

A moment of reckoning for the AU in Chad as interim leader declares candidacy for presidential election

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Going against a commitment he made to an African Union (AU) delegation that visited Chad following the seizure of power by the military, Chad's interim leader Mahamat Idriss Deby Itno declared his candidacy to run for the presidential election slated for 6 May 2024. Considering clear rules of relevant AU norms and equally clear decisions of AU's Peace and Security Council (PSC), Deby's candidacy raises the difficult policy question of whether the AU will continue with 'its exceptional treatment of Chad' or enforce relevant AU norms and its own decisions.

How this policy question is handled will set the tone for the six other countries (Burkina Faso, Gabon, Guinea, Mali, Niger and Sudan) that are in transition and suspended from the AU on accounts of military coups.

On 20 April 2021, the military in Chad stepped in to grab power after the death of then President Idriss Deby Itno from wounds he suffered during a visit to troops on the frontlines fighting against an armed rebel group, the Front for Change and Concord in Chad (FACT), which was reportedly marching towards Chad's capital, N'Djamena. After suspending the Constitution and dissolving the Government and Parliament, the military spokesperson announced a decree establishing a

Transitional Military Council (TMC) to lead the country and designating Mahamat Idriss Deby, the son of the deceased president, as head of the Council.

Under AU norms, such seizure of power by the army constitutes an unconstitutional change of government (UCG) banned and sanctioned by various AU legal instruments including, AU's grand norm, the Constitutive Act of the AU. The various instruments banning UCG, including the Lome Declaration of 2000, the African Charter on Democracy Elections and Governance (ACDEG), and the Peace and Security Council (PSC) Protocol make it clear that any UCG is subject to automatic sanction and they don't envisage exception. This has also been supported by the large body of AU practice in responding to UCG since the turn of the century.

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In an emergency session it convened on 22 April 2021, the AU, through its standing peace and security decision-making body, the PSC, failed to designate the event in Chad as an UCG. This was despite the fact the PSC, in [the communique](#) it adopted, expressed 'grave concern over the establishment of the Transitional Military Council.' Subsequently and after deploying a 'fact-finding mission' comprising of 'the members of the PSC and the AU Commission' (a composition contrary to established international practice and undercut the impartiality of the PSC), the PSC used the excuse of 'the complexity of the current political and security situation in Chad' for persisting with not designating the military power grab in Chad as a UCG.

While there were two earlier instances in which the PSC withheld the automatic application of the consequences of the designation of a situation as UCG, namely suspension from the AU (in November 2014 and April 2019 concerning Burkina Faso and Sudan, respectively), this is the first time that the PSC failed to characterize a military seizure of power as UCG. In doing so, the PSC dealt a major blow to its credibility, exposing the AU to legitimate charges of applying double standards and being inconsistent.

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The major casualty of PSC's failure on Chad was the deterrence effect of the AU norm against coups. PSC's failure to enforce the norm on Chad broke the practice of consistent enforcement and the attendant international diplomatic censure that gave the norm its force. In so doing, it sent a message to others watching the events in Chad that this was a season to stage a coup and get away with it. It is no wonder that some countries against whom the PSC enforced the anti-coup norm challenged the legitimacy of the AU's action given its failure to uphold the same rule in neighbouring Chad. Indeed, countries such as Mali, which are facing complex security threats, share the same, if not more, challenges as Chad, and have a point in criticizing the AU for not giving them a pass as it did for Chad.

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Despite letting Chad get away with its UCG, the AU in [the PSC decision](#) of 14 May 2021 expressly stated its expectation that the authors of the unconstitutional seizure of power in Chad will not auto-legitimize their hold to power by having themselves 'voted' during elections held for restoring constitutional order. In this respect, the PSC demanded 'the Chairman and members of the TMC to abide with the avowed

commitment, not to contest or take part in the upcoming national elections towards democratic rule.’ It even went further stating that ‘the Military will be held fully accountable in this respect.’ Subsequently, in [the communique](#) adopted at its 1016th meeting of August 2021, the PSC reiterated ‘that the members of the Military Transition Council shall not be eligible to be candidates for the elections at the end of the Transition.’ In [the communique of its 1106th](#) session held on 19 September 2022, the PSC was emphatic stating it **‘unequivocally reiterates** that all members of the TMC shall be ineligible to participate as candidates for the elections at the end of the transition’ (emphasis in the original).

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It is thus clear from the various pronouncements that any attempt by the members of the TMC to run for election is set as a clear redline as the PSC makes. For this, the PSC draws legal authority from the AU Assembly Decision of 2010 ([Assembly/AU/Dec.269\(XIV\)](#)) and the ACDEG.

A sign of a potential breach of the redline set for the junta in Chad emerged in October 2022. Following a national dialogue convened for charting a roadmap for the transition, the national dialogue forum announced on 1 October 2022 to extend the transition period by another 24 months in contravention of the timeframe established by the PSC. Even more gravely, the national dialogue forum further agreed to allow the head of the TMC and its members to participate in the elections at the end of the transition period. This pronouncement is not only a clear contravention of the decision of the PSC, emphatically

reiterated several times, but also a clear rule in the extant AU norms including Assembly/AU/Dec.269(XIV) that bar coup-makers from participating in elections.

Instead of encouraging it to cooperate and abide by agreed commitments set in the various PSC decisions, these developments suggest that the junta in Chad took PSC's initial failure to enforce the norm on UCG as a license for pursuing its ambition of legitimizing itself by 'getting voted into power'. Yet, the reading of the various PSC communiques on Chad and the commitment that the head of the TMC made to a delegation of the AU suggest that the PSC would enforce the anti-coup norm against Chad in the event of the contravention of this redline. It thus came as no surprise that when the PSC convened a session on Chad on 11 November 2022, a key aspect of the agenda was whether to suspend the country given the new developments arising from the conclusions of the national dialogue. Indeed, the report that the AU Commission Chairperson submitted to the session presented the suspension of Chad from the AU as one of the possible courses of action available to the PSC.

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As documented in the [November 2022 Monthly Digest on the PSC](#), after long hours of debate, the session was adjourned without a consensus among members of the PSC on the actions to be taken vis-a-vis the developments in Chad that are in clear breach of PSC's decisions. While the provisions that ban UCG are clear and the existing PSC decisions of its 996th and 1121st sessions affirm the importance of upholding AU principles including the ineligibility of members of the TMC for elections that will be held for restoring constitutional

order, the PSC was divided on the issue of the suspension of Chad.

In response to media reports accusing the Chairperson of the AU Commission of seeking to punish Chad in proposing suspension as one course of action in the report he presented, the spokesperson of the Chairperson [stated](#) on 12 November, apart from noting that no member of the PSC challenged the report, the statement rightly put blame for the mishandling of the situation in Chad on PSC member states stating that 'Some felt that the authorities of the Transition **should continue to be given exceptional treatment**, others stated that they should be sanctioned by suspending the country via the rules invariably followed and implemented in matters of unconstitutional change of government. The PSC failed to reach an agreement on the matter during its meeting held on 11 November.' (emphasis added) Despite holding a second meeting on 30 November to conclude the consideration of the developments in Chad that started on 11 November, the members of the PSC were not able to bridge their differences.

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This marks the second time that the PSC was unable to enforce on Chad a norm it applied against others. One of the arguments made at the time was that the PSC could only act when any member of the TMC stood for election.

In a [Press Statement](#) it issued, the PSC reiterated in general terms its previous decisions on Chad and reaffirmed its total rejection of UCG. Despite not stating them explicitly, the PSC, in reiterating its previous decisions (of which ineligibility of members of the TMC to elections is key), signalled that suspension. While avoided for now, suspension is still a possibility that the PSC may resort to. This is to happen when any member of the TMC decides to stand as a candidate for the elections expected to be organized at the end of the transitional period.

With elections set for 6 May 2024 and the declaration by Deby of his plan to run for the presidential elections, there is now no possibility of kicking the can down the road. The AU and its PSC are now faced with only one option- to end its 'exceptional treatment of Chad' and sanction it by suspending it from the AU, 'by the rules invariably followed and implemented in matters of unconstitutional change of government' and its own various decisions. Failing to do so would wipe out any of the PSC's residual credibility on this matter and firmly suggest the continental body's lack of conviction for its own decisions.

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One avenue that the PSC may opt for to maintain a semblance of credibility, if it is unable to suspend Chad, it is to decide that the AU should not deploy election observers to the upcoming elections in Chad.

Beyond the legitimacy crisis for the PSC, there are more reasons why the issue of how the PSC deals with this case matters for the AU and its policy on UCG. How the PSC handles this case is not without consequences for other cases. Indeed, if the PSC is unable to enforce the rule on non-eligibility concerning Chad, it would be the end of any future application of this rule as well. And most immediately, this would also mean that the AU would have no standing to apply this rule for stopping any of the military leaders in the six other countries (Burkina Faso, Gabon, Guinea, Mali, Niger and, Sudan) from becoming candidates for elections that will be held at the end of the transitional period in those countries.

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