



***Much a coup about nothing?***

Was Zimbabwe's 2017 'military-assisted change of government' an 'unconstitutional change of government' as defined by applicable international law? Did the relevant international bodies respond to it in accordance with their own rules?

**BY**

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## Contents

Acknowledgements and Dedications .....	4
Abbreviations.....	5
Chapter One – Introduction .....	6
I. Background.....	6
II. Research Questions.....	7
III. Sources.....	8
IV. Limitations .....	8
V. Chapter Overview .....	9
Chapter 2 – Factual Background.....	10
I. Introduction.....	10
II. The pre-November 2017 background .....	10
a. Factionalism within ZANU-PF.....	10
b. The Lacoste vs G-40 factions – origins and escalations (late 2015 to June 2017).....	15
c. Factional tensions brought to boil – July 2017 to 6 November 2017 .....	18
III. 7 to 24 November 2017.....	21
a. Lacoste and the military take action .....	21
b. The ZDF takes control .....	26
c. The situation in Zimbabwe the week following the military actions.....	27
d. Response of the international community to the events in Zimbabwe .....	30
Chapter Three – The Legal Framework.....	32
I. Introduction.....	32
II. The Zimbabwean Constitution.....	32
a. Generally applicable Constitutional provisions .....	32
b. Changes to the Executive Offices .....	33
c. The powers and responsibilities of the Executive.....	35
d. The Defence Forces .....	36
III. International law .....	36
a. SADC law .....	37

b. African Union Law .....	38
c. Global law .....	44
IV. The Rule of Law .....	45
Chapter Four – Legal Assessment .....	48
I. Introduction.....	48
II. The constitutionality of the 2017 change of government.....	48
a. The legality of the ZDF’s actions under the Constitution.....	48
b. The constitutionality of Mugabe’s resignation and ED’s inauguration .....	54
III. Does the 2017 coup violate international law? .....	57
a. SADC Law.....	57
b. African Union Law .....	57
c. Conclusion .....	58
IV. Assessing the adequacy of the responses of SADC and the AU under their rules.....	59
a. SADC’s response .....	59
b. The African Union’s response .....	60
Chapter Five – Conclusions & Recommendations .....	63
I. Conclusions.....	63
II. Recommendations.....	64
a. Recommendations for African states .....	64
b. Recommendations for international organisations.....	66
BIBLIOGRAPHY.....	69
Primary Sources .....	69
<b>Constitution</b> .....	69
<b>Legislation</b> .....	69
<b>International Sources</b> .....	69
<b>Cases (Zimbabwean)</b> .....	69
Secondary Sources .....	70

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## Abbreviations

ACDEG	African Charter on Democracy, Elections and Governance
AHG	Assembly of Heads of State and Government
AU	African Union
CIO	Central Intelligence Organisation
ED	Emmerson Dambudzo Mnangagwa
FTLRP	Fast-Track Land Reform Program
G-40	Generation-40
JOC	Joint Operations Command
MAT	military-assisted transition (of government)
MCPMR	Mechanism for Conflict Prevention, Management and Resolution
OAU	Organisation of African Unity
PSC	Peace and Security Council
RSA	Republic of South Africa
SADC	Southern African Development Community
UCOG	‘unconstitutional change of government’
UN	United Nations
ZANU-PF	Zimbabwe African National Union (Patriotic Front)
ZBC	Zimbabwe Broadcasting Association
ZDF	Zimbabwe Defence Forces
ZNLWA	Zimbabwe National Liberation War Veteran’s Association
ZRP	Zimbabwe Republic Police

## Chapter One – Introduction

### I. Background

In November 2017, Zimbabwe experienced something almost unthinkable – someone other than Robert Mugabe was President. Mugabe, then the world's oldest head of state, had resigned on the back of a military operation in Harare which had placed him under intense pressure. A small group of the military, ostensibly acting on the directions of the Lacoste faction of ZANU-PF, quickly moved into Harare, secured key locations, shut down any potential resistance, arrested Lacoste's main political rivals, and placed the Mugabe family under house arrest.

Although the ZDF's actions bore the traditional hallmarks of a military coup d'état, much of the world hesitated in declaring the events a 'coup.' International organisations, such as SADC and the AU, called for calm and implored a return to constitutionality, but largely avoided labelling the events with any conviction. For example, the SADC Chair 'urged the government and military to resolve their differences amicably,' seemingly glossing over the myriad of potential illegalities that had occurred during the ZDF's Operation: Restore Legacy.<sup>1</sup>

For whatever reason, SADC and the AU approached the Zimbabwean situation in a restrained manner, thereby allowing the ZDF to characterise the events not as a 'coup,' but rather as a 'military-assisted transition' of government.<sup>2</sup> The military was allowed to control the narrative around its operation, thus portraying itself as acting in the best interests of the Zimbabwean populace. SB Moyo, the ZDF spokesman, stated after the takeover, 'we [the ZDF] are only targeting criminals...causing social and economic suffering in the country.'<sup>3</sup> The ZDF's narrative was supported by the huge mobilisation of civil society who marched in the streets, calling for Mugabe to resign.

Mugabe eventually resigned under the concerted pressure, including the looming spectre of an embarrassing impeachment or removal by more nefarious means. However, although Mugabe resigned and the constitutional order was seemingly restored, this is not the end of the story. Adopting the position that Mugabe resigned freely ignores the pivotal role that the ZDF played in initiating the change of government, and further ignores the illegalities of its actions.

In this paper, I re-examine Zimbabwe's 2017 MAT to assess its legality, both under domestic and international law. I argue that rather than its being an altruistic operation by the ZDF to ease the economic and social difficulties experienced by Zimbabwe, it was the result

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<sup>1</sup> Lucky E. Asuelime 'A coup or not a coup' (2018) 5 *Journal of African Foreign Affairs* 14.

<sup>2</sup> Ibid.

<sup>3</sup> Blessing-Miles Tendi 'The motivations and dynamics of Zimbabwe's 2017 military coup' (2020) 119 *African Affairs* 47.

of long-running factional disputes within the ruling ZANU-PF party. ZANU-PF members had long squabbled over who would eventually succeed Mugabe, with ED Mnangagwa almost always involved in such disputes. Therefore, I briefly trace the history of factionalism within ZANU-PF to demonstrate how ED positioned himself to eventually assume power.

Upon eventually becoming Vice-President in 2014, ED strengthened his existing relationship with military leadership figures, securing their support for his succession ambitions. After ED was fired from the Vice-Presidency on 6 November 2017, his military allies put a plan into motion to ‘take control of the government’ to stop the perceived purge of their allies.<sup>4</sup> In doing this, the ZDF leadership acted outside of the Constitution, violating several key provisions and thus acting illegally. This paper examines the Constitution in depth and highlights these illegalities.

I argue that since the ZDF acted illegally to effect a change of government, its actions amounted to a military coup d’état, despite the apparent reluctance of the international community to label it as such. As the 2017 MAT was a coup, it amounted to a breach of Zimbabwe’s legal obligations under international law. A military coup is classified as an ‘unconstitutional change of government’ under AU law and should attract legal consequences.

This paper thus argues that as Zimbabwe underwent a military coup in 2017, it violated international law. I assess SADC and the AU’s responses to the breaches of their rules, determining that both responses were inadequate. Although international law was breached, SADC and the AU were lukewarm in their responses, thus allowing the ZDF to seize control of the public narrative and portray themselves as acting in the interests of the country, not in the interests of one political faction. The hesitancy of the AU to declare the events a ‘coup’ and respond accordingly has set a weak precedent for the AU and has empowered the militaries of other African states to attempt coups, ostensibly believing they will face little meaningful opposition or punishment from the AU.

## II. Research Questions

Over the course of this paper, I will address the following questions:

1. How did ZANU-PF factionalism result in the MAT?
2. How did the events of the MAT differ in reality from the public narrative?
3. What does the Zimbabwean Constitution say about: executive powers, Presidential resignations, and the Armed Forces?

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<sup>4</sup> Tendi op cit (n3) 63-64.

4. What does applicable international law say?
5. Does Zimbabwe's 2017 MAT constitute an 'unconstitutional change of government' under international law?
6. Did SADC and the AU respond appropriately to the events in Zimbabwe?

### III. Sources

The historical background was drawn from published news articles, academic journals and written first-hand accounts, while the legal framework was extrapolated directly from the relevant legal documents such as the SADC Treaty and the Constitutive Act of the AU.

I should also mention that I am a Zimbabwean citizen whose family and friends were in Harare during the events described in this paper. As such, there are instances where I refer to the public sentiment or perception of the events of 2017 – these sentiments were communicated directly to me by persons with first-hand experience. For instance, close family members were involved in the November march past State House calling for Mugabe's resignation and explained their feelings at the time to me. Accordingly, my understanding and explanation of the public sentiment around the MAT have been influenced by these first-hand accounts.

### IV. Limitations

The biggest limitation encountered while researching this paper was the sparsity of verified information. Due to the highly secretive nature of the MAT, verifiable first-hand accounts concerning the finer details of the event are unsurprisingly somewhat scarce. Although mainstream news sources reporting from Harare largely corroborate one another regarding uncontested or well-established facts and can thus be considered to be predominantly reliable, other purportedly factual sources rely on anonymous interviews and creatively embellish certain stories, calling into question their overall veracity. This sparsity of verified information, along with widespread misinformation disseminated by state-run media and on social media platforms, has made the investigation of the factual background difficult.

Due to the aforementioned difficulties, precautions have been taken to ensure that the information contained within this paper is accurate. Such precautions include: only relying on news reports whose content has been widely corroborated by other consistent reports, relying on peer-reviewed literature from academic sources, and relying on sources from authors whose published work has been independently fact-checked. Given the generally clandestine nature of military operations, the possibility remains – despite the precautionary measures taken – that some of the finer details may never be fully verifiable. This is understandable since none of

those closely involved in the MAT are ready to risk life or liberty to disclose the inner workings of such a high-stakes military operation.

Despite the lingering possibility of misinformation or unverifiable accounts of the facts, I believe that the implemented precautionary measures are sufficient to ensure that the contents of this paper are objectively accurate and can be verified through publicly-accessible information.

## V. Chapter Overview

Chapter Two sets out the relevant historical background leading up to and including the 2017 MAT. I trace the history of factionalism within ZANU-PF from its emergence in the late 1990s, showing how factional tension revolved primarily around who Mugabe's eventual successor would be. ED was almost always involved in factional issues, gradually positioning himself to succeed Mugabe. I argue that it was these ongoing factional disputes that eventually resulted in the MAT.

Thereafter, Chapter Three explores the legal framework applicable to the events of the MAT. I discuss relevant Constitutional provisions, as well as the applicable SADC and AU law. I conceptualise 'military coups d'état,' and examine whether there are any other forms of international law that can be applied to the Zimbabwean situation. I also briefly discuss the concept of 'the rule of law.'

Chapter Four applies the legal framework set out in Chapter Three to select events detailed in Chapter Two. In this chapter, I demonstrate how the ZDF's actions during the MAT violated numerous provisions of the Constitution, rendering the actions illegal. As the ZDF acted illegally, I argue that the MAT constitutes a 'military coup d'état' and thus amounts to a violation of the applicable international law. As international law was violated, I examine whether the relevant international institutions responded appropriately to the Zimbabwean coup.

Finally, Chapter Five presents my conclusions. I summarise key points raised throughout the paper, reasserting my argument that Zimbabwe's 2017 MAT was a military coup d'état, and thus an 'unconstitutional change of government' under applicable international law.

## Chapter 2 – Factual Background

### I. Introduction

To understand the discussion of the legalities of the 2017 MAT in a nuanced manner, the reader must be first introduced to some basic political history. This chapter provides a detailed account of the 2017 MAT, including the establishment and examination of the key dates and incidents which eventually resulted in the MAT, a review of the MAT itself, and the inauguration of ED Mnangagwa as President of Zimbabwe on 24 November 2017. Although the MAT itself occurred roughly between 6 and 24 November 2017, this chapter also identifies key events which occurred before this timeframe.

### II. The pre-November 2017 background

While the MAT and its ancillary events predominantly occurred in November 2017, the events of this period alone do not tell the whole story. To readers unfamiliar with Zimbabwean politics, the MAT may appear to be an isolated or opportunistic event, but in reality, its foundations were laid over an extended period.<sup>5</sup> Rather than an opportunistic power grab by ED and the ZDF, the MAT was the product of years of political squabbling and factionalism within the ruling ZANU-PF party.<sup>6</sup>

This chapter's brief revision of ZANU-PF factionalism demonstrates how the conditions for the MAT were developed, and ultimately aids in the answering of the core question addressed by this thesis – was Zimbabwe's 2017 MAT an 'unconstitutional change of government' under international law?

#### a. *Factionalism within ZANU-PF*

The man replaced in the MAT, then-President Robert Mugabe, was 93 years old at the time, and had led Zimbabwe since 1980.<sup>7</sup> Across his 37 years in power, Mugabe deployed a range of tactics to retain his monocratic grip on power, and he was especially adept at stoking the factions within his ZANU-PF party for political gain.<sup>8</sup> Although such factions are said to have

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<sup>5</sup> TJ Mudau & Dylan Yanano Mangani 'Operation Restore Legacy: An Epitome of Mnangagwa Anti-Mugabe Narrative' (2018) *Ubuntu: Journal of Conflict and Social Transformation* 179.

<sup>6</sup> Ibid.

<sup>7</sup> MacDonald Dzirutwe, Ed Cropley & Joe Brock 'The inside story of Mugabe's downfall' (2018) 68 *New Agenda* 33.

<sup>8</sup> Clever Chirume et al 'Political Tsunami: An End to Hegemony in Zimbabwe' (2018) 43 *American Scientific Research Journal for Engineering, Technology, and Sciences* 79.

emerged by the early 1990s, Mugabe retained firm control of the party in the following decades.<sup>9</sup>

Factions within ZANU-PF have almost always boiled down to arguments over who would eventually succeed Mugabe.<sup>10</sup> In 1999, Solomon Mujuru, a powerful former general in Zimbabwe's liberation struggle, was reportedly plotting to oust Mugabe as ZANU-PF leader and replace him with his wife, Joice Mujuru.<sup>11</sup> Part of Mujuru's plan included mobilising the veterans of the liberation struggle ('war vets') to demand large pensions and land from Mugabe's government.<sup>12</sup> Mugabe weathered this challenge by initiating the FTLRP, which allowed (and even directed) war vets to invade and forcibly seize white-owned commercial farmland.<sup>13</sup> This move temporarily placated the noisy faction, but ultimately accelerated further fracturing within ZANU-PF.

Following the FTLRP, the Zimbabwean economy began to falter as its largely agricultural foundation crumbled amid the seizure of successful commercial farms.<sup>14</sup> By the 2002 Presidential Election, Zimbabwe's economy had stagnated, and rumours of further factional divides within ZANU-PF were rife, with some party members opining that Mugabe was out of ideas.<sup>15</sup> Mugabe, ever the strategist, turned to the military-aligned faction of his party, directing them to unleash troops into civil society and violently intimidate opposition supporters. Reports estimate that during the 2002 election cycle, some 107 opposition members were killed and many others tortured. Additionally, many further cases likely went undocumented.<sup>16</sup>

Unsurprisingly, Mugabe won the 2002 Presidential Election. Mugabe's exploitation of party factions provided a short-term solution to guarantee his stay in power, but it created further divisions in ZANU-PF between Mugabe loyalists and those who thought it was time for fresh leadership.

In September 2003, just over a year after the election, one of Zimbabwe's Vice-Presidents, Simon Muzenda, died.<sup>17</sup> Muzenda's death left a vacant Vice-President seat for Mugabe to fill, thus providing him with an opportunity to assess loyalties, which he did by playing off competing factions once again. Despite her husband's previous anti-Mugabe scheming, Joice Mujuru had now emerged as a Mugabe favourite and was seen as the frontrunner for the

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<sup>9</sup> Chirume et al op cit (n8).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> David Moore 'A very Zimbabwean coup: November 13-24, 2017' (2018) 97 *Transformation* 3.

<sup>13</sup> Ibid at 4.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid at 5.

<sup>17</sup> Mudau & Mangani op cit (n5) 188.

position. However, not all ZANU-PF members were enamoured by the thought of a woman assuming a role that would position her to succeed Mugabe. Thus, a new faction seeking to block Mujuru from the role emerged.<sup>18</sup> This faction was led by ED Mnangagwa, working with another long-time Mugabe loyalist, Jonathan Moyo.<sup>19</sup>

ED had long aspired to become Vice-President (with the apparent goal of becoming Mugabe's eventual long-term successor), and thus he contrived with Moyo to block Mujuru's ascension.<sup>20</sup> Although this 'anti-Mujuru' faction gained significant support within ZANU-PF, with seven of the ten (7/10) party provincial chairpersons supporting ED's aspirations, the movement ultimately failed as Mugabe appointed Mujuru as Vice-President in 2004.<sup>21</sup> It was suggested that Mugabe was aware of ED's growing influence over ZANU-PF's 'old guard' – ie those who were part of the liberation struggle – and had thus strategically selected Mujuru to curtail ED's ambitions.<sup>22</sup>

Mujuru carried liberation struggle credentials herself, and her appointment secured additional support for Mugabe from the ZANU-PF Women's League, while simultaneously weakening the influence of the ED-supporting faction.<sup>23</sup> ED, for his involvement in the anti-Mujuru movement, lost his prestigious political roles as the Minister of Justice and Speaker of Parliament, suffering demotion to the 'irrelevant' Ministry of Rural Amenities – by which Mugabe reminded him who was in charge.<sup>24</sup>

Despite the embarrassment of his failed Vice-Presidential bid and the ignominy of his subsequent demotion, ED stayed close to Mugabe (as he had done since the 1960s), anticipating that his time would eventually come.<sup>25</sup> Within 4 years, ED was back in Mugabe's inner circle and played a key role in the 2008 elections.<sup>26</sup>

When Mugabe appointed Joice Mujuru in 2004, he had declared that she should 'look beyond just becoming Vice-President,' an ambiguous statement which hinted that he was potentially lining her up for eventual succession.<sup>27</sup> However, when the 2008 Presidential Election came around, Mugabe was once again nominated as ZANU-PF's candidate.<sup>28</sup>

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<sup>18</sup> Mudau & Mangani op cit (n5) 188.

<sup>19</sup> Ibid.

<sup>20</sup> Moore op cit (n12) 5.

<sup>21</sup> Mudau & Mangani op cit (n5) 188.

<sup>22</sup> Ibid at 190.

<sup>23</sup> Ibid at 189.

<sup>24</sup> Ibid at 190.

<sup>25</sup> Chirume et al op cit (n8) 81.

<sup>26</sup> Moore op cit (n12) 6.

<sup>27</sup> Ibid.

<sup>28</sup> Mudau & Mangani op cit (n5) 190.

Mugabe's unwillingness to relinquish power and allow Mujuru to stand for the Presidency irked the Mujuru-supporting faction in ZANU-PF, who subsequently devised and initiated a strategy colloquially dubbed '*bhora musango*' (roughly translated as 'kick the ball outside the field') – a sporting analogy which encouraged ZANU-PF supporters to vote for party Parliamentary candidates but vote for alternative Presidential candidates.<sup>29</sup>

The Mujuru faction's *bhora musango* tactics resulted in Mugabe losing the election with approximately 43 per cent of the vote, compared to the opposition Morgan Tsvangirai's 47 per cent.<sup>30</sup> Although Mugabe lost, neither candidate had gained a 50 per cent majority, meaning a run-off election was scheduled. Not winning an election outright was a new experience for Mugabe, who suspected that he had been internally sabotaged. Accordingly, he presumed that he could not rely on Mujuru's help to win the run-off, so he summoned ED.

Mugabe installed ED as ZANU-PF's chief election agent and the head of the JOC, an elite task force comprising the heads of the various security sectors, which reported directly to Mugabe and was not subject to any form of legal oversight or accountability.<sup>31</sup>

In his powerful new roles, ED unleashed the state's security apparatus on the opposition again, but with far less restraint than in 2002. The ED-masterminded operations resulted in the deaths of at least 200 people, with over 5,000 tortured and injured, and approximately 35,000 displaced from their homes.<sup>32</sup> The horrific violence perpetrated by state security forces under ED's command led to Tsvangirai withdrawing from the run-off election in an attempt to stop the violence and save the lives of his supporters. Thus Mugabe retained the Presidency, as he was re-elected unopposed.<sup>33</sup>

Mugabe had once again utilised a ZANU-PF faction to ensure his political continuity, while simultaneously side-lining a competing faction. This move strengthened Mugabe's short-term position but made him increasingly beholden to his state security sector backers and their ostensible leader, ED.

Aside from empowering the ED/military faction, Mugabe knew that he would have to find a strategic way to retain the backing of the Women's League, having shut down Mujuru's moves toward the Presidency. He initially retained Mujuru as his Deputy in the years following the 2008 elections, but simultaneously encouraged his wife, Grace Mugabe, to become more

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<sup>29</sup> Mudau & Mangani op cit (n5) 190.

<sup>30</sup> Moore op cit (n12) 6.

<sup>31</sup> Mudau & Mangani op cit (n5) 191.

<sup>32</sup> Moore op cit (n12) 6.

<sup>33</sup> Asuelime op cit (n1) 12.

publicly and politically active. Together, ED and Grace constructed and propagated an ‘anti-Mujuru’ narrative throughout ZANU-PF.<sup>34</sup>

ED and Grace argued that Mujuru’s *bhora musango* tactics in 2008 had hurt Mugabe’s political standing, and Mujuru was a disloyal ‘usurper’ who wanted to seize Mugabe’s power for herself.<sup>35</sup> Grace and her acolytes began to publicly castigate Mujuru at ZANU-PF rallies and conferences, with some even disparaging Mujuru’s liberation credentials to undermine her in the eyes of ZANU-PF supporters and effectively torpedo her leadership aspirations.<sup>36</sup>

Whether her attacks on Mujuru had any merit is largely irrelevant, as Grace was becoming an increasingly powerful political figure herself, piggybacking off her husband’s iconic status and empowered by the ED faction’s apparent preference for her over Mujuru. Grace’s meteoric political rise continued when she controversially obtained a PhD in Sociology from the University of Zimbabwe in 2014, consequently adopting the moniker ‘Dr. Amai’ (‘mother’).<sup>37</sup> This allowed Grace to reinvent herself as a distinguished intellectual ‘mother of the nation,’ and elevated her public status above Mujuru, despite Mujuru then still Vice-President.

Critically, Grace moved to assume the leadership of ZANU-PF’s Women’s League, thereby further consolidating her own political power and cementing the League’s support of her husband.<sup>38</sup> This all occurred with the apparent support of ED, who had since been returned to his position as Minister of Justice and was ostensibly utilising Grace as a proxy in his long-running battle against Mujuru’s faction.<sup>39</sup>

The simmering tension between ED/Grace and Mujuru finally came to a boil at the December 2014 ZANU-PF Congress. During the Congress, Mugabe dismissed Mujuru as Vice-President and completely expelled her and several of her closest supporters from ZANU-PF entirely, effectively eliminating that faction.<sup>40</sup> ED was finally appointed to the role he had craved for the majority of two decades, as Mugabe replaced Mujuru with him.<sup>41</sup> ED had bided his time and played his cards perfectly, utilising Grace to get Mujuru and her faction out of the way. All the while, ED seemingly remained a dignified statesman, uninvolved in the messy public denigrations of Mujuru that Grace apparently relished.

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<sup>34</sup> Mudau & Mangani op cit (n5) 191.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid at 192.

<sup>37</sup> Moore op cit (n12) 8.

<sup>38</sup> Ibid at 9.

<sup>39</sup> Ibid.

<sup>40</sup> Mudau & Mangani op cit (n5) 192.

<sup>41</sup> Ibid.

Thus in late 2014, ED was in the political ascendancy – he won his factional battle with Mujuru and was back in Mugabe’s good books, and had finally landed the role he had long-craved, putting him first in line to succeed Mugabe.<sup>42</sup> However, things were not so simple for ED. Grace had begun to enjoy her newfound political identity and was not content to sit back and lead the Women’s League. Indeed, by the end of 2015, two new dominant factions had emerged within ZANU-PF; the *Lacoste* faction, largely comprised of liberation struggle veterans who supported the 73-year-old ED’s succession claims, and the *Generation-40* (‘G-40’), a faction comprised of the younger generation of ZANU-PF members who backed 50-year-old Grace to eventually succeed her husband.<sup>43</sup> It is these two factions and their competing interests that ultimately led to the MAT in 2017.

*b. The Lacoste vs G-40 factions – origins and escalations (late 2015 to June 2017)*

In 2015, shortly after ED was appointed Vice-President, various rumours emerged that he was attempting to set up parallel security, party, and governmental structures that would operate under his direct control – undermining the existing structures ostensibly loyal to Mugabe alone.<sup>44</sup> As someone who had long earmarked the Vice-Presidency as a stepping-stone to the top job, ED was apparently wasting little time in laying the groundwork for that potential ascension. Apparent confirmation of ED’s purported plots came to light when he hosted a party at his ancestral homestead, at which a high-ranking ZANU-PF official gave a speech in homage to ED, publicly equating him with Jesus Christ, and thanking him for his benevolence to the community.<sup>45</sup> This was a politically-risky move for an official within a ZANU-PF party that had long held Mugabe in an almost deistic reverence.

Unsurprisingly, these reports did not go down well with the Mugabe family and their loyalists within ZANU-PF. Grace, backed by the G-40, went on the offensive against ED and his *Lacoste* allies, particularly the head of the ZDF, General Constantino Chiwenga. She publicly lambasted ED and Chiwenga, accusing them of plotting to usurp her husband and grab power for themselves.<sup>46</sup> This skirmish was the beginning of the long-running G-40 vs. *Lacoste* factional battle, which ultimately culminated in November 2017.

Despite Grace’s public drawing of the battle lines in 2015, much of the ongoing tension was initially confined within ZANU-PF, and little more was made public until 2016. However, once

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<sup>42</sup> Mabasa Sasa ‘Zimbabwe: Out with the old, in with the old’ *New African* 19 January 2015 available at [www.newafricanmagazine.com/9605/](http://www.newafricanmagazine.com/9605/), accessed on 25 September 2021.

<sup>43</sup> Moore op cit (n12) 9.

<sup>44</sup> Mudau & Mangani op cit (n5) 192.

<sup>45</sup> Ibid.

<sup>46</sup> Moore op cit (n12) 9.

the metaphorical toothpaste is out of the tube, it is almost impossible to restore the *status quo ante*, something which became evident through what occurred between early 2016 and the 2017 MAT. Grace, barely in her 50s, was fairly young in comparison to the constitutive members of the *Lacoste* faction, and she demonstrated her political naiveté by challenging ED.

Given ED's alliance with Chiwenga, their *Lacoste* faction was primarily comprised of the state security sector, but also included many of the war vets with whom ED had fought alongside in the 1970s and 1980s.<sup>47</sup> Indeed, one of ED's closest allies in early 2016 was Christopher Mutsvangwa, the then-head of the ZNLWA, who wielded great influence over the war vets.<sup>48</sup> The *Lacoste* faction was essentially ZANU-PF's 'old guard' (excluding those still fiercely loyal to Mugabe), and they pushed the narrative that only those with liberation war credentials were qualified for top leadership roles.<sup>49</sup> ED and his faction believed that as they had helped secure Zimbabwe's independence, they should hold the political power now, not the G-40 upstarts without liberation credentials.<sup>50</sup>

The G-40, as previously explained, comprised primarily of the younger generation of ZANU-PF members, much more politically-minded than the *Lacoste* faction.<sup>51</sup> Many of the G-40's members were technocrats, such as ED's now-former ally Jonathan Moyo, and preferred battles of intellect, rather than the machismo of the militaristic *Lacoste* faction.<sup>52</sup> Knowing that ED had the backing of the military – the golden key in Zimbabwean politics – the G-40 devised a plan to get ED out of the way while they could. Mugabe was ageing and would not be able to keep the military constrained forever, but if the G-40 could replace ED as Vice-President with Grace and get him out of the way, then they stood to conclusively win the succession battle.<sup>53</sup>

The G-40, particularly Jonathan Moyo, constructed and pushed an 'anti-Mnangagwa' narrative within ZANU-PF and amongst its supporters.<sup>54</sup> Moyo had served as Mugabe's Minister of Information (read 'chief propagandist') and had infamously been referred to as Mugabe's 'Goebbels.'<sup>55</sup> Moyo held a PhD in Public Administration from the University of

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<sup>47</sup> Moore op cit (n12) 9.

<sup>48</sup> Mudau & Mangani op cit (n5) 196.

<sup>49</sup> Moore op cit (n12) 9.

<sup>50</sup> Linda Thomas-Greenfield & D. Bruce Wharton 'Zimbabwe's Coup: Net Gain or No Gain?' (2019) 99 *Military Review* 11.

<sup>51</sup> Moore op cit (n12) 9.

<sup>52</sup> Ibid.

<sup>53</sup> Mudau & Mangani op cit (n5) 192.

<sup>54</sup> Ibid.

<sup>55</sup> Douglas Rogers *Two weeks in November: The Astonishing Inside Story of the Coup That Toppled Mugabe* (2019) 48.

South California, and was perhaps the most intellectual member of ZANU-PF.<sup>56</sup> Moyo knew that the only realistic way of countering ED and the military's influence in Zimbabwean politics was to influence the public's perception of ED, particularly the youth's – considering the huge turnout of first-time voters that carried Mugabe to electoral victory in 2013.<sup>57</sup>

In February 2016, the *Lacoste* faction, fearing imminent G-40 action, began making their own political moves. The ZNLWA, led by Mutsvangwa, mobilised a cabal of war vets to take to the streets, purportedly in protest of Zimbabwe's continuing economic deterioration, but also as a challenge to the G-40's increasing influence over Mugabe and ZANU-PF internal politics.<sup>58</sup> The protesting war vets, historically staunch Mugabe allies, were met with resistance from the G-40-aligned ZRP, who quickly dispersed them with tear gas and water cannons and shut down their protest.<sup>59</sup> While this event was not all that meaningful to the public or ZANU-PF outsiders at the time, the benefit of hindsight shows that it was a clear indication of the rapidly-deteriorating relationship between Mugabe and his military allies, the chief guarantors of his power.<sup>60</sup>

The G-40 moved fast to counter the narrative that Mugabe was losing his grip on power, using the ZANU-PF Youth League to organise the 'Million Man March' through the streets of Harare on 25 May 2016.<sup>61</sup> The proclaimed purpose of this march was to 'express solidarity with President Robert Mugabe as ZANU-PF's candidate in the 2018 polls because [of] his visionary leadership.'<sup>62</sup> This march was later followed by a joint statement from ZANU-PF's Youth League and Women's League in December 2016, reaffirming 'the two bodies' unwavering support for President Mugabe's leadership and candidature for the 2018 national elections.'<sup>63</sup> The Youth League even proclaimed that Mugabe should be 'president for life.'<sup>64</sup>

These events demonstrate the increasing factional tension within ZANU-PF, with Grace and the G-40 growing ever bolder in their challenges against ED and his military allies. It was already widely suspected that Grace had developed aspirations to succeed her husband, but this had become undeniable after she publicly vilified the protesting war vets at a rally in 2016. Grace declared that 'there are those who refuse to be guided by me. They are especially those

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<sup>56</sup> Rogers op cit (n55) 48.

<sup>57</sup> Ibid at 46.

<sup>58</sup> Moore op cit (n12) 9.

<sup>59</sup> Ibid.

<sup>60</sup> Tendi op cit (n3) 53.

<sup>61</sup> Mudau & Mangani op cit (n5) 196.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

who went to the war...'<sup>65</sup> It was around this time that Mugabe moved to dismiss Mutsvangwa as the head of the ZNLWA, apparently for his role in convening an 'illegal gathering' (the February 2016 protest), but arguably also to weaken the *Lacoste* faction's support base, especially among the war vets.<sup>66</sup>

Mutsvangwa's dismissal and Grace's challenges of the war vets were not well-received. The ZNLWA issued an explosive press release, decrying the 'disrespectful' treatment of the war vets, and claiming that ZANU-PF was forgetting the ideals of the liberation struggle and the spilt 'blood of the departed heroes' to whom they owed everything.<sup>67</sup> They vowed that no war vets would support Mugabe's candidacy in 2018.<sup>68</sup>

With Mugabe having lost the support of the war vets and seemingly falling out of favour with his generals, who were increasingly annoyed by Grace's antics, the G-40 ramped up their youth-focused initiatives, hoping to increase their base of public support to compensate for the losses of key allies. In early 2017, with the elections less than 18 months away, the G-40 began organising 'Youth Interface Rallies' throughout Zimbabwe's ten provinces, aimed at aligning the nonagenarian Mugabe with the youth in an attempt to secure their votes.<sup>69</sup> These rallies further provided Grace with a platform to assert her own political credentials. Grace pushed her 'Dr. Amai,' the 'mother of the nation' narrative at these rallies, positioned herself and her husband as the ideological 'parents' of the nation, akin to a monarchy. This was a far cry from the anti-imperialist ideology that Mugabe had long adhered to, and was further 'evidence' to the *Lacoste* faction that Grace had 'usurped' Mugabe.<sup>70</sup>

*c. Factional tensions brought to boil – July 2017 to 6 November 2017*

While Grace did the public fighting for the G-40, her allies worked behind the scenes to push ED out of the succession race. On 19 July 2017, Jonathan Moyo 'dropped a political bombshell' on ED at a ZANU-PF Politburo meeting.<sup>71</sup> For years, Moyo had quietly been compiling 'evidence' of ED's succession ambitions, and he presented it to Mugabe in front of the entire ZANU-PF Politburo (including ED) in the form of a 72-minute video presentation.<sup>72</sup> This video tracked ED's aspirations from the beginning, highlighting his role in the 2004 Vice-Presidency

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<sup>65</sup> Mudau & Mangani op cit (n5) 197.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Chirume et al op cit (n8) 81.

<sup>71</sup> Rogers op cit (n55) 47.

<sup>72</sup> Ibid.

battle, and demonstrating how he had cunningly manoeuvred to take that role from Mujuru.<sup>73</sup> Furthermore, the video alleged that ED and his *Lacoste* faction were ‘planning an illegal and secessionist coup against Mugabe.’<sup>74</sup>

ED unsurprisingly denied all the allegations levelled by Moyo in the video, firing back and accusing him of being a CIA mole, planted to destroy ZANU-PF from the inside.<sup>75</sup> The veracity of the allegations bandied by both factions will probably never be known, but ultimately the truth was of little importance to Mugabe. Grace, and therefore the G-40, had Mugabe’s ear, and he was more inclined to side with his wife than listen to ED, whom he had already suspected was manoeuvring to ‘usurp’ him.<sup>76</sup> Until this point, ED had largely remained out of the direct firing line of the factional battles, only suffering veiled attacks from Grace’s public assertions that there were ‘some’ who would not be led by her. However, this all changed after Moyo’s cinematic efforts.

On 27 July, roughly a week after the bombshell video, General Chiwenga gave an interview to the state-run *Chronicle*. Chiwenga said of Moyo: ‘this guy [Moyo] is vomiting that nonsense... He has some other forces behind him. Hasn’t he written in his books that he is going to destroy [ZANU-PF] from within?’<sup>77</sup> While Chiwenga did not directly reference the G-40, his subtext was clear – he believed that Moyo and the G-40 were manoeuvring within ZANU-PF to take down the old guard, and he was having none of it. Chiwenga, by virtue of his role as the head of the ZDF, tacitly indicated that ED had the military’s support.

In response to Chiwenga’s interview, Grace stepped up her efforts to position the G-40 to take control of ZANU-PF at its December 2017 Party Congress. On the same day that Chiwenga’s interview was released, barely a week after the ED *exposé* incident in the Politburo, Grace urged her husband to name his successor. She declared at a meeting of the ZANU-PF Women’s League that ‘[Mugabe] naming a successor will enable all members to rally behind one candidate’ – a clear attempt to gain the advantage in the factional battle that was coming to head.<sup>78</sup>

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<sup>73</sup> ‘The Blue Ocean Strategy Document’ available at [www.youtube.com/watch?v=Ydt4ZCb9tEc](http://www.youtube.com/watch?v=Ydt4ZCb9tEc), accessed on 23 September 2021.

<sup>74</sup> Rogers op cit (n55) 47.

<sup>75</sup> Ibid at 48.

<sup>76</sup> Moore op cit (n12) 9.

<sup>77</sup> Mabasa Sasa ‘Chiwenga warns Prof Moyo’ *Chronicle* 27 June 2017 available at [www.chronicle.co.zw/chiwenga-warns-prof-moyo/](http://www.chronicle.co.zw/chiwenga-warns-prof-moyo/), accessed on 23 September 2021.

<sup>78</sup> News24 ‘Wife of Zimbabwe leader says Mugabe should name successor’ *News24* 27 July 2017 available at [www.news24.com/News24/wife-of-zimbabwe-leader-says-mugabe-should-name-successor-20170727](http://www.news24.com/News24/wife-of-zimbabwe-leader-says-mugabe-should-name-successor-20170727), accessed on 22 September 2021.

Two days after this statement, on 29 July, Grace took the battle public, telling supporters at a ZANU-PF rally that she had ‘been approached by unnamed people who wanted to take to the streets to remove Mnangagwa from office.’<sup>79</sup> Grace publicly disparaged ED, reminding him he was an employee who ‘served [as Vice-President] at her husband’s will,’ and that he ‘risked losing his job if he did not perform to expectations.’<sup>80</sup>

At that same rally, Mugabe accused the military generals of ‘plotting a coup,’ and warned them to ‘stop interfering in politics,’ saying that ‘politics will always lead the gun and not the gun politics [sic].’<sup>81</sup> Mugabe indicated that he was considering firing some of the military’s top generals, saying ‘I would like to see if the situation is ripe [for retirement],’ while acknowledging that ‘there might be some who have ambitions that they could also be President.’<sup>82</sup>

Unsurprisingly, Grace’s public attacks humiliated ED, and he wrote to Mugabe offering his immediate resignation from the Vice-Presidency. He reportedly cited the public humiliations as one reason, further stating that he believed there was a plot against him.<sup>83</sup> Mugabe purportedly rejected ED’s resignation, but rather than reassuring him, he merely told him ‘not to jump the gun’ – leaving ED’s political future hanging in the balance.<sup>84</sup>

On 10 October 2017, Mugabe reshuffled his Cabinet, once again removing ED as Minister of Justice, and replacing him with Happyton Bonyongwe, the head of the CIO and a Mugabe loyalist.<sup>85</sup> The reshuffle also included the removal of another key *Lacoste* figure Patrick Chinamasa from his position as Minister of Finance, replacing him with G-40 sympathiser Ignatius Chombo.<sup>86</sup> This reshuffle was widely perceived as being instigated at Grace’s bequest, apparently to weaken the *Lacoste* faction, while strengthening her own position.<sup>87</sup> Grace’s close ally, Jonathan Moyo, although then the Minister of Higher Education, had strong ties to

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<sup>79</sup> News24 ‘Mugabe says NO, as VP offers to resign over “public humiliation” by Grace – report’ *News24* 13 August 2017 available at [www.news24.com/News24/mugabe-says-no-as-vp-offers-to-resign-over-public-humiliation-by-grace-report-20170813](http://www.news24.com/News24/mugabe-says-no-as-vp-offers-to-resign-over-public-humiliation-by-grace-report-20170813), accessed on 22 September 2021.

<sup>80</sup> Ibid.

<sup>81</sup> News24 ‘Mugabe accuses military of plotting a coup, tells them “stop interfering [sic] in politics”’ *News24* 29 July 2017 available at [www.news24.com/News24/mugabe-accuses-military-of-plotting-a-coup-tells-them-stop-interfering-in-politics-20170729](http://www.news24.com/News24/mugabe-accuses-military-of-plotting-a-coup-tells-them-stop-interfering-in-politics-20170729), accessed 22 September 2021.

<sup>82</sup> Xolisani Ncube ‘Mugabe: Generals face axe’ *The Standard* 30 July 2017 available at [thestandard.newsday.co.zw/2017/07/30/mugabe-generals-face-axe/](http://thestandard.newsday.co.zw/2017/07/30/mugabe-generals-face-axe/), accessed on 23 September 2021.

<sup>83</sup> News24 op cit (n79).

<sup>84</sup> Ibid.

<sup>85</sup> eNCA ‘Mugabe swears in six ministers: cabinet reshuffle’ *eNCA* 10 October 2017 available at [www.enca.com/africa/mugabe-swears-in-six-ministers-cabinet-reshuffle](http://www.enca.com/africa/mugabe-swears-in-six-ministers-cabinet-reshuffle), accessed on 23 September 2021.

<sup>86</sup> Ibid.

<sup>87</sup> News24 “‘It is a Grace Mugabe reshuffle” - Zimbabwe analyst’ *News24* 10 October 2017 available at [www.news24.com/News24/it-is-a-grace-mugabe-reshuffle-zimbabwe-analyst-20171010](http://www.news24.com/News24/it-is-a-grace-mugabe-reshuffle-zimbabwe-analyst-20171010), accessed on 23 September 2021.

the CIO from his tenure as Information Minister and this reshuffle gave him considerable influence.<sup>88</sup>

Mugabe's second removal of ED from the Justice Ministry was another humiliating betrayal by his mentor, and although he did not retaliate publicly, his *Lacoste* faction was working behind the scenes to hit back at the G-40. Mugabe knew that the military would not support Grace's claims for succession, so around 20-22 October, he summoned Chiwenga for a meeting to address the escalating tensions.<sup>89</sup> Mugabe allegedly 'confronted [Chiwenga] about his ties to Mnangagwa and told him that going against Grace would cost him his life.'<sup>90</sup> He ordered Chiwenga to pledge his loyalties to Grace, but Chiwenga refused, 'standing his ground over his loyalty [to ED].'<sup>91</sup>

On 4 November 2017, Grace was loudly booed by the crowd at a ZANU-PF rally when she began to ridicule ED. The heckling angered her husband, leading him to publicly question whether he should fire ED as Vice-President, saying:

We are denigrated and insulted in the name of Mnangagwa. Did I make a mistake in appointing him as my deputy?... If I made a mistake by appointing Mnangagwa...tell me. I will drop him as early as tomorrow... If it has come to this, it is time we make a final decision.<sup>92</sup>

The next day Chiwenga was dispatched to China, purportedly on 'official business.' On 6 November, with ED's most powerful ally out of the country, Mugabe announced the removal of ED as the Vice-President and his expulsion from ZANU-PF.<sup>93</sup> Following ED's firing, Mugabe stated:

we knew a long time ago what he [Mnangagwa] was like... He thought that by being close to me, I would carry him on my back to the presidency. But I didn't die, I didn't resign.<sup>94</sup>

ED's dismissal and expulsion were the last straw for the *Lacoste* faction. They had grown increasingly annoyed with the G-40's antics and ED's dismissal was 'Code Red.'<sup>95</sup>

### III. 7 to 24 November 2017

#### a. *Lacoste and the military take action*

Immediately after his firing, the state-supplied security detail protecting ED's home and family was withdrawn. He later confirmed that he had been warned of threats against his life.<sup>96</sup> ZDF

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<sup>88</sup> Moore op cit (n12) 10.

<sup>89</sup> Dzirutwe, Cropley & Brock op cit (n7).

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Moore op cit (n12) 10.

<sup>93</sup> Dzirutwe, Cropley & Brock op cit (n7).

<sup>94</sup> Mudau & Mangani op cit (n5) 198.

<sup>95</sup> Dzirutwe, Cropley & Brock op cit (n7).

<sup>96</sup> Rogers op cit (n55) 51.

Lieutenant-General Philip Sibanda, another *Lacoste* ally and the acting head of the ZDF while Chiwenga was in China, contacted Chiwenga to inform him of the developments. Sibanda warned Chiwenga that ED's life was at risk, imploring him to ensure ED's safety.<sup>97</sup>

Chiwenga arranged for two soldiers stationed in Mutare (located on the Mozambique border) to assist ED's escape across the border in the early hours of 8 November.<sup>98</sup> Although border and ZRP officials stopped ED's car from crossing through the official border post, the assistance of Chiwenga's soldiers allowed ED to evade arrest and sneak across the border.<sup>99</sup> Reportedly, one of these soldiers began firing his gun, causing chaos at the border and allowing ED to escape in the commotion.<sup>100</sup> This incident clearly demonstrates the *Lacoste* faction's influence over the ZDF.

After escaping into Mozambique, ED contacted his ally Chris Mutsvangwa, who had been living in exile in Johannesburg since 2016.<sup>101</sup> Mutsvangwa called a press conference in Sandton on 8 November, where he 'denounced "the G-40 cabal" and the firing of ED.'<sup>102</sup> Mutsvangwa praised the Zimbabwean military, saying that 'it [was] conscious of its obligations to arrest some of the excesses of this mad cabal, and if any spilling of blood happens [in the days ahead] we will hold G-40 to account...'<sup>103</sup> That such a statement came merely two days after ED was fired, and at a time when the public still had no idea where ED even was, is indicative that something ominous involving the ZDF was planned.

Meanwhile, Chiwenga reportedly met with China's Defence Minister, Chang Waquan, in Beijing on 10 November.<sup>104</sup> Allegedly, Chiwenga sought assurances that China would not intervene in Zimbabwe if the ZDF acted to remove Mugabe from power, and sought advice on how to do so without it being labelled a 'coup.'<sup>105</sup> However, Mugabe loyalists within the CIO gained knowledge of this meeting, leading to Mugabe arranging to have Chiwenga arrested as he landed in Zimbabwe.<sup>106</sup>

Although the CIO was still primarily loyal to Mugabe, Chiwenga had his own spies, and he got word of his planned arrest. Chiwenga thus arranged for an elite ZDF special forces squadron to be ready at the Harare airport for his arrival on 12 November. This squadron disguised

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<sup>97</sup> Tendi op cit (n3) 62.

<sup>98</sup> Ibid.

<sup>99</sup> Rogers op cit (n55) 51-58.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid at 60.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Dzirutwe, Cropley & Brock op cit (n7) 34.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

themselves as airport staff and baggage handlers, and reportedly easily overpowered the waiting ZRP officials without so much as a single shot being fired.<sup>107</sup> Shortly thereafter, Chiwenga's plane landed, and he was escorted away by his waiting troops, with the police completely incapacitated and the wheels of their vehicles clamped.<sup>108</sup>

The same week of ED's escape and Mutsvangwa's address to global media in Sandton, several high-ranking ZDF officers requested Mugabe to rearrange his schedule for Monday, 13 November, to meet with them and discuss the escalating political crisis.<sup>109</sup> These officers had grown increasingly alarmed at what they perceived to be a 'purge' of those within ZANU-PF with liberation war credentials, and they feared that Mugabe had essentially abdicated the Presidency to Grace.<sup>110</sup> The generals felt that Mugabe owed his position to them, thanks to their contributions to his 'successful' electoral campaigns in 2002 and 2008.

However, Mugabe ignored the generals' requests for an audience – a snub which particularly enraged Chiwenga, who, after his daring return the previous evening, clearly had much to discuss with Mugabe. Rather than meet with his generals, Mugabe went about his usual Monday business, with reports indicating that he was out-of-sorts and angrily lashing out at his aides.<sup>111</sup>

Despite the rapidly-deteriorating political environment, the generals, even Chiwenga, had reportedly remained open to negotiation up until this point.<sup>112</sup> Many of them had been trained by the British Army in the 1980s and were aware of the international community's general disdain for military interference in politics. Thus, they would likely have preferred to negotiate a peaceful conclusion to the political crisis, but the chances of any negotiations were quickly snuffed out when Mugabe refused the meeting.<sup>113</sup> To their minds, this left them with only one real option.

On the afternoon of 13 November, Chiwenga convened a press conference, appearing in army fatigues and flanked by almost all the senior figures in the state security apparatus.<sup>114</sup> Chiwenga decried the side-lining of those with liberation credentials as 'counter-revolutionary'

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<sup>107</sup> Rogers op cit (n55) 78.

<sup>108</sup> Ibid.

<sup>109</sup> Tendi op cit (n3) 63.

<sup>110</sup> Ibid at 60.

<sup>111</sup> Ibid at 63.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Rogers op cit (n55) 79.

and pointed out times in Zimbabwe's history where 'counter-revolutionary measures were all defused by the military.'<sup>115</sup> He went on to say:

It is pertinent to restate that the Zimbabwe Defence Forces remain the major stockholder [sic] in respect to the gains of the liberation struggle and when these are threatened, we are obliged to take corrective measures...The current purging and cleansing process in ZANU-PF which so far is targeting mostly members associated with our liberation history is a serious cause for concern for us in the Defence Forces. We must remind those behind the current treacherous shenanigans that when it comes to matters of protecting our revolution, the military will not hesitate to step in.<sup>116</sup>

Chiwenga was clear, the ZDF were prepared to step in and resolve the situation – Mugabe had been warned.

Following his press conference, Chiwenga convened a meeting of top security force figures, along with other prominent war vets, in which he purportedly said the following:

We now have an urgent security situation. The liberation legacy is under threat. The country is collapsing. If we do not act as an army things will get out of control. So I am going to require the cooperation of everybody. We will do this together. *We will temporarily take over the country.* If anyone tries to fire or arrest one of us, that is an attack on us all. No one will be fired. No one will be victimized. Are we together?<sup>117</sup>

Reports indicate that Chiwenga received the full support of the Armed Forces – essentially the entire army command was under *Lacoste* control.<sup>118</sup>

The following afternoon, 14 November, reports began circulating on social media that armed personnel carriers had been seen leaving barracks around the outskirts of Harare, all heading towards the capital.<sup>119</sup> Multiple rumours of an imminent military takeover abounded, but when Mugabe's motorcade left his office unscathed at 6 pm, travelling towards his home, the feeling was that the rumours of a military intervention were exaggerated. Despite this, pictures of tanks continued to circulate on social media and a nervous excitement persisted among Harare residents.

Around 7 pm, the Mugabes had begun to worry about the persistent rumours and lingering uncertainty, with Grace placing calls to the Defence Minister in an attempt to ascertain what was going on.<sup>120</sup> He apparently had no knowledge of the ongoings and could not answer her, telling her that he would enquire of Chiwenga and report back to her – to which she responded,

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<sup>115</sup> Tendi op cit (n3) 63.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid at 63-64 (own emphasis).

<sup>118</sup> Ibid.

<sup>119</sup> Dzirutwe, Copley & Brock op cit (n7).

<sup>120</sup> Ibid.

‘nobody will stand for a coup...It cannot happen.’<sup>121</sup> This indicates that Mugabe himself had no control over the ZDF’s operations.

By 8 pm, ZDF tanks rolled into the ZBC headquarters in Harare and sealed off all exits. The ZDF detained all staff and interrupted the regular broadcasting schedule.<sup>122</sup> Simultaneously, ZDF personnel seized control of ZRP armouries and CIO offices across Harare, effectively nullifying the only potential sources of resistance, in addition to occupying key government buildings throughout the city.<sup>123</sup> Furthermore, ZDF forces converged around the Mugabes’ mansion and the residences of G-40 aligned cabinet ministers.<sup>124</sup>

Eager to avoid this operation being labelled a ‘coup’ and the consequences that would follow, the *Lacoste* faction did their best to ensure that it appeared as a non-violent or bloodless event, but in reality, this was not quite accurate.<sup>125</sup> While descending on Mugabe’s mansion, ZDF members encountered the head of Mugabe’s security detail, Albert Ngulube, a high-ranking CIO officer, on a side road near the mansion. Ngulube was beaten by the soldiers, who threatened to shoot him, before being detained at an unknown location.<sup>126</sup> While this was happening, more soldiers raided Jonathan Moyo’s home. The ZDF blew off Moyo’s gates with explosives and fired automatic weapons into the house. Fortunately for Moyo and his family, they had already escaped to the residence of close G-40 ally, Saviour Kasukuwere.<sup>127</sup>

The violence was not limited to Moyo’s residence. Finance Minister Chombo’s home was also attacked, with his gates also blown off. ZDF members exchanged gunfire with his private security guards, reportedly killing two of them instantly.<sup>128</sup> The soldiers then entered Chombo’s home, finding him hidden in his bathroom and brutally assaulting him before detaining him in an unknown location for almost a week.<sup>129</sup>

After assaulting Chombo but failing to locate Moyo, the ZDF turned their violent attention to Kasukuwere’s home, where he and Moyo were hidden. Allegedly, 18 to 25 ZDF soldiers scaled Kasukuwere’s wall, lobbing grenades and opening fire on his security detail, who quickly abandoned their posts and fled before meeting the same fate as Chombo’s guards.<sup>130</sup> Inside, Kasukuwere and Moyo were frantically trying to contact Grace for assistance, reportedly

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<sup>121</sup> Dzirutwe, Cropley & Brock op cit (n7).

<sup>122</sup> Ibid.

<sup>123</sup> Tendi op cit (n3) 46.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid at 48.

<sup>126</sup> Dzirutwe, Cropley & Brock op cit (n7) 35.

<sup>127</sup> Rogers op cit (n55) 90.

<sup>128</sup> Ibid.

<sup>129</sup> Dzirutwe, Cropley & Brock op cit (n7) 35.

<sup>130</sup> Rogers op cit (n55) 91.

saying that the Mugabes were the ‘only ones who could help them now.’<sup>131</sup> What exactly happened next is unclear, but the onslaught was halted and the ZDF soldiers quickly withdrew – whether Mugabe still had some influence or whether they withdrew having successfully ‘sent a message’ is uncertain.<sup>132</sup> Grace immediately sent two cars to Kasukuwere’s mansion, collecting him, Moyo, and their families, quickly sneaking them to the Mugabes’ mansion.<sup>133</sup>

*b. The ZDF takes control*

Clearly, the described events were part of a well-planned and well-executed operation. They were executed to completion within a few hours, beginning with the ZDF taking control of the ZBC’s headquarters around 8pm on 14 November, and concluding with the G-40 and any potential resistance effectively nullified by 3:45am the next day.<sup>134</sup> By 4 am on 15 November, the military and the *Lacoste* faction were in *de facto* control of the country, and ZBC began broadcasting live to the nation once again. Major-General Sibusiso Busi (‘SB’) Moyo (no relation), a well-respected veteran of many UN peace-keeping missions in Africa appeared on screen in military fatigues with a statement before him.<sup>135</sup>

SB Moyo announced:

We wish to assure our nation, His Excellency, the President of the Republic of Zimbabwe and Commander-in-Chief of the Zimbabwe Defence Forces, Comrade R G Mugabe and his family are safe and sound and their security is guaranteed. We are only targeting criminals around him, who are committing crimes that are causing social and economic suffering in the country, in order to bring them to justice. As soon as we have accomplished our mission, we expect that the situation will return to normalcy...To the judiciary, the measures underway are intended to ensure that as an independent arm of the state, you are able to exercise your independent authority without fear of being obstructed as has been the case with this group of individuals. To Members of Parliament, your legislative role is of paramount importance for peace and stability in this country. It is our desire that a dispensation is created that allows you to serve your respective constituencies according to democratic tenets. To the world beyond our borders, *we wish to make it abundantly clear that this is not a military takeover of government.* What the ZDF is doing is to pacify a degenerating social, political and economic situation in our country...<sup>136</sup>

Thus, the military takeover of government was complete. The ZDF had taken control of all important political institutions in Harare, detained key G-40 leadership figures, and effectively placed the Mugabe family under house arrest.<sup>137</sup> These facts notwithstanding, the ZDF went to great lengths to reassure the watching world that this was not a ‘military takeover of

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<sup>131</sup> Rogers op cit (n55) 91.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Moore op cit (n12) 13.

<sup>136</sup> Asuelime op cit (n1) 6; Tendi op cit (n3) 47 (own emphasis).

<sup>137</sup> Moore op cit (n12) 14.

government,' conveniently remaining silent about the violence it perpetrated during its operations.<sup>138</sup>

c. *The situation in Zimbabwe the week following the military actions*

Despite the nation falling under *de facto* military control, there was no immediate indication that Mugabe had been deposed or replaced. A mere two days after the military seized control, Mugabe appeared publicly to preside over a graduation ceremony at the Zimbabwe Open University in Harare, where he was Chancellor.<sup>139</sup> At this ceremony, he was saluted on camera by military officials, in an apparent attempt to portray to the watching world that Mugabe was still in charge.<sup>140</sup> In the days that followed, Mugabe received many visitors to his mansion, including high-profile allies who reportedly tried to negotiate with him to resign and retire peacefully.<sup>141</sup>

One visitor to Mugabe was a SADC envoy, dispatched from South Africa by then-chair, RSA President Jacob Zuma.<sup>142</sup> The envoy, RSA's Defence Minister Nosiviwe Mapisa-Nqakula, was met on arrival by military officials and taken to State House (not Mugabe's private residence), where she met with Mugabe in the presence of Chiwenga and other generals.<sup>143</sup> Soon thereafter, a photograph of the meeting was published, showing a 'relaxed-looking' Mugabe seated on an ornate sofa with Mapisa-Nqakula and being saluted by Chiwenga.<sup>144</sup> Mugabe 'appeared to be in complete control.'<sup>145</sup>

Behind the scenes, however, the story was different. The military leadership was growing increasingly frustrated at Mugabe's stubborn refusal to resign. They presented him with his options: resign peacefully, face the ignominy of impeachment and subsequent expulsion from ZANU-PF, or go out 'Ghaddafi-style.'<sup>146</sup> To compound the pressure on Mugabe, the war vets led a massive protest march through the streets of Harare towards State House on 18 November.<sup>147</sup>

While the march was ostensibly organised by the war vets under *Lacoste* direction, it was joined by thousands of citizens from all sectors of society. Galvanised by the idea that

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<sup>138</sup> Tendi op cit (n3) 47.

<sup>139</sup> Asuelime op cit (n1) 10.

<sup>140</sup> Ibid.

<sup>141</sup> Moore op cit (n12) 13.

<sup>142</sup> Rogers op cit (n55) 96.

<sup>143</sup> Ibid.

<sup>144</sup> Eliza Mackintosh 'Zimbabwe's military takeover was the world's strangest coup' *CNN* 21 November 2017 available at [edition.cnn.com/2017/11/20/africa/zimbabwe-military-takeover-strangest-coup/index.html](http://edition.cnn.com/2017/11/20/africa/zimbabwe-military-takeover-strangest-coup/index.html), accessed on 23 August 2021.

<sup>145</sup> Ibid.

<sup>146</sup> Asuelime op cit (n1) 8.

<sup>147</sup> Moore op cit (n12) 13.

Mugabe's reign was coming to an end, people celebrated in the streets, demanding that Mugabe peacefully resign and retire from politics.<sup>148</sup> While the military were the clear instigators and orchestrators of the pressure on Mugabe, they cunningly used the mobilisation of civil society to disguise their leading role. The ZDF portrayed their actions as representative of the will of the populace – a somewhat twisted take on democracy.<sup>149</sup>

The next day, 19 November, ZANU-PF's Central Committee met in Harare and resolved to recall Mugabe as party president. It additionally expelled Grace, Jonathan Moyo, Kasukuwere, and several other key G-40 figures.<sup>150</sup> Following their recall of Mugabe, the Committee gave him 24 hours to resign from the Presidency, or ZANU-PF representatives would introduce a motion to impeach him in Parliament.<sup>151</sup> By now the pressure on Mugabe was incessant, and he announced that he would be addressing the nation on ZBC at 8 pm that day.<sup>152</sup>

The broadcast, delayed by an hour, began with a live image of Chiwenga and other military commanders standing together. Mugabe was seated between them with a prepared speech in front of him.<sup>153</sup> As he organised himself to speak, he dropped/pushed several pages of his speech to the floor and then rambled and slurred for 20 minutes, eventually announcing that he was going nowhere and he planned to preside over the ZANU-PF Congress in December (despite being recalled as party president).<sup>154</sup>

It later emerged that George Charamba, Mugabe's spokesman who had purportedly written the speech, said that Mugabe never had any intention of resigning, despite everyone's expectations to the contrary.<sup>155</sup> Chiwenga was enraged by Mugabe's actions, castigating Charamba for not ensuring the resignation was in the speech and accusing him of 'selling out.'<sup>156</sup> Charamba reportedly replied that he had 'saved your [Chiwenga's] future.'<sup>157</sup> Charamba pointed out that they could never sanitise the public perception that the military had removed Mugabe if he resigned on live television surrounded by army officials, saying that they must ensure that 'legal means' of removal were followed.<sup>158</sup>

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<sup>148</sup> Moore op cit (n12) 13.

<sup>149</sup> Ibid at 14.

<sup>150</sup> Rogers op cit (n55) 106.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid at 108.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

On 20 November, when the midday deadline for Mugabe's resignation passed without any resignation forthcoming, Parliament moved to introduce an impeachment motion.<sup>159</sup> At the same time, a tank was seen outside Mugabe's mansion alongside a crowd of angry protestors, calling for Mugabe to resign.<sup>160</sup> Impeachment proceedings against Mugabe began the next day, 21 November.<sup>161</sup>

Just minutes into the Parliamentary discussion of impeachment, the Speaker of Parliament, Jacob Mudenda, halted proceedings, saying he had just received an urgent letter from Mugabe. Mudenda then read the following words aloud: 'I have resigned to allow smooth transfer of power. Kindly give public notice of my decision as soon as possible.'<sup>162</sup> After 37 years in power, Mugabe had finally resigned, albeit under concerted pressure and without ever publicly announcing his resignation himself.

The next day, 22 November, ED flew into Harare, just over two weeks after his firing.<sup>163</sup> He quickly challenged that dismissal in the Harare High Court, where Chiweshe JP ruled on 24 November that:

the dismissal of the Applicant [ED] by Robert Gabriel Mugabe, the then-President of Zimbabwe, from the office of Vice-President of Zimbabwe, on November 6, 2017, is null and void, and accordingly of no force or effect.<sup>164</sup>

Chiweshe JP then issued another ruling on the same day, declaring:

The actions of the Defence Forces...in intervening to stop the takeover of the First Respondent's [Mugabe] constitutional functions by those around him are constitutionally-permissible and lawful in terms of Section 212 of [the] Constitution of Zimbabwe in that:

They arrest the First Respondent's abdication of [his] constitutional function, and

They ensure that non-elected individuals do not exercise executive functions which can only be exercised by elected constitutional functionaries.<sup>165</sup>

Curiously, neither of these two aforementioned High Court judgements are available in the High Court public records, nor were any further reasons for the rulings provided by Chiweshe JP beyond what was directly quoted above.

Regardless of this highly-unusual judicial practice, the effect of the two judgements was that the actions of the ZDF between 14 to 21 November were declared to be constitutional and thus legally permissible, and that ED had never been fired and was still Vice-President and a

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<sup>159</sup> Mackintosh op cit (n144).

<sup>160</sup> Rogers op cit (n55) 109.

<sup>161</sup> Mackintosh op cit (n144).

<sup>162</sup> Ibid.

<sup>163</sup> Rogers op cit (n55) 112.

<sup>164</sup> *Emmerson Dambudzo Mnangagwa v Acting President of Zimbabwe and Another* (2017) HC 10 940/17.

<sup>165</sup> *Joseph Evurath Sibanda v Robert Gabriel Mugabe* (2017) HC 10820/17.

member of ZANU-PF. Following these somewhat hasty High Court rulings, ED was swiftly inaugurated as the President of Zimbabwe on the afternoon of 24 November, mere hours after Chiweshe JP had ruled on the legality of it all.<sup>166</sup>

*d. Response of the international community to the events in Zimbabwe*

The perception of the events in Zimbabwe and thus the response of the international community was largely shaped by SADC. As previously mentioned, the then-chair of SADC, Jacob Zuma, sent an envoy to meet with Mugabe.<sup>167</sup> This had followed a statement from Zuma calling ‘for calm and urg[ing] the government and the military to resolve their differences amicably as a coup is against SADC and AU rules.’<sup>168</sup>

Despite the clear involvement of the military in Mugabe’s resignation, SADC avoided labelling the event as a coup or any other form of unconstitutional change of government, instead urging Mugabe and the military to ‘resolve their differences.’<sup>169</sup> This lukewarm response allowed the ZDF to take control of the public narrative and portray itself as merely assisting in formal constitutional processes.<sup>170</sup> SADC was seemingly content to go along with the ZDF’s characterisation, ostensibly due to the large amount of public support for the incident, and perhaps also due to their own frustrations with Mugabe’s increasingly-erratic behaviour.<sup>171</sup>

The AU, which usually assumes a strong stance against unconstitutional changes of government, was more forceful in its response than SADC. AU Chairperson, Alpha Condé, said on 15 November that the situation in Zimbabwe ‘seems like a coup’ and called on the military to ‘halt their actions and restore constitutional order.’<sup>172</sup> Condé further ‘condemned’ the ZDF’s actions as ‘clearly soldiers trying to take power by force’ and ‘expressed its [the AU’s] serious concern regarding the situation unfolding in Zimbabwe.’<sup>173</sup>

Notwithstanding this denunciation of the ZDF’s actions as an apparent coup and its call for a return to the constitutional order, the AU did little more to pressure the ZDF to reverse course. The AU seemed content to accept the contentious High Court ruling of 24 November and/or Mugabe’s subsequent resignation as a ‘return to constitutionality.’

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<sup>166</sup> Moore op cit (n12) 16.

<sup>167</sup> Rogers op cit (n55) 96.

<sup>168</sup> Asuelime op cit (n1) 14.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> News24 ‘African Union says Zimbabwe crisis “seems like coup”’ *News24* 15 November 2017 available at [www.news24.com/News24/african-union-says-zimbabwe-crisis-seems-like-coup-20171115](http://www.news24.com/News24/african-union-says-zimbabwe-crisis-seems-like-coup-20171115), accessed on 27 September 2021.

<sup>173</sup> Ibid.

The UN, the chief representative body of the international community, seemed to relinquish any leading role in responding to the MAT to the regional bodies – SADC and the AU. No UN body passed formal resolutions on the military takeover. The UN did not send its own envoys to assess the situation first-hand, apparently content to rely on information conveyed by the regional bodies, and perhaps also relieved to see the back of Mugabe's reign, despite how it ended. Indeed, the UN's only response came in the form of a 'call for calm and [to] resolve matters peacefully' from Farhan Haq, the UN Secretary-General's spokesperson.<sup>174</sup>

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<sup>174</sup> Asuelime op cit (n1) 16.

## Chapter Three – The Legal Framework

### I. Introduction

Following the examination of the factual background concerning Zimbabwe's 2017 MAT, this chapter sets out the legal framework applicable to the MAT's events. This framework comprises both Zimbabwean constitutional law and relevant international law which binds Zimbabwe. As I set out the legal framework in this chapter, it should begin to become clear how the MAT violated both domestic constitutional and international law.

### II. The Zimbabwean Constitution

The Constitution of Zimbabwe ('Constitution') is the most important legal document for the purposes of this thesis, because if the ZDF's actions during the MAT are shown to have contravened the Constitution, then they are illegal. If the ZDF acted illegally in causing a change of government, the MAT could be labelled an 'unconstitutional change of government' under international law, and thus attract legal consequences.<sup>175</sup>

While the Constitution provides for an array of individual human rights, including some which were undeniably infringed by the executors of the MAT, these provisions will not be addressed in this paper. Rather, I will focus on the constitutional provisions which directly relate to the transfer of power, change of government, the control and conduct of the Armed Forces, and Executive powers.

The omission of a discussion of individual human rights from this paper is not intended to imply that such rights are unimportant, but rather to ensure that the core focus of this paper remains on the legality of the MAT itself, and is not diverted by potential human rights law considerations. This paper is focused on the collective right of the electorate to be governed by those who come into power through the proper constitutional methods.

#### *a. Generally applicable Constitutional provisions*

The Constitution is both the highest law of the land, as well as the foundation upon which all other domestic law operates. Section 2(1) asserts that the Constitution 'is the supreme law of Zimbabwe, and any...conduct inconsistent with it is invalid to the extent of the inconsistency.'<sup>176</sup> The next paragraph states:

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<sup>175</sup> Constitution of the Republic of Zimbabwe, 2013.

<sup>176</sup> *Ibid* at s2(1).

The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, *and must be fulfilled by them.*<sup>177</sup>

Section Two thus affirms the supremacy of the Constitution and its binding nature on all persons within the nation, including the State itself. As the Armed Forces are an organ of the State, they too are bound by the Constitution, and their conduct must be consistent with its provisions. This fact is reaffirmed in s207(2), which states that ‘the security services are subject to the authority of this Constitution...’<sup>178</sup>

Section Three contains the ‘founding values and principles’ on which Zimbabwe is based, declaring that:

Zimbabwe is founded on respect for the following values and principles—

- a. supremacy of the Constitution;
- b. the rule of law;
- ...
- h. good governance.<sup>179</sup>

Elaborating on ‘good governance,’ s3(2) states that it includes *inter alia*, the principles of ‘a multiparty democratic political system,’ ‘free, fair and regular elections,’ and ‘the orderly transfer of power following elections.’<sup>180</sup>

*b. Changes to the Executive Offices*

The Constitution clearly provides that political power is to be democratically contested through free and fair elections and then transferred peacefully to the winner. Thus, for a new government to be formed constitutionally, the electoral winners must form the government. It follows that any other manner of establishing a government would be unconstitutional.

While the Constitution is clear that a new government may only be formed off the back of democratic elections and a peaceful transition of power, this is not the only manner in which an individual may assume an Executive office. Indeed, a person may ascend to the Presidency or Vice-Presidency without an election, albeit in limited circumstances. These circumstances are the: death, resignation, removal from office, or physical or mental incapacity of the incumbent.<sup>181</sup> The Constitution details certain rules pertaining to a change of President or Vice-

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<sup>177</sup> Constitution supra (n175) s2(2) (own emphasis).

<sup>178</sup> Ibid at s207(2).

<sup>179</sup> Ibid at s3(1)(a)-(b) & (h).

<sup>180</sup> Ibid at s3(2)(a)-(c).

<sup>181</sup> Ibid at s101.

President in such circumstances, regulating how either of these officials may resign or be impeached and the succession of power in any such event.

Sections 96 and 97 of the Constitution deal with the resignation or removal from the Executive offices. Section 96(1) provides:

The President may resign his or her office by written notice to the Speaker [of Parliament], who must give public notice of the resignation as soon as it is possible to do so and in any event within twenty-four hours.<sup>182</sup>

Thus, the President may resign at any time, in any circumstances they deem fit, by way of written notice to the Speaker.<sup>183</sup> Although s96 does not explicitly state that the resignation must be made voluntarily, this requirement has been affirmed by Zimbabwe's Constitutional Court in 2018, where it stated that:

The Constitution envisages a freely and voluntarily tendered resignation for the termination of the Presidency to be valid. In other words, the resignation must be a free expression of the will of the President to bring his or her Presidency to an end.<sup>184</sup>

Aside from resignation, a President or Vice-President may also be removed from office on certain grounds. The process for impeaching a President or Vice-President is detailed in s97, which identically addresses both offices, imposing strict procedural rules on the removal.

Section 97(1) directs that any proposed impeachment must receive at least 50 per cent support of a joint session of Parliament to advance.<sup>185</sup> Furthermore, the proposal must refer to at least one of the following grounds as cause for removal: 'serious misconduct, failure to obey, uphold or defend the Constitution, wilful violation of the Constitution, or inability to perform the functions of their office due to physical or mental incapacity.'<sup>186</sup>

Should the proposal obtain majority support to pass through Parliament, a committee comprised of members from the two houses must investigate the allegations set out as the cause for impeachment.<sup>187</sup> Once this committee concludes investigations, it is to report back to Parliament with a recommendation on whether to remove or not. Thereafter, the joint Parliament is to vote on the recommendation, and only if a two-thirds majority supports removal will an incumbent President or Vice-President be impeached.

The Constitution's main text does not provide for any other manner of removal from either Executive office. However, its Sixth Schedule is operative until 2023, and it deals with certain

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<sup>182</sup> Constitution supra (n175) s96(1).

<sup>183</sup> Ibid.

<sup>184</sup> *Liberal Democrats v President of the Republic of Zimbabwe E.D. Mnangagwa* (2018) CCZ 7/18 13.

<sup>185</sup> Constitution supra (n175) s97(1).

<sup>186</sup> Ibid at s97(1)(a)-(d).

<sup>187</sup> Ibid at s97(2).

matters slightly differently than the main text of the Constitution. It provides that Vice-Presidents are not elected, but are appointed by the President and ‘hold office at his or her pleasure.’<sup>188</sup> Thus while a Vice-President may be impeached under s97, the President may still fire him or her at will until 2023.

If the Presidency is vacated either through the incumbent’s death or the exercise of s96 or s97, s101 provides for how the vacancy should be filled. Section 101(1)(a) stipulates that the ‘First Vice-President [shall] assume office...until the expiry of the former President’s term of office.’<sup>189</sup> However, the Sixth Schedule directs that should any President elected within the first 10 years of the Constitution’s operation (2013 to 2023) die or vacate the office in terms of s96 or s97, the political party to which they belonged when elected shall nominate a person to complete the former President’s term.<sup>190</sup>

Thus, although the Constitution itself stipulates that the First Vice-President shall assume the Presidency upon the incumbent’s vacation of Office, the operation of s101 has effectively been suspended until after the 2023 general elections. This means that upon Mugabe’s resignation in 2017, his ZANU-PF party was constitutionally empowered by the Sixth Schedule to nominate any person to fulfil the remainder of his term of Office.<sup>191</sup>

*c. The powers and responsibilities of the Executive*

In addition to providing the processes for vacating and refilling the Executive positions, the Constitution meticulously details the Executive’s powers and duties. Section 89 states that ‘the President is the Head of State and Government, and the Commander-in-Chief of the Defence Forces.’<sup>192</sup> Thus the overall control of the Defence Forces lies with the President, who may appoint operational commanders to manage the daily affairs of the Defence Forces in accordance with the Defence Act.<sup>193</sup>

While the President may appoint commanders and delegate the day-to-day management of the Defence Forces to them, he retains ultimate control as the Commander-in-Chief.<sup>194</sup> The Constitution reaffirms this in s110, stipulating that ‘the President is responsible for deploying the Defence Forces.’<sup>195</sup> Furthermore, s213 provides that ‘only the President... has the power

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<sup>188</sup> Constitution supra (n175) Sixth Schedule s14(1).

<sup>189</sup> Ibid at s101(1)(a).

<sup>190</sup> Ibid at Sixth Schedule s14(4).

<sup>191</sup> Ibid.

<sup>192</sup> Ibid at s89.

<sup>193</sup> Ibid at s216(2); Zimbabwe Defence Act (1972) Chapter 11:02.

<sup>194</sup> Ibid at s216(5).

<sup>195</sup> Constitution supra (n175) s110(2)(g).

to authorise the deployment of the Defence Forces...[and] determine [their] operational use.’<sup>196</sup> Accordingly, any deployment of the Defence Forces which was not ordered by or consented to by the President, and any Defence Force actions contrary to the President’s instructions or against the President are unconstitutional.

*d. The Defence Forces*

In addition to the Constitution’s provisions concerning the role of the President *vis-à-vis* the Defence Forces, it also contains detailed provisions concerning the conduct of the Forces themselves. Section 207 defines the State’s ‘security services’ to include the Armed Forces, with s208 directing that ‘members of the security services must act in accordance with this Constitution and the law.’<sup>197</sup>

Furthermore, s208(2) states:

- Neither the security services, nor any of their members may, in the exercise of their functions –
- a. act in a partisan manner;
- b. further the interests of any political party or cause;
- ...
- d. violate the fundamental rights or freedoms of any person.<sup>198</sup>

Sections 211 and 212 deal with the Armed Forces separately from the rest of the security sector, with s211(3) dictating that ‘the Defence Forces must respect the fundamental rights and freedoms of all persons and *be non-partisan*...and subordinate to the civilian authority as established by this Constitution.’<sup>199</sup> Section 212 further sets out the functions of the Defence Forces, saying they are ‘to protect Zimbabwe, its people...and *to uphold this Constitution*.’<sup>200</sup>

Clearly, the Constitution goes to great lengths to ensure that the Armed Forces are to remain non-partisan, subordinate to the civilian control of the President, protect the people of Zimbabwe and their fundamental human rights, and remain subject to the supremacy of the Constitution, thus respecting the rule of law. Accordingly, any actions of the Defence Forces which are contrary to any of these aforementioned Constitutional provisions would be unconstitutional, particularly engagement in any operations not sanctioned by the President.

### III. International law

As a sovereign state in the international community and a member of several regional and international organisations, Zimbabwe is bound by international law – both customary and

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<sup>196</sup> Constitution supra (n175) s213(1).

<sup>197</sup> Ibid at s207(1)(a) & s208(1).

<sup>198</sup> Ibid at s208(2)(a)-(b) & (d) (own emphasis).

<sup>199</sup> Ibid at s211(3) (own emphasis).

<sup>200</sup> Ibid at s212 (own emphasis).

treaty law. While international treaty law is expansive and covers a wide range of issues, many such issues are not relevant for the purposes of this paper and will not be addressed.

Conversely, parts of international law applicable to Zimbabwe address UCOGs, and are thus the focus of the next section of this chapter. This section will explore the applicable parts of international law that pertain directly and indirectly to UCOGs, beginning with legal obligations imposed on Zimbabwe by regional organisations and expanding outwards to examine global law and international custom.

*a. SADC law*

Zimbabwe is one of the founding Member States of SADC, having signed the SADC Treaty on 17 August 1992.<sup>201</sup> SADC was established with the primary goals of ensuring regional progress and ‘the well-being of the people of Southern Africa.’<sup>202</sup> The drafters of this Treaty were ‘mindful’ of the need for regional cooperation to ensure economic development, particularly through ‘guaranteeing democratic rights, and observing human rights and the rule of law.’<sup>203</sup>

When establishing SADC, the Member States committed to ‘bear... in mind the principles of international law governing the relations between states,’ and thus bind themselves under the provisions of the Treaty as international law.<sup>204</sup> Through Zimbabwe’s accession to the Treaty, it committed to ‘act in accordance with the...principles of human rights, democracy and the rule of law.’<sup>205</sup> Furthermore, Zimbabwe is bound to ‘consolidate, defend and maintain democracy, peace, security and stability.’<sup>206</sup>

Alongside its commitments to take the aforementioned positive steps in line with SADC’s objectives, Zimbabwe further undertook to ‘refrain from taking any measure[s] likely to jeopardise the sustenance of [SADC’s] principles, the achievement of its objectives and the implementation...of the Treaty.’<sup>207</sup> Therefore, Zimbabwe has committed to upholding human rights, democracy, and the rule of law, and has undertaken to refrain from taking any actions that would undermine these commitments. Accordingly, any unconstitutional change of government which undermines the principles of democracy or the rule of law would fall foul of these legal obligations.

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<sup>201</sup> Southern African Development Community *The Consolidated Treaty of the Southern African Development Community* as amended (2015) 28.

<sup>202</sup> *Ibid* at 1.

<sup>203</sup> *Ibid*.

<sup>204</sup> *Ibid* at 2.

<sup>205</sup> *Ibid* at art 4(c).

<sup>206</sup> *Ibid* at art 5(1)(c).

<sup>207</sup> *Ibid* at art 6(1).

To ensure that Member States uphold their obligations, the SADC Treaty provides for the possibility of the imposition of sanctions against a Member that ‘implements policies which undermine the principles and objectives of SADC.’<sup>208</sup> Thus, SADC is empowered to impose sanctions upon any Member who takes any anti-democratic actions or fails to uphold the rule of law – such as a Member State which undergoes a UCOG.

*b. African Union Law*

*i. Constitutive Act of the African Union*

In addition to Zimbabwe’s membership in SADC, it is also a Member State of the AU, a continental organisation comprising all sovereign states in Africa.<sup>209</sup> The AU is the successor to the OAU, having replaced it in 2002.<sup>210</sup> Zimbabwe joined the OAU in June 1980 after obtaining independence and transferred its membership to the AU when it replaced the OAU.<sup>211</sup>

Akin to SADC, the AU has a constitutive treaty which amounts to binding international law on its Member States. The Constitutive Act of the African Union (‘AU Act’) contains principles and standards to which all Member States are bound to uphold and adhere to.<sup>212</sup> Cognisant of Africa’s tumultuous political history, the drafters of the AU Act were ‘determined to promote and protect human and peoples’ rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law.’<sup>213</sup>

Reaffirming the drafters’ determination, the AU Act declares that one of the AU’s main objectives is to ‘promote democratic principles and institutions...and good governance.’<sup>214</sup> To highlight the importance of this objective to Member States, the AU Act reiterates that ‘the Union shall function in accordance with the principle of respect for democratic principles, human rights, the rule of law and good governance.’<sup>215</sup>

The history of post-colonial Africa before the formation of the AU is characterised by bloody coups, rigged elections, and civil wars – essentially the antithesis of democracy. Aware of this history, the founding Members agreed that another key principle of the AU would be to always ‘condemn and reject unconstitutional changes of government.’<sup>216</sup> As an AU Member

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<sup>208</sup> SADC supra (n201) art 33(1)(b).

<sup>209</sup> African Union ‘Member States’ available at [www.au.int/en/member\\_states/countryprofiles2](http://www.au.int/en/member_states/countryprofiles2), accessed on 1 February 2022.

<sup>210</sup> African Union ‘About the AU’ (2022) [www.au.int/en/overview](http://www.au.int/en/overview), accessed on 1 February 2022.

<sup>211</sup> Ibid.

<sup>212</sup> African Union *Constitutive Act of the African Union* (2000).

<sup>213</sup> Ibid at 3.

<sup>214</sup> Ibid at art 3(g).

<sup>215</sup> Ibid at art 4(m).

<sup>216</sup> AU supra (n212) art 4(p).

State, Zimbabwe has legally bound itself to uphold and strive toward the aforementioned principles and objectives.

Additionally, the AU Act contains provisions for disciplining Member States who ‘fail to comply with the decisions and policies of the Union,’ saying that they may be subject to sanctions and ‘other measures of a political and economic nature...’<sup>217</sup> This Article can be interpreted practically to mean that any Member State who fails to uphold the principles and objectives of the AU, including *inter alia* a failure to uphold the rule of law or respect human rights, or which undergoes a UCOG, may be subjected to sanctions by the AU.

Reiterating the AU’s strong stance against UCOGs, the AU Act dictates that ‘[any] government which shall come to power through unconstitutional means *shall not be allowed to participate in the activities of the Union.*’<sup>218</sup> Furthermore, the AU’s Rules of Procedure direct the AU Chairperson to ‘*immediately suspend [a] Member State from the Union and participating in the Organs of the Union*’ *whenever* a UCOG takes place.<sup>219</sup>

ii. *OAU Algiers Decision (1999)*

Between 1995 to 1999, four military coups occurred across Africa, resulting in the deposition of democratically-elected governments.<sup>220</sup> This led the OAU’s Council of Ministers (now the AU’s Executive Council) to direct the OAU’s MCPMR to ‘reactivate, as a matter of urgency, the Committee on anti-constitutional changes’ and develop a framework for identifying and dealing with UCOGs.<sup>221</sup> The issue of UCOGs was also prioritised at the OAU AHG’s 35<sup>th</sup> Ordinary Session in 1999, which took place in Algiers.

One AHG Decision resulting from this Session was directed at UCOGs, as the AHG decided that ‘Member States whose Governments came to power through unconstitutional means after the Harare Summit (in 1997), should restore constitutional legality before the next Summit.’<sup>222</sup> The AHG further called on the OAU’s Secretary-General to prioritise the implementation of this Decision and report back to the AHG at their next summit.<sup>223</sup>

iii. *The Lomé Declaration (2000)*

The aforementioned Ministerial directive to the MCPMR and the subsequent Decision by the AHG to accelerate the development of an OAU legal framework to address the issue of UCOGs

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<sup>217</sup> AU supra (n212) art 23(2).

<sup>218</sup> Ibid at art 30 (own emphasis).

<sup>219</sup> African Union *Rules of Procedure of the Assembly of the Union* (2002) Rule 37.

<sup>220</sup> Said Djinnit ‘The Case for updating the African Union Policy on Unconstitutional Changes of Government’ (2021) 54 Policy and Practice Brief *The African Centre for the Constructive Resolution of Disputes* 3-4.

<sup>221</sup> Ibid.

<sup>222</sup> Organisation of African Unity *AHG/Dec. 142 (XXXV)* 1999.

<sup>223</sup> OAU supra (n222).

resulted in the Framework for an OAU Response to Unconstitutional Changes of Government, enunciated in the Lomé Declaration.<sup>224</sup> This Framework was developed to assist the OAU in identifying and responding to the various forms of UCOGs occurring across Africa. While military coups d'état were then the most prevalent form of UCOG, the OAU was aware that UCOGs could occur in several other ways, and the Lomé Declaration accordingly details certain situations that would constitute UCOGs.

The Lomé Declaration Framework was formally adopted by the AHG in 2000, and still forms part of the AU's legal framework on UCOGs. It must be read with the AU Act, particularly Article 30.<sup>225</sup>

The Lomé Declaration reiterates the OAU's position on UCOGs, 'unequivocally condemn[ing] and reject[ing] any unconstitutional change of government.'<sup>226</sup> The Declaration labels any UCOG as 'an unacceptable and anachronistic act, which is in contradiction of our [OAU's] commitment to promote democratic principles and conditions.'<sup>227</sup> The AHG further 'recognise[d] that the principles of good governance, transparency and human rights are essential elements for...stable governments.'<sup>228</sup>

Beyond reiterating the OAU's (and now AU's) strong anti-UCOG stance, the Lomé Declaration details the elements of the OAU's Framework for a response to UCOGs. The Declaration contains: 'a set of common values and principles for democratic governance, a definition of what constitutes an unconstitutional change, measures and actions that the OAU would progressively take to respond to a UCOG, and an implementation Mechanism.'<sup>229</sup>

As part of the 'common values and principles,' the Lomé Declaration declares that OAU Member States should adopt a 'democratic constitution' and 'respect... the Constitution and adhere to provisions of the law and other legislative enactments adopted by Parliament.'<sup>230</sup> Essentially, OAU Member States should remain committed to democracy and upholding the rule of law.

The Declaration further states that to 'give practical effect to [these] principles,' the following situations are defined as UCOGs, and would attract legal consequences:

- i) military coup d'état against a democratically elected Government;
- ii) intervention by mercenaries to replace a democratically elected Government;

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<sup>224</sup> Organisation of African Unity 'Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government' *AHG/Decl.5 (XXXVI)* 2000.

<sup>225</sup> Organisation of African Unity *AHG/Dec.150 (XXXVI)* 2000 para 4.

<sup>226</sup> OAU *supra* (n224) 1.

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> *Ibid* at 2.

<sup>230</sup> *Ibid* at 3.

- iii) replacement of democratically elected Governments by armed dissident groups and rebel movements;
- iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.<sup>231</sup>

The OAU further agreed that when any of the aforementioned UCOGs occurred in a Member State,

our Current Chairman...and our Secretary-General...should immediately and publicly condemn such a change and urge for the speedy return to constitutional order. The Current Chairman and the Secretary-General should also convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognized by the OAU.<sup>232</sup>

Upon receiving an OAU condemnation and warning, the Member State in which the UCOG has occurred is given six months to re-establish the constitutional order, during which time they shall be suspended from participating in any of the Policy Organs of the OAU.<sup>233</sup> If the constitutional order is not restored within these six months, the OAU is to implement a range of sanctions measures against the perpetrators of the UCOG and its unconstitutional government.<sup>234</sup>

Although the OAU has since been replaced by the AU, the Lomé Declaration is still the legal policy of the AU in dealing with UCOGs. The four situations it defines as UCOGs are still considered by the AU to constitute UCOGs, and how such situations are to be dealt with under the Lomé Declaration is still applicable to the AU. Thus, a military coup d'état against a constitutionally elected government in an AU Member State constitutes a UCOG and should be dealt with under the Lomé Declaration.

The Merriam-Webster dictionary defines a 'coup d'état' as 'a sudden decisive exercise of force in politics, *especially*: the violent overthrow or alteration of an existing government by a small group.'<sup>235</sup> Similarly, the Oxford Advanced Learners' Dictionary defines it as 'a sudden change of government that is illegal and often violent.'<sup>236</sup> It is clear from these definitions that a coup d'état occurs when a group suddenly, violently, and/or illegally forces a partial or complete change of the existing government. Accordingly, a 'military coup d'état' occurs when

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<sup>231</sup> OAU supra (n224) 3.

<sup>232</sup> Ibid at 4.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Merriam-Webster Online Dictionary 'coup d'état' available at [www.merriam-webster.com/dictionary/coup%20d'etat](http://www.merriam-webster.com/dictionary/coup%20d'etat), accessed on 28 December 2021.

<sup>236</sup> Oxford Advanced Learners' Dictionary 'coup d'état' available at [www.oxfordlearnersdictionaries.com/definition/english/coup-d-etat?q=coup+d%27etat](http://www.oxfordlearnersdictionaries.com/definition/english/coup-d-etat?q=coup+d%27etat), accessed on 28 December 2021.

a state's military is the group that violently or suddenly seizes political power or effects a change in government within that state.

Working off the above conceptualisation of a 'military coup d'état,' it is clear that when the Armed Forces of a state unlawfully act outside of their Commander-in-Chief's orders, or illegally instigate a change of government outside of the proper constitutional channels – no matter the purported justifications for their actions – a UCOG occurs. Therefore, illegal military actions in Zimbabwe which violated the Constitution and resulted in a change of government could indeed be classified as a military coup, and thus a UCOG under the Lomé Declaration.

*iv. The Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2003)*

In 2002, to oversee the proper application of the Lomé Declaration, the AU adopted the Protocol Relating to the Establishment of the Peace and Security Council of the African Union ('PSC Protocol') to the AU Act, which entered into force in 2003.<sup>237</sup> This Protocol established the PSC as the AU's 'standing decision-making organ for the prevention, management and resolution of conflicts' in Africa.<sup>238</sup> The role of the PSC within the AU essentially mirrors that of the UN's Security Council, designed to serve as a 'collective security arrangement' and facilitate the AU's responses to 'conflict and crisis situations in Africa.'<sup>239</sup>

One of the stated objectives of the PSC is to 'promote and encourage democratic practices, good governance and the rule of law, [and] protect human rights and fundamental freedoms...'<sup>240</sup> This indicates that the AU considers threats to democracy and the rule of law as threats to the peace and security of the African continent, thereby implying that UCOGs threaten the peace and stability of Africa.

Again highlighting the AU's strong anti-UCOG stance, the PSC Protocol empowers and directs the PSC to 'institute sanctions whenever an unconstitutional change of government takes place in a[n AU] Member State, as provided for in the Lomé Declaration.'<sup>241</sup> Furthermore, AU Members 'agree to accept and implement the decisions of the Peace and Security Council...'<sup>242</sup>

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<sup>237</sup> African Union *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2003).

<sup>238</sup> *Ibid* at art 2(1).

<sup>239</sup> *Ibid*.

<sup>240</sup> *Ibid* at art 3(f).

<sup>241</sup> AU *supra* (n237) art 7(1)(g).

<sup>242</sup> *Ibid* at art 7(3).

Thus, not only is the PSC empowered to institute sanctions on AU Members who undergo a UCOG as defined in the Lomé Declaration, but all other Members are legally obliged to support and implement the sanctions when directed by the PSC. The mandatory wording of the Protocol reflects the AU's Rules of Procedure and is clear that the PSC 'shall institute such sanctions *whenever* an unconstitutional change of government takes place...' <sup>243</sup>

v. *The African Charter on Democracy, Elections and Governance (2012)*

To reinforce its strong anti-UCOG stance, the AU has developed the African Charter on Democracy, Elections and Governance, which entered into force in 2012. <sup>244</sup> This Charter expands the AU's UCOG legal framework, dealing with the issue of UCOGs in much greater detail than the Lomé Declaration.

While the ACDEG constitutes binding international law on its State Party members, Zimbabwe only signed this Charter in 2018, after the MAT, and has yet to ratify it through Parliament. Section 327(2) of the Zimbabwean Constitution declares that 'an international treaty... does not bind Zimbabwe until it has been approved by Parliament.' <sup>245</sup> Therefore, the ACDEG does not yet amount to binding law on Zimbabwe and its provisions are not directly applicable to the events of the MAT.

Furthermore, the ACDEG cannot even be indirectly applied to the MAT by arguing that it constitutes a codification of customary international law. This is because the ACDEG has thus far only obtained 34 ratifications, amounting to a little over half of the African continent. <sup>246</sup> This lack of widespread uptake demonstrates that many African states do not consider the protection and strengthening of democracy a priority.

Additionally, African nations very seldom comply with the ACDEG's provisions in practice. The lack of state practice and *opinio juris* thus indicates that African states do not consider the ACDEG to be binding law. As the ACDEG does not yet reflect the position of customary international law in Africa, Zimbabwe cannot be held to its terms.

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<sup>243</sup> AU supra (n219); AU supra (n237) art 7(1)(g)(own emphasis)

<sup>244</sup> African Union *Charter on Democracy, Elections and Governance* (adopted 30 January 2007, entry into force 15 February 2012).

<sup>245</sup> Constitution supra (n175) s327(2)(a).

<sup>246</sup> African Union 'Status of the Charter on Democracy, Elections and Governance' available at [au.int/sites/default/files/treaties/36384-sl-AFRICAN%20CHARTER%20ON%20DEMOCRACY%2C%20ELECTIONS%20AND%20GOVERNANCE.PDF](http://au.int/sites/default/files/treaties/36384-sl-AFRICAN%20CHARTER%20ON%20DEMOCRACY%2C%20ELECTIONS%20AND%20GOVERNANCE.PDF), accessed on 28 December 2021.

c. *Global law*

Despite the international community's apparent disdain for coups and other forms of UCOG, there is still no global treaty law that proscribes UCOGs. Although one of the stated purposes of the UN is to 'promote and encourage respect for human rights and fundamental freedoms,'<sup>247</sup> which include all peoples' right to self-determination – to 'freely determine' how they are governed and by whom – the international community has yet to develop and agree upon a global legal instrument that would proscribe UCOGs and impose consequences on states that undergo UCOGs.<sup>248</sup>

The lack of a global treaty addressing UCOGs is perhaps attributable to the role that the principle of non-interference in the internal affairs of sovereign states plays in international relations. This principle is a key tenet of the UN, being 'based on the principle of the sovereign equality of all its Members.'<sup>249</sup> The UN and its Members have agreed to refrain from 'intervene[ing] in matters which are essentially within the domestic jurisdiction of any state.'<sup>250</sup> Matters pertaining to a change of a government, whether constitutional or not, fall directly within the domestic jurisdiction of the affected state, and thus should be dealt with by that state alone.

Sovereign states, especially former colonies, have typically been reticent to allow any actions that could be perceived as infringing on their sovereignty, and adopting a global legal instrument that would dictate their manner of domestic governance would certainly be seen as such. Thus, although some regions have adopted legal instruments proscribing UCOGs, the appetite of the international community for a similar global instrument remains low. States ostensibly prefer to jealously guard their sovereignty, only willing to sacrifice it incrementally to regional organisations, such as the AU, but unwilling to grant the UN any further control of their internal governance affairs. Considering that some states are still in their first half-century of independence, it appears unlikely that there will be sufficient political will to develop a global treaty on UCOGs in the near future.

Although there is no global legal instrument proscribing UCOGs, the argument is there to be made that customary international law may do so. As previously alluded to, customary international law is formed when there is sufficient evidence of state practice in line with the custom, along with *opinio juris* – the belief of states that they are legally obliged to act in a

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<sup>247</sup> United Nations *Charter of the United Nations* (1945) at art 1(3).

<sup>248</sup> United Nations General Assembly *International Convention on Civil and Political Rights* (1966) art 1(1).

<sup>249</sup> UN *supra* (n247) art 2(1).

<sup>250</sup> *Ibid* at art 2(7).

certain way.<sup>251</sup> Essentially, customary international law is formed when enough states act in a certain way because of a belief that they are legally obliged to do so.

Although the UN has usually taken a dim view of coups and other UCOGs, such events have continued to occur worldwide, with four successful military coups occurring in Africa in 2021 alone.<sup>252</sup> These four coups are in addition to the three that occurred in Africa in 2020.<sup>253</sup> This continued proliferation of coups indicates that would-be perpetrators are not deterred by international law, knowing that no other state will interfere if they successfully initiate a change of government. State practice is indicative of a belief that UCOGs are not proscribed globally, and although AU law does indeed proscribe them, there is little compliance with it. Thus it can be concluded, based on state practice and a clear lack of *opinio juris*, that a rule of customary international law proscribing UCOGs has yet to be developed.

#### IV. The Rule of Law

A common recurrence in the above discussions of both the Zimbabwean Constitution and the relevant international law is the mention of ‘the rule of law.’ The Constitution’s Preamble ‘recognises the need to entrench...the rule of law,’ with s3(1)(b) affirming that ‘Zimbabwe is founded on respect for...the rule of law.’<sup>254</sup> The SADC Treaty and the AU Act oblige their Member States to ‘act in accordance with the rule of law,’<sup>255</sup> and to ‘respect the rule of law’ respectively.<sup>256</sup> However, none of these sources of law defines ‘the rule of law,’ instead leaving it somewhat ambiguous or open to interpretation.

As ‘respecting’ or ‘upholding’ the rule of law forms a major part of Zimbabwe’s legal obligations to SADC and the AU, as well as constituting one of the ‘founding principles’ of Zimbabwe, it is important that the concept of ‘the rule of law’ is adequately defined.<sup>257</sup> This allows us to assess whether the 2017 MAT amounts to an infringement of Zimbabwe’s legal obligations.

Distilled to its essence, the rule of law ‘is fundamentally a form of social control – the enterprise of subjecting human conduct to the governance of rules.’<sup>258</sup> The core tenet of the

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<sup>251</sup> TW Bennett & J Strug *Introduction to International Law* (2013) 14-26.

<sup>252</sup> Mucahid Durmaz ‘2021, the year military returned to the stage in Africa’ *Al-Jazeera* 28 December 2021 available at [www.aljazeera.com/news/2021/12/28/2021-year-military-coups-return-to-the-stage-in-africa](http://www.aljazeera.com/news/2021/12/28/2021-year-military-coups-return-to-the-stage-in-africa), accessed 29/12/21.

<sup>253</sup> *Ibid.*

<sup>254</sup> Constitution *supra* (n175) Preamble & s3(1).

<sup>255</sup> SADC *supra* (n201) 2.

<sup>256</sup> AU *supra* (n212) art 4(m).

<sup>257</sup> Constitution *supra* (n175) s3(1).

<sup>258</sup> Iutisone Salevao *Rule of Law, Legitimate Governance & Development in the Pacific* (2005) 6.

rule of law is that ‘law should govern society, and not the arbitrary will of particular persons.’<sup>259</sup> Essentially, the rule of law ‘demand[s] that a state puts into place and adheres to a body of definite rules’ which are applied equally or impartially to all – ordinary citizens and the state alike.<sup>260</sup> The idea is that everyone within a state, including the government, is equal under the law and must comply with it.

The rule of law comprises two core principles – regularity and publicity.<sup>261</sup> Regularity is often expressed as ‘certainty’ or ‘uniformity’ and requires the law to be certain and uniformly applied.<sup>262</sup> Legal certainty allows those under the law to understand it and adjust their conduct accordingly. Closely linked to certainty, publicity requires that the law be knowable or accessible to all, with any changes or developments of the law to be made public.<sup>263</sup>

Publicity further requires that those exercising state power give reasons for why power was exercised in such a way, thus ensuring that state power is not used arbitrarily or abused, and is only exercised in accordance with the law.<sup>264</sup> Simply put, the rule of law requires that there be an overarching set of laws that bind everyone, including the state, that those laws be certain and applied uniformly, and that the public can access and understand those laws and any developments to them.

The rule of law, when properly upheld, thus constitutes limits on the state’s power, dictating its conduct. This ‘limitation of government rule by law’ has been described as the ‘essence of constitutionalism.’<sup>265</sup> In a purported constitutional democracy like Zimbabwe, the Constitution places limits on state power, such as the limits on the deployment of the ZDF. The Constitution is the ‘supreme law of Zimbabwe,’ with its ‘obligations...binding on *every* person.’<sup>266</sup> As the Constitution is designed to be the overarching law of Zimbabwe, it should ‘rule’ the nation, with its provisions directing the state’s actions, rather than the state apparatus operating without restraint. Proper operation of the rule of law means that no one, not even the state itself, is above the Constitution or can act outside of its provisions.

As the rule of law requires legal certainty, there must be clarity in the law’s development.<sup>267</sup> Case law, or common law, needs to delineate the applicable principles in such a way that future

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<sup>259</sup>Allan C. Hutchinson ‘The Rule of Law Revisited: Democracy and Courts’ in David Dyzenhaus (ed) *Recrafting the Rule of Law: The Limits of Legal Order* (1999) 196.

<sup>260</sup> Hutchinson op cit (n259).

<sup>261</sup> Paul Gowder ‘The Rule of Law and Equality’ (2013) 32 *Law and Philosophy* 574.

<sup>262</sup> Ibid at 575.

<sup>263</sup> Ibid at 582.

<sup>264</sup> Ibid at 583.

<sup>265</sup> Salevao op cit (n258) 3.

<sup>266</sup> Constitution supra (n175) s2 (own emphasis).

<sup>267</sup> Gowder op cit (n261) 585.

conduct can be guided by it. The law cannot be considered 'certain' if a judge makes an order without providing any reasons for reaching that conclusion. Without a clear explication of the judicial reasoning behind a judgement, the law develops uncertainly, and future conduct cannot be guided by it. If a judge were to hand down a ruling without explaining their reasoning, no one would understand why it has been interpreted in that way, thus creating uncertainty and opening the law to potential abuse. Therefore, for the proper functioning of the rule of law, judicial officers exercising state power should be required to give reasons for their use of power so that the law remains certain and predictable.<sup>268</sup>

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<sup>268</sup> Gowder op cit (n261) 584.

## Chapter Four – Legal Assessment

### I. Introduction

In this chapter, I assess the legality of the MAT under the last chapter's legal framework. First, I examine the legality of the military's actions under the Zimbabwean Constitution. Thereafter, I explore whether the MAT could have infringed the applicable international law.

If the ZDF violated the Constitution, its actions were accordingly illegal, and the MAT could constitute a 'military coup d'état.' A military coup is a clear and direct violation of AU law. Even if the MAT was not a coup, it still may have indirectly violated Zimbabwe's international legal obligations. This chapter thus explores how such legal obligations could have been infringed by the MAT.

I also evaluate SADC and the AU's responses to the MAT. The relevant international law provides that certain consequences should follow when it is infringed. Thus, I will examine whether SADC and the AU addressed the MAT adequately under their own rules. This involves assessing whether the consequences faced by Zimbabwe accord with SADC and AU law.

### II. The constitutionality of the 2017 change of government

#### a. *The legality of the ZDF's actions under the Constitution*

Although Grace Mugabe alleged that ED and Chiwenga were plotting to 'oust' Mugabe in late 2015, little more came from these allegations until July 2017.<sup>269</sup> It was in July that Jonathan Moyo alleged to Mugabe that ED and his *Lacoste* faction were planning 'an illegal...coup.'<sup>270</sup> Mugabe himself echoed these accusations at a rally on 29 July, where he accused military generals of 'plotting a coup' and warned them to 'stop interfering with politics.'<sup>271</sup>

By publicly alleging a coup plot and warning the military generals, Mugabe effectively admitted that he was no longer in overall control of the military, contrary to several provisions of the Constitution. Section 89 places the President in overall command of the military as the Commander-in-Chief, with s110 and s213 giving Mugabe alone the 'responsibility' to deploy the military and 'determine their operational use.'<sup>272</sup> Through his allegations, Mugabe indicated that someone else was determining the operational use of the ZDF, thus usurping his Presidential powers.

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<sup>269</sup> Moore op cit (n12) 9.

<sup>270</sup> Rogers op cit (n55) 47.

<sup>271</sup> Ncube op cit (n82).

<sup>272</sup> Constitution supra (n175) s110 & s213(1).

This indication by Mugabe that someone else was controlling the military was reinforced by his meeting with Chiwenga in late October 2017. Mugabe had allegedly demanded that Chiwenga pledge loyalty to him and Grace, which Chiwenga had refused to do.<sup>273</sup> This is perhaps the clearest sign that ED and *Lacoste* were in effective control of the military, given that its preeminent general professed loyalty to ED over the Mugabe family. This also indicates that while Mugabe was the constitutional Commander-in-Chief, he had little real control of the military, particularly its leaders.

Further evidence of the ZDF leadership's disregard for the Constitution is provided by the actions of its acting head, Philip Sibanda, and Chiwenga in early November 2017. Upon Sibanda's request, Chiwenga arranged for members of the ZDF to assist ED in escaping across the border into Mozambique. These ZDF members interfered with the work of immigration agents and ZRP officers, violating the Constitution by failing to uphold the rule of law,<sup>274</sup> and acting to 'further the interests of a political cause.'<sup>275</sup> This incident indicates that Mugabe had effectively lost control of the military, as its leaders were acting of their own volition.

Chris Mutsvangwa's Sandton press conference on 8 November is again evidence that the ZDF's leadership had abandoned their constitutional obligations.<sup>276</sup> Mutsvangwa publicly praised the military, stating 'it [was] conscious of its obligations to arrest some of the excesses of this mad cabal,' in reference to the G-40.<sup>277</sup> There is no way to interpret this statement other than that the ZDF was clearly entangled in the interests of a political party. In stating that the ZDF was 'conscious of its obligations' to interfere in the factional disputes of ZANU-PF, Mutsvangwa indicated that the ZDF leadership had abandoned the constitutional restraints on their actions.

The ZDF's abandonment of constitutionality is again clear through Chiwenga's return to Zimbabwe on 12 November. That a squadron of ZDF members acted directly against Mugabe's orders to detain Chiwenga, and went so far as incapacitating awaiting ZRP officers, again demonstrates that the ZDF had little concern for its Commander-in-Chief's orders or the rule of law. This incident alone amounts to a direct contravention of several Constitutional provisions – s2(2), s207(2), s208(2), s211(3) and s213(1).<sup>278</sup>

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<sup>273</sup> Dzirutwe, Copley & Brock op cit (n7).

<sup>274</sup> Constitution supra (n175) s212.

<sup>275</sup> Ibid at s208(2)(b).

<sup>276</sup> Ibid at s208(2)(a)-(b).

<sup>277</sup> Rogers op cit (n55) 60.

<sup>278</sup> Constitution supra (n175):

s2(2) – 'The principles of good governance, which bind the State and all institutions and agencies of government at every level, include –...

e. observance of the principle of separation of powers.'

Chiwenga's press conference the following day is perhaps the most blatant example of the top ZDF leaders' disregard for the Constitution. Chiwenga's statement demonstrated the ZDF leadership's abandonment of their obligations to remain non-partisan and not to act in the interests of any political party.<sup>279</sup> Chiwenga indicated that the ZDF would 'step in' and 'take corrective measures' due to the 'purging and cleansing process in ZANU-PF.'<sup>280</sup> Not only does Chiwenga's statement demonstrate that the ZDF would act in a partisan manner to resolve internal ZANU-PF conflicts, but it further demonstrates that the ZDF leadership were determining its operational uses and deployment, in direct contravention of s211 and s213 of the Constitution.

The reported statements from the meeting between Chiwenga and the ZDF leadership on 13 November make it explicitly clear that this group had usurped Mugabe's constitutional powers to determine the ZDF's operational uses and its deployment. The ZDF leadership together agreed to 'take over the country.'<sup>281</sup> That they agreed to cooperate to take over the country, moving against their Commander-in-Chief in the process, is patently unconstitutional.<sup>282</sup> In addition to the infringements of the Constitution mentioned previously, this decision disregards the fact that the ZDF is bound by the supremacy of the Constitution,<sup>283</sup> undermines the founding principles of 'respect for the rule of law and good governance,'<sup>284</sup> and ignores the principles of a 'multiparty democratic political system' upon which Zimbabwe is purportedly based.<sup>285</sup>

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s207(2) – 'The security services are subject to the authority of this Constitution, the President and Cabinet and are subject to parliamentary oversight.'

s208(2) – 'Neither the security services nor any of their members may, in the exercise of their functions--

- a. act in a partisan manner;
- b. further the interests of any political party or cause;
- c. prejudice the lawful interests of any political party or cause; or
- d. violate the fundamental rights or freedoms of any person'

s211(3) – 'The Defence Forces must respect the fundamental rights and freedoms of all persons and be non-partisan, national in character, patriotic, professional and subordinate to the civilian authority as established by this Constitution.'

s213(1) – 'Subject to this Constitution, only the President, as Commander-in-Chief of the Defence Forces, has power--

- a. to authorise the deployment of the Defence Forces; or
- b. has power to determine the operational use of the Defence Forces.'

<sup>279</sup> Ibid at s208(2).

<sup>280</sup> Tendi op cit (n3) 63.

<sup>281</sup> Ibid at 63-64.

<sup>282</sup> Constitution supra (n175) s211(3).

<sup>283</sup> Ibid at s2(2).

<sup>284</sup> Ibid at S3(1).

<sup>285</sup> Ibid at s3(2).

Clearly unworried about how their actions to this point were already unconstitutional, the ZDF leadership put their takeover plan into action on 14 November 2017. The ZDF deployed themselves to carry out ‘Operation: Restore Legacy’ without an order from the Commander-in-Chief. The phone call placed by Grace Mugabe to the Defence Minister in which she questioned what was going on, and stated ‘nobody will stand for a coup...it cannot happen’ clearly indicates that the President had no control over the military’s actions.<sup>286</sup> Furthermore, the fact that the Defence Minister did not have the requested information on the ZDF’s activities for Grace indicates that the ZDF members were acting entirely of their own volition, with no direction or oversight from the existing civilian political structures.

Within an hour of Grace placing the aforementioned call, the military had taken control of the ZBC, locked down critical ZRP and CIO armouries around Harare, and occupied government buildings.<sup>287</sup> The ZDF not only seized control of the nation’s main news broadcaster, thus controlling the public narrative, but also nullified any potential sources of resistance. This all happened within mere hours of tanks first leaving the barracks, and was carried out by a few key ZDF squadrons. The takeover was both quick and effective, with a small portion of the military effectively taking control of the government within a matter of eight hours.

Although the military attempted to avoid public displays of violence to keep Operation: Restore Legacy from being perceived as a ‘coup,’ they ultimately failed. While the operation was relatively non-violent overall, several people did suffer at the hands of the ZDF. Mugabe-aligned figures were assaulted and detained incommunicado, G-40 members’ residences were raided and shot up, and several security guards were killed or injured by military personnel. Other G-40 figures were forced into hiding, fearing for their lives and families’ safety.<sup>288</sup>

From 8 pm on 14 November, when the military took control of the ZBC, to Major General SB Moyo appearing on TVs around the nation at 3:45 am on 15 November, was a little less than eight hours. Operation: Restore Legacy was both sudden and violent, despite the ZDF’s best attempts to avoid that appearance. SB Moyo’s televised statement ‘this is not a military takeover of government’ directly contradicts what Chiwenga and his fellow generals had agreed two days prior – to ‘take over the government.’<sup>289</sup> Moyo’s statement cannot and does

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<sup>286</sup> Rogers op cit (n55) 86.

<sup>287</sup> Tendi op cit (n3) 46.

<sup>288</sup> Rogers op cit (n55) 91.

<sup>289</sup> Tendi op cit (n3) 63-64

not change the fact that the ZDF operated outside of the Constitution to take over the government.

SB Moyo's statement further declared that 'what the ZDF is doing is to pacify a degenerating social, political and economic situation in our country.'<sup>290</sup> Perhaps without realising, Moyo effectively admitted that the ZDF was acting unconstitutionally. Moyo admitted that the ZDF was acting in the interests of a political cause by 'pacify[ing] a degenerating...political situation.'<sup>291</sup> This statement thus amounts to a public admission by the ZDF leadership that they had violated s208(2)(b) of the Constitution, amongst others.

Although the military did not directly remove Mugabe from office following their takeover of government, this does not mean that their actions do not amount to a military coup d'état. As defined in the previous chapter, a military coup occurs when the military (or a group of military personnel) suddenly, illegally, and/or violently seize the political power within a state or effect a change of government. As this chapter has demonstrated, this is exactly what occurred in the 2017 MAT.

The majority of the ZDF leadership's actions as part of Operation: Restore Legacy were in direct contravention of numerous provisions of the Constitution. The ZDF leadership usurped Mugabe's constitutional powers to determine the operational use of the military and its deployment. The ZDF acted in a partisan manner, furthering the interests of a 'political cause' by intervening in internal ZANU-PF factional politics and thus failed to uphold the Constitution. According to s2(1) of the Constitution, 'any conduct inconsistent with [the Constitution] is invalid to the extent of the inconsistency.'<sup>292</sup> Thus, all conduct of the ZDF and its leadership which has been shown to infringe various sections of the Constitution is accordingly invalid and illegal.

Applying this reasoning to the definition of a military coup d'état proffered above, it is clear that the MAT was indeed a military coup. Operation: Restore Legacy was illegally planned and executed by a group of military personnel, its execution was sudden and violent, and the ZDF effectively seized political power, initiating a change in government. Although the change in government only occurred when Mugabe eventually resigned, this would almost certainly not have happened without the ZDF's actions and concerted pressure on Mugabe to resign. Therefore, it must be concluded that the MAT was a military coup d'état.

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<sup>290</sup> Tendi op cit (n3) 47.

<sup>291</sup> Ibid.

<sup>292</sup> Constitution supra (n175) 2(1).

### 2.1.1 *The Sibanda judgement*

As mentioned in Chapter Two, the Harare High Court issued a ruling on 24 November 2017, effectively sanitising the actions of the ZDF during the MAT and declaring them to be constitutional.<sup>293</sup> Chiweshe JP ruled that:

the actions of the Defence Forces...in intervening to stop the takeover of the First Respondent's [Mugabe] constitutional functions by those around him are constitutionally-permissible and lawful in terms of Section 212 of Constitution.<sup>294</sup>

Chiweshe JP's proffered rationale was that the ZDF's actions 'arrested [Mugabe's] abdication of his constitutional functions' and 'ensured that non-elected individuals do not exercise executive functions.'<sup>295</sup>

With all due respect to the High Court and Chiweshe JP, this ruling is problematic at best, if not completely wrong. Section 212, upon which the ruling is based, states that the ZDF's function is 'to uphold the Constitution.'<sup>296</sup> The next section declares that '*only the President as Commander-in-Chief has the power to authorise the deployment of the Armed Forces*' or to 'determine [their] operational use.'<sup>297</sup> Thus, if the ZDF were 'upholding the Constitution' as per s212, its deployment and operations could only be ordered by Mugabe. The fact that Mugabe did not deploy the ZDF means it could not have acted constitutionally under s212, despite Chiweshe JP's ruling to the contrary.

Furthermore, Chiweshe JP ruled that the ZDF's actions ensured that 'non-elected individuals' did not exercise executive functions, yet the Constitution provides that the deployment of the Armed Forces is an 'executive function.'<sup>298</sup> The ZDF were deployed without Mugabe's direction, ostensibly on Chiwenga's orders, meaning that an 'unelected individual' exercised an executive function. Chiweshe JP's ruling thus ignores the obvious illegalities of the ZDF's actions and instead portrays the ZDF as acting in the best interests of the nation (rather than in the interests of a ZANU-PF faction).

Due to these highlighted issues with the High Court ruling, it should not be considered 'good law.' Although this judgment is binding on all courts in Zimbabwe (except the Supreme Court and Constitutional Court) and is thus 'law' in the technical sense, Chiweshe JP provides no real ratio for his decisions. As I pointed out, Chiweshe JP's reasoning is tenuous at best, if not entirely wrong. The rule of law requires that judicial officers who create new laws through their

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<sup>293</sup> *Sibanda* supra (n169).

<sup>294</sup> *Ibid.*

<sup>295</sup> *Ibid.*

<sup>296</sup> Constitution supra (n175) s212.

<sup>297</sup> *Ibid* at s213 (own emphasis).

<sup>298</sup> *Ibid* at s110(2)(g).

rulings must give a clear and detailed rationale for their decisions to ensure legal certainty. As Chiweshe JP does not provide a detailed rationale, this judgment does not comply with the basic requirements of the rule of law and thus cannot be ‘good law.’

While the *Sibanda* judgement attempted to whitewash the ZDF’s actions under domestic law, it is a tenuous and illogical ruling and cannot make the ZDF’s actions ‘legal.’ The ruling cannot change the fact that the ZDF’s actions violated numerous provisions of the Constitution and were thus illegal. Therefore, the MAT clearly falls within the definition of a military coup d’état.

*b. The constitutionality of Mugabe’s resignation and ED’s inauguration*

As previously explained, a sitting President may freely resign at any time by way of written notice to the Speaker of Parliament.<sup>299</sup> Interestingly, the Constitutional Court ruling which declared that the resignation must be voluntary was a case challenging Mugabe’s resignation on the grounds that it ‘was not a result of [the] exercise of free will.’<sup>300</sup> The applicants in this case alleged that Mugabe’s resignation was a ‘direct result of the military action on 14 November 2017.’<sup>301</sup>

Having explored the facts surrounding Mugabe’s resignation in 2017, it would appear as if these applicants had a strong case. While the *Lacoste*-controlled ZDF did not ‘force’ Mugabe to sign a resignation letter, they did not give him much of a choice. They not only threatened Mugabe with the embarrassment of impeachment and expulsion from ZANU-PF but also mobilised civil society to march to State House in an attempt to further pressure Mugabe.<sup>302</sup> The ZDF generals purportedly even told Mugabe he would ‘face the mob in the streets’ if he did not resign and the impeachment process failed.<sup>303</sup>

When Mugabe did eventually send his resignation letter to the Speaker on 21 November, it was as Parliament had just convened to initiate impeachment proceedings against him. While Mugabe may have signed the letter, it is clear that he had very little choice. He was leaving one way or another. Although the ZDF leadership ultimately pursued constitutional channels to remove Mugabe, the military’s involvement in the whole transition means that its illegal actions essentially effected the change of government. The generals’ threat that Mugabe would

<sup>299</sup> Constitution supra (n175) s96.

<sup>300</sup> *Liberal Democrats* supra (n184) 3.

<sup>301</sup> *Ibid.*

<sup>302</sup> Rogers op cit (n55) 97-98, 102.

<sup>303</sup> Fin24 ‘Mugabe said to have quit over fear of being Zimbabwe’s Gaddafi’ *Finance24* 27 November 2017 available at [www.news24.com/Fin24/mugabe-said-to-have-quit-over-fear-of-being-zimbabwes-gaddafi-20171127](http://www.news24.com/Fin24/mugabe-said-to-have-quit-over-fear-of-being-zimbabwes-gaddafi-20171127), accessed on 26 January 2022.

‘face the mob in the streets’ if the constitutional methods of removing him failed is clear evidence of this.<sup>304</sup>

The Constitutional Court in the aforementioned case eventually ruled that ‘all the evidence shows that the former President’s resignation was in conformity with the provisions of the Constitution.’<sup>305</sup> The Court rationalised that Mugabe resigned freely to avoid the embarrassment of impeachment but peculiarly did not spend much time addressing the military’s role in the whole event. The Court stated that ‘the military action had obviously not removed the former President from office.’<sup>306</sup> The Court either ignored or overlooked that Mugabe resigned out of ‘the fear of suffering the same fate as Gaddafi.’<sup>307</sup>

The only other mention of the ZDF’s actions made by the Court was in reference to the High Court ruling mentioned previously, saying that the applicants could not question the constitutionality of the ZDF’s actions whilst the High Court order was ‘extant.’<sup>308</sup> This is a somewhat peculiar line of reasoning, given that the Constitution provides that the Constitutional Court ‘makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.’<sup>309</sup> It further provides that the Rules of the Court ‘must allow a person, when it is in the interests of justice...to bring a constitutional matter directly to the Constitutional Court.’<sup>310</sup>

The Applicants approached the Constitutional Court under Rule 21(2), which provides for direct access to the Court under s167(5) of the Constitution.<sup>311</sup> This Rule allows for direct access to the Court when the issue falls under s167(5) – ie when there is a ‘constitutional matter’ which is in the interests of justice to be heard.<sup>312</sup> As the ‘constitutionality of the ZDF’s actions’ is quite clearly a constitutional matter, an extant High Court ruling would in no way bar the Constitutional Court from considering the issue. The Constitutional Court clearly had the jurisdiction to address the issue, irrespective of any extant High Court ruling, but the Court declined to do so.

By failing to take up an apparent constitutional issue, the Constitutional Court indirectly confirmed the ‘constitutionality’ of the ZDF’s actions, despite the obvious issues with the High Court judgment discussed previously. Furthermore, the Court ignored the obvious pressure

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<sup>304</sup> Fin24 op cit (n303).

<sup>305</sup> *Liberal Democrats* supra (n184) 22.

<sup>306</sup> *Ibid* at 17.

<sup>307</sup> Fin24 op cit (n303); Rogers op cit (n55) 102.

<sup>308</sup> *Liberal Democrats* supra (n184) 6.

<sup>309</sup> Constitution supra (n175) s167(1)(c).

<sup>310</sup> *Ibid* at s167(5)(a).

<sup>311</sup> *Liberal Democrats* supra (n184) 1.

<sup>312</sup> Constitutional Court Rules (2016) SI 61 of 2016.

placed on Mugabe to resign, deciding his resignation was ‘voluntary’ and in accordance with the Constitution.

As Mugabe was ultimately deemed to have resigned in accordance with s96 of the Constitution, this left the Presidency vacant. Ordinarily, s101 would determine how to fill this vacancy, however, this section is currently suspended by the operation of the Sixth Schedule. The Sixth Schedule states that the political party to which the former President belonged when he was elected ‘shall nominate a person to assume the Presidency for the remainder of the former President’s term.’<sup>313</sup> This means that ZANU-PF was entitled to nominate any person to finish Mugabe’s term, which they did by nominating ED. Thus, ED’s inauguration was not unconstitutional, notwithstanding the myriad of illegalities leading up to that point.

Another legal peculiarity is the other ruling given by Chiweshe JP on 24 November 2017, which overturned ED’s dismissal from the Vice-Presidency.<sup>314</sup> It is peculiar because it is essentially irrelevant. If s101 was in operation and only the Vice-President could succeed Mugabe when he resigned, then this judgment would make sense, as ED would need to have been Vice-President to succeed Mugabe. However, as explained, the Sixth Schedule allows ZANU-PF to nominate any person to replace Mugabe, which they did with ED. Thus, ED did not need to be the Vice-President to succeed Mugabe. This judgement appears to be a precautionary measure by ED to ensure he would not miss out on the Presidency on a legal technicality.

Ultimately, ED was inaugurated in accordance with the Constitution, and thus ‘legally.’ The Constitutional Court has confirmed as much.<sup>315</sup> Indeed, if one looks at Mugabe’s resignation in isolation, asking only if it complies with constitutional requirements, then arguably the Constitution was complied with. ED was nominated and inaugurated in line with the Constitution. However, this is a simplistic assessment which ignores the broader context of the ZDF’s illegal actions and the concerted pressure on Mugabe to resign. The domestic courts can rubberstamp the ZDF’s actions all they want, but the fact ultimately remains that Operation: Restore Legacy of November 2017 amounts to a military coup d’état. No amount of legal mental gymnastics can change the fact that the ZDF’s illegal, sudden and violent actions ultimately resulted in a change of government, thus fulfilling the definition of a ‘military coup d’état.’

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<sup>313</sup> Constitution supra (n175) Sixth Schedule s14(4).

<sup>314</sup> *Mnangagwa* supra (n164).

<sup>315</sup> *Liberal Democrats* supra (n184) 23.

### III. Does the 2017 coup violate international law?

Irrespective of how the Zimbabwean domestic courts choose to characterise the ZDF's actions or justify their legality, the fact remains that the MAT falls within the definition of a military coup d'état. This means that although Zimbabwean domestic courts have ruled the MAT to be legal, it still violates applicable international law. This next section will demonstrate how the coup infringed the applicable international legal framework set out in the previous chapter.

#### *a. SADC Law*

Upon acceding to SADC membership, Zimbabwe committed to 'act in accordance with the...principles of democracy and the rule of law'<sup>316</sup> and bound itself to 'defend and maintain democracy.'<sup>317</sup> Furthermore, Zimbabwe undertook to 'refrain from taking any measure likely to jeopardise the sustenance of [SADC's] principles...and the achievement of its objectives.'<sup>318</sup> SADC's principles include respect for 'democracy and the rule of law,' and its objectives include 'defending and maintaining democracy.' Thus, Zimbabwe has legally undertaken not to take any measures that would jeopardise democracy or undermine the rule of law.<sup>319</sup>

These commitments constitute legally binding obligations under international law. An infringement of them would thus be a violation of international law. A military coup is an antithesis of 'defending democracy' and undermines the rule of law as it is an arbitrary and unfettered exercise of state power outside of the law. In undergoing a military coup in 2017, Zimbabwe failed to 'defend and maintain democracy' and completely disregarded the rule of law. Furthermore, the coup amounts to a measure that jeopardises SADC's principles and objectives. Therefore, the 2017 coup was a clear violation of the SADC Treaty and Zimbabwe's legal obligations to SADC.

#### *b. African Union Law*

As a Member State of the AU, Zimbabwe has also bound itself to uphold the AU's objectives and principles, including 'promoting democratic principles' and 'ensuring...the rule of law.'<sup>320</sup> A key principle of the AU is that it shall always 'condemn and reject unconstitutional changes of government.'<sup>321</sup> Therefore, by virtue of its AU membership, Zimbabwe is legally bound to

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<sup>316</sup> SADC supra (n201) art 4(c).

<sup>317</sup> Ibid at art 5(1)(c).

<sup>318</sup> Ibid at art 6(1).

<sup>319</sup> Ibid at arts 4(c) & 5(1)(c).

<sup>320</sup> AU supra (n212) arts 3-4.

<sup>321</sup> Ibid at art 4(p).

adhere to these objectives and principles, and thus ‘condemn and reject unconstitutional changes of government.’<sup>322</sup>

Although the AU Act declares that the AU will always condemn UCOGs, it does not define what constitutes a UCOG, which is why the Lomé Declaration remains important. The Lomé Declaration sets out four distinct instances which constitute UCOGs, the most important for this paper being a ‘military coup d’état against a democratically elected government.’<sup>323</sup>

As this chapter has already established, the 2017 MAT in Zimbabwe falls squarely within the definition of a ‘military coup d’état.’ Mugabe was democratically elected under the Constitution in 2013. As such, the 2017 MAT is a ‘military coup d’état against a democratically elected government’ and thus amounts to an ‘unconstitutional change of government’ as defined by the Lomé Declaration. Accordingly, the Zimbabwe coup is a clear and direct violation of AU law.

*c. Conclusion*

The question of whether Zimbabwe’s 2017 military coup d’état amounts to a breach of international law must be answered in the affirmative. This chapter has demonstrated that Operation: Restore Legacy was nothing more than an illegal operation carried out by the ZDF to initiate a change of government in Zimbabwe. The illegal, sudden, and violent manner of the ZDF’s actions clearly constitutes a military coup.

Even if it is argued that the MAT does not amount to a military coup, either because the High Court ruled the ZDF’s actions to be legal, or because Mugabe ultimately resigned and constitutionality was restored, this does not negate the fact that international law was breached. The mere fact that the military was involved in the political transition, despite the Constitution prohibiting such involvement, already indicates that democratic principles and the rule of law were not upheld in Zimbabwe, thereby violating Zimbabwe’s international legal obligations to SADC and the AU. The ZDF interfered in the democratic process by involving itself in politics and engaging in political factional disputes and completely disregarded the Constitution by arbitrarily exercising state power, thereby undermining the rule of law.

The ZDF’s actions were illegal and amount to a military coup, meaning that one does not need to make the roundabout argument that Zimbabwe has breached international obligations by failing to protect and maintain democracy and uphold the rule of law. A military coup,

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<sup>322</sup> AU supra (n212) art 4(p).

<sup>323</sup> OAU supra (n224) 3.

constituting an ‘unconstitutional change of government’ under AU law, occurred in Zimbabwe. Therefore, international law was violated by Operation: Restore Legacy.

#### IV. Assessing the adequacy of the responses of SADC and the AU under their rules

##### a. *SADC’s response*

As previously mentioned, SADC sent an envoy to Zimbabwe in November 2017 to meet with Mugabe and assess the political situation first-hand. The envoy only met with Mugabe in the presence of Chiwenga and other military leaders, in a carefully choreographed meeting which gave the impression that Mugabe ‘was in complete control.’<sup>324</sup> Following the meeting, SADC’s Chair ‘called for calm and urged the government and the military to resolve their differences amicably as a coup is against SADC and AU rules.’<sup>325</sup> This statement was the closest SADC came to labelling the events as a ‘coup’ or alleging any kind of unconstitutionality.

SADC’s lukewarm response allowed the ZDF to influence public perception of the coup. Instead of condemning the military’s actions, SADC ignored their illegalities, the ZDF’s blatant interference with the democratic system, and the collapse of the rule of law.<sup>326</sup> SADC thereby allowed the ZDF to portray themselves as merely assisting with the democratic process, rather than actively interfering to further a political cause.

Under SADC rules, ‘sanctions may be imposed against any Member State that implements policies which undermine the principles and objectives of SADC.’<sup>327</sup> A military coup goes directly against SADC’s principles of ‘democracy and the rule of law,’ and negates its objective of ‘defending and maintaining democracy.’<sup>328</sup> Thus, by undergoing a military coup, Zimbabwe essentially implemented a ‘policy’ which undermined SADC’s principles and objectives, in clear violation of its Treaty.

Under the SADC Treaty, the imposition of sanctions on Zimbabwe would have been permissible in these circumstances, yet SADC opted to do nothing. SADC did not even publicly acknowledge that Zimbabwe was undergoing a military coup, and completely ignored the numerous violations of the SADC Treaty by the ZDF. Although SADC was not obliged to institute sanctions, it is difficult to conceive of a situation that affronts SADC’s objective of ‘defending and maintaining democracy’ more than a military coup d’état. If SADC does not

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<sup>324</sup> Mackintosh op cit (n144).

<sup>325</sup> Asuelime op cit (n1) 14.

<sup>326</sup> Ibid.

<sup>327</sup> SADC supra (n201) art 33(1)(b).

<sup>328</sup> Ibid at arts 4(c) & 5(1)(c).

consider a coup to be serious enough to warrant sanctions, then its objective of ‘defending democracy’ is effectively rendered moot.

Through failing to acknowledge the breaches of the SADC Treaty by the ZDF during the coup, and failing to sanction Zimbabwe over the events, I argue that SADC failed to respond adequately to the coup. SADC purports to be ‘mindful’ of the need to observe the rule of law, yet ignored the obvious breakdown of the rule of law and democracy in Zimbabwe, thereby failing to uphold its own principles.<sup>329</sup> SADC’s weak response emboldened the ZDF to continue pressuring Mugabe to resign, as they (correctly) guessed they would not be punished by SADC.

Although not legally obliged to sanction Zimbabwe, SADC undermined its own position by not doing so. It sent the message that even a military coup, which is diametrically opposed to the objective of ‘defending democracy,’ is not bad enough to warrant sanctions on a Member State. This further signals to Members that as long as they violate the SADC Treaty in a less serious manner than a coup, SADC will take no remedial action against them.

*b. The African Union’s response*

The AU has adopted a firm anti-UCOG stance since its inception. This is evident in its Constitutive Act, which declares the ‘condemnation and rejection’ of UCOGs as a guiding principle of the AU.<sup>330</sup> The Act further states that ‘[any] government which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.’<sup>331</sup> Furthermore, the AU is empowered to institute sanctions against Members who ‘fail to comply with the decisions and policies of the Union.’<sup>332</sup>

As the previous chapter explained, the AU Act must be read with the Lomé Declaration when dealing with UCOGs. I have already demonstrated how the 2017 coup in Zimbabwe constitutes a UCOG under AU law, meaning the AU should follow the Lomé Declaration procedure in response to the UCOG. The Lomé Declaration directs that when a UCOG occurs:

our Current Chairman...and our Secretary-General...should immediately and publicly condemn such a change and urge for the speedy return to constitutional order. The Current Chairman and the Secretary-General should also convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognized by the OAU.<sup>333</sup>

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<sup>329</sup> SADC supra (n201) Preamble.

<sup>330</sup> AU supra (n212) art 4(p).

<sup>331</sup> Ibid at art 30.

<sup>332</sup> Ibid at art 23(2).

<sup>333</sup> OAU supra (n224) 4.

Considering the AU's firm anti-UCOG stance and well-developed framework for dealing with UCOGs, one would expect that the AU would have an unequivocal response to the Zimbabwean coup. Then-Chair, Alpha Condé, stated that the situation in Zimbabwe 'seems like a coup' and called on the military to 'halt their actions and restore constitutional order.'<sup>334</sup> On behalf of the AU, Condé 'condemned' the ZDF's actions as 'clearly soldiers trying to take power by force' and 'expressed its [the AU's] serious concern regarding the situation unfolding in Zimbabwe.'<sup>335</sup>

The AU responded more forcefully to Zimbabwe's breach of its international legal obligations than SADC did. Following its rules in the Lomé Declaration framework, the AU condemned the actions of the ZDF in interfering with politics and called for a return to constitutionality. This was the bare minimum that the AU could do in the circumstances. Despite 'condemning' the ZDF's actions, the AU did not 'convey a clear and unequivocal warning to the perpetrators of the unconstitutional change that, under no circumstances, will their illegal action be tolerated or recognized [sic]' as the Lomé Declaration directs.<sup>336</sup>

The Lomé Declaration stipulates that Zimbabwe should have been given six months to restore constitutional order, during which time Zimbabwe should have been suspended from participating in AU activities.<sup>337</sup> This did not happen. Although Condé condemned the ZDF and called for a return to constitutionality, Zimbabwe was never suspended from any AU activities.

Perhaps the AU accepted the flawed High Court ruling, or even Mugabe's resignation, as a return to constitutionality, but this ignores the myriad of illegalities perpetrated by the ZDF. It also ignores the immense pressure placed on Mugabe to resign, choosing only to view the resignation in isolation. This failure to suspend Zimbabwe from AU activities and to properly investigate Zimbabwe's 'return to constitutionality' is a wholly inadequate response by the AU.

The AU's PSC is empowered and directed by its establishing Protocol to 'institute sanctions whenever an unconstitutional change of government takes place in Member State, as provided for in the Lomé Declaration.'<sup>338</sup> As previously discussed, the wording of this Protocol is mandatory, saying the PSC '*shall* institute sanctions *whenever* an unconstitutional change of

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<sup>334</sup> News24 op cit (n172).

<sup>335</sup> Ibid.

<sup>336</sup> OAU supra (n224) 4.

<sup>337</sup> Ibid.

<sup>338</sup> AU supra (n237) art 7(1)(g).

government takes place.<sup>339</sup> This means that the AU, through the PSC, was legally obliged to institute sanctions on Zimbabwe when it became clear that a UCOG had occurred in the form of a military coup. The fact that the PSC did not do this further demonstrates the inadequacy of the AU's response to Zimbabwe's 2017 coup.

These inadequacies may not appear hugely important, especially since the response was partially what was required, with the exception of a warning to the coup perpetrators and the suspension and sanctioning of Zimbabwe. However, the fact remains that the AU did not respond exactly as required by its own rules. While this improper implementation of the AU's rules may seem trivial or immaterial, it has set a dangerous precedent for the AU going forward.

By failing to suspend Zimbabwe from the AU or sanction it in any meaningful way, and by failing to unequivocally warn the perpetrators of the coup that their government would not be recognised, the AU demonstrated weakness. The inadequate response to Zimbabwe's coup sent a message to other AU Member States that the AU is only strongly anti-UCOG in theory, but in reality, it will do little more than posture. The African continent has undergone seven successful military coups d'état in the last two years alone, with the continent's militaries evidently unconcerned about violating AU law, arguably because its responses are inadequate and ineffective.<sup>340</sup> Although the AU has since returned to the proper practice of suspending Member States which undergo UCOGs, this has done little to deter the perpetrators – the AU has lost leverage in recent years.<sup>341</sup>

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<sup>339</sup> AU *supra* (n237) art 7(1)(g) (own emphasis).

<sup>340</sup> Durmaz *op cit* (n252).

<sup>341</sup> *Ibid.*

## Chapter Five – Conclusions & Recommendations

### I. Conclusions

In this paper, I argued that rather than the ZDF's actions being about 'pacifying a degenerating social, political and economic situation,' Zimbabwe's 2017 coup was the result of long-running factional battles within ZANU-PF over who would succeed Mugabe.<sup>342</sup> To support this argument, I briefly retraced the history of factionalism within ZANU-PF to highlight how ED Mnangagwa gradually positioned himself to ensure he would eventually succeed Mugabe.

The broader historical examination contained in Chapter Two was critical, as the facts clearly demonstrate that the coup was not merely the ZDF 'targeting criminals' around Mugabe as was claimed.<sup>343</sup> Rather, the ZDF acted to further the political interests of a ZANU-PF faction in direct violation of the Constitution.<sup>344</sup> This repudiates the ZDF's narrative that it was acting in the best interests of the country.

On 14 November 2017, ZDF personnel moved into Harare, securing key locations, arresting G-40 aligned ministers, and placing the Mugabe family under house arrest. Following these actions, the military's leadership pressured Mugabe to resign, threatening to have him impeached or left 'to face the mob in the streets' if he did not resign.<sup>345</sup> Huge public demonstrations called for Mugabe's departure, creating the perception that the military's actions accorded with the populace's will.

Ultimately, Operation: Restore Legacy was the well-executed strategy of ED and his *Lacoste* faction to secure political power for themselves. They planned to seize power from the ageing Mugabe before the December 2017 ZANU-PF Congress, fearing Mugabe would further empower his wife and thus side-line them further. The ZDF's actions were therefore not a military operation to protect democracy or the Constitution, but rather an operation designed to override the constitutional order and replace the elected President with a preferred candidate.

The facts are clear that the ZDF's leadership usurped Mugabe's constitutional powers as Commander-in-Chief to deploy the military and determine its operational uses. In self-deploying on an operation that Mugabe did not order or consent to, the ZDF blatantly violated the Constitution, rendering its actions illegal. A group of the military acted illegally, suddenly and violently to seize political power and ultimately ensured a change of government, thereby constituting a military coup d'état.

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<sup>342</sup> Tendi op cit (n3) 47.

<sup>343</sup> Ibid.

<sup>344</sup> Asuelime op cit (n1) 6.

<sup>345</sup> Fin24 op cit (n303).

Accordingly, Zimbabwe's coup amounted to an 'unconstitutional change of government' and a violation of the applicable international law. The regional bodies responsible for overseeing and enforcing the applicable laws responded wholly inadequately to the coup, allowing the ZDF to control the public's perception of the events and thus create and maintain a flimsy veneer of legitimacy over the whole situation. These inadequate responses, particularly from the AU, have emboldened other African states to abandon constitutionality, ostensibly because they perceive the AU as ineffective or weak.

## II. Recommendations

With the coup now over four years ago and Mugabe having passed away, nothing can be done to restore the situation that existed before the military's actions. Zimbabwe has conducted Presidential Elections since, in 2018, in which ED won and retained the Presidency. Therefore, although the coup resulted in ED assuming power, it is not the basis of his continued occupancy of the Presidency, and thus trying to overturn its outcome would achieve little.

It follows that I will not make any recommendations directed at the coup itself, rather my recommendations are lessons that should be learned from the Zimbabwean situation and taken on board to avoid any potential repeats – in Zimbabwe or the rest of Africa. The recommendations I propose are lessons for individual African states in particular, but also for SADC and the AU.

### *a. Recommendations for African states*

Perhaps the most obvious lesson that all African states should learn from the Zimbabwean coup is the importance of developing and maintaining independent, empowered and effective oversight institutions. Zimbabwe's coup was not a result of a weak Constitution or a lack of legal regulation, but rather it resulted from a failure to properly implement the Constitution and respect the rule of law. The establishment of effective, independent oversight bodies to ensure the proper implementation of the Constitution at all levels of state organs would arguably have prevented the political situation from devolving into a coup.

The Constitution became operational in 2013, effectively banning members of the ZDF from active politics or even membership in a political party.<sup>346</sup> Despite this, many high-ranking military officials, such as Chiwenga and SB Moyo, retained their membership in ZANU-PF and thus failed to remain 'non-partisan' as directed by the Constitution. Such overlap between the military and ZANU-PF has long been commonplace in Zimbabwean politics, and despite

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<sup>346</sup> Constitution supra (n175) s208(2)(a) & s211(3).

the 2013 Constitution banning this, it did not change anything in reality. An effective and independent constitutional oversight body would have detected these obvious conflicts of interest long before they evolved into a full-blown coup and could have taken measures to distance military leadership from politics.

Not only would a constitutional oversight institution have detected the entanglement of the military in ZANU-PF factional battles, but it likely would have espied how the military leadership were shunning their constitutional Commander-in-Chief. As Chapter Two highlighted, Mugabe gave numerous indications that he was losing his grip on the military leadership, even going so far as accusing them of ‘plotting a coup’ in July 2017.<sup>347</sup> Mugabe’s allegations were not taken seriously; no one investigated his claims that the ZDF leadership were shirking the Constitution. An independent constitutional oversight body would have been the ideal institution to investigate such claims and resolve any issues with the military leadership.

Aside from developing and empowering an independent body to ensure proper implementation of the Constitution at the state level, another important lesson that all nations, particularly in Africa, should learn is that political parties should resolve factional tension as a matter of urgency. As Chapter Two showed, factions have long been present in ZANU-PF, and it is because of such factional tension that the coup ultimately occurred. Political parties, particularly ruling parties with a long history of governance and a monopoly over the control of state power, should thus attempt to resolve internal issues as soon as they arise. Doing so would go some way in ensuring that powerful factions do not abuse state power and resources to further their own political objectives.

Another somewhat obvious lesson is that African nations must do everything to strengthen and uphold the rule of law. The rule of law, when properly upheld, limits state power and curbs potential abuse of that power. When the rule of law is disregarded by the state, government officials, or the ruling political party, then state power is often abused or used in the interests of those who control it. For years, Mugabe and ZANU-PF shunned the rule of law, acting as they pleased and weaponizing the law against opponents. When governments or leaders fail or refuse to uphold the rule of law, they are often removed in unlawful ways, as with Mugabe.

The importance of the rule of law goes beyond the top leadership of a nation. The rule of law should bind the state at every level, including the judiciary. When a judge fails to give proper reasons for his judgements, as with Chiweshe JP in November 2017, the populace

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<sup>347</sup> News24 op cit (n81).

begins to lose faith in the law. When a nation loses faith in the rule of law, it eventually devolves into chaos and unlawfulness, and political unrest becomes more commonplace. Thus, upholding the rule of law and strengthening the institutions which protect it is paramount for nations who wish to strengthen democracy and avoid coups and other forms of UCOG.

Ultimately, the primary lesson that nations should learn from the Zimbabwean coup is the importance of oversight over those exercising state power. Ideally, nations would develop independent institutions to oversee those who wield state power and to ensure that the respective constitutions are properly instituted. However, this is not always possible for various reasons, and neither is it an all-encompassing solution. While effective oversight bodies would go some way in curbing abuses of state power, they cannot solve everything.

Unfortunate as it may be, state institutions in Africa inevitably become corrupted or ‘captured,’ thus they cannot be the answer alone. In addition to such bodies, civil society in African nations should be mobilised and organised to hold their respective governments to account. An active civil society can identify breakdowns in the rule of law, abuses of state power and other unlawful actions performed by those exercising state power and hold them to account. The Zimbabwean situation demonstrated how mobilisation of civil society can pressure a ruler to resign, and it demonstrates that civil society has more power than is often realised.

Citizens of African nations should learn from what transpired in Zimbabwe. They should learn to identify the indicators that political factional tension is threatening to spill into the broader society, learn the signs that a ruler is losing control of power or his military, and learn to identify breakdowns in the rule of law. By learning these lessons from Zimbabwe’s 2017 coup and the events that led up to it, African societies will be able to identify similar situations brewing in their own countries and be able to react accordingly. Zimbabwe’s civil society grew disillusioned or bored of the long-running ZANU-PF factional squabbles and thus did not anticipate what was coming, thus the rest of Africa should learn from this and be aware of the warning signs.

*b. Recommendations for international organisations*

*i. SADC*

The most important thing that SADC can, and should, do following the Zimbabwean coup is to develop its own legal framework on the issue of UCOGs. As I explained in Chapter Three, SADC does not have its own framework for identifying and responding to UCOGs like the

AU's Lomé Declaration. Due to this, SADC has no consistent or uniform way of identifying UCOGs, and no clearly determined manner of responding to them.

In the Zimbabwean situation, SADC sent its envoy to Zimbabwe to discuss the matter with Mugabe and the generals but refrained from labelling the events a 'coup' or anything like that. They rather called for the 'differences' between Mugabe and the ZDF to be 'resolved.'<sup>348</sup> As I already argued, this lukewarm response allowed the generals to construct and propagate their own narrative around the coup, making it appear bloodless and peaceful.

In the absence of a detailed legal framework for dealing with such situations, SADC appeared uncertain of how to approach the coup. Perhaps this is attributable to a sense of relief that Mugabe was finally gone, but this would not be the correct approach. SADC requires a uniform and consistent roadmap of how to deal with such situations, or how will it respond to the next UCOG in the region? It certainly cannot repeat its response to Zimbabwe, given that it only emboldened the ZDF and allowed them to shape the perception of the coup. Without a set framework which identifies UCOGs and determines SADC's response to them, SADC will likely continue to respond inadequately to them.

If SADC is truly committed to its objective of 'consolidating, defending and maintaining democracy,' it will develop a legal instrument that helps achieve these objectives.<sup>349</sup> By developing a legal framework like the Lomé Declaration to address UCOGs in the region, SADC will not only demonstrate its commitments to democracy, but will empower itself to react swiftly, adequately and consistently to any potential UCOG.

#### *ii. The African Union*

Unlike SADC, the AU already has a well-developed legal framework addressing UCOGs in Africa. The Lomé Declaration should be lauded for the clear manner in which it identifies various forms of UCOG and details the Union's response to such events. The Lomé Declaration, read with the AU Act, contains clear and consistent directions regarding dealing with Member States who undergo a UCOG.

Thus, the issue with the AU is not the lack of legal direction, but rather an issue of consistent application of the existing rules. As I showed in Chapter Four, the AU failed to properly respond to the Zimbabwean coup under its own rules. While it did 'condemn' the actions of the ZDF and call for constitutional order to be reinstated, it failed to suspend Zimbabwe from the AU, or implement any form of sanctions on it. This directly contradicts the PSC Protocol

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<sup>348</sup> Asuelime op cit (n1) 14.

<sup>349</sup> SADC supra (n201) art 5(1)(c).

which directs the PSC to implement sanctions ‘*whenever* an unconstitutional change of government takes place.’<sup>350</sup>

By failing to suspend Zimbabwe from the AU or institute sanctions against it, the AU failed to follow its own rules and procedure. It readily accepted a flawed High Court judgement and Mugabe’s controversial resignation as a ‘return to constitutionality’ without carrying out any further investigations. Thus, it was not the AU’s law that failed, rather it was just improperly applied. The AU does not need more laws or rules, it merely needs to be consistent and steadfast with its application of existing laws.

A further reason that the AU does not need new laws is the existence of the ACDEG. The ACDEG was clearly developed to deal with situations exactly like Zimbabwe’s coup. I strongly recommend that the AU engages with all Member States to ensure the ACDEG is signed and ratified by all. The ACDEG was adopted in 2007, but only entered into force in 2012 and has still only been ratified by a little more than half of all AU Member States.<sup>351</sup>

The AU should thus urge all outstanding Member States to sign and ratify the ACDEG, thereby signifying their commitment to upholding and protecting democracy and the rule of law. Unless the AU takes a proactive approach to drive the ACDEG and reiterates its importance to African democracy, the ACDEG will continue to be ignored or rejected. As a result, unscrupulous African leaders or militaries will continue to undermine the rule of law and endanger democracy, and thus UCOGs will likely continue to occur throughout the continent.

I, therefore, recommend that the AU should publicly reiterate its position on UCOGs and the importance of the rule of law. The AU only really deals with such issues after an alleged UCOG has already occurred, when rather it should be addressing such issues consistently. The AU should, as a matter of priority, push for the universal ratification of the ACDEG, and should consistently adhere to its own procedure for addressing UCOGs. If the AU takes the lead, refusing to let UCOGs slip out of the public’s consciousness, and implores proper adoption of the ACDEG in all Member States, it will go a long way towards alleviating the current African trend towards UCOGs.

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<sup>350</sup> AU supra (n237) art 7(1)(g)(own emphasis).

<sup>351</sup> AU op cit (n244).

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