The Resurgence of the African Coup D'état
Unconstitutional Changes of Government: An Analysis of the 2012 Mali Coup D'état

A Thesis submitted to Tilburg University in partial fulfilment of the requirements for the degree of L.L.M. International and European Public Law
The Resurgence of the African Coup D’état

Unconstitutional Changes of Government: An Analysis of the 2012 Mali Coup D’état

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Cover photo – Source: ‘The Monument to African Renaissance – Magnificent Symbol or Colossal Folly?’
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ACIRC</td>
<td>African Capacity for Immediate Response to Crises</td>
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<td>AFISMA</td>
<td>African-led International Support Mission in Mali</td>
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<td>APSA</td>
<td>African Peace and Security Architecture</td>
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<td>ASF</td>
<td>African Standby Force</td>
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<td>AU</td>
<td>African Union</td>
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<td>AUC</td>
<td>African Union Commission</td>
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<td>AU PSC</td>
<td>African Union Peace and Security Commission</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>CNRDE</td>
<td>National Committee for Recovering Democracy and Restoring the State</td>
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<tr>
<td>ECO</td>
<td>Economic Community of West African States</td>
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<td>EU</td>
<td>European Union</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GNU</td>
<td>Government of National Unity</td>
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<tr>
<td>IOF</td>
<td>International Organisation of La Francophonie</td>
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<tr>
<td>MICEMA</td>
<td>ECOWAS Standby Force Mission in Mali</td>
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<tr>
<td>MINUSMA</td>
<td>Multidimensional Integrated Stabilisation Mission in Mali</td>
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<tr>
<td>MPLA</td>
<td>People's Movement for the Liberation of Angola</td>
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<td>OAU</td>
<td>Organisation of African Unity</td>
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<tr>
<td>OIF</td>
<td>Organisation of Francophone Countries</td>
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<tr>
<td>OPDS</td>
<td>Organ on Politics, Defence and Security</td>
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<tr>
<td>OPDSC</td>
<td>Organ on Politics, Defence and Security Cooperation</td>
</tr>
<tr>
<td>PSC</td>
<td>Peace and Security Council</td>
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<tr>
<td>RECs</td>
<td>Regional Economic Communities</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<td>SSA</td>
<td>Sub-Saharan Africa</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UN SC</td>
<td>United Nations Security Council</td>
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<tr>
<td>UNITA</td>
<td>National Union for the Total Independence of Angola</td>
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<td>UNSG</td>
<td>United Nations Secretary-General</td>
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Foreword

This study represents the culmination of my life-long dream to further my education and achieve a master’s title. With this achievement I hope to have lived up to the expectations of my family. I am mindful of the privilege that I have in being able to realise this dream and thus see this as a stepping stone for my future development as well as that of the continent of Africa. Throughout my academic career I have paid particular focus to Africa and was able to continue this line with my work at the Dutch Ministry of Foreign Affairs. During this period I performed policy supporting services for the Sahel specialist of the Stability and Rule of Law Division. Shortly after, Mali fell victim to the biggest threat to the continuity of democratic rule on the African continent, a coup d’état. During this period I partook in several meetings during which we analysed the situation leading up to the coup and how the Dutch Government should react. I was continually baffled by the fact that all conflict analysis reports merely touched the subject matter of the coup. The policy analysis lacked the depth that would allow the Netherlands to play a role in preventing a future coup. In a pursuit of clarifying the matter I realised the subject matter would be perfectly suited as topic for my master thesis. Many people have been involved in encouraging and supporting me in the process of completing this study including my family and my friends. A special word of thanks goes to my girlfriend who endured the hardships of this process alongside me and for which I am eternally grateful. I would also like to express my gratitude for the assistance and feedback provided to me by my thesis supervisor Assistant Professor Anna Meijknecht and most notably for being willing to assist me during this process. Furthermore I would like to thank Ms. Eefje de Volder for her insightful feedback. To conclude I would like to express my sincere and heartfelt thanks to the contribution of all who have assisted me.
1.0 - Introduction

Africa as a whole has declined both absolutely and relative to the rest of the global periphery. This decline is multi-faceted and well documented as a whole. Explanations cover a wide array of topics both internal and external. A vital element is the political instability and mal governance in weak African states. A major manifestation of political instability is the military coup d’état. A coup d’état involves the sudden, often violent overthrow of an existing government by a small group. Thus, a coup is the abrupt replacement of leading government personnel, which the AU classifies as an unconstitutional change of government. This phenomenon of political instability has been ever present since the inception of the OAU with the political assassination in 1963 of Togo’s president Sylvanus Olympio and still ravishes the continent. There have been successful coups in Niger (2010), Guinea-Bissau (2012) and Mali (2012) in recent years. In March last year a coup d’état in the Central African Republic led to a civil war, which is still wreaking havoc, examples are therefore plentiful and recent.

The AU has coined these challenges of democratic rule as an unconstitutional changes of government. These unconstitutional changes of government have been a vigorous threat to the democratic stability of the continent. The reaction to recent coups in Mali and in Egypt, which toppled democratically elected regimes, has at best been muddled. These forms of political instability show no sign of abating, and the current system lacks control and response mechanisms. I consider these facts to warrant further investigation this chapter will elaborate the intricacies and goals of this research. For reasons this thesis will delve into Mali seemed to encapsulate most aspects which warrant further investigation and therefore will be discussed in great length throughout this thesis.

1.1 - Chapter Outline

The first chapter will address the issue of political instability in Africa and cover the conceptual and historical issues which are seen as underlying reasons for the current manifestation of political instability. This chapter will offer a brief illustration of the conceptualisation of coups and the different types of coups that exist. This will provide the historical backdrop for the rest of the thesis. Throughout this thesis Mali will function as our main case study but where necessary others countries and cases
will be used to exemplify and clarify certain notions. The following chapter will introduce the concept of unconstitutional change of government as understood by the AU and its Regional Economic Communities (REC’s). Unconstitutional Change of Government encompasses four phenomenon, namely military coups, tenure prolongation (third term politics), the refusal of defeated incumbents to concede power to the winning opposition and finally amendments of the constitution which can be considered an infringement on the democratic principles of democratic change of government. The four situations will be briefly discussed although this paper will continue to mainly focus on the coup. The third chapter will cover the underlying reasons for the frequency of coups and possible underlying reasons. Part of addressing the problem is getting to grasp the reasons for its existence. As opposed to an in-depth study the reasons will briefly be presented and discussed. Like a contagion coups have spread across the continent, striking not only regimes that were inherently weak and unstable but bringing down even economic and historical giants of Africa - Ghana, Nigeria and Ethiopia. This chapter will provide the underlying reasons for the frequency and reasons for coups. The following chapter covers the legal qualifications of unconstitutional changes of government in Africa. It is of vital importance to comprehend the current state of affairs through the qualification of most importantly the AU and ECOWAS as they are the most active regional organisations. With the aim of providing a complete overview SADC will also briefly be discussed. The Constitutive Act of the African Union, the Lomé Declaration and the African Charter on Democracy, Elections and Governance will be discussed in depth using clear and concise examples. Throughout this chapter the sanctioning system in the wake of an unconstitutional change of government will be covered. The previous chapters lead up to a concise and clear example to be drawn from the Mali 2012 coup. Due to the fact that this coup perfectly incorporates many elements of this thesis it encapsulates the lessons to be drawn. A brief historical background will clarify the current state of affairs after which the different approaches of the different array of actors will be discussed at length. The final chapter draws relevant conclusions based on the previous chapters. Here the main research question and the sub questions will be answered incorporating my humble recommendations for improvements.
1.2 - Research Questions

The research questions addressed throughout this thesis are as follows;

Main Research Question:

1. How to improve the current system of addressing unconstitutional changes of government?

Sub Questions:

2. What have been Africa’s historical issues with democratic instability?
3. Why does a coup manifest itself?
4. What is the legal framework of unconstitutional changes of government in Africa?
5. What can we learn from the March 2012 coup in Mali?

1.3 - Research Methodology

The research approach of this study was literature based. The primary reason that this approach was taken, rather than collecting primary data, was the limitation of the time and the scope of this research. However, a broad overview of all available literature was consulted, including books and journal articles on the topic, as well as that written in the case studies in current media. Additionally, the AU’s Constitutive Act and its drafts, the UN’s Charter and its drafts and comments to the Charter were analysed. The literature review on Mali illustrates the paucity of the subject matter due to its recent occurrence. In addition to the many academic journals and books I have further consulted additional newspapers to get a complete overview. Including many blogs written by a wide array of authors often on the ground, their pieces offer an insight which other articles lack. With all these sources combined I hope to offer a complete oversight of the available literature and with that give a concise and clear explanatory note covering the topic of unconstitutional change of government.
2.0 - Democratic Instability in Africa

2.1 - Conceptual and Historical Issues

The rampage of the coup d’état on the African continent starts in 1963 with Togo’s president Sylvanus Olympio being the first major victim to be assassinated during a military coup in Africa. On 13 January 1963, Togo’s first President Sylvanus Olympio was shot down outside the US Embassy in Lomé while fleeing from dissatisfied soldiers who were conducting a coup d’état. This event is remembered not only as the first successful military overthrow in sub-Saharan Africa, but it was also the first time that a country’s leader had been assassinated during a coup d’état. At the time African leaders condemned the attack and Tanganyika’s president Julius Nyerere wrote to the UN, calling for diplomatic sanctions against the new administration saying:

“After the brutal murder of President Olympio, the problem of recognition of a successor government has arisen. We urge no recognition of a successor government until satisfied first that the government did not take part in Olympio’s murder and second that there is a popularly elected government1”.

This event cast a cloud over the founding of the Organisation for African Unity (OAU) in May of that year. The chair that would have been occupied by President Olympio was left conspicuously empty in the conference hall. It was supposed to be a warning to potential coup makers that military overthrows and assassinations would not be tolerated on the continent2. A total of 32 Independent African countries were represented at the summit and signed the OAU Charter3. To illustrate the startling reality of coups the following figures are mesmerising; of the 32 countries 26 had experienced military coups by the 1990’s, most of them more than once and some within the same year4. Furthermore nearly three-quarters of African leaders who left power in the 1960s and 1970s did so through a coup, violent overthrow, or assassination5. In Benin there were no fewer than 12 heads of state in the first decade of its independence, every one of whom was overthrown in a coup d’état.

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1 Mwikikagile (2014), p. 82.
During the 1960’s the decade was marked by widespread violence, including the continuous unrest in the Congo and Sudan, the civil war in Nigeria and the border wars fought by the Somalis. During the 1960s there were 27 successful coups in 13 countries in sub-Saharan Africa, the coup had clearly become a fact of life in the region\(^6\). It was also the decade in which Mali saw independence as it broke away from De Gaulle’s community of French states in September 1960\(^7\). As was the perception of many African presidents, Mali’s president Modibo Keita wanted to create a socialist state fulfilling his vision of:

“a system where there will be no unemployed, and there will be multimillionaires ... a system where there will be no beggars, and where each will eat if hungry\(^8\).”

By the mid-1960s, Keita had created a heavy state machinery that dragged mercilessly on the nation’s already fragile economy. The situation was characterised by numerous national enterprises (almost all of them running at a deficit), a plethora of civil servants clogging the administrative machinery, a soaring balance-of-trade deficit and foreign debt, and a rapid weakening currency\(^9\). Eventually he fell victim to a bloodless coup in 1968 staged by a group of young officers. The coup was perpetrated by Moussa Traore who became an authoritarian leader and was eventually toppled by a coup himself decades later\(^10\).

The decade thereafter started with the coup that put the ‘last king of Scotland’ Idi Amin in power aided by its former colonialist Great Britain. The second coup of the 70’s that put a brutal dictator in office was that of Ethiopia. After surviving an earlier coup in 1960 Haile Selassie lost power during the Ethiopian revolution which eventually brought Mengistu Haile Mariam to power ending the 3000 year old Ethiopian Monarchy\(^11\). Most estimates say that 2 million people lost their life under the rule of Mengistu and subsequently he was found guilty of genocide by an Ethiopian court. Despite his conviction he currently resides in exile in Harare much to the chagrin of the Ethiopian government. By far the worst calamity to strike Africa during the 1970’s was the prolonged drought between 1968 and

\(^{7}\) Meredith (2007), p. 69.  
\(^{9}\) Meredith (2005), p. 167.  
\(^{10}\) Vengroff (1993), p. 544.  
\(^{11}\) Meredith (2005), p. 215.
1973 which had a devastating impact on the Sahel region\textsuperscript{12}. During this period as many as a quarter of a million people may have died; cattle herds were decimated and vast areas of land deteriorated into desert. A massive international rescue operation totalling $7.5 billion worth of aid poured into the Sahel region\textsuperscript{13}.

Coups began to decline in Africa after the 1980s per the global trend, although they remained more prevalent in Africa than anywhere else in the world. Three of the current strongmen of African politics came to power in the 80’s. 1981 was the year in which Hissene Habré seized power in Chad, he ruled from 1982 until deposed in 1990 by Idriss Déby, who still remains in power today. Habré’s one party regime was characterised by widespread human rights abuses and atrocities for which he has currently been indicted by a court in Dakar in close cooperation with the AU, following a ruling by the ICI. Omar al Bashir is another African head of state indicted, in this case by the ICC. Bashir came to power after a coup d’etat in 1989 and quickly implemented a totalitarian Islamic state. The final coup winner of the 80’s who remains in power is Blaise Compaoré who took power from the charismatic Thomas Sankara in a coup that murdered him. Thomas Sankara came to power in a coup himself although the coup was seen as a popularly supported coup. During the 80’s it was relatively calm in Mali with President Moussa Traore, who himself came to power through a coup, consolidating his power by amending the constitution to remove term limits\textsuperscript{14}.

The 1990’s were by no means peaceful for Africa as it played host to some of the darkest pages of recent history. The Rwandan genocide and the Liberian ‘civil’ war saw many of its surrounding states caught up in its turmoil. This decade reaffirmed that Africa is the most conflict ridden region in the world as in the 1990’s, Africa saw more civil unrest than the rest of the world combined\textsuperscript{15}. Mali had elections in 1992 although when the sitting president noticed he was running fourth he abruptly terminated the election process. The following year he tried to avoid another election as a subsequence France responded by suspending all economic and military assistance. President Traore tried to retain control of popular protest through mass arrests and repression, but when he unleashed

\textsuperscript{12} Meredith (2005), p. 276.
\textsuperscript{13} Meredith (2005), p. 291.
\textsuperscript{14} Vengroff (1993), p. 562.
troops to quell demonstrations demanding his resignation, resulting in scores of deaths, the army overthrew him\textsuperscript{16}.

Recently there has been a re-emergence of coups throughout Africa, this is confirmed by the AU decision of 3 February 2009 on the ‘resurgence of the scourge of coups d’état in Africa’\textsuperscript{17}. The AU decision expressed concern about the resurgence of coups and condemned those that took place in Mauritania in August 2008 and Guinea in December 2008 and the attempted coup in Guinea-Bissau in August 2008. Since those coups there have been many more even toppling the democratic bastion of Mali in West Africa in 2012. This clearly reaffirms the statement that Africa is having to cope with the resurgence of coups. Both Mali and the continent as a whole have endured and still have to deal with coups as an ever present threat to constitutional rule.

\textbf{2.2 - Concept and Types of Coups}

Coup d’états have long been part of a political tradition. Julius Caesar who is best known as the most famous of Roman generals came to power through a coup and was eventually the victim of one himself. Coup d’état comes from the French notion meaning “stroke of the state”. The word coup means a blow or a strike and état stands for denoting a sovereign political entity. Although the coup d’état has featured in politics since antiquity, the phrase is of relatively recent coinage. Academic literature is rife with competing definitions of a coup d’état. To illustrate the common thread among those I will show three definitions of coup d’état used by leading scholars of coups and civil-military relations. Of all Samuel Huntington’s contributions to the study of politics, the most important was his 1968 work Political Order in Changing Societies, included his definition of a coup\textsuperscript{18}:

“The distinguishing characteristics of the coup d’état as a political technique are that: (a) it is the effort by a political coalition illegally to replace the existing governmental leaders by violence or the threat of violence; (b) the violence employed is usually small; (c) the number of people involved is small; (d) the participants already possess institutional bases of power within the political system\textsuperscript{19}.”

\textsuperscript{16} Meredith (2005), p. 410
\textsuperscript{17} AU PSC, Presidential Statement on the Resurgence of Coup D’états in Africa. Kampala: AU PSC (2009).
\textsuperscript{18} ‘Samuel Huntington’s Legacy’, http://www.foreignpolicy.com/articles/2011/01/05/samuel_huntingtons_legacy
\textsuperscript{19} Huntington (1968), p. 194.
Secondly Jonathan Powell and Clayton Thyne define coups as:

“overt attempts by the military or other elites within the state apparatus to unseat the sitting head of state using unconstitutional means...there is no minimal death threshold for defining a coup. A coup attempt is defined as successful if the coup perpetrators seize and hold power for at least seven days.”

Finally E. Lutwakk defines a coup d’etat as:

"[a] coup consists of the infiltration of a small, but critical, segment of the state apparatus, which is then used to displace the government from its control of the remainder ... a coup succeeds if its opponents fail to dislodge the plotters, allowing them to consolidate their position, the plotters obtain the surrender or acquiescence of the population, surviving armed forces and the sitting government and they claim legitimacy.”

In the above definition it can be said that the minimum amount of time during which this can occur is at least 7 days. Using these definitions we come to the conclusion that for a coup to be constituted a coup the following events need to have occurred: a force is deployed, by political insiders, Chief executive is replaced, during which the legal procedures aren’t followed.

For further illustration there is further distinction made with regards to the different type of coups. The differentiation in this context is often by whom the coup is perpetrated;

- the Breakthrough coup -- soldiers (usually NCOs or junior officers) overthrow the government and create a new bureaucratic elite; may also be a mutiny where senior officers are relieved of command.
- the Veto coup -- high-ranking officers order violent repression of a mob or mass movement that is attempting to take power and in the process take over the government themselves; may often be the most violent type of coup, or the most unsuccessful one.
- the Guardian coup -- one high-ranking officer seizes power from another high-ranking officer, citing the need for efficiency, national security, or to eliminate corruption, and usually a game

21 Luttwak (1979), p. 73.
of musical chairs results, with political leadership shifting back and forth between military and civilian rule\textsuperscript{22}.

- the Self coup -- where the political leader, aided and abetted by the military or police, suspends or abolishes a branch of government (legislative or judiciary) and assumes extra-constitutional or "emergency" power\textsuperscript{23}.

In academic circles a case has been made for another type of coup, namely the democratic coup. Some coups enjoy the will of the people and hence they are regarded variously as popular or good coups or as O. Varol has coined, a democratic coup. The conventional framework considers military coups to be entirely anti-democratic and assumes that all coups are perpetrated by power-hungry military officers seeking to depose existing regimes in order to rule their nations indefinitely\textsuperscript{24}. Varol argues that, although all military coups have anti-democratic features, some coups are distinctly more democracy-promoting than others because they respond to popular opposition against authoritarian or totalitarian regimes, overthrow those regimes, and facilitate free and fair elections\textsuperscript{25}. As will be postulated later this does not make this means of accession to power acceptable, but its emergence will be encapsulated in the following chapters.

To conclude when Abdou Diouf of Senegal accepted defeat in an election in March 2000 he was only the fourth president to do so in four decades\textsuperscript{26}. The sequence of coups have been ever present since the inception of the OAU in 1963 and has spread across the continent like a contagion. The constant threat to constitutional rule has clearly had its effect on development as it’s scarcely an auspicious environment to promote human rights. The three decades of rule under the OAU have seen the African strongmen of yesteryear cling to power with their opponents attempting to get into power through unconstitutional means. The aspirations were furthermore curtailed by ‘proxy wars’ waged by the worlds superpowers in Africa. The resurgence of the coup has been the most prevalent and violent form of democratic instability in Africa. Striking not only regimes that were inherently weak and unstable but bringing down nearly all African states in its wake. Mali has endured the rule of a strong man who like all its leaders until 2012 was ousted by a coup. Even after a spell of democratic rule it once again had to overcome yet another unconstitutional change of government in 2012. The

\textsuperscript{22} The first three coups come from: Luttwak (1979), p.73.
\textsuperscript{23} Costa (1993), p. 28.
\textsuperscript{24} Varol (2012), p.292.
\textsuperscript{25} Varol (2012), p.294.
\textsuperscript{26} Meredith (2005), p. 679.
AU has deemed coups and other methods related to taking or remaining in power in a manner which constitutes an unconstitutional change of government, illegal. The following chapter will elaborate on what constitutes an unconstitutional change of government.
3.0 - Forms and Manifestations of Unconstitutional Change of Government

3.1 - Legal Framework

Throughout this section we look at the definition of the concept or phenomenon of unconstitutional change of government. Unconstitutional change of government encompasses four phenomenon, namely military coups, tenure prolongation (third term politics), the refusal of defeated incumbents to concede power to the winning opposition, and amendments of the constitution which can be considered an infringement on the democratic principles of democratic change of government. Throughout this paper there is a special emphasis on the coup but for the sake of a complete understanding all four phenomenon will be discussed in this chapter. The AU has three policy instruments under which the phenomenon of unconstitutional change of government is contained. Firstly we have the Constitutive Act of the AU27. The second is the Lomé declaration which is the outgrowth of the 1999 Algiers declaration28. Thirdly there is the African Charter on Democracy, Elections and Governance29. A more in depth analysis of the specific articles of each policy instrument is contained in the next chapter.

1. Military coup d’état against a democratically elected government.
2. Intervention by mercenaries to replace a democratically elected government.
3. Replacement of democratically elected governments by armed dissident groups and rebel movements; and
4. The refusal by an incumbent government to relinquish power to the winning political party after free, fair and regular election.
5. Amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government.

With the transition from the OAU to the AU there was a reinvigorated hope for continental efforts to promote peace, stability and development. The OAU was replaced by the African Union, with a plethora of new institutions, including a Pan-African parliament, a Pan-African Court of Justice an African Central Bank and a Peace and Security Council. It was also granted greater powers that could possibly infringe with the sovereignty of the member states. Whereas the OAU was required by

Charter to refrain from interference in individual states, the AU was given the right to intervene without consent, in a member state in order to ‘restore peace and stability’; to prevent war crimes, genocide and crimes against humanity’. The Protocol on Amendments to the Constitutive Act, which was adopted in February 2003 and is not yet in force, amends Article 4 (h) by adding at the end of the sub-paragraph the words “as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council.”

The Protocol or the proposed Rules of Procedure have not defined what these situations could be, but a number of theoretical issues could be raised. Would the Assembly decide on intervention where a total breakdown of law and order leading to massive population displacement was imminent? Would the situation be different if the government’s refusal to hand over power after losing an election led to chaos and anarchy in the member state? Would the Assembly decide on intervention to protect a regime, whether democratically elected or not, from the wrath of its own people, or rather to protect the people from the regime? According to Sturman and Baimu, this amendment is inconsistent with the other grounds for intervention that aim to protect the African peoples from gross violations of human rights, whereas by contrast, in their view, the amendment aims to protect State security rather than human security.

This is relevant for the study of unconstitutional changes of government where this protocol may be utilised in favour of state security. In my opinion in deciding on intervention it is only justified if it’s in accordance with the fundamental values and standards set out in the constitutive act and the other elements of the legal framework that encapsulate the spirit of the AU. Furthermore according to article 7 of the Constitutive Act, decision making by the Assembly is by consensus or, failing which, by a two-thirds majority of member States eligible to vote. The ratification of the Addis Charter illustrates the attempt of the AU to make good on its promise for new standards of democracy, accountability and good governance. It therefore seems unlikely the far reaching implementation tools that the Amendment would offer would get consensus if utilised for state security rather than human security.

3.2 - Military Coup D’état

The first example of an unconstitutional change of government is the military coup, which is also the focus of this paper. The resurgence of the coup has been the most prevalent and violent form of...

democratic instability in Africa\textsuperscript{33}. Whereas other parts of the world are no longer plagued by the disposition of its government through coups, Africa is still continuously plagued by this phenomenon\textsuperscript{34}. The Lomé declaration came on the eve of the birth of the AU and is widely considered to be one of the canons in the AU’s drive to promote democracy and good governance and consequently rid the continent of the coup malaise. With the transition from the OAU to the AU there was a reinvigorated hope for continental efforts to promote peace, stability and development. It was the Constitutive act of the AU which was supposed to encapsulate these hopes and dreams and give them legal grounding. Within it tempers with the Westphalian notions of sovereignty and non-interference including response mechanisms dealing with coups. This will be discussed in length in the following chapter. Throughout the continent the small country of Guinea-Bissau has been least successful in stepping out of the shadows of its past. In Guinea-Bissau, no president has completed his term since the first multiparty elections began in 1994, and coups and assassinations have played big roles in the political theatre since the country’s independence from Portugal in 1974. On 2 March 2009 it recorded a coup when President Joao Bernardo Veira was murdered by a faction of the army. Then came the 1 April 2010 attempt in which Prime Minister Carlos Gomes Jnr was captured and detained together with the head of Guinea-Bissau’s armed forces, before eventually being released. Then two weeks before the second round of presidential elections a coup was staged by elements of the armed forces. Both second-round candidates and the incumbent president were initially arrested by the junta. Members of the Military Council, which ran the country until an interim National Transitional Council was eventually established. These elections are currently being held during which there a constant fear of yet another a coup\textsuperscript{35}. Guinea-Bissau epitomises the reason for greater analysis into the reasons for the resurgence of the coup and how to combat it’s ever presence. This analysis will be provided in the following two chapters.

3.3 - Tenure Prolongation/Third Term Agenda

Attempts to foster tenure prolongation in office by incumbent power-holders has been another strategy often employed to disguise unconstitutional changes of government in Africa. Throughout the last decade and a half there have been many cases of leaders clinging to power through tenure

\textsuperscript{33} Omotola (2001), p. 10.
\textsuperscript{34} Recent exception is the 22 May 2014 coup in Thailand.
\textsuperscript{35} ‘Guinea-Bissau votes to elect president but military overthrow feared’, http://www.theguardian.com/world/2012/mar/18/guinea-bissau-vote-president-military-coup
prolongation\textsuperscript{36}. Going back in history Kwame Nkrumah, the influential Pan-Africanism advocate, was the first to declare himself the “life president” of Ghana in 1964. Nkrumah was followed by Hastings Banda of Malawi in 1971 and by Jean-Bédel Bokassa of the Central African Republic in 1972. In the late ‘80s to early ‘90s some African states adopted constitutional checks and balances to curb the trend of elected leaders turning into dictators\textsuperscript{37}. The exception to this was Moussa Traore of Mali who removed the limits on the length of time a president could hold office. One check is the constitutional entrenchment of a limit to the number of terms a person can be elected as president. There are generally two types of limits\textsuperscript{38}. First, most constitutions limit a president to two terms. A person becomes ineligible to run for president after serving as president for two or three terms. The second type is that a head of state who has served as a president for two terms must be out of office for at least five years before he can run for another period of office (Mozambican Constitution, 1990)\textsuperscript{39}. The requirement of one term out of office is a “cooling off” period\textsuperscript{40}.

African leaders who have succumbed to the pressure and attempt to prolong their power beyond the statutory two terms, sought to do so within the ambit of the law by resorting to parliament for constitutional amendments\textsuperscript{41}. According to Posner and Young some leaders have managed to circumvent restrictions on seeking more than two terms in office, yet have done so through formal institutional channels rather than extra constitutional means. In this context they claim that leaders today are more constrained by formal rules in trying to achieve their most preferred outcome\textsuperscript{42}. However as J. Omotola puts it “it should be emphasised that tenure prolongation, in whatever guise, is wrong-headed”. Presidential term limits have proved indispensable in Africa due to the reluctance of leaders to voluntarily leave office. African leaders have a startling propensity for perpetual rule. This Perpetual rule allows presidents to monopolise and personalise power. Constitutional and electoral engineering have been reduced to instruments or tools for political preservation of the presidency and its close associates. Perpetual rule erodes other basic principles of democracy such as accountability, transparency and responsiveness of government\textsuperscript{43}. Tenure prolongation should be

\begin{itemize}
\item \textsuperscript{36} See Table 2.
\item \textsuperscript{37} Augustin (2002), p. 10.
\item \textsuperscript{38} Posner & Young (2007), p. 127.
\item \textsuperscript{39} Mozambique, Constitution of the Republic of Mozambique. Maputo: Mozambique (2004).
\item \textsuperscript{41} Omotola (2001), p. 24.
\item \textsuperscript{42} Posner & Young (2007), p. 129.
\item \textsuperscript{43} Omotola (2014), p. 18.
\end{itemize}
dealt with at AU level through article 23(5) of the Addis Charter which provides a policy framework to ensure the first step. The ultimate aim would be to adopt a binding continent-wide policy on two-term limits of a maximum of seven years for presidential mandates for a minimum period of three decades or thereabout and to categorically refuse any change to this policy. The justification for such a policy is that overstay in power of many African leaders has not been accompanied by good governance, which (a) seems to be a source of political instability in many countries; (b) has been a constant pretext, if not justification for military coups; and (c) as the AU policy itself recognises, highlights the need to find a way to ensure smooth and regular change of leadership on the continent.

Attempts to remove presidential term limits in Africa 1990 – 2009

<table>
<thead>
<tr>
<th>Country</th>
<th>President:</th>
<th>Term Limit Successfully Removed:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>Abdelaziz Bouteflika</td>
<td>Algeria - (2008)</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>Blaise Compaore</td>
<td>Cameroon - (2008)</td>
</tr>
<tr>
<td>Cameroon</td>
<td>Paul Biya</td>
<td>Chad - (2005)</td>
</tr>
<tr>
<td>Chad</td>
<td>Idriss Deby</td>
<td>Gabon - (2003)</td>
</tr>
<tr>
<td>Djibouti</td>
<td>Ismael Guelleh</td>
<td>Guinea - (2001)</td>
</tr>
<tr>
<td>Gabon</td>
<td>Omar Bongo</td>
<td>Namibia - (1998)</td>
</tr>
<tr>
<td>Ghana</td>
<td>Jerry Rawlings</td>
<td>Niger - (2009)</td>
</tr>
<tr>
<td>Guinea</td>
<td>Lansana Conte</td>
<td>Senegal - (2008)</td>
</tr>
<tr>
<td>Malawi</td>
<td>Bakili Muluzi</td>
<td>Tunisia - (2002)</td>
</tr>
<tr>
<td>Malawi</td>
<td>Bingu wa Mutharika</td>
<td>Uganda - (2008)</td>
</tr>
<tr>
<td>Mali</td>
<td>Alpha Konare</td>
<td>Term Limit Removal Attempt:</td>
</tr>
<tr>
<td>Mozambique</td>
<td>Joachim Chisanno</td>
<td>Malawi - (2002)</td>
</tr>
<tr>
<td>Namibia</td>
<td>Sam Nujano</td>
<td>Nigeria - (2006)</td>
</tr>
<tr>
<td>Niger</td>
<td>Mamadou Tandja</td>
<td>Zambia - (2001)</td>
</tr>
<tr>
<td>Nigeria</td>
<td>Olusegun Obasanjo</td>
<td></td>
</tr>
<tr>
<td>Senegal</td>
<td>Abdoulaye Wade</td>
<td></td>
</tr>
<tr>
<td>Siera Leone</td>
<td>Ahmad Kabbah</td>
<td></td>
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<tr>
<td>Tanzania</td>
<td>Benjamin Mkapa</td>
<td></td>
</tr>
<tr>
<td>Togo</td>
<td>Gnassingbe Eyadame</td>
<td></td>
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<tr>
<td>Tunisia</td>
<td>Zine Ben Ali</td>
<td></td>
</tr>
<tr>
<td>Uganda</td>
<td>Yoweri Museveni</td>
<td></td>
</tr>
<tr>
<td>Zambia</td>
<td>Frederick Chiluba</td>
<td></td>
</tr>
</tbody>
</table>

From a historical perspective it is paramount that these rules are born from African soul and aren’t enforced by foreign powers, giving rise to the familiar rhetoric of western imperialism. For all the Charters and principles that legally encompass the African Continent it’s the factor of non-application towards sitting leaders that manipulate their constitutions to stay in power that remains an issue. Constitutions embody the practices, customs and rules through which power is established, exercised and transmitted in the state. Ensuring the sanctity of the law is therefore a primacy for both the governed and the governors. Furthermore a relatively uncritical stance towards elections is assumed that cannot distinguish in practice between democratic and autocratic governments, because the criterion of ‘free and fair’ elections is not robust enough to draw that distinction. States and continental organisations are also unwilling to apply it stringently. Therefore, all elected governments are automatically considered constitutional and also legitimate. The doctrine’s implication is that it does not provide for legitimate government changes by other means.

3.4 - Failure to Concede Power to Winning Parties

The third form of unconstitutional change of government discussed within this chapter occurs when heads of state have lost elections in Africa but refuse to accept defeat and concede power to their opponents. In such cases, sit-tight incumbents deliberately engineer post-election violence that will help them remain in power at any cost. This development is another form of unconstitutional change of government, and has been complicated by one of the emerging mechanisms for resolving post-election conflicts in Africa, namely power-sharing. This was the case in Kenya and Zimbabwe, two cases where the opposition reportedly won but the incumbents either manipulated the final election results or refused to concede defeat. In its 2010 report on election related disputes and political violence, the AU Panel of the Wise equally observed that the use of post-electoral crisis power-sharing arrangements, if not well managed, “may spiral out of control and become a political tool, abused for purposes of manipulating the democratic process and annulling the people’s vote. As a response to violent contestations of the outcome of electoral processes power-sharing agreements are problematic, this is best encapsulated by the AU Commissioner for Political Affairs in 2009.

46 Posner & Young (2007), Figure 3
“In many instances, the response to the violence experienced has been to prescribe negotiated arrangements for stabilisation purposes. Whilst such an approach is understandable, prescriptions of power sharing arrangements will have the consequence of weakening the momentum towards building the rules of competition that invariably embody winners and losers. Whilst a consensus government may be a good thing in itself, building this through rewarding the violence of losing parties makes a mockery of electoral competition.”

The situation in Zimbabwe occurred after the 28 March 2008 presidential and parliamentary elections. Morgan Tsvangirai of the Movement for Democratic Change (MDC) won the first round of the presidential election. However, with his total votes less than the required 50 per cent, there was a need for a run-off, but he withdrew from this, citing violence against his supporters and himself. The ruling party the Zimbabwean African National People’s Union-Patriotic Front (ZANU-PF) run by Robert Mugabe was unwilling to concede defeat and resorted to violence. A violent onslaught was focused on the opposition and the press and was finally subdued once the attendant process of post-election conflict-resolution facilitated by regional leaders led to the Global Political Agreement (GPA). This was signed on 15 September 2008, between the contending ZANU-PF, MDC and a small breakaway faction of the MDC led by Author Mutambara. The failure of AU to decisively apply its rules in the Kenyan and Zimbabwean cases indirectly constitutes an open invitation to other incumbents who lose competitive elections not to concede victory to the winners. The power sharing agreements which follow simply legitimise their actions and create the illusion of democratic elections. For this analysis it should suffice to say that power sharing agreements help countries overcome moments of violence and instability, but at what constitutional cost?

3.5 – Constitutional Amendments

The AU Charter on Democracy, Elections and Governance came into force in February 2012 after the fifteenth ratification by Cameroon adding another situation to the normative framework of unconstitutional changes of government. Contained within is Article 23 (5) which added a fifth situation that amounts to an unconstitutional change of government and states that “any amendment

51 The violent onslaught and the tactics running up to the 2008 elections are best encapsulated in the book by Philip Barclay: Zimbabwe years of hope and despair.
or revision of [national] constitution or legal instruments which is an infringement on the principles of
democratic change of government”. This would amount to implanting an incumbent government
regardless of the will of the people. More importantly, it stipulates that amendments to constitutions
are to be carried out only when a national consensus is achieved. Cumulative reading of Articles 5 and
10 of the Addis Charter stipulates that amendments to constitutions should take place by consensus,
if possible, or through referendum, if necessary. Between 2005 and 2010 in Algeria, Cameroon, Chad,
Djibouti and Uganda constitutional amendments eliminated presidential term limits, allowing the
incumbent to continue running for election. Similar initiatives failed in Nigeria and Niger, where they
led to a coup against then President Mamadou Tandja in February 2010. However the announced
canditure of Senegalese President Abdoulaye Wade for the 2012 election, and his subsequent
contestation of the poll, were seen as another attempt to bend the two term constitutional limit.

Over the next few years, several countries in the Africa Great Lakes region are scheduled to hold
presidential elections where the incumbent is constitutionally prevented from participating. Burundian
President Pierre Nkurunziza has been angling to remove presidential term limits so that he
may run for a third term in 2015. After parliament narrowly voted down a series of constitutional
amendments in mid-March that would have removed presidential term limits, the government
announced that President Nkurunziza would indeed be running for re-election in 2015. The
Democratic Republic of Congo and Rwanda are scheduled to hold elections in 2016 and 2017,
respectively. In both, the president will have reached his constitutional maximum term limit. Elections
in Uganda are scheduled for 2016. The incumbent president, Yoweri Museveni, will most likely run for
a fifth term, having overseen the removal of term limits in 2005, one year before being elected to his
third term as president. It is evidently the continent’s most volatile region that will have to stand the
test of Article 23 (5) of the Addis Charter. As it’s currently unclear whether the incumbent Presidents
are willing to uphold their constitutional limit as head of state. I firmly believe that constitutional
limits are an effective manner of preventing future strong men within African politics, however we
should be careful not to instil western notions of democracy to strongly upon Africa. As the current
framework has a certain degree of ambiguity in relation to what entails an infringement of the
democratic principles of democratic change of government is it for the AU to fill that ambiguity.

53 ‘Between Coup and Revolution: the Egyptian political and legal debacle’
54 Mindzie (2014), p. 84.
In conclusion unconstitutional change of government encompasses four phenomenon, namely military coups, tenure prolongation (third term politics), the refusal of defeated incumbents to concede power to the winning opposition and finally amendments of the constitution which can be considered an infringement on the democratic principles of democratic change of government. Whereas the OAU was required by Charter to refrain from interference in individual states, the AU was given the right to intervene without consent, in a member state in order to ‘restore peace and stability’; to prevent war crimes, genocide and crimes against humanity’. The Protocol on Amendments to the Constitutive Act, which was adopted in February 2003 and is not yet in force, amends Article 4 (h) by adding at the end of the sub-paragraph the words “as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council”\(^56\). With the transition from the OAU to the AU there was a reinvigorated hope for continental efforts to promote peace, stability and development.

In first instance the resurgence of the coup has been the most prevalent and violent form of democratic instability in Africa. The second instance of unconstitutional change of government occurs when parties refuse to accept their electoral defeat. This has been seen to devastating effect in Kenya and Zimbabwe. The African solution thus far has been to arrange a power sharing agreement to avoid further bloodshed. Although I applaud the latter I remain steadfast in my opinion that constitutionally such arrangements are often not sound and are therefore not always a viable option. Finally tenure prolongation has been identified as a form of unconstitutional change of government. The distinct problem here is that the current AU Charter and protocols are ambiguous, as it mostly relies on states constitutions to cover the topic.

4.0 - Reasons for the Propensity of Coups

4.1 - Historical Background

Throughout Africa one-partyism or military rule have reigned supreme, characterised by flagrant and wanton abuse of democratic values, particularly the fundamental human rights of citizens, the rule of law and equality. When the OAU transformed itself into the AU in 2002, the new organisation’s founding Constitutive Act included among its principles “condemnation and rejection of unconstitutional changes of government.” In 2007, an AU summit approved a new African Charter on Democracy, Elections and Governance. It’s coming into force has been slow but it clearly prohibits any ‘perpetrators’ of unconstitutional changes from participating in subsequent elections and even warns that coup makers will be tried for their crime against the democratic state. The perseverance of coups throughout Africa has been widespread since the start of democratisation around 1960. The following figures are startling in illustrating how pervasive they have been; thirty SSA (62.5%) have experienced at least one successful coup and 18 (37.5%) have suffered multiple coups. Only six countries have been completely free of coups, although three of them only became independent or majority ruled in the 1990’s and therefore have not had much time to prove they are immune to this form of political intervention. Frankly there has not been a single year without an attempted or successful coup since the first coup in the Sudan in November 1958. Ghana’s first prime minister and subsequently president Dr. Kwame Nkrumah sought to explain the prevalence of coups by laying blame at the imperialist aggression.

“At present, there is in Africa an intensification of struggles and conflicts between imperialism and its class allies on the one hand, and the vast mass of the African peoples on the other. Imperialist aggression has expressed itself not only in coups d’état, but in the assassination of revolutionary leaders and the setting up of new intelligence organisations.”

Seeking to explain the prevalence of coups in Africa explanations tend to emphasis either factors external to Africa such as declining terms of trade and Cold War interventions, or factors internal to weak African states themselves such as authoritarian rule and corruption. The bi-polar struggle

between competing ideologies during the cold war era heightened political tensions and led to many conflicts fought on African soil. Given the weak institutional and productive capacities of key statesman, it allowed the superpowers to influence their proxy regimes and orchestrate regime change by political intervention. The most apparent example in this context was the Angolan civil war. The war between the Cuban backed MPLA and the South African backed UNITA forces led to decades of civil war and the approximate loss of life of 1 million people. During this war the Reagan administration offered covert aid to the anti-communist UNITA rebels, led by Jonas Savimbi in an attempt to overthrow the MPLA government. While the MPLA government received humanitarian and financial support from the socialist governments of the time.

4.2 - Three Reasons for the Propensity of Coups

It should suffice to say that among the internal causes there are various forms of political instability and mal-governance of which the coup d’état is the manifestation which warrants further investigation. With regard to the propensity of coups several factors have been identified as important variables. Firstly the level and growth rate of per capita income powerfully affects the risk of a coup. Economic growth and political stability are deeply interconnected. On the one hand, the uncertainty associated with an unstable political environment may reduce investment and the speed of economic development. On the other hand, poor economic performance may lead to government collapse and political unrest. In other words, some measures of positive economic performance are highly stabilising such as a high level of productive employment, robust economic growth, sound export performance (ratio of export-imports to GDP) and diversified export commodities. Africa can be saved from the menace of coups if it could achieve inclusive economic growth. The evident limited appeal of economic reform for most African governments may reflect a failure to appreciate the importance of good economic performance for their own security.

Secondly a key variable is the time elapsed since the most recent coup. This, rather than a pure time trend, is the key temporal dimension of the story. If a country can for whatever reason avoid a coup plot, it gradually becomes much easier to continue that trend in the future. Certain countries are

60 ‘President Pledges Support of US to Angolan Rebel Leader Savimbi’, http://news.google.com/newspapers?nid=1350&dat=19860131&id=XklPAAAAIBAJ&sjid=MgMEAAAAIBAJ&pg=6915,6185697
63 Collier & Hoeffler (2005), p. 17.
highly coup-prone, not because of a fixed effect but because they never break out of the high risk environment which prevails in the recent aftermath of a plot. In the research by Lunde in 1991 it found that the probability of coups and attempts rises sharply for the first 45 months after independence and every subsequent regime change. If a military or civilian regime can survive this testing three to four years, the risk of a coup or coup attempt declines afterwards. According to study if the time elapsed since the most recent plot is doubled, the risk of a further plot is reduced by 62.7%. A big factor in this context is to what extent the new leaders tend to exploit their new found power. Often it gives rise to new animosity with those that are still left behind after the previous regime change. Once the precedent of a coup has been established, the probability of subsequent coups rises dramatically and countries pay a steep and long term price for cyclical interference in political discourse. The trio of islands, nestled off the Africa’s east coast between Mozambique and Madagascar known as the Comoros islands seems to take the number one spot in this respect. The Comoros used to be known as a pirate haven and has played host to 20 coups or attempted coups in the past three decades not to mention the fact that it became the spiritual home of the mercenary widely believed to have provided the inspiration for Frederick Forsyth's classic tale of guns for hire in Africa, The Dogs of War.

Thirdly the governments of Africa face a non-negligible risk of a coup perpetrated by their own military establishment. Control of the military has been seen as the vehicle to power and wealth in Africa. This has fostered a politicisation of the military and ongoing competition and collusion among politicians and security leaders seeking to gain the upper hand. In addition to systematically weakening the capacity of the military, these patterns have bred deep fear and distrust of the security sector by the general population, further fuelling instability. The government needs its military to protect it from external threats and internal rebellion however the military itself also forms a threat. Therefore there is a conundrum with regards to its budget, potentially the threat against the government can be the leading train of thought in determining the military’s budget. African governments respond to a high level of coup risk by increasing military spending. The normal government reaction to coup risk is to cut military spending, and most especially to cut the size of the army. Whereas on the global sample there is no evidence that an increase in military spending is effective in reducing coup risk, in Africa it achieves a significant reduction. This distinctive behaviour of African governments, and the distinctive

response of their militaries, is consistent with their use of military spending to buy off the military. This is consistent with a theory in which only above a threshold level of coup risk can coups not be adequately deterred by the fear of punishment\(^68\). Even though 2013 saw a worldwide fall in military expenditure, mostly due to the fact that military spending has fallen in the west, Africa has managed to circumvent this trend. Africa had the largest relative rise in military spending in 2013 of any region, by 8.3 per cent, to reach $44.9 billion. While the regional trend tends to be dominated by a few key countries, military spending rose in two-thirds of the countries for which data is available\(^69\).

Lastly there are two monetary incentives which coincide with the large rents of sovereignty. In the context of Africa the two most important sources of the rents to sovereignty are those from natural resources and foreign aid. For example, when the Sudanese People’s Liberation Army became the government of Southern Sudan region in mid-2005 it received $1bn per year in oil revenues, plus an aid inflow – which for 2005 accumulated to $2.1bn\(^70\). The revenue from natural resources is not solely an African Income resource but the prevailing lack of checks and balances within governmental structures does allow for a generous freedom for self-enrichment.

Africa receives over $50.0bn a year from foreign donors, which arguably does not always achieve its goal\(^71\). An apparent coup does not per definition hinder the continued payment of foreign aid in most cases. Most coups occur in states with a low level of democracy, therefore a coup may be viewed by donor countries as a likely event in a politically unstable country. Because the coups are not unexpected and do not affect the level of democracy or rule of law, or on the contrary may be viewed as an improvement if a coup occurs against an autocratic regime, donor countries don’t alter their foreign aid commitment. When a coup occurs in an established democracy, like witnessed in Mali in March 2012 the reaction is somewhat different. Here the U.S. quickly condemned the overthrow and called for an immediate restoration of constitutional rule. The World Bank and African Development Bank reported that they were suspending all aid\(^72\). The former colonial power, France, condemned the coup and stated it was suspending all aid except for food aid and joint efforts to combat terrorism\(^73\).

Furthermore, organisations including ECOWAS and the AU imposed heavy sanctions on Mali including economic sanctions\textsuperscript{74}. Here the coup did elicit a significant financial response from the donor community due to the fact that Mali was seen as having a functioning democracy albeit an elitist democracy which functioned independently from the democratic elections process. When we compare Mali to Central African Republic we find grounds for the previous statement as throughout the recent crisis foreign aid and direct government assistance continued, albeit paused at several intervals when the crisis peaked. The lack of reaction by the donor community with successful coups is mirrored with its reaction to unsuccessful coups. The reaction to failed coups follows the general pattern of increased foreign aid which is seen globally, with the distinct exception that the global recession caused worldwide ODA contributions of OECD countries to fall by 3\% in 2011\textsuperscript{75}. These findings may be interpreted as donor countries coming to the realisation that the autocratic leader is remaining in power for the long haul and thus relationships and alliances must be formed. In this regard I analysed data from the World Bank which illustrated that ODA income by regimes surviving failed coups continued on par with the global trend. Amongst others this was both seen in Chad and Equatorial Guinea after the regimes survived failed coup attempts in 2004\textsuperscript{76}. Therefore it can be concluded that foreign aid income is included in the debts of sovereignty and may be viewed as spoils of battle by coup plotters.

In conclusion in Africa coup plots are by far the most common challenge to the continuity of regimes. The factors are not solely African but have a higher degree of prevalence or occurrence in Africa due to surrounding circumstances. The level and growth rate of per capita income seems to be an important factor. The conundrum of the vicious cycle is that Fosu’s sophisticated econometric studies have shown that coup related events had a clear impact on yearly growth in GDP for 31 Sub-Saharan states during the 1960-86 period, reducing the rate of growth by as much as one-third of the observed average\textsuperscript{77}. This combined with the tendency of African militaries to become ‘partis militaires’ under which auspice they engage in personal and corporate enrichment through political representation benefiting from the large rents of sovereignty, causes the vicious cycles of coup d’état, especially when people feel disenfranchised by the new leaders, creating new grounds for a coup. With aid being channeled through the state it tends to increase the economic attractiveness of politics and therefore

\textsuperscript{74} ‘African Union adds to sanctions in Mali’, http://edition.cnn.com/2012/04/03/world/africa/mali-unrest/
\textsuperscript{75} ‘Development Aid to Developing Countries Falls Because of Global Recession’, http://www.oecd.org/newsroom/developmentaidtodevelopingcountriesfallsbecauseofglobalrecession.htm
\textsuperscript{76} ‘Net ODA Received per Capita’, http://data.worldbank.org/indicator/DT.ODA.ODAT.PC.ZS
\textsuperscript{77} Kwasi (2002), p. 329.
the profitability of controlling or taking power. It is of paramount importance to reverse this trend as it is a major impediment to the quest for democratic consolidation in Africa. The following chapter will encompass the legal framework that exist to deter and respond to unconstitutional changes of government.

Coups in Africa 2008-2013.

<table>
<thead>
<tr>
<th>SN</th>
<th>Country</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Mauritania</td>
<td>6 August 2008</td>
</tr>
<tr>
<td>2</td>
<td>Guinea</td>
<td>23 December 2008</td>
</tr>
<tr>
<td>3</td>
<td>São Tomé and Principe</td>
<td>February 2009 (foiled)</td>
</tr>
<tr>
<td>4</td>
<td>Guinea-Bissau</td>
<td>2 March 2009 and 1 April 2010</td>
</tr>
<tr>
<td>5</td>
<td>Niger</td>
<td>29 May 2009 and 18 February 2010</td>
</tr>
<tr>
<td>6</td>
<td>Madagascar</td>
<td>17 March 2009 and 17 - 18 November 2010</td>
</tr>
<tr>
<td>7</td>
<td>Mali</td>
<td>22 March 2012</td>
</tr>
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<td>8</td>
<td>Ivory Coast</td>
<td>13 June 2012</td>
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<td>9</td>
<td>Libya</td>
<td>17 April 2013 and 10 October 2013</td>
</tr>
<tr>
<td>10</td>
<td>Chad</td>
<td>1 May 2013</td>
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<tr>
<td>11</td>
<td>Central African Republic</td>
<td>18 April 2013</td>
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<tr>
<td>12</td>
<td>Egypt</td>
<td>3 July 2013</td>
</tr>
</tbody>
</table>

*Table 2*.  

78 Source: Author’s Compilation.
5.0 - Legal Ramifications of Unconstitutional Changes of Government in Africa

5.1 - African Union

The next section presents the rights, powers and obligations of the AU in relation to coups which fall under the parameter of unconstitutional changes of government. The AU has clearly specified the parameters to democracy and has unequivocally described the conditions of unconstitutional change of government, a violation for which sanctions are proscribed. At its creation in 1963 the OAU was preoccupied with protecting the hard-won independence of its member states and devising a strategy to eradicate all forms of colonialism on the continent. At the time the OAU strove to promote unity and solidarity among its members and strongly upheld the principle of territorial sovereignty as enshrined in Article 2 (4) in the UN Charter. Sovereignty is a central and indivisible principle that governs international relations. The notion is binary, meaning that a state is either sovereign or it is not a state. Consequently the OAU and its members were prohibited from meddling with matters within the discretion of state sovereignty. The fact that the OAU recognised almost all regimes that came to power through unconstitutional means, was one of the issues which called into question the legitimacy of the organisation as a credible institution at the apex of decision making in the continent. The OAU Charter was embedded with two noteworthy institutional flaws: First the Charter rendered the OAU’s executive and administrative branches ineffective by according them only limited powers. Resolutions of the OAU Assembly were not legally binding and this rendered the Assembly little more than a deliberative forum at best. Secondly the OAU’s Commission of Mediation, Conciliation and Arbitration, set up as the organisation’s diplomatic machinery for conflict resolution, did not have any powers to make a difference. As a consequence during the three decades of its existence the organisation was plagued by its institutional ineffectiveness. To achieve regional integration sacrifices of sovereignty needed to be made and clearly the African leaders during the spell of the OAU did not adhere to the motivational words spoken by Algeria’s first president Ben Alla at the inaugural summit in 1963:

“So let us agree to die a little or even completely so that the peoples still under colonial domination may be free and African unity may not be a vain word.”

79 Gandois (2005), p. 3.
81 Adebajo (2012), p. 5.
82 Adebajo (2012), p. 28.
5.2 - Democratic Governance

The right to democratic governance finds its popular beginnings in 1992 the American Journal of International Law published an article by Tom Franck entitled “The Emerging Right to Democratic Governance”\(^8\). The article inaugurated an important debate on the relationship between international law and democracy. The question was “What has become of the emerging right to democratic governance?” Worldwide, the emerging right to democratic governance is supported by developments within international organisations, though still as an entitlement which is emergent rather than fully established. Africa being the subject rather than a contributor of International law in most cases has surprisingly been the one to make most headway on the matter\(^4\). Professor Udombana examined the normative framework of democratic governance in Africa, including UN-inspired human rights instruments to which African states are parties. He noted that “the norms of democratic governance in Africa are not contained in a single instrument; they are scattered apart like the pearls of a snapped necklace”\(^5\). During the 1990’s the indifference of the OAU towards unconstitutional change of government and flagrant disregard towards democratic governance was changing. There was an initiation of placing emphasis on democracy and good governance. The OAU came to deal with coups d’état rather belatedly and after a number of other international organisations had promoted the so-called democracy clause in their constitutive instruments, reference to which is made later in the Chapter, which was accompanied with the infliction of sanctions in cases of infraction. Of particular interest is the pioneering way in which the (former British) Commonwealth of Nations, one of the oldest transnational institutions with a large contingent of African members, dealt with these issues by adopting in November 1995 the Millbrook Action Programme on the Harare Declaration.

5.3 - African Union Decisions

Shortly after the OAU came together during the Harare summit of 1997 where Sierra Leone had just suffered a coup which ousted President Ahmed Tejan Kabbah. For the first time the OAU responded by condemning the coup and if diplomatic efforts failed were prepared to endorse military action by

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Furthermore it was the first time that they barred any other representatives than President Ahmed Tejan Kabbah from attending the meeting. The full frontal approach was contradictory in comparison to its response a year earlier in Congo Brazzaville when a coup ousted President Pascal Lissouba. It appears that a complex set of local and regional dynamics, including the interest of foreign players, would probably best explain the inconsistency displaced by the OAU with regard to these situations, progress was however made. This progress led to the Algiers summit with the adoption of two instruments that had the effect of renouncing coups d’état as unacceptable and anachronistic acts contradicting Africa’s commitment towards the promotion of democratic principles. The first instrument - Decision 141 - recognised that the principles of good governance, transparency and human rights are essential elements for building representative and stable government and contribute to conflict prevention. The second instrument - Decision 142 - determined that those Member States whose governments had come to power through unconstitutional means should restore constitutional legality before the next ordinary session of the Assembly.

5.4 - Lomé Declaration

The following year, further action was taken by the OAU. In particular, the 36th Ordinary Session of the Assembly, which took place in Lomé in July 2000, adopted a framework that attempted to address unconstitutional changes of government and to promote democratic governance in a coherent and collective manner. The Lomé Declaration on the Framework for an OAU Response to Unconstitutional Change of Government laid down a set of common values and principles for democratic governance; defined what constitutes an unconstitutional change of government; set out the measures and action that the organisation would progressively take to respond to such cases; and, finally, introduced an implementation mechanism. The Lomé Declaration was prompted by the desire of African leaders to find a response to the scourge of coups that marked the history of post-colonial Africa. In the event of an unconstitutional change of government occurring in a member state, the Lomé Declaration requires the OAU to condemn that change and to urge for a speedy return to

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constitutional order. A period of up to six months should be given to the perpetrators to restore constitutional order. During this period, the government concerned should be suspended from participating in the policy organs of the OAU. After the six month period, a range of limited and targeted sanctions should be imposed against a regime that refuses to restore constitutional order, including visa denials, trade restrictions and restrictions of intergovernmental contacts. The Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution, later replaced by the PSC, was charged with implementing the Lomé Declaration. Unfortunately the mechanism to attempt to intercede or make recommendations were often not heeded. The problem was that the central organ cannot enforce the decision without the consent of the parties, much as enforcement may look attractive. It is a matter of persuasion, mediation and coordination with the parties for it to yield its benefit.

5.5 - African Union’s Constitutive Act & Addis Charter

Unlike the OAU Charter the AU’s constitutive act of 2000 allowed for interference in internal affairs of its members in cases of unconstitutional change of government, egregious human rights abuses and genocide. This is revolutionary in light of the OAU’s rigid, non-interventionist posture in the first three decades of its existence. The AU added to the existing legal framework with the African Charter on Democracy, Elections and Governance. It was part of the roadmap to encourage better governance across the continent. It sets out international standards of good governance and democracy in such areas as rule of law, free and fair elections, and condemning unconstitutional changes of government. The Charter expands the definition of an unconstitutional change of government as well as the range of sanctions that may apply to states as well as to individuals. According to article 5 state parties commit themselves to take all appropriate measures to ensure constitutional rule and, in particular, constitutional transfers of power. Furthermore article 10 illustrates that “they shall entrench the principle of the supremacy of the constitution in the political organisation of the state and ensure that the process of amending or revising their constitution reposes on national consensus.”

Alarmed by the resurgence of (attempted) coups d’état in Africa in 2008, the AU Assembly adopted a

decision in February 2009 to support the activities undertaken by the PSC in view of an immediate return to constitutional order in the countries affected by a coup. The AU Assembly also urged member states to ratify the Addis Charter. On 2 February 2010, the AU Assembly adopted a decision which clearly finds inspiration in the Charter in order to enhance the effectiveness of the AU response. In particular, it includes sanctions put forward in article 25(1), (4), (6) and 7 of the Addis Charter. In addition, this decision adds an important diplomatic sanction, stating that “Member States should, upon the occurrence of an unconstitutional change of Government, not recognise the de facto authorities” and calling on all non-African international bodies including the United Nations “to refrain from granting accreditation to such authorities”.

To summarise the AU has three policy instruments under which the phenomenon of unconstitutional change of government is contained. Firstly we have the Constitutive Act of the AU. The second is the Lomé declaration which is the outgrowth of the 1999 Algiers declaration. Thirdly there is the African Charter on Democracy, Elections and Governance, adopted in Addis Ababa by the 8th ordinary summit of the AU in January 2007. To reaffirm the spirit of these policy instruments the AU assembly adopted two separate decisions to enhance the effectiveness.

5.6 - Sanctioning System

The following articles deserve to be further elaborated upon as these are vital for the AU when dealing with unconstitutional changes of government, especially with regard to punitive measures. The constitutive act of the AU covers the issue of unconstitutional change of government with article 4 (p) by condemning and rejecting it and with article 30 which allows for the suspension of governments should they come to power through unconstitutional means. Article 25 of the Charter lays down a whole process for applying sanctions. The competent AU organ to act is the PSC, which if it has observed that there has been an unconstitutional change of government in a contracting party it State Party and diplomatic initiatives have failed, it shall suspend it from the exercise of its

right to participate in Union activities in accordance with Article 30 of the Constitutive Act and Article 7(g) of the Protocol Establishing the PSC. The perpetrators of the unconstitutional change of government shall not be allowed to participate in any future elections held to restore the democratic order or to hold any position of responsibility in the political institutions of the country in question. However, the perpetrators of an unsuccessful coup would be allowed to stand for election.

The African Charter on Democracy, Elections and Governance offers us a more elaborate insight into the understanding of unconstitutional change of government within the AU. As clearly stated in the preamble, the AU adopted the Addis Charter: (1) inspired by the objectives and principles enshrined in its Constitutive Act which emphasizes the significance of good governance, popular participation, the rule of law and human rights; (2) committed to promote the universal values and principles of democracy, good governance, human rights and the right to development; (3) seeking to entrench in Africa a political culture of change of power based on the holding of regular, free, fair and transparent elections; and (4) concerned about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa. The objectives of the Charter on Democracy, outlined in article 2, include promotion of adherence to the universal values and principles of democracy and respect for human rights, and enhancement of adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, a constitution and constitutional order. Furthermore, the objectives include promotion of the holding of regular free and fair elections to institutionalize the legitimate authority of representative government as well as the democratic change of government. Prohibition, rejection and condemnation of unconstitutional change of government in any member state is another of the Charter’s objectives.

Article 23 (5) of the Addis Charter adds a fifth situation: ‘any amendment or revision of the constitution of or legal instruments, which is an infringement on the principles of democratic change of government’. An example of an instance which would fall under the scope of article 23 (5) would be the constitutional provisions that removed presidential term limits and runoff voting in Gabon. Currently run by the Democratic Gabonese Party headed by the Gabonese president Omar Bongo.

Article 24 of the Addis Charter states that when a situation arises in a state party that may affect its democratic, political institutional arrangements or the legitimate exercise of power, the Peace and
Security Council will exercise its responsibilities to maintain the constitutional order in accordance with relevant provisions of the establishment of the Peace and Security Council of the African Union. Article 25 of the Charter on Democracy firstly states, when the PSC observes that there is an unconstitutional change of government in a member state, and that diplomatic initiatives have failed, it is empowered to suspend that state from the exercise of its right to participate in AU activities in accordance with articles 30 of the Constitutive Act and 7(g) of the PSC Protocol. Finally regarding individual perpetrators of unconstitutional changes of government, article 25 stipulates that the perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or to hold any position of responsibility in political institutions of their State (para. 4), that they may be tried before the competent court of the Union (para. 5), that the Assembly of Heads of State and Government may decide to apply other forms of sanctions on them, including punitive economic measures (para. 7) and that states parties shall not harbour or give sanctuary to them (para. 8) but rather bring them to justice or take necessary steps to extradite them (para. 9) along the lines of ‘aut dedere aut judicare’. It is not entirely clear whether the drafters of the Charters had the intention of defining a new crime under international law.\textsuperscript{104}

Article 30 of the Constitutive Act is one of three separate provisions in the Constitutive Act that deal with sanctions. The first provision, Article 23(1), empowers the Assembly to determine the sanctions to be imposed upon any Member State defaulting in the payment of its contributions to the Union budget. The second provision, Article 23(2), stipulates that any Member State failing to comply with AU decisions and policies may be subjected to further sanctions, such as the denial of transport and communications links with fellow Members, and, on the other hand, empowers the Assembly to determine the imposition of any other “measures of a political and economic nature.” Finally Article 30, concerns governments that have come to power through unconstitutional means and stipulates that such governments “shall not be allowed to participate in the activities of the Union.” It is a measure of a punitive nature aiming at putting considerable pressure on the relevant government to restore constitutional normality and the rule of law. Article 30 is in line, on the one hand, with the principle of condemnation and rejection of unconstitutional changes of government which is enshrined in Article 4 of the Constitutive Act and, on the other hand, with the trend to introduce a so-called democracy clause in the constitutive instruments of international organisations. The democracy principle iterates that states must be governed by regimes subscribing to the rule of law, the protection of human rights and other democratic ideals and that the unconstitutional/undemocratic

\textsuperscript{104} Vandeginste (2012), p. 25.
overthrow of governments will not be tolerated by the membership and by the organisation itself\textsuperscript{105}. Other democracy clauses that can be found at other regional organisations are article 9 of the Inter American Democratic Charter and Article 7 of the Treaty on European Union and Article 309 of the Treaty Establishing the European Community\textsuperscript{106}.

\textbf{5.7 - Implications of the African Union’s 23rd Summit}

Recently Malabo hosted the 23\textsuperscript{rd} AU summit which will again be an opportunity for Equatorial Guinea’s president, Teodoro Obiang Nguema, Africa’s longest-serving head of state, to showcase his fabulous Sipopo Conference Centre which allegedly cost € 580 million. The island capital and the purpose-built, enormously expensive conference venue where the 23rd Ordinary Summit of the African Union was held are deliberately isolated from the grinding poverty which characterises this oil-rich state. Likewise, Africa’s leaders seemed isolated from the continent’s real problems, focusing instead on saving their own skin, and keeping themselves in power\textsuperscript{107}. Organised under the theme ‘2014 Year of Agriculture and Food Security’. The Heads of State and Government adopted a number of key decisions with a view to enhancing the socio-economic and political development of the continent, notably in the areas of education, health, agriculture, trade, women and youth development. Our interest lies in the adoption of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights and its relation to unconstitutional change of government. The protocol merges the existing African Court on Human and Peoples Rights and the still purely theoretical African Court of Justice. It will have a wide mandate to try serious human rights violations, war crimes and major breaches of international law. It is Africa’s answer to the International Criminal Court (ICC), and will reinforce the AU’s ‘commitment to promote peace, security and stability on the Continent and to protect human and peoples’ rights’ – this, at least, is the message contained in the protocol’s lofty preamble\textsuperscript{108}. The amendments adopted extended the jurisdiction of the proposed African court of justice and human rights to international crimes, including a broad range of new crimes, an expansion that has the potential to fight impunity and advance justice and the protection

\textsuperscript{105} Magliveras (2011), p. 9.
\textsuperscript{108} ‘THINK AGAIN: At the new African Court, will power mean impunity?’, http://www.issafrica.org/iss-today/think-again-at-the-new-african-court-will-power-mean-impunity
of human rights in Africa. The double standards inherent in the protocol on the proposed African Court on Justice and Human Rights have two apparent setbacks.

Firstly hidden in the legalese of the amendments is one very disturbing clause. This clause exempts all serving AU heads of state as well as senior government officials, effectively inoculating governments from prosecution. The final part of senior government officials is a deliberately ambiguous category that could conceivably include the entire top echelon of government\textsuperscript{109}. The second problematic decision was also contained within the protocol. In early drafts, put together with help from international justice experts and African civil society, the protocol contained a clause excluded peaceful protests – the Arab Spring kind, the kind that results in the ousting of a government – from the general provision that criminalises unconstitutional changes of government. It was designed to make sure that people were not punished for rising up against oppressive regimes\textsuperscript{110}. In early drafts the protocol contained a clause that excluded peaceful protests, the Arab Spring kind, from the general provision that criminalises unconstitutional changes of government. These are the kind of protest that from my perception were a legitimate manner to voice one’s opinion towards a repressive regime. For reasons of personal insurance the current leaders preferred it not to be added to the list of recently ousted presidents. Finally the third problem specifically related to unconstitutional change of government was the generous reception accorded to new Egyptian President Abdel Fatah el-Sisi. Egypt was suspended from the AU following Sisi’s coup, but has now been reinstated following the largely symbolic elections which confirmed Sisi as president. Unlike its stand in July 2013, when it broke ranks from the rest of the international community, this time around the AU is disposed to join others in the international community in giving precedence to pragmatism over principles. There was very little appetite within the AU to keep Egypt’s suspension. The fact that he as leader of the coup was welcomed back invites critical questions on the credibility of the African Union and the future application of its norm on unconstitutional changes of government. This is contrary to the case of Madagascar where the AU warned that it would not recognise the elections he was intending to run for as the leader of the group that overthrow the government. Contrary to the AU’s rule banning perpetrators of unconstitutional change of government, this decision can be interpreted as conferring legitimacy on the election of a president who was responsible for the unconstitutional change of

\textsuperscript{109}“THINK AGAIN: At the new African Court, will power mean impunity?”, http://www.issafrica.org/issa-today/think-again-at-the-new-african-court-will-power-mean-impunity

\textsuperscript{110}‘AU summit conclusions: Number Ones look out for number one, again’, http://www.dailymaverick.co.za/article/2014-07-04-au-summit-conclusions-number-ones-look-out-for-number-one-again/#.U9Ildv2PbHg
government in Egypt\textsuperscript{111}. The fact that the AU seems to uphold double standards towards leaders of unconstitutional changes of government undermines the legitimacy of relevant AU instruments, particularly the African Charter on Democracy, Elections and Governance. The focus has been on the Council’s lifting Egypt’s suspension, its decision reflects an understandable lack of enthusiasm on the part of the AU to ratify the conditions in Egypt as manifesting the full restoration of constitutional order and being in full compliance with established AU norms\textsuperscript{112}. The undermining of the evolving legal framework of unconstitutional change of government is an unfortunate setback in consolidating it.

A final positive note are the strides that have been made towards a regional military force made up of exclusively African soldiers ready to be deployed at a moment’s notice. This standby force was spearheaded by South African President Jacob Zuma and was dubbed the African Capacity for Immediate Response to Crises (ACIRC). Regardless of the fact that the AU summit enthusiastically enforced the new force, the question remains who will foot the bill. The original idea behind the force was to find ‘African solutions for African problems,’ and to avoid having to call on foreign forces when there is a crisis. This was the case in Mali last year when France launched Operation Serval to stave off an immediate threat from Islamist rebels against the capital, Bamako\textsuperscript{113}. According to Chadian president Deby ‘it’s time to take our destiny in our own hands’. Footing the bill remains the current issue as currently 90% of the AU’s peace and security efforts are funded by external actors. Noting the rise of armed Islamists groups like Boko Haram it’s of paramount importance to combat their threat.

5.8 - African Union’s RECs Protocol

The framework guiding the relationship between the African Union (AU) and regional economic communities (RECs) is the Protocol on Relations between the African Union and Regional Economic Communities adopted in July 2007 in Accra, Ghana\textsuperscript{114}. Collaboration and coordination of peace and security policies are articulated in Chapter 2, Article 7, paragraph 2(b) and Article 30. These relevant sections outline the establishment of a committee that will be responsible for coordinating and harmonising policies on governance, peace and security, among other issues. The membership of

\begin{itemize}
  \item \textsuperscript{111} ‘Far-reaching implications of the PSC’s decision on Egypt’, http://www.issafrica.org/pscreport/on-the-agenda/far-reaching-implications-of-the-pscs-decision-on-egypt
  \item \textsuperscript{112} ‘Far-reaching implications of the PSC’s decision on Egypt’, http://www.issafrica.org/pscreport/on-the-agenda/far-reaching-implications-of-the-pscs-decision-on-egypt
  \item \textsuperscript{113} ‘Who will foot the bill for Africa’s new intervention force?’, http://www.issafrica.org/iss-today/who-will-foot-the-bill-for-africas-new-intervention-force
  \item \textsuperscript{114} AU, Protocol on Relations between the African Union and Regional Economic Communities. Accra: AU (2007).
\end{itemize}
these committees will be drawn from relevant departments of the AU and the RECs. In addition, the Protocol Relating to the Establishment of the Peace and Security Council (PSC) provides the legal and institutional parameters of the PSC’s relationship with regional mechanisms (RMs) for conflict prevention, management and resolution. Specifically, Article 16, paragraph 1(b) notes that the PSC will ‘work closely with Regional Mechanisms to ensure effective partnership in the promotion and maintenance of peace, security and stability’. Furthermore, paragraph 3, of Article 16, calls for close harmonisation and coordination of activities between the AU’s PSC and RMs. In furtherance of these normative provisions, a Memorandum of Understanding on conflict prevention, management and resolution was signed between the AU and the RECs. Article 7, paragraph 4 states that, “where conflicts have occurred, the parties shall cooperate in peace-making and peace-building activities to resolve these conflicts and prevent their recurrence, including through good offices, mediation, conciliation, enquiry and the deployment of peace support missions, as provided for in the PSC Protocol and other relevant regional instruments.”

5.9 - ECOWAS

Mali is one of the founding members of ECOWAS which is the regional organisation of fifteen West-African nations founded in 1975 with the signing of the treaty of Lagos. Initially its aim was solely to promote economic integration across the region but during the early 90’s it also started to promote peace and security. In first instance we will have a look at the normative framework of ECOWAS and how it has been utilised in recent events. In all of the recent coups and unconstitutional changes of government throughout West-Africa ECOWAS has been quick to condemn and impose sanctions as well. Table 1 illustrates that of the recent coups in Africa the members of ECOWAS are generously represented. In all of these coups and unconstitutional changes of government ECOWAS swiftly condemned them and imposed sanctions (except in the case of Mauritania, which had pulled out of ECOWAS in December 2000). Despite sanctions by ECOWAS, undemocratic changes of government in West Africa seem to be the norm rather than the exception. Subsequently its normative framework, has a plethora of protocols—such as the Protocol Relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security; the Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention,
Management, Resolution, Peacekeeping and Security\textsuperscript{117}; and the ECOWAS Conflict Prevention Framework (ECPF)\textsuperscript{118}, which maintained the organisation’s zero tolerance to unconstitutional changes of government.

ECOWAS has attempted, via a process of constitutional convergence, to develop a series of norms that will entrench good governance and democracy in its member states. The 2001 Democracy and Good Governance Protocol is an attempt to deter and prevent military coups and unconstitutional changes of government\textsuperscript{119}. The Protocol was signed at the 25th Conference of Heads of State and Government in Dakar in 2001. The Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Resolution, Peacekeeping and Security, provides in Article 1 (b-e) thus:

B. Every accession to power must be made through free, fair and transparent elections;
C. Zero tolerance for power obtained or maintained by unconstitutional means;
D. Popular participation in decision-making, strict adherence to democratic principles and decentralisation of power at all levels of governance;
E. The armed forces must be apolitical and must be under the command of legally constituted political authority; no serving member of the armed forces may seek to run for elective political office\textsuperscript{120}.

Thus Article 1(b) requires that 'every accession to power be made through free, fair and transparent elections'. The modification of a country’s electoral law in the six months prior to an election is prohibited and elections have to be held within constitutionally mandated time periods.’ The independence of election-monitoring bodies is required as is the maintenance of electoral registers allowing people to vote equally, irrespective of race or gender. These provisions of the Protocol are unambiguously worded and failure to adhere to these requirements would result in the engagement of coercive measures such as the imposition of sanctions\textsuperscript{121}. The specifics of these provisions reflects the various tactics that regimes have used to circumnavigate domestic constitutions. Furthermore the

\textsuperscript{117} ECOWAS, Protocol on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. Dakar: ECOWAS (2001).
\textsuperscript{120} ECOWAS, Protocol Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Resolution, Peacekeeping and Security: Dakar: ECOWAS (2001).
\textsuperscript{121} Cowell (2011), p. 333.
Protocol contains a 'trigger mechanism' that automatically suspends states from ECOWAS in the event of an unconstitutional change of government and contains numerous provisions relating to electoral law and constitutional transfers of government. The Protocol binds member states into only allowing democratic succession, a coup government cannot be recognised as legal by a domestic court due to the nature of its succession. At the very least the Protocol is subject to a degree of entrenchment, making it difficult to set aside a 'pre-coup' constitution. The Protocol is similar to the AU mechanisms which prohibit coups and unconstitutional changes of government122. Article 9 of the same protocol provides that “the party and/or candidate who loses the elections shall concede defeat to the political party or candidate finally declared the winner, following the guidelines and within the deadline stipulated by law.”

When President Gbagbo refused to leave office in Ivory Coast in 2010-2011 he used the Protocols ambiguity on the issue of mechanisms on solving election disputes to legitimise his actions in the wake of much protest. The situation in the Ivory Coast is the most significant test the Protocol has had to date: and the incident has highlighted some of the weaknesses inherent in the structure of the Protocol123. This was highlighted by the head of ECOWAS’s political commission Victor Gbeho;

“The concern we have is that apart from some geo-political interests by some countries, there are others that are encouraging Gbagbo not to leave ... Because of certain individual interests, some countries have decided to break the tradition of solidarity in ECOWAS. What is happening is a matter of serious concern to ECOWAS and the international community, as certain countries have taken sides.124

On 7 December the ECOWAS Heads of Government activated article 45 of the Protocol and suspended the Ivory Coast from ECOWAS until Gbagbo left office. Gbagbo refused to negotiate or accept any political settlement involving him standing down as President and ECOWAS ruled out talks on constitutional power sharing. Gbagbo's actions forced ECOWAS and other international players to consider a more draconian range of sanctions that ran the risk of exacerbating the domestic situation in the Ivory Coast. In March, the seven countries of the West African franc zone, who are all ECOWAS members, suspended the Ivory Coast from the currency zone in the hope of increasing the financial

pressure on the Gbagbo government. The standoff was only resolved after forces loyal to Ouattara, assisted by French troops, stormed Abidjan and following a series of violent confrontations placed Gbagbo under arrest\(^\text{125}\). He is currently awaiting his trial before the International Criminal Court in The Hague. In conclusion Gbagbo utilised the lack of political will between the members of ECOWAS to prolong the situation at which point it escalated. The legal framework was not coherent as it allowed ambiguity. It was eventually necessarily for a third party to intervene militarily and an international court to prosecute Gbagbo for the situation to be resolved.

\textbf{5.10 – SADC}

The first predecessor of SADC was the ‘Frontline States’ (FLS) which was founded as an informal political alliance seeking political and security co-operation particularly in response to efforts by the apartheid regime in South Africa at that time to destabilise the region as well as to support decolonisation projects such as that in Rhodesia and Namibia at the time. Eventually the FLS formalised their union into the SADCC. Key characteristics of the SADCC throughout the 1980s and early 1990s included a decentralised approach in which each member state was allocated a sector or sub-sector to coordinate from home with a dominant focus upon national sovereignty and closely linked to the focus upon state rather than human security\(^\text{126}\). Although SADCC has a limited amount of members they have a great amount of differences amongst them with regards to colonial history, population and economic size. This division reinforced the limited scope, which subsequently just focused on economic matters with political matters to be solved by a separate structure. In seeking to address several of the organisational and structural challenges to the FLS and SADCC, the Southern African Development Community (SADC) was established in 1992 as an international body with a legal persona and the successor to the SADCC, founded upon the SADC Windhoek Declaration and the SADC Treaty\(^\text{127}\). SADC launched the Organ on Politics, Defence and Security (OPDS) in 1996\(^\text{128}\). The Protocol on Politics, Defence and Security Co-Operation was adopted in 2001, providing a framework and mechanisms to support peace and security objectives of SADC\(^\text{129}\). In practice, OPDS is a rather weak directorate with a small staff who are obliged to spend a lot of time out of their offices, resulting in

\begin{footnotes}
\begin{enumerate}
  \item Cowell (2011), p. 341
  \item SADC, Declaration on SADC and the International Corporating Partners. Windhoek: SADC (2006).
\end{enumerate}
\end{footnotes}
the directorate playing only a relatively small role in conflict resolution issues\textsuperscript{130}. SADC has been only partially active in conflict resolution, mainly through the appointment of mediators (typically a serving or retired president) and was active in attempting to resolve the crises in Angola, Lesotho, the DRC and most notably Madagascar. The crisis in Madagascar best illustrated the transformation of SADC into a regional body with a normative and ideological shift from state security to the broadened conceptualisation of human security, as outlined in the OPDS.

Together with the SADC Treaty, the Protocol on Politics, Defence and Security Co-operation provides the general basis for political and security co-operation in the sub-region. In specifying the areas in which the organ has jurisdiction to resolve intra-state conflicts amongst its members, the Protocol regards “a military coup or other threat to the legitimate authority of a State” as a significant intra-state conflict under Chapter 2 of the Protocol. The methods which the Organ may employ to prevent, manage and resolve conflict by peaceful means include “preventive diplomacy, negotiations, conciliation, mediation, good offices, arbitration and adjudication by an international tribunal”. SADC has only been partially active in conflict resolution mainly through mediation. When it was active in attempting to resolve crises in Angola, Lesotho, the DRC and elsewhere it was met with mixed results at best\textsuperscript{131}. With regards to unconstitutional changes of government SADC does not have an explicit normative framework to the same degree as the AU. Considering the fact that all SADC members are AU members they are legally bound by the more rigorous framework that the AU offers. In practice SADC has acted and reacted upon unconstitutional changes of government within its member states, within its own framework. An example of a SADC intervention took place at the request of Lesotho, when both South Africa and Botswana intervened military in hopes to stabilise a domestic crisis and avoid a coup. Four years after entering the new democratic dispensation in 1994, South Africa led the invasion of Lesotho in 1998, under the banner of the Southern African Development Community (SADC). South Africa claimed that the armed intervention (Operation Boleas) was sanctioned by the SADC and that it was aimed at promoting democracy and stability in the mountain kingdom. This was in the aftermath of the highly disputed March 1998 parliamentary elections. Botswana assisted in this undertaking and there were no other SADC member countries involved\textsuperscript{132}. The sanctioning by SADC is highly disputed as the predecessor of the Protocol on Politics,

\begin{footnotesize}
\textsuperscript{130} Cawthra (2010), p. 11.
\textsuperscript{131} Cawthra (2010), p. 11.
\textsuperscript{132} Makoa (1999), p. 75.
\end{footnotesize}
Defence and Security Co-operation was suspended at the time due to internal power squabbles between South Africa and Zimbabwe.

With regards to the recent crisis in Madagascar SADC managed to play a positive role. The crisis followed the installation of Andry Rajoelina as president of the High Transitional Authority of Madagascar. The international community immediately condemned the leader and his ascension as unconstitutional: Financial support and foreign investments stopped and the country fell into one of the worst economic crises in its history. At this point SADC and the AU were designated to supervise Madagascar’s political reinstatement. Though the objective of the transitional government was to run presidential elections as soon as possible to relieve the tensions, it had great difficulty agreeing terms amongst the four rival fractions. The Extraordinary Summit of SADC Heads of State and Government was held on 20 June 2009 to address the political and security situation in Madagascar. SADC noted with appreciation the progress made in all-party negotiations facilitated by the AU, UN and the International Organisation of La Francophonie (IOF). SADC further decided to proactively promote and facilitate dialogue and appointed Joaquim Chissano, former President of Mozambique, “to lead and coordinate the all-party dialogue in Madagascar” as lead mediator. The wide range of international organisations partaking in the negotiations did complicate the matter and the leadership of SADC here was a positive effect and illustrated a shift within SADC and erased any fears of a military intervention. SADC’s leading role in promoting and maintain peace and stability in the southern African region is supported in Chapter VIII of the UN Charter, which states that regional arrangements should make an effort to achieve pacific settlements of local disputes before referring them to the Security Council, as well as in the AU mandate to coordinate the activities of the REC’s with the objectives of the AU peace and security architecture, as outlined in Article 3(l) of the Constitutive Act as well as in the Protocol Relating to the Establishment of the Peace and Security Council of the AU. Presidential elections only followed in December 2013, after which Madagascar re-entered the international scene with all sanctions lifted and aid programmes re-instatement. SADC played a small but pivotal role, regarding SADC the importance lays in the fact that although it has an inadequate normative framework for unconstitutional changes of government the internalisation process of the norm is most definitely under way.

133 Cawthra (2010), p. 22.
In conclusion it is evident that the phenomenon of unconstitutional change in Africa is rooted in the very foundation and nature of the African state. It is therefore of the utmost importance that the legal framework should be unambiguous and cover all aspects in an effort to eradicate all forms of unconstitutional change of government. At the moment that the AU’s seems to make strides in the right correction, the AU’s 23rd summit can be considered a setback. Both in relation to its stance towards Egypt and the fact that is excluded peaceful protests in the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. Fortunately it did allow for an expansion of the crimes that can be persecuted by the court of justice and strides have been towards an African stand-by force. Recent events have highlighted the gap between the rhetoric of prevention which is at the heart of the objectives of the AU, ECOWAS and SADC, and its practice. There is a need for accountability of governments and of their national and international responsibilities, whilst redefining the notions of state sovereignty we should utilise REC’s as a first line of defence. The Resolutions and Protocols clearly mandate the REC’s to be proactive in dealing with matters of peace and security and should be equipped with the tools to do so. The next chapter will illustrate how the AU and ECOWAS had to react to the escalating situation in Mali following the March 2012 coup.
6.0 - Mali March 2012 Coup D’état

6.1 - Historical Overview

The March 2012 coup in Mali took many countries by surprise, as Mali was generally perceived to be a poster child for African democracy and would not succumb to the same faith as many of its neighbours. In contrast the unrest in the north was a culmination of the government’s policy which centred on Bamako. This chapter will delve into the reasons for the coup and how the regional security architecture could have prevented it and how the legal architecture could have had a more deterrent role.

There have been recurrent episodes of conflict in northern Mali since the Tuareg Rebellion in 1963-64 with periods of revolt and unrest from 1990-1996 and 2006 to 2009. The 2012 crisis had its roots in multiple interlinked processes, including long-term problems in Mali’s governance institutions, decades old grievances in the north, fractious political relations between communities in the north and the central government and the failure of the government to stop the expansion of cross-border criminal and extremist networks. The issues at stake include the long-term neglect of the north by the government in Bamako, the role of Islam in Malian politics and society and the government’s failure to make good on promises of greater decentralisation and funding for development. These conditions provided fertile ground for the outbreak of fighting for which the Libyan conflict was the catalyst which tipped the north into war. The fall of the Libyan regime in August 2011 led to the return of several hundred heavily armed Tuareg fighters formerly in the employ of President Muammar Gaddafi. January 2012 brought forward a secessionist rebellion in the north of Mali from within the Tuareg community which threatened the territorial integrity of Mali claiming sovereignty over large parts of northern Mali as the National Movement for the Liberation of Azawad (MNLA) led by Alghabass ag Inthallah. The government soon lost control over almost two-thirds of its national territory, which fell to an opaque alliance of several Islamist groups with supranational and localised support networks. Then in March members of the Malian military – embarrassed by their defeat and angry at the political class for a perceived lack of support – staged a coup, ousting Touré and seising control of the government in Bamako. The coup was orchestrated by the Malian military officer

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Amadou Sanogo who proclaimed himself leader the National Committee for Recovering Democracy and Restoring the State (CNRDRE). His first actions as de facto head of state included suspending the constitution as well as declaring a curfew and closing the borders. The rationale for the coup had been Amadou Toumani Toure’s alleged mismanagement of the 2012 Tuareg rebellion. However following the coup the Military lost even more ground as it lost the regional capitals of Kidal, Gao and Timbuktu. The violence exacerbated the existing humanitarian crisis and took a heavy toll on the local population. The fighting and insecurity precipitated a displacement crisis and caused the gradual collapse of private enterprises and public services, affecting access to water, food and health services. As of August 2012, an estimated 595,000 Malians had fled their homes. Most refugees settled in neighbouring countries in impoverished areas close to the border, amongst host communities who were themselves struggling to recover from the region wide food crisis. It is clear that the insurgency in the north of Mali has lead the country into a situation of despair of no uncertain proportion. The following sections of this chapter will analyse the possible reasons for the coup and the regional and international reaction towards the general unrest and the unconstitutional change of government.

6.2 - Reasons for the Coup

With regard to the propensity of coups several factors have been identified as important variables. Firstly the level and growth rate of per capita income powerfully affect the risk of a coup. Economic growth and political stability are deeply interconnected. Mali has seen economic growth since the start of its democratisation in the beginning 1990’s (see table 3). Since its transition to democracy in 1991, Mali has undergone a modest transformation due to steady economic growth, a decline in the rate of poverty, and rapid urbanisation. Higher levels of income, as well as sustained economic and political stability for over two decades, have strengthened the middle-class but due to pervasive corruption their salaries remain out of sync with their aspirations. This is particularly true in the major urban metropolis of Bamako, which now has a population of over 2 million people. Even though economic growth has been constant in the years leading up to the coup its correlation with foreign aid and distribution of wealth can nevertheless be seen as a negative factor.

139 Haysom (2014), p. 11.
141 Haysom (2014), p. 3.
In the years leading up to the coup Mali was a ‘donor darling’ receiving both development aid and military assistance from many countries. Among the poorest countries in the world, both in terms of income and in terms of human development indicators, it consistently received aid levels amounting to around 12-15 per cent of its GNI, which accounted for more than 50 per cent of the government’s annual budget. Foreign aid has impacted Mali to the extent that it became dependent. A plethora of poorly co-ordinated donor driven decision and policy-making mechanisms dominate and in some cases have largely replaced domestic government institutions. The resulting symptoms of aid dependence included the fact that the state’s capacity to design and implement development policy remained woefully low. Mali has not been able to address three significant structural problems: weak institutions of accountability, regional cleavages and the gap between the elite and the average Malian. The unequal distribution of foreign aid between the centre and periphery further exacerbated the marginalisation of certain regions and donors slow response time to increasing discontent in some regions may have had a direct impact on the discontent in the north of Mali where the conflict started. Another facet of unequal distribution occurred due to the overwhelming focus of aid resources on the central government which strengthens it relative to the other branches of government, which receive only a small share of aid resources. The enhanced policy dialogue with the donors today hardly involves the legislature, which appears to have been further marginalised. To

* Table 3

144 Authors Compilation with World Bank Data.
summarise on the surface it seems the steady economic growth over a long period of time should be considered a stabilising factor with regard to the propensity of coups. However as illustrated the economic growth was largely instigated by foreign aid which further exacerbated the regional distribution between the centre and the periphery and consolidated the power with the central part of the government148.

Secondly a key variable in the propensity of coups is the time elapsed since the most recent coup. Since gaining its independence from France in 1960, the Republic of Mali has spent decades plagued by military dictatorships, successive coups and a tribal separatist movement which continually plagued northern Mali. Modibo Keita as Mali’s first president was also the first to succumb to the violent overthrow of a coup in 1968 following his disastrous economic policies. His successor Moussa Traoré as so many African leaders of the time remained in power through autocratic rule until 1991 until he endured the same ill faith as his predecessor. The following succession in 2002 was an illustration of Mali’s turn to democratic rule as Amadou Toumani Touré took power after free and democratic elections. Mali therefore has had a distinct history of coups and military strongmen but had seemed to overcome the woes of its past up until the March 2012 coup.

Thirdly the governments of Africa face a non-negligible risk of a coup perpetrated by their own military establishment as was the case with the March 2012 coup. This variable brings together the upheaval in the north and the existing military structure and its apparent discontent of the central government as the faltering military campaign against the Tuareg in the north together with rampant levels of corruption which were cited as reasons for the initial protest, this protest eventually led to the coup. The coup was thus perpetrated by Amadou Sanogo and several junior ranking officers. The army failed to quell the Tuareg rebellion in the north to the great disappointment of remaining garrisons in Bamako. Amadou Sanago took advantage of the situation and through improvisational tactics managed to stage a coup forming the National Committee for Recovering Democracy and Restoring the State (CNRDRE). The coup took place little more than a month before a scheduled presidential election and was clearly aimed at destroying democratic rule. Once installed the coup leader did not manage to extricate himself from the disaster he had got himself into. The junta’s actions have been erratic: It staged the coup in order to fight the war in the north, but then sought peace negotiations with the Tuareg rebels. It proclaimed a new constitution, then rescinded it. It then announced a

national conference, only to cancel it when its domestic opponents refused to attend. To me it seems that captain Amadou Sanago was tempted by the spoils of leadership and ceased upon the moment of unrest caused by the Tuareg rebellion to seize power. Due to the longstanding tradition of democracy and his general incompetence he did not manage to receive general support from the public. Subsequently he has been arrested and sentenced to prison for kidnapping and torture. This raises the final point for staging a coup, the large rents of sovereignty. Clearly the junta did not manage to benefit from the spoils of the coup as they did not manage to cling onto power long enough. This was largely due to the international response which denounced the coup from the beginning, but how did it proceed from that point?

6.3 - International Response

The first response of regional bodies and neighbouring states was to try to mediate a resolution to Mali’s political crisis. ECOWAS denounced the March coup and urged the junta to immediately relinquish power to the rightful Government so that the country could return to constitutional normality. The Commission wishes to remind the military of its responsibility under the Constitution, and to reiterate ECOWAS’s policy of ‘Zero Tolerance’ for any attempt to obtain or maintain power by unconstitutional means. Following its condemnation with regards to the upheaval the actual coup took place after which the commission strongly condemned this usurpation of power from a democratically-elected Government. As illustrated the junta took over power just over a month before the nation was due to go to the polls to elect a new President. The action of the Junta was completely at odds with the provisions of the Supplementary Protocol on Democracy and Good Governance and seriously undermined the painstaking gains that the ECOWAS Region has made in the last two decades to entrench democratic culture and the rule of law. In accordance with Articles 1(e) and 45(2) of the Supplementary Protocol on Democracy and Good Governance, and the provisions of the African Charter on Democracy, Elections and Governance, Mali was suspended from all decision-making bodies of ECOWAS until constitutional order was effectively restored. In addition to political and diplomatic sanctions ECOWAS also responded with economic sanctions by freezing assets and denying Mali access to seaports. The other sanctions were financial and cultural in nature and are generally

149 ‘Foreign Policy the Mess in Mali’, http://www.publicbroadcasting.net/wpr/arts.artsmain?action=viewArticle&sid=1&pid=1338&id=1918956
part of the standard response package. Following the sanctions ECOWAS focused on political negotiations by appointing President Blaise Compaoré of Burkina Faso as lead mediator. Although ECOWAS initially sent out positive signals, the credibility of its diplomatic action was seriously compromised by a lack of transparency in the attempts at mediation led by Burkina Faso, this was bitterly criticised in the Malian capital and beyond. While ECOWAS was willing to edge out the coup makers in the first months after the coup, the mediator was much more ambiguous and did everything to allow the CNRDRE to retain some of its powers. For weeks there were internal disagreements among ECOWAS member states and even at the African Union level. An agreement was reached in April outlining a transition to civilian government under an interim president, parliamentary speaker Dioncounda Traoré. The following August, after a brief reassertion of control by the junta and continued intimidation of civilian politicians, a government of national unity was formed. With French support, ECOWAS called both for political negotiation and military intervention in initially through ECOWAS led MICEMA and then, as the AU became involved, AFISMA. However, key states outside of ECOWAS – Mauritania and Algeria – blocked these efforts, and the UN was also reluctant to provide logistical and financial support. Their main objections were the weakness and illegitimacy of the Bamako government and concerns with ECOWAS relations with the political leadership. Deployment of ECOWAS turned out to be a lengthy process and was met with reluctance by the ex-junta. In the end, it was the southward advance of Islamist groups that broke the impasse. Algeria and Mauritania dropped their opposition to the intervention and sent representatives to ECOWAS to discuss the deployment of forces. It was the same advancement by Islamist that caused the French to launch operation Serval, after which French and Malian forces took control of most of the towns in the north. The French intervention was never intended to be a long-term solution to Mali’s problems, and the French sought to make the mission multilateral quickly so as to reduce their involvement. As such, AFISMA was transformed into a UN mission MINUSMA and the re-hatting took place in the unprecedented time of 6 months.

The shifting lead between ECOWAS, the AU and the UN has also highlighted tensions in how these organisations relate to one another. As the situation evolved the involvement of regional organisations appears to be waning. Initially ECOWAS was remarkably swift to denounce the March

2012 coup and implement sanctions aimed at the restoration of democratic rule, this was facilitated by its existing legal structure with its plethora of protocols. Its intention stretched even further with its decision to deploy a multidimensional mission – the ECOWAS Standby Force Mission in Mali (MICEMA), which for political grounds never took hold. At this point the AU which initially limited its efforts to supporting ECOWAS, started playing a more active role in June 2012. The AU sought to overcome Algeria’s reluctance by making it a continental initiative, transforming MICEMA into the African-led International Support Mission in Mali (AFISMA)\(^{159}\). On 10 January 2013, twenty days after the UN Security Council adopted the resolution authorising the deployment of AFISMA the insurgents made significant ground in their push down south. This called for urgent action that the Malian army, whose reorganisation and formation by the EU had not yet started, and AFISMA, then still in the planning stages, could not deliver. So at the request of the Malian authorities France launched operation Serval. In addition, the transition from MICEMA to AFISMA was marked by tension between ECOWAS and the AU\(^{160}\). So to recapitulate ECOWAS did not manage to launch MICEMA, the AU failed in getting AFISMA launched and the French had to come and save the day.

To conclude the current mission of MINUSMA falls under the auspices of the UN. The role of the UN brings us to the final phase of this analyse, initially the UN Secretariat was reluctant to allow any kind of deployment since the prevailing conditions did not lend themselves to the type of operation the UN is able to conduct. Stabilising northern Mali requires an offensive mandate, one which goes far beyond the scope of peacekeeping operations as understood and conducted by the UN. MINUSMA’s mandate is about ‘robust’ peacekeeping. What this means is that the blue helmets may resort to force in self-defence or, more importantly, in defence of the mandate. Practically, this implies that force can be used at the tactical level and in response to ‘spoilers’ that may oppose the implementation of the mandate, yet it should fall short of any kind of war-fighting or counter-insurgency tactics\(^{161}\). ECOWAS’s engagement to date has encompassed strong involvement in mediation with armed actors and negotiations with the military junta and other political parties to install an interim government and then lay the groundwork for an electoral process. Both ECOWAS and the AU are disposed to intervene militarily to support regional stability\(^{162}\). Both organisations have illustrated a willingness to take decisive action to contain crises although it clearly outstrips their current capacity to do so. The legal

realm allows for the larger role ECOWAS and AU foresee for themselves however its implementation remains more aspirational rather than operational. The over-reliance on international partners in this regard is a challenge to the success of its policy. This is because if some of the powerful international actors do not collaborate sincerely in enforcing this policy the AU may find it difficult to enforce its own agenda. The elements that keep me pessimistic are the consistent calls from the government for more direct budget support. The central government, even under a new president, has retained many of its bad habits. Nepotism, corruption and extravagant spending are all still prevalent. The underlying factors for the rebellion have not been dealt with but are currently being contained through mediation by France and ECOWAS. The economic inequalities between northern and southern Mali persist, and may be getting even worse.
Conclusion

Acknowledging the important constraints inevitably associated with putting into practice an ambitious policy of promoting constitutional rule on the African continent this conclusion aims to bring forward a few ideas on how to improve the current system of addressing unconstitutional change of government. Historically Africa has had to deal with the threat to constitutional rule since the inception of the OAU in 1963. The historical issues have been that Africa’s leaders of yesteryear have ruled through one-partyism and have a startling propensity for perpetual rule allowing them to monopolise and personalise power, for the benefit of themselves and their cronies. Consequently Africa has scarcely been an auspicious environment for development. Looking ahead firstly what we want is to establish and ensure a form of democratic government that is based on the empowerment of ordinary citizens, with a clear separation between the three poles of government (executive, legislature, and judiciary), political pluralism, accountability and transparency, and respect for human rights. With the transformation from the OAU to the AU there was a reinvigorated momentum for peace, security and development but a decade later we are no longer elated. The AU allows for interference in internal affairs and the notion of sovereignty has consequently eroded and rightly so. The norm of non-interference seems all the more inapplicable to the African continent since there exists a greater degree of solidarity across borders with ethnic groups separated by the frontiers decided at independence. The erosion of sovereignty was parallel with the development of democracy in Africa with people requesting that the state be accountable to them.

Coup plots are by far the most common challenge to the continuity of regimes even when they have established a tradition of democratic rule like in Mali. The current legal framework can be improved by addressing two implications, the first implication of the AU Charter is that it requires an unambiguous application and not the response we saw towards Egypt at the 23rd AU summit. The second implication of the Charter’s regime is that it concentrates only on elections as a democracy instrument. Its premise is that an election automatically grants a government its legitimacy, and that if an election is granted the status of being free and fair, then by definition it is regarded as democratic. The rhetoric of prevention is reiterated throughout the plethora of protocols and decisions of the REC’s it is in practice where the fault lies. The OAU linked the absence of democracy with unconstitutional changes of government. However there are conditions other than democracy which are necessary sine qua non to assure a coup free environment. Africa can be saved from the menace
of coups if it could achieve economic growth and by further political reform. Both economic and democratic development lead to a middle class who can hold its government accountable. An active and informed civil society enhances the entrenchment of democratic values and deters military adventurism. The current political system allows for states to personalise their monopoly of power and wealth and distribute this wealth amongst their cronies to ensure their political survival. We need to have a system where their political survival is dependent on the policies towards their voters. Reforms are aimed at restoring the disarticulation between the state and its citizens. Political survival needs to be an effect of your policies towards your citizens.

To provide sustained levels of economic development and prosperity. This will entail developing basic infrastructure; diversifying the economy; building productive capacities; reforming trade policies for increased income-generating opportunities; and reforming the financial system for increased access to means of production and export. The evident limited appeal of economic reform for most African governments may reflect a failure to appreciate the importance of good economic performance for their own security. The only real guarantee against future military coups is good governance that builds popular legitimacy and active public support for democracy. Civilian political leaders need to respect and develop the professional capacity, coherence, and autonomy of the military as an institution to which the military should act impartial and no longer be part of the vicious cycle of coups. The last point that the Mali case has illustrated is that both the AU and ECOWAS have illustrated a willingness to take decisive action to contain crises although it clearly outstrips their current capacity to do so. Capacity improvement should be realised through political reform of the current security architecture in which an emphasis should be placed on getting the ACIRC operational without being halted by political or financial constraints. The over-reliance on international partners in this regard is a challenge to the success of its policy. The REC’s should be used as a first line of defence. Africa has suffered grievously at the hands of its big men and ruling elites and blamed other factors for the lack of development. We can no longer blame colonialism and imperialism waiting for a more auspicious moment. Looking ahead Africa needs to break from this vicious cycle and has all the potential and capabilities to be its own wind of change and avoiding unconstitutional change of government is key to that change. The continents challenges are innumerable but not unsurmountable.
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