, *Supra* note at 81, p.7

¹¹⁶ Alasdair Mc Cay, *Supra* note at 1, P.5

¹¹⁷ *Ibid*

¹¹⁸ Michael J. Totten, *Supra* note at 5, p. 1

¹¹⁹ *Ibid*

¹²⁰ Alasdair Mc Cay, *Supra* note at 1, P.5

¹²¹ *Ibid*

¹²² *Ibid*

revolution in Tunisia. But who would have imagined that this one act would trigger such a wave of massive Revolution against the Ben Ali regime?

One man's self-immolation appeared to encapsulate a pent up sense of frustration which had been buried deep down inside many young Tunisians and finally leading them to Revolution.¹²³ Immediately after Bouazizi's self-immolation, peaceful protests were held in the town of Sidi Bouzid which was resumed every few days. After his death, these protests and increasingly violent riots soon spread all over the country, especially in the capital of Tunis.¹²⁴

One of the major mobilizing factors that has triggered and facilitated the Tunisian revolution was the use of Information communication technology and more specifically, social media. Social media sites, such as Facebook, Twitter and YouTube, have made communication and, hence mobilization, a lot easier in society.¹²⁵

One of the words uttered most frequently in Tunisia Revolution was "Facebook."¹²⁶ This social media site which is considered as one of the biggest time-wasters in the West became an irreplaceable tool for the youth of Tunisia to begin to orchestrate the Revolution. As events unfolded and the oppression by the police intensified, youth in Tunisia took to Facebook to talk about the government crackdown, but, more importantly, pictures and video were posted that brought the struggle to life.¹²⁷ The design of Facebook allows for users to share information with their social network, and this function allowed those closest to the action to distribute compelling information to let others know what was happening.¹²⁸ In this mostly peaceful and relatively short revolution, information was the weapon that brought down a long-standing and oppressive regime. That is why the term "Facebook revolution" has been used frequently in reference to the Tunisian Revolution as well as to the North Africa Revolutions of 2011.

¹²³ Alasdair Mc Cay, *Supra* note at 1, P.5

¹²⁴ Institute for Multilateral Affairs, *Supra* note at 81, p.6

¹²⁵ Anita Breuer, (November 2012), *The Role of Social Media in Mobilizing Political Protest: Evidence from the Tunisian Revolution*, German Development Institute, Discussion paper, p.13

¹²⁶ Gary Decker, (2012), *What's in a Revolution? The timing of the Tunisian Revolution*, Conflict Management Program, Johns Hopkins University, p.4

¹²⁷ *Ibid*

¹²⁸ *Ibid*

Another important factor in the flow of information surrounding the revolution was the access to satellite television throughout Tunisia.¹²⁹ The aforementioned flow of information beyond the borders of Tunisia created a feed-back loop where information from Facebook pictures, video, and stories from bloggers, activists, and ordinary citizens was picked up by international news outlets, like Aljazeera.¹³⁰ The powerful combination of Facebook and satellite television broadcasts allowed a freer flow of information, both within Tunisia and to the broader international public, and created the aforementioned feed-back loop that allowed for the revolution to gain the critical mass necessary to overthrow the Ben Ali regime.¹³¹

The Tunisian Revolution began on 18 December 2010.¹³² Immediately after Bouazizi's self-immolation, peaceful protests broke out in the town of Sidi Bouzid which was resumed every day.¹³³ After just a few days it was clear that the unrest was not just about social issues.¹³⁴ The lack of prospects for young Tunisians was certainly the main reason for the protests, but resentment soon spilled over against the regime, and particularly against the corrupt and repressive government of Ben Ali and his families.¹³⁵

The protests had reached the Capital Tunis on 27 December with about 1,000 citizens expressing solidarity with residents of Sidi Bouzid and calling for jobs.¹³⁶ Once the protests reached the more prosperous coastal regions and the capital Tunis, the slogans became even more pointed: "Ben Ali degage!" (Get out Ben Ali!), "Freedom" and "Democracy".¹³⁷

¹²⁹ Ghannam, (February 3, 2011), *Social Media in the Arab World: Leading up to the Uprisings of 2011*, A Report to the Center for International Media Assistance, p.30

¹³⁰ Ibid

¹³¹ Ibid

¹³² Institute for Multicultural Affairs, Supra note at 81, p. 7

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Aljazeera English, (28 December 2010), *"Tunisia jobless protests rage Africa"*, Available at, www.English.aljazeera.net/africa Last accessed on 18 August 2012

¹³⁷ Thomas schiller, Supra note at 67, p.8

Tunisians from all levels of society and all parts of the country poured onto the streets, organizing themselves through internet, mobile phone and verbal communication. The security forces immediately reacted with brutality to the first demonstrations in the country's heartlands.¹³⁸

In three televised addresses, Ben Ali tried to calm the situation down. He offered more concessions every time he appeared. In his first address on December 28, 2010 he was still trying to show his strength and sharply criticized the protests.¹³⁹ He visited Mohamed Bouazizi in hospital, hoping this gesture would demonstrate his sympathy and understanding.¹⁴⁰ In spite of his concessions, protests continued in the Capital and across other cities of Tunisia.

In his second address on January 10, 2011 Ben Ali was much more conciliatory, as the protests had by then already reached the coastal provinces and the country's capital.¹⁴¹ He tried to show his willingness to make concessions by announcing the creation of 300,000 new jobs.¹⁴² However, the protestors didn't show any sign of giving up. Rather, massive protests continued across Tunisia and the Capital Tunis on 11 January 2011.¹⁴³ The protesters were said to have chanted "We are not afraid, we are not afraid, we are afraid only of God."¹⁴⁴

The third televised address on the evening of January 13, 2011 was a last desperate attempt on the part of Ben Ali to take the sting out of the protests.¹⁴⁵ He promised not to change the constitution which limited the age of presidential candidates to 75, in this way indirectly announcing that he would not be standing for president in 2014.¹⁴⁶

General Rachid Ammar, Chief of Staff of the armed forces, delivered the final blow to Ben Ali's regime.¹⁴⁷ On 12 January, Ammar warned the President during talks that his regime was at an

¹³⁸ Thomas schiller, Supra note at 67, p.8

¹³⁹ Ibid, p.12

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Aljazeera English, (14 January 2011), "Tunisia unrest spreads to capital – Africa". Available at www.English.aljazeera.net/africa Last accessed on 18 August 2012

¹⁴⁵ Thomas schiller, Supra note at 67, p.12

¹⁴⁶ Ibid

¹⁴⁷ Institute for Multicultural Affairs, Supra note at 81, p.6

end.¹⁴⁸ On 13 January 2011, he affirmed that the army would not shoot unarmed protesters.¹⁴⁹ The same day the General was removed from office when he refused to obey the President's order to make the army open fire on the demonstrators.¹⁵⁰

The demonstration on January 14th on the central Avenue Habib Bourguiba, right in front of the Interior Ministry, was a clear sign that the people were demanding that Ben Ali step down immediately and that they were neither satisfied nor intimidated by the president's words.¹⁵¹ Several thousand demonstrators from all levels of Tunisian society poured onto this magnificent avenue in the centre of the capital. Their demands were clear: the departure of Ben Ali and a total change in the political system.¹⁵²

By 4.00 p.m. January 14, 2011, Ben Ali had already flown out of Tunis heading for Saudi Arabia ending his 23 years in power.¹⁵³ His Airplane was forced to circle for hours because it did not receive permission to land in Malta, France or the Gulf States. The former dictator was eventually given permission to land in Saudi Arabia.¹⁵⁴ For the success of their Revolution as well as for the role of the social medias during the Revolution, crowds in Tunis celebrated carrying banners saying "Thank you Facebook".¹⁵⁵

2.3.1.4. Consequences of the Revolution

The 'Jasmine Revolution' which ousted president Ben Ali never stopped in Tunisia or elsewhere where its seeds had taken root. The popular revolution that was triggered by the self immolation of one desperate Tunisian young man immediately spread like a wild fire to the rest of the North African countries and to the wider Arab world. This wind of change that is initially emerged from Tunisia continued to hit other authoritarian regimes in neighboring Egypt and Libya as well as the

¹⁴⁸ Institute for Multicultural Affairs, Supra note at 81, p.6

¹⁴⁹ Ibid

¹⁵⁰ Ibid

¹⁵¹ KAS Länderberichte on Tunisia Revolution, available at <http://www.kas.de/tunesien/de/publications/serials> Last accessed on 9 July 2012

¹⁵² Ibid

¹⁵³ Wyre Davies, (15 January 2010), "Tunisia: President Zine al-Abidine Ben Ali forced out", BBC News, available at <http://www.bbc.co.uk/news/world-africa-12195025> Last accessed on 26 August 2012

¹⁵⁴ Institute for Multicultural Affairs, Supra note at 81, p.7

¹⁵⁵ Oleguer Sarsanedas, (FEBRUARY 2011), *THE TEXT-MESSAGING REVOLUTIONS*, Opinion Medditeran y Oriente Medio, p.1

wider Middle East region.

Following Ben Ali's departure, prime minister Mohamed Ghannouchi assumed temporary command of the state; he quickly stepped down and ceded power to Fouad Mebazaa, the head of Tunisia's parliament.¹⁵⁶ The Constitutional Council affirmed Fouad Mebazaa as acting president under Article 58 of the Constitution.¹⁵⁷ Nine months after the ouster of Ben Ali, on October 23, Tunisians went to the polls to elect a new constituent assembly, which will draw up a new constitution.¹⁵⁸ Tunisia's formerly banned Islamist party, Hizb al-Nahda (the Renaissance Party), won the first free and fair elections to emerge from the Arab Spring.¹⁵⁹

Concerning the human casualties, according to the United Nations High Commissioner for Human Rights Report, 117 people have been killed during the Tunisia Revolution, including 70 people killed by security forces using live ammunition.¹⁶⁰

2.3.2. The Egypt Revolution

2.3.2.1. Background of the Revolution

Hosni Mubarak became head of Egypt's presidential republic government following the 1981 assassination of President Anwar El Sadat, and continued to serve until February 2011.¹⁶¹ Mubarak's 30-year reign made him the longest-serving President in Egypt's history, with his National Democratic Party (NDP) government maintaining one-party rule under a continuous state of emergency law.¹⁶² The socio-economic and political atmosphere under the reign of Mubarak has not been favorable to the majority of Egyptians.¹⁶³ Mubarak was repeatedly re-elected as president in sham elections in which the opposition parties were either banned or their leaders jailed.¹⁶⁴ This political atmosphere was further worsened when Gamal Mubarak, the younger of Mubarak's two

¹⁵⁶ Michele Penner Angrist, *Supra* note at 112, p.178

¹⁵⁷ *Ibid*

¹⁵⁸ Amichai Magen, *Supra* note at 10, p.9

¹⁵⁹ *Ibid*

¹⁶⁰ Institute for Security Studies (ISS) Report, *Update on Tunisia*, No 22, May 2011, p.8

¹⁶¹ Slackman Michael, (31 January 2011), "*Hosni Mubarak*", *The New York Times*, available at <http://topics.nytimes.com/topics/reference/michael> Last accessed on 20 August 2012

¹⁶² *Ibid*

¹⁶³ Fafowora, D., (February 17 2011), "*The Fall of Mubarak*", *The Nation*, Lagos, Nigeria, Vol. 6, No. 1673, p.4

¹⁶⁴ *Ibid*

sons, began to be groomed to succeed his father as the next president of Egypt around the year 2000.¹⁶⁵

2.3.2.2. Causes of the Revolution

Following the overthrow of Tunisia's President Ben Ali, events in Egypt began to follow a similar path to that of the Tunisia's Jasmine revolution. The most populous country in the Arab world erupted in mass protest on January 25th, 2011, in response to the heavy-handed rule of President Hosni Mubarak.¹⁶⁶

The January 25th Egyptian Revolution was mainly a campaign of non-violent civil resistance, which featured a series of demonstrations, marches, acts of civil disobedience and labor strikes. Millions of protesters from a variety of socio-economic and religious backgrounds demanded the overthrow of the regime of Egyptian President Hosni Mubarak. Despite being predominantly peaceful in nature, the revolution was not without violent clashes between security forces and protesters.¹⁶⁷

Like the Tunisian Revolution, the use of technology has highly characterized in the Egyptian revolution too. The Social Medias like Facebook, Twitter and You tube played a significant role in organizing the demonstrations and passing on information on developments to international correspondents.¹⁶⁸ In this respect, the Facebook page dedicated to Khaled Said, who assumed the role of martyr in much the same way as Mohamed Bouazizi in Tunisia, acted as a major catalyst.¹⁶⁹ While Mohammed Bouazizi is considered as a symbol which triggered the Tunisia Revolution, likewise, it is Khaled Saeed which stands as an immediate trigger towards the mobilization of the January 25th Egyptian Revolution. Khaled Said is a well-known blogger who was beaten to death at the beginning of June 2010 by two members of the secret police at the door of the cyber café in Alexandria where he was working.¹⁷⁰ The Facebook page "We are all Khaled Said" was one of the driving forces behind the big "Day of Revolt" demonstration on Tuesday 25 January 2011.¹⁷¹ During the Egyptian Revolution, there were 34 million participants in the revolution on Facebook across 2313 pages,

¹⁶⁵ Aziz, Muhammad Abdul and Hussein, Youssef, (2002), "The President, the Son, and the Military: Succession in Egypt", Arab Studies Journal 9/10, p.73-88

¹⁶⁶ Creamer Media's Arab Spring Report, Supra note at 70, p.2

¹⁶⁷ Ibid

¹⁶⁸ Madeline Storck, (20 December 2011), *The Role of Social Media in Political Mobilisation: a Case Study of the January 2011 Egyptian Uprising*, dissertation submitted to requirement for the Degree of M.A., University of St Andrews, Scotland, p.19

¹⁶⁹ Ibid

¹⁷⁰ Ibid

¹⁷¹ Institute for Multicultural Affairs, Supra note at 81, p.6

where 9815 participants got 461 thousands commentaries.¹⁷² That is exactly why one Egyptian activist said the following statement during the Revolution: “We use Facebook to schedule the protests, Twitter to coordinate, and YouTube to tell the world.”¹⁷³

Revolutions happen for a reason. In case of Egypt, there are several reasons: more than 30 years of one-man rule, Hosni Mubarak’s plan to pass the presidency to his son, widespread corruption, and patronage, lack of fundamental freedoms, high unemployment, nepotism; and economic reform that didn’t benefit most Egyptians, but that nonetheless contrasted sharply with the almost complete absence of political change.¹⁷⁴

Generally, the basic causes behind the Egyptian revolution can be classified in to three major categories: Political deficits, Economic deficits and Social (dignity) deficits.

2.3.2.2.1. Political Deficit

The political mood in Egypt prior to the 25th of January revolution was acidly cynical, and full of bitterness. President Hosni Mubarak was in command for 30 years.¹⁷⁵ Anger at Mubarak’s rule had built up over the past decade. An accidental president, who came to power because of Anwar Sadat’s assassination on October 6, 1981, Mubarak initially calmed the public, stressed the rule of law, released political prisoners and encouraged parliamentary elections.¹⁷⁶ However, as soon as he began his second term, in 1987, he refused to reform the constitution, extended the state of emergency, promulgated laws to exclude opposition parties from local councils and tightened the grip of the ruling National Democratic Party (NDP) over parliament.¹⁷⁷

Here are some of the multifaceted political deficits of the Mubarak regime that caused the Egypt Revolution: lack of fundamental freedoms and the imposition of emergency law, police brutality and concentrated powers of Hosni Mubarak.

¹⁷² Ghietas Gamal, (3-9 March 2011), *Scientific Analysis of the Revolution through the Internet. Al-Ahram Weekly*, Available at: <http://www.weekly.ahram.org>. Last accessed on 30 august 2011

¹⁷³ Nadine Kassem Chebib & Rabia Minatullah Sohail, (2011), “*The Reasons Social Media Contributed to the 2011 Egyptian Revolution*,” *International Journal of Business Research and Management*, p.139

¹⁷⁴ Richard N. Hass, (February 13, 2011), *Reflection on the Revolution in the Egypt*, *Project Syndicate* p.115

¹⁷⁵ Noha Bakr, (2010), *The Egyptian Revolution*, page 61 available at, <http://www.um.edu.mt/data/assets/pdf> Last accessed on 30 august 2011

¹⁷⁶ Ibid

¹⁷⁷ Ibid

The emergency law of Egypt was enacted after the 1967 Six-Day War.¹⁷⁸ It was suspended for 18 months in the early 1980s and has otherwise continuously been in effect since President Sadat's 1981 assassination.¹⁷⁹ Under the emergency law, police powers are extended, constitutional rights suspended, censorship is legalized, and the government may imprison individuals indefinitely and without reason.¹⁸⁰ The Mubarak government has cited the threat of terrorism in order to extend the emergency law.¹⁸¹ The application of the emergency law has led to the imprisonment of activists without trials, illegal undocumented hidden detention facilities, and rejecting university, mosque, and newspaper staff members based on their political inclination.¹⁸² Human rights organizations estimated that only in the year 2010, between 5,000 and 10,000 people were in long-term detention without charge or trial.¹⁸³

In addition to the imposition of repressive emergency laws, the government of Egypt under President Mubarak was notoriously known for its gross violations of Human rights and police brutality. According to a report from the U.S. Embassy in Egypt, police brutality has been common and widespread in Egypt.¹⁸⁴

Lastly, the major political deficit that has resulted in the outbreak of the Egyptian Revolution is the concentrated power of Hosni Mubarak. The political system over which Mubarak presided concentrated power in the executive branch of government. The president served a six-year term, renewable indefinitely by referendum.¹⁸⁵ He had the power to appoint and remove the prime minister and council of ministers, dissolve the bicameral parliament at any time, veto laws, and by-pass the legislature by putting issues to a vote in public referenda.¹⁸⁶ President Mubarak has never conducted any free and fair election during his entire tenure. Elections were reduced to mockery. Corruption and

¹⁷⁸ Law 1958/162, (2010), *"Emergency Law of Egypt"*, Edinburgh Middle East Report, p.24-25

¹⁷⁹ Egyptian Organization for Human Rights, (28 May 2008), *"Egypt and The Impact of 27 years of Emergency on Human Rights"*, p.16

¹⁸⁰ Ibid

¹⁸¹ Ibid

¹⁸² Ibid

¹⁸³ Amnesty International (29 June 2010), available at <http://www.amnesty.org/en/library/info/MDE12/027/2010/en> Last accessed on 4 September 2012

¹⁸⁴ Harding, Luke, (28 January 2011), *"US reported 'routine' police brutality in Egypt, WikiLeaks cables show"*, *The Guardian* (UK), available at www.guardian.com Last accessed on 4 September 2012

¹⁸⁵ Noha Bakr, *Supra* note at 175, p.66

¹⁸⁶ Ibid

manipulation of election results occurred during many of the elections over 30 years.¹⁸⁷ Until 2005, Mubarak was the only candidate to run for the presidency, on a yes/no vote.¹⁸⁸ Mubarak won five consecutive presidential elections with a sweeping majority.¹⁸⁹ In addition to the fraudulent elections and excessive accumulation of governmental power in the hands of Mubarak, one of the main factors which also electrified the popular Revolutions of January 25 was the public suspicion that Gamal Mubarak would succeed his father as the next President of Egypt.¹⁹⁰ The attempt to transfer power from Mubarak to his son Gamal was clearly manifested when a huge number of constitution articles were amended in 2005 to suit the November 2011 presidential elections' needs for former President Mubarak's son, thereby eliminating any chance of competition.¹⁹¹

2.3.2.2.2. Economic Deficit

Before discussing the main economic problems and deficits that have ultimately caused the Revolution, it is worth elaborating the economic conditions of Egypt prior to the 25th January 25 Revolution.

Prior to the revolution on the 25th of January, the economy in Egypt as a whole was performing better than ever.¹⁹² GDP growth had shifted into a much higher gear, increasing from just below 5% in the mid-1990s to 7% in 2006-08.¹⁹³ Egypt's share of world trade, which had been falling continuously for 40 years, started expanding as exports tripled in value.¹⁹⁴ Foreign investment gushed in at record levels, notching up a cumulative total of \$46 billion between 2004 and 2009.¹⁹⁵

Therefore, if the economy was showing such an improvement, why did the Egyptians resort to Revolution on the 25th January 2011?

¹⁸⁷ Democracy Reporting International and Egyptian Organization for Human Rights, (2007), *"Final Report: Assessment of the Electoral Framework in the Arab Republic of Egypt"*, Congressional Research Service, p.17

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ Noha Bakr, Supra note at 175, p.66

¹⁹¹ Ibid

¹⁹² Max Rodenbeck, (17 July 2010), *"Holding its Breath: A Special Report on Egypt"*, The Economist Newspaper, available at, <http://www.econbiz.de/en/search/detailed-view/doc> Last accessed on 7 September 2012

¹⁹³ Ibid

¹⁹⁴ Ibid

¹⁹⁵ Ibid

On the economic level, these mentioned figures illustrate development, but it is not balanced development.¹⁹⁶ Overall, the GDP was a sign of improvement; however the gap between the rich and the poor was enormous in Egypt.¹⁹⁷ Prior to the revolution, the Egyptian economy grew, but this growth did not trickle down, as it only benefited the regime's narrow social base.¹⁹⁸ The majority of Egyptians were completely deprived of the fruits of development leading to the marginalization of large sectors of society.¹⁹⁹ The most amazing fact about Egypt under Mubarak is that 40 percent of the population in Egypt is estimated to live on less than two dollars a day and around 21 percent lives on less than one dollar a day.²⁰⁰ The poverty rate had increased in Egypt from 39% to 45% under Mubarak.²⁰¹ The gains of the economy had simply been appropriated by the oligarch leaving millions of uneducated Egyptians in penury and abject poverty.²⁰² Instead of enjoying the fruit of their country's development, many Egyptians found themselves in deeply rooted economic maladies such as massive unemployment and corruption. Even though the economy of Egypt was performing so well before the revolution, many of the population especially the youth suffers from high unemployment and joblessness.²⁰³

According to the Peterson Institute for International Economics and other Demographic sources, a basic problem that triggered the Revolution in Egypt is unemployment driven by a demographic "youth bulge".²⁰⁴ Two-thirds of Egyptians are between the age of 15 and 29, and each year 700,000 new graduates compete for 200,000 new jobs.²⁰⁵ Total number of the unemployed on the eve of the Egyptian Revolution was about 2.5 millions.²⁰⁶ Accordingly, on the eve of the Revolution Egypt had

¹⁹⁶ Noha Bakr, Supra note at 175, p.57

¹⁹⁷ Ibid

¹⁹⁸ Ibid

¹⁹⁹ Ibid

²⁰⁰ African Development Bank Group, *Egypt Economic Outlook*, available at, <http://www.afdb.org/en/countries/north-africa/egypt> Last accessed on 16 September 2012

²⁰¹ Fafowora, D., Supra note at 163, p.22

²⁰² Ibid

²⁰³ Ibid

²⁰⁴ Korotayev A., Zinkina J., (2011), *Egyptian Revolution: A Demographic Structural Analysis*, Entelequia Revista Interdisciplinar No. 3 p.142

²⁰⁵ Ibid

²⁰⁶ Ibid

about one million of unemployed young people aged 20–24 who made up the main striking force of the Revolution.²⁰⁷

In addition to severe unemployment problems, the Mubarak regime was also infamously known for chronic corruptions and blatant nepotism among its officials. The government's deteriorating ability to provide basic services and seeming indifference to widespread unemployment and poverty that alienated tens of millions of Egyptians, was further aggravated by a growing corruption among a business elites connected to Mubarak's regime and his son Gamal.²⁰⁸

During the reign of President Mubarak Corruption reached an extreme, with Egypt rated 80th in the world.²⁰⁹ Political corruption in the Mubarak administration's Ministry of Interior rose dramatically due to the increased level of control over the institutional system necessary to prolong the presidency.²¹⁰ Aladdin Elaasar, an Egyptian biographer and an American professor, estimated that the wealth of Mubarak family was worth from \$50 to \$70 billion.²¹¹ In addition, The wealth of Ahmed Ezz, the former NDP Organization Secretary, was estimated to be 18 billion Egyptian pounds; the wealth of former Housing Minister Ahmed al-Maghraby was estimated to be more than 11 billion Egyptian pounds; the wealth of former Minister of Tourism Zuhair Garrana is estimated to be 13 billion Egyptian pounds; the wealth of former Minister of Trade and Industry, Rashid Mohamed Rashid, is estimated to be 12 billion Egyptian pounds; and the wealth of former Interior Minister Habib al-Adly was estimated to be 8 billion Egyptian pounds.²¹²

While many Egyptians suffers from low living standard and joblessness resulted from unemployment, President Mubarak, his son and the business elites of the NDP party accumulated billions of Dollars through corruption and embezzlement of public money and resources. The perception among

²⁰⁷ Andrey V. Korotayev, Julia V. Zinkina, (2012), *EGYPTIAN REVOLUTION: A DEMOGRAPHIC STRUCTURAL ANALYSIS*, Russian Foundation for Basic Research, p.29

²⁰⁸ Lisa Anderson, *Supra* note at 108, p.4

²⁰⁹ Transparency International, *Corruption Perceptions Index 2010*, Available at: <http://www.transparency.org.policy> Last accessed on 19 September 2012

²¹⁰ *Ibid*

²¹¹ Epistoli, (9 February 2011), "*How did Egypt become so corrupt? – Inside Story*", Aljazeera, available at <http://epistoli.blogspot.com/2011/02> Last accessed on 29 September 2012

²¹² *Ibid*

Egyptians was that the only people to benefit from the nation's wealth were businessmen with ties to the NDP; "wealth fuels political power and political power buys wealth."²¹³

2.3.2.2.3. Social (Dignity Deficit)

Egypt used to be perceived as the proud leader of an independent Arab world under Nasser until Mubarak had turned into "America's poodle", unable to make independent decisions.²¹⁴ Mubarak's close partnership with the US throughout the second Intifada and the Iraq War evoked a feeling of national humiliation and gave rise to some of the largest mass protests previous to the Arab Spring.²¹⁵ Thus, the factor of a dignity deficit was one of the motifs behind the Egyptian protesters since Mubarak's unquestioning obedience to the United States and his close economic and security ties with Israel appeared shameful to many ordinary Egyptians since they have lost their dignity in the international arena.²¹⁶

Moreover, lack of political freedoms and the abuse of public authority, police brutality, unemployment have also been a routine part of daily life in Egypt and corruption has been endemic at every level of society, albeit most visible at the top.²¹⁷ All of this contributed to a widespread feeling of powerlessness and alienation among the majority of Egyptians that has finally caused to the outbreak of the Revolution.²¹⁸

Generally speaking, Many Egyptians felt not just alienated, but also humiliated. Humiliation is a powerful motivator.²¹⁹ Egypt was a ripe for Revolution; dramatic changes would have come at some point in the next few years, even absent the spark of Tunisia Revolution or the existence of Social Medias.²²⁰

²¹³ Epistoli, Supra note at 211

²¹⁴ Timo Behr and Mika Aaltola, (March 2011), *The Arab Uprising: Causes, Prospective and Implications*, The Finnish Institute of International Affairs, P.4

²¹⁵ Ibid

²¹⁶ Ibid

²¹⁷ John Chalcraft, (2011), *The Egyptian People Demand the Fall of the Regime*, A collection from e-International Relations, page 12, available at <http://www.e-ir.info/author/al-mckay/page/1> Last accessed on 30 September 2012

²¹⁸ Ibid

²¹⁹ Richard N. Hass, Supra note at 174, p.115

²²⁰ Ibid

2.3.2.3. Chronology of Revolution

Following the Tunisian Revolution that saw the overthrow of the long time Tunisian president, the Egypt Revolution began on Tuesday, 25th January 2011. Opposition groups planned a "Day of Revolt"²²¹ for 25 January, coinciding with the National Police Day.²²² The purpose was to protest against abuses and brutalities by the police in front of the Ministry of Interior.²²³ These demands immediately expanded to include the resignation of the Minister of Interior, an end to State corruption, the end of Egyptian emergency law, and term limits for the president.²²⁴

Many political movements, opposition parties, and public figures supported the "Day of Revolt", including the 6 April Youth Movement, We Are All Khaled Said Movement, National Association for Change, 25 January Movement, Kefaya, Youth for Justice and Freedom, Coalition of the Youth of the Revolution, the Popular Democratic Movement for Change, the Revolutionary Socialists and the National Association for Change.²²⁵

On 25 January 2011 which is known to be the "Day of Revolt"; protests erupted throughout Egypt, with tens of thousands of protesters poured in to Tahrir Square, the symbolic heart of Cairo and thousands more in cities throughout Egypt such as Alexandria, Suez, Aswan, El-Mahalla El-Kubra and others.²²⁶ Chanting and waving placards, the demonstrators called for *karama* (dignity) and *hurriyyah* (freedom).²²⁷ The protests targeted President Hosni Mubarak's government, and mostly adhered to non-violence means of peaceful Revolution.²²⁸

The "Friday of Anger" protests began on 28 January 2011.²²⁹ The biggest demonstrations were held in Cairo and Alexandria.²³⁰ Hundreds of thousands demonstrated in Cairo and other Egyptian cities after

²²¹ The 25th January Day of Revolt is also called the "Day of Anger, "Day of Wrath" and the "Day of Rage"

²²² Fahim, Kareem; El-Nagaar, Mona, (25 January 2011), "*Violent Clashes Mark Protests Against Mubarak's Rule*", The New York Times, Available at, <http://topics.nytimes.com/topics/reference> Last accessed on 3 October 2012

²²³ Ibid

²²⁴ Ibid

²²⁵ Almasry Alyoum, (20 January 2011), "*6 April movement calls for protest against police abuse*", available at www.almasryalyoum.com Last accessed on 3 October 2012

²²⁶ Fahim, Kareem; El-Nagaar, Mona, Supra note at 222

²²⁷ Ibid

²²⁸ BBC News, (28 January 2011), "*Egypt Protests: Three Killed in 'Day of Revolt'*", (25 January 2011) available at www.bbcworld.english.com Last accessed on 3 October 2012

²²⁹ The Daily News, "*Thousands protest across Egypt on Friday of Anger, one killed as govt. imposes curfew*", available at <http://www.TheDailyNewsegypt.com.egy> Last accessed on 5 October 2012

²³⁰ Ibid

Friday prayers.²³¹ President Hosni Mubarak made his first address to the nation and pledged to form a new government.²³² For the first time, the regime showed that it had been badly shaken by the protests. President Mubarak announced that he would appoint a new government. However, demonstrations and riots in Cairo went on all night long.²³³

On Saturday 29 January, thousands of demonstrators were still standing firm on Tahrir Square.²³⁴ Widespread protests continued, with many protesters chanting, "Down with Mubarak".²³⁵ Soldiers in the tanks surrounding Tahrir Square did not intervene.²³⁶ For the first time since he came to power more than 30 years ago, President Mubarak appointed a Vice-President: Omar Suleiman.²³⁷ The same day, military reportedly refused to follow orders from Mubarak to fire live ammunition on protestors and exercised restraint overall.²³⁸

Opposition leaders called for a "March of the Millions" from Cairo's Tahrir Square to the Presidential Palace on 1 February.²³⁹ This was the biggest demonstration held up till then took place in order to press home one week of protests.²⁴⁰ An estimated one million demonstrators assembled in Cairo, while President Mubarak delivered a long-awaited speech on television in which he announced that he would not be standing for re-election as president in the September elections.²⁴¹ However, he refused to resign and leave Egypt, and reminded the Egyptian people of his many years of service to his country: "I shall die on Egyptian soil," he declared.²⁴² As a result of this, protests continued unabated the whole night.²⁴³

²³¹ The Daily News, "Thousands protest across Egypt on Friday of Anger", Supra note at 229

²³² Institute for Multicultural Affairs, Supra note at 81, p.10

²³³ Ibid

²³⁴ Ibid

²³⁵ Ibid

²³⁶ Ibid

²³⁷ Ibid

²³⁸ Reuters, (29 January), "Update 1 – Egypt Army: Will Not Use Violence Against Citizens", available at www.af.reuters.com Last accessed on 7 October 2012

²³⁹ CBS News, (31 January 2011), "Egypt Opposition Plans 'March of Millions'", available at www.cbsnews.com Last accessed on 7 October 2012

²⁴⁰ Institute for Multicultural Affairs, Supra note at 81, p.10

²⁴¹ Ibid

²⁴² Ibid

²⁴³ Ibid

The organizers of the "Day of Revolt", called for a protest that was dubbed the "Sunday of Martyrs" on 6 February 2011.²⁴⁴ A multi faith Sunday Mass was held with Egyptian Christians and Egyptian Muslims in Tahrir Square. Egyptian Christians held their Sunday Mass in Cairo's Tahrir Square as Muslim protesters formed a ring around them to protect them during the service.²⁴⁵

On the evening of Thursday 10 February, a frenzied crowd of demonstrators gathered at Tahrir Square for a "Day of Departure", since Mubarak was going to issue a statement that evening.²⁴⁶ The military's supreme command had made a brief statement for the first time that afternoon, to the effect that the military was continually in consultation in order to establish the measures to be taken to guarantee the safety of Egypt and its people.²⁴⁷ However, Mubarak's speech could not have been more disappointing.²⁴⁸ After giving extensive details of his service in the army and to the country in paternalistic tones, the President announced his intention of remaining in power until the elections in September.²⁴⁹

The shock that Mubarak did not step down resulted in a nationwide escalation of protests on 11 February, named again as the "Friday of Departure" by the opposition movement.²⁵⁰ Massive protests continued in Cairo, Alexandria, and other cities.²⁵¹ The military command issued a second communiqué before afternoon prayers, indirectly stating the army's intention of defending the national interest.²⁵² They called on the demonstrators to go home and to resume their daily duties so that the country could return to normal.²⁵³ This final appeal was in vain; the protests continued unabated and spread towards the presidential palace and the state television building.²⁵⁴

The long-awaited statement was issued that afternoon. In his shortest appearance to date, Vice President Suleiman announced that President Mubarak had resigned and had delegated his duties to

²⁴⁴ Al-Ahram, "Protesters plan Coptic mass on 'Martyrs' Sunday", available at www.alahram.com, Last accessed on 9 October 2012

²⁴⁵ Ibid

²⁴⁶ Dina Shehata, (May/June 2011), *The Fall of the Pharaoh: How Hosni Mubarak's Reign Come to end*, Foreign Affairs, p.137

²⁴⁷ Ibid

²⁴⁸ Ibid

²⁴⁹ Ibid

²⁵⁰ Robert Mackey, (11 February 2011), "Latest Updates on Day 18 of Egypt Protests"– The New York Times, available at www.thelede.blogs.com Last accessed on 9 October 2012

²⁵¹ Ibid

²⁵² Owen, Paul, (2011/02/11), "Egyptian army backs Hosni Mubarak and calls for protesters to go home". The Guardian, available at www.guardian.co.uk Last accessed on 9 October 2012

²⁵³ Ibid

²⁵⁴ Ibid

Egypt's military High Command, i.e., the Supreme Council of the Armed Force (SCAF).²⁵⁵ Anger transformed into tears of joy and celebration.²⁵⁶ The whole of Egypt took to the streets to celebrate.²⁵⁷ Tahrir Square changed into a sea of Egyptian flags, setting off fireworks and dancing for joy. Thanks to their admirable courage and perseverance, the Egyptian people were able to fight Mubarak's sovereignty in a dignified and peaceful manner, and to create the opportunity for a democratic future.²⁵⁸

2.3.2.4. Consequences of the Revolution

After only eighteen days of mass protests in Tahrir Square and various Cities of Egypt, Hosni Mubarak handed over power to the military on February 11, 2011- ending the pharaoh's thirty-year reign as president.²⁵⁹ Within these eighteen days of Revolution, 846 Egyptians were killed and where as a total of 6467 participants were wounded.²⁶⁰

As it is mentioned above, on 11 February 2011, Vice President Omar Suleiman announced that Mubarak would be stepping down as president and turning power over to the Supreme Council of the Armed Forces (SCAF) and Mubarak resigned from office. The SCAF, headed by effective head of state Mohamed Hussein Tantawi, announced on 13 February that the constitution would be suspended, both houses of parliament dissolved, and that the military would rule for six months until elections could be held.²⁶¹

On 19 March, Egyptians voted in large numbers in a referendum for changes to the Egyptian constitution after the military council had suspended the previous constitution.²⁶² The changes, which intended to bring democratic reforms, were passed overwhelmingly, with 77 percent favoring the

²⁵⁵ AP news, "Mubarak resigns, hands power to military", Available at, <http://www.Apnews.myway.com.mubarek> Last accessed on 15 October 2012

²⁵⁶ Ibid

²⁵⁷ Ibid

²⁵⁸ Institute for Multicultural Affairs, supra note at 81, p.12

²⁵⁹ Amichai Magen, Supra note at 10, p.8

²⁶⁰ *Report of the Commission to Investigate the Facts of the 25th of January Revolution* (19 April 2011)

²⁶¹ El-Malawani, Hania, (13 February 2011), "Egypt's military dismantles Mubarak regime", The Sydney Morning Herald, available at, www.smh.com.au Last accessed on 19 October 2012

²⁶² Institute for Security Studies (ISS), *Update on Egypt*, Report No 22, May 2011, P.5

amendments.²⁶³ Under the proposed new amendments to the constitution, the future president would only be allowed to serve two four-year terms instead of unlimited six-year periods.²⁶⁴

Following weeks of sometimes violent demonstrations against the SCAF administration over reforms, Egypt's public prosecutor summoned Mubarak and his sons for questioning on 11 April, 2011.²⁶⁵ Two days later Egypt's prosecutor general ordered the further detention of Mubarak and his sons, Alaa and Gamal, ahead of an investigation into corruption and allegations of abuse.²⁶⁶

On 24 May, former Egyptian President Mubarak was ordered to stand trial on charges of premeditated murder of peaceful protestors during the 2011 Egyptian revolution.²⁶⁷ On 2 June 2012, Hosni Mubarak was found guilty of complicity in the murders of the protestors and sentenced to life imprisonment.²⁶⁸

In an election conducted from 16-17 June 2012, the State Election Commission announced that Muslim Brotherhood candidate Mohamed Morsi is declared winner of Egypt's first free presidential election since the ouster of Hosni Mubarak on 24 June 2012.²⁶⁹ On 30 June 2012, Morsi was inaugurated as the 5th President of Egypt.²⁷⁰ Consequently, the SCAF administration formally handed power to Mohammed Morsi.

Generally speaking, the transition process of Egypt is not as such a linear and simple phenomenon. After the fall of President Mubarak, Egypt has witnessed a lot of mass protests and violent disputes between demonstrators at Tahrir Square and The SCAF. Even after the SCAF administration handed its power to the newly elected president Mohammed Morsi, protests and demonstrations have continued against the new president and protesters are still calling for Mohammed Morsi to step

²⁶³ Institute for Security Studies (ISS), *Supra* note at 262

²⁶⁴ *Ibid*

²⁶⁵ Fadel, Leila, (13 April 2011), *"Egypt detains Mubarak and family in probe on wealth and crackdown on protests"*, Washington Post, available at <http://www.washingtonpost.com/world/mubarak-and-sons-ordered-detained-story.html> Last accessed on 22 October 2012

²⁶⁶ *Ibid*

²⁶⁷ BBC News, (24 May 2011), *"Egypt: Hosni Mubarak and sons to be tried over deaths"*, available at <http://www.bbc.co.uk/news/world-africa-13527102> Last accessed on 22 October 2012

²⁶⁸ Leila Fadel and Ernesto Londoño, (2 June 2012), *"Hosni Mubarak sentenced to life for complicity in killing of protesters"*, The Washington Post, Available at, <http://www.washingtonpost.com/world/middle> Last accessed on 22 October 2012

²⁶⁹ Ernesto Londoño and Karin Brulliard, (24 June 2012), *"Mohamed Morsi named new Egyptian president"*, The Washington Post. <http://www.washingtonpost.com/morsi> Last accessed on 22 October 2012

²⁷⁰ Londoño, Ernesto, (30 June 2012), *"Islamist Morsi is sworn in as president of Egypt"*, The Washington Post. available at, <http://www.washingtonpost.com/story.html> Last accessed on 22 October 2012

down. At the time of writing and finalizing this paper, several massive protests were taking place in Cairo's Tahrir Square and many cities across Egypt against President Mohammed Morsi.²⁷¹ The fate of Egypt is still far from being certain. Therefore, the case of Egypt can be considered as "the Unfinished Revolution".

2.3.3. The Libyan Revolution

2.3.3.1. Background of the Revolution

The Libyan Leader Colonel Muammar Gaddafi came to power in a military Coupdetat on 1 September 1969, toppling the weak and ineffectual King Idris, Libya's first and only monarch.²⁷² Since then he has ruled the country as a dictator ever since and established himself as an increasingly erratic and authoritarian leader.²⁷³ He is the longest ruling leader in the whole Middle East and Northern Africa.²⁷⁴

The Libyan Revolution demanding an end to the four-decade long rule of Libyan leader, Colonel Muammar Gaddafi, began to gain momentum on 15 February 2011 in Benghazi, one of the eastern cities of Libya.²⁷⁵ The peaceful Revolution that is inspired by what happened in Tunisia and Egypt turned in to civil war when the Libyan government responded to the protest by deploying its national army against the protesters and rebels with a view to crushing the unrest.²⁷⁶ The protesters then established a National Transition Council (NTC), headed by former Justice Minister Mustafa Mohamed Abud Al Jeleil, to spearhead the struggle against the Qaddafi government.²⁷⁷

²⁷¹ Violence erupted across Egypt on Friday, January 25, 2013 as tens of thousands took to the streets to deliver an angry backlash against President Mohammed Morsi and his Muslim Brotherhood, demanding regime change on the second anniversary of the revolution that toppled Hosni Mubarak. Protests marking the second anniversary of the uprising that toppled Mubarak have killed nearly 60 people since January 25 and February 2, 2013. SEE, MAGGIE MICHAEL and MARIAM RIZK, *Egypt Protests: Thousands March Against Mohammed Morsi*, (02/01/2013), available at <http://www.huffingtonpost.com/2013/02/01/protests.html> Last accessed on 29 October 2012

²⁷² International Crisis Group (ICG), (6 June 2011), *POPULAR PROTEST IN NORTH AFRICA AND THE MIDDLE EAST (V): MAKING SENSE OF LIBYA*, Middle East/North Africa Report N°107, p.6

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Theo Neethling, (2011), *SOUTH AFRICA, THE AFRICAN UNION AND INTERNATIONAL INTERVENTION IN LIBYA: A CRITICAL APPRAISAL*, A paper Presented at the 34th AFSAAP Conference Flinders University, *Department of Political Science, University of the Free State, South Africa*, p.2

²⁷⁶ Frank O. Okyere and Mustapha` Abdallah, (June 2011), *The NATO Intervention in Libya: Implications for the Protection of Civilians and the AU's Pan-Africanist Agenda*, Kofi Annan International Peacekeeping Training Centre (KAIPTC), p.1

²⁷⁷ Ibid

The lethal and indiscriminate use of force by Gaddafi forces on unarmed protesters resulted in condemnation by the international community as well as NATO military intervention in Libya for the purpose of the protection of civilians.²⁷⁸

After eight months of bloody civil war between Gaddafi forces and opposition rebel groups coupled with incessant NATO air strike on Gaddafi forces and military installations, the NTC opposition rebel groups finally secured victory and overthrown the four decade rule of Colonel Gaddafi on Libya. The Brother Leader of Libya, Gaddafi, finally met an ignominious and humiliating death in the hands of his captors, on October 20, 2011.

2.3.3.2. Causes of the Revolution

When the winds of change and revolution blew over both Tunisia and Egypt, many thought that the wealth of Libya would be enough to prevent the Libyan people from revolting, but Libyans had a different opinion.²⁷⁹ In fact, the popular protests there soon escalated to become an open armed clash between the regime and its opponents. This situation raises the question as to why the Libyans chose to revolt against their government despite their apparent wealth and well-being.

The causes of the Libyan Revolution and the subsequent civil war are manifold, most notable being the widespread corruption; the lack of justice in the distribution of the country's wealth among the various segments of society; the state of underdevelopment which the people suffered despite their country's oil wealth; the absence of real opposition; and the blockage of channels of communication; as well as 'oppression' by the revolutionary committees of Gaddafi Regime, which stretched arms of repression abroad to persecute all who disagreed and oppose with Gaddafi's system.²⁸⁰

Generally, these factors for the occurrence of the Libya Revolution can be broadly classified under four main categories: political deficit, economic deficit, social deficit and historical factors.

2.3.3.2.1. Political Deficit

During his 42 years of rule, Gaddafi imposed a repressive system of government devoid of any of the institutional features common even to many of the world's most undemocratic regimes.²⁸¹ When he

²⁷⁸ Frank O. Okyere and Mustapha` Abdallah, Supra note at 276

²⁷⁹ Mohamed Ashour, (May 31 2011), *The Libyan revolution: Causes, dynamics and future scenarios, critical look at the 2011 North African revolutions and their implications*, A Conference Report, Hilton Hotel, Addis Ababa, Ethiopia, p.12

²⁸⁰ Ibid

²⁸¹ Institute for Security Studies (ISS), Report No. 21, *Country Analysis: Libya*, Addis Ababa, April 2011, p.3

took over power in a military coup in September 1969, Gaddafi introduced his so-called “Third Universal Theory” which advanced the idea that “people should directly run the activities and exercise the powers of government.”²⁸² The result of this system over the years has been the virtual absence of any development of a state bureaucracy, democratic institutions or any form of institutionalized governmental structure.²⁸³

In Gaddafi’s Libya therefore, there is neither a constitution in the modern sense nor are there any political parties. Libya under Gaddafi never knew a constitution. Gaddafi abolished the post-1951 Libyan Constitution and introduced his own political philosophy, based on his “*Green Book* that is published in the 1970s”.²⁸⁴ Therefore, Gaddafi’s only constitution was his own mindset, which he laid down in the “*Green Book*.”²⁸⁵ The *Green Book* rejects modern liberal democracy based on electing representatives as well as capitalism. Instead, it proposes a type of direct democracy overseen by the General People’s Committee which allows direct political participation for all adult citizens.²⁸⁶ In reality, however, Libya under Gaddafi didn’t enjoy any democratic governance stipulated under the *Green Book*.²⁸⁷

Gaddafi’s regime was notoriously know for being one of the most oppressive, authoritarian and irreparable government. There were indeed massive violation of fundamental human rights and freedoms in by the Gaddafi regime.²⁸⁸ There have been frequent criticisms raised by the United Nations Commission on Human Rights (UNCHR) and several human rights defense organizations against the repressive practices of the Libyan regime.²⁸⁹ For example, Amnesty International has expressed concerns about the large number of alleged cases of enforced disappearances, tortures,

²⁸² Institute for Security Studies (ISS), Supra note at 281

²⁸³ Ibid

²⁸⁴ Ziad Akl Moussa, (2011), *REINFORCING AND ACTIVATING AFRICAN UNION PROTOCOLS*, AL-Ahram Center For political Science and Strategic Studies, p.4

²⁸⁵ Ronald Bruce St. John (1983), *The ideology of Muammar Al-Qadhafi: theory and practice*, International Journal of Middle East Studies 15, p.471

²⁸⁶ Vandewalle, Dirk J., (2006), *A history of modern Libya*, Cambridge: Cambridge University Press. ISBN 0-521-85048-7, page 33

²⁸⁷ Ibid

²⁸⁸ Mohamed Ashour, Supra note at 279, p.12

²⁸⁹ Ibid

extrajudicial, summary or arbitrary killings, total lack of freedom of assembly and association and harsh oppression of political oppositions in Libya.²⁹⁰

Under Gaddafi Regime, there were considerable arrests and detentions of political oppositions without trial and many political prisoners were also held incommunicado.²⁹¹ Authorities also detain journalists at will.²⁹² There are no constitutional mechanisms or institutions to address the alleged violation of human rights in Libya.²⁹³

Concerning the right of association and assembly in Libya, individuals can neither form nor join independent political or civic groups, nor can said groups operate or assemble freely.²⁹⁴ Moreover, political parties were banned by the Prohibition of Party Politics Act Number 71 of 1972 of Libya.²⁹⁵

Libya under Gaddafi's was characterized by not only violation of human rights and freedoms but also the existence of centralized power and one man rule. In his entire four decades political leadership, Gaddafi never held any free and fair elections. Instead, Gaddafi as the "Leader of the Revolution" has ruled the country without holding any democratically elected position.²⁹⁶ Therefore, the Gaddafi's regime constitutes the best example of an authoritarian regime since there were no mechanisms of constitutional transfer of power, protection and promotion of human rights as well as democratic institutions, rules and procedures.

2.3.3.2.2. Economic Deficit

Before assessing the Economic conditions as a cause for the Libyan Revolution and civil war, it is quite preferable to critically examine the economic performance of the country prior to the outbreak of the protests in the mid of February 2011.

²⁹⁰ Amnesty International Report on Libya, available at, <http://www.amnesty.org.ar/region/libya/> Last accessed on 17 October 2012

²⁹¹ Ibid

²⁹² Ibid

²⁹³ Ibid

²⁹⁴ Bertelsmann Stiftung, (2012), *BTI 2012 — Libya Country Report*, Gütersloh: Bertelsmann Stiftung, page 6, available at, <http://www.bertelsmanntransformation-index.de/fileadmin/pdf/Gutachten> Last accessed on 17 October 2012

²⁹⁵ Ibid, p.7

²⁹⁶ Staff, (2002), *The Middle East and North Africa, 2003*, Europa Publications (London), p.758

Decades of rapid oil-fueled growth transformed Libya from one of the poorest and least developed countries in the world into one of the wealthier countries in Africa and the Arab world.²⁹⁷ Libya is the fourth largest oil producer in Africa, estimated at 1.8 million barrels per day. The country has the continent's largest proven oil reserves at 43.7 billion barrels, while it a natural gas reserve of 1.54 trillion cubic meters.²⁹⁸

Indicators of human development reports reveal that Libya is one of the Arab countries that have made progress according to the Human Development Index (HDI) that measures health, education, income of individuals in one country.²⁹⁹ Compared to its neighbors, Libya enjoys a low level of both absolute and relative poverty.³⁰⁰ Meanwhile, its abundant oil revenues and small population (almost 6 million people) result in one of the highest GDPs per capita in Africa.³⁰¹

But, in spite of the aforementioned positive indicators, many observers believe that since Qaddafi came to power through, Libya has lost many development opportunities.³⁰² Despite the availability of rich oil resources in their country, many Libyans severely suffers from various economic deficits of the Gaddafi regime such as unfair distribution of wealth, high social inequality, regional economic disparities, corruption, unemployment and poor economic governance.³⁰³

Generally, the economic problems that have triggered the Revolution and subsequent civil war in Libya can be broadly classified in to three broad categories. These are unfair distribution of wealth, corruption and unemployment.

Given a population of a mere six million and abundant oil resources, many Libyans believe their country ought to resemble Dubai.³⁰⁴ However, they saw their country looking like 'a very poor Third World country'.³⁰⁵ Years of unfair distribution of wealth and pervasive corruption, have left parts of

²⁹⁷ Mohamed Ashour, Supra note at 279, p.12

²⁹⁸ Ibid

²⁹⁹ UNICEF Middle East and North Africa Regional Office, (November 2010), "*The Situation of Children and Women in Libya*", p.22

³⁰⁰ Ibid

³⁰¹ Ibid

³⁰² International Crisis Group, Supra note at 272, p.6

³⁰³ Libya 2012, *African economic outlook*, available at, <http://www.africaneconomicoutlook.org.pdf> Last accessed on 27 October 2012

³⁰⁴ International Crisis Group, Supra note at 272, p.6

³⁰⁵ Ibid

the country in a state of considerable economic setbacks and underdevelopment.³⁰⁶ Personal rule confined to Gaddafi's family and a very close circle of his relatives and followers has deprived Libyans of their wealth.³⁰⁷ Gaddafi even used Libya's wealth to buy more followers, and tame the opposition or suppress them rather than investing it for the benefit of the whole Libyans.³⁰⁸ It seems that those four decades of the 'Colonel's' domination can be described as the lost decades of development.³⁰⁹

In addition to unfair distribution of wealth, Libya under Gaddafi era was also characterized by pervasive and blatant corruption among Libyan senior officials, political elites and relatives of Gaddafi. Prior to the Revolution in 2010, Libya was ranked 146 out of 178 countries on the Corruption Perceptions list compiled by Transparency International.³¹⁰ Corruption became engrained in the country's political and economic structures, largely as a result of the overwhelming centralization of power in the hands of Gaddafi and small elite of family members and close acquaintances which held uncapped control over state resources- primarily oil.³¹¹ During his time in power, Gaddafi appointed his sons to run various sectors of Libya's economy and enabled them to accumulate billions of Dollars.³¹²

Unemployment has also played a key role in escalating protests against the rule of the Gaddafi regime. Despite its wealth and natural resources, Libya during the reign of Gaddafi faced high unemployment rate especially among the youth.³¹³ Though the country hosts more than million foreign labor forces from Sub-Saharan and other countries, unemployment among Libyan youths became the highest in the region, its rate going above 20 per cent in 2009.³¹⁴ This unemployment could be attributed due to two main reasons. The first one suggests that there is mismatch between the

³⁰⁶ International Crisis Group, Supra note at 272, p.6

³⁰⁷ Ibid

³⁰⁸ Jentleson and Christopher A. Wrytock, (Winter 2005–2006), *Who 'won' Libya?*, International Security 30(3), p.56

³⁰⁹ Hamdy Hasan, *Libya second liberation*, available at <http://www.hounaloubnan.com.news> Last accessed on 1 November 2012

³¹⁰ Transparency International, "*Corruption Perceptions Index*", available at, www.transparency.org Last accessed on 1 November 2012

³¹¹ Maplecroft's Corruption Risk Briefings, (May 22, 2012), *Analysis: Corruption remains major risk to investors in Libya*, available at, <http://www.blog.maplecroft.com/2012/05/22/analysis-corruption-in-libya> Last accessed on 1 November 2012

³¹² Ibid

³¹³ Oxford business group, (2010), *Libya 2010*, available at, <http://www.oxfordbusinessgroup.com> Last accessed on 2 November 2012

³¹⁴ Ibid

local skill set and Libya's economic development need.³¹⁵ The second one is the demographic problem of 'youth bulge' in Libya.³¹⁶ Since 1990, the youth population aged between 15 and 29 has grown by 50 per cent in Libya.³¹⁷ As a result of this, the Libyan economy finds itself in a very difficult situation to employ such huge number of youths in the country.³¹⁸

2.3.3.2.3. Historical Factors

Historically, there has been latent competition between Libya's eastern and western provinces over status and sovereignty.³¹⁹ The eastern provinces, particularly the city of Benghazi, supported Qaddafi's coup in 1969 more than any other provinces of the country.³²⁰ But soon this city became the stronghold of Islamic and non-Islamic opposition, and a source of unrest and coup attempts against the Gaddafi regime.³²¹ Violent confrontations between the government and opposition from the 1970s resulted in a brain drain of professionals from the eastern cities, who left Libya.³²² All this added to the climate of mistrust between Qaddafi's regime and those Eastern cities.³²³ This is clearly displayed when the first spark of Revolution against Gaddafi's forty years rule began in the Eastern city of Benghazi, on 15 February 2011. Even during the entire uprising and civil war in Libya, the opposition rebel groups that are spearheaded by NTC against the struggle of Gaddafi made their stronghold at the Eastern city of Benghazi.

2.3.3.2.4. Social (Dignity) Deficit

In spite of having sufficient natural resources to satisfy a population of around 6 million, Libyans found themselves in unbearable socio-economic difficulties during the reign of Gaddafi over Libya. As it is mentioned in the previous sections, most Libyans severely suffered from the problems of high unemployment, blatant corruption and unfair distribution of wealth.

³¹⁵ Oxford business group, Supra note at 313

³¹⁶ Ragui Assaad and Farzaneh Roudi-Fahimi, *YOUTH IN THE MIDDLE EAST AND NORTH AFRICA: DEMOGRAPHIC OPPORTUNITY OR CHALLENGE?*, POPULATION REFERENCE BUREAU, P.7

³¹⁷ Ragui Assaad and Farzaneh Roudi-Fahimi, Supra note at 316

³¹⁸ Ibid

³¹⁹ Sadiki Koko and Martha Bakwesegha Osula, (2011), *Assessing the African Union's Response to the Libyan Crisis*, conflict trends Journal, p.6

³²⁰ Ibid

³²¹ Ibid

³²² Ibid

³²³ Oye Ogunbadejo, (Summer 1983), *Qaddafi's North African design*, International Security 8(1), p.159

These socio-economic maladies were further aggravated by the most authoritarian and repressive nature of Gaddafi regime. The regime's heavy-handed approach in political governance not only antagonizes large portions of the Libyan citizenry, but also placed Libya among the world's pariah states.³²⁴ The cumulative effect of the above mentioned socio-economic and political deficits of Gaddafi regime created a sense of bitterness, frustration and loses of dignity among broad segments of the Libyan population and finally drove them towards protests and uprising against the government.

2.3.3.3. Chronology of the Revolution

Protests beginning in Benghazi on 15 February 2011 sparked tens of thousands of anti-government demonstrations throughout Libya in the days that followed, mirroring the turmoil in the North Africa and Middle East.³²⁵ The immediate trigger of the Libyan Revolution was the events took place in neighboring Tunisia and Egypt where, between January and February 2011, the people forced out Presidents Ben Ali and Hosni Mubarak respectively, in public demonstrations and protests.³²⁶

As in Tunisia and Egypt Revolution, the Revolutionaries in Libya also used social network computer sites such as *Facebook, Twitter and YouTube* to call on people to stage protests.³²⁷ In this context the Libyan Revolution shared similar features with Tunisia and Egypt since it was facilitated and executed via social networks like Facebook and Twitter.

In chronological order of events, The Libyan Revolution began with a protest in Benghazi on 15 February 2011. On the evening of 15 February, between 500 and 600 demonstrators protested in front of Benghazi's police headquarters after the arrest of human rights lawyer Fathi Terbil.³²⁸ The main protest was held on 16 February 2011 at Shajarah Square in Benghazi. This time, the requests of the protesters were not limited to the release of prisoners such as Mr. Fathi Trbal. It turned out to be a

³²⁴ Sadiki Koko and Martha Bakwesegha Osula, *Supra* note at 319, p.7

³²⁵ Anthony Bell & David Witter, (September 2011), *THE LIBYAN REVOLUTION: ROOTS OF REBELLION, Part 1*, Institute for the Study of War (ISW), p.7

³²⁶ Kasaija Phillip Apuuli, (2011), *The Principle of 'African solutions to African Problems' under the spotlight: The African Union (AU) and the Libya Crisis*, Open Society Institute, Africa Governance Monitoring and advocacy Project, p.2

³²⁷ Riley, Sheila, (Oct 31 2011), "Social Media One Key to the Arab Spring IT-Savvy Population it Played Bigger Role in Tunisia, Egypt than in Libya, Yemen, some Say," *Investor's Business Daily*: A06, ProQuest, p.12

³²⁸ The Great Socialist Libyan Arab Jamahiriya, *Response to the Application of the African Commission on Human and Peoples' Rights (Application No. 004/2011) and the Order for Provisional Measures by the African Court on Human and Peoples Rights, Submitted to the Court, Arusha, Tanzania*, 06 June 2011

demonstration seeking a change of government in Libya as had happened earlier in Tunisia and Egypt.³²⁹

The escalating unrest in Libya represented an unprecedented challenge to Colonel Muammar Gaddafi's 42-year reign, and he responded by ordering Libyan national army and security forces to move against protestors in a harsh and violent crackdown.³³⁰ The protest soon turned into a riot and by February 17th, activists had labeled the day, "A Day of Rage."³³¹ Violence then escalated rapidly.³³² Subsequently, the demonstration in Benghazi went out of control. The government forces and institutions, such as police stations, intelligence and army barracks were destroyed and abandoned.³³³ The protest that initially began in Benghazi rapidly expanded to other cities of Libya.

As the protests started to be organized more effectively, groups began to break into army warehouses and take arms. At this juncture, the protests reached the stage of an armed uprising after the demonstrators armed themselves.³³⁴ At this stage, the groups organizing the protests became public and began to officially take responsibility for the overall situation in the Eastern part of Libya.³³⁵

With the defection of the army, huge quantities of heavy weapons as well as military installations including tanks, guns, air and naval bases fell into the hands of the Revolutionaries.³³⁶ This situation marked the turning point of the popular protest in to a full civil war between Gaddafi forces and the rebel groups.

The protesters established a National Transition Council (NTC), headed by former Justice Minister Mustafa Mohamed Abud Al Jeleil, to spearhead the struggle against the Qaddafi government.³³⁷ The National Transitional Council (NTC) then officially declared itself to be the alternative government in

³²⁹ The Great Socialist Libyan Arab Jamahiriya, *Response to the Application of the African Commission on Human and Peoples' Rights*, Supra note at 328

³³⁰ Theo Neethling, Supra note at 275, p.2

³³¹ Ibid

³³² Ibid

³³³ Ibid

³³⁴ Frank O. Okyere and Mustapha` Abdallah, Supra note at 276, p.2

³³⁵ Ibid

³³⁶ Reuters, (May 10, 2011), "*Timeline: Libya's Uprising against Muammar Gaddafi*," available at <http://www.uk.reuters.com/article/2011/05/10/uk-libya-timeline> Last accessed on 14 November 2012

³³⁷ Aljazeera, (27 February 2011), "*Libya Opposition Launches Council*", available at <http://www.aljazeera.com/news/africa/html> Last accessed on 14 November 2012

Libya.³³⁸ The NTC began to create a front comprising all internal and external actors against Colonel Gaddafi's regime.³³⁹ The Front included some defecting army units from many locations and cities of Libya. Since the formation of the NTC, the crisis situation has exacerbated and spread across many cities and towns, including Tripoli, Misrata, Zuara, Zawiyah, Zintan and Sirte.³⁴⁰

Initially the rebels enjoyed rapid successes, establishing a firm hold over the cities of Benghazi and Tobruk and declaring they had taken control of most of the country's other major cities.³⁴¹ In late February, however, Gaddafi's forces soon recovered and retook much of the country and were even threatening to crush the rebellion's eastern epicenter in Benghazi.³⁴²

On February 22nd Gaddafi issued a televised broadcast, ordering his forces to crush the uprising.³⁴³ In words that bore direct echoes of the 1994 Rwandan genocide, Gaddafi told the world that 'officers have been deployed in all tribes and regions so that they can purify Libya from these cockroaches' and 'any Libyan who takes arms against Libya will be executed'.³⁴⁴ Gaddafi also vowed to track and kill protestors "house by house".³⁴⁵ Government forces utilized heavy equipment including armor, air and artillery assets to confront opposition forces, and the use of foreign mercenaries was widely reported.³⁴⁶

Following the rapid escalation of the crisis, the UN Security Council (UNSC) met in a closed session to discuss Libya, and issued a statement calling for "an immediate end to the violence on 22 February."³⁴⁷ The UN Human Rights Council (UNHRC) also convened a special session in Geneva, on 25 February 2011, recommending Libya's suspension and ordering a commission of inquiry.³⁴⁸ It was the first special session in the Council's history devoted to a situation in the territory of one of its

³³⁸ Aljazeera, (27 February 2011), "*Libya Opposition Launches Council*", Supra note at 337

³³⁹ Ibid

³⁴⁰ Ibid

³⁴¹ Anthony Bell & David Witter, Supra note at 325, p.25

³⁴² Ibid

³⁴³ Kareem Fahim, (22 February 2011), "Qaddafi's Grip on the Capital Tightens as Revolt Grows, The New York Times, available at: <http://www.nytimes.com/2011/02/23/world/africa/23libya.html> Last accessed on 15 November 2012

³⁴⁴ Ibid

³⁴⁵ Ibid

³⁴⁶ Frank O. Okyere and Mustapha` Abdallah, Supra note 276, p.2

³⁴⁷ United Nations Security Council, *Security Council Press Statement on Libya*, 22 February 2011, SC/10180, AFR/2120.

³⁴⁸ UN News Centre, (25 February 2011), A/HRC/S-15/2 and "*UN rights council recommends suspending Libya, orders inquiry into abuses*", available at, <http://www.un.org/apps/news/story> Last accessed on 16 November 2012

members.³⁴⁹ Subsequently, with a unanimous vote, the UN General Assembly (UNGA) suspended Libya from the Human Rights Council on 1 March 2011.³⁵⁰

On the evening of 26 February 2011, the UNSC unanimously passed Resolution 1970, which using the language of “Responsibility to Protect” demanded an immediate end to the violence, leveled sanctions against Gaddafi and advisers close to him and referred Libya to the International Criminal Court (ICC), calling for a war crimes investigation by the body into “widespread and systematic attacks” against Libyan civilians.³⁵¹ The sanctions imposed under Resolution 1970 also include an arms embargo on Libya, indefinite travel bans and asset freezes on members of the regime.³⁵²

On 5 March, in a letter to the UN General Assembly, the NTC declared itself the “sole representative of all Libya,” and called for the international community to protect the Libyan people “without any direct military intervention on Libyan soil.”³⁵³

On 7 March the Gulf Cooperation Council (GCC) called on the UN Security Council to ‘take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya’, and condemned ‘crimes committed against civilians, the use of heavy arms and the recruitment of mercenaries’ by the Libyan regime.³⁵⁴ The following day, the Organization for Islamic Cooperation (OIC) echoed the GCC position when it called for a no-fly zone over Libya, although it explicitly excluded foreign military operations on the ground.³⁵⁵

On 9 March 2011 the head of the Libyan NTC, Mustafa Abdul Jalil, “pleaded for the international community to move quickly to impose a no-fly zone over Libya, declaring that any delay would result in more casualties”.³⁵⁶ On 12 March 2011, the Arab League called on the UN Security Council ‘to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in

³⁴⁹ UN News Centre, “UN rights council recommends suspending Libya”, *Supra* note at 348

³⁵⁰ Institute for Security Studies (ISS) Report, *Country Analysis: Libya*, No. 21, April 2011, p.5

³⁵¹ United Nations Security Council, S/RES/1970, SC 10187, and S/PV.6491

³⁵² *Ibid*

³⁵³ Bill Varner, (8 March 2011), “*Libyan Rebels appeal to UN for protection, formal recognition*”, The Washington Post, available at, <http://www.washingtonpost.com/wp-dyn> Last accessed on 28 November 2012

³⁵⁴ Samir Salama, (7 March 2011), *GCC backs no-fly zone to protect civilians in Libya*, Gulf News, available at, <http://www.gulfnews.com.news/gulf/uae/government/gcc> Last accessed on 28 November 2012

³⁵⁵ ‘Final communiqué issue by the emergency meeting of the Committee of Permanent Representatives to the Organization of the Islamic Conference on the Alarming developments in Libyan Jamahiriya, (8 March 2011)

³⁵⁶ CNN, (9 March 2011) “*Rebel Leader Calls for 'Immediate Action' on No-Fly Zone*”. available at, <http://edition.cnn.com/libya.civil.war/> Last accessed on 28 November 2012

places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighboring States.³⁵⁷

Following such diplomatic calls and pressures and debates, on 17 March 2011, the UN Security Council, acting under the authority of Chapter VII of the UN Charter, adopted UNSC Resolution 1973 which imposed a “No-Fly Zone on Libya” by a vote of ten in favor, zero against, and five abstentions.³⁵⁸ Ten members of the Council, France, the UK, Lebanon, the US, South Africa, Bosnia-Herzegovina, Colombia, Portugal, Nigeria and Gabon supported the Resolution, while China, Russia, Brazil, India and Germany abstained.³⁵⁹ All three African non-permanent members of the UNSC, i.e., South Africa, Gabon and Nigeria voted in favor of No-Fly Zone.³⁶⁰ The five abstentions were: Brazil, Russia, India, China, and Germany.³⁶¹

UNSC Resolution 1973 reiterated the Council’s concern that crimes against humanity might have been committed, deplored the ongoing humanitarian crisis, and took note of the criticisms of Gaddafi’s regime made by a variety of international organizations, particularly the LAS call for a no-fly zone and safe areas to protect civilians.³⁶² Once again, the Resolution 1973 defined the situation in Libya as a threat to international peace and security; and, acting under Chapter VII of the UN Charter, it demanded, among other things, an immediate ceasefire and intensified efforts to find a political solution to the crisis.³⁶³ In operative paragraph 4, the Council authorized the use of ‘all necessary measures to protect civilians and civilian populated areas under threat of attack in Libyan Arab Jamahiriya including Benghazi while excluding a foreign occupation force of any form on any part of Libyan territory’.³⁶⁴ In its operative paragraph 6, the UNSC Resolution 1973 imposed a “No-Fly Zone on Libya, by establishing ‘a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians’, excepting only those necessary to enforce the No-Fly Zone and those

³⁵⁷ Council of the League of Arab States, Res. no. 7360, 12 March 2011, paragraph 1 and 2

³⁵⁸ UN Security Council, (17 March 2011), *Security Council Approves ‘No-fly Zone’ over Libya, Authorizing ‘All Necessary Measures’ to Protect Civilians, by Vote of 10 in Favor with 5 Abstentions*, SC10200, New York: UN Department of Public Information, www.un.org/News/Press/docs/2011/sc10200.doc.htm Last accessed on 30 November 2012

³⁵⁹ *Ibid*

³⁶⁰ *Ibid*

³⁶¹ *Ibid*

³⁶² UNSC Resolution 1973

³⁶³ *Ibid*

³⁶⁴ *Ibid*

'whose sole purpose is humanitarian'.³⁶⁵ This resolution appears to give legal weight to attacks against Col Muammar Gaddafi's air capabilities.

Resolution 1973 highlighted the concept of "Responsibility to Protect," which, in the words of the 2005 UN World Summit Outcome, is the duty of the international community to "help protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity."³⁶⁶ While the principle of Responsibility to Protect (R2P), had been invoked before by the Security Council, including in Resolution 1970, Resolution 1973 was the first time the Security Council approved the use of force in support of R2P.³⁶⁷

The military campaign to enforce the No-Fly Zone started immediately after the "Paris Summit for the Support of the Libyan People", held on 19 March 2011.³⁶⁸ Then, the Multi-State Coalition Forces began military intervention on Libya to implement the No-Fly zone and any necessary measure to protect civilians under the threat of Gaddafi's regime.³⁶⁹ On the same day, Coalitions Forces airstrikes struck the Libyan air defense network, various military installations around the country, and halted the loyalist ground advance on Benghazi.³⁷⁰ US operations were conducted under the code name of "Operation Odyssey Dawn"; French participation was "Operation Harmattan", the British "Operation Ellamy" and the Canadian "Operation Mobile".³⁷¹

Initially, the United States took initial operational command of Coalition Operations to enforce United Nations Security Council Resolution (UNSCR) 1973.³⁷² On 31 March, the North Atlantic Treaty Organization (NATO) assumed sole command of the international air operations over Libya under the mission called, "Operation Unified Protector".³⁷³ The NATO forces under the Operation

³⁶⁵ UNSC Resolution 1973, *Supra* note at 362

³⁶⁶ Michael W. Doyle, (20 March 2011), *"The Folly of Protection"*, Foreign Affairs, available at: <http://www.foreignaffairs.com/> Last accessed on 30 November 2012

³⁶⁷ *Ibid*

³⁶⁸ PEACE AND SECURITY COUNCIL, 275TH MEETING, 26 APRIL 2011, *REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE ACTIVITIES OF THE AU HIGH LEVEL AD HOC COMMITTEE ON THE SITUATION IN LIBYA*, PSC/PR/2(CCLXXV), paragraph 11

³⁶⁹ *Ibid*

³⁷⁰ Varun Vira, Anthony H. Cordesman, Arleigh A. Burke, (20 June 2011), *THE LIBYAN UPRISING: AN UNCERTAIN TRAJECTORY*, Center for Strategic and International Studies (CSIS), p.9

³⁷¹ *Ibid*, p.11

³⁷² *Ibid*, p.18

³⁷³ *Ibid*

name of “Unified Protector” have launched an incessant air strike and bombardment on different targets and locations in Libya from 31 March 2011 to October 31, 2011.³⁷⁴

On March 19, 2011, the first air strike that halts the advance of Gaddafi's forces on Benghazi was launched by the Coalition Forces under the mission called Operation of Odyssey Dawn. The same day many of Libya's Air defense systems were also destroyed. This operation continued for weeks until NATO took an official control of all military operations on March 31, 2011, under the mission known as the “Operation Unified Protector”.³⁷⁵

While the NATO's military campaign continued unabated, on 30 April 2011, Gaddafi survived NATO airstrike in Tripoli that killed his youngest son, Saif Al-Arab Gaddafi and his three grand children.³⁷⁶

After meeting with Gaddafi in Tripoli on 30 May 2011, South African president Jacob Zuma indicated that the Libyan leader was not willing to step down, but evinced interest in negotiating a political solution to the crisis, stating that Qaddafi “called for an end to the bombings to enable a Libyan dialogue.”³⁷⁷

With NATO attacks increasing in both severity and frequency, numerous defections amongst Gaddafi's military and political elite, and steadily increasing support from the international community, the opposition forces were able to make some military gains towards the end of May 2011.³⁷⁸

³⁷⁴ Varun Vira, *Supra* note at 370

³⁷⁵ *Ibid*, p.19

³⁷⁶ EXTRAORDINARY SESSION OF THE ASSEMBLY OF THE UNION ON THE STATE OF PEACE AND SECURITY IN AFRICA, *REPORT OF THE CHAIRPERSON OF THE COMMISSION ON CURRENT CHALLENGES TO PEACE AND SECURITY ON THE CONTINENT AND AU'S EFFORTS, Enhancing Africa's Leadership, Promoting African Solutions*, EXT/ASSEMBLY/AU/2.(01.2011), ADDIS ABABA, 25 – 26 MAY 2011, paragraph 39

³⁷⁷ Peter Graff, (31 May 2011), “*Libya's Gaddafi: I will not leave my country*”, Reuters, available at, www.reuters.com Last accessed on 13 November 2012

³⁷⁸ Emily O'Brien and Andrew Sinclair, (2011), *The Libyan War: A Diplomatic History (February-August 2011)*, New York university, p.7

On 8 June, in an audio address to a state television, Gaddafi vowed to remain in Libya saying, “We only have one choice.³⁷⁹ This is our country and we shall stay here till the end- dead, alive, victorious. It doesn’t matter.” He also said, “We welcome death. Martyrdom is a million times better.”³⁸⁰

On 27 June, the ICC issued arrest warrants for Muammar Gaddafi, his son Saif Al Islam Gaddafi and the Head of the Intelligence Abdullah Al Sanousi for crimes against humanity committed in Libya since February 2011.³⁸¹

On 29 June 2011, France officially acknowledged that it had furnished the Libyan rebels with weapons, the first case of a NATO member providing military hardware to the Libyans endeavoring to remove Gaddafi from power.³⁸²

During the fall of June 2011, the Libyan rebels made surprising and rapid military gains against Gaddafi forces.³⁸³ According to some analysts, the confirmation of French weapons assistance explained how the rebels were able to press Gaddafi forces and establish control over much military fronts.³⁸⁴

French foreign minister Alain Juppé then stated on 20 July that Gaddafi could potentially remain in Libya, if he agreed to give up power.³⁸⁵ Juppé did, however, state that Gaddafi’s renouncing power was a precondition for a ceasefire in Libya.³⁸⁶ Similarly, On 22 July, the Libyan oppositions NTC leader Mustafa Abdel Jalil stated that Gaddafi could potentially remain in Libya, with certain

³⁷⁹ The Daily News, (8 June 2011), *Libya: Gaddafi vows to fight to death*, available at, <http://www.thisdaylive.com/articles.Libya-gaddafi-vows-to-fight-to-death> Last accessed on 12 November 2012

³⁸⁰ Ibid

³⁸¹ Mike Corder, (28 June 2011), *“Prosecutor presses inner circle on Gaddafi arrest”*, Associated Press, available at, www.associatedpress.com.eng Last accessed on 15 November 2012

³⁸² Elizabeth Pineau and John Irish, (29 June 2011), *“France provided weapons, food to Libya rebels”*, Reuters, available at, www.reuters.com/france/provided/weapons Last accessed on 27 November 2012

³⁸³ Emily O’Brien and Andrew Sinclair, *Supra* note at 378, p.24

³⁸⁴ Ibid

³⁸⁵ Steven Erlanger, (20 July 2011), *“France Says Qaddafi Can Stay in Libya if He Relinquishes Power”*, The New York Times, available at: <http://www.nytimes.com.2011/07/21/world/europe/21france.html> Last accessed on 29 November 2012

³⁸⁶ Ibid

conditions, if he agreed to give up power.³⁸⁷ However, this proposal of Gaddafi relinquishing power but remain in Libya, was totally rejected by the Libyan government.³⁸⁸

On 5 August, Gaddafi's son Khamis was reported killed in a NATO airstrike on loyalist forces of Gaddafi in Zlitan.³⁸⁹

By the late August 2011, the rebel forces were drastically approaching to the Libyan Capital, Tripoli.³⁹⁰ After taking a series of strategic towns near Tripoli, rebel forces continued to the capital in a rapid advance.³⁹¹ Finally, On 21 August 2011, six months after the protests began opposition rebels entered in to Tripoli with little resistance from Gaddafi forces.³⁹² At that day, with Gaddafi's whereabouts was unknown while some clashes between loyalist forces and the Libyan rebels were ongoing in Tripoli.³⁹³ Leaders of major countries across the world have called on Gaddafi to give up the fight, step down and hand over power.³⁹⁴ Defiant Gaddafi however, makes audio addresses over state television calling on Libyans to fight off the rebel "rats".³⁹⁵

On 20 October 2011 the Libyan Leader Muammar Gaddafi is captured and killed in a last stand-off between pro and anti-Qaddafi forces in his hometown of Sirte.³⁹⁶ An NTC official says Gaddafi's son Mutassim is also dead.³⁹⁷ Mobile phone footage showed both Gaddafi and his son alive after their

³⁸⁷ Charles Levinson, (25 July 2011), "*Rebel Chief Says Gaddafi, Family Can Stay in Libya*", The Wall Street Journal, p.12

³⁸⁸ Michael Peel, Kiran Stacey and Helen Warrell, (26 July 2011), "*Libya rejects Gaddafi leave proposal*", Financial Times, available at: <http://www.ft.com.intl/cms/> Last accessed on 24 November 2012

³⁸⁹ Reuters, (5 August 2011), "*Libya rebels say Gaddafi's son killed by NATO*", available at www.reuters.com/gaddafis/son Last accessed on 24 November 2012

³⁹⁰ Emily O'Brien and Andrew Sinclair, Supra note at 378, p.27

³⁹¹ Ibid

³⁹² PEACE AND SECURITY COUNCIL, 291st MEETING, *REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE SITUATION IN LIBYA AND ON THE EFFORTS OF THE AFRICAN UNION FOR A POLITICAL SOLUTION TO THE LIBYAN CRISIS*, PSC/AHG/3(CCXC), 26 AUGUST 2011, ADDIS ABABA, Paragraph 11

³⁹³ Ibid

³⁹⁴ Global Times, (23 august 2011) *A Brief Look at the Libyan Civil war*, available at, <http://www.globaltimes.cn/NEWS/Libyan-Civil-War> Last accessed on 11 November 2012

³⁹⁵ Ibid

³⁹⁶ AlertNet News, (23 October 2012), *Libya turmoil At a glance*, available at, <http://www.trust.org/alertnet/crisis-centre/crisis/libya-turmoil> Last accessed on 11 November 2012

³⁹⁷ Ibid

capture.³⁹⁸ The former leader was seen being mocked, beaten and abused before he died in what National Transitional Council (NTC) officials said was crossfire.³⁹⁹

With the killing of Gaddafi, his 42-years rule over Libya has effectively come to an end.⁴⁰⁰ Generally speaking, one of the most unfortunate and heartbreaking feature of the Libyan civil war is the huge number of civilian casualties and destructions of properties that has resulted from the eight months of bloodshed and mayhem between Gaddafi forces and the opposition rebel fighters. Though it is difficult to ascertain the exact number of deaths from the civil war, at least 30,000 people are thought to be killed, 50,000 people wounded and around 4,000 missing during the upheavals in Libya.⁴⁰¹

2.3.3.4. Consequences of the Libya Revolution

Eight months after the beginning of the Revolution in Benghazi and just three days after the death of Colonel Gaddafi, the NTC declared the “liberation of the nation” on 23 October 2011.⁴⁰² By this time Libyans were free from their dictator but faced the massive challenge of building a new country for themselves.⁴⁰³ On July 7, 2012, Libyan voters chose 200 members of the General National Congress in the country’s first national election since 1965.⁴⁰⁴ The Alliance of National Forces, a coalition of civil society organizations led by former interim Prime Minister Mahmoud Jibril, won the parliamentary election by securing 39 out of 80 political seats.⁴⁰⁵ The main bright spot about this election was the fact that it has produced a relatively moderate parliament from which a more legitimate government might be formed.⁴⁰⁶ A political coalition widely regarded as the liberal option

³⁹⁸ AlertNet News, Supra note at 396

³⁹⁹ Ibid

⁴⁰⁰ REUTERS, (20 October 2011), *Timeline: Libya's civil war nears end*, available at <http://www.reuters.com/article/libya-events> Last accessed on 13 November 2012

⁴⁰¹ Karin Laub, *Libya: Estimated 30,000 Died In War; 4,000 Still Missing*, Huffington post, available at <http://www.huffingtonpost.com/2011> Last accessed on 13 November 2012

⁴⁰² Saleh, Yasmine; Rohan, Brian, (23 October 2011), *"UPDATE 4-Libya declares nation liberated after Gaddafi death"*, <http://uk.reuters.com/article/2011/10/23/libya-declaration-liberation> Last accessed on 16 November 2012

⁴⁰³ Christopher S. Chivvis, Keith Crane, Peter Mandaville, Jeffrey Martini, (2012), *Libya's Post-Qaddafi Transition: The Nation-Building Challenge*, RAND National Security Research Division, p.1

⁴⁰⁴ Christopher M. Blanchard, (October 2012), *Libya: Transition and U.S. Policy*, Congressional Research Service, October 18, 2012, p.14

⁴⁰⁵ Ibid

⁴⁰⁶ Christopher S. Chivvis, Keith Crane, Peter Mandaville, Jeffrey Martini, Supra note at 403, p.5

dominated Libya's historic parliamentary election.⁴⁰⁷ The next major step in Libya's transition process is the drafting and approval of a new constitution.⁴⁰⁸

Though post Gaddafi Libya is witnessing impressive developments towards transition to democracy, there are remaining challenges in achieving the overall peace and security challenges of the country. During the post Revolution transition period; Libya has witnessed some major security threats.⁴⁰⁹ For instance, on September 11, 2012, multiple armed groups attacked the U.S. consulate in the eastern Libyan city of Benghazi, killing the U.S. ambassador and three other U.S. government employees.⁴¹⁰ The attack on Benghazi drew immediate action to the security challenge Libya faces.⁴¹¹

⁴⁰⁷ Christopher S. Chivvis, Keith Crane, *Supra* note at 406

⁴⁰⁸ *Ibid*

⁴⁰⁹ *Ibid*

⁴¹⁰ *Ibid*

⁴¹¹ *Ibid*

CHAPTER THREE

3. THE RESPONSE OF THE AFRICAN UNION TO THE NORTH AFRICA REVOLUTIONS OF 2011: SPECIAL EMPHASIS TO THE LIBYAN CIVIL WAR

3.1. Introduction

The Revolutions that brushed away the North African countries during the opening days of 2011 took the world by surprise. They were extraordinary events whose exact time of occurrence could hardly have been anticipated.

Clearly, the AU like any other international players did not anticipate these Revolutions.¹ Even if the AU was unable to anticipate and expect the occurrence of the North African Revolutions, it has nevertheless try to react and respond in various ways to bring peace and democratic transition in its North African member states.²

The popular Revolutions that led to the ousting of Zine El Abidine Ben Ali of Tunisia and Hosni Mubarak of Egypt were relatively short and peaceful. Due to the amazing speed of developments on the ground in Tunisia and Egypt Revolution, the responses of the AU to these Revolutions were almost overtaken by events.

Despite the fact that only days separated the Libyan Revolution from the Egypt and Tunisia one, the Democratic Revolution in Libya has, however, followed a path different from those of Tunisia and Egypt. The Revolution and the intransigence of Gaddafi to stand down has consequently plunged Libya into protracted mayhem and bloodshed.³

Following the violent crackdowns over the protesters by the Libyan authorities, the opposition groups demanding democratic change in Libya started an armed rebellion led by the National

¹ EXTRAORDINARY SESSION OF THE ASSEMBLY OF THE UNION ON THE STATE OF PEACE AND SECURITY IN AFRICA, REPORT OF THE CHAIRPERSON OF THE COMMISSION ON CURRENT CHALLENGES TO PEACE AND SECURITY ON THE CONTINENT AND AU'S EFFORTS, *Enhancing Africa's Leadership, Promoting African Solutions*, EXT/ASSEMBLY/AU/2.(01.2011), ADDIS ABABA, 25 – 26 MAY 2011, paragraph 9

² *Ibid*, paragraph 9

³ Frank O. Okyere and Mustapha` Abdallah, (June 2011), *The NATO Intervention in Libya: Implications for the Protection of Civilians and the AU's Pan-Africanist Agenda*, Kofi Annan International Peacekeeping Training Centre (KA IPTC), p.1

Transition Council (NTC). The peaceful Revolution in Libya, then, quickly turned into a de facto civil war between the Gaddafi forces and the opposition groups. The African Union has then responded to the Libyan civil war through negotiated settlement and diplomacy using its “Political Roadmap to Libya” which provided for political dialogue between the Libyan government and the oppositions for the transformation of Libya to a democratic system through immediate cessation of all hostilities and the adoption and implementation of political reforms necessary for the elimination of the causes for the Libyan crisis.⁴

The political solutions adopted by the AU, however, failed to bring the necessary outcomes to the Libyan civil war since the Libya leader Colonel Muammar Gaddafi accepted and the opposition rebels rejected AU’s political roadmap. Finally, after being accompanied by an overwhelming and incessant NATO air strikes over Libya and gaining several military successes on the ground, the Libyan rebel forces NTC entered into Tripoli on 21, August 2011 and brought to an end to the 42 years of Gaddafi’s dictatorial rule over Libya. As a result of this, the AU’s peacemaking initiative for Libyan civil war as symbolized by its roadmap was never materialized and brought peace to Libya.

Though the North Africa Revolutions are over and each country is in transition process now, it is very important to critically examine the response of the AU to the North Africa Revolutions in general and the Libyan Civil War in particular. Since the Revolution in Tunisia and Egypt were relatively peaceful and short lived, the AU response to these events didn’t come under scrutiny and debate. However, the AU response to the Libyan civil war is still a very hot issue of debate and controversy among different stake holders.

During and after the Libyan Civil war, there were a plethora of debates concerning the response of the AU to the Libyan civil war. On one hand, the AU officials, some scholars and politicians contend that the AU has responded creatively and properly in the face of worrying and challenging situations which were not provided in its normative instruments.⁵ Moreover, they

⁴ PEACE AND SECURITY COUNCIL, *265TH MEETING, PSC/PR/COMM.2(CCLXV)*, 10 MARCH 2011, ADDIS ABABA

⁵ EXTRAORDINARY SESSION OF THE ASSEMBLY OF THE UNION, *REPORT OF THE CHAIRPERSON*, *Supra* note at 1

blamed the marginalization and sidelined of the AU by external actors such as, the western powers and NATO for the failure of the peacemaking diplomacy of the AU to the Libyan crisis.⁶

However, overwhelming swathes of scholars, intelligentsias, researchers and politicians are of the view that the AU response to the Libyan uprising and civil war was too slow, weak, inefficient and ineffective one.⁷ They believed that the AU should have acted more firmly and efficiently on the Libyan crises.

In addition to the response of the AU to the Libyan civil war, one of the most interesting and vexing topic to be dealt with is the NATO military intervention on Libya which was adopted by the UN Security Council Resolution 1973 in the form of 'Fly Zone' for the Protection of Civilian who are under the threat of Gaddafi forces. While some consider this intervention has a clear and genuine application of the norm of responsibility to protect⁸, others like some AU officials, African heads of states and politicians, leading personalities and heavy weight writers considered the NATO intervention as a means of achieving forced regime change agenda on Libya which is motivated by their geo-political and economic interest on Libya.⁹ These are the main issues that this chapter seeks to analyze and investigate in detail.

⁶ SEE, Thabo Mbeki, *In Libya the West has marginalized African concerns*, The African Times, http://www.african-times.com.index.php?option=com_content&views; Jean Ping, (25 March 2011), BBC Hard Talk, 'AU 'ignored' over Libya crisis', available at <http://www.news.bbc.co.uk/2/hi/programmes/hardtalk/stm>; Yoweri Kaguta Museveni, (24 March 2011), *Reflections on the Libyan crisis*, available at www.anc.org.za Last accessed on 22 November 2012

⁷ SEE, the statement of HON. LOUISE MUSHIKIWABO, MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RWANDA TO THE 275 MINISTERIAL SESSION OF THE PEACE AND SECURITY COUNCIL OF THE AFRICAN UNION, 26 APRIL 2011, ADDIS ABABA; Kathryn Sturman (May 2012), *The African Union and the "Arab Spring": An exception to new principles or return to old rules?*, Istituto Per Gli Studi Di Politica Internazionale (ISPI) – Analysis; Kasaija Phillip Apuuli (September 2012), *The Principle of 'African solutions to African Problems' under the spotlight: The African Union (AU) and the Libya Crisis*, Open Society Institute, Africa Governance Monitoring and advocacy Project

⁸ SEE, Francis E. Ramoin, (January 25, 2012), *Why Intervention in Libya was Justified: A moral, political & operational defense for the coalition's military intervention in the 2011 Libyan uprising*, e-International Relations Journal; T Weiss, *RtoP alive and well after Libya*, Global Centre for the Responsibility to Protect (2011) available at www.globalr2p.org

⁹ SEE, Hsiao Amy, (April 2011), *"Worldviews of Rising Powers: What Does Their Policy on the Libyan Intervention Tell Us?"*, Sigur Center For Asian Studies, Policy Brief; Politics web, "NATO War of Aggression on Libya should end immediately", Mbeki and Co', www.politicsweb.co.za/politicsweb; Frank O. Okyere and Mustapha Abdallah, (June 2011), *The NATO Intervention in Libya: Implications for the Protection of Civilians and the AU's Pan-Africanist Agenda*, Kofi Annan International Peacekeeping Training Centre (KAIPTC) and PEACE AND SECURITY COUNCIL 275TH MEETING, REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE ACTIVITIES OF THE AU HIGH LEVEL AD HOC COMMITTEE ON THE SITUATION IN LIBYA, PSC/PR/2(CCLXXV), 26 APRIL 2011, ADDIS ABABA, Paragraph 11

3.2. The Response of the African Union to the Tunisian Revolution

Like any other international actors, the AU was caught by surprise when a massive Revolution broke out in Tunisia in December 2010. Both the scale and the speed of the Tunisian Revolution have been very startling and unprecedented. Even if the AU was not in a position to anticipate the occurrence of such event on its one of the North African member state, it has, however, tried to respond to such event.

When the Revolution first erupted in Tunisia, the AU responded through the Peace and Security Council (PSC) of the AU. The PSC in its 257th Meeting held on 15 January 2010 issued a press release on the situation in Tunisia.¹⁰ The PSC expressed its strong condemnation of excessive use of force against the demonstrators in Tunisia and the resulting loss of life, and stressed the need to spare no efforts to avoid any further loss of life.¹¹ The Council also called for “Calm and an end to all acts of violence and destruction of property” and a peaceful democratic transition which allows the Tunisian people to freely choose their leaders through free, open, democratic elections.¹² In an earlier press release on 14 January 2014, at the downing of the “ Jasmine Revolution”, the then Chairperson of the AU Commission, Mr. Jean Ping, also expressed his deep sympathy and condolence to the victims of the Ben Ali regime and also hoped that Tunisia would emerge as a stronger and more democratic nation.¹³

More importantly, at the Sixteenth Ordinary Session of the Assembly of the Union, held on Addis Ababa from 30-31 January 2011, the AU expressed its solidarity with the people of Tunisia and urgently appealed to all Tunisian Parties to work together, in unity, peace and consensus and respect of legality, towards a peaceful and democratic transition which enabled

¹⁰ PEACE AND SECURITY COUNCIL, 257TH MEETING PSC/PR/COMM.2(CCLVII), PRESS STATEMENT, 15 JANUARY 2011, ADDIS ABABA

¹¹ Ibid

¹² Ibid

¹³ Institute for Security Studies (ISS), Report, No. 22, *Country Analysis: Update on Tunisia*, May 2011, p.7

the Tunisian people to choose their leaders through open, free, democratic and transparent election.¹⁴

Generally speaking, since the Tunisian Revolution was relatively short lived and peaceful compared to that of Egypt and Libya, the AU response on Tunisia Revolution didn't lead significant inquiries and controversies. Though the support of the AU to the Tunisian Revolution and the legitimate aspiration of the Tunisian peoples is unequivocally clear, one thing that can be raised about the AU response to Tunisian Revolution is its slow reaction to the crisis. The AU didn't condemn the violent crackdown of the Tunisia government on peaceful protestors until President Ben Ali finally stood-down from power on 14 January 2011. The AU should have responded to such crisis from the very beginning of the Revolution. But, the response of the AU to Tunisian Revolution was generally based up on the attainment of the overall objectives sought by it, i.e., the consolidation of the on-going democratic transition process in Tunisia.

3.3. The Response of the AU to the Egypt Revolution

Like the case of the Tunisian Revolution, the AU has also reacted the January 25th Egypt Revolution that toppled the 23 years rule of President Hosni Mubarak. AU has applied similar reaction that resembled with that of Tunisia when responding to the Egypt Revolution.

When the Egyptian Revolution entered its first week on 3 February 2011, the then Chairperson of the Commission, Mr. Jean Ping, expressed its concern over the escalating violence and loss of life that has resulted from the on-going Revolution in Egypt.¹⁵ He also stressed the need for a consensual solution that takes into account the aspiration of the people as well as the need for appropriate reforms.¹⁶ Though the Commission called for solutions and reforms, he failed short of identifying the nature of the solution and the appropriate areas of reform.¹⁷

¹⁴ ASSEMBLY OF THE UNION, *Sixteenth Ordinary Session, Assembly/AU/Dec.332-361(XVI), Assembly/AU/Decl.1-3(XVI), Assembly/AU/Res.1(XVI)*, 30 - 31 January 2011, Addis Ababa, p.7

¹⁵ Institute for Security Studies (ISS), Report, No. 22, Country Analysis: Update on Egypt, May 2011, p.5

¹⁶ Ibid

¹⁷ Ibid

When President Hosni Mubarak finally removed from power, after 18 days of massive Revolution in Egypt, the AU PSC issued its Communiqué on the matter.¹⁸ The PSC at its 260th Meeting held on 16 February, 2011, noted the deep aspirations of the Egyptian people, especially the Youth, to change and the opening of political space, in order to able to democratically to choose institutions that are truly representative and respectful of freedom and human right.¹⁹ It strongly condemned the acts of violence against demonstrators, requesting the Egyptian authorities to shade light on this acts of violence and bring their authors and perpetrators to justice.²⁰ These declarations by the PSC indicated the unequivocal support of the AU to the Egypt Revolution as well as to the desires of the Egyptian people to change.

Concerning the resignation of former President Hosni Mubarak from power, the PSC recognized the exceptional nature of the situation in Egypt and took note of the decision of Mr. Hosni Mubarak to resign from his position as a president of the Republic and surrender authority for the exercise of the state to Supreme Council of the Armed Force (SCAF).²¹

When we see the responses of the AU to the Egypt Revolution, the AU was not as such firm in its responses since it has already found itself unready and ill-prepared on the matter. Beyond issuing Communiqués and holding meetings at the PSC, the AU failed to take any strong measures and sanctions against the Egyptian government when it took harsh crackdown against peaceful protestors in Cairo and other cities of Egypt. It is believed that 846 peoples have been killed during the Revolution that overthrow president Hosni Mubarak from power.²² The most surprising thing is that the AU has even failed even to send a fact finding or investigation team to Egypt to assess the situations prevailing in Egypt at that time. Furthermore, the AU didn't issue any statement of condemnation on President Hosni Mubarak until he steps down from his power.

The Egypt Revolution is not yet over. Many Egyptians are still complaining that the Revolution didn't wholly achieve its goal. The recent clash between the supporters and opponents of the

¹⁸ PEACE AND SECURITY COUNCIL, *260TH MEETING, COMMUNIQUE, PSC/PR/COMM.(CCLX)*, ADDIS ABABA, 16 FEBRUARY 2011

¹⁹ *Ibid*, paragraph 3

²⁰ *Ibid*, paragraph 4

²¹ *Ibid*, paragraph 5

²² Institute for Security Studies (ISS), *Supra* note at 15, p.6

newly elected Egyptian President Mohammad Morsi as well as the massive demonstrations calling him to step-down indicates that Egypt has still a long way to go to come up with full fledged de facto democracy.²³ So, it is important to see how AU will react and support Egypt's transition to democracy in the near future time.

3.4. The Response of the African Union to the Libya Revolution and Civil War

I- Background

The African Union was first seized with the situation in Libya eight days after the beginning of the uprising at the 261st meeting of the PSC on 23rd of February 2011.²⁴ In the Communiqué issued on that occasion, PSC expressed deep concern at the developments in Libya and strongly condemned the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and international humanitarian law.²⁵ The PSC called on the Libyan authorities to ensure the protection and security of their citizens, as well as the delivery and provision of humanitarian assistance to the injured and other persons in need.²⁶ The PSC also underscored that the aspirations of the people of Libya for democracy, political reform, justice and socio-economic development are legitimate.²⁷ Furthermore, the Council stressed the need to preserve the territorial integrity and unity of Libya.²⁸

On the same day, the then AU Commissioner Mr. Jean Ping issued a statement in which he condemned the disproportionate use of force against civilians, and deeply deplored the many

²³ At the time of writing and finalizing this paper, there were protests and demonstrations calling for the new President Mohammad Morsi to step-down from power across major cities of Egypt such as Cairo, Alexandria, Suez and Port Seid

²⁴ PEACE AND SECURITY COUNCIL, *261ST MEETING, COMMUNIQUE, PSC/PR/COMM(CCLXI)*, ADDIS ABABA, ETHIOPIA, 23 FEBRUARY 2011

²⁵ Ibid, paragraph 2

²⁶ Ibid, paragraph 3

²⁷ Ibid, paragraph 5

²⁸ Ibid

human lives lost then.²⁹ He reiterated the appeal made by Council for an immediate end of the repression and violence, and stressed that only dialogue and consultation will enable the Libyans to find appropriate solutions to the challenges facing their country and to embark upon the necessary reforms to fulfill their aspirations.³⁰

On 10 March 2011, the PSC, at its 265th Meeting held at the level of Heads of State and Government, reviewed the evolution of the situation in Libya.³¹ In the Communiqué concluding its deliberations, the Council reiterated AU's concern at the prevailing situation in Libya, which poses a serious threat to peace and security in that country and in the region as a whole, as well as at its humanitarian consequences; also underscored the legitimacy of the aspirations of the Libyan people for democracy, political reform, justice, peace and security, as well as for socio-economic development, and the need to ensure that these aspirations are fulfilled in a peaceful and democratic manner; and finally reiterated AU's strong and unequivocal condemnation of the indiscriminate use of force and lethal weapons, whoever it comes from, and the transformation of pacific demonstrations into an armed rebellion.³² More importantly, the Council also reaffirmed its strong commitment to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form.³³

Furthermore, the Council expressed its conviction that the situation in Libya calls for an urgent African actions and thus proposed a political roadmap to the Libyan crisis which comprises of four main points. These are:

- I. The immediate cessation of all hostilities;
- II. The cooperation of the competent Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy populations;
- III. The protection of foreign nationals, including the African migrants living in Libya; and

²⁹ PEACE AND SECURITY COUNCIL, 275TH MEETING, REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE ACTIVITIES OF THE AU HIGH LEVEL AD HOC COMMITTEE ON THE SITUATION IN LIBYA, PSC/PR/2(CCLXXV), 26 APRIL 2011 ADDIS ABABA, ETHIOPIA, paragraph 3

³⁰ Ibid

³¹ PEACE AND SECURITY COUNCIL, 265TH MEETING, Supra note at 4

³² Ibid, paragraph 5

³³ Ibid, paragraph 6

IV. The adoption and implementation of the political reforms necessary for the elimination of the causes of the Libyan crisis.³⁴

To implement these four points of political solution for the Libyan crisis, the PSC decided to establish an “AU High-Level *Ad-Hoc* Committee on Libya” comprising five Heads of State and Government, as well as the Chairperson of the Commission, with the mandate to:

- I. Engage with all parties in Libya and continuously assess the evolution of the situation on the ground;
- II. Facilitate an inclusive dialogue among the Libyan parties on the appropriate reforms; and
- III. Engage AU’s partners, in particular the League of Arab States (LAS), the Organization of the Islamic Conference (OIC), the European Union (EU) and the United Nations (UN), to facilitate coordination of efforts and seek their support for the early resolution of the crisis.³⁵

In its decision, Council requested the Chairperson of the AU Commission to undertake consultations to finalize the composition of the *Ad Hoc* Committee on Libya.³⁶ Accordingly, and following consultations, the Commissioner announced, on 11 March 2011, that the *Ad Hoc* Committee would include the Heads of State of the following AU Members States: Islamic Republic of Mauritania (President Mohamed Ould Abdel Aziz), Republic of Congo (President Denis Sassou Nguesso), Republic of Mali (President Amadou Toumani Touré), Republic of South Africa (President Jacob Zuma) and Republic of Uganda (President Yoweri Museveni).³⁷

As it is mentioned in Chapter One of this paper, on 17 March 2011, the UNSC adopted Resolution 1973 that imposed a “No-Fly Zone on Libya” and authorized the use of ‘all necessary measures to protect civilians and civilian populated areas under threat of attack in Libyan Arab Jamahiriya including Benghazi while excluding a foreign occupation force of any form on any part of Libyan territory’.³⁸ In that resolution, the Security Council also demanded the immediate

³⁴ PEACE AND SECURITY COUNCIL, 265th MEETING, *Supra* note at 4, paragraph 7

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ PEACE AND SECURITY COUNCIL, 275th MEETING, *REPORT OF THE CHAIRPERSON*, *Supra* note at 29, paragraph 8

³⁸ United Nation Security Council Resolution 1973

establishment of a ceasefire and a complete end to violence and all attacks against, and abuses of, civilians; stressed the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people, and noted the decisions of the UN Secretary-General to send his Special Envoy to Libya and of the AU Peace and Security Council to send its *Ad Hoc* High-Level Committee to Libya, with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution.³⁹

The military campaign to enforce the No-Fly Zone started on 19 March 2011.⁴⁰ At the same time, the AU also started pursuing its political solution to settle the Libyan civil war using its political roadmap on Libya as articulated on the 265th meeting of the PSC on 10 March 2011.

II. The First Nouakchott Meeting of the African Union *Ad Hoc* Committee on Libya

The AU *Ad Hoc* Committee on Libya which is established by the 265th meeting of the PSC convened its first meeting in Nouakchott, Mauritania, on 19 March 2011.⁴¹ The meeting was attended by the five head of states that comprises the *Ad Hoc* Committee.⁴² This meeting provided an opportunity for an in-depth exchange of views on the situation in Libya, as well as on the modalities for the implementation of the mandate of the AU High-Level *Ad Hoc* Committee, took place at a critical moment in the situation in Libya, marked by the continuation of fighting, with the resulting serious humanitarian consequences, as well as by the commencement of the implementation of the relevant provisions of Resolution 1973.⁴³ In this context, the High-Level *Ad Hoc* Committee reiterated AU's deep concern at the prevailing situation and its humanitarian consequences.⁴⁴ It stressed the serious threat that this situation poses for peace, security and stability in the region as a whole, and reaffirmed AU's conviction

³⁹ United Nation Security Council Resolution 1973, *Supra* note at 38

⁴⁰ PEACE AND SECURITY COUNCIL, 275TH MEETING, *REPORT OF THE CHAIRPERSON*, *Supra* note at 29, paragraph 11

⁴¹ MEETING OF THE AU HIGH-LEVEL *AD HOC* COMMITTEE ON LIBYA, *COMMUNIQUE, NOUAKCHOTT, MAURITANIA, 19 MARCH 2011*

⁴² *Ibid*, paragraph 1

⁴³ *Ibid*, paragraph 2

⁴⁴ *Ibid*

on the need for an urgent “African action” revolving around the elements of the roadmap adopted on 10 March 2011.⁴⁵

At their meeting in Nouakchott, the members of the High-Level *Ad Hoc* Committee were planning to travel to Libya, on 20 March 2011, to meet with the parties, i.e., Col Muammar Gaddafi and the NTC rebels, both of which had agreed to interact with it. To this end, and as required by UNSC Resolution 1973, the *Ad Hoc* Committee, through the Commission, sought authorization from NATO for the flights carrying its members to Libya, in order to fulfill their mandate.⁴⁶ This request was denied.⁴⁷ At that particular time, the Committee expressed regret for not being able to travel to Libya as envisaged.⁴⁸

In order to contribute actively to the search for an early solution, consistent with international legality as reflected in relevant UNSC Resolutions, the High-Level *Ad Hoc* Committee:

- I. *Made an urgent appeal to all parties concerned, namely the Government of Libya and the NTC, to observe, without any further delay, a comprehensive cessation of hostilities and to take other measures aimed at defusing tension and ensuring the protection of the civilian population. In this respect, the Committee agreed to formally and immediately communicate to the parties its urgent request to positively respond to this appeal;*⁴⁹
- II. *Reaffirmed the relevance of the elements of the Roadmap articulated by the Council. It invited the Libyan authorities and the NTC to a meeting to be convened, as soon as possible, in Addis Ababa or in any other venue agreeable to the parties, to discuss this Roadmap, in particular the establishment and the management of an inclusive transitional period that would lead to political reforms meeting the aspirations of the Libyan people;*⁵⁰

⁴⁵ AU Ad Hoc Committee *NOUAKCHOTT Meeting*, *Supra* note at 41, paragraph 4 & 5

⁴⁶ *Ibid*, paragraph 6

⁴⁷ *Ibid*

⁴⁸ *Ibid*

⁴⁹ *Ibid*, paragraph 7

⁵⁰ *Ibid*

Furthermore, the High-Level *Ad Hoc* Committee agreed to spare no efforts to facilitate a peaceful solution, within an African framework, duly taking into account the legitimate aspirations of the Libyan people.⁵¹ The Committee lastly stressed that it would act within the framework of its mandate and in a manner consistent with, and complementary to, resolution 1973 of the UN Security Council, and appealed to the international community as a whole to provide unreserved support to its efforts.⁵²

III. Follow-Up to the Nouakchott Meeting

As a follow-up to the Nouakchott Meeting of the High-Level *Ad Hoc* Committee on Libya held on 19 March 2011, a Consultative Meeting on the situation in Libya was convened in Addis Ababa on 25 March 2011.⁵³ In addition to the members of the *Ad Hoc* Committee on Libya and of the Peace and Security Council of the AU, the meeting brought together neighboring countries of Libya and the other countries of the region, as well as multilateral and bilateral AU partners.⁵⁴

This meeting provided the AU with the opportunity to brief the participants on the conclusions of the Nouakchott meeting and on the efforts it is deploying towards a peaceful and early settlement of the crisis.⁵⁵ The participants welcomed the fact that the efforts of the High-Level *Ad Hoc* Committee, whose role is recognized by UN SC Resolution 1973, are consistent with, and complementary to, the relevant provisions of that resolution.⁵⁶

The meeting reached a consensus on the elements of the AU Roadmap on Libya.⁵⁷ It emphasized the need and urgency of the effective protection of the civilian populations and immediate cessation of hostilities and all acts of violence. It encouraged the AU, the League of Arab States (LAS), the UN, the OIC and the EU to consider, with the required urgency and within the

⁵¹ AU Ad Hoc Committee *NOUAKCHOTT Meeting*, *Supra* note at 41, paragraph 8

⁵² *Ibid*, paragraph 9

⁵³ CONSULTATIVE MEETING ON THE SITUATION IN LIBYA, COMMUNIQUE, 25 MARCH 2011, ADDIS ABABA

⁵⁴ *Ibid*, paragraph 1

⁵⁵ *Ibid*, paragraph 3

⁵⁶ *Ibid*, paragraph 4

⁵⁷ *Ibid*, paragraph 7

context of Resolution 1973, the speedy establishment of a monitoring mechanism for the planning and implementation of the cessation of hostilities in an effective and credible manner.⁵⁸

In addition as a follow up to the first Nouakchott meeting, the *Ad Hoc* Committee convened its second meeting in Addis Ababa on 25 March 2011, at the level of Ministers of Foreign Affairs, in line with the relevant provisions of the PSC Communiqué of 10 March 2011.⁵⁹ In this respect, it should be recalled that, during its Nouakchott meeting, the *Ad Hoc* Committee extended invitations to the Libyan authorities and to the NTC to take part in a consultation in Addis Ababa.⁶⁰ While the representatives of the Libyan Government attended the meeting, the members of the NTC were unable to do so.⁶¹

During the Committee's interaction with the representatives of the Libyan Arab Jamahiriya, the latter reiterated the unconditional acceptance of the AU Roadmap by the Libyan Government.⁶² They further stressed the commitment of the Libyan authorities to a credible and effective cease fire and, to that effect, their readiness to facilitate the establishment and deployment of a monitoring and verification mechanism.⁶³ The delegation also expressed the readiness of the Libyan Government to implement the other aspects of the AU Roadmap, including the adoption and implementation, in a peaceful and democratic manner, of political reforms that meet the aspirations of the Libyan people.⁶⁴ The Ad Hoc Committee took note of the position thus expressed by the Libyan Government delegation, and assured it of its continued engagement.⁶⁵

⁵⁸ CONSULTATIVE MEETING ON THE SITUATION IN LIBYA, COMMUNIQUE, *Supra* note at 53, paragraph 9

⁵⁹ PEACE AND SECURITY COUNCIL, 275TH MEETING, REPORT OF THE CHAIRPERSON, *Supra* note at 29, paragraph 29

⁶⁰ Joint Africa-EU strategy, The AU's second ad hoc High-Level Committee on Libya meeting, News and Resource, available at, <http://www.europafrika.net.2011/03/28/the-aus-second-ad-hoc-high-level-committee> Last accessed on 2 December 2012

⁶¹ *Ibid*

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ *Ibid*

In conclusion, the Ministers and the Commission exchanged views on the next steps to be taken in implementation of the *Ad Hoc* Committee's mandate and, in this regard, agreed on the early undertaking of the planned visit of the *Ad Hoc* Committee to Libya, at the level of Heads of State.⁶⁶ The Commission also liaised with the Libyan parties, which, both, confirmed their readiness to receive the mission.⁶⁷

IV. The Second Meeting of the *Ad Hoc* Committee at the Level of Heads of State and Visit to Libya

The High-Level *Ad Hoc* Committee on Libya held its second meeting at the level of Heads of State in Nouakchott, on 9 April 2011.⁶⁸ The Committee took stock of the activities undertaken in the discharge of its mandate and the promotion of the AU Roadmap for the resolution of the Libyan crisis.⁶⁹

On the eve of its planned visit to Libya, on 10 and 11 April 2011, in order to meet with the Libyan parties, both in Tripoli and Benghazi, the *Ad Hoc* Committee made an urgent appeal to the said parties to resolutely commit themselves to a peaceful settlement of the grave crisis facing their country and, to this end, to extend to it the required cooperation.⁷⁰ The Committee reiterated its determination to spare no efforts in fully discharging its mandate and assisting the parties to achieve an early solution to the crisis, based on the AU Roadmap.⁷¹

As planned, the High-Level *Ad Hoc* Committee undertook a visit to Libya on 10 and 11 April 2011.⁷² The AU delegation, consisting of the presidents of South Africa, Congo-Brazzaville, Mali and Mauritania, plus Uganda's foreign minister, landed at Tripoli's Mitiga airport after

⁶⁶ Joint Africa-EU strategy, The AU's second ad hoc High-Level Committee on Libya meeting, Supra note at 60

⁶⁷ Ibid

⁶⁸ MEETING OF THE AU HIGH-LEVEL *AD HOC* COMMITTEE ON LIBYA, COMMUNIQUE, NOUAKCHOTT, 9 APRIL 2011

⁶⁹ Ibid, paragraph 2

⁷⁰ Ibid, paragraph 3

⁷¹ Ibid, paragraph 5

⁷² PEACE AND SECURITY COUNCIL, 275th MEETING, REPORT OF THE CHAIRPERSON, Supra note at 29, paragraph 32

NATO gave permission for their aircraft to enter Libyan airspace.⁷³ The planes were the first to land in Tripoli since the international coalition imposed a no-fly zone over the country.⁷⁴

On 10 April 2011, in Tripoli, the members of the *Ad Hoc* Committee had an extensive meeting on the AU Roadmap for the resolution of the Libyan crisis. Colonel Qaddafi confirmed his acceptance of the AU Roadmap.⁷⁵

Referring to officials of the Libyan regime, Zuma, the South African president who led the AU *Ad Hoc* Committee at that time, told reporters inside Gaddafi's compound at Bab al-Azizia that "the brother leader delegation has accepted the roadmap as presented by us".⁷⁶ He also called on NATO to stop air strikes on Libyan military targets "to give a ceasefire a chance".⁷⁷ On the specific issue of the cease-fire, Colonel Qaddafi confirmed his support for the efforts of the *Ad Hoc* Committee aimed at ensuring its urgent materialization on the ground, including the deployment of an effective and credible monitoring mechanism.⁷⁸ He expressed his full confidence in the AU and in its ability to successfully carry out the peace efforts in his country.⁷⁹

On Monday 11 April 2011, the *Ad Hoc* Committee visited Benghazi, the Eastern stronghold and the center of the NTC, where it had extensive discussions with the Chairman and members of the NTC.⁸⁰ In this respect, the High-Level *Ad Hoc* Committee and the NTC extensively dealt with the need for an urgent ceasefire to be monitored by a credible and effective international mechanism.⁸¹ The objective is to ensure the effective protection of the civilian population and to create conducive conditions for the fulfillment of the legitimate demands and aspirations of the Libyan people for democracy, freedom, the rule of law and socio-economic development.⁸² However, the NTC insisted they will not consider any deal that involves Gaddafi or his family

⁷³ Harriet Sherwood, Chris McGreal, (Monday 11 April 2011), *Libya: Gaddafi has accepted roadmap to peace, says Zuma*, The Guardian, available at, www.guardian.co.uk/theguardian Last accessed on 3 December 2012

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ PEACE AND SECURITY COUNCIL, 275th MEETING, REPORT OF THE CHAIRPERSON, *Supra* note at 29, paragraph 32

⁷⁹ Ibid

⁸⁰ Ibid, paragraph 34

⁸¹ Ibid

⁸² Ibid

retaining power.⁸³ While the Libyan Government has expressed its acceptance of the AU Roadmap, the NTC was of the view that negotiations on a ceasefire and other related aspects can only commence once certain preconditions have been met, in particular the removal from power of Colonel Gaddafi and members of his family.⁸⁴ According to the NTC, Gaddafi and his government had lost all legitimacy to govern the country and thus could not therefore be interlocutors in finding a solution to the crisis.⁸⁵ Thus, the NTC refused to agree on the crucial issue of the cessation of hostilities.⁸⁶ Due to this political condition put forward by the NTC as a prerequisite for the urgent launching of discussions on the modalities for a ceasefire, it was not possible, at that stage, to reach an agreement on the crucial issue of the cessation of hostilities.

While the *Ad Hoc* Committee, the Commission and the PSC are making sustained efforts to find a political solution, other AU organs have stepped in to address issues pertaining to their respective mandates. On 3 March 2011, the African Commission on Human and Peoples' Rights submitted an application to the African Court on Human and Peoples' Rights, alleging serious and widespread violations of human rights by the Libyan Government.⁸⁷ The Commission accused Colonel Gaddafi's regime of major crimes of repression by Libyan security forces directed against peaceful demonstration in February, 2011, the use of heavy weapons and machine guns against civilians, as well as the use of mercenaries and extra-judicial killings of civilians and members of the revolt.⁸⁸

Meeting at its 20th Ordinary Session in Arusha, Tanzania, from 14 to 25 March 2011, the Court deliberated on the application and decided that, in view of the extreme gravity and urgency of the matter, and in accordance with its powers and Rules, it ordered provisional measures with a view

⁸³ Institute for Security Studies (ISS), Report, No. 22, *Country Analysis: Update on Libya*, p.11

⁸⁴ *Ibid*

⁸⁵ *Ibid*

⁸⁶ *Ibid*

⁸⁷ The application was filed before the Court by the African Commission on Human and Peoples Rights (the Commission) on behalf of the International Federation of Human Rights (FIDH) and the Libyan League for Human Rights (LLHR)

⁸⁸ The Great Socialist Libyan Arab Jamahiriya Response to the Application of the African Commission on Human and Peoples' Rights (Application No. 004/2011) and the Order for Provisional Measures by the African Court on Human and Peoples Rights, Submitted to the Court, Arusha, Tanzania, 06 June 2011

to avoiding irreparable harm being caused to persons who are the subject of the application.⁸⁹ More specifically, the Court called on the Libyan Government to ‘immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the African Charter on Human and Peoples’ Rights or of other international human rights instruments to which it is a party’.⁹⁰

The Panel of the Wise (POW) of the AU also held its 10th meeting on 12 May 2011, in Addis Ababa, Ethiopia.⁹¹ The POW expressed its deep concern at the situation in Libya. It thus called for an immediate and complete ceasefire, and an end to all attacks on civilians.⁹² The Panel expressed its full support to the AU Roadmap for the Resolution of the Libyan Crisis, as articulated by the Peace and Security Council at its 265th meeting held on 10 March 2011.⁹³

On 20 May 2011, the Pan-African Parliament (PAP) adopted a motion on Libya, following a briefing by the Commissioner for Peace and Security.⁹⁴ In that motion, the PAP condemned “the military aggression of NATO forces”, and requested the international community to stop this aggression immediately.⁹⁵ The PAP also expressed appreciation for the African initiatives aimed at seeking a peaceful solution to the crisis and decided to dispatch a fact finding mission to Libya.

V. The Extraordinary Summit of the African Union on Libya

The AU Extraordinary Summit on Libya, held on 25 May 2011 in Addis Ababa, reiterated its conviction that only a political solution to the Libyan conflict will make it possible to promote sustainable peace in Libya and fulfill the legitimate aspirations of the Libyan people to

⁸⁹ African Commission on Human and Peoples’ Rights v. Great Socialist People’s Libyan Arab Jamahiriya, Application No. 004/2011

⁹⁰ Ibid

⁹¹ 10th MEETING OF THE PANEL OF THE WISE, *COMMUNIQUE, POW/PR/COMM(X)*, 12 MAY 2011, ADDIS ABABA

⁹² Ibid, paragraph 14

⁹³ Ibid, paragraph 13

⁹⁴ African Press Organisation, *PAP Adopts Motion on Libya, Hosts the APRM and Debates on Youth Empowerment*, 20 May 2011, available at, www.apo.org, Last accessed on 5 December 2012

⁹⁵ Ibid

democracy, rule of law, respect for human rights and good governance, as well as preserve the unity and territorial integrity of Libya.⁹⁶ In this respect, the Assembly endorsed the AU Roadmap for the Resolution of the Crisis in Libya, as adopted by the PSC, at its 265th meeting held on 10 March 2011, and stressed its continued relevance.⁹⁷ Furthermore, this extraordinary Summit endorsed the AU Roadmap and also called upon both the Government of Libya and the NTC to comment on the Roadmap.⁹⁸

In support of the *Ad hoc* Committee's position, the AU Extraordinary Summit expressed its conviction and support for a political solution to the crisis in Libya.⁹⁹ It said "that only a political solution to the current conflict would make it possible to promote sustainable peace in Libya and fulfill the legitimate aspirations of the Libyan people to democracy, rule of law, respect for human rights and good governance, as well as preserve the unity and territorial integrity of Libya."¹⁰⁰ It also called for an immediate cessation to the fighting and the NATO led air campaign.¹⁰¹ The Assembly expressed its "deep concern at the dangerous precedence being set by one-sided interpretations of the UNSC resolution 1973 by NATO forces, in an attempt to provide a legal authority for military and other actions on the ground that are clearly outside the scope of these resolutions, and at the resulting negative impact on the efforts aimed at building an international order based on legality."¹⁰²

VI. The Pretoria Meeting of the AU High Level *Ad Hoc* Committee on Libya

Prior to the 17th Ordinary Summit of African Heads of State and Government held in Malabo, Equatorial Guinea, the AU High Level *ad hoc* Committee met in Pretoria, South Africa, on 26 June 2011.¹⁰³

⁹⁶ Extraordinary Session of the Assembly of the Union on the State of Peace and Security in Africa, Addis Ababa, Ethiopia 25 May 2011, Ext/Assembly/Au/Dec/ (01.2011) Decision of the Peaceful Resolution of The Libyan Crisis, *Enhancing Africa's Leadership, Promoting African Solutions*, Ext/Assembly/Au/Dec/(01.2011)

⁹⁷ *Ibid*, paragraph 3

⁹⁸ *Ibid*

⁹⁹ *Ibid*, paragraph 4

¹⁰⁰ *Ibid*

¹⁰¹ *Ibid*

¹⁰² *Ibid*, paragraph 7

¹⁰³ MEETING OF THE AU HIGH-LEVEL *AD HOC* COMMITTEE ON LIBYA, *COMMUNIQUE*, 26 JUNE 2011, PRETORIA

The 26th June Pretoria meeting of the of the *Ad Hoc* Committee on Libya reviewed the developments in Libya based on the report by President Jacob Zuma, who visited Libya on 31 May 2011.¹⁰⁴ In that meeting, the Committee also elaborated Proposals for a Framework Agreement on a Political Solution to the Crisis in Libya within the framework of the AU Roadmap.

One of the positive developments that the Committee welcomed during this meeting was the acceptance of Colonel Muammar Gaddafi not to be part of the negotiation process.¹⁰⁵ Finally, the *Ad Hoc* Committee then decided to report the framework for political solution to the 17th Ordinary Session of the Assembly of the Union that was to be held from 30 June to 1 July, 2011, at Malabo, Equatorial Guinea, to seek its continued support for the pursuit of its efforts.¹⁰⁶

VII. The Malabo Ordinary Summit of the African Union on Libya

The 17th Ordinary Session of the Assembly of the AU, held in Malabo, Equatorial Guinea from 30 June to 1st July 2011, extensively discussed the situation in Libya.¹⁰⁷ The Assembly adopted the report of the AU High-Level *Ad Hoc* Committee on Libya and endorsed the Proposals for a Framework Agreement on a Political Solution to the Crisis in that country, as presented by the *Ad Hoc* Committee, within the context of the AU Roadmap.¹⁰⁸

In this AU summit in where both representatives from Gaddafi's government and the NTC were present, African leaders were unable to come to an agreement on Libya after a series of closed door sessions.¹⁰⁹ When the *Ad Hoc* Committee submitted its Proposals for a Framework Agreement on Libya for approval by the AU Summit, a widening division arose among AU members.¹¹⁰ Reports indicated that while some member states thought that Gaddafi should step

¹⁰⁴ PRETORIA MEETING OF THE AU HIGH-LEVEL *AD HOC* COMMITTEE ON LIBYA, *Supra* note at 103, paragraph 5

¹⁰⁵ *Ibid*, paragraph 6(II)

¹⁰⁶ *Ibid*, paragraph 7

¹⁰⁷ African Union, ASSEMBLY OF THE UNION, *Seventeenth Ordinary Session, Assembly/AU/Dec.363-390(XVII), Assembly/AU/Decl.1-2(XVII), Assembly/AU/Res.1(XVII)*, Malabo, EQUATORIAL GUINEA, 30 June - 1 July 2011

¹⁰⁸ *Ibid*

¹⁰⁹ Institute for Security Studies (ISS) Report, *Country Analysis: Libya*, No 25, (August 2011), page 9

¹¹⁰ *Ibid*

down immediately, others believed that he should be part of any negotiated solution to the crisis.¹¹¹ Even some diplomatic sources have announced that some African officials at the AU Summit in Malabo agree that Libyan leader Muammar Gaddafi should leave power for a democratic transition to take place. For instance, the U.K. Minister for the United Nations and Africa, Henry Bellingham, said that most AU foreign ministers meeting in Malabo had been telling him privately that they felt Gaddafi should go, thereby defying the issue still considered a taboo at the AU.¹¹² Following advice by the High Level *Ad Hoc* Committee, the call for Gaddafi to leave was subsequently withdrawn.¹¹³ Accordingly, the AU Assembly at Malabo endorsed the Proposals as presented by the AU High-Level ad hoc Committee.¹¹⁴ Following the endorsement of the proposal by the Assembly, the *Ad Hoc* Committee presented the Proposals to both the Libyan Government and the National Transitional Council (NTC), in Malabo. Although it was initially announced that both parties had accepted the proposals, the NTC rejected them, insisting on the prior departure of Gaddafi as a precondition.¹¹⁵

Even if the African Union has tried to bring the parties in to one table via various and uninterrupted diplomatic negotiations, it was however unable to bring them on the same wavelength. While the Libyan Leader Muammar Gaddafi has accepted the AU political solution for Libyan crisis, the NTC spearheaded by Dr. Mahmoud Jibril, adamantly refused to accept the AU Roadmap unless Colonel Muammar Gaddafi and his families first step-down from power. As a result of this political condition put forwarded by the NTC, the AU political solution to Libya failed to achieve its mission. This political condition of Gaddafi should step-down not only caused division among African states but also hindered any ceasefire initiative to halt the civil war.

Even if the AU's political negotiations and diplomacy to settle the Libyan civil war continued without pause, the air strikes conducted by NATO and the fighting on the ground also escalated

¹¹¹ Institute for Security Studies (ISS) Report, No 25, *supra* note at

¹¹² Institute for Security Studies (ISS), Report, No. 24, *Regional Update: North Africa*, (July 2011), p.7

¹¹³ Institute for Security Studies (ISS) Report, *Country Analysis: Libya*, *Supra* note at 110

¹¹⁴ *Ibid*

¹¹⁵ *Ibid*

dramatically.¹¹⁶ After several months devastating civil war, the opening days of August 2011 saw significant development on the battlefield between Gaddafi forces and the opposition NTC rebel fighters. Supported by the massive NATO aerial bombardment over Gaddafi forces and military installations, the NTC rebel fighters entered in to the Capital, Tripoli, on 21st August 2011.¹¹⁷ Consequently, after taking control of the whole Libya and killing the former Libyan Colonel Muammar Gaddafi, the Libyan opposition rebels under the leadership of NTC secured a complete victory over the Gaddafi regime. This marked the end of Gaddafi's dictatorial leadership over Libya and most unfortunately, the ultimate failure of the AU's peacemaking effort and political solution to the Libyan civil war. In other words, the AU political solution to the Libyan civil war as stipulated in its Roadmap never materialized, rather failed.

If this is so, the next section will try to deeply investigate the adequacy and efficiency of AU response on the Libya civil war. After assessing the adequacy of the entire political solutions of the AU to the Libyan crisis, this chapter will provide some of the major factors that have affected, influenced and undermined the response of the African Union to the Libya civil war.

3.5. Assessing the Response of the African Union to the Libyan Civil War

In examining and assessing the AU response to the Libyan civil war, there are certain considerations for which one should have to look at first. The first of these consideration is the principle which is enshrined under article 2(1) of the PSC Protocol i.e., "timely and efficient response to conflict and crisis situations". This major principle obliges the AU to speedy, clear and efficient response to crises situations. Speedy, clear and efficient response can enable the AU to have a leadership role for engagement in various crises situations in the continent. This can furthermore allow the AU to put itself in a position to shape the course of international engagement as well as the possible outcome of such engagement in the settlement of the crises.¹¹⁸ However, the absence and lack of such speedy and immediate response can create the

¹¹⁶ PEACE AND SECURITY COUNCIL, 291ST MEETING, REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE SITUATION IN LIBYA AND ON THE EFFORTS OF THE AFRICAN UNION FOR A POLITICAL SOLUTION TO THE LIBYAN CRISIS, PSC/AHG/3(CCXCI), 26 AUGUST 2011, ADDIS ABABA, Paragraph 10

¹¹⁷ Ibid, Paragraph 11

¹¹⁸ Kasaija Phillip Apuuli, (September 2011), *The Principle of 'African solutions to African Problems' under the spotlight: The African Union (AU) and the Libya Crisis*, Open Society Institute, Africa Governance Monitoring and advocacy Project, p.3

pretext for other foreign global actors to intervene in, formulate and engage in responses that can negatively affect and undermine the response that the AU want to apply in the crises occurred in its continent.¹¹⁹

In this regard, the AU has been slow in its response to the Libyan civil war. When the AU was first apprised of the situation in Libya just a week after the beginning of the uprising on 23 February 2011, the AU PSC condemned the indiscriminate and excessive use of force and lethal weapons against peaceful protesters, and took a decision to “urgently dispatch a mission of Council to Libya to assess the situation in the ground.”¹²⁰ However, there was no mission which was dispatched “urgently” to Libya.¹²¹ The AU failed to make even this limited intervention by immediately sending such fact-finding or investigation team to Libya.¹²² The failure of the PSC to act without delay in the crisis set the basis for the UN to intervene on the situation in Libya. Had the PSC immediately established the fact-finding mission, it would have been very difficult for the UNSC to consider the passing of Resolutions to deal with the Libyan crisis. Thus, the failure of the PSC to immediately establish the fact finding mission paved the way for the UNSC to pull the rug from the feet of the AU in the Libya crisis.¹²³ The AU having failed to act without delay allowed the UNSC to seize the initiative. On 26th February 2011, acting under Chapter VII, the UNSC passed Resolution 1970 which effectively precluded the AU from being the lead organization to deal with the Libya situation.¹²⁴ Once this resolution was passed, it meant that whatever the AU would do in future regarding the Libyan situation, would be secondary to what the UNSC did; since the UNSC has the primary responsibility for maintaining international peace and security.¹²⁵

In addition to being slow, the AU response to the Libyan civil war was also characterized by lack of clarity and coherence. For instance, when the AU PSC met on 10 March 2010 and adopted the

¹¹⁹ Kasaija Phillip Apuuli, *supra* note at 118

¹²⁰ PEACE AND SECURITY COUNCIL, *261ST MEETING*, *Supra* note at 24

¹²¹ Kasaija Phillip Apuuli, *Supra* note at 118, p.4

¹²² *Ibid*

¹²³ *Ibid*

¹²⁴ United Nations Security Council, Resolution 1970, S/RES/1970 (2011), 26 February 2011

¹²⁵ Article 24(1) UN Charter

Political Roadmap to the Libyan crises during its 265th Meeting, it expressed its ‘rejection of any foreign military intervention, whatever its form’.¹²⁶ But a week later when the UNSC adopted its Resolution 1973 that imposed a No-Fly Zone on Libya and authorized the any necessary measure to protect civilians, the three Non-Permanent African members of the UNSC (i.e., Gabon, South Africa and Nigeria) voted in favor of this resolution that prescribed exactly the ‘foreign military intervention’ that Africa had rejected.¹²⁷ This revealed the inconsistency and incoherence in Africa’s response to the Libyan crisis. While the AU PSC decided to reject any sort of foreign military intervention, the above mentioned three non-permanent African members of the UNSC voted in favor of foreign military intervention via the imposition of No-Fly Zone on Libya– a euphemism for military action that stopped short of deploying foreign ground forces on Libyan soil.¹²⁸

But above all, one of the most interesting as well as nagging issue to examine relates to the adequacy and efficiency of the AU response to the Libyan civil war. Many political analysts, security experts, academic writers and researchers have frequently argued that the AU response the North Africa Revolutions in general and to the Libyan civil war in particular has been weak and inefficient. For example, during the ministerial meeting of the 275th session of the PSC, the Rwanda’s Minister of Foreign Affairs had the following to say on this issue:

“We are all in agreement that Africa should not condone a Head of State who holds his own people in contempt. And that we shall never tolerate a Head of State that intentionally takes lives of its own people. Despite all this, why has the African Union not responded timely and take a leadership role to put in place practical steps to stop this...?”¹²⁹

¹²⁶ PEACE AND SECURITY COUNCIL, 265TH MEETING, Supra note at 4, paragraph 6

¹²⁷ Thabo Mbeki, (2012), In Libya the West has marginalized African concerns, *The African Times*, http://www.african-times.com/index.php?option=com_content&view=article&id=13702:let-ussolve-our-problems-by-ourselves Last accessed 9 December 2012

¹²⁸ Ibid

¹²⁹ REMARKS BY HON. LOUISE MUSHIKIWABO, MINISTER OF FOREIGN AFFAIRS AND COOPERATION OF THE REPUBLIC OF RWANDA TO THE 275 MINISTERIAL SESSION OF THE PEACE AND SECURITY COUNCIL OF THE AFRICAN UNION “THE NEW THREATS TO PEACE AND SECURITY IN AFRICA: LESSONS LEARNED FROM NORTH AFRICA CRISES AND COTE D’IVOIRE, 26 APRIL 2011, ADDIS ABABA, page 7

Even after the PSC issued a communiqué condemning the killing of civilians and excessive use of force on 23 February 2011, the AU has not taken stronger measures against the Libyan government for its violent response against peaceful demonstrators. Here the question is, what an extra stronger action could the AU possibly take against the Libyan government to stop its cruel and brutal acts against Libyan peaceful protestors? One of the possible answers is Intervention by the Union in accordance with Article 4(H) of the AU Constitutive Act which empowered the Union to intervene in member states in cases of grave circumstances such as war crime, genocide and crimes against humanity. But, before assessing whether the AU should have intervened in Libya so as to stop the brute acts of Gaddafi forces on the protestors, it will be wise to see the legal interpretation as well as the rationale behind this article. i.e., Article 4(H) of the Union.

The Constitutive Act of the AU, in its Article 4(H), provides for 'the right of the African Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely; war crimes, genocide and crimes against humanity.'¹³⁰ The African continent has been plagued by armed conflicts leading to massive human rights violations.¹³¹ States are usually failing to fulfill their responsibility to protect civilians.¹³² Looking at the poor record of human rights in Africa, the article 4(H) of the Constitutive Act of the African Union is essentially important for the AU to intervene without the consent of the culprit states.¹³³ It is therefore clear that the Constitutive Act of the AU, unlike its ancestor OAU, supports the doctrine responsibility to protect and there is general consensus on a change of stand from non-intervention to non-indifference.

Article 4(H) of the Constitutive Act comes as a limitation to intervention by AU in the sense that not all human rights violations will fulfill the criteria of intervention. Article 4(H) provides for two important elements namely internationally punishable serious crimes as well as a significant involvement of the government in those crimes.¹³⁴ The PSC has the duty to recommend an

¹³⁰ Article 4(H) of the AU Constitutive Act of the African Union

¹³¹ O Furley & R May, (2006), *Ending Africa's wars: Progressing to Peace*, p.1

¹³² Ibid

¹³³ K Kindiki, (2003), 'The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal', *African Human Rights Law Journal* 107, p.32

¹³⁴ A Roberts, (1993), 'Humanitarian War: Military intervention and human rights', *International Affairs Journal*, p.69

intervention to the AU assembly where there are grave circumstances as defined by relevant international conventions and instruments according to article 7(1) (E) of the PSC Protocol.¹³⁵

However, the dilemma of lack of legal definition of what exactly constitutes grave circumstances or genocide can become a hindrance for the proper application of article 4(H). It is argued that article 4(H) was designed to prevent mass atrocity crimes and therefore, it would be contradictory to wait for grave circumstances before saving lives of human beings.¹³⁶ Considering the speed with which mass crimes can occur sometimes, it may be wiser for the AU to prioritize intervention over strict legal interpretation of article 4(H) especially in the absence of precise and legal definition of such crimes in international law.¹³⁷ In addition, article 4(H) can be interpreted in the light of the responsibility to protect which also has a prevention dimension.¹³⁸

Authorization from the UNSC is an important issue which needs consideration while interpreting article 4(H). The Ezulwini Consensus provides for approval by the AU from the UNSC even after the event.¹³⁹ Therefore a post facto authorization is enough for states not to be in violation of the UN Charter. The UNSC is legally and morally obligated to authorize any intervention under article 4(H) if the criteria are met in order to stop the occurrence massacres resulting from war crime, crimes against humanity and genocide.¹⁴⁰

¹³⁵ According to Article 7(E) of the PSC protocol, the PSC shall recommend to the Assembly, pursuant to Article 4(H) of the Constitutive Act, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments

¹³⁶ D Kuwali, (2008), *Protect responsibility: The AU's implementation of article 4(H) intervention*, Yearbook of International Humanitarian Law, p.81

¹³⁷ A Abass, (2007), *The Darfur Crisis: The role of the AU in Darfur*, Utrecht Journal of International and European Law, p.47

¹³⁸ Ibid

¹³⁹ *The Common African Position on the Proposed Reform of the United Nations' African Union Executive Council 7th Extraordinary Session Addis Ababa, Ethiopia (7-8 March 2005, page 60.* The Ezulwini Consensus is the Common African Position on the Proposed Reform of the United Nations which was adopted by the African Union on March 8, 2005 in Addis Ababa, Ethiopia. *The African Union, having deliberated at length on the Report of the High-level Panel on Threats, Challenges and Change, adopted a Common African Position, known as "The Ezulwini Consensus", which contains the following elements: Collective Security and the Challenge of Prevention, Collective Security and the Use of Force, Responsibility to Protect, Institutional Reform in the United nations and other issues)*

¹⁴⁰ M. Banda, (March 2007), *The Responsibility to Protect: Moving the agenda forward* available at <http://www.unac.org/en/.asp> Last accessed on 12 December 2012

Use of force is however the last resort while fulfilling the responsibility to protect. Despite the necessary condition of exhausting all other means, it cannot be interpreted as an obligation to use diplomatic means to try and prevent mass atrocity crimes as in the meantime hundreds of lives can be lost.¹⁴¹ What is only required is a reasonable assessment of the viability and effectiveness of any diplomatic means and going on use of force if it is clear that diplomacy would fail the victims.¹⁴²

So, considering the above legal interpretations, should the AU have intervened in Libya as per Article 4(H) of the Constitutive Act? To answer this question, first it is critically important to see whether the actions of Gaddafi and his forces against Libyan population were capable of warranting the application of Article 4(H) of Constitutive Act. So, it is very helpful to see the actions and rhetoric of Gaddafi's regime during the Libyan Revolution.

From the very beginning of the Revolution, the Libyan security forces under the rule of Col. Muammar Gaddafi responded to the popular protest through brute and disproportionate force. The Libyan government response was to deploy its national army against the protesters with a view to crush the Unrest.¹⁴³ The Libyan leader Colonel Muammar Gaddafi marshaled his land, sea, air force and even contingencies of mercenaries against protestors to retain power.¹⁴⁴

The speeches and rhetoric of Muammar Gaddafi were also indicators of possible massacres in Libya. For instance, on 21 February 2011, Muammar Gaddafi called on his supporters in State TV speech saying, "Come out of your homes and attack the oppositions in their dens."¹⁴⁵ He also described the protestors as "greasy rats" and "cockroaches."¹⁴⁶ His threats to cleans Libya house

¹⁴¹ D Kuwali, *Supra* note at 136, p.82

¹⁴² *Ibid*

¹⁴³ *Theo Neethling*, (2011), SOUTH AFRICA, THE AFRICAN UNION AND INTERNATIONAL INTERVENTION IN LIBYA: A CRITICAL APPRAISAL, paper Presented at the 34th AFSAAP Conference Flinders University, *Department of Political Science, University of the Free State, South Africa, p.1*

¹⁴⁴ *Ibid*

¹⁴⁵ Stalinsky Steven, (22 February 2011), "*Gaddafi's calls out "Greasy Rats" and "Foreign Agents"*", *National Review*, <http://www.nationalreview.com.corner/greasyrat>. Last accessed on 14 December 2012

¹⁴⁶ *Ibid*

by house bore direct echoes of the 1994 Rwandan Genocide.¹⁴⁷ Even if the speeches of Gaddafi could be dismissed as maniacal scare tactics, the civilian death count certainly could not. Just within only 20 days, between 15 February and 5 March 2011, 6,000 civilians had been killed by Gaddafi forces.¹⁴⁸ As a consequence of Gaddafi's regime harsh crackdown and violent attack on Libyan protestors, the UNSC through Resolution 1970 unanimously referred the situation in Libya to the International Criminal Court, (ICC) calling for war crime investigations and widespread and systematic attack of civilians by Gaddafi forces. Moreover, due to the cruel actions of Gaddafi regime against the Libyan population and widespread fears of possible massacres in Libya, the UNSC finally authorized military intervention on Libya to protect civilians, under Resolution 1973, on March 17, 2011.

Generally speaking, the number of Civilian casualties as well as the actions and rhetoric of Gaddafi was indicative enough of war crimes and crimes against humanity being committed in Libya. So, the situation in Libya can possibly warrant the invocation of Article 4(H) of the AU Constitutive Act which dictates the right of the AU to intervene in member states in respect of grave crimes like war crime, genocide and crimes against humanity. That is why acting upon the authority of Article 4(H) was a rationale proposed by Goram Gumbo, deputy head of African Parliament, when he stated that the AU should have sent troops to Libya like it did in other African states.¹⁴⁹

Despite the threshold of Article 4(H) being met in the Libyan crisis, military intervention was not the pathway chosen by the AU. From the very beginning of the civil war, AU has perused political solution and negotiated settlement to Libya as articulated by its Roadmap. Even if AU has desperately tried to settle the Libyan civil war through political solutions and diplomacy, the result was quite disappointing. The AU peacemaking initiative for Libya never materialized and succeeded since the Libyan civil war was finally culminated by the victory of the NTC forces

¹⁴⁷ Francis E. Ramoin, (January 25, 2012), *Why Intervention in Libya was Justified: A moral, political & operational defense for the coalition's military intervention in the 2011 Libyan uprising*, e-International Relations Journal, page 1

¹⁴⁸ The Guardian, "Libyan Uprising-Thursdays 10 March", <http://www.guardian.com.co.uk.worldblog> Last accessed on 14 December 2012

¹⁴⁹ Ziad Akl Moussa, (2011), *The African Union and the Libyan Revolution: Interests and protocols*, AL-Ahram Center For Political & Strategic Studies, p.4

and the demise and death of the Gaddafi, after unfortunate bloodshed and related humanitarian catastrophes.

As a result of this, the next section will try to figure out some of the major factors for the collapse of AU's political solution to the Libyan civil war as well as the reasons why the AU didn't intervene in Libya as per Article 4(H) of the Constitutive Act.

3.5.1. Factors affecting AU's Response to the Libyan Civil War

3.5.1.1. Division among African States

One of the major factors which have severely affected AU's negotiated settlement and political solution to the Libyan civil war is the existence of division and fissure among African states. The Libyan crisis exposed the division within the AU member states and this division has hindered the capacity of the organization to mount a unified front on the Libyan crisis.¹⁵⁰

The first fissure and confused position of African states over the Libya crisis was manifested at the time when UN Security Council Resolution 1973 was passed by the UNSC on 17 March 2011. As it is discussed earlier, on March 10, 2011, the AU PSC adopted political road map to the Libyan crises and expressed its "rejection of any military intervention, whatever its form". However, a week later, the three non-permanent African members of the UN Security Council, i.e. , Gabon, South Africa and Nigeria voted in favor of UN SC Resolution 1973 which imposed a no fly zone over Libya which exactly prescribed foreign military intervention in Libya.

Even after the passing of Resolution 1973 and when the NATO coalition forces started the military intervention on Libya, the divisions among African leaders again become so visible. Concerning NATO intervention on Libya, three positions emerged among African countries. The first position advanced by some countries like Uganda, South Africa and to some extent Kenya accepted the UN Security Council Resolution 1973 but were critical of the way the NATO countries were conducting their operation on Libya.¹⁵¹ To these countries, NATO's military

¹⁵⁰ Sadiki Koko and Martha Bakwesegha Osula, *Assessing the African Union's Response to the Libyan Crisis*, conflict trends journal, p.8

¹⁵¹ Kasaija Phillip Apuuli, *Supra* note at 118, p.3

operations went beyond the limits and contours of resolution 1973 and in effect were part of regime change agenda.¹⁵²

The second position forwarded by some African countries was a clear and unequivocal support for the NATO intervention on Libya. For instance, the Rwandan President Paul Kagame and Senegalese President Wade supported the military intervention and the continued raid by NATO forces.¹⁵³

The third position advanced by many African states by the likes of Zimbabwe, Algeria, Nigeria, Chad, Central African Republic and Mali was a strong condemnation and opposition of NATO intervention on Libya. These countries argued that the NATO intervention on Libya as a political means to remove Gaddafi's regime from power.¹⁵⁴ The President of Uganda, Yoweri Museveni criticized the Western countries of being selective in the way they want to deliver justice and they do so for their own interest.¹⁵⁵ Moreover, President Mugabe has accused NATO of being a "terrorist organization" fighting to kill Gaddafi.¹⁵⁶

Therefore, the presence of such contradictory and varied positions among African states have significantly impaired AU's continued commitment to bring negotiated political solution to the Libyan crisis. This fissure and lack of unified African voice on the matter undermined the efficacy of AU's diplomacy on Libya, let alone the application of effective military intervention by the Union as enshrined under Article 4(H) of the AU Constitutive Act. Moreover, these divisions among African states are indications that Pan-African solidarity is cracking.

¹⁵² Kasaija Phillip Apuuli, *Supra* note at 118, p.3

¹⁵³ Roopanand MAHADEW, *THE AFRICAN UNION'S RESPONSIBILITY TO PROTECT IN THE LIBYAN CRISIS 2011*, A dissertation submitted in partial fulfillment of the requirements of the degree LLM in Human Rights and Democratization in Africa, University of Pretoria, 01 November 2011, p.33

¹⁵⁴ Kasaija Phillip Apuuli, *Supra* note at 118, p.3

¹⁵⁵ Yoweri Kaguta Museveni, (24 March 2011), *Reflections on the Libyan crisis*, Thursday, *ANC Today*, Vol. 11, No 12, page 5, available at <http://www.anc.org.za.docs/ancoday/2011> Last accessed on 17 December 2012

¹⁵⁶ Radio Netherlands Worldwide (RNW), *'Zimbabwe: Dictatorship out of fashion'*, (23 August 2011) Available at <http://allafrica.com.stories.html> Last accessed on 17 December 2012

3.5.1.2. Failure to take clear position on Gadafi

During the Libyan civil war, AU was committed to bring the Libyan Civil War to an end through politically negotiated settlement as outlined by its political road map on Libya. After the formation of the AU *Ad Hoc* Committee on Libya by the decision of the 265th Meeting of the PSC, AU was extensively dedicated to sell its road map the two main protagonists of the civil war: the Gadafi government and the NTC. While Colonel Gadafi unconditionally accepted the AU road map, the NTC refused to accept the roadmap unless colonel Gadafi relinquished power.

One of the major problems with the AU political road map on Libya was that it failed to pronounce itself on the future of Gadafi “during” and “after” the negotiation process to the Libyan Civil War. The four point AU political roadmap on Libya didn’t mention anything as to whether colonel Gadafi will be removed from power or not.

The AU was largely ambivalent and resistant on the future of Gadafi during and after the political negotiation for Libya. More significantly, AU’s ambivalence on the future of Gadafi was clearly displayed at the 17th AU Summit that was held in Malabo, Equatorial Guinea from June 30 to 1 July 2011. In this AU Summit, some African officials announced that Gadafi should leave power for democratic transition to take place, while others argued to the contrary that he should be part of the negotiation process to the Crisis.¹⁵⁷ The final decision of the Assembly had not called for the removal of Gadafi from power.

The AU position on Gadafi proved to be somewhat naïve as the NTC rejected any deal that could see Gadafi remaining in power. Many western countries, the Arab League, the EU, the OIC and the GCC have repeatedly called Colonel Gadafi to step down. Countries like France, US and UK and were all resolute in their demand that Gadafi must go and go for good.¹⁵⁸ Even the Russian Federation which strongly opposed the NATO interventions for overstretching its mandate from

¹⁵⁷ Institute for Security Studies (ISS) Report, *Country Analysis: Libya*, No 25, (August 2011), p.9

¹⁵⁸ BBC News, (15 April 2011), *‘Libya letter by Obama, Cameron and Sarkozy*, available at www.bbcworld.com Last accessed on 19 December 2012

responsibility to protect civilians to regime change joined the Western nations in calling Gaddafi's departure from power.¹⁵⁹

In spite of all these international demands for Gaddafi's departure from different corners of the world, the AU or *its Ad Hoc* Committee never called such request. This was one of the reasons why the rebels refused to accept the AU's peace plan. Therefore, the AU should have precisely articulated its position on the future of Gaddafi during and after the political negotiation to the Libyan crisis. In failing to do so, the AU has hampered and undermined the success of its political diplomacy on the matter.

3.5.1.3. The Gaddafi Factor

Among the plethora of intelligentsias and public opinions, the influence of colonel Gaddafi on the African Union has been frequently cited as the major reason for the collapse of AU's political solution as well as for the failure of the AU to intervene in Libya as per Article 4(H) of the AU Constitutive Act.¹⁶⁰

Libya, under Colonel Gaddafi, was one of the most influential and powerful member of the AU, partly because of its huge financial contribution to the Union and due to the Pan-African agenda promoted by its leader Gaddafi. So, in order to examine whether the nature and influence of Colonel Gaddafi has indeed affected the response of the AU to the Libyan civil war, it is of paramount importance to look at Gaddafi's relationship with the AU and other African countries.

Despite his repressive governance and democracy credentials, Colonel Gaddafi was a very popular leader in Africa. His popularity is stemmed out of three things; his Pan-African dreams, his frequent interference in the internal affairs of many African countries and mostly importantly his huge financial contribution and donation for the AU as well as several countries.

Concerning his Pan-African dreams, Brother Leader Muammar Gaddafi was a major proponent of the "United States of Africa", i.e., an Africa with one single unified army as well as common

¹⁵⁹ Reuters, (4 July 2011), "*Libya Dominates Russian Meetings with NATO, Zuma*", www.reuters.com/article/2011/07/04/us-russia-nato-libya Last accessed on 19 December 2012

¹⁶⁰ Kathryn Sturman, (May 2012), *The African Union and the "Arab Spring": An exception to new principles or return to old rules?*, Istituto Per Gli Studi Di Politica Internazionale (ISPI) Analysis, p.5

currency.¹⁶¹ Most of the Pan-Africanist ideas like forging unity, solidarity, political independence and economic emancipation are largely being spearheaded by Mohammad Gaddafi.¹⁶²

The Libyan leader, Gaddafi was also infamously known for his frequent interference in the internal affairs of many African countries. For instance, in 1980 he militarily intervened in Chad.¹⁶³ Gaddafi's military support such as sending troops to help Idi Amin's regime in Uganda and his support to rebel groups in Sierra Leone and Liberia in terms of military training were some of his interferences in the internal business of African countries.¹⁶⁴ Gaddafi also proclaimed himself as African king of kings annoying many African leaders by inflating the status of their traditional chiefs and "Imams of the Muslim".¹⁶⁵

However, more than the above mentioned characteristics of Colonel Gaddafi, one thing that is hard to deny about Gaddafi is that his financial contribution to the AU's budget was very significant. Due to his huge financial contribution to the AU, Gaddafi was a major actor within AU.¹⁶⁶ Under the leadership of Gaddafi, Libya was one of the five AU members that contributed 75% of the AU's budget.¹⁶⁷ Gaddafi was also known for paying fees for poorer AU member countries and financially bailing out many African states for a long period of time.¹⁶⁸ For example, according to figures from Libyan foreign Ministry, Tanzania, Mozambique, Ethiopia and Sudan have each benefitted from loans in excess of 100 million dollars.¹⁶⁹ In sum, Libya's

¹⁶¹ The Independent, (30 June 2007), *Ambitious plan for new Africa: welcome to the USA (i.e., United States of Africa)*

¹⁶² Frank O. Okyere and Mustapha` Abdallah, *Supra* note at 3, p.3

¹⁶³ The Guardian, 'Gaddafi: the man who would be king of Africa' available at <http://www.guardian.co.uk/commentisfree/2011/aug/26/gaddafi-legacy> Last accessed on 20 December 2012

¹⁶⁴ Yoweri Kaguta Museveni, *Supra* note 155, p.3

¹⁶⁵ The Age, (31 March 2011), *Libya's Gaddafi hurls insulting at kings*

¹⁶⁶ Ozias Tungwarara, (September 2011), *The Arab Spring and the AU Response*, Open Society Institute, Africa Governance Monitoring and Advocacy Project (AFRIMAP)19, p.4

¹⁶⁷ The others are Algeria, Egypt, Nigeria and South Africa

¹⁶⁸ Ozias Tungwarara, *Supra* note at 166, p.4

¹⁶⁹ Downier, (2 March 2011), "Gaddafi's Tangled Legacy in Africa", *center for strategic and international studies*", available at www.csis.org/publications/Gaddafi's.tangledlegacy Last accessed on 27 December 2012

contribution amounted to nearly 1/3 of the total AU's budget.¹⁷⁰ In general, what is clear from this is that Colonel Gaddafi was a driving force in the AU, even if he was sometimes driving it to the wrong direction.¹⁷¹

Considering the above mentioned natures of Gaddafi, it can be logical to argue that the AU's political solutions to Libya may have been affected or influenced by Gaddafi's key role on the activities of the Union as well as his generous financial contribution. Moreover, Gaddafi's purported stature within the AU has been commonly cited as one of the reason why the AU has failed to intervene to stop the cruel acts of Gaddafi against civilian protestors in accordance with article 4(H) of the Constitutive Act.¹⁷² Therefore, one can possibly associate AU's weak response and its failure to intervene in Libya with the already existing state of affair between Gaddafi and the AU.

3.5.1.4. Lack of Sufficient Resource

Africa has been characterized by the prevalence of civil wars, inter-state and intra-state conflicts, massive human right violations and widespread poverty. As a result of this, protection of civilian is a very critical issue underlying AU's Peace and Security Architecture (APSA). AU support for responsibility to protect principle emerged from broader concerns with promoting human right standards and human security on the continent.¹⁷³

One of the main indications in the desire of the AU on the protection of civilian is stipulated under Article 4(H) of the Constitutive Act of the AU. This article provides for the right of the Union to intervene in member states pursuant to a decision of the Assembly in respect of grave circumstances namely War Crime, Genocide and Crime against Humanity. However, AU's right of intervention in member states has been severely constrained since the AU Standby Force has not been yet fully operational. Due to various reasons, the AU Standby Force has yet not been

¹⁷⁰ Daily Maverick, 'After Qaddafi, who will fund the AU' available at <http://csis.org/publication/autocrats-unitedpeace-and-security-council-African-Union> Last accessed on 22 December 2012

¹⁷¹ Paul-Simon Handy, (22 Feb 2012), *Perspectives on 2011: A Year of Change*, African Security Review, p.4

¹⁷² Kathryn Sturman, *Supra* note at 160, p.5

¹⁷³ PAUL D. WILLIAMS, (12 March 2007), *FROM NON-INTERVENTION TO NON-INDIFFERENCE: THE ORIGINS AND DEVELOPMENT OF THE AFRICAN UNION'S SECURITY CULTURE*, African Affairs, 106/423, 253-279, p.275

fully organized and operational, even though some positive progresses have been achieved on the realization of AU Standby Force in recent years.¹⁷⁴

One of the major factors which is attributable for slow progress of operationalization of the AU Standby Force is lack of financial resources. The AU Standby Force has not been supported with serious resources by the African countries in order to carry it through.¹⁷⁵ Even if the AU, unlike its predecessor OAU, has intervened in many more crises, the chronic failure to raise enough financial and human resource to conduct peace keeping operations has been embarrassing to the organization.¹⁷⁶ Almost all peace keeping missions of the AU were characterized by lack of financial and human resource as well as heavy reliance on external donors funding and aids.¹⁷⁷

The reaction of the AU to the Libyan civil could have been different if the AU Standby Force was totally operational. Had the AU standby force been fully organized and functional, it would have permitted AU to deploy troops in Libya for peace keeping missions and simultaneously to pursue its political dialogue for solution on the matter.

However, AU's inaction to intervene in Libya to fulfill its responsibility to protect civilians cannot be wholly blamed on the non operationalization of AU Standby Force, since what matters more is the political will to do what is needed.¹⁷⁸ Sound decision making by the African leaders is also of the utmost importance so as to protect civilians from the horrors of War Crime, Genocide, Crime against Humanity and ethnic cleansing. Poor political will among African leaders seems to have prevented the AU from intervening in Libya. Had the African leaders have sufficient political will, they could have deployed at least small African troops in Libya to make civilians feel protected couple with pursuing political dialogue between Gaddafi and the NTC position rebel forces. This, of course, could have yielded a valuable outcome.

¹⁷⁴ Mashood Issaka and Elijah Dickens Mushemeza, (January 29, 2010), *Operationalizing the African Standby Force*, International Peace Institute (IPI), p.3

¹⁷⁵ Kasaija Phillip Apuuli, *Supra* note at 118, p.6

¹⁷⁶ *Ibid*

¹⁷⁷ *Ibid*

¹⁷⁸ Bjorn Møller, (August 2009), *"The African Union as Security Actor: African Solutions to African Problems?"*, *Crisis States Working Papers Series*, 2, p.9

3.5.1.5. Marginalization of the AU by Western Powers and NATO Intervention

One of the major factors attributable for the ultimate failure of the AU's peacemaking diplomacy to the Libya was the marginalization and sidelining of AU by Western powers (UN, NATO, US, UK, France and others). This is why the AU officials, politicians, writes and important African figures such as former South African President Thabo Mbeki were involved in vocal campaign against NATO intervention and for the sidelining and marginalization of AU with some 200 African personalities.¹⁷⁹

Indeed, AU's peacekeeping effort to the Libyan civil war was clearly undermined and marginalized by the behavior of powerful Western nations and the NATO Coalition Forces. This marginalization of the AU can be expressed in two ways. Firstly, the western powers effectively ignored AU and secondly, they overstretched the mandate of Resolution 1973 from the protection of civilians to forced regime change agenda in Libya.

In their response to the Libyan crisis, the western nations appeared to ignore the role of the AU on the settlement of the Libyan civil war. During the civil war, many African leaders and AU officials were complaining that the AU was not properly consulted as to the possible diplomatic ways of settling the Libyan crisis. Appearing on BBC program, Hard Talk on 25 March 2011, the AU Commissioner Jean Ping decried the sidelining of AU in the Libyan crisis.¹⁸⁰ He raged against the fact that the international community was not consulting the AU.¹⁸¹ He said, "Nobody has talked to us, nobody has consulted us on the settlement of the Libyan civil war".¹⁸²

The fact that the AU was ignored by the Western powers is clearly demonstrated when UN refused to allow the AU *Ad Hoc* committee to fly to Libya on 19 March 2011 as a part of the AU Roadmap. When the AU High Level Ad-Hoc Committee on 19 March 2011 requested

¹⁷⁹ Mbeki and Co', *Politics web*, "NATO War of Aggression on Libya should end immediately", available at, www.politicsweb.co.za/politicsweb Last accessed on 25 December 2012

¹⁸⁰ BBC Hard Talk, 'AU 'ignored' over Libya crisis', (25 March 2011) available at <http://news.bbc.co.uk/programmes/hardtalk/stm> Last accessed on 27 December 2012

¹⁸¹ *Ibid*

¹⁸² *Ibid*

authorization to fly to Tripoli and Benghazi, it was prohibited by NATO.¹⁸³ Even if the role of the AU *Ad Hoc* Committee is clearly acknowledged by Resolution 1973, the UN and NATO forces were not willing to give special permission for the members of the *Ad Hoc* Committee to fly to Libya to promote their political solution.¹⁸⁴ This refusal by NATO meant that the African Peace Makers flying to Libya to carry out their mission were in danger of having their planes shot down.¹⁸⁵ Denial of flight permission for the AU *Ad Hoc* Committee's fly to Libya raises a very serious questions as to the credibility of the UN and NATO's commitment on the peaceful resolution of the Libyan crisis. This is why the former president of South Africa Thabo Mbeki said "it should not come as a surprise, if over the years, the people of Africa lose confidence in the will of multilateral institutions such as the UN."¹⁸⁶

The Western countries have also underlined this marginalization of AU by insisting that what is important for them is the support of the League of Arab States, with absolutely no mention of the AU. In its response to the Libyan case, the UNSC appeared to give priority to the Arab League over the AU. Resolution 1973 explicitly recognized the important role of the Arab League states on the resolution of the Libyan civil war. The UN Security Council only "took note" of the AU PSC decision to send *Ad Hoc* Committee to Libya in its operative declaration of the resolution 1973.

As it is mentioned repeatedly, the UNSC adopted resolution 1973 that among other things imposed No-Fly Zone over Libya and authorized the taking of all necessary measures to protect civilian under the threat of attack in Libya. In its various Communiqués and Meetings, the AU have recognized the importance of this Resolution and stressed to pursue its political solution in a manner which is complementary to it. However, once NATO forces began the implementation of the No-Fly Zone on Libya, a serious rift and disagreement come to existence between the AU and Western Powers.

¹⁸³ PEACE AND SECURITY COUNCIL 275TH MEETING, *REPORT OF THE CHAIRPERSON*, Supra note at 29, paragraph 16

¹⁸⁴ *Ibid*

¹⁸⁵ Thabo Mbeki, (2011), *In Libya the West has marginalized African concerns*, The African Times, page 2, available at, <http://www.african-times.com/let-ussolve-our-problems-by-ourselves> Last accessed on 27 December 2012

¹⁸⁶ *Ibid*

The NATO coalition forces have utilized increasingly aggressive tactics and publicly declared their intent to toppling Gaddafi regime, drawing up sharp criticism from the AU, the Arab League, China and Russia, among others, who having supported the intervention on Libya, argued that the NATO forces are overstepping the remits of resolution 1973 to oust Gaddafi and achieve regime change in Libya.¹⁸⁷ Moreover, on 14 April 2011, at a summit in Sanya, China, BRICS leaders, all of whom are Security Council members, said that Resolution 1973 was being interpreted arbitrarily.¹⁸⁸

While the AU and its member states do not object the purpose of no-fly zone on Libya, many of the countries in Africa were, however, concerned about the rhetoric of regime change by the NATO forces.¹⁸⁹ For instance, although South Africa voted in favor of UNSC Resolution 1973, President Zuma has criticized the air strikes by NATO suggesting that they were part of “regime change doctrine”.¹⁹⁰ Indeed the NATO forces have overstepped the mandate of the resolution from the protection of civilian to regime change. The overstretching of the contours of the Resolution 1973 by NATO was clearly displayed during the conduct of their military operation in Libya. The NATO forces significantly expanded the military targets of their aerial bombardment on Libya and even tried to assassinate Colonel Gaddafi. For instance, the Libyan authorities have described some of the NATO’s attack as a clear attempt to assassinate Colonel Gaddafi.¹⁹¹ On 30 April, 2011, Gaddafi escaped a NATO air strike that killed his youngest son and three of his grandchildren.¹⁹² Early on 25 April 2011, NATO planes also attacked the residence of Colonel Gaddafi in Tripoli, in what the Libyan officials claimed was an assassination attempt of Colonel Gaddafi.¹⁹³

¹⁸⁷ Hsiao Amy, (April 2011), “Worldviews of Rising Powers: What Does Their Policy on the Libyan Intervention Tell Us?” The George Washington University, Sigur Center For Asian Studies, Policy Brief, p.6

¹⁸⁸ Security Council Report, “Libya May 2011 forecast”, available at: <http://www.securitycouncilreport.org/site/Libya.htm> Last accessed on 29 December 2012

¹⁸⁹ Institute for Security Studies (ISS) Report, *Country Analysis: Libya*, No. 21, (April 2011), p.5

¹⁹⁰ Ibid

¹⁹¹ EXTRAORDINARY SESSION OF THE ASSEMBLY OF THE UNION, *REPORT OF THE CHAIRPERSON*, Supra note at 1, paragraph 39

¹⁹² Ibid

¹⁹³ Ibid

Moreover, military leaders from UK and France had regime change as a preferred objective of the NATO operations in Libya.¹⁹⁴ Thus, the NATO was not only targeting the military capabilities of Gaddafi regime that threatened civilians, but it was also after the Gaddafi itself.¹⁹⁵ In response to this arbitrary NATO air strikes, the AU PSC, as its 275th Meeting held on 26 April 2011 stressed the need for all countries and organizations involved in the implementation of Resolution 1973, to act in a manner fully consistent with international legality and the resolution provisions whose objective is solely to ensure protection of civil population.¹⁹⁶ In addition, the Council urged NATO to refrain from military operations targeting Libyan senior officials and socio-economic infrastructures.¹⁹⁷

In addition to expanding the military targets in Libya, the NATO forces in a clear contravention with Resolution 1973, had supported the rebel NTC rebel fighters so as to topple the Gaddafi regime through different techniques such as arming them and also providing military weapons and equipments. For instance, on 29 June 2011, France officially acknowledged that it had furnished the Libyan rebels with weapons, the first case of a NATO member providing military hardware to the Libyans endeavoring to remove Gaddafi from power.¹⁹⁸ Reports also disclosed that up to forty tones of weapons including light armored cars had been delivered to rebels in western Libya by France.¹⁹⁹ The arming of the rebel groups by NATO to enable them to topple Gaddafi regime is a clear contravention of Resolution 1970 and 1973 which indicated their desire to regime change instead of protecting civilian.

The overstepping of Resolution 1973 by Western powers has effectively jeopardized AU's political solution to the Libya crisis. Focusing on regime change rhetoric, the NATO forces

¹⁹⁴ Robin Beste, (16 May 2011), "*Do to Libya what was done to Gaza and Iraq says head of UK army*", stops the war coalition

¹⁹⁵ Ibid

¹⁹⁶ PEACE AND SECURITY COUNCIL, 275TH MEETING, REPORT OF THE CHAIRPERSON, Supra note at 29, Paragraph 11

¹⁹⁷ Ibid, paragraph 4

¹⁹⁸ Elizabeth Pineau and John Irish, (29 June 2011), "*France provided weapons, food to Libya rebels*", Reuters, available at, www.reuters.af.com Last accessed on 30 December 2012

¹⁹⁹ Institute for Security Studies (ISS) Report, *Country Analysis: Libya*, No 25, August 2011, p.9

marginalized the success of AU's politically negotiated settlement to the Libyan crisis. The AU's commitment to bring Gaddafi and the NTC on the same wave length was made increasingly difficult due to the western and NATO forces military plot to change Gaddafi. Therefore, the western nations should also be blamed on their part for the failure of AU's diplomacy on Libya.

This behavior of the western nations, i.e., the overstepping the mandate of Resolution 1973 and their regime change agenda in Libya in the guise of protection of civilians won't be without consequences. Firstly, it raised very serious question as to the real and genuine motive of NATO's military intervention on Libya. Even if some regards the intervention on Libya as a genuine application of RTP,²⁰⁰ a plethora of writings from Africa considered the intervention by NATO as an indication of neo-colonialism and their "oil agenda" in Libya.²⁰¹

The major consideration which raises vital question as to the true motive of NATO intervention on Libya is their application of double standard when they deal with similar situations in other countries. For example, if foreign intervention is truly motivated by the need to protect civilians, then intervention in Libya smacks of double standard given its selective nature.²⁰² If the situation in Libya justified military intervention under Chapter VII of the UN Charter, why not Syria or Yemen?

Moreover, the UNSC and NATO's application of the No-Fly Zone on Libya at a speed of light exposed their approach of double standard in handling African cases. For almost a year and half, the AU PSC has repeatedly pleaded with the UNSC to impose a No Fly-Zone in Somalia to protect civilians.²⁰³ But the UNSC was not willing to impose No-Fly Zone on Somalia to protect civilians. In Somalia more people are dying every day due to the civil war of the last two decades and compared to Libya, the humanitarian catastrophe in Somalia should also have taken priority on the UNSC agenda and NATO's readiness to partner in Africa.

²⁰⁰ T. Weiss, (2011), *RtoP alive and well after Libya*, Global Centre for the Responsibility to Protect, p.18

²⁰¹ 'La communauté internationale veut-elle recoloniser l'Afrique', *Journal Afrique Expansion* (September 2011), p.256

²⁰² Frank O. Okyere and Mustapha` Abdallah, *Supra note at 3*, p.4

²⁰³ PEACE AND SECURITY COUNCIL, 217th MEETING, PRESS STATEMENT, PSC/PR/BR.(CCXVII), ADDIS ABABA, 25 FEBRUARY 2010, PAGE 2

Unfortunately, the behavior of the west and the wrong interpretation of the No-Fly Zone Resolution 1973 by NATO in Libya can negatively affect the development of RTP norm in the future. This is clearly manifested by the failure of the UNSC to reach on any agreement concerning any military intervention on Syria, even though the civilian death toll in Syria by far exceeds that of the Libyan civil war. Even at the time of writing and completing this thesis, the number of civilian deaths resulting from the Syrian civil war exceeds 60,000 according to the report of the UN Human Rights Office.²⁰⁴ This is mainly due to the “blow-back” from the NATO intervention in Libya since China and Russia rejected to draft resolutions on Syria.²⁰⁵

Generally speaking, the western nations have effectively undermined the AU’s diplomacy on Libya by overstepping the mandates of the UNSC Resolution 1973. The international community, in general and the western and NATO forces in particular should have taken the AU more seriously and provide due respect to its mandate in the resolution of the Libyan civil war.

²⁰⁴ BEN HUBBARD and FRANK JORDANS, *Syria Death Toll At 60,000*, UN Human Rights Office Says, Huff Post, available at, <http://www.huffingtonpost.com.html> Last accessed on 30 December 2012

²⁰⁵ Garwood-Gowers, Andrew, (2012), *China and the "Responsibility to Protect": the implications of the Libyan intervention*, Asian Journal of International Law, 2(2), Cambridge University Press, p.17

CHAPTER FOUR

4. THE NORTH AFRICAN REVOLUTIONS AND THE AFRICAN UNION NORMATIVE FRAMEWORKS ON DEMOCRACY, CONSTITUTIONALISM AND UNCONSTITUTIONAL CHANGE OF GOVERNMENT

4.1 Introduction

The popular Revolutions that swept across North Africa during 2011 have brought dramatic change in leaderships in Tunisia, Egypt and Libya. Ben Ali of Tunisia fled his country after his long and repressive rule over Tunisia. While the former Egyptian President Hosni Mubarak is now languishing in jail, the Libyan leader Colonel Mohammad Gaddafi ultimately met a humiliating and barbaric death in the hands of his captors after the bloodiest civil war and NATO bombardment on Libya.

As a result of an extraordinary nature of these events, it is critically important to analyze the North African Revolutions in light of the AU normative frameworks and legal instruments governing democracy, constitutionalism and unconstitutional change of government. The purpose of this chapter is to assess whether there exist any incompatibility, tension or contradiction between the North African Revolution and the AU normative frameworks related to constitutionalism, democracy and unconstitutional change of government. By focusing on major AU normative instruments like the Constitutive Act of the AU, the African Charter on Democracy, Election and Governance (ACDEG) and the Lomé Declaration on Unconstitutional Change of Government, this chapter will investigate the following questions:

- Is there any inherent tension between Revolutions like that of the North African and various AU instruments on democracy, constitutionalism and unconstitutional change of government
- Are Revolutions unconstitutional events under the AU legal instruments and frameworks? Or do the people have the Right to Revolution?
- Does the Lomé Declaration on Unconstitutional Change of Government apply to change of government resulting from Revolutions?
- Is the existing African Peace and Security Architecture (APSA) possess the capacity and potential to respond to Revolutions?

4.2. Revolutions as Extra-Constitutional Right of the People

“Under a government which imprisons any unjustly, the true place for a just man is also a prison.”
Henry David Thoreau, 1849¹

“The stark choice Africa faced was- should we side with the demonstrators or with the government they demanded should resign?”

Thabo Mbeki, the former South African President, 2011²

At the heart of these statements lie two core questions: is there a right to Revolution and are Revolutions compatible with various African normative frameworks like the Lomé Declaration and African Charter on Democracy, Election and Governance.

There is no universal consensus on the existence of a right called, the right to Revolution. For a long period of time in history, there has been a very deeply entrenched philosophical, political and legal debate on the theoretical conceptions and existence to the right to Revolution among renowned philosophers and scholars. While many philosophers like Kant denied the existence of the right to revolution³, an overwhelming number of philosophers like John Lock, Thomas Hobbs, Alexander Hamilton and others argued that the right to Revolution is one of the fundamental right of every human being.⁴

¹ Thoreau Henry David, (1849), *“the Duty of Civil Disobedience”, Civil Disobedience, and Other Essays*, New York: Dover Publications, p.14

² Thabo Mbeki, (2011) *In Libya the West has marginalized African concerns*, The African Times, p.2 <http://www.african-times.com/let-ussolve-our-problems-by-ourselves> Last accessed on 9 December 2012

³ In 1793, Kant sent his essay on the saying: that may be true in theory, but it doesn't work in practice” He denied the existence of the right to Revolution for various reasons, Kant and Revolution, (Lewis W. Beck, (Jul. - Sep., 1971), *Kant and the Right of Revolution*, Journal of the History of Ideas, Vol. 32, No. 3, University of Pennsylvania Press, page 417, available at, <http://www.jstor.org/stable/2708355> Last accessed on 3 January 2013)

⁴ John O'Toole, (May 2011), *The Right of Revolution: An Analysis of John Locke and Thomas Hobbes' Social Contract Theories*, Senior Honors Thesis Submitted to the College of Arts and Sciences Honors Program and the Department of Philosophy, p.4-25

The American founding fathers including James Madison and Thomas Jefferson were also the famous proponent of the right to Revolution when arguing for the independence of colonies.⁵

The philosophical foundation of the right to Revolution lies in the famous article of John Lock, "Two treaties of government."⁶ Accordingly, the right to Revolution as stated by John Lock is not only entitlement of the people, but also an obligation when a government breaches the trust enjoyed on the people.⁷

The conceptual basis of the Right to Revolution lies on the assumption that the people are the ultimate bearers of all political power, since the power of the government emanates from the will of the people.⁸ This means peoples are the original bearers of the political power. State exercises power by delegation; it is an agent of the people. When the state, the agent in this case, acts beyond, misuse or abuse its power as delegated to it by the people, they have the right to revoke that delegation or agency.⁹ According to this scenario, the people can change their government when it acts beyond or misused its power which is originally entrusted to it by the general will of the people. Such change should normally take place through constitutional means such as, regular elections or other methods like vote of no confidence.¹⁰ Therefore, the people who are the principal of the power can change their government using the existing constitutional frameworks and laws when the government abuse its power or loss its legitimacy. But what if such constitutional means of changing a government are non-existent or deliberately rendered meaningless? Here, the people have the Right to rebel against their government. The right to Revolution, therefore, indicates the act of taking power back by the people. Since Revolutions are carried out above the normal procedures of constitution, it becomes "extra-constitutional."¹¹

⁵ Mehari Taddele Maru, (2012), *The North Africa Uprisings under the African Union's Normative Frameworks*, Conference on the Implication of the North Africa Uprisings for Sub Saharan Africa, Inter Africa Group, P. 10

⁶ John Locke (1689), *The Two Treatises of Civil Government*, (Hollis ed.) The Online Library of Liberty, p.19

⁷ Ibid

⁸ Harvey C. Mansfield Jr., (1976), *The Right of Revolution*, American Academy of Arts & Sciences and the MIT Press, P.151-162

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

The legal and philosophical perspectives of the right to Revolution rest on its extra-constitutional nature. This implies if all the avenues of constitutional means of changing the government are inexistent or unavailable for whatsoever reason, the people have the right to change their government extra-constitutionally, i.e., through Revolution. In other words, Revolutions are extra-constitutional means of ensuring the will of the people and their legitimate aspiration when people's right to change their government constitutionally is made impossible.

The extra-constitutional nature of Revolution is based on the idea that the will of the people is above any constitution.¹² Constitutions are evidences of the existence of fundamental human rights, not sources of these rights.¹³ Fundamental human rights are not made by the constitution. As universal, inalienable and inviolable entitlements of human beings, they exist even without the existence of the constitutions or conventions.¹⁴ Provisions of human rights provided in a constitution are constructs to make references much easier.¹⁵ Thus, the right to Revolution becomes extra-constitutional as people have the right to activate their latent right to change government or a constitution when they feel that the set of rules, procedures and institutions do not address their concern.¹⁶

Similarly, both Thomas Jefferson and Alexander Hamilton invoke the right to rebellion as a last resort when the people's right is violated and means of redressing them are unavailable.¹⁷ For these philosophers, the state exercises power by delegation from the people. When the government misused or abused this delegated power, the people have extra-constitutional right to Revolution.¹⁸

However, people can not resort to Revolution without fulfilling some conditions that justify Revolution as a last resort to change their government. Thomas Jefferson took pains to argue that

¹² Mehari Taddele Maru, *Supra* note at 5, page 12

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Thomas Jefferson, (1776), *the right to change one's government*, the Online Library of Liberty available at http://www.oll.libertyfund.org/?option=com_staticxt&staticfile Last accessed on 5 December 2012

¹⁸ *Ibid*

the right of Revolution was a limited one, in the sense that one could not do this for weak or frivolous reasons.¹⁹ The preconditions that are necessary to exercise people's right to Revolution are:

- Violation of substantive rights of the people (systematic violation of constitutional values including human right)
- Violation of the trust of the people (government has fiduciary duty to the governed, when a government deliberately and systematically violates the declaration)
- Absence of constitutional mechanisms to redress (the lack of constitutional mechanisms of solving or redressing)²⁰

As it is mentioned above, one of the criteria which warrant Revolutions as an extra-constitutional means of changing government is the violation of substantive right including fundamental right and freedoms. Nevertheless, not all kinds of violations of human right constitute as a legitimate cause for Revolution. Rather, the human right violations need to be systematic, widespread and grave one. To be regarded as systematic, the violation must be carried out in organized and deliberate way.²¹ Gross violation of human right refers to the intensity of the violation and its effect: it denotes violations of a flagrant nature, amounting a direct and outright assault on the values protected by the rule.²²

In addition to substantive violations of rights, there needs to be a violation of trust of the people towards their government to justify Revolutions.²³ As is mentioned repeatedly, the government is the agent of the people. As an agent, the government is expected to be just, faire and to do good to its people who has conferred their will to be governed. Thus, the government has to be subjected to the cumulative will of the people. If the government breaches this duty, this will constitute one ground for the people to exercise their right of Revolution.

¹⁹ Thomas Jefferson, Supra note at 17

²⁰ Mehari Taddele Maru, Supra note at 5, page 12

²¹ Clapham, Andrew, (2006), *Human Rights Obligations of Non-state Actors*, (Oxford, Oxford University Press), P.92

²² Ibid

²³ Harvey C. Mansfield Jr., Supra note at 8, p.153

Lastly, in order to exercise the extra-constitutional Right of Revolution, there should be an absence of constitutional mechanisms to redress violations of the government.²⁴ Revolutions can be justified if, for instance there are no democratic institutions such as an Election Commission to run free and fair election, national human right institutions to trust, judiciary organ to seek independent judgment as well as the representative parliament to represent the popular view of the population in any country. In countries where constitutional mechanisms, institutions and procedures are deliberately and effectively misused or totally abandoned, this leads to a conclusion that people can resort to exercise their extra-constitutional right to change government through popular protest or Revolutions.

The right to Revolution in face of repressive and irreparable authoritarian government is universal, inalienable and inviolable right of the people.²⁵ A Revolution to be considered as extra-constitutional means of changing government, it should also enjoy a broad based popular support. With such broad based popular support, the size of the population and the degree of participation of the people in the Revolution makes it a real expression of the aspiration of the people.

4.3. The African Charter on Democracy, Election and Governance

The African Charter on Democracy, Election and Governance (The ACDEG)²⁶ which is also commonly known as “the Addis Charter” was adopted in the 8th Ordinary Session of the Assembly, held in Addis Ababa on 30 January 2007 and entered into force recently on 15 February 2012.²⁷

The ACDEG is premised on universal values of democracy, respect for human right, the rule of law, supremacy of the constitution and constitutional order and political arrangement of states.²⁸ The charter underlines the fundamental human right values, promoting good governance, rule of

²⁴ Mehari Taddele Maru, Supra note at 5, page 13

²⁵ Ibid

²⁶ The African Charter on Democracy, Elections, and Governance (ACDEG)

²⁷ The African governance Forum, www.africangovernanceforum.org/index/african/charter/, Last accessed on 7 December 2012

²⁸ Ibid

law, democracy and constitutional order.²⁹ This Charter also addresses among other things, the issues around unconstitutional change of government which are the major causes of violent conflict in Africa by setting out majors strengthen electoral institutions and processes to ensure democratic, free and fair election and by rejecting and condemning unconstitutional change of government.³⁰

The overall purpose and object of this charter is to entrench democratic constitutionalism and good governance in Africa. As clearly mentioned in the Charter's preamble, its principles emanate from the importance of good governance and participatory democracy. Generally, the ultimate policy objective of the Charter as it is clearly enshrined under Article 2 and 5 is to enhance and promote constitutional regimes in Africa.³¹ The Charter obliges state parties to take all appropriate measures to ensure constitutional rule and constitutional transfer of power. Some of the objectives of the charter are: promoting universal values and principles of democracy and human right,³² adherence of rule of law, supremacy of constitution and constitutional order,³³ the holding of regular, free and fair election³⁴ and rejection of unconstitutional change of government and consolidation of good governance.³⁵

Article 2 and 3 of the ACDEG provides the overall policy objectives of the Charter, i.e., democratic constitutionalism. The main features of democratic constitutionalism include a government characterized by vibrant parliament, multi-party democracy by way of regular credible election, pluralist and good governance.³⁶ The concept of good governance also comprises broad measures of core components. These components include economic growth, sustainable development and human security which include access to education, health and

²⁹ The African governance Forum, Supra note at 27

³⁰ Ibid

³¹ The Africa Charter on Democracy, Election and Governance Charter (Hereinafter ACDEG), Article 2 and 5

³² ACDEG, Article 2(1)

³³ ACDEG, Article 2(3)

³⁴ Ibid

³⁵ ACDEG, Article 2(6)

³⁶ ACDEG, Article 3(1), Article 3(4), Article 3(7), Article 3(8) and Article 3(9), Article 3(11)

welfare.³⁷ Furthermore, good governance can be understood to manifest as a respect for fundamental rights and freedoms, rule of law, the participation of the population in influencing policy and political process and separation of power between the main arms of the government.³⁸ More specifically, good governance emphasized on values such as participation, representation, transparency, responsiveness and respect for rule of law.³⁹

Generally, the ACDEG is a milestone instrument that is highly essential to bring about democracy, respect for human right, rule of law, supremacy of constitution and constitutional order in African states. Therefore, this Charter in combination with various AU legal instruments that deals with human right, good governance and democracy can play a very pivotal role in reducing the risk of intra-state security threat such as Revolutions. As it is mentioned in the first chapter of this thesis, the main factors that caused the North African Revolutions are lack of functioning democracy, massive violation of human right and the absence of good governance and generally unconstitutional exercise of governmental power. Shortly, it is the absence of democratic and constitutional governance as enshrined in the ACDEG that has caused to the Revolutions in North Africa. For instance, the Libyan leadership under Colonel Gaddafi was characterized by massive violation of fundamental human rights and freedoms. Libya under Gaddafi never knows constitution. Gaddafi's constitution was his mindset, which he personally laid down in the 'Green Book', and the Principles included in this book did not include any political participation, features of good governance and means of power transfer.⁴⁰

³⁷ AU 2011 High Level Retreat Report, *MAKE PEACE HAPPEN: STRENGTHENING POLITICAL GOVERNANCE FOR PEACE, SECURITY AND STABILITY IN AFRICA*, A research report based on the AU High-level Retreat held in Cairo, Egypt, from 4–5 September 2011, organized by the African Union Peace and Security Department in cooperation with the Government of Egypt, the African Centre for the Constructive Resolution of Disputes, the Centre for Humanitarian Dialogue and the Cairo Regional Centre for Training on Conflict Resolution and Peacekeeping in Africa, p.15

³⁸ CHIBBA M, (2009), *governance and development, the current role of theory, policy and practice*, Africa Governance institute, P.4

³⁹ Ibid

⁴⁰ Ziad Akl Moussa, (2012), *REINFORCING AND ACTIVATING AFRICAN UNION PROTOCOLS: The African Union and the Libyan Revolution: Interests and Protocols*, AL-Ahram Center For Political and Strategic Studies, p.4

Therefore, if the universal values of human right, democracy and constitutionalism are abandoned and replaced by repressive and unconstitutional government, the people in one country can resort to exercise their extra-constitutional right of Revolutions to change regimes which has effectively undermined their desire for good governance, democracy and socio-economic development.

Since the purpose of the ACDEG is mainly to enhance democratization and constitutionalism, it cannot prohibit the right of the people to exercise their extra-constitutional right of Revolution when there exist massive violation of substantive right and an apparent absence of constitutional mechanisms of redressing these violations.

Therefore, it is possible to argue that North African Revolutions are not only compatible but also within the spirit of the African Charter on Democracy, Election and Governance and other AU normative frameworks and instruments.

4.4. The Lomé Declaration on Unconstitutional Change of Government

African liberation elites, keen on political power from the continents colonizers, created the impression among their followers that life would be just “rosy” after the departure of colonial powers.⁴¹ Unfortunately, however, shortly after independence, the showing expectations of economic, social and political wellbeing were replaced by disappointment and frustration in majority of African countries.⁴² This was further aggravated by political instability that emerged as a whole mark of African politics, with unconstitutional change of government, particularly military Coup d’etat being the most popular pattern of regime change.⁴³ Since independence, Africa has faced more than 100 Coupdetat.⁴⁴

⁴¹ Ikome F, (2007), *Good Coups and Bad Coups: the Limits of the AU’s Injunction on Unconstitutional Changes of Government*, Occasional Paper, 55. Johannesburg, Institute for Global Dialogue, p.5

⁴² Bereket H. Selassie, (1974), *The Executive in African Governments*, London: Heinemann, P.224

⁴³ Ibid

⁴⁴ Anyangwe, Carlson, (2011), ‘*Understanding the Phenomena of Unconstitutional Changes of Government in Africa*’, in Gutto, Shadrack (ed,) *Shared Values, Constitutionalism and Democracy in Africa*, Fortune-Africa Publishing, p.12

In order to tackle the insurgence of unconstitutional change of government in Africa, the former OAU as well as brand new AU has for a long period of time developed various normative instruments, decisions and declarations to deal with unconstitutional change of government. One of the most historic normative instruments that have played a major role in fighting unconstitutional change of government in Africa for the past two decades is “the Declaration on the Framework for an OAU Response to Unconstitutional Change of Government, commonly cited as the Lomé Declaration” which was adopted on July 2000.⁴⁵ The Lomé Declaration is an instrument which is intended to combat the illegal acquisition and exercise of governmental power in Africa.⁴⁶

The Lomé Declaration was arrived as against the backdrop of the resurgence of the phenomenon of coup that threatened not only the peace and security of the continent but also a set back the continents democratic agenda and rule of law.⁴⁷ The key elements on the Lomé Declaration on unconstitutional change of government include the following:

- A set of common values and principles for democratic governance
- A definition of what constitutes Unconstitutional Change of Government, and
- Actions and Sanctions that the OAU would progressively take to respond unconstitutional change of government and implementation mechanisms⁴⁸

To provide a solid underpinning to the OAU’s agenda of promoting democracy and democratic institutions in Africa, the Lomé Declaration gave consideration to the elaboration of a set of principles on democratic governance to be respected by all members of the OAU. These principles include: the adoption of democratic constitutions, separation of power, political pluralism, principles of democratic change, participatory democracy, promotion of human right

⁴⁵ OAU, Lomé Declaration of July, 2000, on the framework for an OAU response to unconstitutional changes of government (AHG/Decl.5 (XXXVI), Lomé, Togo (hereinafter Lomé Declaration)

⁴⁶ Munir Squires, (June 14–26, 2005), *Democracy without borders: cross-regional survey of multilateral pro-democracy efforts*, Paper prepared for presentation at the workshop on trans-national dimensions of democratization in the Americas, Mount Allison University, New Brunswick, Canada, P.8

⁴⁷ Rumbidzai Dube, (October 2010), *Fighting unconstitutional changes of government or merely politicking? A critical analysis of the African Union response*, A thesis Submitted in partial fulfillment of the requirements of the degree LLM (Human Rights and Democratization in Africa), Centre for Human Rights, University of Pretoria, p.36

⁴⁸ Lomé Declaration, (AHG/Decl.5 (XXXVI), Supra note at 45

and the organization of free, fair and regular election.⁴⁹ The assumption was that state adherence to this principles would considerably reduce the risk of unconstitutional change of government on the continent.⁵⁰ The architects of the Lomé Declaration conceded that unconstitutional change of government are sometimes the culmination of political and institutional crisis linked to the non-adherence of common values and democratic principles.⁵¹

The Lomé Declaration provides four situations that amounted to unconstitutional change of government. These are:

1. A military Coup d'état against democratically elected government
2. Intervention by the mercenaries to replace a democratically elected government
3. Replacement of democratically elected government by armed dissident groups, and rebel movements: and
4. The refusal by an incumbent to relinquish power to the winning party after free, fair and regular election.⁵²

Based on these definitions, unconstitutional change of government can take two forms, i.e., illegal emplacement and replacement of democratically elected government.⁵³ Illegal emplacement refers to the conduct of an incumbent government refusal to relinquish power to the winning party after free, fair and regular elections, whereas illegal replacement refers to those aspiring to grab power through military Coup d'état, mercenaries, armed dissident groups and rebel movements. Therefore, any type of emplacement or replacement of governmental power through the above listed techniques amounts to unconstitutional change of government and constitute a clear violation of the Lomé Declaration.

⁴⁹ Lomé Declaration, AHG/Decl.5 (XXXVI), Supra note at 45

⁵⁰ Ikome F, Supra note 41, p.31

⁵¹ Ibid

⁵² Lomé Declaration, AHG/Decl.5 (XXXVI), Supra note at 45

⁵³ Christopher Gelpi, (2003), *The Power of Legitimacy: assessing the role of norms in crisis bargaining*, Princeton, NJ: Princeton University Press, p.78

One of the most interesting historical facts about the Lomé Declaration is that many of the African Head of Governments that adopted the Lomé Declaration came to power through unconstitutional means, mainly by military or military supported Coup d'état and only few participating Head of States and Governments were considered as democratically elected governments.⁵⁴ Therefore, this leads to the conclusion that the Lomé Declaration was a call by African leaders including those who ascend to power through Coup d'état or civil war to end Coupdetat.⁵⁵ In other words, these leaders through the Lomé Declaration expressed their wish not to being toppled by Coup d'état and to become the last Coup d'état leaders.⁵⁶ Such line of contention seems inappropriate and deceptive. The legislative intention of the Lomé Declaration unequivocally rejects any seizure of power through illegal replacement and emplacement of a democratic government by military coup, mercenary groups, and armed rebel groups or by incumbent party or personality. This could be easily understood not only the ordinary meaning of the terms of the Lomé Declaration but also the context in which it was ratified as well as by the subsequent application and interpretation of the Declaration by AU organs which are mandated to tackle unconstitutional change of government.

As it is discussed, replacement of a democratically elected government by military coup, mercenary, armed dissident (rebel groups) and the refusal of an incumbent government to relinquish power to the winning party are proscribed as unconstitutional change of government by the Lomé Declaration. However, in mapping out its practical response to unconstitutionality of governments, the Lomé Declaration is painfully silent and muted on the omissions and commissions of sitting African governments. In a similar vein, while the Lomé Declaration defined what constitutes unconstitutional change of government and prescribes how governmental power must be acquired, it says nothing on how governmental power should be exercised. Therefore, the declaration places an injection and prohibition on unconstitutional change of government, not on unconstitutional exercise of governmental power and undemocratic governance. For example, the Lomé declaration is silent on how to deal with

⁵⁴ Kathryn Sturman, (March 2011), *Unconstitutional Changes of Government: The Democrat's Dilemma in Africa*, SALLA, Governance of Africa's Resource Program, Policy Briefing No 30, P.2

⁵⁵ Ibid

⁵⁶ Ibid

pervasive affronts of democratic norms and violations of constitutional power by sitting head of states or governments.

Moreover, when defining Unconstitutional Change of Government, the Lomé Declaration specifically refers to military coups, intervention by mercenaries and armed dissidents against “democratically elected government”. The contrary reading of these provisions could be constructed as indicating that Coup d’etat, mercenary and armed intervention against undemocratic government is acceptable. So can we consider Coup d’etat against undemocratic government to be legal under the Lomé Declaration? In this case, even if the contrary reading of the Lomé Declaration seems to indicate that Coups against undemocratic government as acceptable, it is significantly important to see the purpose and object of the Lomé declaration. The overall purpose of the Lomé Declaration is to do away with any illegal means of emplacement and replacement of governmental power. Moreover, the Declaration is primarily intended to avoid the scourge of unconstitutional change of government and Coup d’etat in Africa. By laying basic democratic principles in its preamble and operative parts, the declaration is framed to entrench constitutionalism and constitutional transfer of governmental power in Africa. Therefore, it is logical to conclude that the Lomé Declaration rejects any unconstitutional takeover of or illegal stay in power. More importantly, the AU has remained adamant that no unconstitutional change of government can be justified, insisting politics must be at all times be conducted through constitutional order and rule of law, not by Coup d’etat or other unconstitutional means.⁵⁷ So, AU’s stance is that the end cannot justify the means.⁵⁸

Although the Lomé Declaration has been generally accepted as an important political initiative that has played a significant role to foster democratization in Africa, the AU technocrats have finally recognized the need to broaden and strengthened the Lomé Declaration beyond simply frowning at unconstitutional change of government to address the principal issues of political instability.⁵⁹ It was in this regard that the central organ of the AU, in July 2003, requested the

⁵⁷ Mxolisi S. Nkosi, (April 2010), *Analysis of OAU/AU Responses to Unconstitutional Changes of Government in Africa*, a thesis submitted in partial fulfillment of the requirement for degree, Faculty of humanities, University of Pretoria, p.80

⁵⁸ Ibid

⁵⁹ J. Shola Omotola, (2011), *UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA: What Implications for Democratic Consolidation?*, Discussion Paper 70, Nordiska Afrikainstitutet, P.16

AU commission to undertake a comprehensive review of the Lomé Declaration and submit concrete proposals for consideration by the competent AU organs.⁶⁰ These proposals constitute the core of the proposed African Charter on Democracy, Election and Governance (ACDEG). Consequently, the ACDEG strengthened and broadened the existing provisions of the Lomé Declaration and transformed the declaratory principles of the declaration into binding treaty based provisions.

The ACDEG slightly broadened the definition of what constitutes Unconstitutional Change of Government, moving away from the Lomé Declaration on prescription of how power must be acquired, to embrace also prescriptions of how power should be exercised. More specifically, in addition to the four types of unconstitutional change of government mentioned under the Lomé Declaration, Article 23(5) of the ACDEG added a new fifth situation which amounts to unconstitutional change of government that is, i.e.,: “any amendment or revision of a constitution or legal instrument which is an infringement on the principles of democratic change of government.”⁶¹ This provision is aimed at preventing the constitutional tempering and amendments that are aimed at extending the term limits and tenors of sitting head of states and governments. The ACDEG stipulates that any amendment to constitutions is to be carried out only when a national consensus is achieved.⁶² Such extensions of terms of office are constitutional only when an amendment to this effect is authorized through national consensus, if possible by referendum.⁶³ These provisions are meant to prevent the constitutional tempering and amendments that enable, for example, President Museveni of Uganda and Biya of Cameroon to outstay two term limits in office.⁶⁴

4.5. Revolutions and Unconstitutional Change of Government

Based on the cumulative reading of the above mentioned various AU normative frameworks on unconstitutional change of government, it is critically important to analyze whether change of

⁶⁰ J. Shola Omotola, *Supra* note at 59, P.16

⁶¹ ACDEG, Article 23(5)

⁶² ACDEG, Article 10(2)

⁶³ *Ibid*, ACDEG, Article 10(2)

⁶⁴ Kathryn Sturman, *Supra* note at 54, P.2

governments through Revolutions should be considered as constitutional or not. In other words, it is to mean that, does the Lomé Declaration on unconstitutional change of government apply to change of government resulted from Revolutions? The central mission of this section is to solve the puzzle whether or not Revolutions could be considered as unconstitutional change of government.

The issue of constitutionality of Revolutions mainly arises because of the fact they are not specifically governed either in the Lomé Declaration or in the ACDEG. As the former Chairperson of the AU Commission, Mr. Jean Ping precisely put it during the extraordinary meeting of the AU Assembly, “the popular uprising that occurred in North Africa were unparallel and posed serious doctrinal problems, because they do not correspond to any of the cases defined by the Lomé declaration on unconstitutional change of government.”⁶⁵

Pursuant to the cumulative reading of the Lomé declaration and the ACDEG, unconstitutional change of government is defined to constitute five major situations, i.e., military Coup d’etat against democratically elected government, intervention by mercenary to replace democratically elected government, replacement of democratically elected government by armed dissident groups or rebel movements, the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular election and any amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government.⁶⁶

So, Revolutions are not clearly regulated either in the Lomé declaration or in the ACDEG. In the other words, the constitutionality of change of governments by Revolutions like that of the North Africa doesn’t correspond to any of the above mentioned scenarios of unconstitutional change of government. However, the fact that change of government through Revolution is not clearly regulated by the Lomé Declaration or the ACDEG doesn’t mean that they are inherently unconstitutional or even anti-constitutional. Rather, it will be very important to analyze the

⁶⁵ EXTRAORDINARY SESSION OF THE ASSEMBLY OF THE UNION ON THE STATE OF PEACE AND SECURITY IN AFRICA, *REPORT OF THE CHAIRPERSON OF THE COMMISSION ON CURRENT CHALLENGES TO PEACE AND SECURITY ON THE CONTINENT AND AU’S EFFORTS, Enhancing Africa’s Leadership, Promoting African Solutions, EXT/ASSEMBLY/AU/2.(01.2011)*, ADDIS ABABA, 25 – 26 MAY 2011, *paragraph 4*

⁶⁶ Lomé declaration Lomé Declaration, AHG/Decl.5 (XXXVI) and Article 23(5) of the ACDEG

whole purpose and object of the AU instruments on unconstitutional change of government before reaching at any conclusion concerning the constitutionality of Revolutions in the AU context.

As it is constantly mentioned in the above sections, the whole purpose of the Lomé declaration and the ACDEG is to do away with any unconstitutional emplacement or replacement of governments in member states the Union. Both instruments laid down a blue print on constitutional use government power as well as constitutional transfer of power. According to the preamble of the Lomé declaration and the ACDEG, one can ascertain that the whole purpose and object of these instruments is to enhance and foster democratization, good governance, respect for rule of law and constitutional use and transfer of governmental power. Effective implementation and realization of the provisions of these instruments can play a significant role for the promotion of democracy, respect for human right, peace and security as well as the socio economic developments of African states. The sincere application of these AU instruments therefore can substantially reduce the risk of crisis, conflicts and Revolutions that may arise from the abuse of governmental power, poor governance and authoritarian leadership.

What is the ultimate remedy for a population where there is a systematic, widespread and gross human right violation by the government and when there are no constitutional mechanisms for redressing these violations? The possible answer is the people have the right to exercise their extra-constitutional right to Revolution. This will bring as back to the narrative of "Revolution as extra-constitutional right of the people". Normally the principle is that the people can change their government using constitutional procedures like regular elections or vote of no confidence in some cases. But they have also the right to change their government extra-constitutionally i.e., through Revolution when all constitutional means of changing the government are absent or rendered meaningless for any reason whatsoever. When a government become extremely oppressive towards its people and if there is widespread and gross human right violation, at the same time if there are no constitutional mechanisms to address these violations like an election commission to run free and fair elections, human right institutions to depend on, independent judiciary to demand justice, representative parliament and independent civil societies: the people in any country has a moral right to change their government extra-constitutionally through Revolution. This is exactly what happened in North African Revolutions during 2011. The AU

normative framework like the Lomé Declaration and the ACDEG are intended to avoid situations that have caused the North Africa Revolutions, i.e., such as violation of human right, good governance, unconstitutional use of governmental power and other democratic deficits. This is why the preambles of the Lomé declaration and the ACDEG point out that peaceful, democratic and stable Africa is possible when governments promote constitutional governance and democracy.⁶⁷ Otherwise, the lack of constitutional governance as envisioned in these AU instruments will cause instability, uprisings and upheavals and Revolutions.

While unconstitutional change of government as stipulated in the Lomé Declaration means replacement and emplacement of democratically elected government through Coupdetat, mercenary and rebel movements, only Revolutions are legitimate and acceptable means of extra-constitutional change of government. Both Unconstitutional Change of Government and Revolutions are extra-constitutional in nature, since they are carried out above the normal procedures laid down in the constitutions. However, while Revolutions are legitimate one, unconstitutional change of government are purely illegitimate means of changing government. This is due to the fact that Revolutions are the manifestation of legitimate aspiration of the whole population to change the government when all constitutional means are impossible or non-existent. To the contrary, Unconstitutional Change of Governments like Coup d'etat are illegitimate in their natures since they impose the will of some specific groups or entities on the whole population.

Therefore, Revolutions are compatible with AU normative frameworks governing unconstitutional change of government. The Lomé Declaration on unconstitutional changes of government, thus, doesn't apply to Revolutions resulting from prevailing unconstitutional governance and lack of functioning democracy in any country. To sum up Revolutions are not unconstitutional change of government, they constitute part and parcel of the extra-constitutional right of the people to change their government.

⁶⁷ Preamble of the Lomé Declaration and the Africa Charter on Democracy Election and Governance (ACDEG)

4.6. Constitutionality of Change of Governments in Tunisia, Egypt and Libya

One of the major features of the North Africa Revolution is that they resulted in the total demise of the existing governments in each respective country that was brushed away by the Revolutions in 2011. While Ben Ali of Tunisia left its power and escaped to Saudi Arabia, Mubarak went to trial and the Libyan leader Colonel Gadafi was barbarically murdered by his captors after a long civil war in Libya. Therefore, it is useful to assess the constitutionality of these three changes of governments in accordance with the AU normative frameworks governing unconstitutional change of government. Thus, this section is devoted to critically examine the constitutionality of the changes of governments resulting from the North African Revolutions.

In Tunisia, just after Ben Ali fled to Saudi Arabia, the transitional government was formed in accordance with the Tunisia's constitution. The constitutional council of the country declared the seat of the Head of State vacant and the speaker of the Parliament, Fouad Mebazaa, took over as provided by Article 58 of the Tunisian Constitution.⁶⁸ Constitutionalism was therefore maintained and respected in Tunisia. As a result of this, there is no tension between the revolutionary change of government in Tunisia and the Lomé Declaration on unconstitutional change of government. Consequently, the Tunisian change of government resulting from the Jasmine Revolution is perfectly constitutional.

In Egypt, President Hosni Mubarak stepped down after 18 days of popular Revolution in Tahrir Square and across the whole cities of Egypt. During the Revolution, there were attempts by President Mubarak to transfer executive power to the vice-president who had been appointed by him in attempt to appease the uprising. This was rejected by the protestors and the Revolution continued to gain its momentum. Finally, Mubarak step-down on 11 February 2011, by transferring his power to the Supreme Council of the Armed Forces (SCAF). This transfer of power from the President to the Military raised some controversy as to the constitutionality of this change of government in accordance with the Lomé Declaration on unconstitutional change of government.

⁶⁸ Ozias Tungwarara, (September 2011), *The Arab Spring and the AU Response*, Open Society Institute, Africa Governance Monitoring and Advocacy Project (AFRIMAP) p.4

There were some who felt that this transfer of power from the President to the military amounted to a coup and therefore an unconstitutional change of government pursuant to the provisions of the Lomé Declaration.⁶⁹ Others however maintained that this handover of power from Mubarak to the military was an expression of popular sovereignty, not Unconstitutional Change of Government.⁷⁰ Here, as long as power was returned to the old regime or taken by some elites against the wish and aspirations of the whole population, the handover of power to the military doesn't amount to Coupdetat. Furthermore, since the transfer of power from President Mubarak to the military is meant to protect the aspiration of the Egyptian people, what had transpired in Egypt is Revolution and not unconstitutional change of government.

In Libya, what was initially began as a peaceful demonstration against the rule of Colonel Muammar Gaddafi has immediately turned in to full-fledged civil war between Gaddafi forces and the opposition rebel groups spearheaded by the NTC. The NATO military intervention on Libya and the aerial bombardment carried out by it further complicated the constitutionality of change of government in Libya. In a nutshell, the armed nature of the Libyan Revolution and the involvement of mercenaries in support of both Gaddafi and Libyan NTC rebels have made the change of government unconstitutional in accordance with the provisions of the Lomé Declaration on unconstitutional change of government.⁷¹ According to the Lomé Declaration, the intervention of mercenaries and the use of rebel movements and armed dissidents to topple a government makes any change of government unconstitutional one.⁷²

However, Some scholars like Kathryn Sturman⁷³ and Ziad Akl Moussa⁷⁴ contended that since the Gaddafi regime is characterized by its undemocratic, repressive and authoritarian nature, it is excluded even from the broadest definitions of 'democratically elected government' challenged

⁶⁹ Ambassador Ramtane Lamamra, (4-5 September 2011), AU Commissioner PSC, AUC, *intervention during the High Level Retreat on the promotion of peace, security and stability in Africa*, Cairo, Egypt

⁷⁰ Ibid

⁷¹ Mehari Taddele Maru, (March 2012), *On unconstitutional changes of government The case of the National Transitional Council of Libya*, African Security Review 21.1, p.70

⁷² Lomé Declaration on unconstitutional change of government, Supra note at 45

⁷³ Kathryn Sturman, Supra note at 54, P.4

⁷⁴ Ziad Akl Moussa, Supra note at 40, p.4

by unconstitutional change of government. In other words, since Gaddafi is authoritarian in nature and as he has never held so much as a charade of elections in his entire tenure; his removal through armed movement of NTC cannot be considered as unconstitutional change of government. Such line of argument is however inappropriate and incorrect one. The fact that the Gaddafi regime was undemocratic and authoritarian doesn't make the change of government using armed means and mercenaries to be considered as constitutional and permissible in accordance with the provisions of Lomé declaration and other instruments of the Union.

During the Libyan civil war, both Gaddafi and the NTC rebel forces have employed foreign mercenaries during the civil war. Several media outlets, particularly newspapers in Niger, Chad, Sudan, Nigeria, Guinea, Angola, Mali, Liberia, Mozambique and Ghana either carried out adverts for mercenaries or referred the involvement of their nationals in the Libyan armed conflict between Gaddafi and opposition forces.⁷⁵ Many including Reuters and Aljazeera reported that more than 2000 African, Arab and East European mercenaries were fighting on the side of Gaddafi forces.⁷⁶ Even the Gaddafi government admitted the existence of more than 200 foreigners in the Libyan army drawn from friendly and brotherly countries, according to a report submitted to the UNHR Council by the Libyan government.⁷⁷

The NTC were also employed mercenaries in their fight against Gaddafi forces.⁷⁸ Many media reports pointed to the involvement of hundreds of mercenaries from UK, US, France and some Arab countries.⁷⁹ Therefore, the use of mercenaries and the armed nature of the NTC make the change of government in Libya unconstitutional pursuant to the provisions of the Lomé Declaration on Unconstitutional Change of Government.⁸⁰

⁷⁵ Anna-Mahjar-Barducci, (1 April 2011), *African mercenaries in Libya, Part 2*, Stonegate Institute, available at, <http://www.hudson-ny.org/2008/africanmercenaries-libya> Last accessed on 2 January 2013

⁷⁶ Samir Bennis, *Libya: Over 556 of the Polisario mercenaries in the hands of NTC*, *Morocco World News*, (25 August, 2011) , available at, <http://www.moroccoworldnews.com.2011.08> Last accessed on 8 January 2013

⁷⁷ Response of the Great Socialist People's Libyan Arab Jamahiriya to charges of human rights violations under the Human Rights Council Resolution A/HRC/S-15/2, 25 February 2011

⁷⁸ Julian Borger and Martin Chulov, *Al-Jazeera footage captures 'western troops on the ground' in Libya*, *The Guardian UK*, <http://www.sott.net/Al-Jazeera-footage-captures-western-troops> Last accessed on 2 January 2013

⁷⁹ Ibid

⁸⁰ Lomé Declaration on unconstitutional change of government, Supra note at 45

This is why the AU has failed to recognize the NTC as its 291st Meeting held on 26 August 2011, just a few days after the NTC forces entered into Tripoli.⁸¹ The PSC requested the NTC to form an all inclusive transitional government so as to occupy the seat of Libya in the AU.⁸² Later on, the AU recognized the NTC officially as a legitimate government of Libya on 294th Meeting of the PSC held on 21 September 2011.⁸³

4.7. The Potential of the African Peace and Security Architecture to Respond to Revolutions

The North African Revolutions of 2011 took the world by surprise.⁸⁴ The Revolutions proved to be events for which even the governments in those countries were not prepared, let alone AU and other multilateral organizations.⁸⁵ They were extra-ordinary situations whose occurrence could hardly been anticipated. Extraordinary and rare as this events are, it is necessary to ask the question whether the existing African Peace and Security Architecture (hereinafter APSA) has the capacity and potential to adequately respond crises like the North African Revolution. This question emanates from the historical fact that Africa has faced more Coup d'etat and other internal conflicts than Revolutions, thus the AU posed to respond to these crises than Revolutions. Therefore, interrogating the issue whether the APSA has the adequacy or lack thereof to respond to Revolutions is the question that this chapter seeks to examine.

4.7.1. The African Peace and Security Instruments

The good way to start examining the adequacy of the APSA vis-à-vis Revolutions is first to see whether Revolutions feet any of the African peace and security instruments. This task requires an overview of the PSC norms and instruments in light of Revolutions. It is also significant to examine the major threats and issues to which the PSC norms address themselves.

⁸¹ PEACE AND SECURITY COUNCIL, 291st MEETING, COMMUNIQUE, PSC/AHG/COMM.(CCXCI), ADDIS ABABA, 26 AUGUST 2011, paragraph 6

⁸² Ibid

⁸³ PEACE AND SECURITY COUNCIL, 294th MEETING, COMMUNIQUE, PSC/PR/COMM(CCXCIV), NEW YORK, USA, 21 SEPTEMBER 2011, paragraph 3

⁸⁴ Solomon A. Dersso, (31 May 2011), *Reflections on the adequacy and potential of African Peace and Security Architecture for responding to popular uprisings*, Institute for security studies, (ISS), Conference report on the North Africa Revolutions of 2011, p.35

⁸⁵ Ibid

The Africa Peace and Security Architecture (APSA) are founded in various AU instruments and treaties. The Constitutive Act of the AU is the primary instrument in which several other PSC instruments are flourished from it. In addition to the Constitutive Act, there are also several instruments which together form the APSA. These other instruments include, the AU protocol on the establishment of the Peace and Security Council (PSC Protocol)⁸⁶, the Common African Defense and Security Policy (CADSP)⁸⁷, and other equally important instruments and declarations which are enshrined in the preamble parts of the these instruments.

Article 4 of the Constitutive Act of the Union list down the core principles under which the Union shall function.⁸⁸ Among these principles, the one that has particular importance with Revolutions are: respect for human right, sanctity of human life, democratic principles and good governance: rejection of impunity and unconstitutional change of government and the right of the Union to intervene in member states pursuant to the decision of the Assembly in respect of grave circumstances, namely war crime, genocide and crime against humanity.⁸⁹ Strict adherence and implementation of these principles by the Union and member states can substantially reduce the risk of Revolutionary incidents. However, if these principles are simply kept for a show case only, African states will through time face popular uprising and Revolutions like that of the North Africa.

The Constitutive Act of the AU in its Article 3 specified the objectives of the Union. The two objectives of the Union which are relevant with Revolutions are: promoting democratic principles, institutions and good governance and also promotion and protection of human and peoples' right in accordance with African Charter of Human Right and other relevant human right instruments.⁹⁰ These objectives have a direct link with Revolutions since one of the major cause for the North African Revolutions as repeatedly mentioned is the lack of democratic institutions and good governance as well as widespread human right violations and abuses by the authoritarian government of the North Africa countries. So, sincere implementation of these

⁸⁶ The AU Protocol Relating to the Establishment of the Peace and Security Council 2002

⁸⁷ African Union, The AU Solemn Declaration on the Common African Defense and Security Policy (CADSP) 2004.

⁸⁸ The Constitutive Act of the African Union, Article 4(A)- Article 4(P)

⁸⁹ Ibid, Article 4(H), (M), (O), and (P) of the Constitutive Act

⁹⁰ Ibid, Article 3(G) and 3(H) of the Constitutive Act

objectives by African states can play a huge role in tackling the occurrence of future Revolutions and upheavals.

The PSC Protocol also in its preamble, recognizes, “the fact that the development of strong democratic institutions and culture, observance of human rights and rule of law as well as the implementation of sustainable development are essential for the promotion of collective security, durable peace and stability in Africa.”⁹¹ This has a far reaching implication since the development of strong democratic institutions, observance of human rights and rule of law has paramount importance in attaining collective security as well as preventing conflicts, uprising and Revolutions.

The normative basis for the APSA is further elaborated in the Solemn Declaration on a Common Defense and Security Policy. The CADSP identifies human security as an important basis of collective security systems. As a result of this, the declaration focuses on the importance of human rights, good governance, democracy, the right to equal development, the right against poverty and access to resources.⁹² Moreover, the CADSP broadly defines common security threats of Africa in three categories: interstate, intrastate conflicts and unstable post conflict situations.⁹³ Some of the intrastate security threats mentioned in CADSP are: the existence of grave circumstances, namely war crime, crime against humanity and genocide; lack of respect for human life; Coup d’etat and unconstitutional change of government; situations which prevent and undermine the promotion of democratic institutions and structures including the absence of rule of law, popular participation and good governance; poverty and inequitable distribution of natural resources and corruptions.⁹⁴ From these intrastate security threats which have particular importance to deal with Revolutions are poverty, absence of respect for human rights, absence of good governance including corruption and situations that prevent and undermine the promotion of democratic institutions. The North Africa Revolutions that swept Tunisia, Egypt and Libya are the direct consequences of these security threats. It is widely recognized that the major factors that caused the Revolutions in North Africa were lack of political freedoms, and functioning

⁹¹ The Preamble of the Peace and Security Protocol

⁹² Solemn Declaration on the African Common Defense and Security Policy, Supra note at 87, P.4

⁹³ Ibid

⁹⁴ Ibid, p.5

democracy coupled with corruption, poverty, decline of the living standard of the people and rising unemployment.

Furthermore, the AU is endowed with excessive legal instruments, treaties and declarations that in detail elaborate human rights, democracy, election, good governance, social development, UCG and other related issues. For the AU, the major challenge is not the absence of normative instruments; rather it is establishing an effective implementation of these treaties and legal instruments.

To sum up, many of the APSA instruments as discussed in the above paragraphs are relevant to deal with Revolutions. This will at least imply that the North Africa Revolutions are not entirely beyond the purview of the APSA regimes.

4.7.2. Criteria for Legitimacy of Revolutions

As it is discussed in the preceding paragraphs, the normative frameworks of the APSA are relevant to deal with Revolutions. However, they offer no particular guidance as to how to respond to Revolutions. Besides, these peace and security instruments failed to distinguish between “legitimate” and “illegitimate” Revolutions. This problem was highlighted by the former South African president, Thabo Mbeki, who said, “the stark choice Africa face was- should we side with the demonstrators or with the governments they demanded should resign.”⁹⁵ This statement indicates the difficulty of distinguishing between legitimate and illegitimate Revolutions that the African peace and security instruments proscribe.

Therefore, it is imperative to identify some criteria or conditions for determining the legitimacy of Revolutions under the AU Context. This can substantially assist the AU and other regional organizations to develop guidelines to respond to Revolutions in a coherent and proper manner.

Though it is very difficult to list out an exhaustive features and characteristics for legitimate Revolutions, one can possibly identify some criteria to differentiate between legitimate and illegitimate Revolutions. Therefore, here are some five criteria which can be used as a parameter for determining the legitimacy of Revolutions:

- The existence of situations that warrant Revolution,

⁹⁵ Thabo Mbeki, Supra note at 2, p.2

- Organisation and mobilization of the Revolution,
- The popularity of the Revolutions,
- The peacefulness of the Revolutions,
- The involvement of the military during the Revolution and
- The involvement of external actors during the Revolutions.

One of the basic features which confer Revolutions legitimate nature is the existence of situations that warrant and justify Revolutions. It is to mean that the people in one country cannot resort to Revolution unless there exist sufficient reason that justifies Revolutions as a last remaining option to the people. As it is already prescribed in the previous sections of this paper, three main conditions needs to be fulfilled for the people to exercise their extra-constitutional right of Revolution to change governments. These are, violation of substantive rights of the people (systematic violation of constitutional values including human right), violation of the trust of the people (when a government violates its fiduciary duty to the people) and when there are no constitutional mechanisms to redress or solve these violations.

The other parameter for the legitimacy of Revolution is the organization and mobilization of the Revolution. Here, the test is whether the protest is an attempt on the part of certain political grouping or section of the society to impose its political agenda on the whole population.⁹⁶ In terms of organization, the Revolutions in North Africa were not driven by single political party or section of the society; rather it was supported by the whole population and all segments of social classes.⁹⁷ As Omar Ben Yader wrote on the Tunisian Revolution, “the Revolution was a spontaneous uprising by the people, not sparked by any particular leader or movement; rather it is espoused popular aspirations and expectations for reformed order.”⁹⁸

The third criteria for the legitimacy of Revolutions are the Popularity of the Revolution. Here also, the issue is whether the Revolution has broad popular support or not. One of the most remarkable characteristics of the North Africa Revolutions is that they were popular, with broad based popular support.⁹⁹ With its broad based popular support, the size of the population and the

⁹⁶ Solomon A. Dersso, *Supra* note at 84, p.37

⁹⁷ Omar Ben Yeder, (February 2011), *Lessons from Tunisia's uprising*, *New Africa Magazine* 503, p.20

⁹⁸ *Ibid*

⁹⁹ Solomon A. Dersso, *Supra* note at 84, p.38

degree of participation of the people in the protest make Revolutions a real expression of the people.¹⁰⁰ The North Africa Revolutions attracted people from all walks of life and age groups as well as people from different religious, cultural, ideological and political affiliation.¹⁰¹

The fourth condition of legitimacy is the peacefulness of the Revolutions.¹⁰² The African Charter on Human and People's Right and several other AU and international instruments guarantees the right to peaceful assembly and demonstration. By the virtue of this right, the people have the right to conduct demonstrations and protest peacefully. The most interesting feature of the North African Revolutions, especially the Revolutions in Egypt and Tunisia were largely peaceful. The Revolutionary scenes in Tahrir Square of Cairo and Streets of Tunis were relatively peaceful except some expression of anger and confrontation of the protesters with police forces that counteract them with violent crackdowns. However, the Libyan Revolution is an exception for the peaceful nature of the North African Revolution since it finally dragged Libya in to civil war and bloodshed.

The fifth way of assessing the legitimacy of Revolution is the role of the Military during the Revolution. The role of the military in supporting or repressing protests during the Revolution plays a pivotal role in determining the constitutionality of Revolutions.¹⁰³ According to the AU instruments on unconstitutional change of government, the constitutionality of the active involvement of the military in overthrowing government can be highly questionable. If the military supports the protestors and actively involved in toppling the government, this situation will amount to unconstitutional change of government in accordance with the AU legal instruments like the Lomé Declaration. When we this in light of the North African Revolutions, the militaries in Tunisia and Egypt maintained their neutrality.¹⁰⁴ They were neither involved in supporting and instigating the removal of their governments nor in crushing the Revolutions.¹⁰⁵ The Libyan case stand again as an exception and should be treated differently from Tunisia and

¹⁰⁰ Richard N. Hass, (February 13, 2011), *Reflections on the Revolution in Egypt, Project Syndicate*, p.116

¹⁰¹ Ibid

¹⁰² Solomon A. Dersso, *Supra* note at 84, p.38

¹⁰³ Lutterbeck, Derek, (2011), *Arab Uprisings and Armed forces: between openness and resistance, DCAF SSR Paper 2*, p.163

¹⁰⁴ Ibid

¹⁰⁵ Ibid

Egypt. When the protest in Libya began in February 2011, some of the members of the Libyan army defected relatively quickly to the opposition rebels' forces and resulted in fracturing of military apparatus, and practically turned the Revolution in to one of the most disastrous civil war.¹⁰⁶

The final way of assessing the legitimacy of Revolutions is the involvement of external actors. When external actors are involved deeply in instigating or actively supporting the Revolutions, the right of the people in that society to self determination gets compromised with the consequences rendering the country amenable to the manipulation of outside forces.¹⁰⁷ When we see this in light of what has transpired in North Africa, there was no involvement of external actors in case of Tunisia and Egypt Revolution. The Revolutions in these two countries were internally motivated and executed.¹⁰⁸ Here again the Libyan Revolution deviates from this fact. The direct military support and arming of the rebels by NATO and some Western nations under the guise of implementing Resolution 1973 put the Libyan Revolution in exceptional situation compared with that of Tunisia and Egypt.

4.7.3. The Response of the African Peace and Security Architecture to Revolutions

Even though the APSA sufficiently prescribed each and every situation constituting threats to peace and security, it doesn't equip the AU with effective response and enforcement mechanisms for all situations. This is best illustrated by the fact that the prohibition on unconstitutional change of government is the only principle in the AU Constitutive Act for whose breach sanction is specifically imposed. According to article 30 of the Constitutive Act, 'governments that come through UCG shall not be allowed to participate in the activities of the Union.'¹⁰⁹

The most important thing to consider here is that, no similar response mechanisms has been developed for the violations of other equally important norms and principles of the AU as well as African peace and security legal regimes. For instance, the AU has not yet developed effective

¹⁰⁶ Lutterbeck, Derek, Supra note at 103

¹⁰⁷ Ana Echague, (April 2012), *The role of external actors in Arab Transitions*, FRIDE, policy brief, No 122, p.12

¹⁰⁸ Ibid

¹⁰⁹ The Constitutive Act of the African Union, Article 30

means of discouraging massive and widespread violation of fundamental human rights, bad governance, violation of rule of law or generally, unconstitutional use and exercise of governmental power.

The AU has established stiff sanction regimes and penalties for those who commit unconstitutional change of government, but it has no similar response mechanisms for those sitting heads of governments who are known for their unconstitutional exercise of governmental power. The three heads of states that are overthrown by the Revolutionary waves of 2011, i.e., Ben Ali, Mubarak and Gaddafi, were notoriously known for their unconstitutional use of power, dictatorship and authoritarianism. Since the AU has no effective response mechanisms for such affronts and violations, they have been for long accepted as a key player in the businesses of the AU until the anger and frustration of the people swept them from their tight-sits.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1. Conclusions

In 2011, the eyes of the whole world were watching events taking place in North African countries. At that time, Tunisia, Egypt and Libya faced popular Revolutions and massive protests of the entire population against their respective governments.

The North African Revolutions are not only astonishing in their nature, scale and speed, but also, very surprising in their consequences. The Jasmine Revolution of Tunisia which began on 17 December 2011 finally resulted in the end of the 23 years rule of President Ben Ali. The January 25th Revolution of Egypt led to the fall of President Hosni Mubarak from power just after eighteen days of demonstration across Egypt. The Libyan Revolution which initially began as a peaceful protest against the 42 years of authoritarian regime of Colonel Muammar Gaddafi soon turned to a full blown civil war between Gaddafi forces and opposition rebel fighters headed by the NTC.

One of the most remarkable features of the North Africa Revolutions was the role of the new Social-Medias in organizing, mobilizing and executing these Revolutions. The new social-media networks such as Face Book, Twitter and YouTube have played a very crucial role in the facilitation of the Revolutionary movements as well in the collapse of the authoritarian regimes in North Africa countries.

It is the author's firm belief that the North Africa Revolutions were mainly caused by various social, economic, political and demographic imbalances and deficits in Tunisia, Egypt and Libya. Though these North African states are often considered as stable and wealthier nations, however, the reality on the ground is totally different. The population in these countries has become increasingly frustrated due to high unemployment rate, corruption, decline in living standard, unfair distribution of wealth and social inequalities.

In addition to these socio-economic problems, political factors have also played a huge role in triggering the North African Revolutions. In spite of their wide recognition in the international arena, the governments in Egypt, Tunisia and Libya are notoriously known for their authoritarian

and repressive nature as well as for violations of human rights, absence of political freedoms, centralized powers, bad governance and generally the absence of functioning democracy. So, it is the sense of anger and frustration among the people which is steamed out of these socio-economic and political deficits that have caused the occurrence of the North African Revolutions.

The North Africa Revolutions took the world by surprise. The AU, like any other international actor, didn't anticipate or expect the occurrence of these Revolutions. However, when the Revolutions broke out in North African states, the AU tries to react and respond in various ways to bring peace and democracy out of such Revolutionary situations. Since the Revolutions in Tunisia and Egypt were relatively short spanned and largely peaceful, the AU response on these two countries didn't lead to significant debates and controversies. The AU support to the Revolutions in Tunisia and Egypt was unequivocally clear. The AU also repeatedly reiterated its support to the legitimate aspirations of the Tunisian and Egyptian people for democracy, socio-economic development and good governance. Its response was generally based on its desire to achieve democratic transitions in these countries.

Unlike the case of Tunisia and Egypt, the response of the AU to the Libyan Revolution and civil war is still subject to significant debates and controversies. When the civil war broke out in Libya, the AU has responded through its political roadmap to Libya which was adopted in the 265th meeting of the PSC of the AU on 10 March 2011.

Though the actions and cruel responses of the Gaddafi regime against the Libyan population justified military intervention by the AU, as stipulated under Article 4(H) of the Constitutive Act of the AU, which entitled the AU to intervene in member states in grave circumstances such as war crime, crime against humanities and genocide, military intervention was not the path chosen by the AU in handling the Libyan crisis. Rather, the AU has perused politically negotiated settlement and mediation through diplomacy to settle the Libyan civil war.

But, the AU political roadmap and diplomacy never succeeded and materialized in bringing peace to the Libyan civil war. While the Libyan government under Muammar Gaddafi unconditionally accepted AU's political roadmap, the NTC rebel groups persistently refused to accept AU's political solution unless Muammar Gaddafi removed from power. As a result of

this, the AU peacemaking effort collapsed and the Libyan civil war was finally culminated by the victory of the NTC rebel groups and the death of Libyan leader Muammar Gaddafi, after several months of bloodshed and incessant NATO airstrikes over Libya.

Even if the Libyan situation warranted intervention by the Union in accordance with Article 4(H) of the Constitutive Act, the AU has pursued political solutions that unfortunately failed to bring any positive result to settle the Libyan crisis.

There are some major factors which are attributable for the collapse of the AU diplomacy over Libya and for the failure of the AU to intervene in Libya as per Article 4(H) of the Constitutive Act. The first factor is the existence of divisions and fissure among African states over many aspect of the Libyan crisis. The Libyan crisis has exposed a number of divisions among African states concerning the NATO military intervention on Libya as well as the future of Gaddafi during and after the negotiation process on the crisis.

The second major factor that impaired not only AU's diplomacy to the Libyan civil war but also AU's willingness to intervene in Libya is the "Gaddafi factor", i.e., the influence of Muammar Gaddafi on the AU. Due to his huge financial contributions to the Union and member states and because of his ambitious Pan-Africanist Agendas, AU's diplomacy as well as its willingness to intervene in Libya was believe to be intimidated and affected.

The other factor which has undermined AU's diplomacy and willingness to intervene in Libya as per Article 4(H) of the Constitutive Act is the lack of sufficient resources and non operationalization of the African Standby Force. AU's right of intervention in member states has been severely constrained since the African Standby Force has not yet fully operational and organized. This is attributable due to the chronic shortage of adequate resources and lack of political will to support this continental Standby Force. The reaction of the AU could have been very different if the African Standby Force was completely operational. Had the African Standby Force been fully organized, the AU would have been able to deploy troops in Libya for peacekeeping missions and simultaneously to pursue its political solution and diplomacy to the Libyan civil war. This scenario could have produced much more desirable outcome to the crisis.

The last but the most decisive factor behind the failure of AU's diplomacy on Libya is the marginalization and sidelined of the AU by major western powers and the NATO coalition

forces. Indeed, the AU peacemaking effort to the Libyan civil war was marginalized and undermined the influence of the western powers. The marginalization of the AU was manifested in two ways. First, the Western powers ignored the role of the AU in the settlement of the Libyan civil war. Secondly, these western powers and NATO forces frustrated AU's mediation process by overstretching the mandates of the No-Fly Zone Resolution from the protection of civilians to forced regime change agenda in Libya.

So, the AU was marginalized by the west in the settlement of the Libyan crisis. But, the author strongly believes that the marginalization of AU by external actors is self-inflicted. Had the AU took a very strong measures and actions against the brute acts of Colonel Muammar Gaddafi from the outset, it would have precluded external actors from intervening in an African businesses and this marginalization and sidelined of AU would have not been happened. Since the responses of the AU were slow, incoherent and weak, it opened the door for external actors to take advantage of the situation that originally deserve an African solution. The AU should have first discharged its responsibility to protect the Libyan people from the horrors and massacres of Gaddafi's forces before complaining on its marginalization by the western actors, even though the west's modus operandi of handling African matters are always biased, selective and double standard.

Concerning the relationship between Revolutions and the AU legal and frameworks governing democracy, constitutionalism and unconstitutional change of government, it is argued that there is no tension and incompatibility between the two. Revolutions are considered as the right of the people to change their government when all constitutional means of changing a government doesn't work for various reasons. More importantly, Revolutions are extra-constitutional (opposed to unconstitutional), legitimate means of replacing government when change of government is impossible by constitutional methods.

The AU normative instruments like the African Charter on Democracy, Election and Governance and the Lomé Declaration on Unconstitutional Changes of Government are intended to bring about constitutional governance, respect for human right, rule of law and democracy in Africa. Since the North African Revolutions were mainly caused by the total lack of constitutional governance and democracy, it is possible to conclude that the Revolutions are not only compatible but also within the spirit of the AU normative frameworks on Democracy,

constitutionalism and unconstitutional change of government. This will imply that there is no tension between the Revolutions and the AU normative frameworks and instruments and the latter are sufficient to address phenomenon such as the North African Revolutions. Therefore, Revolutions are not only morally required but also legally permissible under the AU normative frameworks governing democracy, constitutionalism and unconstitutional change of government.

5.2. Recommendations

The following section is entirely devoted to provide the recommendatory points of the author. These recommendations are categorized in to four main parts: recommendation on the Revolutions; recommendation on the responses of the AU to the North Africa Revolutions and the Libyan civil war; recommendations on relationship between AU and Western powers, and recommendations concerning the response of African Peace and Security Architecture to Revolutions and other democratic deficiencies.

5.2.1. On the Revolutions: suggestions for African countries and the Africa Union

- ❖ **African governments should focus not only on development but also democracy to tackle the causes of future Revolutions and unrests**

The North Africa Revolutions employed different methods and results. But, their call remains the same: the population in any country will resort to Revolutions to tyrannical, authoritarian and repressive governments like that of the North African regimes which are brushed away by Revolutionary waves of the people.

Since the North Africa Revolutions are mainly caused by the unbearable socio-economic and political deficits, these Revolutions have shown that the old dichotomy between freedom from hunger and freedom from fear is over. This indicates the fact both freedom from hunger and freedom from fear are the priorities of the African peoples. Better economic performance and good delivery of goods and services by African governments do not suffice unless this is well accompanied by the provisions of political freedoms, rule of law, good governance and functioning democracy. This is purely displayed in the North African Revolutions of 2011. The North African countries like Tunisia, Egypt and especially Libya are considered as rich and wealthier states than their sub-Saharan neighbors. But this substantial economic growth and

superiority didn't preclude these regimes from being toppled by Revolutions of the people. This is mainly because the regimes in North Africa failed to provide their people with better political freedoms, good governance, rule of law and participatory democracy. This indicates that a mere provision and delivery of service to the people is not sufficient unless it is supplemented with better democracy and political freedom from the respective governments of African states. To be precise, the North Africa Revolutions are demand for both "Democracy" and "Delivery" together. Therefore, African countries should promote better and functioning democracy as well as better economic development and growth that can satisfy the legitimate aspirations of their people not to face massive Revolutions and uprisings in the future.

❖ **The African Union should support the commitment of its member states in promoting development and democracy**

The AU should also support and oblige member states to strive for promoting socio-economic development in one hand and functioning democracy, rule of law and good governance on the other. The AU should also support and assist all those demanding their governments be more democratic and respect constitutionalism. In addition, the AU has to promote the values, institutions and procedures that the African Charter on Democracy, Elections, and Governance and the Lomé Declaration and other treaties and decisions has stipulated. This will play a paramount role to reduce and eliminate the root causes of future Revolutions in Africa and also foster the democratic agendas of the Union.

❖ **The African Union should focus on "Norm Implementation"**

More importantly, the AU should focus on "Norm Implementation" of its existing treaties, conventions, declarations and various decisions. The AU has more than two hundred well advanced legislative and policy frameworks on several issues covering a wide range of issues including human right, democracy, election, good governance, economic development and others.¹ The AU is very rich in policy frameworks and legal instruments. What is needed now is an urgent implementation of such norms. The implementation of the existing AU legal and policy instruments should take priority. For instance, the Addis Charter on Democracy, Election

¹ List of countries which have signed, ratified/acceded to the different treaties of the AU, 2010, available at <http://www.au.int/en/treaties/status> Retrieved 7 December 2012

and Governance and The Lomé Declaration on Unconstitutional Change of Government laid down basic foundations for democracy, constitutionalism, rule of law and constitutional transfer and use of governmental power. The sincere and effective implementation and application of such policies can help to avoid Revolutions, uprisings and crises. So, the AU should focus on implementing its various normative policies and legal instruments.

❖ **African states should address the problem of “Youth Bulge”**

Moreover, Africa states and governments should solve the issues of “Youth Bulge” and youth related unemployment problems as quickly as possible. It is urgent that they invest in employment generating economic policies that would provide jobs and better incomes for the population, especially the youth, and contribute to elevating standards of living across the continent. Otherwise, they will end up with Revolutions and uprising which are spearheaded the frustrated and alienated youth segment of the population.

❖ **The African Union should support countries which are in Post-Revolution transition process**

Lastly, the AU should also assist post-Revolution transitions processes in countries which are already affected by Revolutions like that of the North Africa. The AU should vigorously involved in post-Revolution transition processes, for example by ensuring the credibility of transitional elections, by working in due time in the preparation for elections and sending verifying missions in pre, during and post-election period. This will in-turn support the democratic endeavors of the Union by setting precedents and by extracting the best opportunities out of such crises.

5.2.2. On the Responses of the African Union to the North Africa Revolutions and the Libyan Civil War

❖ **AU should swiftly respond to crises**

Even if the AU support for the North African Revolutions was unequivocally clear, however, its responses were to slow and weak. When the North African Revolutions broke out in Tunisia, Egypt and Libya, the AU didn't take an immediate action or condemnation from at the very outset of the Revolutions. The AU institutional set-up needs to be more nimble and firm by

avoiding unnecessary bureaucratic processes that characterize their slow culture of responding to events. It is preferable to take all preventive measures to avoid crises like Revolutions, but when these events inevitably broke out, the AU should firmly involve and take a leading role in the management of such crises.

❖ **The African Union should intervene in member states if there are war crime, genocide and crime against humanity in member states**

Concerning the response of the AU to the Libyan civil war, the Response of the AU was slow, incoherent, weak and inefficient. Article 4(H) of the Constitutive Act of the Union that dictates the AU to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity should be applied in practice. This article which is essential for discharging AU's responsibility to protect civilians should not be kept for only a show case.

If there grave circumstances, such as war crimes, genocide and crimes against humanity are committed in any African member states, the AU should intervene to stop such heinous massacres of civilian populations. If there are dilemmas on issues such as, whether or not the AU should intervene in member state to protect civilians, Article 4(H) of the Constitutive Act should be interpreted by the African Court of Justice and Human Rights. Since the African Court of Justice and Human Rights is mandated to interpret the Constitutive Act of the AU, it should be empowered to deliberate on situations such as Libya and pronounce whether the responsibility to protect should apply or not and should the AU intervene or not. If this is so, the interpretation of Article 4(H) will be a legal interpretation, not political decision at the discretion of political interests. However, to effectively apply the intervention scenarios of Article 4(H), the operationalization of the African Standby Force is highly imperative. Without the full organization and realization of the African Standby Force, it is naïve to talk about the right of the AU to intervene in member states to protect civilians from war crimes, genocide and crimes against humanity. The full operationalization of the Africa stand By Force is entirely dependent on the financial capacities of the Union and the political will of African states towards this initiative. Therefore, the AU, by searching for an alternative sources of finances and by raising the political will of member states should strive towards the full organization of the continental Standby Force.

5.2.3. On the Relationship between African Union and Western Powers and NATO

The Libyan civil war once again indicated the existence of political disagreement and rift between the AU and Western powers including the NATO coalition countries. The AU contended that it was marginalized by such Western nations and NATO forces in the management of the Libyan crises. Here, it is obvious that the AU was not only marginalized but also ignored and sidelined by these external actors. However, the marginalization of AU is self inflicted, since it has failed to take a firm and strong measures against Gaddafi during the Libyan Revolution. Had the AU took a very bold action against the brute act of Muammar Gaddafi on peaceful protestors, this marginalization could have been at least minimized. Unfortunately, the Western nations and NATO by doing what is good for them have effectively undermined AU's policy of "African Solution to African Problems" to the Libyan crises.

❖ Promoting "African solution to African problems" with necessary resources, funds and political will of African states

Even if the notion of "African Solution to African Problems" is one of the most significant achievement and founding principles of the AU, it didn't work for the Libyan civil war. The Libyan crisis has exposed the hollowness of this principle in the current AU context. The African Solution to African Problems slogan of the AU is highly suffering from many problems like, the chronic shortage of financial resources to support it, division among African states and lack of one unified African voice concerning basic African issues and the negative behaviors and influences of external actors like Western powers.

The talk of "African solutions to African problems" has not been backed with serious resources by the African countries in order to carry it through. Financial dependence on external donors has a crippling effect on the function of the AU. The AU to carry out its mandates and to function without any interference from external actors, it is mandatory that it enjoys financial independence. So, in order to advance the principle of African Solution to African Problems, the AU should have sufficient financial capabilities by searching for alternative sources of funds from within the member states and through devising other means of generating an extra fund to undertake its missions properly. For instance, imposition of an import levy and tax on insurance, taxes on airline tickets by the African Organisation of Civil Societies and mobilization of

resources thought the private sector can serve as an alternative ways of generating additional funds for the Union.² African member states should also improve their political willingness to pay their financial contribution to the Union. Otherwise, it will be difficult for the AU to pursue African Solution to African Problems, since it is predominantly dependent on foreign funds and donations. Lack of sufficient financial resource by the AU will not only undermine its “African solution to African problems” mantra, but also results in its marginalization of AU by external powers.

5.2.4. On the Response of the African Peace and Security Architecture to Revolutions and Other Democratic Deficiencies

❖ The African Union or any legislative body should set parameters for the legitimacy of Revolutions

Even if Revolutions are legally permissible within the AU normative frameworks and instruments, the African Peace and Security regimes do not provide necessary criteria to distinguish between legitimate Revolutions and illegitimate Revolutions. Therefore, the African PSC, the Pan African Parliament or any legislative organ should set down some conditions for legitimate Revolutions. For instance, the author of this thesis propose some criteria for determining the legitimacy of Revolutions such as: the organization and mobilization of the protestors, the peacefulness of the Revolution, the popularity of the Revolution, the involvement of the military and external actors during the Revolution and the existence of situations that prevent and undermine democratic institutions. Setting criteria for legitimacies of Revolution can help the AU and regional organizations to differentiate between legitimate Revolutions and those situations that amount to unconstitutional change of government. Furthermore, it will enable them to take timely, uniform and effective responses for future Revolutions and upheavals.

² The Statement of the Commissioner for Economic Affairs at the meeting of Governmental Experts on *Alternative Sources of Financing the African Union* (26 May 2006)

❖ The African Union should develop stiff sanction regimes on undemocratic and repressive sitting head of states and governments

Lastly, the major problem of the African Peace and Security system is that, it has not yet developed effective means of discouraging massive and widespread violation of fundamental human rights, bad governance, violation of rule of law or generally, unconstitutional exercise of governmental power by sitting heads of states and governments. Unlike the case of unconstitutional change of government, the AU has not yet developed stiff sanction regimes and penalties on those head of states that are known for their unconstitutional, repressive and authoritarian exercise of governmental power. Since the AU has no effective response mechanisms for such violations and affronts of democracy, many authoritarian leaders like Muammar Gaddafi have been accepted as a key player in the businesses of the AU for a long period of time. So, the AU should devise mechanisms to discourage unconstitutional exercise of power and violations of political freedoms by sitting heads of states and governments. This could be done for example by checking the implementation various AU norms governing democracy, constitutionalism and unconstitutional change of government by each and every member states of the Union. Moreover, initiatives such as the African Peer Review Mechanisms and NEPAD, Early warning system, other similar approaches of the AU can play a paramount role to foster the democratic environment of the African states and ultimately address the root causes of future Revolutions and unrests.

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