

Consideration of the Fact Finding Mission on Chad

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Tomorrow (10 May) the African Union (AU) Peace and Security Council (PSC) is expected to convene its 994th session to consider the findings of the Fact-finding Mission on Chad.

This first session of the month is set to begin with the opening remark of the PSC Chairperson for May, Algeria's Permanent Representative to the AU, Salah Francis Elhamdi. The AU Commissioner for Political Affairs, Peace and Security (PAPS), Bankole Adeoye, who co-led the delegation of the Fact-finding Mission, is expected to present on the findings of the Mission. Similarly, Djibouti's Permanent Representative to the AU, Mohammed Idriss Farah, Chairperson of the PSC for April who co-led the mission is also scheduled to present on the mission. It is also envisaged that the representative of Chad, as the country concerned, will make a statement.

Tomorrow's session is a follow up to the emergency session on Chad the PSC had at its 993rd meeting held on 22 April 2021. In that meeting, the Council requested the AU Commission to send a 'high-powered Fact-Finding Mission to Chad'. It is to be recalled that the emergency session was convened after the military announced seizure of power after the death of the late President Idriss Deby Itno on 20 April, reportedly from the wounds sustained while battling rebel groups. A Transitional Military Council, established under the leadership of Deby's son, Mahamat Idriss Deby, suspended the Constitution and dissolved the national Assembly. The military takeover took place in clear contravention to the terms of Chad's Constitution which provides that in the event of vacation of power, the president of the National Assembly should be appointed as interim president and lead the country

to elections within 90 days.

As highlighted in our previous 'Insight on the PSC' for the emergency session on Chad at its 993rd session, practice of the PSC takes two approaches during unconstitutional change of government. The first is the automatic application of the Lomé Declaration and article 7(1) (g) of the PSC Protocol, resulting in the immediate suspension of the country from AU activities. Since coming into operation in March 2004 and until its 993rd session on Chad, the PSC invoked its Article 7(1)(g) power in fifteen (15) instances.¹ In all the 15 instances except that of Cote d'Ivoire in December 2010, the PSC designated each instance as constituting 'coup d'état' or 'unconstitutional change of government'. The PSC also condemned or rejected the 'coup d'état' or 'unconstitutional change of government' in each instance. Additionally, with the exception of three cases,² in all other twelve (12) cases the PSC applied the Lomé Declaration's stipulation for automatic suspension of the country concerned, with the PSC, in some cases, such as its 384th session, stating that AU instruments 'provide for automatic implementation of specific measures whenever unconstitutional change of government occurs.'

The forcible seizure of power by the military in Chad is the first case in which the PSC failed to name the act as a coup d'état and condemn or reject it. This is in stark departure from both the clear terms of AU normative instruments including the Lomé Declaration of 2000 and the African Charter on Democracy, Elections and Governance (2007) and the practice it has set over the years, at least in two major ways. On one hand, the Council stopped short of characterizing the military takeover in Chad as 'unconstitutional change of government' or a 'coup d'état'. On the other hand, the Council neither suspended Chad from AU activities pursuant to its Protocol and the Lomé Declaration nor did it follow the Burkina Faso and Sudan approach that gave 15 days ultimatum for the military to transfer power to a civilian authority.

The PSC decided to task the AU Commission to dispatch 'a high-powered Fact-Finding Mission', with the participation of the PSC, to engage with the Chadian authorities on all issues relating to the situation there, particularly to support the investigation into the killing of the late President and ascertain the efforts to restore constitutionalism, and report back to the Council within two weeks. In pursuit of this, the Fact-finding Mission, led by the AU Commissioner for PAPS, along with the PSC Chairperson for the month of April (Permanent Representative of Djibouti), was deployed to Chad from 29 April to 06 May 2021. The delegation involved the participation of the representatives of five PSC member states from the five regions of the continent (Cameroon from Central, Djibouti from East, Egypt from the North, Ghana from West and Lesotho from Southern). The DRC in its capacity as Chairperson of the Union, and an officer of the AU Legal Counsel were also part of the delegation.

According to a statement released by AU Commission on 29 April, the Fact-Finding Mission would engage with Chadian authorities and stakeholders mainly to 'get first-hand information' on the unfolding political and security situation as well as explore ways to facilitate 'a swift return to constitutional order', while at the same time preserving security and territorial integrity of that country. The mission held meetings with a wide range of actors including the President of the Military Council, Head of the Lake Chad Basin Commission, religious leaders of Chad, President of the Supreme Court of Chad and President of the Assembly of Chad. The delegation of the mission also received a briefing from the AU Commission Chairperson in N'Djamena.

One consideration that seems to carry tremendous weight within the PSC as reflected in its communique of the 993rd session is the security context in Chad and its neighbourhood. Some of the developments that merit attention during tomorrow's session include the intense political climate after a deadly

protest broke out in the two largest cities (N'Djamena and Moundou), demanding a return to constitutional order. According to media reports, military crackdown left six people dead and some 700 people arrested. Also of concern is the fight with rebel group, the Front for Change and Concord in Chad, otherwise known by its French acronym as FACT, in northern part of the country, some 300Kms north of the capital. This is despite the rebel's overtures for a ceasefire and dialogue. The military council ruled out any possibility to sit down with the rebels for negotiation nor mediation, but vowed to bring them to justice. Another consideration for PSC members is the fact that Chad is a key player as a major military actor in the efforts to combat terrorism and violent extremism in both the Sahel and Lake Chad Basin regions.

Of course, these concerns about security and stability are not completely unique to Chad. These are threats that Chad shares with its two neighboring countries, Sudan and Mali, that also experienced military seizure of power in similar context. Indeed, experience shows that overemphasizing the security dimension leads to risk of the military considering it as a license to justify seizure of power in complete disregard of the constitutional process of the country concerned. While security represents a significant consideration, the experience of Mali and Sudan also shows that it cannot dispense with the need for upholding constitutional order and the application of the AU norm on unconstitutional changes of government.

In terms of the task of the Fact-finding Mission for 'ascertaining' and 'facilitating' swift return to constitutional order, the shape that the transitional process has taken shows no indication of a handing over of power to civilian authority. Instead, indications are that the Military Council is going to stay around. The Military Council, without any meaningful engagement with other stakeholders, adopted a Transitional Charter, indicating the continuation of the

suspension of the Constitution of the country. This Charter invests supreme authority in the Military Council, with the Chairman of the Military Council holding enormous power including the appointment of both the Transitional Government headed by the Prime Minister and the members of National Transitional Council. It is to be recalled that the PSC has already expressed its 'grave concern' over the military takeover and urged the handing over of political power to civilian authorities in accordance with the relevant provisions of the Constitution of Chad, at its 993rd session.

The Military Council named a government comprising 40 ministers and deputy ministers where oppositions are given some portfolios. For instance, the former Prime Minister turned an opposition and a presidential runner-up in the latest election, Albert Pahimi Padacke, has been appointed to head the transitional government as an interim Prime Minister. The newly created Ministry of Reconciliation and Dialogue as well as the Justice Ministry are also portfolios handed to the opposition. While some of this move received positive response from some oppositions including the longtime opposition figure Saleh Kebzabo, the fact remains that under the Transitional Charter, ultimate power is held by the Military Council. Thus, these measures that the Military Council took represent no progress towards return to civilian rule within the framework of Chadian Constitution as stipulated in the communiqué of PSC's 993rd meeting.

The other issue on which the Fact-finding Mission is expected to update the PSC is the investigations around the circumstances of the death of the late President Deby.

The expected outcome is a communique. On the issue of the transfer of power to civilian authorities as per the terms of PSC's 993rd meeting, the PSC may follow one of the two options. The first is to endorse the Military Council's plan for the transition. This would be a direct violation of the AU instruments including the PSC's Protocol and bring to an end

AU's policy of zero tolerance to military coups. The other option is to apply, as it did for Mali in August 2020, the AU instruments, declare the military council's action a military coup, suspend Chad from participation in the AU activities and set out clear terms for Military Council's handover of power to civilian transitional authority with the participation of various Chadian stakeholders for lifting suspension. The Council is expected to reiterate its deep concern about the increasing spate of violence and rebellion and the attendant heightened insecurity and the increasing operational tempo of rebels, foreign terrorist fighters and mercenaries, as well as the proliferation of illicit weapons, as consequences of, among others, the conflict in Libya. The PSC is also expected to express concern about the challenges facing Chad's security and stability and the necessity of forestalling the transitional process from leading to the destabilization of the country, and the weakening of its role in the fight against terrorism in the region. In this respect, the PSC, as it did in previous instances relating to Chad, may also express its rejection of the attempt of the rebel groups for taking power by force and call for peaceful means for resolving the fighting with rebel groups. The Council is also likely to express its regrets over the incidents of violence on protesters and call on all parties to show utmost restraint and the de facto authorities to respect human rights as enshrined in different regional and international human rights instruments.

¹Togo (2005), Mauritania (2005), Mauritania (2008), Guinea (2008), Madagascar (2009), Niger (2010), Cote d'Ivoire (2010), Mali (2012), Guinea Bissau (2012), Central African Republic (2013), Egypt (2013), Burkina Faso (2014), Burkina Faso (2015), Sudan (2019) and Mali (2020).

²The first instance in which the PSC did not activate automatic suspension after declaring the occurrence of a coup d'état or unconstitutional change

of government was at its 164th session held on 24 December 2008 relating to Guinea. But this lasted only for five days. Thus, at its 165th session held on 29 December 2008, after the visit of the AU Commission Chairperson to the country on 26 December, the PSC suspended Guinea from participation in AU activities. The other instances are the cases of Burkina Faso in November 2014 and Sudan in April 2019 where the PSC set a 15-day deadline for transfer of power after declaring the seizure of power by the military a coup d'état and condemning it.