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Political Developments in Post-Eyadema Togo: A Critical Analysis

by Kwadwo Appiagyei-Atua

AFTER SURVIVING MANY COUPS D'ÉTAT, political assassination attempts, political upheavals, and political transitions, one of Africa's political dinosaurs finally bowed out on February 5, 2005. According to reports, Gnassingbe Eyadema, the President of Togo, died of a heart attack while being flown abroad for medical treatment. His remains were finally laid to rest on March 13, 2005.

What is intriguing about his death is not so much the fact that the last of the dominant francophone dictators, including Félix Houphouët-Boigny of the Ivory Coast and Mobutu Sese Seko of Zaire (now the Democratic Republic of Congo), is gone after a record 38 years in office, but the circumstances surrounding how the deceased's son came to assume the reins of President. This paper analyzes the circumstances of the succession, the reaction of African leaders to the change of government, and the likely precedent this may set for the development of a democratic culture in Africa.

The installation of Faure Essozima Gnassingbe to succeed his father and the subsequent amendment of the Togolese Constitution to permit his installation failed to follow the Constitution's dictates pertaining to succession. For Togo to move toward a constitutional democracy and an internationally recognized legitimate government, the Togolese government must make democratic reforms to ensure genuine respect for human rights in conformity with the spirit of the current Constitution. Although the African Union (AU) and the Economic Community of West African States (ECOWAS) intervened to force Gnassingbe to step down temporarily, additional steps must be taken to put Togo on a track of constitutional governance.

GNASSINGBE SUCCEEDS HIS FATHER

A FEW DAYS BEFORE EYADEMA'S DEATH, the President of the National Assembly, Fambare Natchaba Ouattara, traveled to Europe on official assignment as head of a parliamentary delegation. He was in Europe when Eyadema passed away. Prime Minister Kofi Samma announced Eyadema's death that same day on state radio and television. About two hours later, the Chief of Staff of the Togolese Armed Forces, General Zachari Nandja, appeared on state television flanked by the country's top army personnel to announce: "The armed forces of Togo find itself [*sic*] faced with the evidence of a total vacuum of power in Togo. This is because the Speaker of the National Assembly is absent. Therefore, in order not to create a power vacuum, the armed forces of Togo have decided to declare Faure Gnassingbe the head of state." He concluded, "The Togolese armed forces swear allegiance to Faure Gnassingbe as President of the Republic of Togo." At the same time, General Nandja announced the closure of the country's borders. As a result of this measure, the President of the National Assembly, who was returning home from his trip, was not allowed to re-enter the country. For all intents and purposes, the military thus created the "power vacuum."

AU AND ECOWAS REACTIONS

FOLLOWING THESE DEVELOPMENTS, messages of condolence began to pour in from world leaders, as well as condemnatory reactions to the installation of Faure Gnassingbe as the new leader of Togo. Noteworthy among the reactions was the AU and ECOWAS's swift and vehement opposition to, and condemnation of, the takeover of power.

Nigeria's President Olusegun Obasanjo, the current chairman of the AU, said the appointment was unconstitutional and refused to accept the transition of power. AU Commission Chairperson Alpha Omar Konare labelled the succession a military coup d'état. He called for the constitutional order to be re-established and for the President of the National Assembly to assume power properly. Both the Executive Secretary of ECOWAS, Dr. Mohamed Ibn Chambas, and ECOWAS Chair, President Mamadou Tandja of Niger, were unequivocal in expressing ECOWAS's opposition to the coup plot.



Billboard in the Togolese capital, Lomé, of Gnassingbe Eyadema, the man who ruled over this West African nation for 38 years (February 2005).

SUBSEQUENT EVENTS

THE STRONG AND DECISIVE REACTION of other African leaders was indeed unprecedented and took the Togolese authorities by surprise. In an effort to manage the general tone of opposition to the military takeover, the Togolese Parliament stepped in. It convened an extraordinary session of Parliament on February 6 to amend the Constitution, which the Army had suspended the day before to allow the President of the National Assembly to stand as President for the next five years. The Parliament, however, subsequently replaced the legitimate Speaker of the National Assembly, Natchaba, with Gnassingbe.

Upon ECOWAS's insistence that the process was still flawed and in violation of the Constitution and ECOWAS principles, Gnassingbe made some concessions. Although he refused to step down, he announced that he would not serve the full five years of his term. Rather, he called for presidential elections within two months, as stipulated by the original version of the Constitution. This decision did not sway ECOWAS. Following his refusal to

step down, ECOWAS, at its extraordinary session in Niamey, Niger, on February 19, imposed sanctions on the illegitimate regime.

In the face of this opposition, the Togolese authorities resorted to constitutional means to maintain the appearance that it was committed to democratic principles. The Parliament met to reverse its earlier decision made on February 6. The reversal of its prior constitutional amendment left unclear who was running the country because the National Assembly stopped short of asking Gnassingbe to step down. It was not until February 25 that Gnassingbe finally announced that he was stepping aside but would be running as the presidential candidate of the *Rassemblement du Peuple Togolais* (Rally of the Togolese People, or RPT). The next day, Abbas Bonfo, the Deputy Speaker of the National Assembly, was sworn in as interim president. The Parliament set the presidential election for April 24.

CONSTITUTIONAL ANALYSIS

BY ALL ACCOUNTS, THE EVENTS OF FEBRUARY 5 amounted to a classic military take-over in contravention of the Togolese Constitution. Article 65 of the Togolese Constitution stipulates that, in the case of a vacuum in the presidency created through death, resignation, or incapacity, the functions of the President shall pass provisionally to the President of the National Assembly or Speaker of Parliament. The Constitutional Court establishes and officially recognizes the validity of the vacancy. The provisional government then has 60 days within which to organize elections and elect a new president, who will serve a full term of five years.



Faure Essozima Gnassingbe sworn in as new Togolese head of state in February 2005.

ARMY SUSPENDED THE CONSTITUTION

In accordance with Article 65, Natchaba should have been sworn in as the interim head of state to run the 60-day transition period upon Eyadema's death. The Army's suspension of the Constitution and installation of Faure Gnassingbe as the new head of state amounted to a military coup d'état. Article 147 of the Constitution explicitly states that the Togolese Armed Forces are "a national, republican and apolitical army," which is "totally subject to the constitutional political authority that has been properly established." Article 148 further says that all attempts to overthrow a constitutional regime by personnel of the Armed Forces or the public security services are crimes against the nation and punishable by law.

Article 54 of the Constitution notes that in the case of a vacuum created in the Presidency of the National Assembly through death, resignation, or for "any other reason," the National Assembly shall elect a new person to fill the position. Although President of the National Assembly Natchaba was leading an official delegation to the European Union, he was still acting as the National Assembly President, even while outside the country, and did not die nor resign. Apart from death or resignation, Natchaba's removal and replacement could be justified under the "any other reason" language only if done by the National Assembly and for good cause. The Army did not provide a reason for removing Natchaba from office. More importantly, it was not the Army's function to do so, but that of Parliament. The Army did not have the power to appoint a new person to replace the National Assembly President; only the Parliament had this authority.

Furthermore, the Parliament did not act in accordance with the Togolese Constitution when it ignored the rules of succession and amended the Constitution to permit Gnassingbe's appointment as President. Article 150 of the Togolese Constitution stipulates that in the event of a coup d'état or any use of force to overthrow the constitutionally elected government, all members of the government or National Assembly have the right and duty to re-establish constitutional legitimacy by any means. It further states that, in such circumstances, all Togolese have "the most sacred of rights and the most imperative of duties" to disobey and organize to abort the establishment of an illegitimate authority. The National Assembly, however, did not restore constitutional legitimacy on February 6. Rather, it sought to install Faure Gnassingbe as leader of the nation, no matter what consequences might ensue.

The Parliament's actions raise several issues. According to the Constitution, only the National Assembly President can convene an extraordinary session, following a request made by the President of the Republic or by the absolute majority of deputies. Either Natchaba, as the National Assembly President, should have been present to convene the extraordinary session or the Parliament should have appointed a new Speaker in his stead. It is unclear whether the Parliament took these steps.

FOREGOING MANDATED ELECTIONS

Another issue is the Parliament's amendment to the Constitution that removed the legal requirement to hold elections in Togo within 60 days of the death of a President. The new article to the Constitution stated that the President of the National Assembly succeeds the President of the Republic and may remain in office until the end of the previous President's mandate. According to the Togolese Constitution, at least four conditions must be met before the Constitution can be amended. First, the authority to amend the Constitution is shared concurrently between the President of the Republic on the advice of the Prime Minister and at least one-fifth of the members of the legislature. Second, 80 percent of the National Assembly must vote for the amendment in order for it to be adopted. Third, in the event that this majority is not attained, the bill shall be subjected to a national referendum. Finally, the Constitution is categorical in stating that no procedure for amendment shall be initiated or pursued during an interim period or vacancy, or when it relates to the territorial integrity of the nation.

The Assembly likely satisfied the first two conditions necessary to amend the Constitution, which negated the need for a referendum. But it is difficult to see how the last condition could have been met or overcome. When the amendment was made, there was no President of the Republic or of the National Assembly. Certainly, the National Assembly passed the amendment when a vacancy existed and during an interim period. The amendment therefore did not meet the test of constitutional validity.

In sum, the Assembly's actions were unconstitutional. It failed to do at least three things required by the Constitution: (1) to condemn the suspension of the Constitution and the installation of Gnassingbe as the new head of state; (2) to call on the Constitutional Court to rule on the legality of the takeover and demand the arrest and prosecution of Gnassingbe and the army brass; and (3) to call for the return of the Speaker of the National Assembly to assume his legitimate role as interim President. To add to its catalogue of constitutional failures, the Parliament convened an emergency session of Parliament in contravention of constitutional procedures and amended the Constitution contrary to its letter and spirit.

Internal opposition to this chain of events was expressed on the radio, in the newspapers, and on the streets. The police and military met these legitimate and constitutionally protected political expressions with force, resulting in the death of one protester on February 12. Three more died in another encounter with the police. The government shut down seven private radio stations and a television station and banned all political rallies. Interestingly, Gnassingbe, who in his "acceptance speech" had vowed to respect the democratic rights of the Togolese people, upheld the police's actions and condemned the march organizers. Indeed, the actions of the Togolese authorities violated the Togolese Constitution, the African Charter on Human and Peoples' Rights, and international law, which the Togolese Constitution itself upholds.

ANALYSIS OF THE ECOWAS MOVE

INITIALLY ESTABLISHED AS AN ECONOMIC UNION, the objectives of ECOWAS, as defined in the ECOWAS Treaty, did not include protection or promotion of human rights and democracy. The principles guiding ECOWAS in the realization of its objectives, however, include, under Article 4(g), "the recognition of promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights." Guided by this principle, ECOWAS has issued declarations and protocols, which recognize the inextricable link between development and peace, security, human rights, the rule of law, and democratic governance.

Thus, at the 14th Session of the Authority of Heads of State and Government held in Abuja, Nigeria, in July 1991, ECOWAS created the Declaration of Political Principles of ECOWAS (Declaration). The Declaration reaffirms the need to promote rights, liberties, and political pluralism. In particular, the Declaration states: "We believe in the liberty of the individual and in his inalienable right to participate by means of free and democratic processes in the framing of the society in which he lives. We will therefore strive to encourage and promote in each our countries, political pluralism and those representative institutions and guarantees for personal safety and freedom under the law that are our common heritage."

The Protocol Relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security (Protocol), adopted in 1998, further strengthened the 1991 Declaration. Article 25(e) of the Protocol stipulates that one of the conditions for its application shall include a situation that involves "an overthrow or attempted overthrow of a democratically elected government." A Supplementary Protocol was adopted three years later. It expresses "[z]ero tolerance for power obtained or maintained by unconstitutional means" and considers the armed forces an "apolitical" body that "must be under the command of a legally constituted political authority."

In accordance with these principles, ECOWAS took the proper steps of not recognizing the new Togolese regime and imposing sanctions when Gnassingbe's concessions fell short of stepping down. Gnassingbe's decision to allow for elections within the 60-day period did not comply with the Constitution, as amended on February 6. It was up to the National Assembly to have made that decision through another constitutional amendment. Interestingly, the National Assembly later legitimized and endorsed Gnassingbe's decision, demonstrating the extent of Gnassingbe's control in Togo.

ECOWAS MOVE: A CRITIQUE

THE AU AND PARTICULARLY ECOWAS ACTED PROPERLY in flexing their muscles to ensure that their commitment to zero tolerance for unconstitutional change of government was genuine. In so doing, ECOWAS set an important precedent for and a strong message on the need to groom and maintain democratic governance in the sub-region.

“The government shut down
seven private radio stations
and a television station
and banned
all political rallies.”

ECOWAS, however, has not finished its job. Its mission is twofold: first, to reverse the military coup and unseat Gnassingbe, and second, to ensure that the proper processes are put in place for free and fair elections. Although the first mission was successfully accomplished, the second was not. ECOWAS should have ensured that the Parliament recognized the National Assembly President, Natchaba, and not the Deputy President, Bonfo, as the interim president, as required by Article 54 of the Constitution. Parliament's replacement of Natchaba with Bonfo was unconstitutional.

ECOWAS should also demand that the Parliament put in place certain short-term reform measures to foster the creation of a long-term sustainable democratic culture in Togo. The short-term measures should include: (1) the review of laws and policies

that were used in previous elections to frustrate opposition efforts to mount effective campaigns (of particular importance are the draconian press laws, which allow the government to jail journalists for “defaming or insulting” the President, the courts, or other state institutions); (2) the assurance of fair and equal access of the opposition to the state media; (3) determined and genuine efforts to expunge the electoral list of “ghost names,” which are estimated to constitute as much as 25 percent of registered voters; (4) better representation of the opposition in the national electoral bodies; and (5) revision of the electoral codes, which remain outdated and weighted in favor of the incumbent.

ECOWAS’s mandate is to ensure that “every accession to power must be made through free, fair and transparent

CONCLUSION

PERHAPS MOTIVATED BY THE CIVIL CONFLICTS that have affected Sierra Leone, Liberia, and the Ivory Coast, ECOWAS realized that it could no longer passively observe the deterioration of the political situation in Togo. This preventive approach is commendable and sets a very positive precedent. The question is how long ECOWAS can sustain this policy of prevention. The case of Togo is a fairly “easy” assignment, considering that it is a small country and of little strategic significance to any of the major powers. Above all, it was headed by a relative newcomer to politics who was riding on the dictatorial legacy of his father. If ECOWAS would have had to confront a regional superpower, such as Nigeria, or an entrenched leader, such as Eyadema himself, perhaps the response and outcome would have been different. It is worth a reminder that Nigeria continues to harbor former Liberian leader Charles Taylor, against whom the UN-backed Special Court for Sierra Leone has issued an arrest warrant in connection with the atrocities committed in the Sierra Leonean civil war. But ECOWAS has not been able to act against Nigeria. Time will tell how ECOWAS’s precedent will fare.

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Togolese lawyers take to the steps of the court to protest the seizure of power by Faure Gnassingbe (February 2005).

elections.” This responsibility does not lie in the mere monitoring of the election process. It involves facilitating an even political playing field. Unless these measures are put in place, the mere presence of an ECOWAS election monitoring force will not make much difference.

The long-term measures necessary for democratic reform in Togo include an overhaul of the Constitution to conform to its 1992 format, particularly restoring the two-term office for a President (instead of the indefinite term) and abolishing the one-year residency rule which limits exiled politicians from standing for office. Another measure is creating a favorable climate to allow for the effective functioning of Togolese civil society, which remains paralyzed. Because the RPT has been in power for 38 years and maintains a stranglehold over the state media, the judiciary, the national assembly, and other state institutions, democratic structures must be established to ensure effective checks and balances in the political structure. The opposition remains battered, fractured, disorganized, and in need of ample time and space to reorganize. These are issues that cannot be resolved within 60 days. This does not justify, however, opposition demands for an extension of the 60-day period. Doing so would itself violate the Constitution. These long-term measures remain the political duty of the Togolese people but can be addressed more adequately if the short-term measures are established first.