

Briefing session on the situation in Sudan

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Tomorrow (15 April) the African Union (AU) Peace and Security Council (PSC) will convene on an emergency meeting on the situation unfolding in Sudan.

It is expected that the AU Peace and Security Department, will brief the PSC. Sudan's Ambassador and representative of IGAD are also expected to make statements. It is anticipated that the session will focus on the conditions of the ouster of long time President of Sudan, Omar Hassan al-Bashir the previous day on 11 April and the nature of the transition that the army leadership announced after removing Bashir.

The move of the Sudanese army ousting Bashir came after months of peaceful popular protests that covered many parts of Sudan. The protests began on 19 December in the northern town of Atbara after a major spike in the price of bread. As the protests spread to many other parts of Sudan including notably the capital Khartoum, the demand of the protesters shifted into broader political change with a particular focus on the departure of Bashir from power.

The army ousted Bashir after the protesters mobilized major demonstrations running for a number of days since April 6 outside of the military headquarters in Khartoum. When announcing the removal of Bashir, the First Vice President and Minister of Defence Awad Ibn Auf declared the suspension of the Constitution, the dissolution of the National Assembly, the formation of a military-led transitional government which will rule for two years, and the arrest of President Omar al Bashir, as well as the imposition of a state of emergency for three months. Since then the military Awad IbnAuf himself

resigned and Lt-General Abdel Fattah Burhan assumed the region of power. Despite reconciliatory tone of the new head of the Military Council, protesters continue to demand the establishment of a civilian administration.

These turn of events, particularly the abrogation of transitional government power by the military and the suspension of the Constitution, raised the question of the application of the AU norm on unconstitutional changes of government. Unsurprisingly, the AU Commission Chairperson issued a press statement on the situation. In the statement the Chairperson expressed 'the African Union conviction that the military take-over is not the appropriate response to the challenges facing Sudan and the aspirations of its people.' While appealing to all stakeholders to engage in an inclusive dialogue to create the conditions that will make it possible to meet the aspirations of the Sudanese people to democracy, good governance and well-being and restore constitutional order as soon as possible, the Chairperson reiterated the strong condemnation, under the Lome Declaration of 2000 and the African Charter on Democracy, Elections and Governance (African Democracy Charter), 'of any unconstitutional change of Government and commit member states to the respect of the rule of law, democratic principles and human rights.'

Tomorrow's session was also anticipated in the Chairperson's statement. It is expected that the PSC will make a determination on whether the transition in Sudan constitutes a military coup warranting the application of the measures envisaged under the Lome Declaration and the African Democracy Charter. The military takeover of transitional authority under a Military Council, the suspension of the constitution and the declaration of state of emergency are all the constituent elements of a military coup. As such, it is expected that the PSC will designate the situation in Sudan as an unconstitutional change of government.

What is not clear is whether the PSC will proceed to institute

the consequences that flow from the occurrence in a member state of an unconstitutional change of government. While the reading of the Lome Declaration and other relevant instruments of the AU including the AU Constitutive Act and the dominant practice of the AU suggests that the application of suspension of the country in which unconstitutional change happened to be automatic, there have been instances in which the PSC opted for holding back the automatic application of the legal consequences. This is done to use the threat of sanction as leverage for pushing democratic change and deploy an incremental application of sanctions.

It may be recalled that in a similar situation in Burkina Faso in 2014 the PSC opted for the suspension of the automatic application of the consequences of the occurrence of a military seizure of power. After widespread protests against the change of constitutional term limit he was pushing through Parliament for seeking a third term, Burkina Faso's then President Blaise Compaore fled out of the country at the end of October 2014. On his departure, the army took over the reign of power. The AU through the statement of the Chairperson of the AU commission announced its rejection of unconstitutional changes. At its meeting on 3 November 2014, the PSC informed the army that the seizure by the army of power was contrary to the AU norm on unconstitutional changes. But as opposed to the usual practice of suspending Burkina Faso immediately, the PSC, on the advise of the then Chairperson of the AU Commission Nkosazana Dlamini Zuma, used the threat of suspension as a leverage for quick transfer of power by the military to a transitional civilian authority. Accordingly, the PSC gave Burkina Faso's army a period of two weeks for handing over power to such civilian authority.

From the perspective of applying the AU norm banning unconstitutional change of government to support peaceful transition in Sudan, this approach used in Burkina Faso could as well be the option that the PSC could opt for. The result

of this could be the rejection and condemnation of the seizure of power by the army as unconstitutional and the provision of a timeline for the army to negotiate with various stakeholders on the streets protesting for handing over power to an inclusive civilian transitional authority.

The expected outcome of the session is a communiqué. In accordance with Lome Declaration of 2000 and the Addis Ababa Democracy Charter, it is expected to condemn the military seizure of power and urge the transfer of power to a civilian transitional administration, failing which the PSC would take the relevant measures including suspension of Sudan from the AU and targeted sanctions as applicable. As in Burkina Faso, the PSC could request the AU High Level Panel to support the Sudanese actors in handing over power to an inclusive civilian authority and elaborate a road map for addressing outstanding issues of the various peace processes in Sudan and for instituting reforms for achieving democratic change.