

**THE RESURGENCE OF MILITARY COUP *D'ETATS* IN AFRICA: A
STEP FORWARD OR BACKWARD IN DEMOCRATIC
GOVERNANCE?**

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ABSTRACT

This article discusses the resurgence of military coup *d'états*, in Africa, whether it is backward or forward movement in democratic governance on the continent. Recently there has been an upsurge in UCG in Mali, Burkina Faso, Sudan, Guinea and the latest now is Gabon. This trend is against Article 4(m) (p) of the Constitutive Act of African Union that condemns UCG; and the African Charter on Democracy, Election and Good Governance (ACDEGG), 2007. It is not also a surprise that some citizens of these countries where the unconstitutional change of government has taken place were found jubilating due to maladministration of the constitutionally elected leaders. This article aims at bringing the attention of global leaders to the regressive trend in the democratic progress of certain African nations. Doctrinal methodology is used and the data method is content analyses. The findings of the study show that some citizens of these countries are not enjoying dividends of democracy and that the military itself has not imbibed the dictates of civilian administration or rule on the continent. This paper concludes that the mere suspension of a particular country whose civilian administration has been overthrown is not enough deterrent to other countries in Africa, and stricter penalties is needed to be implemented against such country. It is one of the recommendations of this article that paper condemnation of illegal take over government and the suspension of such a country from AU is not enough deterrent to putsch in the continent.

Keywords: Coup *de'tats*, Resurgence, Governance in Africa, Right to Rebel, The Malabo Protocol, UN SC Reaction to Coups

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INTRODUCTION

After the end of colonial rule in many colonies, military coups became a common method of altering the political order in Africa.³ As at July 2023, it is amazing that seven African countries are under military rule. These countries are the Republic of Chad, Sudan, Mali, Guinean, Burkina Faso, Republic of Niger and the latest being Gabon. According to a research conducted by Thyne, Powell, Hayden, and VanMeter, between 1960 and 2000 there were an average of four coups and coup attempts every year.⁴ However, as calls for democratic changes and constitutionalism developed in the new century, the number of military coups reduced to two per year until 2019.⁵ However, they appear to be making resurgence, causing United Nations Secretary-General Antonio Gutierrez to condemn what he called 'an epidemic of coup d'états' earlier in 2022.⁶

A coup, according to Powell and Thyne, is an 'illegal and overt attempt by the military or other elites within the state apparatus to unseat a sitting executive'.⁷ According to the same authors, 'a coup attempt is successful if the perpetrators seize power for at least seven days'.⁸ According to analysts, Thyne & Hitch and Dersso, the recent increase in the militarization of politics is influenced by a combination of external, influence such as the growing and diverse number of international actors active in the continent prioritizing their interests, and internal

³ M Durmaz, '2021, the Year Military Coups Returned to the Stage in Africa, (2021), *Aljazeera News*

<<https://www.aljazeera.com/news/2021/12/28/2021-year-military-coups-return-to-the-stage-in-africa>> Accessed 20 December 2022.

⁴ C L Thyne, *et al* 'Even Generals Need Friends: How Domestic and International Reactions to Coups Influence Regime Survival' *Journal of Conflict Resolution* (2018) 62 (7) <[doi/10.1177/0022002716685611](https://doi.org/10.1177/0022002716685611)> Accessed 22 December 2022.

⁵ R Schiel, C Faulkner and J Powell 'Silent Guns: Examining the Two year Absence of Coups in Africa' *Political Violence at a Glance*, (2017) <<https://www.accord.org.za/conflict-trends/a-new-coup-era-for-africa/>> accessed 26 January, 2023.

⁶ Durmaz (n 1).

⁷ J Powell and C Thyne, 'Global Instances of Coups' from 1950-2010' (2011), *Journal of Peace Research*, 48(2), 249 – 259. <<https://www.uky.edu/~clthyn2/powell-thyne-JPR-2011.pdf>> accessed 12 December, 2022.

⁸ *Ibid.*

factors, such as widespread public frustration with corruption, insecurity, and poor governance, among others.⁹ The coup in Guinea was precipitated by widespread discontent and protests against President Alpha Conde's unpopular decision to abolish the two-term limit on the presidency. Therefore, the head of the military junta, Colonel Mamady Doumbouya, justified the coup by alleging that poverty and pervasive corruption obliged his special forces to act.¹⁰ Doumbouya said:

The personalization of political life is over. We will no longer entrust politics to one man. We will entrust it to the people at a time. The electoral process increases public support for the armed forces to do something.¹¹

Concurring, Cummings and Devermont said the militaries assume ‘the position of saviour and use civic discontent as a means of legitimizing their unconstitutional power grabs’.¹² Similarly the two military coups in Mali occurred against the backdrop of widespread protests, against President Ibrahim Boubacar Keita, whose administration was accused of; corruption, nepotism, and failing to address the country's deteriorating security issues.¹³ Military commanders in Mali and Sudan employed similar strategies to seize power. Following the first coup in August 2020, the Malian putsches led by Colonel Assimi Goita initially agreed to create a

⁹ C L Thyne and K Hitch, ‘Democratic versus Authoritarian Coups: The Influence of External Actors on States Post-coup Trajectories’ *Journal of Conflict Resolution* <<https://ideas.repec.org/a/sae/jocore/v64y2020i10p1857-1884.html>> accessed 26 January, 2023; S A Dersso, ‘Unconstitutional Change of Government and Unconstitutional Practices in Africa’ *African Politics and African Peace, Summary Paper From The Program On African Peace Missions*, June 2016, <<https://sites.tufts.edu/wpf/files/2017/07/2.-UCG-Dersso-f.pdf>> accessed 21 July, 2023.

¹⁰ Durmaz (n 1).

¹¹ Ibid.

¹² R Cummings and J Devermont, ‘Under Radar’ *Centre for Strategic and International Studies (CICS) Summer 2021 Edition* <<https://www.csis.org/analysis/under-radar-summer-edition>> accessed 26 January, 2023.

¹³ R Adekoya, ‘Why are coups making a comeback in Africa’, *CNN* September 13, 2021 <<https://edition.cnn.com/2021/09/12/africa/africa-coups-resurgence-intl-cmd/index.html>> Accessed 20 December 2022.

military civilian mixed transitional council, vowing to give over power to civilian government at the end of the transition.¹⁴

Following a cabinet change that saw two military members replaced with civilian lawmakers, Goita imprisoned and then ousted the civilian president and prime minister of the transitional council in May 2022. Meanwhile, the military's commitment to organise elections by February 2023 appears more unlikely to be fulfilled.¹⁵ Recently, on October 25, Sudan's General Abdel Fattah al-Burhan seized control and jailed Prime Minister Abdalla Hamdok, with whom he had agreed to oversee the government.¹⁶

The African Union (AU) and regional community such as the Economic Community of West African States (ECOWAS) suspended nations where coups had occurred—except Chad—in an attempt to persuade military authorities to reach an agreement with civilian leaders. However, such initiatives have had a limited impact. Cummings and Davermont continued by remarking that their answers to previous power grabs had been "relatively toothless," and they added that:

It is our understanding that the preference has been to engage in dialogue process between the leadership and aggrieved domestic stakeholders, rather than to pursue punitive measures against the said leadership for their transgressions; this ensures that democratic consolidation does not take place organically within these states which, in turn, allows the military to exploit these democratic deficits.¹⁷

Africa, the continent with the world's youngest democracy, now boasts of four of the world's longest-serving elected presidents. In Gabon and Togo, the Bongo and

¹⁴ Durmaz (n 1).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Cummings and Devermont (n 10).

Eyadema dynasties have reigned for 55 years apiece.¹⁸ Teodoro Obiang of Equatorial Guinea is approaching his 44th year as president, while Cameroon's Paul Biya has been in government for more than 40 years. Elections are in disgrace throughout Africa, and the endless president is back in style.¹⁹

Doctrinal methodology is adopted and the paper considers the works and data provided by other Authors on this subject matter. The primary legislation used are; the Constitutive Act of AU, the Protocols for example, ACDEGG and Resolutions of the UNSC. This paper is divided into four parts; part one discusses the unconstitutional change of government, its element and factors responsible for this. Part two discusses the history and the resurgence of it in 2021. Part three discusses the reaction of the UN Security Council to unconstitutional change of government and the right to rebel then conclusions and recommendations made.

It is the contention of this paper that if the international bodies delay or refuse to implement stricter policies against *coup de tat* in Africa, at the end of the day many more African nations may be under military rule which is an antithetical to democratic rule in the world but now gaining ground in Africa. This article therefore, intends to proffer solutions to military rule.

Unconstitutional Change of Government (UCG) in Africa

As articulated in the African Union (AU) instruments, Unconstitutional Change of Government (UCG) takes different modes. They are Military coups, intervention by mercenaries, and removal of democratic government by armed rebels and refusal of an incumbent to hand over power to newly elected leaders. All these are evident and prevalent in Africa in comparison to other parts of the world.²⁰

On military coups, three types are discernible; these are, military coups proper, where members of the army depose the incumbent political leader and put in place a military led government, for example in Mauritania (2005 and 2008), Guinea

¹⁸ C A Odinkalu, 'Return of Interminable President in Africa' (*The Punch* Nigeria) 10 April 2023.

¹⁹ Ibid.

²⁰ Derrso (n 7).

Bissau (2009 and 2012, Niger (2010), and Mali (2012). The other is instance of forced change of government involving mass protest, where mass protest facilitated military backed change of government. Examples of these include Madagascar and Egypt, and also the army's involvement in violation of constitutional processes which was the case in Togo and recently in Chad. On intervention by mercenaries, since the norm against (UCG) was instituted, there has been no successful overthrow of a government by mercenary forces, though they did attempt to do so in Equatorial Guinea.²¹

On the refusal of an incumbent to relinquish power, Zimbabwe and Kenya are cited as difficult example but relevant to this form of UCG, the only case that Africa Union (UN) actually considered as UCG on the ground of refusal of an incumbent to relinquish power was Cote d'Ivoire. The amendment of a legal instrument or the constitution to prevent constitutional change in government as was unsuccessfully sought in Nigeria and Burkina Faso.²²

UCG eroded and undermined constitutional rule, entrenched bad governance and created conditions inimical to citizen's rights and freedom (including by encouraging future coups). This change with the revival of multi-party politics in Africa in the 1990s which led to the emergence of a belief in elections as the only legitimate basis for assuming a retaining governmental power. Building on his belief, the AU has become not only the defender of democracy and constitutional rule on the continent, but has also taken up the role of promoting democracy and helped enshrine the norm against the UCG in various legal instruments. Through norms like the UCG, the AU has even exceeded the United Nations (UN) in expansively articulating the conditions that could be considered as threat to peace and security.²³

President Macky Sall of Senegal is the most recent addition to this group, what happens in 2024 in his bid to amend the constitution in order to contest for a third

²¹ Ibid.

²² Ibid.

²³ Ibid.

term will be critical to the continents. UCG is definitely one of the most serious and contentious offences that will fall within the purview of the newly constituted African Criminal Chamber.

Elements of Unconstitutional Change of Government

The Malabo Protocol, which will serve as the legal foundation for this future African Criminal Court²⁴ defines this offence as the commission or ordering to be committed of a number of specified acts with the aim of illegally accessing or maintaining power. These acts include:

- (a) A putsch or coup *d'état* against a democratically elected government. This is the type that took place in Niger Republic in 2023 where a democratically elected government was toppled.
- (b) An intervention by external forces to a democratically elected government;
- (c) Any replacement of a democratically elected government by use of armed dissidents or rebels or through political assassination;
- (d) Any refusal by an incumbent government or to relinquish power to the winning party or candidate after free, fair and regular elections. This occurred in Gambia in 2017 when Yahya Jammeh refused to relinquish power to democratically elected president
- (e) Any amendment on the principles of democratic change of government or is inconsistent with Constitution; and
- (f) Any substantial modification to the electoral laws; in the last six months before the elections without the consent of the majority of the political actors. In accordance with the above Article of the Malabo Protocol, several different actions can constitute the crime of UCG. They all have one thing in common: they all pose a danger to

²⁴Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, STC/Legal/ Min7(1) Rev. I, African Union; First Meeting of the Specialized Technical Committee on Justice and Legal Affairs, 15–16 May 2014, Addis Ababa, Ethiopia (Malabo Protocol).

democratically elected governments and processes. This occurred in Togo when Gnassingbe Eyadema amended the constitution to eliminate the two – term limit; so also in Uganda, Chad and Cameroon.

In other words, the whole provision aims to safeguard institutions and (democratic) political decision-making processes. In this regard, the crime is analogous to current international crimes. It is the tragic destiny of international criminal justice that is principally concerned with the tragic fate of particular human beings; who have suffered - and continue to suffer - as a result of gross human rights breaches amounting to the most severe international crimes.²⁵ This does not exclude, however, that communities, (political) institutions or even procedure can be the victims of international crimes. The most conspicuous example is obviously the crime of aggression. Article 8b of the Rome Statute defines the crime of aggression as an ‘act of aggressions’ – invasion or attack by armed forces, bombardment, blockade of the ports or coasts etc. - of one state against another state. In other words, the provisions aim at the preservation of the integrity of the state.²⁶ In a same spirit, terrorism as an international crime is distinguished not only by the specific goal to terrorize the populace, but also by the desire to compel a government to do or refrain from doing anything, or to seek the extinction of an economic, social, or political institution.²⁷

²⁵Compare the second item of the Preamble to the Rome Statute that reads ‘Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of mankind’.

²⁶R S Clark ‘The Crime of Aggression’, in G. Sluiter and C. Stahn (eds.), *The Emerging Practice of the International Criminal Court*, (Leiden/Boston,2009) 709<<https://lawcat.berkeley.edu/record/73254?ln=en>>accessed 12 December, 2022.

²⁷The Special Tribunal for Lebanon defined the *mens rea* required for terrorism as the intent to spread fear among the population or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it (Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging (STL- 1–01/I/AC/R176bis), Appeals Chamber, 16 February 2011, §§ 83, 85.

Some Aggravating Factors of Unconstitutional Change of Government

The first issue to note, in looking at drivers of UCG, is the way earlier political transitions in some of the affected countries have been characterized by incompleteness. Since 2012, Mali has vacillated between transient civilian rule and military coups. In Guinea and Sudan, there is evidence of similar contestation between attempt to consolidate reform and civilian administration on the one hand, and incursion by the military into politics on the other. The fact that the AU has initiated suspensions 13 times against just six its member states due to UCG provides a clear indication of this pattern of incomplete transition in some countries. The countries in question are Burkina Faso, Central African Republic, Egypt, Guinea, Mali and Sudan.²⁸

Second, there is some evidence to suggest a correlation between a country's experience of a military coup and its socio-economic, governance and overall fragility contexts. Burkina Faso, Chad, Guinea, Sudan and Mali are ranked at the bottom of the United Nations Development Programme (UNDP). The Human Development Index (HDI) measures life expectancy; expected years of schooling, average years of schooling, and Gross National Income per capita. A low score indicates significant shortfall in progress towards Agenda 2030 and Agenda 2063. These countries also rank low in the Ibrahim Governance index and are among the top countries in the Fragile States Index²⁹

The desire for good change among the populace, which is linked to a rise in democratic aspirations across the continent, is a related third set of drivers. This desire can spur popular protest movements but can also be easily exploited by

²⁸ JM Okeke and J Banfield, 'Hot-Air or a Resurgence? Making Sense of Unconstitutional changes in Government in Africa' *Accord* May 26, 2022 <<https://www.accord.org.za/analysis/hot-air-or-a-resurgence-making-sense-of-unconstitutional-changes-in-government-in-africa/>> accessed 24 July, 2023.

²⁹ UNDP Annual Report 2022 UN Development Programme <https://www.google.com/aclk?sa=l&ai=DChcSEwj5g_65xKeAAxVF4u0KHaYxDpkYABAAGgJkZw&sig=AOD64_0AlsxZcUiRZ3jx-qQioquM1BM6tA&q&adurl&ved=2ahUKEwizh_G5xKeAAxUhQ0EAHT-IBJ0Q0Qx6BAgBEAE> accessed 24 July, 2023.

putsches. This is no to suggest that citizens' perceptions justify military coups. Rather, it is evident from early findings of a new research project examining these issues, that prolonged frustrations and unmet expectations of citizens can serve to trigger popular support for any change of government, irrespective of whether it is through constitutional or unconstitutional means, at least in the short-term.³⁰

Incompleteness of previous transitions, underlying development and governance shortfall and related citizen's frustration emerge as salient factors shaping the trajectory of the countries that experience coup. They are experienced more widely across the continent however and cannot therefore be taken alone to explain coup occurrence.³¹

A fourth set factor to be considered is the sub-regional specificity of recent event. A concentration of the coups has played out in the greater Sahel. It is perhaps no coincidence that this is region which has become increasing militarized over the past decade. Since 2012 the United Nation (UN), European Union (EU), French, United State (US) as well as regional forces have deployed at scale, responding to multiple intersecting crises such as terrorism and irregular migration³²

Analyst like International Crisis Group has long argued that investing in the region's governance should be prioritized over and above the dominance of security approaches. The latter has sometimes raised the issue of the use of indiscriminate force, which could erode state-citizen trust. Failure to reduce violence despite deployment has furthermore shaped the region's political culture, with a leader's ability to provide security seen as a priority.³³

Powell and Thyne are of the opinion that the lack of concrete and unified international condemnation and the growing number of international actors, who

³⁰ Okeke and Banfield (n 26).

³¹ Ibid.

³² Ibid.

³³ International Crisis Group, 'A course correction for the Sahel stabilization Strategy, February 1, 2021 <<https://www.crisisgroup.org/africa/sahel/299-course-correction-sahel-stabilisation-strategy>>accessed 24 July, 2023.

have shown willingness to work with the military governments, encourage more unconstitutional power grabs by military officials who know they will not face several consequences or regional and global condemnation.³⁴ China, the continent's largest trading partner, has a no-interference policy on the domestic affairs of African countries, as long as they are committed to long-term economic ties.³⁵ This is seen favorably by many across the continent, with more African Leaders wooed by China's economic success on the global stage becoming increasingly convinced their countries should leave Western prescriptions for good governance and economic growth.³⁶

Russia, on the other hand, had been expanding its influence politically and militarily across the continent. Moscow has been stretching its muscles by backing putsches leaders like Mali's Goita and Sudan's al-Burhan and running online disinformation campaigns to spread a positive image of the Kremlin and capitalize on rising anti-French sentiments in Francophone Africa.³⁷ Meanwhile, the Kremlin-linked Wagner Group has reportedly deployed mercenaries in conflict-ridden countries including the Central African Republic, Mali, Libya, and the Niger Republic, while the Russian government denies any links to the shadowy private security company.³⁸

RESURGENCE OF COUPS IN AFRICA

The Egyptian army's 1952 overthrow of King Farouk signaled the start of military intervention in Africa with the goal of gaining political control. Since then, there have been other ones, making military intervention in politics a regular tactic to seize political control. Thus, the concept of coups is not new, despite mounting concerns about their increasing prevalence in recent times.

³⁴ Powell and Thyne, (n 5).

³⁵M Shannon, 'The International Community's Reaction to Coups' *Foreign Policy Analysis* (2015) 11 (4).<<https://www.jstor.org/stable/44784751>> accessed 26 January 2023.

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ *ibid.*

In Africa, coups have been characterized by three main dynamics. The first is that their frequency is distributed unevenly, with sporadic spikes associated with the governing structure of different states. Second, each coup has a unique set of causes, actors, triggers, and ultimate outcomes that differ greatly from one another. As a result, several internal transitional dynamics and management strategies have been developed to address the effects of coups in countries.³⁹

The recent resurgence of coups and coup attempts in Africa highlights the challenges of the African Union's framework on UCG. It was not long ago that the decline of coups was being celebrated, not just in Africa, but globally. *New African Magazine* asked in 2015 why coups are going out of style.⁴⁰ In 2017, Schiel, Faulkner and Powell pointed to a two-year period since the last attempted coup in Africa, with the continent approaching three full years since the last successful attempt.⁴¹ A month later, former Malian Foreign Minister Kamissa Camara even in the context of her serving shortly after a coup-suggested that 'the time for coups is over'.⁴²

Through perhaps not a long period at first glance, this was the longest coup-less stretch in Africa since decolonization.⁴³ Various efforts have been made to explain this shift, including the institutionalization of more open political systems and the role of external factors such as the African Union (AU).⁴⁴ Though the November

³⁹ ISS/PSC Monthly Report: 'Evolution of Coups in Africa.' <https://issafrica.org/pscreport/psc-insights/the-evolution-of-coups-in-africa> accessed 21 December, 2023.

⁴⁰R Ntomba, 'Why are Military Coups Going out of Fashion in Africa?' *New African*(2015)<<https://newafricanmagazine.com/11522/>>accessed 12 December, 2022.

⁴¹ Schiel, Faulkner and Powell (n 3).

⁴² K Camara, 'En Afrique de l'Ouest, Les Revisions Constitutionnelles Ont-elles Contribue a la Consolidation de la Paix et de la Democratie, ou l'inverse?' Africa Research Institute (2017)<<https://nyelenimagazine.org/afrique-de-louest-revisions-constitutionnelles-ont-contribue-a-consolidation-de-paix-de-democratie-linverse/>> accessed 12 December, 2022.

⁴³ Ibid.

⁴⁴I Souare, 'The African Union as a Norm Entrepreneur on Military Coups d'etat in Africa (1952-2012): An Empirical Assessment', *Journal of Modern African Studies*, 52(1), 69-94 DOI: <https://doi.org/10.1017/S0022278X13000785>; J Powell,; T Lasley and R Schiel, (2016) 'Combating Coups d'etat in Africa, 1950-2014', *Studies in Comparative International Development*, 51, 482-502 (2014) DOI: 10.1007/s12116-015-9210-6accessed 12 December, 2022.

2017 coup against Robert Mugabe in Zimbabwe was a new coup, coups remained something of an afterthought in subsequent years.⁴⁵

More recently, commentary at the Council on Foreign Relations concluded that ‘old style’ coups in which soldiers attempted to seize power had been supplanted by incumbents scheming to maintain it.⁴⁶ This has changed since August 2020, with successful coups taking place in Chad, Guinea and twice in Mali as well as a failed effort to seize power in Niger, and both a failed and successful coup in Sudan.⁴⁷ This apparent resurgence in the phenomenon has prompted much discussion on the cause of these events, whether they are related, and what-if anything-the region can do to block the trend.⁴⁸ Independent African states have experienced over 200 coup attempts since 1950, of which over one hundred have succeeded.⁴⁹ This work reviews the recent ‘coup epidemic’ within a larger historical context, reflecting on commonalities, disparities, and how these events fit into international frameworks designed to deter coups.⁵⁰ The region’s recent coups point to two important challenges to the AU framework on UCG. First, though the AU had been heralded for becoming less tolerant of military coups, the less responsive to the constitutional maintenance of power has not proved this assertion.⁵¹

The Coup D’état of 2021

The world attention to coups shifted to Southeast Asia following Myanmar’s 1 February, 2021 coup against its young democracy. This attention returned to Africa following a short-lived coup effort from elements of the Nigerien Air Force

⁴⁵ Ibid.

⁴⁶J Campbell, ‘The Changing Style of African Coups’, *Council on Foreign Relations* (2020)<<https://www.accord.org.za/conflict-trends/a-new-coup-era-for-africa/>> accessed 12 December, 2022.

⁴⁷ ibid.

⁴⁸ ibid.

⁴⁹Powell and Thyne (n 5).

⁵⁰ Ibid.

⁵¹ Ibid.

on 31 March, 2021.⁵² Three weeks later, Chad's military installed General Mahamat Idriss Deby following the death of his father, President Idriss Deby. A power vacuum was created after the latter became the first head of state to be killed in Africa in battle since Emperor Yohannes IV of Ethiopia fell to Mahdist forces in March 1889.⁵³ Mali soon saw interim President Bah N'Daw removed on 21 March, 2021, just eight months after the country's previous coup. Guinea's Alpha Conde was the next victim, with his 5 September 2021 ousting. Though the next coup attempt failed in Sudan on 21 September 2021, the armed forces successfully removed Prime Minister Abdallah Hamdok on October 2021.⁵⁴

As difficult as it would be to overstate the seriousness of Africa's coup resurgence, some observers have managed the task. Following Sudan's October coup, *The Wall Street Journal* declared military coups to be at their highest level since the end of colonialism.⁵⁵ Though hyperbolic, 2021's departure from recent history has been dramatic enough to earn comparison with the independence era. *The Economist* more accurately noted that 2021 has seen more coups than the previous five years combined.⁵⁶

Our exploration of the data indicates that the year has seen the most successful coups in Africa since 1999 and the most total coup attempts since 1991.⁵⁷ Perhaps more importantly, the coups have not fallen into any particular pattern with regard to victims. They have occurred within vacuums, young regimes and long-entrenched ones, countries moving both toward and away from democracy, those

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ B Faucon, S Parkinson and J Summer 'Military Coups in Africa at Highest Level since End of Colonialism', *Wall Street Journal* (2021). <<https://www.wsj.com/podcasts/google-news-update/africa-coups-at-highest-level-since-colonialism/eb151e7b-7b23-4d1b-9861-adae7e42c1c1>> accessed 12 December, 2022.

⁵⁶ *The Economist* (2021) 'As Sudan's Government Wobbles, Coups are Making a Comeback', (2021) <<https://www.economist.com/graphic-detail/2021/10/25/as-sudans-government-wobbles-coups-are-making-a-comeback>> accessed 12 December, 2022.

⁵⁷ Ibid.

with ongoing insurgencies, and those in relative peace. It is perhaps more intriguing that this high number of coups in 2021 occurred within the context of the AU UCG framework, that since 1997 has sought to discourage coups and other illegal seizures of power.⁵⁸

Increase of the Anti-Coup Norm

With the loss of foreign patrons and sweeping challenges in Africa, such as structural adjustments and unprecedented pressure for democracy, the immediate post-Cold War period saw a spike in coup attempts. Soon, however, the region began moving toward a more formal anti-coup framework. In 1997, Robert Mugabe declared, ‘we are getting tougher and tougher on coups. Coup-plotters will find it more difficult to get recognition from us; we now have a definite attitude against coups’.⁵⁹ Mugabe’s words came in the midst of the OAU Summit in Harare, during which Nigerian forces under the auspices of the Economic Community of West African States Monitoring Group (ECOMOG) commenced a bombardment meant to dislodge Paul Koroma’s recently established in Sierra Leone.⁶⁰

Mugabe’s remarks were followed by the 1999 Algiers Summit decision on UCG.⁶¹ This decision urged the restoration of constitutional rule in those countries that had experienced illegal power seizures since the Harare Summit and called on the OAU Secretary-General to facilitate constitutional governance in Member States. The 2000 Lome Declaration on the Framework an OAU response to UCG went even further by defining what actions constituted UCG and stipulating the OAU’s responses to such illegal power seizures.⁶² In the Lome Declaration, UCGs

⁵⁸ Ibid.

⁵⁹M Andrew ‘Coups No Longer Acceptable: OAU’, *Africa Renewal* (1997)<<https://www.un.org/africarenewal/magazine/july-1997/coups-no-longer-acceptable-oau>> accessed 12 December, 2022.

⁶⁰ Ibid.

⁶¹ OAU ‘Declarations and Decisions Adopted by the Thirty-fifth Assembly of Heads of State and Government’, Ordinary Session of the OAU, Algiers, Algeria, 12-14 July (1999).

⁶² OAU ‘Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government’, Lome, Togo 10-12 July (2000).

included coups against democratically elected governments, power seizures by mercenaries, armed rebels, and dissident groups, and incumbents' refusal to relinquish power following electoral defeat as stated earlier in this work. Additionally, the Lome Declaration outlined two responses from the OAU Central Organ in the event of a UCG.⁶³

- a. Condemnation of the fact, suspension of participation in OAU decision-making, and a six-month deadline to restore constitutional rule.
- b. The AU Secretary-General's use of diplomatic pressure and coordination with Member States, regional organisation, and other international actors to facilitate the restoration of constitutional rule. Further pressure, in the form of targeted sanctions, visa restrictions, limited diplomatic contacts, and trade embargoes, was to be deployed in those instances where the illegal regime was not making progress towards a return to constitutional rule.⁶⁴

The Lome Declaration continues to inform the AU policy on UCG. For instance, The Constitutive Act of the AU of 2000 which became operational in 2002,⁶⁵ and The Protocol establishing the AU Peace and Security Council (PSC) 2002,⁶⁶ confirmed the Lome Declaration as its formal document on dealing with illegal power seizures, reiterating that governments acquiring power through illegal means would be suspended from participating in the AU and could face further sanctions. The provisions of the Lome Declaration were further strengthened through the 2007 African Charter on Democracy, Elections and Governance

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ The Constitutive Act of AU, 2000

<https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf> accessed 28 January 2023.

⁶⁶The Protocol Relating to the Peace and Security Council, 2002

<<https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union>> accessed 28 January 2023.

(Addis Ababa Charter).⁶⁷ This Charter, which entered into force in 2012, makes three notable amendments to the Lome Declaration. First, the Charter includes attempt to amend or revise constitutions to extend one's rule as UCG. Second, the charter authorizes the AU PSC to respond to UCG events. And third, the charter stipulates that those who obtain power through unconstitutional means should not participate in or contest the elections aimed at restoring constitutional rule.⁶⁸

Academic commentaries on international conflicts indicate that deterrence occurs when actors 'define the behavior that is unacceptable and publicize the commitment to punish and restrain transgressors'.⁶⁹ While the OAU may add Lome toward the former, it was not until the abandonment of the non-intervention norm and the launch of the AU that the pattern could be established.⁷⁰ Even then, efforts to 'define' and 'publicize' an anti-coup policy might have been meaningless in the absence of demonstrating a commitment to the framework. Just months after the Lome meeting, for example, General Robert Guei was allowed to represent Cote d'Ivoire following his coup against President Henri Konan Bedie. While the early years saw some inconsistencies in response, the establishment of the AU PSC represented an important shift toward invariably condemning coups.⁷¹ At the time of Souare's seminal study on AU as a 'norm entrepreneur' on military coups *d'etat* in Africa, every coup between 2004 and 2012 saw the regimes suspended from the AU, with half witnessing the ensuring junta being forced from power.⁷² It was within this context that coup attempts dropped by nearly 60% from pre-AU period,

⁶⁷ AU African Charter on Democracy, Elections and Governance', Eighth Ordinary Session of the Assembly of the AU, Addis Ababa, Ethiopia (2007)
<https://en.wikipedia.org/wiki/African_Charter_on_Democracy,_Elections_and_Governance#:~:text=The%20African%20Charter%20on%20Democracy,members%20of%20the%20African%20Union> accessed 12 December, 2022.

⁶⁸ *ibid.*

⁶⁹ RN, Lebow and Janice Gross-Stein, (1990) 'Deterrence: The Elusive Dependent Variable', *World Politics (1990)* DOI: <<https://doi.org/10.2307/2010415>> accessed 12 December, 2022.

⁷⁰ Articles 4(h) & (j) of The Constitutive Act of the AU.

⁷¹ Souare (n 42).

⁷² *ibid.*

and nearly 50% from the post-Cold War period immediately preceding the AU.⁷³ Military leaders in Mali, which as stated earlier saw coups in 2020 and 2021, have postponed election till 2024. Guinean's first democratic leader was removed from office through a coup in 2021. Niger has been facing coup attempts, while Beninois President, Patrice Talon has hung to power and filled the parliament which must approve presidential elections with his supporters. And finally, in Cameroon president Paul Biya has been in office since 1982.⁷⁴

Are Coups on Decline?

A closer inspection reveals a mixed record in the AU's implementation of its UCG policy particularly towards coups. Following the 2008 coup in Mauritania led by General Mohamed Ould Abdel Aziz, the AU suspended Mauritania on the coup-born regime.⁷⁵ Subsequent to an agreement being reached to facilitate a transition to constitutional rule 2009, the AU lifted Mauritania's suspension and sanctions and accepted Abdel Aziz as the new democratically elected leader, despite his participation in the 2008 coup.⁷⁶ Similarly, despite labeling Abdel Fatah el Sisi's takeover in Egypt in 2013 as a coup and suspending Egypt from the organisation, the AU nonetheless accepted Sisi's election as president in 2014 and lifted Egypt's suspension, contrary to the Addis Ababa Charter.⁷⁷

The AU quickly described the Burkinabe armed force's seizure of power in the vacuum created by President Blaise Compaore's resignation in 2014 as 'constituting a coup'.⁷⁸ However, the organisation balked at following through on its threats of suspension and sanctions, even after Lieutenant Colonel Isaac Zida

⁷³ Scheil, Faulkner and Powell, (n 3).

⁷⁴ *The Washington Post*, 'Nigeria Points the Way toward Democracy in a Region where it is Scarce' Wednesday, 20 March, 2023.

⁷⁵ AU 'Communique of the 14th Meeting of the Peace and Security Council' (2008), AU 'Communique of the 168th Meeting of the Peace and Security Council' (2009).

⁷⁶ AU 'Communique of the 196th Meeting of the Peace and Security Council' (2009), New York Times 'Coup Leader Wins Election Amid Outcry in Mauritania' (2009).

⁷⁷ AU 'Communique of the 384th Meeting of the Peace and Security Council' (2013), AU 'Communique of the 442nd Meeting of the Peace and Security Council' (2014).

⁷⁸ AU 'Communique of the 465th Meeting of the Peace and Security Council.

who had illegally assumed power was formally announced as Prime Minister of the transitional government.⁷⁹ The Burkina Faso case required the PSC to balance the unconstitutional seizure of power with the fact that Compaore's resignation was the product of a 'people's right to overthrow oppressive regimes'.⁸⁰

Though also targeting an oppressive regime, the coup against Zimbabwe's Robert Mugabe in 2017 was hardly an effort by or on behalf of 'the people's, and instead represented a clear effort to preserve the privileges of the armed forces and their allies. Instead of suspending the new government or even acknowledge that a coup had taken place, actors, including the AU and the Southern African Development Community (SADC), accepted Mugabe's exit as a resignation and 'tacitly' endorsed the coup.⁸¹

Togo's 2005 coup is a case in point. After 36 years in power, Togolese President Gnassingbe Eyadema died in office after suffering a heart attack in February 2005. Constitutionally, the head of the National Assembly should have succeeded Eyadema, but the military appointed Eyadema's son, Faure Gnassingbe, as the new president. The Economic Community of West African States (ECOWAS) and other relevant actors strongly condemned the coup, imposing a travel ban on coup leaders, freezing their assets, establishing an arms embargo, and enacting a diplomatic suspension, all of which would be lifted only if constitutional order was restored. Following a post ad hoc effort to amend the constitution to accept the maneuver, ECOWAS further demanded a reversal of efforts to legitimate the coup.⁸²

⁷⁹ S Dersso 'Protests have Ended Blaise Compaore's Reign' Institute for Security Studies (2014); Bonkougou, Mathieu and Coulibaly, Nadoun 'Burkina Faso Names Army Colonel Zida as Prime Minister' *Reuters* (2014).

⁸⁰ Institute for Security Studies 'Popular Ousting of Compaore Not Considered Contrary to AU Norms' PSC Report (2014).

⁸¹ P Roessler 'How the African Union Got it Wrong on Zimbabwe' (2017) <<https://www.aljazeera.com/opinions/2017/12/5/how-the-african-union-got-it-wrong-on-zimbabwe>> accessed 12 December, 2022.

⁸² A Banjo, 'The Politics of Succession Crises in West Africa: The Case of Togo', *International Journal of World Peace*, 25(2), 33-35 (2008)

The AU suspended Togo's membership, endorsed the sanctions imposed by ECOWAS, and threatened further sanctions, if deemed necessary, on 'de facto authorities' in the country.⁸³ Following the lead of these regional actors, the United States terminated military assistance and supported the sanctions imposed by ECOWAS until Togo conformed to ECOWAS's communiqué sent on February 2021.⁸⁴ In stark contrast, the installment of President Idriss Deby's son in Chad in April 2021 saw a complete reluctance to describe the event as a coup or as falling under the UCG framework. This reaction was viewed as illustrating an 'erosion of the AU consensus on UCG'.⁸⁵

It is astonishing that on 26 July, 2023, the soldiers struck again in Niger Republic toppling the democratically elected President Mohammed Bazoum. The United States, France and UN strongly condemned the UCG. This time around it was the presidential guards that put the president under house arrest before soldiers announced the takeover.⁸⁶ A mercenary group Wagner, based in Russia has hailed the coup as a welcome development in one of the poorest countries of the world. General Abdourahmane Tchiane who was declared as the country by the coup leaders has also warned against any form of intervention by ECOWAS or the AU, saying that the coup was in the best interest his country.⁸⁷

<<https://www.jstor.org/stable/20752832>> accessed 12 December, 2022.

⁸³ AU 'Communique of the Twenty-Fifth Meeting of the Peace and Security Council' (2005).

⁸⁴ US Bureau for Public Affairs, Press Relations office 'Togo: Imposition of Sanctions by the Economic Community of West African States', US Department of State (2005)

<<https://2001-2009.state.gov/r/pa/prs/ps/2005/42493.htm>> accessed 26 January, 2023.

⁸⁵ P S Handy and F Dijilo 'AU Balancing Act on Chad's Coup Sets a Disturbing Precedent', *Institute for Security Studies* (2021)

<<https://issafrica.org/iss-today/au-balancing-act-on-chads-coup-sets-a-disturbing-precedent>> accessed 12 December, 2022.

⁸⁶ S Mednick, 'World Leaders condemns "Unconstitutional" Military Takeover in Niger' *Aljazeera News*, 26 July, 2023

<<https://www.aljazeera.com/news/2023/7/27/world-leaders-condemn-unconstitutional-military-takeover-in-niger>> accessed 27 July 2023.

⁸⁷ News monitored on Aljazeera News Net work on 31 July, 2023, at 1900 GMT

<<https://www.aljazeera.com/news/2023/7/26/soldiers-in-niger-claim-to-overthrow-mohamed-barzoums-government>> accessed 1 August, 2023.

The Central African Republic (CAR) also voted on 30 July, 2023, in a referendum on a new constitution that will allow President Faustina-Archange Toudera to seek a third term in the country. The proposed new constitution would extend the presidential mandate from five to seven years and also abolish the two term limit. The president said Russia and Rwanda, two states whose influence has been very much on the rise will be ‘supporting’ the security forces during the polls. A mercenary group, Wagner-linked source said that that several hundreds of Russian fighters would be in place for the polls.⁸⁸

UNITED NATIONS SECURITY COUNCIL’S REACTION TO UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA

Several patterns have developed over time in the Council’s efforts to address unconstitutional changes of power. One is that it appears easier for the Security Council to discuss coup d’état when the country concerned is already on its agenda, such as Mali, which hosts a UN peacekeeping operation, or Guinea-Bissau, which had a UN special political mission when the military carried out a coup in April, 2021. Some members tend to be wary of discussing issues not already on the agenda, justifying this by citing the principle of non-interference in internal affairs. For example, the Council did not discuss the coup d’état in Guinea – which was not on its agenda – even though the AU Peace and Security Council (AUPSC) expressly called on the Security Council to support the ECOWAS decision for the restoration of constitutional order in that country. In the case of Guinea, it appears that a Security Council member from the region was sensitive about such a discussion, even though the position of the African members (A3) is generally in line with AU decisions.⁸⁹

⁸⁸ France 24, ‘Central African Republic votes on new Constitution as the President eyes Third Term’ (News monitored on France 24 Network, Sunday, 30 July, 2023 at 600 GMT) <<https://www.france24.com/en/africa/20230730-polls-open-in-central-african-republic-for-referendum-on-new-constitution>> accessed 1 August, 2023.

⁸⁹ Security Council Report, In Hindsight: The Security and Unconstitutional Changes of Government in Africa, July, 2022

There is no general practice discernable in the type of outcome the Council adopts following coups d'état. Products have ranged from press statements, a relatively weak instrument in the Council's toolkit, to stronger outcomes such as presidential statements and, in one case, a resolution imposing sanctions. The resolution adopted after the April, 2012 coup in Guinea-Bissau remains among the Council's most robust such responses in Africa, and established a travel ban that would be applied against leading officers involved in the coup. According to Under-Secretary-General for Political Affairs – Rosemary DiCarlo, who spoke at the 7 February Security Council debate on general issues related to sanctions, these punitive measures are believed to have contributed to facilitating the eventual restoration of constitutional order (elections were organized in the spring of 2014) and to have had a deterrent effect on military intervention during subsequent political crises in the country. Renewed concerns about the military's role in Guinea-Bissau surfaced in the aftermath of the disputed outcome of the 2019 presidential election, in addition to 2022 attack on the presidential palace.

The Council is often supportive of regional and sub-regional organizations' responses to military takeovers. This has been notable in West Africa. ECOWAS has often led international responses to unconstitutional seizures of power in the region in ways that the Security Council has largely supported, also coordinating its message with the sub regional body and the AU. Following the August, 2020 coup d'état in Mali, after issuing an initial press statement expressing strong support for ECOWAS an AU initiatives and mediation, the Council adopted a presidential statement in October, 2020 backing ECOWAS-brokered arrangements for an 18-month national Malian transitional. Renewing the mandate of the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) in June, 2021 and the Mali sanctions regime in August, 2021, the

<<https://www.securitycouncilreport.org/monthly-forecast/2022-07/in-hindsight-the-security-council-and-unconstitutional-changes-of-government-in-africa.php>> accessed 25 July 2023.

Council reiterated its support for ECOWAS' role and an 18-month transition period.⁹⁰

The Council's reaction to 2021's military takeover in Sudan was also less assertive than that of the AU, reflecting differing interpretations of the crisis among Council members. Following the events of 25 October, 2021 – when the military suspended the transitional institutions, declared a state of emergency and detained Prime Minister Abdalla Hamdok and other civilian members of the transitional government – the AUPSC suspended Sudan until the civilian-led transitional authority would be restored. When the Security Council met to discuss the situation on 26 October, 2021, a legal debate ensued during which some permanent members questioned whether the developments in Sudan could be characterized as a coup d'état. Council members issued a press statement on 28 October, 2021, which expressed serious concern about the military takeover but did not condemn it, even as they also called upon Sudan's military authorities to restore the civilian-led transitional government.⁹¹

As a result of the COVID-19 pandemic, the Council went for two years without visiting mission, taking away one tool that it can use to understand the political dynamics in countries going through delicate political transitions. In October, 2021, the Security Council visited Mali. Members conveyed messages on the need for the country to return to constitutional order, though this was also when early signs of fissure in Council support for the ECOWAS position began to surface. As the Council struggles with consistent messaging around coups and coup attempts, first-hand information about developments on the ground will remain important – if not necessarily decisive.⁹²

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

The Right to Rebel

There is a potential tension between criminalization of assaults on incumbent governments and the right of rebellion. In the opening sentences of his searching article, Honoré captures succinctly the predicament:

There is a dilemma concerning the relationship between human rights and criminal responsibility. Unless in certain conditions we have the right to rebel, much talk of human rights can be dismissed as empty rhetoric. But if there is such a right, we are at times entitled to use violence against our fellow citizens as if we were at war with them. We may properly commit what are by ordinary standards the gravest of crimes.⁹³

For the purpose of this work, it is important to figure out whether the introduction of the crime of UCG can be reconciled with the right to rebel. Such an inquiry into the normative compatibility of these notions requires a further investigation of the content of, and limitations on, the right to rebel as well as by whom it is recognized. One is therefore less interested in the question whether there is a remedy to enforce the right to rebel, because the focus is on the crime of UCG and whether the introduction of that crime can be trumped by the right to rebel, as a normative counterweight.⁹⁴ It is less important whether the right to rebel can actually be enforced.

Some light on both the essence of the right to rebel and its limitations is shed by a famous sentence in the Preamble of the Universal Declaration of Human Rights:

. . . whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and

⁹³ T Honoré, 'The Right to Rebel', *Oxford Journal of Legal Studies* (1988) (8) 34.
<<https://www.jstor.org/stable/764412>>accessed 26 January, 2023.

⁹⁴ibid.

oppression, that human rights should be protected by the rule of law.⁹⁵

The formulation is rather enigmatic and shrouded in ambiguity. Indeed, it could be interpreted as an exhortation to states to avoid rebellion.⁹⁶ Moreover, one should be cautious not to deduce too easily a right to rebellion from these lines, in view of the explicit resistance against recognition of such a right by country delegates during the drafting process of the Universal Declaration of rights.⁹⁷ Nonetheless, the Preamble suggests that the international society of states allows people to rise against their oppressing rulers, as an ultimate measure. The situation must have become unbearable and there should be no other method available to escape the ordeal, as is clearly expressed in the words ‘as a last resort’.⁹⁸

The notion of rebellion as ‘ultimate remedy’ resonates in the grand tradition of political philosophers. Calvin’s acknowledgement of the right to resist the monarch had – unlike what one might have expected – clearly political, rather than religious, connotations. If the king renounced his primary duty, to wit, the protection of the liberties of the people, selected persons entrusted with power and authority within the realm would be allowed to disobey and, if necessary, depose him in order to preserve order. Calvin opined:

Certain remedies against tyranny are allowable, for example, when magistrates and estates have been constituted and given the care of

⁹⁵ Preamble of the Universal Declaration of Human Rights, 1946.

⁹⁶ Honoré (n 91).

⁹⁷ B Dunér, ‘Rebellion: The Ultimate Human Right?’, *International Journal of Human Rights* (2005) 9 (2), at 253 points out that ‘Several countries made it clear that they did not want to see rebellion as a right.’

<<https://www.tandfonline.com/doi/abs/10.1080/13642980500095393>> accessed 26 January 2023.

⁹⁸ Harmen Van Der Wilt ‘Unconstitutional Change of Government: A New Crime within the African Criminal Court, (Cambridge University Press)

<<https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/unconstitutional-change-of-government-a-new-crime-within-the-jurisdiction-of-the-african-criminal-court/C83093071021B63ACE46656168411BED>> accessed 26 January 2023.

the commonwealth; they shall have the power to keep the prince to his duty and even to coerce him if he attempts anything unlawful.⁹⁹

Calvin predicated this right – or even duty – to disobey the unfaithful king on the premise that the relation between the ruler and citizen ‘was not a direct one, but occurred through the mediating agency of the law.’¹⁰⁰

For another philosopher, John Locke, the right to revolt was a logical sequel of his postulating the predominance of society over politics, in which we already discern the traces of Rousseau’s political discourse. The monarch only rules by the grace of the will of the community and its role was that of ‘image, phantom, or representative of the commonwealth, acted by the will of society, declared in its laws.’¹⁰¹ If the king strayed from the right course, blatantly abused his powers and oppressed the people, the society had the right to depose him by forceful means, in order to restore the ideal state of nature. Locke suggested that the fierceness of the reaction that was visited upon him was proportionate and reciprocal to the initial violence:

In all states and condition the true remedy of force without authority, is to oppose force to it. The use of force without authority always puts him that uses it into a state of war, as the aggressor, and renders him liable to be treated accordingly’.¹⁰²

⁹⁹Calvin J., *Calvani Opera*, (ed. G. Baum, E. Cunitz and E. Reuss), 50 volumes (Braunschweig 1863–1900, Volume 29: 557, 636–7)

<<https://www.cambridge.org/core/books/african-court-of-justice-and-human-and-peoples-rights-in-context/unconstitutional-change-of-government/3DBC667ED53BF574592ADCD1D5F1281C>> accessed 26 January 2023; quoted by S. S. Wolin, *Politics and Vision*, (Expanded Edition, Princeton University Press 2004), at 169.

¹⁰⁰Ibid; Wolin, at 169.

¹⁰¹J Locke, *Two Treatises of Government*, (ed. by Peter Laslett, New York 1965), Second Treatise, 151

<<https://www.yorku.ca/comninel/courses/3025pdf/Locke.pdf>> accessed 26 January 2023.

¹⁰²ibid, 155.

Nonetheless, Locke immediately qualified his position by pointing out that rebellion would only be appropriate when ‘the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended.’¹⁰³

Unconstitutional Change of Government in the Malabo Protocol and the Principle of Non-Intervention

The most important question in this work is to explore whether there are good reasons for African states to elevate the repression of unconstitutional change of government to a supra-national (regional) level. In that context, it is necessary to inquire whether any criminalization of this conduct does not contravene essential rights and prerogatives – as has been done in the previous paragraph above. However, that does not suffice. While the previous section has indeed demonstrated that the offence of unconstitutional change of government does not violate the right to rebel and that states are entitled to restrain and, if necessary, suppress insurrections, it is by no means clear why this offence should come under the jurisdiction of a regional court. The proper yardstick for assessing whether this crime qualifies for ‘promotion’ is, humbly submitted, whether criminalization surpasses merely parochial interests of the state and epitomizes the idea that it has become the business of a wider community of states.¹⁰⁴

In the realm of international criminal law, the universal interest in the repression of international crimes can be gleaned from the fact that they qualify as violations of customary international law.¹⁰⁵ Could the argument be made that, by analogy, a regional organization like the African Union can legitimately claim jurisdiction over a crime the prohibition whereof has solidified in (regional) customary law?

¹⁰³Ibid; 169.

¹⁰⁴To distinguish between parochial and universal interests as the foundation of the difference between domestic and international criminal law, see G P Fletcher, ‘Parochial versus Universal Criminal Law’, *Journal of International Criminal Justice* (2005) 3, at 20–34<<https://academic.oup.com/jicj/article/3/1/20/888712>> accessed 26 January 2023.

¹⁰⁵Compare, amongst others, A Cassese *International Criminal Law*, (3rd ed. Revised by A. Cassese, at Gaeta, L. Baig, M. Fan, Gosnell C. and Whiting, A. Oxford 2013), at 20<<https://global.oup.com/academic/product/cassese-international-criminal-law-9780199694921>> accessed 26 January 2023.

Such a line of reasoning is (implicitly) defended by Abass who, after expressing concerns that not ‘all crimes (within the jurisdiction of the African Court) are, in fact, ‘international’ and ‘serious’ enough to warrant international prosecution’, contends that the crime of UCG would certainly meet those criteria:

The idea that regional customary law could serve as an appropriate legal basis for the selection of crimes that qualify for subject matter jurisdiction of a regional criminal court is interesting. But a thorough research into whether unconstitutional change of government indeed meets this standard is beyond the scope of this article. Moreover, I would hold that the category of crimes under the jurisdiction of the African Criminal Court is not exhausted by those offences that demonstrably belong to the realm of regional customary law.¹⁰⁶

All of the offences mentioned in Article 28A of the Malabo Protocol are subject of (regional) treaties in which states commit themselves to criminalize the conduct, render mutual assistance in criminal matters and pledge to either prosecute or extradite (*aut dedere, aut judicare*) those suspected of those offences that are found on their territory. The very fact that African states conclude treaties with a view to the common criminal law enforcement in respect of certain offences is proof that they share an interest in their suppression. Any decision to outsource such law enforcement to a regional court is a logical next step that is facilitated by the prior enactment of such treaties. After all, States are not prohibited by international law to establish a regional criminal court and equip this court with jurisdiction over crimes of common concern, provided that such offences are criminalized under their domestic law and the regional court does not apply the law retroactively.¹⁰⁷

¹⁰⁶A Abass, ‘Prosecuting International Crimes in Africa: Rationale, Prospects and Challenges’, *European Journal of International Law* (2013) (24) 3, 941
<<http://www.ejil.org/pdfs/24/3/2433.pdf>> accessed 26 January 2023.

¹⁰⁷For an extensive analysis of these regional suppression treaties, see: H. van der Wilt, ‘On Regional Criminal Courts as Representatives of Political Communities’, in Kevin Jon Heller *et al*, *The Oxford Handbook of International Criminal Law*, (Oxford: 2019).

CONCLUSION

In this paper, we have discussed the increased number of countries under military rule in Africa. The paper also went further to discuss the elements of UCG focusing on the aggravating factors especially maladministration of civilian governments of some African countries. In addition, the paper also discovered that since 2019, there has been an increase of countries coming under military rule in Africa, most especially, the West Africa sub-region. The various reactions of international organisations were also discussed. The AU is unique among continental organisations in that it has a framework against UCG that directs African states in their reaction to coups. The results of this study, however, unequivocally demonstrate that the AU framework has shortcomings, namely the degree to which the AU regularly responds to coups and other unlawful power seizures and its capacity to influence coup-born regimes and, consequently, deter others from planning similar power grabs. It could be time for the AU to fully execute its UCG policy beyond coup situations in order to fortify its frameworks.

If the AU had used its UCG against Mali's Ibrahim Boubacar Keita for trying to prolong his reign, there would have likely been no coup in 2020 and a stronger message sent to other potential plotters. It is evident that the AU has not consistently responded to UCG; her responses to Mauritania and Chad are prime instances of this. If Africa is to advance in the community of nations, the AU cannot treat UCG selectively. This study demonstrates that, as was the case in Mauritania and Burkina Faso, coups can and do thwart the process of democracy and democratic consolidation.

RECOMMENDATIONS

In view of the above discussions, the following recommendations are made. One, there should be elimination of the distinction between UCG and serious human right and democratic deficits. To do this, the sanctions applicable in UCG cases should also be applicable to cases of systematic violations of human rights and democratic principles. Additionally, the AU Peace and Security Council (PSC) should develop mechanisms for establishing close working relationship with the

African Commission and Court on Human and People's Right. Following on this, there should be the establishment of an expert group on the implementation of the AU norm on UCG as it supports in assessing and monitoring different elements of UCG on the continent. It has been proved over and over again that the sanction of suspending violators of UCG has not acted as enough deterrent, there should closure of borders against such nations states and blockages of trade. In addition, such nations could also be made pariah states. There must be no sacred cows amongst states that violate UCG as was done for Mauritania and Chad. Violators must be treated equally to serve as a clear signal that the AU abhors and rejects these undemocratic practices in its entirety.

However, if African countries are to use elections to consolidate and entrench democracy, they must take make certain that incumbent leaders are not able to first, change national constitution to eliminate term and age limits for presidents (as noted above) and other protections that guard the president against various forms of opportunism (as currently taking place in Zambia.¹⁰⁸ Second mandate registration are beyond the reach of many citizen; Third, interfere with freedom of the press to check on the government, provide citizens information about elections, and serve as platform for opposition to bring their message to voter; and four, use security forces to intimidate and strangle the opposition.¹⁰⁹

Effort must be made to ensure that all of a country's population group, including especially those which historically have been marginalized (e.g., minority religious and ethnic groups), are provided the wherewithal to participate fully and effectively in elections. In the words, African countries need to make certain that

¹⁰⁸S Sishuwa, 'How Zambia's Hard won Democracy may soon go up in Flames', (*Mail & Guardian*, 4 June, 2023)

<<https://mg.co.za/thoughtleader/2023-06-04-how-zambias-hard-won-democracy-may-soon-go-up-in-flames/>> accessed 25 July, 2023.

¹⁰⁹ Ibid.

elections are adjudged credible, not just by observer but also by each country's citizens.¹¹⁰

One concrete way to enhance electoral participation is to provide electors information about all the issue that must be decided by the elections. In most African countries, where most citizens are not fluent in their countries' national language e.g., French or English, the government should provide election-related information to citizens in a language that they can understand. For example, studies have determined that for South Africa various subcultures during elections. By expressly recognizing the language of each of its various ethno-cultural groups and providing them election information in their own language, the South African government of these group in elections and, as a result, in governance generally.¹¹¹

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¹¹⁰ JM Mbaku; Threats to Democracy in Africa: The Rise of the Constitutional Coup' *Brookings* 30 October, 2020 <<https://www.brookings.edu/articles/threats-to-democracy-in-africa-the-rise-of-the-constitutional-coup/>> accessed 25 July, 2023.

¹¹¹ *Ibid*

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