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**ASSESSING THE AU'S POST-2020 RESPONSES TO THE MILITARY
COUP D'ETAT'S IN AU MEMBER STATES**

A thesis submitted in partial fulfillment of the requirements for the Degree of Masters of Laws (LL.M) in Public International Law at the School of Law, College of Law and Governance Studies of Addis Ababa Addis University.

BY

Jara Samuel

Prepared under the Supervision of: Mohammed Habib (Assistant Professor)

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Addis Ababa: Ethiopia

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Signature: _____

Mohammed Habib

Addis Ababa University

Date: _____

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ACRONYMS

- ACDEG-----African Charter on Election and Governance
- ACJHR-----African Court of Justice and Human Rights
- AGA-----African Governance Architecture
- APRM-----African Peer Review Mechanism
- APSA-----African Peace and Security Architecture
- ASF-----African Standby Force
- AU CA-----African Union Constitutive Act
- AU-----African Union
- AUC-----African Union Commission
- CA-----Constitutive Act
- CEWS-----Continental Early Warning System
- ECOWAS-----Economic Community of West African States
- FACT-----Front for Change and Concord in Chad
- ICC-----International Criminal Court
- IGAD-----Intergovernmental Authority on Development
- ISS-----Islamic State in Iraq and Syria
- NGO-----Non-Governmental Organization
- OAU-----Organization of African Unity
- PSC-----Peace and Security Council
- REC-----Regional Economic Community
- SADC-----Southern African Development Community
- TMC-----Transitional Military Council
- UCG-----Unconstitutional Changes of Government
- UN-----United Nations

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Abstract

Conferring the form of military coup d'états, the sudden overthrow of incumbents post-2020 in Africa has come to be called an epidemic. In the years following 2020, African states have had five successful coups and two failed coups in seven member countries. which is equal to the total number of coups in the ten years prior, from 2010 to 2019. Also, surprisingly compared, is the number of coups that occurred in Africa between the middle of the 1970s and the middle of the 1980s, when authoritarian regimes were the norm.

It is possible to witness that, the AU's normative framework on military coup d'Etat is faced with legal and practical challenges, and that Africa's quest for democratic power transfer is at a crossroads with the resurgence of military coups. The normative and practical challenges of the AU norms against military coups entail the destabilization of the continent at large and impede the progress of the continent towards the achievement of the 2063 agenda of achieving sustainable economic development and a peaceful and democratized continent.

The objective of the research thesis is to assess the AU's post-2020 responses to the military coup d'états in AU member states. Assessing the AU's responses to military coups has paramount importance in determining the strength and weaknesses of the system, and rectifying the gaps in the implementation of the norms. Against this background, the research thesis employs case and legal analysis with an extended literature review method.

After profound analysis and assessment of the AU responses to the military coups, the thesis explains why and argues that the AU responses to military coups were inconsistent, self-contradictory, lacking guidance on the causes of military coups, and selective. Most importantly, the AU peace and security organs are grappling with a lack of logistics, expertise, guidelines, and finances to prevent military coups. Further, the PSC protocol falls short of connecting with the norms of UCG and particularly military coups and the underlying factors.

Keywords: African Union, Norm, Military Coup detata's, Post-2020, AU's member Countries.

CHAPTER-ONE

1. INTRODUCTION

1.1. Background of the Study

The end of colonial rule in the late 1950s and 1960s created an atmosphere of optimism that the Europeans' militaristic and autocratic ruling system were coming to an end on the African continent.¹ It was also widely assumed that Africa's liberation elites could create a continent with improved social, economic, and political realms following the achievement of sovereign statehood.² Unfortunately, however, Africa's liberation elites did not transform the authoritarian character and failed to fulfill the ambitions of the people other than by succeeding in driving out the colonizers.³ From the mid-1960s to the late 1980s, though many African countries had been ruled by liberation elites, the one-party, one-man rule became the most common form of political leadership.⁴

In addition to one-man rule, in the first three decades of post-colonial Africa, rent-seeking politicians, personalization of power, and repression of human rights were custom, alongside military coups and political assassinations.⁵ As per Posner and Young, during the first decades after independence in 1960s, Benin had no fewer than twelve heads of state, each of whom was overthrown in a coup d'état.⁶ While Benin provides perhaps the most dramatic quintessential of the then post-independence methods of power transfer, it is also indicative of a broader trend in many African countries.⁷

To prevent the surge of military coups and the personalization of power in the post-colonial era, African leaders came under intense pressure from both external and internal actors to consolidate

¹ Khabele Matlosa and Sharon Ndlovu, 'The Response of the African Union to Political Crises on the Continent: Focus on Burkina Faso and Burundi' 18.

² Francis Nguendi Ikome, *Good Coups and Bad Coups: The Limits of the African Union's Injunction on Unconstitutional Changes of Power in Africa* (Institute for Global Dialogue 2007) 5.

³ Khabele Matlosa and Sharon Ndlovu (n 1) 18.

⁴ *ibid.*

⁵ Tony Leon, 'The State of Liberal Democracy in Africa' in Irving Louis Horowitz (ed), *Culture & Civilization* (3rd edn, Routledge 2018) 2.

⁶ Daniel N Posner and Daniel J Young, 'The Institutionalization of Political Power in Africa' (2007) 18 *Journal of Democracy* 126, 128.

⁷ Posner and Young (n 6).

liberal norms at the end of the 1980s, under the third wave of democratization propagated by Samuel Huntington.⁸ The norms promote the implementation of a multi-party-political system backed by a fair, free, and periodic election. Because of the pressure, many African countries have begun to include constitutional provisions relating to holding fair, periodic, and regular elections as well as presidential term limits.⁹ As a result, in contrast to post-colonial periods of undemocratic power transfer, the restricted political space has significantly widened, with the majority either voluntarily or forcibly embracing a liberal political ethos.¹⁰

Despite the improvements in political landscapes in the early 1990s, the prospects for the recurrence of military coups remained high. As a result, by the mid-1990's, political instability following military coup d'états resurged as a new phenomenon.¹¹ It was against this background that OAU leaders carefully examined the patterns of government change and the implications for the continent's peace and security as well as economic development and recognized that constitutional means of power transfer is the only and ultimate method of conferring power. To this end, rejecting unconstitutional change of government became the norm of the OAU and the AU normative frameworks.

The 1997 resolutions of the OAU Council of Ministers in Harare, which denounced the 25 May 1997 coups in Sierra Leone, marked the beginning of the OAU's engagement with unconstitutional government change.¹² Nevertheless, before that, the OAU's central organ mechanism for conflict prevention, management, and resolution at the ambassador level condemned the mercenary-led coup in Comoros in September 1995, marking the organization's first public acknowledgment of its involvement in rejecting military coups.¹³

⁸ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005) Cited in Eki Y Omorogbe, 'A Club of Incumbents? The African Union and Coups d'Etat' [2011] *Vanderbilt Journal of Transnational Law* 33, 3.

⁹ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005) Cited in *ibid*.

¹⁰ Ikome (n 2) 5.

¹¹ *ibid* 6.

¹² Decision [CM/Dec.357 (LXVI)] adopted by the OAU Council of Ministers, on its Sixty Sixth Ordinary Session held from 28 to 31 May, 1997, in Harare, Zimbabwe.

¹³ Ambassador Said Djinnit, 'The Case for Updating the African Union Policy on Unconstitutional Changes of Government' 7, P.2.

The OAU's commitment to the unconstitutional change of government was explicitly stated at the Algiers summit in 1999.¹⁴ The summit was held in response to the military coups in Congo Brazzaville, Guinea-Bissau, Comoros, and Niger. The Summit served as a lynchpin for the development of the AU norms against the UCG.¹⁵ Most importantly, the Summit served as a baseline for the adoption of the Lome Declaration on the framework for an OAU response to an unconstitutional change of government, which clearly banned an unconstitutional change of government ('Herein after the Lome Declaration').¹⁶

According to the declaration, constitutional methods are the one and only instrumentalities of government change on the continent.¹⁷ For the first time, the declaration defined the constituents of UCG as well as the sanctions that could be imposed. Furthermore, the OAU's stance against military coup d'Etat is embraced in the Banjul Charter's article 13 on the right to participation in the government.

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

The AU Assembly adopted a normative framework against UCG that included military coups, including but not limited to the protocol establishing the AU's peace and security, the African Charter on democracy, election, and governance in Africa ('Herein after the Addis Charter'), the 50th anniversary solemn declaration that recognized a peaceful expression of protest against oppressive regimes, and the Malabo protocol that criminalizes the perpetrators of UCG. It has also recently adopted the ACCRA declaration in the wake of the increased wave of military coups post-2020 in Africa.

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

¹⁵ *ibid* 1.

¹⁶ Solomon Ayele Dersso, 'Unconstitutional Changes of Government and Unconstitutional Practices in Africa' [2016] *African Politics* 5, P.3.

¹⁷ Dersso (n 16).

In post-2020, African states have experienced five successful military coups and two attempted coups in seven countries in the last two years of 2021 and the current year of 2022, which is equal to the total number of coups in the previous ten years from 2010 to 2019.¹⁸ Burkina Faso in January 2022, Sudan in October 2021, Guinea in September 2021, Chad in April 2021, and Mali in August and May 2020 are the dates. The other two countries that experienced coup attempts were Niger and Guinea-Bissau in March 2021 and January 2022, respectively.¹⁹ Also, surprisingly compared is the number of coups that occurred in Africa between the middle of the 1970s and the middle of the 1980s, when military coups remained high.²⁰

In reaction to the resurgence of military coups in the continent, the AU banned four countries that experienced military coups²¹ and, subsequently, held an extraordinary summit in Malabo, Equatorial Guinea, on May 28, 2022. The summit identified the challenges of the military takeover on the peace and security of the continent and the rationale behind the newly increased wave of military coups.²²

Recognizing the wave of sudden overthrows of incumbents, the research thesis evaluates the AU's responses to military coups that occurred in AU member states after 2020. Despite the fact that the AU has a comprehensive normative framework for rejecting military coups, including peace and security structures, the instruments and subsequent measures implemented were ineffective in preventing military coups. As a result, military coups are on the rise at an alarming rate. Considering this factual resurgence of military coups in the member states, the thesis argued that the AU frameworks and the structural arrangements norms against military coups call for assessment and exploration in responding to military coups.

In the milieu of assessing the AU's responses to the wave of military coups, the thesis has selected four member countries that, out of the five successful coups, have experienced military

¹⁸ 'Hot-Air or a Resurgence? Making Sense of Unconstitutional Changes in Government in Africa' (*ACCORD*) <<https://www.accord.org.za/analysis/hot-air-or-a-resurgence-making-sense-of-unconstitutional-changes-in-government-in-africa/>> accessed 16 July 2022.

¹⁹ 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' <<https://www.securitycouncilreport.org/monthly-forecast/2022-07/in-hindsight-the-security-council-and-unconstitutional-changes-of-government-in-africa.php>> accessed 17 July 2022.

²⁰ 'Hot-Air or a Resurgence? Making Sense of Unconstitutional Changes in Government in Africa' (n 18).

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

²² 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' (n 26).

coups post-2020. Four successful coups were selected and assessed as case studies, namely, Burkina Faso, Sudan, Chad, and Mali.

1.2.Statement of the Problem

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

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

African states have experienced five successful military coups and two attempted coups in seven countries in Africa post-2020, which is equal to the total number of coups in the previous ten years from 2010 to 2019.²³ Burkina Faso in January 2022, Sudan in October 2021, Guinea in September 2021, Chad in April 2021, and Mali in August and May 2020 are the dates. The other two countries that experienced coup attempts were Niger and Guinea-Bissau in March 2021 and January 2022, respectively.²⁴ Three nations—Sudan, Burkina Faso, and Mali—experienced counter-coups when they were undergoing transitions under the aegis of the AU.²⁵

²³ 'Hot-Air or a Resurgence? Making Sense of Unconstitutional Changes in Government in Africa' (n 18).

²⁴ 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' <<https://www.securitycouncilreport.org/monthly-forecast/2022-07/in-hindsight-the-security-council-and-unconstitutional-changes-of-government-in-africa.php>> accessed 17 July 2022.

²⁵ ISSAfrica.org, 'Can the AU Respond Effectively to Unconstitutional Changes of Government?' (*ISS Africa*) <<https://issafrica.org/pscreport/psc-insights/can-the-au-respond-effectively-to-unconstitutional-changes-of-government>> accessed 4 August 2022.

The wave of military coups post-2020 in Africa shows that the AU normative frameworks on military coups are not preventing the occurrences and are not a deterrent to preventing military coups. It is therefore conceivable to argue that the AU's normative framework on military coups has faced a legal and practical problem, in which the military coups continuation will thwart any glimmer of hope for the establishment of constitutional mechanisms of power transfer. Most importantly, it could destabilize the continent at large and hamper the progress of the continent toward the achievement of the 2063 agenda of achieving sustainable economic development.²⁶

Combating the wave and the return of military coup d'état' once again in the continent has to be done credibly and swiftly by utilizing all the norms and institutions at the disposal of the Union. To this end, it is crucial to assess the AU's responses to the recent military coup d'états thoroughly in light of the AU's normative instruments and institutions. This assists in revealing the gaps in the implementation of the norms on military coups and the weaknesses and strengths of the AU responses.

1.3. Research Objective

1.3.1. General Research Objective

The study has the following general objectives

- Investigating the root causes of military coups in post-2020 in the AU member countries
- Assessing whether or not the AU's responses to military coups in post-2020 AU member countries are compatible with the AU's normative frameworks and institutions on military coup d'Etat.

1.3.2. Specific Objectives of the Research.

- Assessing the AU's Peace and Security Council's adequacy and capability of responding to military coups in Sudan, Burkina Faso, Mali, and Chad
- Providing concrete measures to the AU to tackle and combat military coups in Africa.

²⁶ 'Unconstitutional Changes in Africa. A New Trend?' (*Foundation Office Ethiopia / African Union*, 9 March 2022) <https://www.kas.de/en/web/aethiopien/static-contents-detail/-/content/verfassungswidrige-regierungswechsel-in-afrika-1> accessed 9 August 2022.

1.4. Research Questions

- What were the major causes, triggers, and backgrounds of military coups in Chad, Burkina Faso, Sudan, and Mali?
- Were the AU's responses to the post-2020 military coup d'états in line with the AU normative frameworks on military coup d'Etat?
- Is the existing AU's peace and security council architecture adequate and capable of responding to military coups in Sudan, Burkina Faso, Mali, and Chad?
- What steps should be taken to combat and stop military coups in Africa?

1.5. Methodology of the Research

The research falls under the ambit of doctrinal types of legal research and employs a qualitative approach. A qualitative approach is chosen because the assessment of the AU's responses to the military coup d'état in post-2020 Africa can be best explained by the expression of views and status. Consequently, the research depends on a literature review and assessment of existing literature and legal and non-legal documents.

Furthermore, analysis of views on military coups from books, journals, and internet sources was made to substantiate legal sources. A review of the literature was conducted to collect data from both primary and secondary sources in relation to the wave of military coups in the post-2020 period. Lastly, and most certainly, a case study method is employed to collect data on the triggering background of the selected case studies and responses provided by the AU due to the wave of post-2020 military coups in the selected case studies. The case study helps to comprehend and systematically describe the surrounding facts that led to the military coup and how the AU responded to the case studies.

1.5.1. Data Sources

With regard to data sources, both primary and secondary sources were considered. Accordingly, primary sources such as legal documents adopted by the AU regarding military coups were considered based on a purposive approach. such as the AUCA, ACDEG, and PSC establishing protocols. As far as secondary sources are concerned, data from various kinds of published and unpublished materials on the topic have been considered. Thus, relevant books, journals, internet sources, reports, and unratified legal frameworks such as the Malabo Protocol on the Amendments to the Protocol Creating the African Court of Justice and Human Rights, the Ezulwini Framework, and the Accra Declaration were considered.

1.6. Significance of the Research

The thesis gives readers a detailed knowledge of the legal and normative foundations that the AU has established regarding military coups. Analyzing the existing AU's responses to military coups in the context of AU peace and security regimes can help pinpoint where the gaps are. Furthermore, it provides policymakers and other key stakeholders with an insight into what needs to be done to improve democratization and constitutional order in the AU member states. On top of that, it provides a starting point for policymakers and opens the door for lawyers to deal with the return of military coups as well as carry out and investigate future research on the legal instruments of the African Union.

1.7. Scope of the Research

The scope of the research is limited to assessing the existing institutional and normative frameworks of the AU on military coups. In particular, it assessed the AU's responses to the wave of military coups post-2020 in light of the AU's normative framework against military coups. The PSC's responses and communiqués to the selected case studies of military coups were assessed. In doing so, it explained the legal and practical gaps in the AU's response to the recent wave of military coups in post 2020.

1.8.Limitations of the Study

Lack of relevant and timely material on the AU's UCG, particularly on the military coups, could have been an issue in performing the research, and this may have reduced the study's quality. However, the researcher made every effort to consult all available materials. Furthermore, the changing political dimensions of member states that have experienced military coups and the ill crafted TMC power sharing agreements would make the research work continuous.

1.9.Organization of the Thesis

The research thesis is divided into four chapters. Chapter one introduced the study by providing background information, a statement of the problem, research questions, the objectives of the research, the scope of the study, and the research methods and methodologies utilized. Chapter Two discussed the AU's frameworks and institutions regarding military coups. In this chapter, the military coups experienced in Burkina Faso, Sudan, Mali, and Chad were discussed as a case study. Chapter Three critically assessed the AU's responses to the military coups in the case studies in relation to the AU's norm against military coups d'état. The study's findings were summarized in Chapter four.

CHAPTER-TWO

AFRICAN UNION LAWS AND INSTITUTIONS ON MILITARY COUP D'ETAT IN AFRICA

Introduction

The French term "coup" means "a sudden blow or strike."²⁷ Except for the etymological definition, the notion of "military coup d'état" has not been defined in any of the OAU or African Union laws, other than incorporating it as one strand and constituent of an unconstitutional change of government under the several OAU/AU laws, including but not limited to the Lome Declaration and ACDEG. As per the script of the Lome declaration, UCG includes; a military coup d'état against a democratically elected government.²⁸ The definition of "military coup d'état" under either law was undefined, save from defining the term "UCG." Although several scholars, including Ikome and Samuel Huntington, have defined coup d'état in light of the important facts of what transpires during and after a military coup.

As per Ikome in his paper on "Good and Bad coups" military coup d'Etat is the unexpected overthrow of a government against the general will expressed by the majority of the populace.²⁹ It is typically carried out by a small, well-organized group that effectively threatens or employs force to overthrow the state's highest levels of authority.³⁰ A military coup d'état is carried out by seizing control of some active portions of a country's government structures, which are indeed military, while neutralizing the rest of the armed forces.³¹ Usually, the coup plotters capture or expel leaders and take physical control of important government offices, strategic means of communication, and the physical infrastructure.³²

In Africa, military coups d'état has reached their pinnacle and are still being used as a means of removing incumbent governments in an unconstitutional manner, disregarding the whims and wills of the enormous population. Though the frequency of military coups in AU member

²⁷ Ikome (n 2) 7.

²⁸ *ibid* para 14.

²⁹ *ibid*.

³⁰ *ibid*.

³¹ *ibid*.

³² *ibid*.

countries has decreased over millennia, the risk remains high. As a result, due to its detrimental effects on peace, security, and economic growth, the AU has adopted a myriad of policies and institutions. The rejection of changing leaders through a military coup is supported by the legalization of laws against military coups under a variety of legal frameworks and their implementation in the event of a military coup.³³ In addition, the AU has made reference to the principles of democracy in several of its documents and communiqués focusing on peace and security, which is part of a heavy investment in consolidating democratic values in member states.

Furthermore, from the non-interventionist approach of the former OAU, the AU conferred an interventionist approach.³⁴ Interference in the member states' affairs is one of the great departures of the AU from the OAU norms, which adhered to the principle of non-interference. The approach has given the AU broad authority to deal with the norm of rejecting military coup d'Etat. Most importantly, it assisted in the utilization of a democratic tools to reject military coup d'Etat. Against this historical background, the AU has come up with a range of normative frameworks rejecting military coup d'état's, such as the AUCA as a parent source material, the PSC establishment protocol, and ACDEG, which are the anchor normative frameworks of the AU, adhere to the principles of democratic governance, human rights, the rule of law, and constitutionalism.

The upcoming sections of the chapter two discussed the AU norms and institutions on military coup d'Etat by categorizing them into three sections. The first section discusses the evolution of AU norms and institutions regarding military coups. The second section is devoted to discussing the AU's norms and institutions regarding military coups d'état. In this section, the AU's legal frameworks and their underpinning policies are outlined. Section three discusses the AU member states that have experienced military coups as a case study. The AU member countries, namely Burkina Faso, Sudan, Mali, and Chad, have been discussed. In this section, the circumstances leading to military coups and the responses of the AU were also discussed.

³³ Julia Leininger, 'Against All Odds: Strong Democratic Norms in the African Union' in Tanja A Börzel and Vera van Hüllen (eds), *Governance Transfer by Regional Organizations* (Palgrave Macmillan UK 2015) 2 <http://link.springer.com/10.1057/9781137385642_3> accessed 17 August 2022.

³⁴ 'From Non-Interference to Non-Indifference: The African Union and the Responsibility to Protect - World | Relief Web' P.2 <<https://reliefweb.int/report/world/non-interference-non-indifference-african-union-and-responsibility-protect>> accessed 24 February 2022.

2.1. The Development of the African Union Norms and Institutions on a Military Coup D'Etat

The non-recognition of military coup d'Etat in Africa has become the central norm since 1995.³⁵ Despite the fact that prior to this period, there was a numerous military coup d'Etat in post-colonial era of Africa. Since the decolonization era between 1950-the 1960s, of the 486 attempted and successful coups around the world Africa has seen 214 exceeding all other continents of the world with 106 successful coups.³⁶ Out of 54 members of the AU, 45 of them had seen one attempt the intricate horrors of the coup in Africa since 1950.³⁷ Furthermore, sixty-one successful coups took place between the OAU's founding in 1963 and the end of 1989, and more than half of its member states were ruled by military administrations that maintained power by ousting civilian governments.³⁸ Until the end of the Cold War, military coup was the epitome of regime change on the continent.

After the Cold War, there was intense pressure on the OAU to progressively change its policy and include participatory democracy. At the conference held under the auspices of the UN Economic Commission, participatory democracy was a thematic topic. Diverse stakeholders, including African leaders, actively participated in the summit. The Summit adopted the African Charter for Popular Participation in Development and Transformation. The charter highlighted the importance of participatory democracy in the political and socio-economic development of African countries. Nevertheless, the illegal overthrow of incumbents increased and remained high.³⁹

Against this background, the OAU issued two fundamental decisions against military coups⁴⁰. The 1997 Harare Summit, following the coup detat in Sierra Leone, was the first breakthrough against military coups by the OAU.⁴¹ At the summit, the OAU condemned the coup d'état that

³⁵ Julia Leininger, 'A Strong Norm for Democratic Governance in Africa' 38, 5.

³⁶ Megan Duzor and Brian Williamson, 'By the Numbers: Coups in Africa' <<https://projects.voanews.com/african-coups/>> accessed 15 July 2022.

³⁷ *ibid.*

³⁸ Monty G. Marshal (2006), *Systematic Peace, Conflict Trends in Africa* Cited in Omorogbe (n 3) 5.

³⁹ Kalkidan N Obse and Christian Pippan, 'Collectively Protecting Constitutionalism and Democratic Governance in Africa: A Tale of High Hopes and Low Expectations?' (2015) 4 *Cambridge International Law Journal* 344, 353–354.

⁴⁰ Stef Vandeginste, 'The African Union, Constitutionalism and Power-Sharing' (Institute of development Policy and Management 2011).7

⁴¹ Ambassador Said Djinnit, 'The Case for Updating the African Union Policy on Unconstitutional Changes of Government' [2021] *ACCORD* 7, 3.

occurred in Sierra Leone, and called for the immediate restoration of constitutional order.⁴² Following the Harare Summit, the Algiers summit was held in 1999, which called on the OAU member states whose governments came to power through military coup d'Etat after the Harare summit to restore the constitutional order.⁴³ Consequently, in Lome, Togo, in 2000, the declaration on the framework for an OAU response to UCG was adopted. The declaration was one of the first comprehensive normative frameworks against UCG. Indeed, it defined the constituents of UCG and measures taken accordingly for the first time (The Lome declaration).

The time period has also paved the way for the transformation of the OAU into the AU. Within this historical juncture, the AUCA was adopted in 2002 with a strong adherence to democracy, human rights, and provisions against military coups. Consequently, this has resulted in the adoption of a peace and security council establishment protocol in 2003 to deal with all concerns of peace and security, including but not limited to military coups⁴⁴ and the African Charter on Democratization, Election and Governance in 2007. The norms against military coups have gained a monumental advancement and importance since the creation of the AU for two reasons, in contrast to the OAU's lip service to ensuring constitutional order in the transfer of power on the continent.⁴⁵ These are the legalization of military coups under various AU normative frameworks and actual AU involvement in enacting the normative frameworks.⁴⁶

The following section of the research would provide a comprehensive overview of the OAU/AU norms and institutions regarding military coups d'état. Within this objective, the AU's laws and policies against an unconstitutional change of government will be dealt with. Since military coups d'état are one of the strands and constituents of unconstitutional changes of government under the Lome Declaration and Article 23(1) of the ACDEG. Furthermore, the AU norms regarding military coups d'état are covered under the ambit of laws adopted on rejecting unconstitutional changes of government.

⁴² *ibid* P.3.

⁴³ Vandegenste, Stef. "The African Union, Constitutionalism and Power-Sharing." *Journal of African Law* 57, No. 1 (2013): 1–28. [w.jstor.org%2Fstable%2F24734852](https://www.jstor.org/stable/24734852). &aqs=chrome.69i57.73754j0j15&sourceid=chrome&ie=UTF-8> accessed 24 August 2022.

⁴⁴ 'EPRS_ATA (2017)608822_EN. Pdf' 1
<[https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608822/EPRS_ATA\(2017\)608822_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608822/EPRS_ATA(2017)608822_EN.pdf)>
accessed 16 September 2022.

⁴⁵ Leininger (n 32) 5.

⁴⁶ Leininger (n 32).

2.2. The African Union Laws and Policies on a Military Coup D'Etat

2.2.1. The Lome Declaration on the Framework for an OAU Response to Unconstitutional Change of Government

The Lome Declaration was adopted in Lome, Togo at the Thirty-Sixth ordinary session of the OAU Assembly in 2000.⁴⁷ The declaration was adopted in the context of preventing the resurgence of military coups and the negative consequences for the continent's peace and security.⁴⁸ The declaration puts forward military coup as an ingredient in the setback of the democratization of the Continent and a serious threat to peace and security.⁴⁹

The Lome declaration covered three issues in response to the UCG. These were; common values and principles for democratic governance, the definition what constitute unconstitutional change, and the measures and action that OAU would take progressively to respond to UCG, and an implementation mechanism.⁵⁰ The common values and principles the declaration puts forward to enhance the promotion of democracy and democratic institutions include but are not limited to the adoption of democratic constitutions, respect for constitutions, and adherence to the provisions of law and other legislative enactments adopted by parliament, separation of power and judicial independence, and guarantee and promotion of human rights.⁵¹

The declaration defined UCG for the first time in the history of the African documents on UCG. As per the declaration, UCG occurs in four instances. These are: a military coup d'état against a democratically elected government; intervention by mercenaries to replace a democratically elected government; the replacement of a democratically elected government by armed dissident

⁴⁷ Declaration on the framework for an OAU response to unconstitutional change of government para 1.

⁴⁸ *ibid.* para 2.

⁴⁹ *ibid.* para 2.

⁵⁰ *ibid.* para 9.

⁵¹ *ibid.* para 11.

groups and rebel movements; and the refusal of an incumbent government to relinquish power to the winning party after a fair, regular election.⁵²

In addition to defining UCG, the declaration has come up with a sanction regime in the event of UCG in the member states. The first measures that would be taken in the event of UCG are condemnation of the event by the chairman and Secretary General of the OAU.⁵³ Further, the government concerned should be suspended from engaging in the policy organs of the OAU for six months.⁵⁴ Within these six months, the perpetrators should need to work on restoring constitutional order in the country.⁵⁵

After the expiration of the six months, if the perpetrators fail to restore constitutional order, a range of limited and targeted sanctions should be imposed.⁵⁶ The sanctions include but are not limited to, visa denials, government-to-government contact, and trade restrictions.⁵⁷ The duty of monitoring of the sanctions and the implementation of the measures falls under the mandate of the OAU Central organ.⁵⁸

2.2.2. The Constitutive Act of the Africa Union

After the 39-year life span of OAU, the constitutive act of AU was adopted in Lome, Togo in 2002 (Hereinafter CA). The CA is determined to address the shortcomings of the predecessor OAU and maintains an interventionist approach in the effort to keep the Continent peaceful and secure. The CA has the objective of enhancing peace, security, and stability in a member country.⁵⁹ Regarding the norms against UCG, and particularly on military coups, the CA is determined to the principles and values of human and peoples right, consolidating democratic institutions and culture, good governance and rule of law.⁶⁰

⁵² *ibid* para 14.

⁵³ *ibid* 15.

⁵⁴ *ibid*.

⁵⁵ *ibid*.

⁵⁶ *ibid* 16.

⁵⁷ *ibid*.

⁵⁸ *ibid* 17.

⁵⁹ Constitutive Act of the African Union 2002 art 3(f).

⁶⁰ *ibid* 4(m).

The CA stipulated condemnation and rejection of UCG as one of the charters underpinning principles regarding a regime change through illegal means.⁶¹ The CA declares that; “Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union”.⁶² Moreover the CA declares that a member states that fails to comply with the policy and decisions of the Union may be subjected to targeted sanctions, including but not limited to denial of transport and communication determined by the AU Assembly. ⁶³

2.2.3. Protocol Relating to Establishment of the AU’s Peace and Security Council

The African Union Peace and Security Council was the first to be established after the adoption of an amendment protocol by the African Union Peace and Security Council. The council was not part of the original part of the constitutive act. The protocol established the Peace and Security Council, which is a permanent decision-making organ for the prevention, management, and resolution of conflicts. ⁶⁴

Regarding the norms of rejecting military coup, the protocol is the cornerstone peace and security arrangement that acknowledges coup d’état, electoral violence, and illegitimate constitution-changing are threats to the peace and security of the continent. ⁶⁵ Most importantly, it is an organ that spearheads the AU in imposing sanctions and orders in the manner of restoring constitutional order in a state that experienced UCG. ⁶⁶ According to Protocol Article 7(1)(g), the council has the authority to impose sanctions on states that have experienced UCG. Since its establishment, the council has suspended 14 countries experiencing UCG.⁶⁷ which is one of the strongest features of the council in adhering to the principles of good governance, encouraging democratic practices and rule of law.

⁶¹ *ibid* 4(p).

⁶² *ibid* 30.

⁶³ *ibid* 23(2).

⁶⁴ *ibid* 2(1).

⁶⁵ Leininger (n 32) 15.

⁶⁶ Ahmed Idris and others, ‘The African Union Peace and Security Council’ 288, 145.

⁶⁷ ISSAfrica.org, ‘The AU Reneges on Its Stance against Coups d’état’ (*ISS Africa*) <<https://issafrika.org/pscreport/psc-insights/the-au-reneges-on-its-stance-against-coups-detat>> accessed 21 July 2022.

The suspension of a government from engaging in the activities of the Union is given effect through the instrumentalities of the Peace and Security protocol. As per the protocol, the PSC is mandated to; “Institute sanction whenever unconstitutional government change takes place in a member state as provided for in Lome Declaration. “⁶⁸ The provision has given lives to the normative provisions mentioned out under the Lome declaration. As a result, the sanction regime of the Lome Declaration applies to the PSC *mutatis Mutandis*.

The AU is employing its peace and security architecture in rejecting, condemning, intervening through diplomatic missions, and sanctioning the occurrences of UCG and their adverse consequences. The council has a peace and security council, which is a nucleus and supported by sub-organs under its structure, namely, CEWS, panel of wise, ASF, and peace fund.

2.2.4. The African Charter on Democracy, Election and Governance

Inspired by the principles and objectives of the CA of the African Union on the promotion of good governance, popular participation, rule of law and human rights, the AU charter on democracy, election and governance was adopted in 2007.⁶⁹ The charter is a broader and an extensive legal framework of the AU on UCG, compared with the Lome declaration and the PSC establishment protocol in many aspects. Inter alia, the charter added one more component element of UCG to the original four criteria under the Lome declaration as part of the AU leaders' renewed commitment to combating UCG.

The charter enumerates; “Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government”.⁷⁰ Furthermore, the charter's article 25 lays out the procedures for prosecuting perpetrators of UCG and the prohibition of the perpetrators of UCG in the election held to restore democratic order and hold position of responsibility in political institutions of their country. In contrast to the earlier frameworks as a new norm, and that demonstrates the strong adherence of the AU leaders.

As part of consolidating democratic values the charter stressed on the culture of regime change through fair, free, and periodic elections which are conducted by independent and impartial

⁶⁸ Protocol Relating to the Establishment of the Peace and Security Council of the African Union 2004 art 7(1)(g).

⁶⁹ African Charter on Democracy, Elections and Governance 2007 para 1 preamble.

⁷⁰ *ibid* 23(5).

national election bodies.⁷¹ Of the 55 AU countries, only 34 have ratified the charter; the other 21 have only signed it.⁷² Despite this, the African Commission on Human and People's Rights has consistently urged all the AU states to ratify the charter.⁷³

2.2.5. The Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional changes of Government

The Ezulwini framework on the enhancement of the implementation of measures of the African union in situations of UCG (Hereinafter Ezulwini framework) outlines the strategies and measures used to apply the AU framework to UCG in a more expansive and practical manner. The framework was adopted to enhance the implementation of the AU instruments against UCG.⁷⁴ It affirms that the previously adopted normative frameworks of the AU on UCG have included strong norms and institutions against UCG. However, they lack practical strategies to combat the occurrence of UCG.⁷⁵ As a result, it is necessary to support the normative commitments made against UCG, which the frameworks have not been able to do, with concrete strategies and actions.

The Framework includes guidelines and principles for preventing auto legitimization, dealing with UCG culprits effectively, preventing perpetrators from delaying the restoration of constitutional order, and applying sanctions gradually starting at the time of the incident.⁷⁶ It has also shortened the period of suspending a member state, which was stipulated under the Lome framework, from six months to three months.⁷⁷ It also orders cooperation and coordination among the AU organs, REM, and other regional communities in the implementation of sanctions stipulated under the AU normative frameworks.⁷⁸

⁷¹ *ibid* 7.

⁷² See, <<https://au.int/sites/default/files/treaties/> accessed 19 July 2022.

⁷³ Stef Vandeginste (n 39) 9.

⁷⁴ PSC, 'Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Change of Government' para II(A).

⁷⁵ *ibid* II (3).

⁷⁶ *ibid* (II)(4) I-V.

⁷⁷ *ibid* 5(1).

⁷⁸ *ibid*.5(V).

The framework has also established a sanction committee under the PSC protocol articles 7(g) and 8(5) of the PSC protocol.⁷⁹ The sanction committee consists of five PSC members selected on the basis of regional representation.⁸⁰ The committee is mandated to monitor and make recommendations on the implementation of sanctions regimes imposed by the PSC in the event of UCG occurrence.⁸¹

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

In June 2014 in Malabo, Equatorial Guinea, the AU assembly adopted a protocol on the amendments to the protocol creating the African Court of Justice and Human Rights in its twenty-third ordinary session, (hereinafter Malabo Protocol).⁸² The Malabo protocol accorded ACJHR jurisdiction over international crimes and introduced a regulatory scheme for corporate criminal responsibility.⁸³

Regarding the norm against military coup, the Malabo protocol demonstrates the strong adherence of the AU leaders towards UCG on one hand and the failure of the enacted normative instruments to prevent UCG on the other. The protocol has come up with two profound changes to the AU normative frameworks on unconstitutional change of government. First, it added one more definition of UCG to the already stipulated definition under the ACDEG. The added element was: “Any substantial modification to the electoral laws in the last six months before the election without the consent of the majority of the political actors”.⁸⁴ Second, in the history of international criminal law, the protocol considered unconstitutional change of government as a

⁷⁹ *ibid* 10.

⁸⁰ *ibid* 11.

⁸¹ *ibid* 12.

⁸² ‘A Review of the Malabo Protocol on the Statute of the African Court of Justice and Human Rights – Part I: Jurisdiction over International Crimes – Jessie Chella – ILA Reporter’ <<https://ilareporter.org.au/2021/01/a-review-of-the-malabo-protocol-on-the-statute-of-the-african-court-of-justice-and-human-rights-part-i-jurisdiction-over-international-crimes-jessie-chella/>> accessed 28 September 2022.

⁸³ *ibid*.

⁸⁴ Protocols on amendments to the Protocol on the statute of the African court of Justice and Human rights 2014 art 28E(f).

crime in which international criminal jurisdiction could be asserted.⁸⁵ Currently only 15 countries have signed the protocol of the 55 AU member countries.⁸⁶

2.2.7. The ACCRA Declaration

The Accra Declaration was approved in Accra in March 2002.⁸⁷ The declaration's principles focused on building a more united, prosperous, and peaceful continent.⁸⁸ The declaration appropriately recognized the AU's efforts and the regional economic communities' commitment to fighting UCG.⁸⁹ Though the efforts and strong adherence to the norms against military coups could halt the resurgence of military coup d'états. Furthermore, the declaration outlined the causes of the military coups' recent comeback. Terrorism, violent extremism, the rise of foreign fighters and mercenaries, the illegal trade in armaments, corruption, and the game-playing of political accountability procedures are a few of these.⁹⁰

In addition to outlining the reasons for the most current military coup wave, the declaration provided solutions. It urges all to strongly condemn military coup, put into practice the commitments made under the AU frameworks on military coup as well as address socioeconomic challenges, decriminalize opposition parties, take into account the influence of digital communication, and make sure to create a welcoming environment for women and youths in the democratic process, to mention some of the points.⁹¹ The declaration is expected to be presented to the AU Assembly in the upcoming ordinary session.

2.3. AU's Institutions on a Military coups.

Figure 1: AU's Institutions and Mandates regarding Military Coups.

⁸⁵ *ibid* 28A (4).

⁸⁶ Editor African Yearbook of International L, 'PROTOCOLE PORTANT AMENDEMENTS AU PROTOCOLE PORTANT STATUT DE LA COUR AFRICAINE DE JUSTICE ET DES DROITS DE L'HOMME' (2014) 20 African Yearbook of International Law Online / Annuaire Africain de droit international Online 479.

⁸⁷ The Accra Declaration on Unconstitutional Change of Government in Africa 2022 para 1 preamble.

⁸⁸ *ibid* 7.

⁸⁹ *ibid* 1.

⁹⁰ *ibid* 3.

⁹¹ *ibid* 4.

AU Assembly

- Imposing Sanctions in the Event of PSC Suspension and Diplomatic Intervention failure on states experienced military coup d'Etat.
- Imposing Sanction on the States violates policies and decisions of the AU

PSC

- Imposing and lifting suspension measures of member states from the activities of the Union on states Experiencing military coup d'Etat

AU Commission

- Implementing the decisions of the PSC and AU Assembly regarding military coup d'Etat
- Monitoring the Implementations of Measures and Sanctions Imposed by the AU Assembly and PSC regarding military coup d'Etat
- Issuing Statement condemning military coup d'Etat
- Facilitating negotiation and mediation process in the return of constitutional order in a member states experienced military coup d'Etat.

African Court of Justice and Human Rights

- Judicial authority on the perpetrators of military coup d'Etat

Source:⁹²

2.4. Case Studies

Figure: 2 Countries Experienced Successful and Attempted Military Coups Detata's post-2020

⁹² See, Lome Declaration, AUCA, ACDEG, and PSC protocol.

Mali	<ul style="list-style-type: none"> • May 2021/Successful Military Coup D'état
Sudan	<ul style="list-style-type: none"> • October 2021/Successful Military Coup D'état
Burkina Faso	<ul style="list-style-type: none"> • January/September 2022 two-Successful Military Coup D'état
Chad	<ul style="list-style-type: none"> • April 2021 /Military take over of Power
Niger	<ul style="list-style-type: none"> • January 2022 /Attempted Military coup D'état
Guinea	<ul style="list-style-type: none"> • September 2021/Successful Military coup D'état
Guinea Bissau	<ul style="list-style-type: none"> • March 2021 /Attempted Military coup

Source: ⁹³

2.4.1. The context and the African Union's responses to the military coups in the case studies.

The case study demonstrates military coups experienced in Chad, Mali, Sudan, and Burkina Faso. Of the five successful military coups, only four are analyzed and assessed in the case study. The frequency of military coups is the reason for the selection of the case studies. Sudan,

⁹³ 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' (n 16).

Burkina Faso, and Mali experienced counter-coups while they were in transition, and as a result, they were chosen. The peculiar position of the AU in the Chad situation compared to the other four military coups is the reason for the selection of Chad.

The forthcoming section gives the background of the military coup d'état in the selected case studies by offering facts and events in the overthrow of the incumbent governments separately in the context section. In addition, the responses from the AU and sub-regional organizations are also covered individually in the response section.

2.4.1.1. Burkina Faso

2.4.1.1.1. Context

In 2022, Burkina Faso saw two military coups. The first coup was perpetrated against Roch Marc Christian Kabore, who won the general election in 2015. The main reason behind the first military coup was the serious security threat that has been posed by jihadist groups in a various region of the country.⁹⁴ As a result, the Kabore government was the target of numerous protests across the nation.⁹⁵ Subsequently, the continued intense protest against the Kabore government reached the status of requesting the resignation from office on January 20, 2022.⁹⁶

On January 23, 2022, bullets were fired many times close to the president's official mansion in the nation's capital, Ouagadougou.⁹⁷ Next, the president, the speaker of parliament, and several ministers were all detained and arrested in the Sangoulé Lamizana barracks. On national television, uniformed troops declared themselves in charge and promised a "return to constitutional order" in a "reasonable period."⁹⁸ A communiqué from Lieutenant Colonel Paul-Henri Sandaogo Damiba declared the closing of borders, and the dissolution of the National

⁹⁴ '2022 Burkina Faso Coup d'état', *Wikipedia* (2022) <https://en.wikipedia.org/w/index.php?title=2022_Burkina_Faso_coup_d%27%C3%A9tat&oldid=1093434635> accessed 21 July 2022.

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

⁹⁸ 'Burkina Faso Coup: How President Kabore's Ouster Unfolded | Africanews' <<https://www.africanews.com/2022/01/25/burkina-faso-coup-how-president-kabore-s-ouster-unfolded/>> accessed 20 July 2022.

Assembly and administration, and the suspension of the constitution.⁹⁹ At the end, Lieutenant Colonel Paul-Henri Sandaogo Damiba inaugurated his presidency, just a week after he led a military coup.¹⁰⁰

The second counter-coup was committed in Burkina Faso in less than nine months after the first military coup d'état. The October 20, 2022, coup d'état was committed against Paul-Henri Sandaogo Damiba on October 20, 2022, by Captain Ibrahim Traore. The coup plotters have been highlighting the failure of Colonel Henri Sandaogo Damiba's administration in combating the expansion of Jihadist groups in Burkina Faso and its focus on politics.¹⁰¹

2.4.1.1.2. Response

In response to the primary military takeover in Burkina Faso, the AU commissioner, Moussa Faki, denounced and urging the soldiers to return to the barracks and protect the bodily integrity of the president who had been overthrown.¹⁰² The former president Kabore's release was demanded by AU Chair Felix Tshisekedi, who also denounced the incident.¹⁰³ Burkina Faso's expulsion from the AU was subsequently declared by the AU on January 31.¹⁰⁴ The peace and security council also decided to prevent Burkina Faso from taking part in any Union activities until the nation's constitutional order had been restored.¹⁰⁵

In response to the second-round military counter-coup in Burkina Faso, the AU Commission chairperson, Moussa Faki Mahamat, unequivocally condemned the act of the military.¹⁰⁶ The

⁹⁹ Africa News, 'Burkina Faso Coup: How President Kabore's Ouster Unfolded' (*Africanews*, 25 January 2022) <<https://www.africanews.com/2022/01/25/burkina-faso-coup-how-president-kabore-s-ouster-unfolded/>> accessed 21 July 2022.

¹⁰⁰ 'Burkina Faso Coup Leader Damiba Inaugurated as President | Military News | Al Jazeera' <<https://www.aljazeera.com/news/2022/2/16/burkina-faso-coup-leader-inaugurated-as-president>> accessed 21 July 2022.

¹⁰¹ 'In Burkina Faso, a Coup within a Coup' *Washington Post* <<https://www.washingtonpost.com/world/2022/10/01/burkina-faso-coup/>> accessed 4 October 2022.

¹⁰² '2022 Burkina Faso Coup d'état' (n 93).

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 1062nd Meeting PSC/PR/COMM.1/1062(2022), Held on 31 January 2022 at Addis Ababa, Ethiopia. o' para 5.

¹⁰⁶ AU Commission, 'The Chairperson of the African Union Commission Unequivocally Condemns the Second Takeover of Power by Force in Burkina Faso.' 1 <https://au.int/sites/default/files/pressreleases/42233-pr-The_Chairperson_of_the_African_Union_Commission_unequivocally_condemns_the_second_takeover_of_power_by_force_in_Burkina_Faso.pdf> accessed 4 October 2022.

chairperson calls on the military to immediately and totally refrain from any acts of violence and threats to the civilian population, civil liberties, and human rights and ensure compliance with electoral deadlines for the restoration of constitutional order by July 1, 2024, at least.¹⁰⁷

2.4.1.2. Sudan

2.4.1.2.1. Context

On October 25, 2021, the Sudanese military, led by Lt. General Abdelfattah El-Burhan, took control of the government in a military coup against prime minister Abdalla Hamdok.¹⁰⁸ The head of Sudan's transitional government declared a state of emergency, dissolved the government and the sovereignty council, and announced that the military would take over the government's power from the prime minister and his cabinet.¹⁰⁹ The risk of international war crimes charges as a result of the June 3 Khartoum massacre, as well as the protection of their accumulated wealth, were the driving forces behind the October 2021 counter-coup.¹¹⁰

Abdalla Hamdok, opposed the coup and encouraged popular protest.¹¹¹ On October 25 and 26, in response to the appeal, protests against the coup began as a result many people died and injured.¹¹² Due to the intense protest, the prime minister, and other ministers in the civilian government were detained under house arrest.¹¹³ Nevertheless, on November 21, 2021, Prime Minister Abdalla Hamdok was reinstated following a pro-citizen rally that swept Sudan and diplomatic pressure.¹¹⁴ Subsequently, Abdalla Hamdok and the military agreed to a 14-point agreement on November 21 that reinstated Hamdok as prime minister and guaranteed the

¹⁰⁷ AU Commission (n 105).

¹⁰⁸ 'October–November 2021 Sudanese Coup d'état', , *Wikipedia* (2022) <https://en.wikipedia.org/w/index.php?title=October%E2%80%93November_2021_Sudanese_coup_d%27%C3%A9tat&oldid=1096046025#Reinstatement_of_Prime_Minister> accessed 26 September 2022.

¹⁰⁹ 'Sudan Military Seizes Power, Detains PM, Ministers in Dawn Coup' (*Radio Dabanga*) <<https://www.dabangasudan.org/en/all-news/article/sudan-military-seizes-power-arrests-pm-and-civilian-ministers-in-dawn-coup>> accessed 22 July 2022.

¹¹⁰ 'October–November 2021 Sudanese Coup d'état' (n 107).

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ 'October–November 2021 Sudanese Coup d'état', *Wikipedia* (2022) <https://en.wikipedia.org/w/index.php?title=October%E2%80%93November_2021_Sudanese_coup_d%27%C3%A9tat&oldid=1096046025> accessed 22 July 2022.

release of all political prisoners.¹¹⁵ However, Prime Minister Hamdok resigned in January 2022 as a result of the ongoing pro-democracy demonstration.¹¹⁶

2.4.1. 2.2. Response

In response to the military takeover, the PSC strongly condemns the disintegration of the interim administration.¹¹⁷ The council also applauds Abdalla Hamdok's release and calls for the freedom of all prisoners.¹¹⁸ On top of that, the council suspends the Republic of Sudan from the activities of the Union until the restoration of constitutional order.¹¹⁹ As well as, urges the all stakeholders including the military to respect terms enshrined under the August 2019 Juba Declaration and works for its realization.¹²⁰

2.4.1.3. Chad

2.4.1.3.1. Context

In April 2021, the incidental death of Chad's long-serving president, Idris Debbie, in the war fought between the Chadian army and the Libyan-based Front for Change (FACT) resulted in the dissolution of the nation's national Assembly and the government.¹²¹ As a result, the transitional military council led by the late president's son, Mahamat Kaka, replaced the Idris Debbie regime.¹²² The transitional military council has promised to conduct a nationwide election after

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 1041st Meeting (PSC/PR/COMM.1041) Held on 26 October 2021, at Addis Ababa, Ethiopia.'

¹¹⁸ *ibid* 3.

¹¹⁹ *ibid* Par.4.

¹²⁰ *ibid* Par.6.

¹²¹ 'Chad', , *Wikipedia* (2022) <<https://en.wikipedia.org/w/index.php?title=Chad&oldid=1098435905>> accessed 22 July 2022.

¹²² *ibid.*

18 months.¹²³ However, the Chad national forum held in October 2022 announced that the transition would be extended for the next two years under the leadership of Idriss Deby Itno.¹²⁴

2.4.1.3.2. Response

In response to the military takeover of the military in Chad, the PSC released two communiqués. In its first communiqué, PSC condemned the death of President Idriss Deby and emphasized the urgent need for a thorough investigation into circumstance surrounding his death.¹²⁵ It also expresses a deep concern about the establishment of the transitional military council.¹²⁶ The PSC also urges the Chadian military council and all national stakeholders to respect the constitutional mandate and to expeditiously work on the manner of restoring constitutional order.¹²⁷

In its second communiqué, the PSC strongly condemned the use of violence by mercenaries' foreign fighters, and rebels in order to control political power in Chad.¹²⁸ The council also demanded the immediate cessation of hostilities and the unconditional expeditious withdrawal of all mercenaries and foreign fighters from Chad in line with the 1977 OAU convention on the elimination of Mercenaries in Africa.¹²⁹ The council welcomed the establishment of the civilian-led transitional government led by Mr. Albert Pahimi Padacke.¹³⁰ In addition, PSC underscores a clear separation of powers between the transitional government and the transitional military council, with the TMC focusing primarily on the statutory defense and security of Chad.¹³¹

The PSC has also urged the transitional government to expediate the process of organizing an inclusive and transparent national dialogue and national reconciliation and to work on the

¹²³ *ibid.*

¹²⁴ Africa News, 'Chad: Forum Names Deby Transitional President' (*Africanews*, 9 October 2022) <<https://www.africanews.com/2022/10/09/chad-forum-names-deby-transitional-president/>> accessed 12 October 2022.

¹²⁵ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 993rd Meeting (PSC/BR/COMM.2(CMCXIII) Held on 22 April 2021, Addis Ababa, Ethiopia.' para 3.

¹²⁶ *ibid* 5.

¹²⁷ *ibid* 3.

¹²⁸ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 996th Meeting (PSC/BR/COMM.(CMXCVI) Held on 14 May 2021, on the Consideration of the Report of the Fact-Finding Mission to the Republic of Chad, at Addis Ababa, Ethiopia.' para 2.

¹²⁹ *ibid.*

¹³⁰ AU's Peace and Security Council [AU PSC] (n 131).

¹³¹ *ibid* 3–4.

promotion and protection of fundamental human rights of the Chadian people.¹³² In addition, the council urges the immediate release of all political detainees and arrested protesters.¹³³ The council has also expressed its support for holding nationwide elections and a democratic transition which would end within 18 months.¹³⁴

2.4.4.1. Mali

2.4.4.1.1. Context

Since independence in 1960, Mali has experienced five coups and one peaceful transition, including the recent 2021 coups.¹³⁵ The May 2021 coup was the country's third coup within ten years in Mali, following the 2021 and the 2020 military takeovers, in which the 2021 happened only nine months after the earlier 2020 coup.¹³⁶ In May 2021, the interim president, Bah Ndaw, the prime minister, Moctar Ouane, and Souleymane Doucoure were arrested by a military force under the command of Assimi Goita, the interim vice president.¹³⁷ Even though Assimi Goita claims the transitional leaders attempted sabotage, the military takeover was allegedly justified by the creation of a broad-based cabinet and a legal transition.¹³⁸ In addition, the new cabinet reshuffle, which did not identify Assimi Goita as a vice president, and the lack of consultation regarding the cabinet change, were the causes of the second-round coup.¹³⁹

Assimi Goita has been named as the interim leader of Mali by the constitutional court.¹⁴⁰ The military faction headed by Assimi Goita promulgated a decree extending the military's control on June 7, 2022, along with an announcement that there would be an election in two years.¹⁴¹

¹³² *ibid* 8.

¹³³ *ibid* 9.

¹³⁴ *ibid* 4(c).

¹³⁵ 'Analysis | Another Coup in Mali? Here's What You Need to Know.' *Washington Post* <<https://www.washingtonpost.com/politics/2021/05/28/another-coup-mali-heres-what-you-need-know/>> accessed 27 September 2022.

¹³⁶ *ibid*.

¹³⁷ '2021 Malian Coup d'états,' *Wikipedia* (2022) <https://en.wikipedia.org/w/index.php?title=2021_Malian_coup_d%27%C3%A9tat&oldid=1091918661> accessed 8 August 2022.

¹³⁸ *ibid*.

¹³⁹ 'Mali's Coup Leader Assimi Goïta Seizes Power Again' *BBC News* (25 May 2021) <<https://www.bbc.com/news/world-africa-57239805>> accessed 27 September 2022.

¹⁴⁰ '2021 Malian Coup d'état' (n 136).

¹⁴¹ *ibid*.

Abdoulaye Diop, Mali's minister of foreign affairs, declared that preparations will be extended to five years and informed the same to the ECOWAS.¹⁴²

2.4.4.1.2. Response

In response to the counter-coup, the PSC suspended the Republic of Mali from the activities of the union until normal constitutional order is restored and endorsed the ECOWAS decisions taken on May 30, 2021, in Ghana, Accra.¹⁴³ It also urges the military to refrain from interfering in the political process and lift the arrest of the interim presidents, Bah Nadew and Moctar Ouane and calls for their adherence to the 18-month transitional period stipulated in the first transition.¹⁴⁴

¹⁴² *ibid.*

¹⁴³ AU's Peace and Security Council [AU PSC], 'COMMUNIQUÉ of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 1001 St Meeting (PSC/PR/COMM. (2021) Held on 1 June 2021, on the Situation in Mali at Addis Ababa, Ethiopia.' paras 1–3.

¹⁴⁴ *ibid* 5.

CHAPTER-THREE

A CRITICAL ASSESSMENT OF THE AU'S RESPONSES TO THE CASE STUDIES VIS A VIS THE AU'S NORM ON MILITARY COUP D'ETAT'S.

Introduction

The rejection of military coup d'Etat is the lynchpin of the African Union's policy on constitutionalism and democratic governance.¹⁴⁵ The AU is employing its norms and institutions in rejecting, prohibiting, condemning, and sanctioning military coup d'Etat. It does so by utilizing the norms and institutions that have been part of the AU's heavy investment in good governance and democratization since the CA's adoption in 2002. Most importantly, in its overall mandate of maintaining peace, security, and stability on the continent, the African Union Peace and Security Architecture (APSA) has played a significant role in rejecting, preventing, managing, and resolving conflicts related to the military coup d'Etat

In the post-2020, the wave of military takeover has grown. Despite the AU's substantial and extensive efforts to combat military coup d'Etat and promising results in the fight against military coup d'Etat in the last couple of decades. African states have experienced five successful military coups and two attempted coups in seven countries in post-2020, which is equal to the total number of coups in the previous ten years from 2010 to 2019.¹⁴⁶ indicating that coups are re-emerging again after the late 1960s and 1980s.

The justification for the rise of military coups in the post-2020 stems from both internal and external factors. Internally, the embedded authoritarian system, insurgency, terrorism, impoverishment, gross human rights violations, corruption, constitutional manipulation, deficits in democratization, and a rigged election system were some of the notable factors. Most importantly, the perception of the coup leaders that the advantages of participating in a military coup outweigh the harm caused by AU norms on UCG and that the AU and regional

¹⁴⁵ Obse and Pippan (n 38) 344.

¹⁴⁶ 'In Hindsight: The Security Council and Unconstitutional Changes of Government in Africa, July 2022 Monthly Forecast: Security Council Report' (n 23).

organizations have become lax in enforcing the AU norms against military coup d'Etat.¹⁴⁷ Externally, the extended geopolitical interests and competition of developed nations is a factor behind the recurrence of the recent military coups.

Conscious of the justification, it is crucial to assess and look at the AU's responses in light of its normative frameworks. Because assessing the AU's responses to military coup d'état's has paramount importance in determining the strength and weaknesses of the system, rectifying the gaps in its implementation.

Although it is important and worthwhile to assess all of the AU's institutions and practices, the research assessment is limited to the AU's peace and security council and its complementary organs' responses to the selected military coup d'états as a central organ of the Union. This is done in light of the AU's responses to the case studies and the stage at which they are, specifically, the suspension and endorsement of the transitional military governments. In addition, counter-coups in Mali and Sudan have also been considered, even though the primary coups fall in the years 2020. This is done considering the relationship between events and factors in the coups.

The critical assessment of the AU's responses to the recent wave of military coups d'état in the selected four AU member countries argues that the PSC responses are inconsistent, self-contradictory, and selective. In addition, the complementary organs of the PSC are challenged by inadequate infrastructure, finance, logistical, and normative expertise. Most importantly, the peace and security architecture of the AU has disregarded the AU norms of rejecting UCG and the underlying factors.

¹⁴⁷ Amani Africa - media and research services, 'Critical Reflections on the Challenges to and Means of Strengthening the AU Norms Banning UCG' (n 31) 10.

3.1. The Peace and Security Council of the AU in Responding to Military Coup Detata's Post-2020 in the AU Member States.

The African Union peace and security council promotes constitutional transfer of power in the AU member states and encourages democratic practices, good governance, and the rule of law.¹⁴⁸ In the event of UCG in the member states, the council shall “institute sanctions whenever an unconstitutional change of government takes place in a member state, as provided for in the Lomé Declaration”.¹⁴⁹ In the milieu of its mandate, the council has condemned and suspended countries experienced military coup and expressed its deep concern over the wave of military coups once again in the continent post 2020.

From five countries experienced successful military coup in the post-2020, four of them were suspended namely, Burkina Faso, Sudan, Mali, and Guinea.¹⁵⁰ This can be deemed as the best instance where the council’s commitment to implementing its norms on military coup d’Etat. Despite the fact that, the council confers “Fighting approach” reacting only after the occurrences of UCG.¹⁵¹ On top of being reactionary, the council responses were inconsistent and self-contradictory, and its efforts to restore constitutional order through “power-sharing agreements” run counter to both its own normative framework against UCG and the constitutional provisions of member states. In the upcoming sections the researcher assessed the inconsistency and self-contradictory responses of the PSC to the selected case studies in brief. It has to be noted that, the countries outlined under the case studies namely, Burkina Faso, Sudan, Mali, and Chad have ratified the key normative documents of the AU on military coup d’Etat.

¹⁴⁸ Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 3(f).

¹⁴⁹ *ibid* 7(1)(g).

¹⁵⁰ Dawit (n 21).

¹⁵¹ Edited by Colonel Festus B. Aboagye (Retired), *A Comprehensive Review of African Conflicts and Regional Interventions* (African Union Commission and APSTA Secretariat 2016) 40.

3.1.1. Inconsistent and Self-Contradictory Responses

The AU norms on rejecting unconstitutional changes of government are founded on the tenets of preserving the right of the people to peacefully protest against oppressive regimes and safeguarding the rights of the people in electing system of governance.¹⁵² In chorus, the norms have defined UCG and the appropriate measures when UCG takes place in order. Against this background, the CA, the PSC establishing protocol, and the Addis Charter enshrined the measures of condemnation and suspension of the new administration gradually in accordance with the Lome Declaration and the measures outlined under the PSC Protocol Article.7(1)(g).

Condemnation and suspension are the first measures taken against a country that experienced UCG, as illustrated under the Lome Declaration and the PSC Protocol. whereas in the other forms of UCG that were not covered by the said frameworks, the CA stipulates what needs to be taken. such as the denial of transport and communication links with other member states and other measures of a political and economic nature to be determined by the AU Assembly.¹⁵³

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

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

In the case studies, the PSC responded inconsistently to the Chad situation in light of the AU's norms against UCG. The incidental death of Chad's long-serving president, Idris Debbie, in the war fought between the Chadian army and the FACT resulted in the dissolution of the nation's national Assembly and the government.¹⁵⁴ As a result, the transitional military council led by the

¹⁵² Dersso (n 16) 1.

¹⁵³ Constitutive Act of the African Union art 23(2).

¹⁵⁴ 'Chad' (n 120).

late president's son, Mahamat Kaka, replaced the Idriss Debbie regime.¹⁵⁵ In the incident, the PSC condemned the death of the late president Idriss Debbie and emphasized on the urgent need for a thorough investigation into the circumstance surrounding his death.¹⁵⁶ Subsequently, in its second communique, the PSC strongly condemned the acts of mercenaries, foreign fighters, and rebels in order to control political power in Chad.¹⁵⁷

In terms of taking the measures enshrined under the AU normative frameworks in the event of a military coup, the PSC has not condemned the actions of the military, which has controlled power in the events next to death. And, did not take any measures stipulated under the AU's normative frameworks against UCG. The Lome Declaration, CA, ACDEG and the PSC establishing protocol under art.7(1)(g) enshrined the measures of condemnation, rejection and suspension of member states experienced UCG. However, the PSC abstained from suspending Chad while the military group's actions were a clear violation of the AU normative frameworks adopted to enhance democratic governance, the rule of law, and constitutionalism. Particularly, article 23(1) of the ACDEG was violated by the Chadian military group.

Other than condemning the military's actions and suspending Chad from Union activities, the PSC opted to express deep concern only about the actions of foreign fighters, whom it referred to as mercenaries.¹⁵⁸ And, it endorsed the TMC's power for 18 months. which is in contravention to the tenets of the AU norms against UCG.

The PSC's, response was again contrary to the previous positions of the PSC reactions. In Togo, the AU condemned, suspended and threatened to sanction Faure Gnassingbe Eyadema, the late General and President Gnassingbe Eyadema's son, in 2005, because of his succession.¹⁵⁹ In principle, the PSC should have been required to condemn the acts of the military and implement the measures outlined in the frameworks without demonstrating additional facts to the benefits of military power sustaining itself smoothly. Given the particulars of the circumstance, it might have at the very least enforced the sanctions outlined in article 23(2) of the CA. but it went on without taking any measures.

¹⁵⁵ *ibid.*

¹⁵⁶ AU's Peace and Security Council [AU PSC] (n 130) art 3.

¹⁵⁷ AU's Peace and Security Council [AU PSC] (n 133) art 3.

¹⁵⁸ *ibid* 1.

¹⁵⁹ Omorogbe (n 145) 138-139.

The inconsistent position of the PSC responses delivered another violation of the AU norms against UCG by the Chadian national forum. which is approved by the national forum under the newly adopted transitional charter that allows Deby Itno to take part in the election held to restore constitutional order after two years of transition. which is a clear violation of Article 25(4) of the ACEDG. That prohibits the participation of coup perpetrators in the election held to restore constitutional order.

In recognition of the PSC's inconsistent position, the researcher argues that the PSC demonstrate the double standard and selective application of its norms, as well as the act of deliberately supporting military coups. The inconsistent response of the PSC would reverse the democratic gains of the past two decades under the AU.

Ipsa facto, the suspension of Chad from the AU policy organs may not bring constitutional order and may not achieve the AU's goal of good governance and democratization, given the nature of the benefits that members may obtain by being members of the AU. However, the proper utilization of the measures would at least stigmatize a government that came into power through unconstitutional means. Conversely, in the rest military coups, the PSC condemned and suspended Burkina Faso, Mali, and Sudan, with immediate measures to be taken on all policy organs of the AU, and it urges international partners, including the UN, to strive for the implementation of the measures. In fact, the immediacy in taking measures in the states that experienced military coups and the call for partnership in the implementation of the decisions is an encouraging endeavor of the council's commitment to combating UCG.

While acknowledging that the Council had been inconsistent in acting to address the Chad coup, on the other hand, the council demonstrated its support for a peaceful transition of power. Though the council did not suspend Chad from union activities, contrary to the AU norm against UCG, it did order the hastily drafted transition charter, the rejection of any potential attempt to extend the 18-month transition period, the establishment of a national dialogue council, and the respect for human rights and freedom.¹⁶⁰ This can be raised as one aspect of the Council's strong side in its endeavor to entrench the norms against UCG.

¹⁶⁰ ISSAfrica.org, 'AU Balancing Act on Chad's Coup Sets a Disturbing Precedent' (*ISS Africa*, 2 June 2021) <<https://issafrika.org/iss-today/au-balancing-act-on-chads-coup-sets-a-disturbing-precedent>> accessed 22 July 2022.

Given the complexity and dynamism of the government changes and the subsequent method of gradually lifting the sanctions, the AU Assembly should provide a comprehensive normative framework and guideline on the sanction regime that include what should be imposed on the occurrence of UCG and under what circumstances briefly. The sanction committee established in 2009 by the PSC under the Ezulwini framework has to undertake its duty effectively by including additional guidelines on the manner of imposing and exempting sanctions. Unless such inconsistent positions of the council could have bad precedent in the subsequent measures of the council and halt the constitutional transition of power.

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

The PSC responses to the military coups experienced in the selected case studies were again in contravention to the AU definition of military coup. Basically, both the Lome Declaration and the Addis Charter clearly stipulate the definition of UCG in the case of military coup. As per the scripts of the ACDEG; UCG occurs when any putsch or coup d'état is perpetrated against a democratically elected government.¹⁶¹ This indicates that the AU cannot consider the coups made against leaders who came into office by undemocratic means as UCG. The script of the provision has two facets. First, it considered the argument of good and bad coup. Meaning, after a military coup, a democratic government may form in which the incumbents close all doors of constitutional transfer of power. Second, there would not be any change as long as the former and the latter held power through bullets not ballots.

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

All four of these leaders were elected through democratic means. By leaving aside, how the election was made, the procedural legality of the election, and the surrounding facts. Even if only

¹⁶¹ African Charter on Democracy, Elections and Governance art 23(1).

nominally, they were elected through an election, and there were no illegal mechanisms used to keep them in office. As a result, the proscription of the military coup taken up against these leaders as UCG are in line with the AU definition of UCG. Nevertheless, the PSC deviates from this norm and considers the counter-coups experienced in Mali, Burkina Faso, and Sudan as UCG in contravention to the AU Framework definition of UCG.

In the case studies, the PSC responded to the counter-coups as if they were UCG. For instance, in Burkina Faso, Lieutenant Colonel Paul-Henri Sandaogo Damiba came to power through coups against the Kabore government in January 2022. And, the regime was in transition under Lieutenant Colonel Paul-Henri Sandaogo Damiba. Under these circumstances, Ibrahim Traore toppled Lieutenant Colonel Paul-Henri Sandaogo Damiba in a counter-coup in September 2022. However, when it became clear that Burkina Faso was in transition and that Damiba himself was installed in office through a coup, the AU Commission chairperson, Moussa Faki Mahamat, unequivocally condemned the act of the military and the PSC treated the counter-coup as if it had been carried out against democratically elected governments and that it was UCG.¹⁶²

In the same vein, the PSC treated the counter-coup in Sudan in 2021 against Abdalla Hamdook as if it had been carried out against democratically elected governments and that it was UCG. The PSC in its communique, suspends the Republic of Sudan from the activities of the Union until the restoration of constitutional order.¹⁶³ When it is clear that Sudan was in transition and that Abdalla Hamdook was installed in office through the Juba agreement. In Mali, too, the PSC considered the counter-coup of Assimi Goita as UCG. The PSC suspended the Republic of Mali from the activities of the union until normal constitutional order is restored and endorsed the ECOWAS decisions taken on May 30, 2021, in Ghana, Accra.¹⁶⁴ When it's known that Bah Nadew himself came to power through a military coup without holding a free, fair, and periodic election. The PSC's legitimization of unelected leaders transgresses the definition of the AU

¹⁶² AU Commission (n 105) 1.

¹⁶³ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 1041st Meeting (PSC/PR/COMM.1041) Held on 26 October 2021, at Addis Ababa, Ethiopia.' (n 119) Par.4.

¹⁶⁴ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 1001 St Meeting (PSC/PR/COMM. (2021) Held on 1 June 2021, on the Situation in Mali at Addis Ababa, Ethiopia.' paras 1–3.

normative frameworks and has the implication of creating a safe haven for governments that came to power through unconstitutional means.

Generally, the inconsistency of the council's responses to the military coups could harm the council's credibility and certainty, and could also make it easier for member states to use the council's normative framework for their own political ends. Moreover, the union's steadfast dedication to constitutionalism, effective leadership, and the rule of law may be jeopardized by following such conflicting policies.

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

In the first phase of its measures against UCG, the AU condemns and suspends member states that experienced UCG. The suspension from AU activities would be imposed until the return of the constitutional order and before the AU Assembly imposes sanctions. The return of constitutional order is a requirement before imposing sanctions. Nonetheless, both the AU and sub-regional organizations have not defined what it means to restore constitutional order and how it is returned. The absence of a clear dimension has been creating divergent policies among international and regional actors.¹⁶⁵

In practice, the AU and sub-regional organizations such as ECOWAS see constitutional order restoration as a return to the constitutional status quo ante and elections, possibly preceded by temporary power sharing.¹⁶⁶ In so doing, on a case-by-case basis, the AU has been imposing either of the two measures as a transition to constitutional order in a country that experienced UCG. In the interim between the period of suspension from AU activities and the return of constitutional order, either through election or the reinstatement of deposed leaders, countries establish a transitional government ruled by a transitional Charter that includes power-sharing provisions among coup plotters and other potential groups. In the case studies, too, in Mali,

¹⁶⁵ Amani Africa - media and research services, 'The Quest for Restoration of Constitutional Order in Mali' (n 231) 6.

¹⁶⁶ Stef Vandeginste (n 146) 12-13.

Chad, and Sudan, coup plotters and others were ruled by transitional charters that included power-sharing agreements between coup perpetrators and other potential groups.

The PSC has also advocated and welcomed proposed transitional charters. Nevertheless, the PSC's advocacy of a power-sharing agreement between the military and civilian groups runs against the AU's normative frameworks against UCG in three dimensions. The researcher has assessed three dimensions of the power-sharing agreement: negative impact on diminishing the AU's norms against UCG.

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

In Sudan, the PSC demanded the imperative of a civilian and consensual led transition in line with the Juba agreement and constitutional declaration, and in Chad, the PSC welcomed and endorsed the formation of a TMC led by the late president's son. Specifically, in the Juba agreement signed in 2019, TMC has been awarded extended political power in the agreement. For instance, 30% of power had been given to it in a Darfur region comprised of myriad actors in the region, as well as it was represented by 10 members comprised of 20 members in the protocol signed between TMC and the third front-Tamazuj for the purpose of integrating third front Tamazuj and proper implementation of the agreement.¹⁶⁷

¹⁶⁷ 'Juba Agreement for Peace in Sudan - Official English' <<https://constitutionnet.org/sites/default/files/2021-03/Juba%20Agreement%20for%20Peace%20in%20Sudan%20-%20Official%20ENGLISH.PDF>> accessed 28 September 2022.

The chairman of the TMC has unrivaled control over the other transitional institutions, including the government, under the existing transitional structure.¹⁶⁸ as well as, in Mali the PSC requested adherence to the 18-month transitional period stipulated in the first transition.¹⁶⁹ Even if the sharing of power to the military could temporarily ease the situation in the UCG-affected nations, in the long run, it might make the military the last arbiter of all national problems and forbid the transfer of authority to a political party led by civilians.

Practically, militaries usually offer a timetable for transitioning to a civilian government following fair, free, and impartial elections. However, they have failed to keep their promises, as was the case in Egypt in 2013, when the military promised a transition but later ousted the elected president, Morsi, and has remained in control ever since.¹⁷⁰ The second-round military coup of Mali was the quintessential of this fact. In May 2021, the interim president, Bah Ndaw, the prime minister, Moctar Ouane, and Souleymane Doucoure were arrested by a military force under the command of Assimi Goita, the interim vice president.¹⁷¹

Limiting the involvement of the military to its inherent duties is necessary given the PSC's recent practice of welcoming and encouraging military personnel to participate in the power-sharing agreement. Even if a nationwide election is held, the military's role must be limited to maintaining peace and security. Unless the military eventually becomes autonomous and less accountable for the oversight of civilian rules.¹⁷² To avoid the phenomenon of power sharing agreements, which are highly inclined to share major executive power with the military faction, the PSC should strongly and consistently support the transfer of power for a civilian-led transition in a shorter period of time.

¹⁶⁸ ISSAfrica.org, 'The AU Reneges on Its Stance against Coups d'état' (*ISS Africa*) <<https://issafrika.org/pscreport/psc-insights/the-au-reneges-on-its-stance-against-coups-detat>> accessed 22 July 2022.

¹⁶⁹ AU's Peace and Security Council [AU PSC], 'COMMUNIQUÉ of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 1001 St Meeting (PSC/PR/COMM. (1001(2021) Held on 1 June 2021, on the Situation in Mali at Addis Ababa, Ethiopia.' (n 133) para 5.

¹⁷⁰ George Derpanopoulos and others, 'Are Coups Good for Democracy?' (2016) 3 *Research & Politics* 2 <<http://journals.sagepub.com/doi/10.1177/2053168016630837>> accessed 19 September 2022.

¹⁷¹ '2021 Malian Coup d'état' (n 136).

¹⁷² Laura-Stella Enonchong, 'Chad's "Covert Coup" and the Implications for Democratic Governance in Africa' (*The Conversation*) para 7 <<http://theconversation.com/chads-covert-coup-and-the-implications-for-democratic-governance-in-africa-159725>> accessed 21 September 2022.

Power-sharing agreements might promote armed conflict and insurrections as the best way to control state power. For instance, in the case study, the Juba Accord included rebel and insurgent organizations in power-sharing, including the armed struggle movements in Darfur, Al-Jebaha Al-Talitha, Masar Al-Shamal, and Masal Al-Sharaq.¹⁷³ All the insurgents' signatories to the agreement have a chance of ruling Sudan until a nation-wide election is held and the power is given to a civilian leader. In addition, the prospects of participating in the election held to restore constitutional order are better than those of coup plotters, as per Article 25(4) of the Addis Charter.

In the same vein, the Chad National dialogue held on August 20, 2022, and promised to include 40 rebel groups in the upcoming election promised to get underway before October 20, 2022. Despite the fact that the prominent ones withdrew from it. Such a PSC's consideration could render the power-sharing agreements a means of governing the nation without first obtaining the confirmation of the people's will.

Tull and Mehler contend that insurgents and dissatisfied groups use UCG as a platform for power negotiations in Africa and that this pattern is encouraging and reproducing additional insurgent violence by those seeking access to authority and power.¹⁷⁴ Consequently, in order to avoid such a short path to control and share power, the PSC should carefully consider its position on power-sharing agreements. Although, power-sharing might temporarily enhance peace, it would also set a bad precedent that runs counter to the AU norms on UCG and that may not ensure a long-term stability.

The power-sharing agreements detail not only how powers will be divided among prominent organs, including those involved in the military coup, but also how long it will take to transition and hold elections to restore constitutional order. According to the Lome Declaration, nations that had an unlawful change of government have six months to restore constitutional order before sanctions are imposed if they disobey the council's directive. Even though the six-month period

¹⁷³ Zaid Al-Ali, 'The Juba Agreement for Peace in Sudan' 48, 11.

¹⁷⁴ Tull D. M and Mehler A, *The Hidden Cost of Power Sharing: Reproducing Insurgent Violence in Africa*, (African Affairs, 2005) Cited in Chika Charles Aniekwe, 'Regional Organisations and the Enforcement of Constitutionalism: Reflections on the Implementation of Chapter 8 of the African Charter on Democracy Elections and Governance (ACDEG)' [2015] SSRN Electronic Journal 6 <<https://www.ssrn.com/abstract=2995696>> accessed 19 October 2022.

is not legally binding, the PSC is seen as agreeing to an extended period of time through power-sharing agreements. which amounts to holding the people hostage for a longer period of time under a regime that was not democratically elected.

In the case studies, for instance, the PSC supported the following; the 18-month transition period in Chad, which went into effect on April 1,2022 and that extended for the next two years under the leadership of Idriss Deby Itno; the 18-month transition period in Mali, which the military under Assimi Goita extended for up to five years; and the transition in Sudan, which plans to hold national elections in July 2023. The Sudanese people have been under military rule for three years, anticipating a civilian takeover without even imagining that the military may go through counter coups again.

The method of maintaining a more than Six-month transition period before transferring power to civilian governments would allow coup plotters to create a quick period of time to strengthen their chairs and, later on, either manipulate the election held to restore constitutional order or disobey the transfer after they ensure that their chairs are strong enough and cannot be easily withheld.

3.1.3. The PSC Responses Violate Member States' Constitutional Principles.

The pillar objectives of the AU's norms against UCG are to enhance and entrench the universal principles of democracy, good governance, human rights, and the rule of law in the governance systems of African states. In addition, it has the objective of enhancing constitutionalism, in which the will of the people is respected accordingly.

In principle, the Union accepts power transfer through fair, free, and regular elections as part of enhancing constitutional transfer of power in member countries. As per article 3(2) of the Addis Charter, access to the central power has to be made through the instrumentality of constitutions and the rule of law. Contrary to the mentioned provision, the PSC responded to the military coups in the case studies in a manner that violates their domestic constitutions. In its response, the PSC has violated the constitutional provisions of member states under the guise of a power-sharing agreement signed between coup plotters and other groups. In which the actual power-sharing agreements themselves are a transparent reflection of the actors' aspirations to create new

constitutions.¹⁷⁵ And, serves as both a short-term quasi-constitutional framework and a long-term, comprehensive constitutional procedure.¹⁷⁶ The PSC renders the constitutions of the member states experiencing military coups arbitrary and subject to suspension without regard to the law or the will of the people.

In the case studies, the council welcomed the transitional government charter signed between the military group and the civilian faction, contrary to what their constitution stipulates. In Chad, the immediate cause of the de-facto military takeover was the death of President Idriss Deby Itno and the immediate installment of the deceased President's son as interim president for a period of 18 months.¹⁷⁷ The military faction has left aside the constitution of the Chad Republic, article 81, which states that in the absence of the President, his/her powers are exercised by the President of the National Assembly provisionally.¹⁷⁸ In addition, by leaving aside the script of the Chad constitution, the PSC in its second communique, welcomed the establishment of transitional military council (TMC) and urged the military to restore the constitutional order.¹⁷⁹ Furthermore, Chad's constitution, article 67, states that only people over the age of 45 can become President of the nation.¹⁸⁰ Nonetheless, the deceased president's son was 37 years old when he controlled the power. The PSC's affirmation of the TMC was a clear violation of the Chadian constitution and is against the will and whim of the people of Chad.

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

¹⁷⁵ Vandegenste, Stef. "The African Union, Constitutionalism and Power-Sharing." *Journal of African Law* 57, No. 1 (2013): 1–28. <http://www.jstor.org/stable/24734852>. - Google Search' (n 42) 1.

¹⁷⁶ Vandegenste, Stef. "The African Union, Constitutionalism and Power-Sharing." *Journal of African Law* 57, No. 1 (2013): 1–28.

¹⁷⁷ Laura-Stella Enonchong, 'Chad's "Covert Coup" and the Implications for Democratic Governance in Africa' (*The Conversation*) <http://theconversation.com/chads-covert-coup-and-the-implications-for-democratic-governance-in-africa-159725> accessed 27 July 2022.

¹⁷⁸ *ibid.*

¹⁷⁹ ISSAfrica.org, 'The AU Reneges on Its Stance against Coups d'état' (n 66).

¹⁸⁰ Chad constitution 2018 art 67.

The constitution of Mali provided that in the event of unexpected absence of the President, the head of the National Assembly would take over power.¹⁸¹ However, the military group established a temporary transitional council by disregarding what the constitution orders. One may argue that the dissolution was ordered by the late incumbent leader. However, IBK decided to force the dissolution of the government and the Constitution under threat from the military. In which he could not have ordered the dissolution had he not been threatened. In ensuing, the same position, the PSC welcomed and encouraged tolerance for the transitional period.

Generally, the PSC's disregard for the constitutional principles of member states that experienced military coups have the implication leaving aside the will of the peoples and focusing only on the temporary stability of nations-states administration.

3.1.4. The PSC Responses Lack Guidance on Fundamental Causes of Military Coup D'état's

The African Union Constitutive Act was enacted on the tenets of promoting good governance, popular participation, the promotion of human rights, and democratic participation.¹⁸² The norms were adopted under the rationale that there could not be a UCG if all the principles and values of the Constitutive Acts were implemented accordingly. However, the non-adherence to these values has amounted to a surge of military coups in post-2020 Africa.

The increased influence of insurgent and extremist groups, along with weak institutions and the failure of incumbents to consolidate democratic values, and political parties, are the main and immediate factors for the recent wave of military overthrow in Africa. This can be exemplified by the popular (mostly young) group's expression of support in the streets by holding flags and pictures of the coup leaders, which was a clear indication of the people's displeasure with the toppled governments' treatment in Mali, Burkina Faso, and Guinea.

¹⁸¹ The constitution of the Republic of Mali 1992 art 36.

¹⁸² Constitutive Act of the African Union art 3(g).

In a recent research report by Amani Africa, the increased military coups have a direct link with the democratic principle's deficits.¹⁸³ Indeed, the report argues that the AU is enforcing and executing UCG norms in a separate context from the underpinnings of human rights, good governance, and rule of law.¹⁸⁴ The freedom house report provided a supporting finding to the research report. According to the 2021 freedom-house report, the number of countries that are not free has increased from 14 in 2006 -2008 to 20 in 2021, and only seven countries are ranked free.¹⁸⁵

In the case studies, for instance in Chad, the council was compelled to support the transitional military council of Chad for the protection of fundamental human rights and to abort the terrorist organization from spreading from Libya¹⁸⁶ Despite this, the council's actions went against the AU's UCG normative norms. The military overthrow of the Kabore government in Burkina Faso was brought about by the Jihadist groups' influence over the local populace and the government's subsequent failure to deal with this expanded and protracted influence. In the same vein, the main factors that led to the overthrow of Ibrahim Boubacar Keita in Mali were the populace's displeasure with the way the government handled the Jihadist insurgency, claims of rising corruption, and the country's troubled economy.¹⁸⁷

Above all, the expansion of terrorist organizations is an anchor factor in the recent wave of military coups. Al-Qaeda and the ISS have recently shifted their influence from Iraq and Syria to their branches in East and West Africa.¹⁸⁸ The recent declaration endorsed by the AU Assembly on the establishment of the counter-terrorism unit under the auspices of the ASF and the

¹⁸³ Amani Africa - media and research services, 'Critical Reflections on the Challenges to and Means of Strengthening the AU Norms Banning UCG' (n 31) 6.

¹⁸⁴ Amani Africa - media and research services, 'Critical Reflections on the Challenges to and Means of Strengthening the AU Norms Banning UCG' (n 31) 6.

¹⁸⁵ Amani Africa - media and research services, 'Addressing the Recent Resurgence of Unconstitutional Change of Government: Policy Recommendation for the AU Extraordinary Summit'.3.

¹⁸⁶ ISSAfrica.org, 'AU Balancing Act on Chad's Coup Sets a Disturbing Precedent' (n 159).

¹⁸⁷ 'Ibrahim Boubacar Keita: Ousted Mali President Dies Aged 76' *BBC News* (16 January 2022) <<https://www.bbc.com/news/world-africa-60015898>> accessed 10 August 2022.

¹⁸⁸ 'Is Africa Overtaking the Middle East as the New Jihadist Battleground?' - *BBC News*' <<https://www.bbc.com/news/world-africa-55147863>> accessed 5 September 2022.

implementation of a fund to fight terrorism and violent extremism is promising in the fight against UCG and the underlying factors.¹⁸⁹

As per Amani's recent report, in order to tackle the factors leading to UCG, it is required to implement the 432 PSC session decisions on the expansion of the definition of the UCG in relation to popular uprisings against oppressive regimes.¹⁹⁰ The implementation assists the council to distinguish between popular uprisings that are legitimate expressions of opposition against authoritarian governments and those oppositions masterminded by coup plotters and amount to UCG. Against this background, the council has presented its adherence to genuine popular uprisings against oppressive regimes under the 50th Anniversary solemn declaration of the OAU and the AU. The declaration rejected any attempt to seize power and recognized the people's rights to express their will against oppressive regimes.¹⁹¹

In the first-round military coup in Sudan against the Al-Bashir regime, the PSC condemned the acts of the military and recognized the legitimate aspirations of the Sudanese people to the opening of political space in order to be able to democratically design and choose institutions that are representative and respectful of freedoms and human rights.¹⁹² As a result, unless the PSC is active enough to work on the root causes, UCG cannot be eliminated from the continents. In fact, the ACCRA declaration considered the root causes of the recent wave of military coups d'états, such as terrorism, violent extremism, the rise of foreign fighters and mercenaries, illegal trade in armaments, and corruption, among the root causes.¹⁹³ The adoption of the declaration is expected to be contested by the member states.

¹⁸⁹ INFORMATION & COMMUNICATION DIRECTORATE, 'African Leaders to Scale up Efforts against Unconstitutional Changes of Government; Terrorism and Foreign Mercenaries' (African Union 2022) Press release 1.

¹⁹⁰ Amani Africa - media and research services, 'Addressing the Recent Resurgence of Unconstitutional Change of Government: Policy Recommendation for the AU Extraordinary Summit' (n 5) 6.

¹⁹¹ '36205-Doc-50th_anniversary_solemn_declaration_en.Pdf' art F(ii) https://au.int/sites/default/files/documents/36205-doc-50th_anniversary_solemn_declaration_en.pdf accessed 20 October 2022.

¹⁹² AU's Peace and Security Council [AU PSC], 'COMMUNIQUÉ of the by the Peace and Security Council Adopted at Its 840th Meeting (PSC/PR/COMM.(DCCCXL)) Held on 15 April 2019, at Addis Ababa, Ethiopia.' (n 105).

¹⁹³ The Accra Declaration on Unconstitutional Change of Government in Africa art 3.

Dersso emphasized the necessity for the AU normative frameworks to do away with the boundaries between serious human rights breaches, unconstitutional government actions, and democratic violations. To achieve this, concurrent application of the UCG sanctions, such as condemnation, rejection, suspension, and sanction, to violations of human and democratic rights is necessary.¹⁹⁴ In general, the UCG cannot be seen in isolation from and need to address the problem of the member states in a holistic manner to avoid the concern from the grassroots level. This could possibly be done by including the root causes for the UCG under the definition of UCG.

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

The Continental early warning system of the AU has a mandate of conflict prevention through the instrumentality of gathering information and anticipating potential conflicts through early warning mechanisms and tools.¹⁹⁵ The CEWS as part of averting UCG is duty-bound to assess and scan the vulnerabilities of potential factors that could lead to UCG and take urgent preventive diplomacy.¹⁹⁶ This could be done by including the indicators of human rights and governance failures in the central early warning system. Most importantly, the CEWS's analysis has to include the interaction between the military and civil authorities, the deterioration of the state's institutions of administration, constitutionalism, and checks and balances between them in the member states at the risk of UCG.¹⁹⁷

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

¹⁹⁴ Dersso (n 11) 2.

¹⁹⁵ Protocol Relating to the Establishment of the Peace and Security Council of the African Union art.16(2).

¹⁹⁶ 'Open Session on Promoting Constitutionalism, Democracy and Inclusive Governance to Strengthen Peace, Security and Stability in Africa – Amani Africa' <<https://amaniafrica-et.org/open-session-on-promoting-constitutionalism-democracy-and-inclusive-governance-to-strengthen-peace-security-and-stability-in-africa/>> accessed 6 September 2022.

¹⁹⁷ Amani Africa - media and research services, 'Addressing the Recent Resurgence of Unconstitutional Change of Government: Policy Recommendation for the AU Extraordinary Summit' (n 266) 7.

indicators as an objective threshold to determine which phenomena in member countries require immediate action.¹⁹⁸ Furthermore, member states and regional economic communities have to effectively utilize the AGA modalities, including APRM and the African Commission on Human and People's Rights.

The most recent initiative of the APRM in cooperation with the AGA platform to review the AU missions on UCG is the progressive success of the AGA in combating UCG.¹⁹⁹ This review is part of the process of developing the African Governance Report for consideration, and is to be presented to the AU Assembly of Heads of State and Government for consideration at its ordinary session every two years.²⁰⁰

According to former AU peace and security department adviser remarks, the situation room was kept but the CEWS was destroyed due to the AU-wide reform in 2021, which established the new departments of political affairs and peace and security.²⁰¹ The specialized early warning location has since been eliminated due to aging and structural issues.²⁰² As a result, the main tasks of the center going to be hampered and forced to grapple with structural difficulties.

In the case studies, the central early warning system could have correctly predicted the primary and immediate causes of the military takeover. The continuous popular protest and the existence of terrorists and insurgent groups in the Republic of Sudan, Mali, Chad, and Burkina Faso would provide the CEWS more than enough time to effectively prevent the experienced UCG in the member states, and the PSC could have taken preventive diplomacy measures before the occurrences. Shirah and Ryan contend that a regime's failure to uphold democratic principles,

¹⁹⁸ Amani Africa - media and research services, 'Monthly Digest on the African Union Peace and Security Council' 5.

¹⁹⁹ 'DEPLOYMENT OF TARGETED REVIEW MISSIONS ON UNCONSTITUTIONAL CHANGES OF GOVERNMENT AS PART OF THE DEVELOPMENT OF THE AFRICAN GOVERNANCE REPORT-2023' (APRM) para 1 <<https://www.aprm-au.org/publications/deployment-of-targeted-review-missions-on-unconstitutional-changes-of-government-as-part-of-the-development-of-the-african-governance-report-2023/>> accessed 22 September 2022.

²⁰⁰ *ibid.*

²⁰¹ Ulf Engel, 'The African Union's Conflict Early Warning System Is No More. What Now?' (*The Conversation*) <<http://theconversation.com/the-african-unions-conflict-early-warning-system-is-no-more-what-now-183469>> accessed 28 August 2022.

²⁰² *ibid.*

restrictions on rights and liberties, and ongoing policies and practices that undermine democracy and good governance lead to popular dissatisfaction and even uprising.²⁰³

In the second round of coups taken against Abdalla Hamdook in Sudan on 25, October 2021 by the military group led by Abdel Fettah al-Burhan, there was a clear indication of fragility and tension between the two groups that had been expanding for more than a year on foreign policy, on the manner of cooperating with the ICC in the crimes committed in Darfur and on the reform of the security sector.²⁰⁴ These indicators could have served the early warning system as a potential indicator of the counter-coup. The failure of Roch Marc Christian Kabore in preventing the expansion of Jihadist groups as well as the frustration of Burkinabe's over the jihadist attack, may serve the CEWS to take precautionary diplomatic measures before the public protest is hijacked by the military group and turned into a full-blown coup d'état.

In Mali too, in the second-round military coup headed by Assimi Goita against the acting president Bah Ndaw in May 2021, the central early warning system might have predicted what would happen if the transitional military council was totally run by the military. Indeed, the people of Mali could have been far more negatively impacted by the ECOWAS painful sanctions and have become irate at the travel ban and restrictions on financial transactions across ECOWAS member states.²⁰⁵

In Burkina-Faso counter coup, according to Abdul Fatau Musah, ECOWAS Commissioner for Political Affairs and Security, there has been a high level of suspicion and division among the militaries since the first coup, which was to be expected.²⁰⁶ However, the CEWS provided no information about the reality on the ground or the politics of holding a seat among military officials. Rather than participating in the review of the first coup to the AU Commission.

Dersso pointed out that the CEWS should need to hire technical staff and set up infrastructures for routine data collecting and analysis, since, the central early warning system heavily depends

²⁰³ Shira Ryan, *Authoritarian Backsliding in New Democracies* (2012) Cited in Aniekwe (n 173) 10.

²⁰⁴ 'Emergency Session on the Situation in Sudan – Amani Africa' <<https://amaniafrica-et.org/emergency-session-on-the-situation-in-sudan-2/>> accessed 6 September 2022.

²⁰⁵ 'Unconstitutional Changes in Africa. A New Trend?' (n 26).

²⁰⁶ James Butty, 'ECOWAS Speaks Out Against Burkina Faso Coup 2.0' (VOA) <<https://www.voaafrica.com/a/ecowas-speaks-out-against-burkina-faso-coup-2-0/6773397.html>> accessed 4 October 2022.

on the utilization of IT and a sophisticated database system.²⁰⁷ This helps to improve the capacity for conflict prevention and particularly preventing the occurrence of UCG. He continued by saying that the CEWS should need to connect to the system of central administration at the level of regional economics and in respective member countries.²⁰⁸ Further, he explained the necessity of separating the system from political intrigues and using it only to prevent confrontations.²⁰⁹ Dersso's argument is valid. Because so far, there was no unit to be there to assist member states in their endeavors in conflict prevention and it was not in the structure of the unit that could serve the regional organization activities regarding early warning systems.

A policy must be adopted for the proactive deployment of an AU presence prior to the collapse of law and order. This can be done by using the Ezulwini framework's operationalization methods to improve the way the AU's measures are put into action when there is a UCG crisis.²¹⁰ Furthermore, in order to speed up the early response to UCG events, the center must dismantle the bureaucratic process that starts with the analyses from the analysts to the Commissioner of peace and security who will try to define the level of action either to request the chairperson to act or to perform the action himself in consideration.²¹¹

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

The AU's commission is mandated to deploy efforts and undertake all activities deemed appropriate to prevent, manage, and resolve conflicts in the member countries.²¹² The commission led by the chairperson of the AU undertakes an active role in rejecting UCG by implementing and monitoring the decisions of the PSC, including by mounting and deploying peace support missions in countries experiencing UCG. As per the Addis Charter: "The Commission shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties".²¹³ In the same token, the commission is

²⁰⁷ Edited by Colonel Festus B. Aboagye (Retired) (n 150) 41.

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

²¹⁰ Khabele Matlosa and Sharon Ndlovu (n 1) 28.

²¹¹ Ahmed Idris and others, 'The African Union Peace and Security Council' 288, P.52.

²¹² Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 10.

²¹³ African Charter on Democracy, Elections and Governance art.44(2)(a).

also mandated to undertake a regular review of member states' democratization processes in the structural prevention of UCG as per the order of the PSC. This mandate was awarded to the commission through the instrumentalities of the declaration on shared values.²¹⁴ Despite the fact that the commission is reactionary, it has played an ample role in revisiting the continental monitoring and review mechanism and increasing the effectiveness of the policy on UCG through a series of consultations with sub-regional organizations and international partners.

In the case studies, the commission, as part of its responsibility in preventing UCG structurally, has condemned military coups and expressed its deep concern about its resurgence by issuing a statement of condemnation via the chairman of the Union. In addition, it has been playing its preventive diplomacy role by sending out its emissaries as part of fact-finding missions to facilitate the restoration of constitutional order in countries that experienced military coups.

The Commission has sent out its emissaries to the Chad in the event next to the death of Idriss Deby. The high-powered fact-finding mission was mandated to investigate the causes of the late president death and to ascertain the manner of restoring constitutional order.²¹⁵ In addition, the PSC has recommended the Commission to dispatch its emissaries to facilitate the restoration of constitutional order in Sudan.²¹⁶ Further, the council ordered the commission through his high representative and head of the AU mission in Mali and the Sahel to continue to closely monitor the situation with close coordination with ECOWAS.²¹⁷

Although it is reactionary in character, the commission was effective in condemning and dispatching fact-finding missions' emissaries. Moreover, the commission is doing the best it can to resolve the situations post military coups compared to the other PSC's entities. However, the

²¹⁴ Ulf Engel, 'The African Union and Mediation in Cases of Unconstitutional Changes of Government, 2008–2011' [2012] African Conflict and Peacebuilding Review 25, 22.

²¹⁵ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 993rd Meeting (PSC/BR/COMM.2(CMCXIII) Held on 22 April 2021, Addis Ababa, Ethiopia.' (n 115) para 3.

²¹⁶ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU) Adopted at Its 1041st Meeting (PSC/PR/COMM.1041) Held on 26 October 2021, at Addis Ababa, Ethiopia.' (n 106) para 9.

²¹⁷ AU's Peace and Security Council [AU PSC], 'COMMUNIQUE of the Peace and Security Council (PSC) of the African Union (AU), Adopted at Its 941 St Meeting (PSC/PR/COMM.(CMXLI) Held on 19 August 2020, on the Situation in Mali, at Addis Ababa, Ethiopia.' para 9.

emissary team lacks expertise and competence in mediation.²¹⁸ The AU should finance, strategize, analysis and cooperate to increase the capacity of the mediators on the mediation process from the traditional usage. Furthermore, the Commission should disregard western expectations in order to react to the UCG aware of African solutions to African challenges. Engel questioned the AU's mediation process in the event of UCG as follows. who is framing mediation knowledge in terms of perceived real problems and desirable solutions. In some cases, the impression has been created that African mediation is responding too strongly to European or US role expectations.²¹⁹

The Engel concern could materialize in areas like West Africa, which has already seen two counter coups and one successful coup since the year 2020. In this region, the interests of great powers such as France and Russia were high. In such situations, the AU should take a firm position on behalf of those who are being addressed while acting as though mediation is taking place.

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

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

The ASF is responsible to facilitate the performance of the peace and security council concerning intervention in respect of grave circumstances envisaged under Art.4(h)and 4(j) of the AU charter.²²⁰The ASF helps the AU normative works on UCG through the instrumentalities of art. 24 of the Addis Charter. The Addis Charter provision awarded the council to undertake its

²¹⁸ Engel (n 213) 24.

²¹⁹ *ibid.*

²²⁰ Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 13(1).

responsibilities in a situation that may affect democratic and constitutional arrangements in order to maintain the constitutional order in accordance with relevant provisions of the protocol.²²¹ The content of the provision depicts that the council could interfere in the member countries experienced UCG under the guise of maintaining constitutional order.

Despite the fact that the charter upholds the principles of non-intervention in member states, this restriction does not rule out the possibility of AU interference in the event of UCG.²²² The amended PSC protocol awards ASF to intervene in a situation of “...serious threat to legitimate order to restore peace and stability in a member state...”.²²³ The protocol did not clearly address whether this intervention includes during the occurrences of UCG. so far, the AU did not go into detail about how to intervene in the event of UCG government or whether or the ACDEG's article 24 refers to intervention in situations covered by article 4(h)(j) of the PSC protocol for the UCG.

According to Leininger; the provision reflects the charters pro-active prevention and promotion of democratic governance and leaves the interpretation to the council and member states.²²⁴ Nevertheless, the coherent interpretation of the provision could give the authority to the ASF to intervene under the objective of restoring constitutional order.²²⁵ Implementing the clause might improve the democratic transfer of power among the participating nations. In support of this claim, Baimu and Sturman stated that article 24 of the Addis Charter should be interpreted in accordance with the textual context and pro-democratic telos of the AU principles.²²⁶ Therefore, armed action would need to be used to defend the populace from their regime.²²⁷

Interference in regards to UCG was not a brand-new phenomenon for the AU. When Yahya Jammeh refused to cede office following Adama Barrow's contentious victory, the AU, acting under the auspices of ECOWAS, endorsed the anticipated intervention of ECOWAS military in the Gambia.²²⁸ The ECOWAS forces had already encircled the Gambian border at the time, even

²²¹ African Charter on Democracy, Elections and Governance art.24.

²²² Omorogbe (n 4) 12.

²²³ Protocol on Amendments to the Constitutive Act of the African Union. 2003 art.4(h).

²²⁴ Leininger (n 53) 11-12.

²²⁵ Omorogbe (n 8) 13.

²²⁶ Baimu and Sturman (2003) cited in Leininger (n 183) 13.

²²⁷ *ibid.*

²²⁸ Christof Hartmann, ‘ECOWAS and the Restoration of Democracy in the Gambia’ (2017) 52 Africa Spectrum 85, 3–4.

if there were no forces that actually entered Banjul and forced Yahya Jammeh to cede office despite their stay for three months at the request of Adama Barrow.²²⁹

The ECOWAS may have intervened in the military coups that took place in Mali and Burkina Faso in light of the prior experience. In a potential true scenario, the ECOWAS as it did in the Gambia could restore civilian led transition in its member countries. If it had employed military threat to the coup leaders. Despite the UN security council's overwhelming support for ousting Yahya Jammeh. In general, the PSC ought to consider how to carry out the Addis charter provisions that have given it jurisdiction in the event of UCG.

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

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

The AU's panel of wise supports the chairperson of the commission and the council in the area of conflict prevention.²³⁰ And, engaged in preventive diplomacy in particular. At the request of the chairperson and the PSC, or on their own initiative, the panel members support the endeavors of the council and the chairperson in the activities of maintaining peace and security on the continent.²³¹ In combating the resurgence of military coups, both the PSC and the commission, even the panel itself, were not seen while it employed the panel members in the mediation process of states that have experienced military coups. This emanates from the overlapping of mandates in the structure of APSA. The protocol did not mention the role of the panel members in preventing UCG.

²²⁹ *ibid.*

²³⁰ Protocol Relating to the Establishment of the Peace and Security Council of the African Union art 11(1).

²³¹ *ibid* 11(4).

In the case studies, the PSC and the Commission have assigned special envoys instead of panel members. Though there was no prohibition to that end, the proper utilization of this organ could potentially influence the AU's adherence to the norms of good governance and constitutionalism. Considering their extensive knowledge of the personalities of the panel members. For instance, the commissioner for political affairs and peace and security council of the AU Bankole Adeoye has served as the mediator and head of fact-finding missions of the Chad situation. The same holds true in the cases of REM, that assigns their choices of personalities, excluding the selected panel members.²³² Goodluck Jonathan was a mediator selected by the ECOWAS in the Mali coup. The former Niger president Mamadou Issoufou was selected as a mediator in the Burkina Faso situation by the ECOWAS.

The newly assigned panel on March 20, 2022, promised to deploy the Pan African network of wise, the network of African women in conflict prevention and mediation, and the network of African youth in conflict prevention and mediation in the case of Sudan and Chad transition.²³³

²³² ISSAfrica.org, 'Events' (*ISS Africa*) <<https://issafrika.org/pscreport>> accessed 5 September 2022.

²³³ *ibid.*

CHAPTER-FOUR

CONCLUSION AND RECOMMENDATION

The three preceding chapters of the thesis discussed and assessed the AU's responses to the military coup's d'état in post-2020 AU member countries. Chapter four of the thesis had concluded and recommended on the findings obtained under each section of the thesis. The first section of chapter four came to a conclusion. The second section of the chapter has made a recommendation. A recommendation was made with the objective of preventing and aborting the occurrence of military coups d'état on the African continent and strengthening the AU's responses to military coups d'état. Additionally, it helps to highlight the gaps in the application of the AU's reactions to military coups as well as their strengths and flaws.

4.1. Conclusion

Throughout the study, the AU's responses to the military coup D'état in post-2020 AU members were assessed. In the recent past, the UCG in the form of military coup de 'tats have increased to an unexpected number. In all, seven military coups and two attempted coups were experienced in the AU member states, namely, Sudan, Chad, Mali, Guinea, Guinea Bissau, Niger, and Burkina Faso.

A wave of military takeovers in African nations after 2020 might destabilize the continent as a whole and impede the continent's democratic advances of the last two decades. In order to effectively oppose the wave and the resurgence of military coups d'état across the continent, the Union must make use of all the norms and institutions at its disposal. To this aim, it is essential to carefully evaluate the AU's responses to the post-2020 military coup. Furthermore, considering the resurgence of military coups in the member states, the thesis argues that the AU frameworks and the structural arrangements on military coups are challenged by legal and practical challenges.

In the context of assessing the AU's responses to the military coups, the thesis has selected four member countries that, out of the five successful coups, have experienced military coups post-2020. Four successful coups were selected and assessed as case studies, namely, Burkina Faso,

Sudan, Chad, and Mali. In recognition of the stages of the AU responses to the coups, the scope of the assessment was limited to PSC and also included the primary coups of Sudan, Burkina Faso and Mali.

After a thorough assessment and analysis, the thesis finds that AU peace and security council responses to military coups are inconsistent, self-contradictory, selective, and run against the normative frameworks of the AU. In contrast, the council showed steadfast devotion to the standards by rejecting military coups with prompt reaction and supporting power-sharing arrangements in the arbitrary light of the security worries of the states that had been subjected to UCG.

In the case studies, the PSC demonstrated its inconsistency in the Chad situation. The council's position on the situation in Chad presents the double standard of the council in which it opts not to suspend Chad from the activities of the union. When the situation clearly falls under the category of UCG in both the Lome and Addis Charter. The PSC responses were again contradictory to the AU definition of military coups. In the case studies, the PSC responded to the counter-coups in Burkina Faso, Mali, and Sudan as if they were military coups. When it is clear that those countries are in transition and the leaders themselves came to power through a military coup. Most importantly, the PSC's proscription of counter-coups as military coups violates the scripts of the Lome and the Addis Charter conspicuously.

The lack of guidance on the causes of military coups is the stumbling block in responding to UCG. In the case studies, both the primary and counter-coups were driven by terrorism, corruption, the influence of insurgent groups, and popular protests. The AU has no system of taking measures against the root causes of military coups, other than the coup itself. To abort the occurrence of military coups, the AU should simultaneously condemn and show its adherence to the abolishment of the root causes of military coups. This should be done by adopting a legal framework that sanctions the root causes of military coups with the preparators. Most importantly, by including the root causes under the definition of UCG.

The PSC responses were in contradiction to the AU frameworks against military coups in many ways. The notable ones are violating member state's constitutions that experienced military

coups; advocating for military control of political power; endorsing an unreasonable transitional period; and indirectly supporting insurrection as a method of controlling power.

The assessment has also thoroughly considered the responses of the PSC's complementary organs, including the CEWS, AUC, panel of wise, and ASF. The CEWS, as one sub-strand of the PSC, inculcates norms that maintain peace and security conflicts before the eruption. Nonetheless, it has not used its norms and structure effectively in the prevention of military coups. The thesis finds that the CEWS was being challenged by a lack of expertise in the database system and analysis infrastructure. In fact, the REM and member countries' CEWS were not routinely and effectively linked to the central early warning system. Additionally, the bureaucratic processes from data analysis to decision-making are extremely drawn-out and time-consuming. The center needs to hire experts and outfit its system with cutting-edge logistics in order to be effective at preventing UCG.

The AU commission has actively contributed to military coups prevention in the member nations. According to the PSC's directive, it has dispatched its emissaries in the guise of preventive diplomacy. Compared to the other sub-organs, the commission has been more vigorous in carrying out its duties. Nonetheless, the commissions mediators lack of mediation experience.

The ASF under the AU peace and security Architecture has played a minimal role and is on the verge of non-existence in rejecting and adhering to the norms on military coups. On the other hand, the AU has not tried an interventionist approach to the military coups through the instrumentalities of ASF. Despite the fact that the contextual reading of the CA, ACDEG, and the PSC protocol allows the ASF to take its inherent role in the military coups. In order to use ASF in rejecting military coups the AU legal frameworks need to outlay the mandates of the ASF in the event of military coups clearly.

The AU's panel of wise role comes in the endeavor of mediation and negotiation with the coup perpetrators on the manner of restoring constitutional order by the initiation of PSC. Since this is the panel's role, it is uncommon to see the PSC and the Commission use panel members in the mediation process in countries that have experienced military coups. The newly selected panel

members on March 20, 2022, promised to deploy the Pan African network of wise, the network of African women in conflict prevention and mediation, and the network of African youth in conflict prevention and mediation in the case of Sudan and Chad transition. In fact, financial constraints have also played an undeniable role in the ineffectiveness of the panel.

4.2. Recommendations

In view of the AU's responses to the wave of military coups d'état in the years succeeding 2020, the following recommendations should be implemented in order to prevent military coups d'état from occurring and to strengthen the AU's peace and security architecture in its endeavor to maintain peace and security.

1. The AU Assembly should adopt a comprehensive normative framework and guidelines on the sanction regime that include what should be imposed on the occurrence of UCG and under what circumstances, briefly.
2. The sanction committee established in 2009 by the PSC under the Ezulwini framework has to undertake its duty effectively by including additional guidelines on the manner of imposing and exempting sanctions in the event of a military coup d'état.
3. The AU Peace and Security Council should oversee the inclusion of stringent provisions in the power sharing agreements by member states that have experienced military coups d'état.
4. Responding to the military coups following the AU norms against the UCG and in line with member states' constitutions.
5. The necessity for the AU normative frameworks to do away with the boundaries between military coups d'état, serious human rights breaches, and democratic violation
6. Concurrent application of the military coup d'état sanctions, such as condemnation, rejection, suspension, and sanction, to violations of human and democratic rights
7. The CEWS of the AU must use trigger mechanisms and indicators as an objective threshold to determine which phenomena in member countries require immediate action.
8. Member states and regional economic communities have to effectively utilize the AGA modalities, including APRM and the African Commission on Human and People's Rights.

9. Operationalizing the Ezulwini framework's methods to improve the way the AU's measures are put into action when there is a UCG crisis
10. The AU should finance, strategize, analyze, and cooperate to increase the capacity of the mediators.
11. Member states must provide financial and logistical support and instill expertise and political personnel capable of putting the ASF's mandates under the PSC protocol and ACDEG into action.
12. The AUPSC's protocol establishing the roles of panel members in the event of a military coup d'état should provide this information.

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