Popular Uprisings Leading to Change of Government: A Comparative Analysis of the African Union's Response Post-Arab Spring

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Declaration

I declare that this research report is my own unaided work. It is being submitted for the Degree Master of Arts (International Relations) to the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination to any other University.

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Miss M. C. Njomane

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Dedication

For my mother, Noxolo

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ACRONYMS

ACDEG	African Charter on Democracy, Elections and Governance
APRM	African Peer Review Mechanism
AU	African Union
AUPSC	African Union Peace and Security Council
CADSP	Common African Defence and Security Policy
ECOSOCC	Economic, Social and Cultural Council
ECOWAS	Economic Community of West African States
GNC	General National Congress
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
IR	International Relations
ISS	Institute for Security Studies
LAS	League of Arab States
NATO	North Atlantic Treaty Organisation
NEPAD	New Partnership for Africa's Development
NTC	National Transitional Council
OAU	Organisation of African Unity
PSC	Peace and Security Council
R2P	Responsibility to Protect
SADC	Southern African Development Community
TMC	Transitional Military Council
UCG	Unconstitutional Changes of Government
UN	United Nations
UNSC	United Nations Security Council
ZANU-PF	Zimbabwe African National Union – Patriotic Front

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Chapter 1
Introduction

1.1 Problem statement

The main objective of this research report is to investigate the seemingly intricate African Union (AU) legislative framework related to unconstitutional changes of government (UCG), especially where popular uprisings are concerned. The research report asks whether the AU has remained consistent in its response to popular uprisings, while maintaining a level of efficiency in the promotion of democracy and governance on the continent. This is chiefly because the existing legislative framework of the AU does not directly mention anything regarding the overthrow of governments by peaceful protesters, because the AU norm on UCG does not offer rules for determining the legitimacy of protests that force governments out. Questions about unconstitutional changes of government in Africa have increased with the growth in demonstrations intended to overthrow governments. These questions are linked to the concerns about their direct threat to the democratisation objective set up by the AU and various other sub-regional organisations, while also being a threat to peace and security. However, popular uprisings are and have always been important, as they are a full expression of people's power, especially on a continent that has a history of long-term authoritarian rule and control.

The threat of democratic regression is manifested by the popular uprisings which occurred between 2011-2019. Each of them triggered a series of different reactions from the AU. Additionally, there is the issue of the aftermath events such as navigating the elements of the repressive, corrupt and violent regime built by the dictator or new occupant government. Often this repression is caused by the lack of expertise from popular leaders emerging from the uprisings in how to navigate their new position and create a government to lead (Appiah-Mensah, 2019). However, it often looks like the AU does not seem to be demonstrating the same amount of urgency where popular uprisings are concerned, making the post-conflict transitional period tricky. Regional bodies such as the AU should be playing a crucial part in these events by providing guidance and stability to ensure that the people's legitimate demands have been met.

The responses to the popular uprisings in Egypt, Tunisia, Libya, Burkina Faso, Algeria, Sudan and Zimbabwe are examples of cases which have raised concerns about whether the AU is able to act decisively and effectively in its response to these popular revolutions and the political

vacuums that often follow them. On paper, the AU's commitment to a more stable and democratic Africa is solid, but when their commitment has to be put into practice through the institutions and legislative frameworks they have set up, many consider it ineffective. Whether this is true is something that this study wants to investigate.

To evaluate the effectiveness and the AU's application of their norm on unconstitutional changes of government after an uprising has occurred, the research report begins by framing all the relevant normative frameworks around unconstitutional changes of government. Furthermore, an evaluation of the AU's responses to uprisings in Tunisia, Egypt, Libya, Burkina Faso, Zimbabwe, Algeria and Sudan is conducted to illustrate how the AU responded to cases that went beyond the traditional notion of the AU's interpretation of UCG. These findings help establish if and how the AU's norm on unconstitutional changes of government has adapted to the phenomena of popular revolutions.

1.2 Background

Since decolonisation, Africa has had a long and turbulent history of popular protests and uprisings. In 2011 the popular uprisings in North Africa, formally known as the "Arab Spring," replaced the 1990s "African Spring" transitional period, which saw most authoritarian regimes on the continent collapse under the popular demand for democratic rule and respect for human rights. The 'success' of these uprisings is said to have exerted a slow-burning influence due to their domino effect on other regions on the continent. Protests of various degrees have erupted in more than a dozen African countries since then (Dersso, 2019:108).

The popularity of these events has raised the issue of state sovereignty and its role in international and sub-regional organisations. The norm around UCG is closely affiliated with the norm of state sovereignty, while incorporating newer principles such as the 'responsibility to protect' (R2P) phenomena. State sovereignty has been contested over time as a response to changing global values. For many years it was viewed as "the fundamental pillar of the international system" (Badescu, 2011:20) and as a "basic norm of international society" (Reus-Smit, 2001:519). During the time of the Organisation of African Unity 1963-2002 (OAU), state sovereignty was interpreted and applied differently, which sanctified state rights, consequently allowing African states to rule virtually with impunity. The OAU's principles emphasised equality of all member states, non-interference in their internal affairs and respect for territorial integrity. These three principles were emphasised within the organisation, but there were only

a few references to human rights, which states were responsible for. This interpretation of sovereignty left the OAU with a record of poor human rights, while the organisation continued to observe – and by proxy condone – atrocities being committed by their member states. When the African Union was established in 2002 to replace the OAU, a decision was made to move away from sovereignty as implying non-intervention to sovereignty as underlying responsibility, a landmark decision that would mark a significant step towards preserving and restoring democracy in Africa (Geldenhuys, 2012:53-59).

The working definition of sovereignty for this report is described by Makinda and Okumu (2008:17-18) as "empirical sovereignty" and defined as "the understanding that states have the right and ability to control the people, resources and all activities within their borders" (Farmer, 2012:94). It is understood as not being conferred on states by the international community, but rather centres on a country's capacity to manage its own political, economic, social and legal affairs. Therefore, the question is whether popular uprisings have their roots in the concept of the right to self-determination. Self-determination was first introduced as entailing the purpose of preserving national sovereignty against the external threats of colonial rule (Obse, 2014:824). But over the last few decades the continent has been challenged with a pattern of massive human right abuses, including genocides and crimes against humanity. This was in spite of the region-focused effort to remove the remnants of colonialism in order to promote the principle of self-determination on the continent which would foster the establishment of state sovereignty free from all forms of external interference.

Thus, various institutions were designed to prevent and respond to conflict on the continent, such as the African Union's Peace and Security Council (PSC). As mentioned above, the institutionalisation of sovereignty changed after the African Union replaced the Organisation of African Unity. The newly formed organisation adopted the very important Constitutive Act which underlines the organisation's legal and institutional framework under Article 4. Amongst the eighteen principles documented in the Constitutive Act, the ones which are most relevant to popular uprisings are respect for human rights, the rejection of impunity and unconstitutional changes of government, the sanctity of human life and democratic principles, good governance, and the right of the AU to intervene in a member state in case of grave circumstances (Dersso, 2011:35).

The difficulty for the African Union and its implementation of this particular policy has been distinguishing between legitimate popular uprisings against authoritarian leaders and unconstitutional changes of government; the latter refers to an internationally or regionally

recognised government which has been replaced by means other than an election. Since its establishment in 2002, the AU has been tasked with the responsibility to prevent, protect and resolve ongoing conflicts ranging from political violence to terrorism on the continent. Hence, when protests broke out in North Africa at the end of 2010, the main challenge for the AU was how they were going to respond to the popular uprisings and the resultant changes of government in a principled and consistent manner. At the moment the AU's response is triggered only when the military intervenes to overthrow a government and assumes leadership of the country. However, ten years ago the AU was faced with the challenge of how to respond when revolutions or popular uprisings trigger a military intervention, and whether this falls within the AU doctrine prohibiting unconstitutional changes of government.

The legislative framework behind UCG has a strong basis in the interpretation of the concept of threats to international security and peace within international law. Moreover, it follows the post-Cold War normative narrative of international law and international organisations in the defence of a constitutional order as well as the promotion of democratic governance. Its importance also lies in its prominence within the regional, legal and political order of the AU's framework. In the African context, the origin of this legislative framework is predominately associated with the shift in the 1990s from one-party and/or military rule to a system of government based on multi-party democratic elections (Dersso, 2016:1-2).

In the preamble to the Lomé Declaration, African leaders proclaimed that coups undermined the continent's steps towards democracy. Military coups were a normal occurrence in Africa before 1990, a period when most African leaders were removed from office through a military coup, political assassination or some other form of violent overthrow. It would seem that African leaders came to this conclusion after reviewing the various patterns of changes of governments and decided that constitutional channels were the only acceptable means of coming into power. The Lomé Declaration was then adopted in July 2000 at the start of widespread moves towards democratisation on the continent.

The Lomé Declaration defines what instances are considered UCG in four scenarios. These include: a military coup d'état, an intervention by mercenaries, the replacement of a democratic government by armed dissident groups or rebel movements, and the refusal of an incumbent government to relinquish power to the winning party after an election. Should an UCG be identified, the AU will condemn the act, suspend the member state and apply targeted sanctions if restoration of constitutional order is not reached within six months (Lomé Declaration, 2000).

The Constitutive Act and the African Charter on Democracy, Elections and Governance (ACDEG) of 2007 were then created as tools to achieve conflict prevention and stability on the continent. The Constitutive Act not only acknowledges that conflicts hinder socio-economic development, but also highlights the importance of peace, security and stability as the fundamental basis for development (Phakathi, 2018:131). The AU's Charter does not specifically mention anything regarding the overthrow of governments by peaceful protesters. The AU norms on responding to UCG do not offer rules for determining the legitimacy of protests that force down governments (Dersso, 2017:654). Although, some scholars do mention that while the AU's response is consistent with the ACDEG there is an absence of a policy specifically designed to respond appropriately to popular uprisings in terms of its normative framework and this raises further uncertainty concerning the AU's commitment to democracy. It is paramount for the AU to develop a policy relating to the conduct of governments, military institutions and relevant stakeholders in the event of popular uprisings (Ani, 2019).

Concerning the legitimacy of popular uprisings, the issue lies with developing guidelines which the AU can use to respond in a principled way to respond to similar events in the future. The Common African Defence and Security Policy (CADSP) of 2004 has come up with some considerations that they believe will help the AU in the development of their guidelines. The responsibility of the AU in addressing popular uprisings is split into two. First, the AU has a preventative role. This includes the implementation of initiatives and strategies to promote the norms and principles that constitute the shared values of the AU member states. Second, the AU has to respond to the uprisings and the cries relating thereto (Dersso, 2011:37-39).

In the wake of the Arab Spring, the instability, government crackdowns and the role of the military in popular uprisings have raised concerns about the AU's apparently inconsistence response. The AU has witnessed a total of seven different popular uprisings which resulted in the overthrow of ruling governments between 2010 and 2019. These are: Libya, Tunisia and Egypt in 2011, Burkina Faso in 2014, Zimbabwe in 2017, and Algeria and Sudan in 2019. Furthermore, some blame the AU of often favouring incumbent leaders during popular uprisings. In the case of Sudan, some critics accuse the AU of not responding to the government crackdown compared to how quickly they condemned the military overthrow of President Al-Bashir and went on to suspend the Sudanese Junta until power was handed over to the civilian government. The absence of a policy on popular uprisings in terms of a normative framework raises uncertainty about the AU's commitment to democracy (Ani, 2019).

The AU's response seems to be triggered only when the military intervenes to overthrow a government and assumes power itself. With the increasing number of popular uprisings on the continent, it is important for the AU to organise a summit to develop a coherent position on promoting peaceful and democratic transfers of power. Moreover, the AU needs to ensure that their position is air-tight in order to prevent opportunists and military/armed forces from exploiting the legitimate grievances of civilians (Ani, 2019).

1.3 Methodology and research design

The research report entailed conducting an analysis of the African Union and its responses to popular uprisings which have led to changes in government, using Libya, Egypt, Tunisia, Burkina Faso, Zimbabwe, Algeria and Sudan as case studies. The selection of cases includes all instances of popular uprisings which led to a change in government since the start of the Arab Spring in late 2010 until 2019.

The comparative case study approach is the preferred method for this research report because of its qualitative and explanatory nature. It will demonstrate trends, which will allow for deductions to be made in determining how and why the AU responds to situations of popular uprisings and deciding whether they can or should be categorised as unconstitutional changes of government. Furthermore, a case study design is ideal in this research report as it seeks to expand on and generalise the constructivist approach, in other words provide analytical generalisation, to test the assumptions of norm scholarship and particularly on the norm life cycle. Therefore, a case study is particularly useful when trying to analyse linkages between regional and sub-regional organisations as well as in deriving useful insights into the dynamics between these organisations and their approaches to peace and security issues.

The study assesses the parallels and differences in norm application as well as the AU's response in each case. This will include an evaluation of the trends and patterns in the organisations' ways of dealing with changes of government led by popular uprisings post-Arab Spring. Furthermore, the research report will examine the strengths and weaknesses in the AU's theoretical and practical framework. This research paper aims to offer insights into and an understanding of the conflicts in the region through an examination of some of the AU's main coercive tools (the African Union's Peace and Security Council, the Constitutive Act and the African Charter on Governance, Democracy and Elections) for maintaining regional peace and security, particularly in the light of the growing unrest on the continent.

The study is rooted in a qualitative research orientation, making use of both primary and secondary sources, with an inductive approach as this allows for insights to be derived and generalisations to be made (Neuman 2006:153-154; Yin, 2003:55). The preferred approach for the study is that it be descriptive and exploratory, with the aim of assessing the AU's policies and frameworks.

The research report is a comparative case study, using process tracing, which allows for the description of both political and social phenomena and the evaluation of causal claims. It helps analyse the trajectories of change and causation, because it requires each step in the observed phenomena to be described adequately (Collier, 2011:823). The process includes evaluating documents and declarations concerning each popular uprising being assessed in the specified time period, and analysing how the AU defined the event as well as their response to it. Key words such as "popular uprising", "conflict prevention", "African Union" and "peace and security" assisted in data search and allocation. Also, the report evaluates whether there has been an evolution or change in the nature of the responses over time.

1.4 Conceptual framework: norms in International Relations

Björkdahl (2002:13) explains that there are many different definitions for norms which often converge and overlap depending on philosophical traditions and academic schools of thought. However, a comprehensive definition would state that international norms are generalised standards of conduct that delineate the scope of states' entitlements, the extent of its obligations and the range of its jurisdiction. The notion of norms in International Relations has always concerned itself with how formal or informal institutional actors pass particular sets of rules and norms, whether through regulation, enforcement, monitoring, localisation, appropriation or contestation. On a basic level, norms operate at a community level and affect the behaviour of people in their everyday lives, thus governing the behaviour of people when they are around others. However, the way in which they develop, spread and become institutionalised in the international system and within states is a point of contention amongst different scholars with different approaches and desired outcomes. Norms can often be understood as tools to "make demands, rally support, justify action, ascribe responsibility, and assess the praiseworthy or blameworthy character of an action" (Kratochwil, 1984: 686), while also being understood in the international system as "providing solutions to coordination problems, reducing transaction costs, [and] providing a language and grammar of international politics" (Cortell & Davis,

2000: 65–66). An evaluation of the development of norms over the years can illustrate the process behind certain normative actions and how they operate within the field of International Relations.

1.4.1 Norm evolution

Over the last three centuries of the nation-state system the world has witnessed sweeping changes in what were broadly accepted standards of international behaviour. Practices such as institutionalised slavery and colonialism are now unheard of and have given way to general agreement on the right to self-determination (Florini, 1996:365). In the 1980s and early 1990s constructivist theories sought to establish a countervailed approach to the rational theories which had previously dominated the discipline of International Relations. Although constructivists were looking to reconceptualise the understanding of norms in world politics, these initial works were important because they laid a theoretical foundation for an approach to world politics which included the assumption that many aspects of politics are socially constructed. The development of constructivism was highly significant, because it established a very different approach to world politics than its more popular competitors: realism and liberalism. Its identity as a social theory (or a family of social theories) means it is held together by consensus on broader questions of social processes (Hoffmann, 2017:2-3). Bjorkdahl (2002:9) explains that the limitations with rationalist theories today is that they do not fully capture the influence of ideas, values and norms concerning the identities and interests of actors. Constructivists generally view norms as a set of intersubjective understandings and collective expectations regarding the proper behaviour of states and other actors in a given context or with a specific identity. Furthermore, they encompass a collective evaluation as well as future expectations of behaviour in determining what ought to be done (Bjorkdahl, 2002:15). As norms began to expand, different scholars came to view norm change differently. Some saw it as a process where influence from various sources push norms as a type of global culture or something that is widely shared. Notable scholars who share this view are Meyer, Boli, Thomas and Ramirez (1997) and Farrell (2005). Others believe norms pass along a range of stages, notably Finnemore and Sikkink (1998) and their work on norm emergence, norm cascade and norm internalisation (Romaniuk & Grice, 2018:1).

This study draws particularly on the work of Finnemore and Sikkink (1998) in seeking to understand how norms emerge, spread and become internalised by international and regional organisations. Norms and norm evolution theory have previously been applied to the study of states and international organisations such as the United Nations (UN). They are understood to

set and reset the standards of behaviour amongst actors in the international system, and an understanding of their functionality in the international system is imperative. Additionally, the study of norms and norm evolution has been applied in matters of human rights and humanitarian assistance. The most noteworthy cases are the norm of R2P and the UN's role in forming global norms (Karlsrud, 2015). Romaniuk and Grice (2018:2) add that norm evolution has been very useful in the study of sovereignty and territorial integrity. The most notable example is the study of taboo weapons such as nuclear, chemical and biological weapons. These examples illustrate that the study of norms has been applied to social, political, economic and legal matters and cases of many types.

Norms are usually portrayed as regulative, constituting or enabling actors in their environment, although the most common distinctions are between regulative and constitutive norms. Regulative norms have gained attention amongst scholars as they are usually used to prescribe, proscribe and order behaviour. These norms function like standards that inform a proper enactment of an already defined identity and establish rights and obligations (Jepperson et al., 1996:53). Bjorkdahl (2002:15) explains that a good analogy to explain regulative norms and make sense of them is 'rules of the road.' This is to say that these norms influence policy because they could serve as guides to behaviour on the road – a responsibility that "derives from the need of individuals to determine their own preferences or to understand the causal relationship between their goals and alternative political strategies by which to reach those goals" (Goldstein and Keohane, 1993:12). Constitutive norms, however, create new actors, interests and categories of action. They give meaning to action, which is a complete contrast to regulative norms. In some cases, norms can be seen to present 'constitutive effects' whereby the norms define the identity of the actor, therefore specifying what actions will cause relevant others to recognise a particular identity (Jepperson et al., 1996:54). In consequence, norms are directly related to collective identities and are observed together with self-interest, meaning that norms and interests are mutually constitutive.

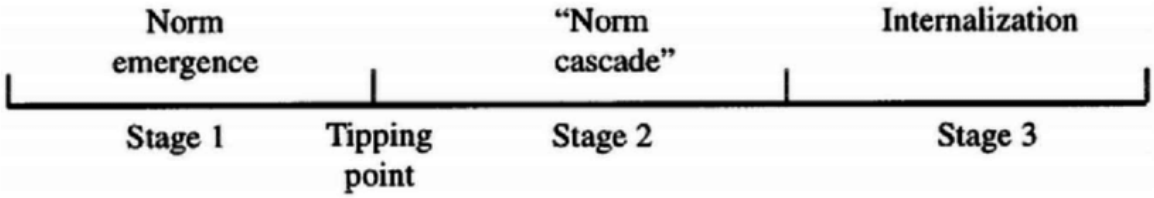
1.4.2 Norm life cycle and norm diffusion

Finnemore and Sikkink (1998) developed a framework known as the "norm life cycle" whereby norm entrepreneurs work to persuade states of the appropriateness of a new norm and the same entrepreneurs function as a catalyst for a cascade of new normative understandings (Hoffmann, 2017:4). They define a norm as a "standard of appropriate behaviour for actors

within a given identity." Amongst some of the conceptual challenges is the important distinction between norms and institutions. The concept of institutions is usually related to sociological studies and an institution is defined as "a relatively stable collection of practices and rules defining appropriate behaviour for specific groups of actors in specific situations" (Finnemore and Sikkink, 1998:891). While norms hold the ability to change despite the level of unpredictability that exists with that, they also possess considerable power and potential to channel and regularise behaviour, often limiting the range of choice and constraining actions. Norms often overlap with other abstracts and elusive terms in social sciences such as shared ideas and expectations as well as "beliefs about appropriate behaviour [that] give the world structure, order, and stability" (Finnemore & Sikkink, 1998:894).

The notion of the "norm life cycle" explains that "in an ideational structure, idea shifts and norm shifts are the main vehicles for system transformation" (Finnemore and Sikkink, 1998: 894). The life cycle is centred around a three stage process. The first stage covers norm emergence with the random rise of norm entrepreneurs who decide that something has to be changed. At this stage domestic norms are regarded as the most influential. These norms usually use existing organisations and/or norms as a platform to proselytise, which then allows for the issue to reach a wider audience. Thus, we see how states adopt a norm for domestic political reasons and if enough states follow suit, a "tipping point" is reached whereby domestic factors become less important and international dynamics become the focal point. The second stage addresses norm cascade and how states adopt norms in response to international pressure even if there is no domestic coalition pressing for the adoption of the norm. This is done to enhance domestic legitimacy, conformity and esteem needs. The third stage covers norm internalisation and how these norms are internalised over time. Eventually the conformity becomes natural and the presence of a norm is unrecognisable (Finnemore & Sikkink, 1998:901).

Figure 1: Norm Life Cycle



Source: International Norm Dynamics and Political Change. Finnemore & Sikkink, 1998:896

As mentioned above, norm development and the understanding of that development is important because those norms are known to set and reset standards of appropriate behaviour among actors in the international system. Some examples include the decolonisation process, the abolition of slavery, the promotion of human rights and gender equality. Thus, the function of norms across the international system has gained a great deal of attention within the International Relations (IR) school of constructivism.

It is from this "norm life cycle" that Acharya (2004) identifies two perspectives of norm diffusion. The first wave of scholarship on norm change refers to moral cosmopolitanism and has three main features. First, the norms which are being propagated are usually universal such as a ban on chemical weapons or a campaign against land mines. Second, the key actors who spread these norms are referred to as transnational agents irrespective of whether they are "moral entrepreneurs" or social movements. Third, "moral proselytism" is concerned with conversion rather than contestation (Acharya, 2004:242). This first wave of scholarship is responsible for two unfortunate tendencies. First, it promotes superiority to "international prescriptions" and completely ignores the appeal of "norms that are deeply rooted in other types of social entities in regional, national and subnational groups." This informs a dichotomy between good universal norms and bad global or regional norms. Thus, norms which make a universalistic claim about what is good are more desirable and are likely to succeed than norms that are localised. Second, moral cosmopolitanism views norm diffusion as *teaching* by transnational agents, thus downplaying the important active role played by local actors. Acharya notes that this perspective captures a small but significant part of norm dynamics in world politics (Acharya, 2004:242).

The second perspective of norm diffusion stresses the role of domestic political, organisational and cultural variables in dealing with the reception of new global norms. It subscribes to the notion of congruence, which describes the fit between international and domestic norms as opposed to the degree of fit between two competing norms. A key example is Legro's notion of "organisational culture." Here Legro (1997:32) argues that the focus on international norms has often misguided the way we interpret their range. He explains that this emphasis has caused an oversight in norms which are rooted in other social entities on a national, regional and sub-regional level. The oversight becomes destructive because it fails to address how international norms are internalised differently by different actors at the various sub-levels. And so Legro suggests the efficiency of an organisational culture, which focuses on the arrangement of assumptions, ideas, and beliefs of the way that a certain group should adapt to its external

environment, while managing their internal affairs, influences and calculations. This approach thus focuses on "norms" that prevail in certain organisations (Legro, 1997:35-36).

The norm life cycle is the most fitting when trying to make sense of the international system and the behaviour of actors within this system. Furthermore, the chosen framework is effective in describing how norms emerge, spread and become internalised by international and regional organisations. In an attempt to offer insights into and understanding of the conflicts in the region, an examination of the AU's main coercive tools for regional peace and security as well as their application needs to be evaluated. The chosen theoretical framework will allow for the assessment of the prominence of the AU norm on UCG and how the regional actors react or take action when norm-breaking behaviour has occurred. Fundamentally, how does the AU respond to cases of unconstitutional changes of government as a means of popular uprisings?

1.5 Limitations on the study

The limitations of this research report refer to practical aspects which include limitations on the length of the thesis. The topic being explored is fairly new and some of the political processes of the chosen case studies were ongoing while research was being conducted. As such there were certain limits the researcher had to navigate with regards to data collection and the sources used to obtain said data. Furthermore, as a single observer the researcher's challenge to remain objective should also be taken into account.

1.6 Structure of the thesis

This first chapter has outlined the background of the study and presented the problem statement focusing on the AU's normative framework and its response to popular uprisings as applied to the relevant case studies, namely: Tunisia, Egypt, Libya, Burkina Faso, Algeria, Zimbabwe and Sudan. This chapter has also highlighted the work of Finnemore and Sikkink on the norm life cycle, which will serve as the main theoretical framework for this research report. The chapter also outlined the methodology and research design.

Chapter Two will investigate the background to the AU's framework for responding appropriately to unconstitutional changes of government, while also providing a review of the AU's tools pertaining to peace and security such as the Constitutive Act, the Charter for Democracy, Elections and Governance, and the AU's Peace and Security Council. The chapter

will also evaluate how the conceptual framework of the norm life cycle applies to the AU's norms on UCG.

Chapter Three will present the seven case studies and give an account of the AU's response when each popular uprising took place. The chosen case studies are Tunisia, Egypt, Libya, Burkina Faso, Algeria, Zimbabwe and Sudan.

Chapter Four will analyse the cases studies presented, augmented by arguments presented by scholars concerning the AU's response to UCG. Moreover, it will investigate and discuss any existing gaps in the AU's normative framework that could possibly hinder its performance.

Chapter Five will provide a summary of the thesis's findings. Furthermore, it will explore the implications of the development of AU ideology concerning unconstitutional change of government and provide recommendations for further research on the topic.

Chapter 2
Literature Review: The Evolution of the AU norm on UCG

2.1 Introduction

To understand a framework within an institution such as the AU, it is also important to fully understand how and why it developed. Therefore, this chapter will discuss the AU's normative framework when confronted with unconstitutional changes of government in depth by examining the history upon which it developed. It will explore the evolution of the AU norm for responding to UCGs by consulting the AU's organs, legal instruments and their application of them.

2.2 Historical overview of the AU's framework on unconstitutional changes of government

The originators of the contemporary African Union and the writers of the Constitutive Act are rightfully commended and praised for the paradigm shift of the regional body from the outdated and unresponsive Organisation of African Unity. The African Union has witnessed a number of introductions and reconfigurations of their policies and frameworks since its establishment, many of which have had to evolve to ensure their relevance and ability to deal with the issues on the continent.

2.2.1 The Harare Decision

The military coup of 25 May 1997 in Sierra Leone inspired the Harare Decision which was adopted by the OAU, becoming one of the key bases for the normative framework on dealing with unconstitutional changes of government. The government of President Ahmed Tejan Kebbah was overthrown after he was elected president in March of 1996. The rule of law in Sierra Leone completely collapsed after a few members of the Sierra Leone Army (SLA) formed the Armed Forces Revolutionary Council (AFRC). In the Decision the OAU outlined that they "strongly and unequivocally condemn the coup d'état which took place and in Sierra Leone and calls for the immediate restoration of constitutional order" (OAU, 1997). The international community, which included the Commonwealth, the European Union, the United Nations and various others, also condemned the coup. This was also the first time the OAU

was able to achieve unanimity on the question of refusal to recognise a new regime, making this a monumental accomplishment on the OAU's part and an important stepping stone for the organisation itself (Gberie, 1997:149).

2.2.2 The Algiers Declaration

Two years after the Harare Decision was put in place, the OAU again met in 1999 in Algiers, Algeria to discuss the issue of how to deal with unconstitutional changes of government following the military coups d'état in Comoros, Congo Brazzaville, Guinea Bissau and Niger. In their declaration the OAU emphasised their commitment to promoting the continent's legitimate rights and "in the peoples and nations of the continent the universal principles of the right of peoples to be the architect of their own destiny, the right to self-determination and independence, as well as the principle of the sovereign equality of states and their right to development" (Algiers Declaration, 1999). Furthermore, the assembly called for the practise of good governance and the restoration of constitutional order on the continent. Like the Harare Decision in 1997, the Algiers Decision did not bring about actual structural change with the OAU's policy framework, but it was able to act as an important cornerstone for the ground-breaking Lomé Declaration which followed.

2.2.3 The Lomé Declaration as a policy framework for dealing with unconstitutional changes of government

The Lomé Declaration was adopted in Lomé, Togo following the OAU's 36th Ordinary Session of the Assembly of Heads of States and Governments in July 2000. The adoption proceeded a review by the organisation of the political developments on the continent and the state of consolidating democracy in Africa. The OAU expressed their "concern about the resurgence of coup d'état in Africa [. . .] and recognize[d] that these developments are a threat to peace and security of the Continent and they constitute a very disturbing trend and serious setback to the on-going process of democratization in the Continent" (OAU, 2000). Its adoption was a further commitment to continue the promotion of good governance, democracy and constitutionalism in Africa. This framework was a major step forward in addressing and responding to unconstitutional changes of government following the resurgence of coups d'état across the continent. Furthermore, the adoption of the Lomé Declaration was important because not only was it a step towards building a constitutional democracy in African countries, but it

also forced member states to show their commitment to the vision set out by the OAU since many of the member governments had come into power as a result of coups. There is no one clear definition concerning unconstitutional changes in government, but rather the AU has provided guidelines as to what constitutes as an unconstitutional change of government according to their many legal instruments such as the Lomé Declaration of 2000.The Lomé Declaration provided for the first time an indication of what actions would constitute an unconstitutional change of government, including: a military coup d'état against a democratically elected government, an intervention by mercenaries to replace a democratically elected government, the replacement of democratically elected governments by armed dissident groups and rebel movements, and the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections (Lomé Declaration, 2000).

To further strengthen the objectives relating to dealing with unconstitutional changes of government, the newly formed AU adopted The African Charter on Democracy, Elections and Governance of 2007.The Lomé Declaration and the ACDEG work together to set out a range of guiding principles and common values for the AU. Some of these include, but are not limited to, respect for democratic rights (such as free, fair and regular elections and democratic change); institutionalism which upholds transparency, accountability and respect for the constitution; separation of powers and independence of the judiciary; and condemnation and total rejection of unconstitutional changes of government (Lomé Declaration, 2000; AU, 2007). Maru (2012:68) explains that the co-existence and co-dependence of these two documents is important because while the Lomé Declaration mainly focuses on *how* governments came into power in order to prevent groups or individuals from coming into power unconstitutionally or undemocratically, the ACDEG zeros in on the issue of individuals and groups remaining in power through constitutional means, both legally and democratically, taking it one step further than the Declaration.

2.2.4 The Constitutive Act

The Constitutive Act ("The Act") was adopted in July 2000 following the meeting in Lomé, Togo. It fully entered into force on 26 May 2001, after it had been ratified by two thirds of the member states of the OAU (Maluwa, 2012: 2). The Act recognises and acknowledges that conflicts on the continent have a direct impact on socio-economic development. It stresses that

peace, stability and security on the African continent form part of the foundations of basic development. Also, the Act's objectives include the promotion of good governance, social justice, gender equality and good health. These objectives are reaffirmed in Articles 3 and 4 (The Constitutive Act, 2000:5-6; Phakathi, 2018:130-132; Corinne & Rukare, 2002:372). The introduction of The Act was hugely significant because its objectives were the complete opposite of those of the OAU's Charter, which mostly prioritised the principles of self-determination, sovereignty and non-interference in domestic affairs. Now, at the introduction of this framework member states of the AU had pledged to respect sovereign rights except in circumstances of human right abuses, war crimes and genocide (Michael Vunyingah, 2011).

The Act is there to ensure that the AU commits to its promise of protecting the rule of law as well as democratic institutions and culture. It also acts as a tool for AU members to accelerate political and economic integration on the continent, while committing to the development of a common defence and security policy to defend sovereignty as well as territorial integrity and state independence (Williams, 2011:3). As such, unconstitutional changes of government involving coups are unacceptable, because with them come instability and insecurity. The Act requires member states to commit to democratic principles, human rights and principles of good governance, while promising to condemn and reject unconstitutional changes of government in member states. The prohibition of unconstitutional changes of government is an especially important part of the Act and thus all governments have an obligation not to recognise any government which comes into power through unconstitutional means. Moreover, the Act encourages member states to uphold the promise of democracy and good governance in the hope that any opposition party would know their legitimacy would only be recognised if they came into power through constitutional means (Phakathi, 2018:130-132).

The Act is an important tool for the AU because it has redefined sovereignty. Before, member states had the ability to do whatever they pleased with regards to their people and government. Furthermore, Article 4(h) clearly states the "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity" (The Constitutive Act, 2000:7; Corinne & Rukare, 2002:372). Where UCGs are concerned, the Act specifically stipulates suspension to be applied in the event of a breach. Article 30 states: "Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union" (The Constitutive Act, 2000:17).

This is a major shift when compared to the OAU Charter of 1963, which primarily focused on a policy of non-interference in the internal affairs of member states. The Act introduced an era where the sovereignty of a state can and will be overridden to ensure that the principles of democracy and good governance are being implemented. This new focus promotes a culture of increased inter-African engagement in order to protect civilians from human rights violations, genocide, war crimes and crimes against humanity (Maluwa, 2012:2-3). Repressive states can no longer hide behind domestic sovereignty as a rationale, because human rights transcend borders (Kuwali, 2010).

2.2.5 The AU's Protocol concerning the Peace and Security Council

The African Union's Peace and Security Council (PSC) works within the AU as one of the instruments and operates as a standing organ for prevention, management and resolution of conflicts. The Protocol was adopted on 26 December 2003 under Article 5(2) of the Constitutive Act, but it was only officially inaugurated on 25 March 2004 as the AU's central organ responsible for African peace and security. One of the objectives outlined in Article 3 is to promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedom, and ensure respect for the sanctity of human life and international law as part of its efforts to properly prevent conflicts. Furthermore, in accordance to Article 7 the PSC is able to impose sanctions whenever an unconstitutional change of government has occurred in a member state (Mulikita, 2010:150).

A need for such an instrument emerged following a series of debates in Kampala (1991), Dakar (1992) and Addis Ababa (1993), when members of the OAU decided against the organisation launching peacekeeping operations, but rather favoured an approach which they believed would reduce the need for peacekeeping on the continent. As such, the Mechanism for Conflict Prevention, Management and Resolution of 1993 was launched by the OAU. Once a decision to dismantle the organisation was taken at the 37th Ordinary Session of the Assembly in Lusaka July 2001, the new African Union drafted an ad hoc process of the old Mechanism for Conflict, Prevention, Management and Resolution now known as the PSC Protocol (Williams, 2009:604-605).

The PSC is made up of fifteen members who are chosen by the Executive Council on the basis of regional representation and rotation. The main criteria for selection include respect for constitutional governance, the rule of law and human rights, as stated in the Lomé Declaration

(African Charter, Article 5(2)). Five members are elected for three years, while the other ten are elected for two years. In addition to the member states, the PSC allows for other states and entities to participate in meetings in the case of open sessions (Williams, 2009:608-609).

As part of a broader framework the PSC is also supported by other institutional instruments, including:

1. The Commission of the African Union through the Chairperson and the Commissioner for Peace and Security. This department is crucial for maintaining peace and security measures and its central divisions are: peace support operations, conflict management, defence and security, the Secretariat to the PSC, and thr Darfur Integrated Task Force (DITF);
2. The Panel of the Wise, comprised of five members selected on the basis of regional representation to serve for three years;
3. The Continental Early Warning System (CEWS) to facilitate the anticipation and prevention of conflicts;
4. The African Standby Force (ASF) composed of five regional brigades and support from the Military Staff Committee responsible for providing suggestions and solutions to military-related issues to the PSC before decisions are taken;
5. A Special Peace Fund to provide the necessary financial resources for peace support missions (Aning, 2008:4-5).

2.2.6 The African Charter on Democracy, Elections and Governance

The African Charter on Democracy, Elections and Governance (ACDEG) was adopted on 30 January 2007 but entered into force only on 15 February 2012 and is anchored in the Constitutive Act of the African Union. It was adopted on the premise that conflicts on the continent were caused by many factors, notably the lack of democratic practices, the non-observance of human rights and unfair electoral processes. As such, the ACDEG's function as an AU instrument is to ensure that free, fair and credible elections are held, that there is a building of democratic institutions, and that the rule of law is protected and practised on the continent. The ACDEG looks to work "relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries [and] strengthen and consolidate institutions for good governance, continental unity and solidarity" (African Charter on Democracy, Elections and Governance, 2007). It reflects the shared values and norms of the AU, its member

states as well as the Act to ensure that states comply and follow through the application of sanctions listed in article 23 of the Constitutive Act against states that fail to adhere to the principles and policies set out by the AU (Kioko, 2019:41).

This exclusive AU instrument consists of 11 chapters, which can be split into two groups. Group one contains the operational chapters (1, 10 and 11) and group two contains eight chapters that deal with the substantive part of the Charter (2-9) (African Charter on Democracy, Elections and Governance, 2007:2-19; Aniekwe et al., 2019:12).

What makes the ACDEG unique is its ground-breaking commitment to good governance, a participatory democracy and ensuring the frequency of credible and transparent elections managed by independent electoral bodies. It reflects the shared values and norms set by the AU and its member states regarding democracy by working together with the AU's Constitutive Act, while also combining the efforts of previous frameworks, namely the Harare Decisions, the Algiers Declaration, and the Lomé Declaration (Kioko, 2019:41; Engel, 2019:131). It further enunciates the elements contained in the Act and the Lomé Declaration, while focusing mainly on strengthening relevant sanctions of the AU norm on UCG and making additional ones available.

The ACDEG follows 18 previous instruments and frameworks, including the New Partnership for Africa's Development (NEPAD) and African Peer Review Mechanism (APRM). The AU's introduction of the NEPAD was designed as an elaborate plan to foster economic development in Africa on the basis of accelerated growth and an emphasis on developmental features such as infrastructure, aid, and trade and market access. Essentially, the objective was to change the narrative that underpins Africa's development in the eyes of the North and the donor community (Landsberg, 2012). The APRM is a specialised tool within the AU used for "sharing experiences, reinforcing best practices, identifying deficiencies, and assessing capacity-building needs to foster policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration" (AU, 2019). It creates a space for dialogue amongst member states and functions as an opportunity to build consensus around issues of governance and socio-economic indicators. Unlike previous instruments, the ACDEG recognises unconstitutional changes of government as being a contributing factor to insecurity, instability and conflict on the continent. By doing so, it has added value to the AU norms, while enhancing the substance of AU responses to any UCG that may occur in the future (African Charter, Article 25(5)).

In summary, this research report considers that the Lomé Declaration of 2000, the Constitutive Act of 2000, the Peace and Security Council of 2003 and the African Charter on Democracy, Elections and Governance of 2007 operate as the main pillars within the African Union because they act as robust normative frameworks for responding to cases of unconstitutional changes of government. These main pillars support the AU in offering an overview of the processes which it may take in the case of an unconstitutional change of government.

2.3 Conceptual framework in practice

In seeking to examine the effectiveness of the African Union's response to popular uprisings, the thesis applies the conceptual framework to the AU's legal tools. Conceptually, the abovementioned instruments of the African Union can be explained in the light of Finnmore and Sikkink's (1998) work around the norm life cycle. The study finds that the normative framework around the Lomé Declaration has evolved as needed over time. Liberal political scientists and important actors within the AU are identified as norm entrepreneurs as they are driven by their joint commitment to a democratic Africa and one that prioritises its good governance agenda. Evidence of norm emergence can be traced back to 2000-2002 during the period when the OAU/AU member states committed themselves to the human rights agenda stipulated in the Constitutive Act and the PSC. Engel (2019:136) posits the view that the conditions supporting the motives for a norm cascade within the AU are not strong enough. So, while the Charter was successfully adopted by the AU Assembly, the mechanisms of socialisation, institutionalisation and demonstration were not fully interlocked. According to Finnemore and Sikkink's framework, it would seem that many member states demonstrate eagerness towards adopting norm change or rather they feign interest in order to look compliant, but they fail to follow through with the cascade and internalisation phase.

2.4 AU's historical response to unconstitutional changes of government

The common narrative concerning the AU's historical response to unconstitutional changes of government has been somewhat negative. According to Omotola (2010:52), various international actors, including regional and international organisations have responded differently to unconstitutional changes of government in the past. Engel (2010) further explains that these responses are usually dependent on the interest and/or issues involved and that these responses have been mostly structured by the regulatory norms and values of the affected

organisation. Many scholars argue that the mere existence of a framework does not challenge the legitimacy of incumbent leaders nor does it question their ascension to power, effectively defeating the purpose of democratic governance. It should be the AU's priority to question those leaders who came into power before the framework was put into place as a form of preventative tool.

Africa's postcolonial history has seen more than 200 unconstitutional changes of government, many of them in the form of military coups. It was evident that these coups were stunting democratic development on the African continent and forced leaders to take collective action in order to end the tradition whereby those who managed to seize control of a country through force were recognised as legitimate rulers of a country. Part of the problem was the OAU's attitude towards unconstitutional changes of government as they previously regarded them as inevitable within the jurisdiction of member states (Odinkalu, 2008).

2.4.1 Classification of unconstitutional changes of government

Manirakiza (2016) identifies two major forms of unconstitutional changes of government in Africa: the classic ones which rely on the use of force and violence, and the soft ones which do not entail the use of force or violence, at least not directly. Usually, the classic ones are identified by the use of violence to overthrow a legitimate and democratically elected government, popularly referred to as a coup d'état. This is the most recognised and common form of unconstitutional change of government in post-colonial Africa (Manirakiza, 2016:92).

Softer cases of unconstitutional changes of government refer to cases where there is a refusal to relinquish power after the loss of elections, or when there have been amendments to the constitution or other electoral laws to guarantee an additional term for an incumbent president, government or political power (Manirakiza, 2016:93).

Since the creation of the UCG framework, the AU has condemned the following coups: Central African Republic and Guinea-Bissau in 2003; Mauritania and Togo in 2005; Mauritania, Madagascar and Guinea in 2008; Côte d'Ivoire in 2010; Mali and Guinea-Bissau in 2012; Central African Republic, Egypt and Guinea-Bissau in 2013, and Burkina Faso in 2015. It suspended these member states and/or implemented sanctions. The implementation of sanctions is not the only tool in the AU's arsenal as will be discussed in a later section (Zamfir, 2017:1-2). However, the AU has not been consistent in the way they have responded to election or coup controversies across the continent. For example, the AU enforced travel, diplomatic

exclusion and the freezing of foreign assets in Togo (2005), Guinea (2008) and Madagascar (2010) for reasons they referred to as 'unconstitutional transfers of political power', while similar cases in São Tomé and Príncipe (2003) and Côte d'Ivoire (2010) were only condemned, with the states being encouraged to work towards a peaceful settlement/transition (Yihdego, 2013). The implication is that rebel or coup leaders who assumed power before 2007 when The African Charter on Democracy, Elections and Governance was adopted are still incumbent heads of states. Thus, there is a dichotomy which interferes with and complicates the Charter's moral position.

According to a report by the Peace and Security Council through the Institute for Security Studies, the AU has responded differently to popular uprisings, mainly because of the multitude of ways that the said uprisings lead to regime change. The pattern identified by many scholars is that the AU seems to treat the direct influence of the military ousting of government differently from scenarios where the popular uprisings are what seem to trigger a military-led regime change (ISS PSC Report, 2019). The thesis will go into greater detail on this observation in the following chapters.

Where military coups are involved, the response is usually condemnation, calling on insurrectionists to revert back or follow instructions to conduct elections within six months. Prior to the Arab Spring, in the case of Niger (2010), Omotola (2011) explains that the AU's response was an immediate suspension of the country as well as the special envoy at the request of ECOWAS, but no sanctions were implemented immediately. In Mauritania (2008), however, the AU not only called for the country's suspension, but they also imposed sanctions in the form of a travel ban on civilians and the military junta, a systematic ban on visas and regular checks on bank accounts. The suspension was lifted on 29 June 2009 by the AU before elections could take place – a move that further consolidated General Mohamed Aziz's grip on power, thus raising doubts and concerns about the AU's ability to handle these situations should they occur. The situation in Mauritania reveals several contradictions in policy responses. When the AU agreed to lift their sanctions, ban and suspension in preparation for the elections, which General Mohamed Aziz won, it exposed a paradox in the AU's protocol which in fact prevents any member of the military junta from taking part in the transitional process of a country (Omotola, 2011:33-35).

Looking at the way that the AU has responded to popular uprisings or democratic revolutions, as they were sometimes called in the past, Derrsso (2019:122) explains that the issue in examining popular uprisings is whether they are consistent with the AU's doctrine on

unconstitutional changes of government. Despite the AU having various response mechanisms at their disposal, those mechanisms and norms do very little in offering systematic and specific guidance on how to response to popular uprisings.

2.5 AU response mechanisms to deal with unconstitutional changes of government

2.5.1 Condemnation

The AU makes use of several steps when responding to unconstitutional changes of government. The first step is the condemnation of the UCG. This is done to express a legal and political position that the UCG is unlawful and the new regime now in power lacks any legal basis and political legitimacy. Dersso (2017) explains that the condemnation should be both immediate and public in order for it to have its intended effect. This is usually done by the Chairperson of the AU and the Chairperson of the AU Commission through a press conference or communiqué. Once a statement declaring condemnation has been made, the AU/PSC will call for a restoration of the constitutional order. The first case of a UCG where a statement was released expressing condemnation was the coup of 1997 in Sierra Leone. Since then there have been other events in various places condemned by the AU, including: São Tomé & Principe (2003), Madagascar (2003, 2009), Central African Republic (2003, 2013), Guinea Bissau (2003, 2012), Togo (2005), Mauritania (2005, 2008), Guinea (2008) and Niger (2010) (Dersso, 2017:647-648).

2.5.2 Suspension

After the initial response of condemnation, the PSC will follow with the suspension of the member state where the UCG has taken place. In accordance with Article 30 of the Constitutive Act, once a statement declaring condemnation has been made, the perpetrators should be given a six month period to restore constitutional order, all while the new regime is suspended from participating in AU member activities and policy organ meetings (The Constitutive Act, 2003; African Charter on Democracy, Elections and Governance, 2007:10). The act of suspension does not affect the membership of the country, but rather the states' diplomatic privileges and membership rights. Article 23(1) of the Constitutive Act extends suspension further into the privileges of membership such as participation in AU meetings, the right to vote or the right to present candidates for any AU position and professional post and the right to benefit from activities or commitments provided for by the Union. The use of suspension is the most

commonly used form of sanction by the AU and thus far it has been applied against CAR (2013), Togo (2005), Mauritania (2005, 2008), Guinea (2008), Madagascar (2002, 2009), Niger (2010), Côte d'Ivoire (2011), Guinea Bissau (2012), Mali (2012) and Egypt (2013) (Dersso, 2017:648-649; Nathan, 2016; Manirakiza, 2016:99).

2.5.3 Targeted sanctions

In the event where condemnation and suspension along with other diplomatic initiatives have failed to convince the new illegal regime to stop their actions and restore the constitutional order, the AU will make use of additional targeted sanctions to try and persuade the perpetrators. These sanctions can range from visa denials, travel bans, restrictions of government-to-government contacts and the freezing of assets. States where some of these sanctions have been applied are Togo (2005), Comoros (2007), Mauritania (2008), Madagascar (2009), Niger (2010), Guinea Bissau (2012), Mali (2012) and the CAR (2013) (Manirakiza, 2016:100).

2.5.4 Peace-making Initiatives

The prohibition of UCG by the AU supports the combined effort of enforcement measures and diplomatic and mediation intervention techniques to stimulate resolution of the constitutional crisis and the return of the country back to its political and constitutional normalcy. The organisation's preferred choice of peace-making initiative is usually mediation, even though the AU does not have a specific mode of mediation. The goal is to restore constitutional order in the country. Most of the AU's peace-making initiatives are reactive, but the organisation has taken steps to include more effective early warning and preventative institutions in their policy toolkit. While the CEWS is still in its infancy, there has been progress with an observation and monitoring centre with a fitted situation room in Addis Ababa for data collection, analysis and process. Although there has been the establishment of institutions such as CEWS, there is still plenty of groundwork that still has to be done, mainly better training of their analysts and an appropriate information system structure to gather better results (Williams, 2011:9).

2.5.5 Military intervention

Finally, the last step the AU will implement is military intervention, although it is very rarely applied. The main reason is that deploying troops against the will of the affected state must meet the threshold of atrocity crimes as listed in Article 4(h) of the AU's Constitutive Act. The reason is that the AU's policy and practice on conflict resolution, which favours mediation and consolidation as guiding principles. There was one situation in Comoros (2008/09) which involved the deployment of 1,800 AU troops and 1,500 soldiers of the Comorian National Army on 25 March 2008 to undertake Operation Democracy. The intervention came after targeted sanctions by the AU imposed a year before ceased to work and Senegal, Sudan, Tanzania and Libya voted in favour of contributing troops and resources (Dersso, 2017:652; Manirakiza, 2016:102).

Above all, interventions usually fail to address the root causes of the clash. Their primary functions are to end conflicts and prevent contributing conditions from spreading beyond the borders of the conflict. Thus, where the AU had failed to place effective measures after the conflict, a reoccurrence of a clash is almost inevitable. (Akokpari, 2016:150).

2.6 Conclusion

In summary, the African Union has developed its legal framework to signify the end of the political order of the Organisation of African Unity and in response to new African politics in the 21st century. This includes the elaborate frameworks of the AU Constitutive Act of 2000, the Lomé Declaration of 2000, the Peace and Security Council of 2003, and the Charter on Democracy, Elections and Governance of 2007. The chapter also explored the different response mechanisms at the AU's disposal in the event of an UCG.

The next chapter assesses the responses of the AU to popular uprisings as unconstitutional changes of government. Using a number of case studies the responses by the AU are discussed in some detail.

Chapter 3

Popular Uprisings after the Arab Spring: Case Studies

3.1 Introduction

Since the Arab Spring the African continent has seen seven (7) popular uprisings which led to a change in government namely: Tunisia (2011), Egypt (2011), Libya (2011), Burkina Faso (2014), Zimbabwe (2017), Algeria (2019) and Sudan (2019). Responses from the AU were mixed. This chapter will explore the events leading up to each uprising and how the AU responded within the limits of their legal framework.

3.2 Case Studies

The following case studies will serve to illustrate the popular uprisings which took place between 2011-2019 and the AU's response to them. They illustrate how the AU responds to UCG on the continent and help exemplify the importance the organisation applies to uprisings. The case studies will be presented in chronological order.

3.2.1 Tunisia

Civil resistance in Tunisia began with street demonstrations after the self-immolation of street vendor Mohamed Bouazizi on 17 December 2010. The unemployed, college-graduated young man clashed with Tunisian police when he was unable to produce proper documentation for the goods he was selling. This display sparked a wave of protests which expanded to most North African states and some in the Middle East (Gana, 2013:127).

The Tunisian people were largely seeking solutions to the vast unemployment and dire economic state of the country. Problems for the regime began when the Tunisian army refused to repress protesters in mid-January of 2011. This reaction did not come as too much of a surprise, because the army had always been loyal to the republic rather than one specific ruler. Thus, Zine El Abidine Ben Ali had to rely on his domestic security apparatus, the police, the national guard and the presidential guard for crucial political support (Angrist, 2013:549-550). The situation in Tunisia became amplified when the police opened fire on the protestors, resulting in dozens of deaths and injuries. Even though the president tried various methods to

diffuse the situation, it was a little too late as things had already escalated beyond his control. With the military maintaining its neutrality in the situation and showing no support for protecting or going against the government, President Ben Ali and his family left the country, officially ending his 23-year rule on 14 January 2011, 28 days after protests started. His departure was immediately followed by an announcement by Prime Minister Mohamed Ghannouchi that he was assuming his role as President of the Republic as stipulated in Article 56 of the Constitution. However, it was later discovered that there was a misapplication of the constitution by the prime minister in a letter from President Zine El Abidine Ben Ali stating the he had in fact left Tunisia without delegating his powers to the Prime Minister in accordance with Article 56 of the Constitution. As such, the decision by Ghannouchi was overturned by the Constitutional Council on 15 January 2011 and they declared that the speaker of parliament should fill the vacant position while elections were organised to take place within 60 days (Dersso, 2019:115-116).

The dilemma facing the AU and PSC was deciding whether the removal of the Tunisian president was in line with the ban on UCG. During the PSC's 257th meeting, the PSC pleaded with the "political stakeholders and the Tunisian people to work together, in unity, consensus and respect for legality, towards a peaceful and democratic transition, which will allow the Tunisian people to freely choose their leaders through free, open, democratic and transparent elections (PSC Press Statement, 2011). Also, despite the PSC showing their solidarity with the Tunisian people, they failed to indicate whether they regarded the ousting of Ben Ali as legally acceptable or whether they questioned the constitutional character of the transition. Rather, it appeared as though the PSC had adopted an evasive position and geared their support towards the democratic aspiration of the Tunisian public. On 23 March 2011 following their 268th meeting, the PSC embraced the popular revolution, giving a proverbial nod to their movement. Dersso (2019:116) explains that this gesture symbolised "the purposive and legitimacy-based approach to determining the constitutionality of the removal of a government."

In January 2011 Tunisia adopted a new constitution as they prepared for elections which were to be held between October and December 2014, marking their 4-year transitional period since demonstrations began. The Nidaa Tounes ("Tunisia's Call") party won the majority of parliamentary seats and its leader, Béji Caïd Essebsi was elected as president (Arieff & Humud, 2015:1).

3.2.2 Egypt

On 25 January 2011 protests around Egypt erupted which forced autocratic President Hosni Mubarak to step down after 30 years in power. The demonstrations were organised by youth groups largely independent of the established opposition parties. They accomplished this by taking hold of the capital and other cities around the country, calling for an end to corruption, injustice and poor economic conditions. The protests were crucial because political change in Egypt had a direct impact on the country's foreign affairs and long-standing policies. The date of the protests was significant because they coincided with the National Police Day and were protests against police brutality (Sharp, 2011:2).

The protests initially started out as peaceful while calling for Mubarak to step down and clear the way for free and fair elections, and democracy. This was done by occupying plazas, non-violent civil resistance, acts of civil disobedience and strikes; however, as they continued to gain strength, the Mubarak regime responded with violence. The violent clashes resulted in the deaths and injuries of hundreds of people, catching the attention of the regional and international media and organisations. In an attempt to pacify the protesters and diffuse the situation, Mubarak promised to step down at the end of his 2011 term, but this did little to quell the protests. After 18 days of demonstrations, on 11 February 2011 President Hosni Mubarak and his national democratic party stepped down from power and the Egyptian military took control of the country pending elections (Rabab & Philip, 2009:23; Tati & Gervasio, 2011:12-15).

The AU commended the peaceful and democratic transition of power following Mubarak's resignation. In a communiqué from its 260th meeting held on 16 February 2011, the PSC formally expressed its opinion on the situation. It acknowledged the aspirations of the Egyptian people and their willingness to change and open the political space in order to democratically designate institutions that they felt are truly representative and respectful of their freedoms and human rights. Moreover, the communiqué recognised the demands of the Egyptian people, which were expressed via mass protests, to be consistent with the instruments of the AU and the continent's commitments to peace and security. While the Supreme Council of the Armed Forces (SCAF) had power, they suspended the 1971 Constitution of Egypt and disbanded parliament. Mubarak's former prime minister, Ahmed Shafik, was elected to lead the cabinet until parliamentary and presidential elections took place, while a six-month plan was being laid out to draft a new constitution. In their 268th meeting of the PSC, they noted the plans and progress for the pending transition in Egypt and encouraged Egyptian authorities and parties

to persevere in their efforts to complete the transition (Ogbonnaya & Femi-Adedayo, 2014:116-121).

The first and second rounds of elections were held on 23-24 May and 16-17 June, resulting in Mohamed Morsi of the Muslim Brotherhood winning the second presidential election in Egypt's history that had more than one candidate. The constitution was redrafted and replaced the one that had been implemented during the 2011 demonstrations. Despite the monumental steps taken in Egypt, there were still continued tensions over political turbulence and rising insecurity, which promoted mobilisation against Morsi's government. Huge popular protests were staged on 30 June 2013 in Cairo and other cities with the Tamarood group acting as the main catalyst. As demonstrations continued against President Morsi, army chief General el-Sisi issued an ultimatum and announced the president's removal on 3 July 2013, the dissolution of parliament, a suspension of the 2012 Constitution of Egypt and the establishment of an interim government. Thus, the PSC held its 384th meeting held on 5 July 2013, when it suspended Egypt from the Union. They noted "the escalation of the situation over the past few days, which led to the overthrow of the elected President Mohamed Morsi, the suspension of the Constitution adopted by referendum in December 2012, and the appointment and swearing in of a caretaker Head of State. Council expresses deep concern at the risks the prevailing situation poses for the long- term stability of Egypt and cohesion of its people, with far-reaching national and regional consequences" (PSC Communiqué, 2011). Furthermore, the PSC states that the "overthrow of the democratically elected President does not conform to the relevant provisions of the Egyptian Constitution and, therefore, falls under the definition of an unconstitutional change of Government" (PSC Communiqué, 2011). Once the Egyptian army took power, the AU was the only international organisation to immediately label the change as unconstitutional and called for the restoration of constitutional order. Yet, the interim Egyptian authority rejected the Union's decision and explained that their decision was based on the wrong interpretation of a 'popular revolution' and challenged the PSC for declaring an unconstitutional change of government when they claimed that the move was a popular revolution and not a coup d'état (Dersso, 2019:119; PSC, 2011)

On 22 July 2014 the PSC announced their decision to lift their suspension of Egypt at their 442nd meeting. They expressed their satisfaction with the restoration of constitutional order after presidential elections were held on the 26 and 28 May 2014, which were won by former defence minister Abdel Fattah el-Sisi (PSC, 2014).

3.2.3 Libya

The Libyan Revolution was an armed conflict which was ignited by a series of protests in Benghazi on 15 February 2011. Despite the documented similarities, the Libyan crisis was different to the events that occurred in Egypt and Tunisia, because it unfolded more like a conventional war than a series of irregular events as is evident in the other two cases. These protests were one of many which had erupted in the region and dubbed by the media as the 'Arab Spring.' The trigger for these protests was primarily poverty and a demand for dignity as a reaction to the deteriorating social environment, corruption and the government's abuses (Pedde, 2017:94-95).

A few days into the peaceful demonstrations by the people of Benghazi, the protests began to gain traction and were then led by the rebels from the National Transitional Council (NTC), a group based in the eastern city they had seized a few days before. The NTC was the umbrella group for rebel fighters led by defectors from Gaddafi's government, who had gained recognition in Western and Arab capitals. The group featured a mixture of urban intellectuals, former Islamist guerrillas, secular professionals and tribal leaders. Their involvement in the protests threatened the dictatorial regime of Muammar Gaddafi, forcing him to resort to powerful responses in an attempt to quell the demonstrations and silence the protestors. Gaddafi's use of force against the Libyan people was captured by both international and regional media, subsequently alerting the global community to the events happening in the country. The NTC used this attention garnered by the media to engage with the Gulf Cooperation Council (GCC) and the League of Arab States (LAS) to urge them to intervene in the conflict (Kasaija, 2013:119).

At its 261st meeting on 23 February 2011, the PSC issued a communiqué to discuss the events that had occurred in Libya. The PSC expressed their concern and strongly condemned "the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law, which continues to contribute to the loss of human life and the destruction of property [. . .] and calls on the Libyan authorities to ensure the protection and security of the citizens and also ensure the delivery and provision of humanitarian assistance to the injured and other persons in need" (PSC Communiqué).

It was agreed that the PSC would embark on a fact-finding mission to gather information on the situation and fill in any missing gaps. They would organize a military assessment mission to study the security situation on the ground and elicit guarantees from both Tripoli and

Benghazi. Ultimately, the fact-finding mission was not given much urgency and guarantees from Tripoli alone were obtained. The lack of urgency and inaction from the AU afforded the United Nations Security Council (UNSC) an opportunity to react swiftly and took on the opportunity to be the first organisation to respond to and deal with the situation in Libya. On 26 February 2011 the UNSC passed Resolution 1970 under Chapter VII with a unanimous vote. The resolution demanded the immediate end to the violence, imposed an arms embargo, restricted travel on Gaddafi's inner circle and his family, and froze all Gaddafi's family assets. Moreover, the Council referred the case to the International Criminal Court (ICC) for further investigation (Kasaija, 2013:119; UNSC, 2011).

At its 265th meeting on 10 March 2011 the AU gathered its Heads of State and Government to launch a High-Level Ad hoc Committee to investigate the situation in Libya and come up with a solution to rectify it. The Committee was comprised of five heads of state from Congo-Brazzaville, Mauritania, Mali, South Africa and Uganda, with the Chairperson of the Commission to finalise consultations and report the composition of the Committee. Furthermore, the Committee was mandated to engage with all parties in Libya while continuously evaluating the situation on the ground, to encourage dialogue among all Libyan parties on plans for reform and engage with all AU partners, specifically LAS, the Organization of the Islamic Conference, the European Union and the UN, and to facilitate and support efforts for a speedy resolution of the crisis (PSC Communiqué, 2011).

The Committee decided on an AU Roadmap to resolve the crisis in Libya. The roadmap included a five-point plan which specified:

i. Immediate cessation of hostilities
ii. Cooperation of the concerned Libyan authorities to facilitate the timely delivery of humanitarian assistance needed
iii. Protection of foreign nationals including African migrant workers
iv. Humanitarian aid
v. Dialogues between the Libyan parties and the establishment of an inclusive transnational government (AU Communiqué 25 March 2011).

As tensions continued to escalate in Libya, the UNSC met again on 17 March 2011 and passed Resolution 1973 under Chapter VII, effectively authorising the use of all necessary force and means to protect civilians across the country. As the AU ad hoc Committee was planning to enter Libya and hold meetings with relevant parties to discuss the crisis, they were denied entry

because the troops of the North Atlantic Treaty Organisation (NATO) established their no-fly zone in the country as a way of implementing Resolution 1973, consequently side-lining the AU and its roadmap (Wilson, 2011:6). Reports by the UNSC also suggested internal conflict amongst African states after three African representatives on the Council voted in favour of the resolution. However, despite the votes from the African representatives, the AU was the only organisation to oppose the authorisation of the use of force to protect the people of Libya. All efforts made by the AU to halt the measures stipulated in Resolution 1973, particularly the efforts by NATO's forces, were initially denied. Finally, on 9 April 2011, the AU ad hoc Committee was given permission to fly into Libya and discuss the conditions of the roadmap, which Gaddafi agreed to in the spirit of African brotherhood and accepting it as a political solution to the crisis. The Committee then flew out to Benghazi to present the proposed roadmap to TNC as a move towards peace, but the attempt fell short when the rebels rejected their plan and claimed it as a political manoeuvre by the AU. The NTC remained firm that they could not negotiate until Gaddafi had relinquished all power (Kasaija, 2013:124-131; Sithole, 2012:114-120; Ibrahim, 2012:46-48).

While the Ad hoc Committee still continued to pursue the implementation of the roadmap, it met twice in Pretoria on June 26 and Malabo on June 30 ahead of the 17th AU Summit in Equatorial Guinea. These meetings led to the adoption of the Framework Agreement on a Political Solution to the Crisis in Libya with the intention of bringing the crisis to an end, ensure the effective protection of civilians, including the provision of humanitarian support and steering a political process that would allow achieving the legitimate aspirations of the Libyan people through democracy, rule of law, good government and the respect of human rights. The newly adopted framework was endorsed at the Summit and presented to both parties involved.

Following an attack launched by rebels on Tripoli on 21 August 2011, the rebels made progress and managed to take the city from Gaddafi's forces while Gaddafi remained in hiding. The PSC issued a communiqué at its 291st meeting whereby they declined to recognise the NTC as a legitimate authority, citing Article 30 of the AU's Constitutive Act. The communiqué also read that the AU would only recognise the NTC's legitimacy once an 'all-inclusive' transitional government has been established, including elements from Gaddafi's regime as part of the new government, despite calls for recognition being issued by countries such as the United States, international and sub-regional organisations and even member states of the AU (PSC, 2011).

While more meetings were held during September, the NTC issued a letter to the Chairperson of the Committee giving the assurance that they were committed to peace, thus giving priority

to national unity to all Libyan stakeholders without exception and to the rebuilding of the country. Furthermore, they dedicated themselves to the protection of foreign workers in Libya, including African migrant workers. As the crisis in Libya continued to escalate, Gaddafi, who was still on the run, was captured in October 2011 by the NTC and killed after four decades in power. The NTC, who took the lead in the protests, declared Libya officially liberated and promised a more pluralist, democratic state. This letter was issued against the backdrop of the UN not only recognising of the NTC's legitimacy, but also after welcoming them at the UN General Assembly. As such, the PSC was one of the last regional bodies to recognise the NTC's legitimacy (Murithi, 2012:84-86).

In July 2012 the state organised elections for an interim government known as the General National Congress (GNC). This interim government signalled the new dawn of liberal, secular and independent candidates to beat the Muslim Brotherhood, Egypt's oldest and largest Islamist organisation, who were aligned with the Justice and Construction Party.

3.2.4 Burkina Faso

In 2014 Burkina Faso experienced a number of protests calling for the resignation of Blaise Campaoré from the presidency. He had been in power for 27 years after the assassination of his comrade, President Thomas Sankara, in October 1987. The Compaoré regime had witnessed two previous displays of popular discontent before the 2014 uprising; the first was in response to the murder of journalist Norbert Zongo in 1998 and the second to the death of school pupil Justin Zongo in 2011. These events marked turning points in the fight against political impunity and spurred on the growth of political mobilisation (Chouli, 2015: 325; Phakathi, 2018:135-136).

The October 2014 demonstrations were sparked by a government spokesperson announcing that a bill to extend Mr Compaoré's term of office had been passed. There were also talks to amend the constitution in some way to allow some sort of dynastic succession in favour of his younger brother, Francois Compaoré, who was also his advisor and a member of the political bureau of the ruling party, the *Congres pour la démocratie et le progress* (the Congress for Democracy and Progress, CDP). The main focus of the demonstrations was to prevent Compaoré from standing again in 2015 and those who had tried to emphasise the linkages between the struggle against Compaoré and the need for the construction of alternative political

and social systems were accused of being 'objective allies' of Compaoré (Chouli, 2015:335-327).

The protests lasted around six days until the president scurried off to neighbouring Côte d'Ivoire with the help of the French, as was discovered later. On 17 September 2015, less than a month before elections were meant to take place, the *Regiment de securité presidentielle* (RSP) seized power from the transitional government in Ouagadougou. The transitional government had been established with the intent of returning the country back to civilian rule while preparing for the upcoming elections. Of the 26 posts available in the new transitional government, the army claimed 6 and other members were selected from civil society groups and a mix of political parties (Assanvo, 2015; , Mathieu, 2014).

The AU's PSC responded to the situation in Burkina Faso by threatening to suspend the country from their activities, while also threatening sanctions against the RSP leaders if they failed to return the country back to the transitional government. Additionally, the African Union's Economic, Social and Cultural Council (ECOSOCC) imposed their own sanctions and condemned the violation of the constitution of Burkina Faso. The seizing of power through unconstitutional means through the use of force was seen as undemocratic and unacceptable. The AU worked closely with the Heads of State and ECOWAS and their low-level mediation team to put an end to the crisis. Eventually the RSP leaders gave up power when they failed to gain support in the West African region and the continent at large. The interim leaders were returned to power to resume their positions and the December 2015 elections were held, which were won by Robert Marc Kabore, making him the first democratically elected president to enter office in Burkina Faso (Phakathi, 2018:135-136).

3.2.5 Zimbabwe

The uprising in Zimbabwe came as a shock not only to SADC region but to the continent as a whole. President Robert Mugabe had been democratically elected after winning the 2013 elections held on 31 July against his long-time rival Morgan Tsvangirai. President Mugabe had won by a landslide when his party, the Zimbabwe African National Union – Patriotic Front (ZANU-PF), gained a two-thirds majority in the Zimbabwean parliament. He managed to secure 61.9% of the votes, while Tsvangirai and Ncube secured 34.85% and 2.68% respectively. Following the results Morgan Tsvangirai lodged a petition on 8 August 2013 with the Constitutional Court of Zimbabwe claiming that the election was rigged and therefore

illegitimate. Although Tsvangirai later reviewed the petition, Chief Justice Godfrey Chidyausiku ruled the election as free and fair, further explaining that it reflected the will of the people of Zimbabwe (Phakati, 2018:136).

It was for these reasons that many had assumed that Mugabe would finish his term in full and not be removed from power by force; his position seemed safe and secure. The exact cause of the crisis in Zimbabwe is unknown, but the firing of Vice-President Emmerson Mnangagwa on 6 November 2017 by President Robert Mugabe was the turning point. On 14 November 2017 General Constantino Chiwenga called for a press conference in which he spoke about the dismissal decision by Mugabe and expressed the view that it looked like President Mugabe was purging certain leaders who seemed to have struggle credentials against ZANU-PF and the government. Protests erupted on 18 November 2017 with thousands marching to Harare, Bulawayo and other major cities. The largest of the demonstration was at Robert Mugabe Square, a few metres away from the headquarters of Mugabe's ruling party: ZANU-PF (Manyowa, 2017). Phakati (2018:137) explains that those who had no *Chimurenga*[1] credentials had somehow warmed their way into Mugabe's heart and were influencing him to remove his brother-in-arms, thus indicating that the uprising in Zimbabwe was of an elite nature. This means it was instigated by the upper echelons of Zimbabwe's military and political system. The military acted in the interests of the elite who felt that their power was being threatened by the actions of President Robert Mugabe.

On 15 November the military took control of the government, media headquarters and other important buildings. Despite their presence and role in the removal of Mugabe, there was little military action and violence towards the Zimbabwean people. Irrespective of whether Mugabe's actions were right or wrong, the role played by the military interfered with civilians' rights, especially after the strides Zimbabwe had made since the apparent 2007 military coup attempt against Mugabe. Given all this, the AU never declared the "non coup" a coup nor did they declare the takeover as an unconstitutional change of government despite the direct violation of Article 23(1) of the ACDEG because the military were able to enter the vacuum created by Mugabe's exit through his forceful resignation without having to use any force.

The AU chairperson, President Alpha Conde, responded to the situation in Zimbabwe by labelling the takeover as a coup and calling for constitutional order in the country to be restored.

[1] *Chimurenga* is a word in the Shona language, roughly meaning "revolutionary struggle".

Phakathi (2018:139) explains that the response by the chairperson was not in line with the normative framework of the Lomé Declaration, which states that "whenever an unconstitutional change of government takes place, the Chairman of the OAU (AU) and Secretary General should immediately condemn such a change". The AU Commission chairperson, Moussa Faki Mahamat, later responded by imploring the parties involved to consult and resolve their issues through the Zimbabwean constitution. On 21 November, AU Commission Chairperson issued a statement welcoming the decision made by President Robert Mugabe to step down. The AU recognised the expression of the will of the Zimbabwean people and emphasised the need for a peaceful transition of power to secure the country's democratic future. General elections were held on 30 July 2018 and Emmerson Mnangagwa was declared the winner of the presidential vote on 3 August 2018. This was the first election in Zimbabwe's democratic history in which Robert Mugabe was not a candidate (Cohen, M & Latham, B, 2018).

3.2.6 Algeria

Demonstrations demanded the removal of long-time President Abdelaziz Bouteflika, who had been in power for 20 years as well as the removal of the country's powerful army chief General Ahmed Gaid Salah. The protest movement known as the *Hirak* in Arabic, came together on 16 February 2019 and kept up its momentum with huge demonstrations every Friday calling for the removal of the existing government and the introduction of a new pluralistic and inclusive framework based on free and fair elections. In addition to the Friday marches, millions of students marched every Tuesday while concessions and responses were made every week. These displays by the public were significant, because they had broken the wall of fear against protests (Zoubir, 2020).

AU Commission Chairperson, Moussa Faki, called for a national dialogue on 18 March 2019 in an attempt to diffuse the situation in Algeria. He also commented on the peaceful nature of the protests and their ability to raise awareness while raising a sense of responsibility among the Algerian people and other actors involved. Additionally, the chairperson also expressed the AU's full solidarity while stressing that he is hopeful the Algerian people will find the necessary resources to overcome their challenges. However, the absence of regional and international intervention in the Algerian crisis was concerning, especially considering how external factors were key in determining the trajectories of protest movements in other Arab

countries in the past (Middle East Monitor, 2019; Arab Center for Research & Policy Studies, 2020).

After Bouteflika announced his resignation on 2 April 2019, Abdelkader Bensalah was named the interim president, as called for by the Algerian constitution, for a period of 90 days until elections could be held. The opposition party refused to accept his nomination, which sparked new protests across the country demanding the departure of Bensalah and the entire government. Elections were then set for 4 July, but were cancelled when the only two candidates were rejected by the public. Algerians indicated that they would not be satisfied until all officials associated with the Bouteflika regime have been removed from office, including interim President Bensalah and Prime Minister Nouredine Bedoui (France24, 2019; BBC, 2019).

On 3 November 2019 Algeria's electoral authority announced their upcoming presidential election set for 12 December. The contenders were former Prime Ministers Abdelmadjid Tebboune and Ali Benflis, former Culture Minister Azzedine Mihoubi, former Tourism Minister Abdelkader Bengrine and Abdelaziz Belaid, head of the El Mostakbal Movement party. When Tebboune won the vote by 58.1%, protesters took to the streets claiming the election was fixed and saw it as a ploy by the establishment to consolidate power after the removal of Bouteflika. In fact, all the presidential candidates in the 2019 elections held positions under the Bouteflika presidency, thus symbolising the corrupt political system and inner circle of generals that retain majority, if not all the power of the state (Bendimerad, 2019: Business Day Live, 2019).

Even though there was a rejection of the government by a large portion of the Algerian people, Abdelaziz Djerad was appointed as Prime Minister and a week later a new government was formed with thirty-nine members including four ministers from Bouteflika's presidency (Arab Center for Research & Policy Studies, 2020).

3.2.7 Sudan

Unrest began in December 2018 when al-Bashir's government imposed emergency austerity measures to try and stave off economic collapse. Cuts to bread and fuel subsidies sparked demonstrations in the east over the rise in living standards before they spread to the capital Khartoum. Later, as the demonstrations broadened, they began to shift gear and call for the removal of Omar Hassan Ahmad al-Bashir who had been in power for 30 years. The movement

reached its climax on 6 April 2019, when the demonstrations managed to occupy the square in front of the military headquarters to demand the army force the president out. Five days later, on 11 April, the military announced that the president had been overthrown and General Awad Ibn Auf, who was the head of the military council and also been appointed by Bashir as first vice-president in February, stated that the military council would run the country for a two-year transitional period as a seven-member Transitional Military Council (TMC). Furthermore, he declared a three-month state of emergency, suspended the country's constitution and imposed a month-long curfew. The Sudanese Professionals Association (SPA) expressed their outrage as they saw the TMC as a representation of the same machine that kept al-Bashir in power for 30 years. The SPA made a demand for the military to hand over power to a civilian transitional government, so it may reflect the forces of the revolution. The AU responded and expressed its view that a military takeover was not an appropriate response to the country's current challenges (Aljazeera, 2019).

On the morning of June 3 2019, the Sudanese security forces opened fire against unarmed pro-democracy demonstrators at a protest sit-in site in Khartoum. The attack resulted in many deaths and injured hundreds more. It was also reported that the security forces were also responsible for sexual and gender-based violence and a range of other serious abuses The TMC faced regional and international backlash while protestors continued to call for a handover to civilian rule following the incident (Human Rights' Watch, 2019; Physicians for Human Rights, 2020).

Following the incident that occurred on 3 June, the AU PSC announced in their communiqué from the 854th meeting held on 6 June 2019 their decision to suspend Sudan from all the organisation's activities until they felt that a civilian-led transitional authority had been established. They expressed that they "strongly condemn and totally reject any unilateral actions by whomsoever in the process of resolving the current crisis; In this regard, rejects the unilateral actions taken by the Transitional Military Council, notably the suspension of dialogue with other Sudanese stakeholders; In this context, demands that the Transitional Military Council and all other concerned Sudanese stakeholders abide by previously reached agreements on the setting up of a civilian-led Transitional Authority" (PSC Communiqué, 2019). The imposition of sanctions was also threatened for those individuals and entities who obstructed the establishment of the transitional authority. The TMC was given a 60-day deadline by the AU to do so. The killings showed the lack of progress towards establishing a

transitional government as well as a reluctance from the military to hand over power (Mail & Guardian, 2019).

Following the PSC's instruction to transfer power to a civilian-led government, Sudan's new prime minister Abdalla Hamdok announced his 18-member cabinet after decades of authoritarianism. The cabinet formation included the signing of a power-sharing deal between the movement and the generals who seized power after the removal of al-Bashir. Subsequently, at its 875th meeting the PSC announced its decision to lift their suspension of Sudan now that a civilian-led government had been established (VOAnews, 2019; PSC Communiqué, 2019).

3.3 Conclusion

The cases above have illustrated the AU's response where popular uprisings have occurred. They exhibit the AU's interpretation of the demonstrations, how these demonstrations affect peace and security, and the organisation's commitment to maintaining democratic governance on the continent. The cases further highlighted the Lomé Declaration, the Constitutive Act, PSC and ACDEG's involvement in the process which may trigger a reaction from the Union.

Chapter 4

Observations on the cases of UCG and the African Union's response to them

4.1 Introduction

Since its establishment, the AU's most difficult dilemma in implementing policy has been distinguishing between legitimate popular uprisings and unconstitutional changes of government, since the latter are by definition directed against democratically elected governments. The need to clearly define legitimate popular uprisings has remained paramount (Zamfir, 2017:1-2).

The popular uprisings which have occurred since 2011 have subjected the AU to discourse and debates on their legal, normative and institutional frameworks on whether the rule of law and constraints on popular power make revolutions appear incompatible with constitutionalism and democracy. Questions have been raised about the relevance of AU law related to UCG. Some of these questions include: What are popular uprisings? When are they legally valid or compatible with the AU norm on UCG? How is their legal validity determined in relation to UCG? (Dersso, 2019:111).

4.2 Popular uprisings and their legal implications

Popular uprisings are categorised as extra-constitutional because they are usually conducted beyond the scope of the normal procedures of the constitution. In fact, they occur precisely because of the perceived failures of established constitutional and legal institutions. Maru (2017:10) explains that from a legal and philosophical perspective on the right to engage in popular protests, it rests on its extra-constitutional nature. Largely, fundamental human rights are not made by a constitution, but they exist despite a constitution and conventions that may deny them. Rather, the right to popular protest becomes extra-constitutional because people should have the right to activate their latent right to change a constitution and/or government should they see fit. However, despite embodying the will of the people and the expression of their capacity, popular protests are often seen as distinct from other forms of public expression (i.e. elections), which are ordinarily set out in law and used in normal circumstances (Dersso, 2019:111).

A constitution is only supposed to serve as a common and easy point of reference. Popular uprisings are usually the consequence of a failure of the legally established process of change of government. Maru (2017:11) postulates that the "extra-constitutional nature of the right to revolution lies in this conceptualisation of revolution as a fundamental human right." Thus, legally and politically popular uprisings are, by definition, inherently legitimate.

In terms of international law, the preamble to the UN's Universal Declaration of Human Rights (Universal Declaration) adopts curious language to describe the lack of protection of human rights as a circumstance which justifies the route to rebellion or uprising. Obse (2014:824) explains that it is uncertain whether the right to mass demonstration can be safely derived from the concept of the right to self-determination, because originally the principle of self-determination was intended to protect national sovereignty against external threats of alien domination, a concept that was not enforced during colonial rule. Beyond the context of colonial rule, the principle of self-determination, as enshrined in the United Nations Charter, has been invoked to support the demands of sub-national groups for autonomy and self-rule within a given state.

4.3 OAU and AU on unconstitutional change of government

From an international law perspective, research shows that popular uprisings are validated by the strength of their success and this is based on the traditional international law theory of effectiveness. The effectiveness theory on the legal validity of popular uprisings comes with a few challenges. Firstly, popular uprisings not being set in law suggests that they do not have any legal basis. This means that they are usually seen as extraordinary acts and only those options which are 'ordinary' in democratic terms – such as procedures for recall or impeachment, and referendum – are constitutionally set. Secondly, the effectiveness theory, which has its roots in legal positivism, adopts a narrow conception of the law, thus making it incapable of dealing fully with popular uprisings. This interpretation separates legality from public legitimacy. Thirdly, the opinions of legal positivism do not pay much attention to the quality of popular uprisings, meaning that those which have been orchestrated or relied on by the army or an act of violence will pass the test of legal validity should they be successful (Dersso, 2019:111-112).

There was a time when the effectiveness theory was seen as incorporated in the legal order of the OAU when it was first established. The construction of the legal order was built around the

principles of state sovereignty and non-interference, characteristics which feature in the OAU era. Therefore, the organisation remained firm in their belief that unconstitutional changes of government were domestic matters that did not require their attention. The organisation would often acknowledge the right of member states to change their government as they saw fit, essentially supporting gross violations of citizens' right and repressive regimes that would go on to taint the progress made during Africa's decolonial project years prior. Even with the Charter of the OAU being adopted in May of 1963 in Addis Ababa, the African Charter of Human and Peoples' Rights was adopted by the organisation only in 1981. It dealt with the unconditional guarantees of the right to human dignity and inviolability, to equality before the law and a fair hearing, and to self-determination. It would be another three years before the OAU would establish the African Commission on Human and Peoples' Rights under the African Charter. Before then the Charter covered only a few indirect references to human rights. As such, during the lifetime of the OAU there was a preoccupation with the rights of states and prioritising the conservation of decolonisation, subsequently legitimising whatever government was in office in a member state. Subsequently, the OAU did make improvement in their attitudes to unconstitutional changes in government, as is seen with the Harare (1997) and Algiers (1999) Summits in the late 1990s. As evidence has shown, the OAU insistence on non-interference and state sovereignty allowed illegitimate regimes and dictators to thrive, claiming this was outside their purview. It was only after the Lomé Summit of July 2000 and the establishment of one of their most important policy frameworks, namely the Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, that the organisation clearly defined and responded appropriately to instances of unconstitutional change (Geldenhuys, 2012, 58-59).

Consequently, the AU's doctrine on democratic and constitutional governance no longer makes use of the effectiveness theory as the criteria for recognising anyone claiming power. When African states designed this new continental body, they moved in a different direction that regarded sovereignty as a responsibility and reconceptualised this idea by adopting the Constitutive Act. Other AU institutions, like the PSC, also embody the organisation's new principle of sovereignty and work to prevent, manage and resolve conflicts. Member states are now duty bound to comply with the implementation decisions made by the PSC or risk sanctions and other interventions. The establishment of the ACDEG in 2007 gave further expression to responsible sovereignty and sought to promote a culture of transfer of power on the continent based on fair and regular elections steered by independent electoral agencies.

4.4 Popular uprisings and the AU's response

Any time a popular uprising occurs it provides an opportunity for the AU to assert its mandate for promoting regional and global governance. Not to mention, it is generally when these events arise that the question concerning the relationship between the AU's UCG norm and popular uprising materialise. The question is usually twofold: 1) Should regime changes which have resulted from popular uprisings be treated as 'unconstitutional changes of government' and condemned by the AU? or 2) Should they be considered as the popular will of the people and supported?

Table 2: Popular uprisings since the 'Arab Spring' leading to the overthrow of ruling governments:

COUNTRY	DATE	BRIEF TIMELINE	AU RESPONSE
Tunisia	2011	2011 popular uprising led to long-time president fleeing Transitional govt put in place, elections held in Oct 2011, considered free and fair.	**Constitutional**
Egypt	2011	Mubarak in power from 1981-2011, 2005 elections saw multiparty candidates contesting, but with restrictions on candidates in place, Mubarak won easily. Very low voter turnout. Jan 2011 popular uprising, Mubarak resigned and fled. Military took control, elections held in June 2012 and Morsi elected president in free and fair elections, Morsi issues decree in Nov 2012 immunising his decree from any challenge, new protests break out and military deposed him. 2014 presidential elections led to el Sisi win.	After the military overthrow of elected president, Mohamed Morsi, the AU suspended Egypt's membership until restoration of constitutional order. **Suspended**
Libya	2011	Protests in Feb 2011, Gaddafi removed with help of NATO coalition, NTC takes control, AU one of the last to recognise NTC in Sept 2011.	Libya's AU membership was suspended after the NTC took over the country with the AU refusing to recognise them as a legitimate opposition party. The suspension was lifted on 11 October following Gaddafi's death. The Peace and Security Council lifted the suspension 'under exceptional circumstances.' The AU insisted that the

			ban would only be lifted once the NTC agreed to protect the interests of migrant workers who had been harassed, arrested and detained by NTC fighters. **Suspended**
Burkina Faso	2014	Oct 2014 protests led to President resigning, government led by transitional authority (mainly civil society and opposition) 2015 military coup, where the elite army, the Presidential Security Regiment (PSR), seized power shortly before historic democratic elections scheduled for October 11, but coup leader restored civilian government a few days later. Nov 2015 saw democratic elections.	AU suspended Burkina Faso's membership after the military coup with immediate effect and threatened to impose sanctions if the interim government was not restored. **Suspended**
Zimbabwe	2017	One party and ruler in charge for decades, regular polls held. 2013 ZANU PF wins poll, which may have been rigged. Despite this, the AU saw the elections as 'credible' and recognised the elected government. 2016 nation-wide protests 2017 Vice-President with help of army takes over (same party remains in power). General election was held in July 2018 to elect new President and members of parliament. Soon after demonstrations took place after the elections were said to be a sham, with intimidation tactics applied by ZANU-PF. President Mugabe resigns after military pressure and takeover. Despite ACDEG violation, AU deems military takeover as constitutional. Nelson Chamisa of the opposition party (MDC Alliance) challenged ZANU-PF victory but was dismissed and the election was seen as credible.	**Constitutional**
Algeria	2019	Dec 2010 saw protests, but President remained in power. Renewed protests in 2019 led to President's resignation before the expiration of his mandate on April 28. On April 9 Abdelakder Bensalah is named interim president for 90 days until elections held.	**Constitutional**

		Opposition parties' refusal to accept his nomination triggered new protests demanding the departure of Bensalah and the entire government. Elections for a new president were set for July 4th but were cancelled when the only two candidates were rejected by the public.	
Sudan	2019	2019 popular uprising, military steps in and deposes al-Bashir, no path to elections, protests continue. All-inclusive transitional government put in place	AU suspends Sudan's membership over a paramilitary massacre of over 100 civilians on June 3rd. **Suspended**

In their Annual PSC Report the ISS identified two categories of popular uprisings that commonly occur on the African continent. The first is a widely supported military action which results in regime change. These types of uprisings usually end in coups, which are clearly condemned under the AU's norms. The second category is mass demonstrations demanding civil, economic and political rights or changes of governance and/or government. These demonstrations often trigger military action when there is a stalemate or when there has been an abuse by the incumbent government (ISS, 2019).

The difficulty for the AU often stems from the different ways popular uprisings can form, often resulting in a different set of responses for different cases. The ISS report also indicates four scenarios of popular uprisings the continent has witnessed.

4.4.1 A popular uprising where an incumbent leader resigns

In the case of Algeria (2019) the role of the military was very subtle, with the head of the army suggesting Bouteflika step down instead of taking action that could seem inflammatory to the public, regional organisations or the international community. This is in direct contrast to the situation in Sudan, where the army had a direct hand in the end of al-Bashir's regime. The tail-end of the military's involvement after months of mass demonstrations calls into question how the AU's instruments should be applied (ISS PSC Report, 2019). In Tunisia the PSC supported the people's will and stood in solidarity until the resignation of Zine El Abidine Ben Ali and the adoption of a new constitution and transitional government.

Consequently, the AU deemed demonstrations which resulted in a leader stepping down as an internal affair, and while the AU advocated for a peaceful transition to be prioritised, there was no response from their side as would be the case in an unconstitutional change of government.

4.4.2 Popular uprising when the army steps into vacuum created by the resignation of a president

In the event of a President stepping down from power with the military stepping in, the military is often given a deadline to hand over power to a civilian government or risk suspension from AU activities. When President Blaise Compaoré fled from Burkina Faso (2014), the military used that as an opportunity to step into the vacuum created by the mass demonstrations and assume power. The AU rejected the military takeover and demanded that power be given back to a civilian government. As soon as the military honoured their commitment to a civilian-led transition within the two-week time frame set by the AU, an army chief was appointed as the country's prime minister (ISS PSC Report, 2019).

4.4.3 Popular uprisings where the army hijacks a civilian movement's demands

During the Sudan (2019) protests the army managed to hijack the civilian movement's demand for a change of government, which the AU then categorised as a military takeover and demanded that order of power be reverted back to civilian rule. The AU Commission chairperson noted that military action was not appropriate, especially among the myriad of challenges Sudan had to deal with. Similarly, in Egypt, on April 15 the PSC supported the chairperson's statement and demanded a transitional government be put into place within 15 days, failing which Egypt would be suspended. Still, a joint communiqué led by Egyptian President Sisi and AU Commission chairperson Moussa Faki where they made recommendations for the PSC to extend the transitional period by 3 months. Later this period was further extended by another 30 days (ISS PSC Report, 2019).

4.4.4 Popular uprisings which turn into armed dissent or civil war (i.e. Libya)

The most obvious example of this type of popular uprising is the civil war which broke out in Libya (2011). In these instances, the AU makes an attempt to launch a conflict-resolution initiative from the onset as was seen with the AU Roadmap, an initiative by the Ad-Hoc

Committee to try and combat the situation which had risen from the protests action and reactionary forces (ISS PSC Report, 2019).

Though these four historical outlines above neatly group what uprisings can look like, with relevant examples, they still fail to account for all the case studies mentioned in this report, e.g. Zimbabwe. The lack of clarity and policy on popular uprisings allows incumbent governments and leaders room to further undermine the wishes of their people. Furthermore, without a specific policy by the AU to address popular uprisings, it becomes difficult to pinpoint and understand the organisation's process and intervention frameworks. In Zimbabwe the military was able to strongarm the president into resignation, but the country was never suspended from the AU's activities. Rather, the army chief who orchestrated the intervention was later appointed as Vice-President. It appears that the AU and its organs treat uprisings with direct military involvement differently from those where the uprisings create a vacuum which lead to a military-led regime change.

4.5 Gaps in the AU's framework

The AU has always implicitly recognised citizens' right to protest, but there appears to be limited scope in the definition of what constitutes an unconstitutional change of government. The challenge for the AU and the PSC during popular uprisings is two-fold. First is the legality perspective that any change of government that was initiated from outside the process established within the bounds of a constitution (elections, impeachment) was unconstitutional. Second, the legitimacy approach to constitutionalism emphasises the will of popular protest as the source for government authority. Substantially, there seems to be a tension between the AU and their respect for constitutional order in regime changes and the right of people to oppose an oppressive regime through peaceful and popular uprisings.

Noteworthy evidence of such tension can be seen in the way the AU handled the situation in Zimbabwe. The Zimbabwean military were fully aware of the AU's consistency in condemning 'outright' coups as part of their commitment to the continent's democratic ideal and quickly rallied behind the civilian movement to avoid triggering an AU response, suggesting that the AU is mainly concerned about exercising their commitment to democracy as opposed to guaranteeing the quality of that democracy. After overlooking the poor governance and weak application of democratic principles by Mugabe in Zimbabwe, the AU was confronted with the dilemma of condemning a regionally and domestically supported coup that would further

protect Mugabe from political subversion, or accept the military intervention and risk legitimising the removal of a democratic leader through brute force.

The emphasis on democracy by the ACDEG and other AU instruments means that the determination of constitutionality cannot be left to the application of brute force. The AU norm on UCG has not been sufficiently updated and developed to give the AU a predictable and legally sound approach to determining popular uprisings and their compatibility with the AU's UCG norm. Where a popular uprising has been successful in the removal of incumbent leaders or governments, that change should not be labelled as UCG as this would hamper the people's aspirations for democratic change. Thus, a stricter distinction needs to be made that will prevent incumbent leaders and governments from getting around the AU's simplistic stance on unconstitutional change. As discussed previously, the Lomé Declaration clearly states under the PSC that once a change of government is deemed unconstitutional, an immediate suspension is applied until constitutional order is restored; however, the gaps in the framework mean this does not always happen where popular uprisings are concerned.

The Lomé Declaration and its reinforcement of AU's UCG norm when popular uprisings occur needs to be updated. The vacuum that currently exists makes it harder to properly identify or characterise these uprisings, the conditions that facilitate them, and deciding on the correct mechanisms needed to respond both efficiently and effectively. The AU cannot continue to adopt an ambivalent response to popular uprisings. Any ambiguity in policy and its implementation will create an opportunity for incumbent governments and leaders to get around the AU's simplistic stance on UCGs. There needs to be a prioritisation of a stricter interpretation of popular uprisings that does not brazenly accept constitutional changes of incumbent leaders on a technicality, but rather assesses the legitimacy of popular movements that oust unpopular leaders.

The Charter has been silent about any normative framework which specifically addresses the overthrow of power by peaceful protestors, notwithstanding the growth in popularity of uprisings in recent years. Rather, what has been observed in the past is that the AU's response is usually triggered by military intervention where forces have helped to overthrow a government and then assume power in the country. In Tunisia, for instance, the AU did not feel the need to interfere because the military had refrained from any involvement in the public protests which eventually led to the resignation of President Ben Ali. From a legalistic interpretation the change of government through street demonstrations could have been classified as an UCG on the basis that it was not constitutionally envisaged. Rather, the PSC

expressed its respect for democratic aspirations and the will of the people, indirectly supporting the idea that the demand for constitutional rule is not only about respecting constitutional processes, but also about safeguarding the will of the people (Amani Africa Report, 2019:1).

In Zimbabwe, Sudan and Egypt, however, the military had a fundamental role in the overthrow of their incumbent regimes. Zimbabwe's military barely managed to escape AU condemnation by reconvening behind a civilian leadership, whereas Egypt and Sudan had their memberships suspended because the military seized power after the civilian protests. By building up a pattern of a delayed response and inconsistent application of their framework, the Union is contributing to the growing scholarship which suggests a lack of firmness and the organisation's inability to implement and sustain democracy beyond military-infused politics (Amani Africa Report, 2019:2).

In Egypt's case, Dersso identifies two missing elements in the AU's decision which calls into question the organisation's approach towards popular uprisings. First, there was little clarity from the AU regarding their position on which they made the decision to declare a UCG. When the PSC announced their suspension of Egypt on 5 July 2013, no reference was made to any of the five situations constituting a UCG in the Lomé Declaration and the ACDEG. Rather, the PSC chose to call it an unconstitutional change of government because they claimed it was not in line with the 2012 Constitution of Egypt. Determining the constitutionality of political events in any given country is not within the jurisdiction of the AU's legal frameworks and the task of the PSC should have been to determine whether the change of government is unconstitutional on the basis of AU's UCG norm. Second, there was no engagement from the AU's side to warn the transitional authorities in Egypt about the rules banning legitimising a UCG through elections, as seen with other cases that were guilty of UCG such as Madagascar (2009), Guinea (2008) and Niger (2010). So in Egypt emphasis was placed on the democratic aspiration of the people and a distinction between the people and the government was made to justify the response (Dersso, 2019:118&121).

A lack of cohesion and cooperation within the organisation also seems to be a contributing factor when it comes to decision making. This was most notable during the Libyan revolution when some member states expressed their lack of enthusiasm about devolving sovereignty to the organisation. This lack of synergy has often been responsible for the AU's inaction and ineffective policy implementation on critical issues in the past. The AU roadmap in Libya failed because the AU was unsuccessful in constructing a consensus about its position and determining the appropriate steps to resolve the Libyan crisis. It appears that the AU was

protecting Gaddafi, while ignoring his numerous violations of the human rights of the Libyan people in its insistence on a peace plan and shifting the blame onto NATO and other Western organisations for the crisis. Conflicts between African states around the UNSC resolutions in 1970 and 1973 also exposed a lack of strategic coordination between the AU Commission and UN member states insofar as the protection of African interests and positions was concerned. Ultimately, the AU was exposed for dragging their feet on important issues and indulging incumbent leaders. It was evident in their reaction to the international response to the Libyan crisis that, although they did not agree with the plans put in place, African representatives in those organisations had no choice but to relent because the AU could not offer any better alternative to deal with the situation. This lack of unity has not only resulted in the organisation's inability to respond decisively on issues, but it also suggests that many states still revert to the old rule of non-interference (Sithole, 2012:122-123).

4.6 Progression of norm evolution on UCG regarding popular uprisings

Unconstitutional changes of government in Africa represent weaknesses within the democratic mandate set by the African Union. Their effect on the continent means there is a growing regional goal among African states to eliminate any further occurrence of such cases in the future. In seeking to evaluate whether the AU has seen a progression in norm on UCG regarding popular uprisings, the AU's response to each case was analysed while the life cycle norm of Finnemore and Sikkink (1998) is applied as the theoretical foundation to evaluate whether a tipping point and norm cascade through internalisation have occurred.

In Tunisia the AU reacted through the PSC, where they expressed their condemnation for the use of force against demonstrators in Tunisia and stressed the need to prevent any more loss of life. Although the AU was heavily criticised for their slow and ineffective response, they relied on following the guidelines set out in the Lomé Declaration by emphasising the democratic transitional period in Tunisia. After the evaluation of the popular uprising which led to the departure of President Ben Ali, the AU recognised the change of government as constitutional, specifically because the transitional period was completed under the new Tunisian constitution, including free elections and subsequently following the AU's framework on constitutional changes of government. Therefore, in the Tunisian context, the AU's normative framework for evaluating the legitimacy of the change of power was focused on the end results and not the events which took place beforehand. The events in Tunisia were acceptable under the

normative framework because a government was replaced after the mass protest while remaining within constitutional order (Cakmak & Ozcelik, 2019:71-72).

Similarly in Egypt, the AU was rather slow with their response to the mass demonstrations, but ultimately expressed their support for the Egyptian Revolution and the peoples' desire to change their government. However, a decision about President Mubarak was not made by the AU until after his departure, the evasive response seemingly becoming part of a pattern in how the AU responded to these events. The success of the 2012 elections, which resulted in the country's first democratically elected president and the construction of a new constitutional order, was interrupted a year later when protests erupted against President Morsi and the Egyptian Armed Forces declaring control of the government after forcing Morsi and his government out of office. Following an emergency meeting, the PSC declared that the overthrow of a democratically elected government was in conflict with the propositions of the Egyptian constitution making it an unconstitutional change of government. In terms of the Lomé Declaration and the ACDEG, the AU suspended Egypt's participation in AU activities until the restoration of constitutional order (AU PSC Communiqué 384, 2013). Nonetheless, the response to the 2013 Egypt demonstrations is one of the first and earliest examples where the effectiveness of the Union's normative framework was tested. In their response, the AU failed to indicate which of the four situations listed in the Lomé Declaration were the events in Egypt evaluated under. Despite the suspension of Egypt's membership, the AU also refused to declare the removal of Morsi as a military coup as it very clearly was per their normative framework (Cakmak & Ozcelik, 2019:73-79).

The response by the AU in Libya is arguably the most important regarding norm analysis of the normative framework, because the response was more active and developed in several stages. On 23 February 2011, eight days after protests began to pick up in Libya, the PSC issued a communiqué condemning the use of force on the Libyan people and supported the people's democratic demands (AU PSC Communiqué 261, 2011). Notwithstanding actions by the EU and the Arab League, the AU chose to forgo the implementation of sanctions on Libya even after the government had been called on to provide security for civilians. On 10 March 2011 a second communiqué by the PSC followed, outlining a committee on Libya which would function as the political solution to the country's crisis, which was in line with ACDEG values. Still, the insistence on a pro-democratic and political solution was not clear as a promotion of peaceful settlement since Gaddafi did not rule under the terms of a formal democracy. Libya's political power and Gaddafi's position on the continent might be considered as contributing

factors to the AU's insistence on a political solution, rather than instructing him to leave office, subsequently mirroring the positions taken by the USA, the United Kingdom, France and other EU countries. Accordingly, all these factors together weakened the AU's response to UCG in Libya and their claim to facilitate and maintain democratic governance on the continent. A lack of cohesiveness and unity within the Union are also contributing factors. When Libyan civilians were fired upon, the AU should have made a decision under Article 4(h) of the Charter instead of simply expressing their condemnation (Ross, 2011). The choice of mediation or intervention calls into question the consistency of the Union's response through their normative framework where popular uprisings are concerned and its effectiveness. Given that the North African uprisings were unforeseen as well as the international criticism of the AU, these demonstrations should have served to identify any existing gaps in the AU's UCG norm (Obi, 2014:76-77; Cakmak & Ozcelik, 2019:77-79).

By the time mass demonstrations were sparked in October 2014 in Burkina Faso more than four years after the North African uprisings, the AU Assembly had made improvements to their normative framework around unconstitutional changes of government by adopting the Malabo Protocol which acts within the ACDEG on 24 June 2014. The Malabo Protocol would operate within the African Court of Justice and Human and Peoples' Rights (African Court). This makes the African Court the first regional criminal court to exercise material jurisdiction over 14 (international and transnational) crimes, namely genocide, crimes against humanity, war crimes, the crime of unconstitutional change of government, piracy, terrorism, corruption, money laundering, trafficking in persons, trafficking in drugs, trafficking in hazardous waste products, illicit exploitation of natural resources, and the crime of state aggression (Statute of the African Court of Justice and Human and Peoples' Rights, Article 28(G)). These additions to the normative framework did not have much effect as the AU responded as they do to a military presence and suspended Burkina Faso from its member activities, while threatening sanctions on the rebel leaders.

Yet under similar circumstances in Zimbabwe in 2017, the Union failed to suspend the country after a military intervention and the confinement of President Robert Mugabe, despite clear violations under Article 23(1) of the ACDEG (AU ACDEG, 2007). Rather, the AU Commission chairperson accepted the military as part of the 'stakeholders' who were tasked with addressing the situation under the Constitution of Zimbabwe and the relevant AU instruments. Accordingly, the characterisation of the military as 'stakeholders' allowed for all the events leading up to the 'resignation' of Mugabe to be recognised as the expression of the

will of the people and thus recognising the change in government as constitutional. However, the AU completely ignored the point that their decision was incompatible with the Zimbabwean Constitution, which opposed the replacement of a former Vice-President after a military intervention in the place of the incumbent (Constitution of Zimbabwe Amendment (No. 20) Act 2013, Article 92(3)). This means that the non-suspension of Zimbabwe by the Union was not consistent with Article 30 of the Constitutive Act. Apart from the inconsistent nature of the response, the AU also set a dangerous precedent that would allow the military to deceptively, under the guise of acting on behalf of the will of the people, to remove, albeit coercively, democratically elected leaders with impunity.

In Algeria in 2019 the AU did not condemn the popular protests which eventually led to the resignation of President Abdelaziz Bouteflika, but called for a national dialogue to facilitate the restoration of peace and stability in the state. Similarly with Sudan in the same year, the AU did not condemn the demonstrations by the Sudanese people which eventually led to the overthrow of President Omar Al-Bashir. However, the AU quickly condemned the seizure of power by the Sudanese military and their plan to lead the country to transition for two years. The Union called for a transitional civilian-led political authority with various Sudanese stakeholders to guide the state towards prompt free and fair elections. Furthermore, the AU emphasised the need for inclusive dialogue by the responsible stakeholders to ensure the restoration of constitutional order, and while ensuring that the conditions and aspirations of the Sudanese people by virtue of good governance and democracy were being met (AU PSC Communiqué, 15 April 2019). Only when the lack of progress towards a civilian-led constitutional restoration was observed by the Union was Sudan immediately suspended from its activities until the effective establishment of a civilian-led Transitional Authority (AU PSC Communiqué, 2019).

Conceptually, the progression of the African Union's norm on UCG concerning popular uprisings in each case can be analysed using the theoretical framework presented by Finnemore and Sikkink (1998). The first step in the 'life cycle', norm emergence, is clear in the growing impact of popular uprisings on peace and security. Emergence is further facilitated by norm entrepreneurs who are in favour of democratic governance on the continent and their organisational platforms. In Tunisia and Egypt the AU focused its response primarily on expressing their support for the people's will and monitoring the actions which materialised after the event. With Libya their hesitancy was much more detrimental, because it created gaps that could be exploited by other international and regional organisations to act and ultimately

undermined the AU's ability to respond to crises. Consequently, the AU's response to the 2011 North African uprisings were the first to reveal the possibly continental damage to peace and security. It revealed that the AU's application of their response to the norm against UCGs was primarily focused on the overthrow of governments by military groups, the non-compliance with election results and amendment of constitutions by presidents to remain in power.

Given the AU's difficulty in responding effectively to the Arab Spring, which is understandable given they did not foresee those events, it was the Union's responsibility afterwards to properly question and assess the relationship between an unconstitutional change of government and the organisation's application of their UCG norm during popular uprising for future cases. In April 2014 at the 432nd PSC meeting a dedicated session was held to discuss the theme of unconstitutional changes of government and popular uprisings. The PSC noted the weaknesses and gaps in their existing frameworks, while also acknowledging how the flexibility and inconsistency in their interpretation of the relevant instruments had created a credibility problem for the organisation. Most importantly, the PSC expressed the need to refine its definition of UCG notably in relation to popular uprisings, but there was no follow up from the PSC (AU PSC Press Statement 432nd meeting, 2014). The uprisings which followed in 2014 and 2017 indicate an issue in how the normative framework is applied, almost as if it is decided on a case-by-case basis in lieu of applying the relevant instruments where appropriate. The AU's decision to suspend Burkina Faso was in line with their practice of recognising peaceful protests and the condemnation of military involvement to remove a democratically elected president, yet somehow those guiding principles were ignored in the case of Zimbabwe. The uprisings which followed in 2019 in Algeria and Sudan further illustrate the AU's recognition of the people's will to peacefully rise up against oppressive political system. In Sudan specifically the PSC made a distinction between the popular protests and the military takeover, which they condemned under the AU's norm on UCG.

These findings of the report imply that the motives to introduce a successful norm cascade and eventually norm internalisation were not secure enough where popular uprisings are concerned. The AU appears to have an organisational culture of non-implementation of its own norms, as is seen during the days of the OAU. Engel (2019:136) describes a disengaged working relationship between collective political will and actual political desire of individual member states to follow through. Although there are still norm entrepreneurs who desire a new approach to interpret the legal framework and instruments to provide justification for the legitimacy of popular uprisings, as is seen by the PSC session in 2014 on UCG and popular uprisings, there

is still no clarity on what is considered 'popular protest', thus determining its compatibility the AU norm on UCG. For a tipping point to be reached, the 'life cycle' requires norm entrepreneurs to successfully persuade the 'critical mass' from certain states to become norm leaders and adopt the new norm, and that has not been the case. In the context of a regional organisation such as the Union, norm leaders and norm adoption could take the form of an ad-hoc committee comprised of legal and regional experts to provide adequate guidelines on determining a working definition and identifier for popular uprisings and its consistency with the AU norm on UCG. Only once there is evidence of a tipping point would a norm cascade be signalled. While the AU's norm on UCG is deeply institutionalised through the robust frameworks of the AU, there is no evidence of this with regards to the AU's application of this response to popular uprisings. An internalisation of the norm has barely begun due to weak initiatives and coordination, even with an existing framework for the promotion of democracy on the continent.

4.7 Conclusion

It is evident from the above discussion that while the AU respects the will of the people and their right to democratic aspirations, the absence of a policy to specifically deal with popular uprisings makes it difficult to understand exactly how the AU instruments are interpretated through their various frameworks once these situations erupt. Furthermore, the lack of clarity on a targeted policy allows opportunists and unscrupulous military officials to exploit the legitimacy of civilian grievances. The AU needs to become more proactive in how it sustains peace, justice and security on the continent.

Through the analysis of the relevant cases, the finding suggest that the normative framework on UCG is somewhat ineffective and is further compounded by the contradiction between the theoretical and practical scope of the norm. By using the 'norm life cycle' theoretical framework by Finnemore and Sikkink (1998), the report found evidence of norm emergence, but ultimately nothing to support a tipping point or norm cascade.

Chapter 5

Conclusion and Recommendations

5.1 Conclusion

The research report sought to explore the African Union's application of their response to the norm against UCG where popular uprisings have occurred. This assessment was done through a comparative analysis of seven case studies – Tunisia, Egypt, Libya, Burkina Faso, Zimbabwe, Algeria and Sudan – to determine patterns in the AU's response and reveal gaps in the existing normative frameworks about the organisation's approach and interpretation of their various legal instruments, chief of those being the justification of the legitimacy of popular uprisings in ousting authoritarian regimes.

The biggest frality of the AU has been that, despite the obvious need for an expanded framework which clearly distinguishes popular uprisings that constitute a UCG and those which do not, the AU has failed to provide clarity on what is considered a popular uprising thus is consistent with their norm on UCG. Continental democracy cannot be achieved if there is a lack of political will and accountability from the organisation and its leaders. The response of the AU needs to be consistent and resolute. The earlier uprisings should have been provided an opportunity for the AU to expand its response instruments to further drive the organisation's democratic project.

The research report began by observing the organisation's evolution from the OAU era to the AU we have today. The stance of the two organisations on state affairs went from strong principles of preserving state sovereignty and non-interference to implementing a norm of non-acceptance of UCGs. In its formation the AU adopted important normative frameworks from the Algiers Declaration in 1999 to the Lomé Declaration of 2000. Furthermore, the AU introduced robust instruments – namely, the Constitutive Act, the Peace and Security Council and the African Charter for Democracy, Elections and Governance – to deal more effectively with matters with security, peace and democracy on the continent.

To better understand norm evolution and how norms development in organisations the report used Finnemore and Skinnik's Norm Life Cycle (1998) as a conceptual framework. It observed that the understanding of norm behaviour in organisations is important because the norms are known to set and reset standards of appropriate behaviour among actors in the international system. Through the AU and its legal instruments, the report noted that while there is evidence

of norm emergence regarding popular uprisings, the motivations needed to signal a tipping point and norm cascade have not occurred yet despite evidence of norm entrepreneurs and norm actors working with the AU in a joint venture under their good governance and democracy guidelines. Just as African states who were part of the OAU were able to recognise the need for an institutionalised norm on UCG, it is imperative for the AU to use the relevant cases to further expand the application of their response to popular uprisings especially with their growing popularity on the continent. That expansion will allow for norm internalisation thus removing the existing gap in response and enforcement. Ensuring that the normative framework is compatible with the times will help with constitutional and democratic order.

5.2 Recommendations

5.2.1 Developing and expanding the AU norm on UCG

On 29 April 2014 the PSC called for a special summit with the AU Assembly to discuss possible guidelines and issues relating to popular uprisings and their involvement in changes of government. One of the issues on the agenda was the lack of definition of popular uprisings. There needs to be a clear distinction between what constitutes a legitimate uprising and where the threshold into unlawful uprising lies. For this to be achieved, the AU would have to develop a specific framework that would include a universally accepted definition, while considering the relative parameters relating to popular uprisings against oppressive regimes. This is particularly important, since the AU norm on UCG does not currently offer any guidance on the distinction between legitimate popular uprisings and unconstitutional changes of government. The final report of the AU High-level Panel in Egypt 2014 proposed a possible guideline for how popular uprisings could compatible under the AU's existing norms on UCG. The proposal listed the following five elements:

> *'(a) the descent of the government into total authoritarianism to the point of forfeiting its legitimacy; (b) the absence or total ineffectiveness of constitutional processes for effecting change of government; (c) popularity of the uprisings in the sense of attracting significant portion of the population and involving people from all walks of life and ideological persuasions; (d) the absence of involvement of the military in removing the government; (e) peacefulness of the popular protests'* (AU High-level Panel on Egypt, 2014).

5.2.2 Determining a constitutional criterion on popular uprisings

While the AU has always expressed its support for the will of the people and their aspirations towards the organisation's democratic project, a mere acknowledgement without action to support civilians is not enough. Considering the rise of popular uprisings on the continent, it has become increasingly important for the Union to make moves towards a criterion for the peacefulness of protestors and what that would look like in today's context. Peacefulness should not refer exclusively to a protest that is free from any form of violence. The importance should lie in the motive behind the event for determining its peacefulness and not focus purely on the absence of violence (Dersso, 2019:125). It is of the outmost importance for the AU to take responsibility and respond to their political responsibilities which include the constitutionality of the change of government by means of a popular movement. A clear stance on the basis of a robust framework would send a message to other world powers and organisations that would minimise foreign interference, something that can often cause tension and instability.

5.3 Final remarks and further research

The African Union is only as strong as its member states want it to be. Despite the fall of long-standing leaders like al-Bashir and Bouteflika, the African continent still has a large presence of authoritarian regimes. Though it is also important to note that the AU is still in its infancy, especially when compared to similar organisation such as the EU and UN, their adoption and application of robust frameworks and organs should be recognised as they have come a long way since the days of the OAU's norm of non-interference.

The AU needs to question the effectiveness of their responses on the continent and the culture of African leaders who exploit their power over their constituents. These reflections could function as a preventative measure, while possibly placing more emphasis on the quality in the implementation of democracy, good governance, human rights and socio-economic development.

While this thesis has focused on the AU's response and the factors that trigger those responses in the cases observed, further research could explore the scholarship around the favouritism that the AU is periodically accused of when dealing with certain situations. More so, observing the effectiveness of regional and sub-regional organisations with dealing with issues of sovereignty, the people's will and constitutionality could be explored as further research while

helping to understand how can these organisations support democratic governance in Africa alongside the African Union.

Word count: 23 204

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