



Situation Report

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The Power of Regional Economic Communities: predicting future trends and mitigating the phenomenon of unconstitutional power alteration in Africa

Introduction

Political power is one of the keenly contested resources in both developed and developing countries. Although historical evidence suggests that different forms of competition existed for the contestation of power, there is today, a large consensus that democracy is the acceptable format for political power contestation. Democracy is underpinned by a number of principles which include inter alia, periodic change of power based on a constitutional order. Thus, when power alternation occurs outside the agreed upon constitutional framework, it is considered unconstitutional.

The history of governance in Africa is decked with a number of different means and methods of power alternations.¹ Whilst some of these fall within the prescribed rules and processes of the countries involved, others do not. The methods which have been used include armed conflicts, *coup d'états*, periodic elections (a great number of which are fraught with allegations of vote buying, intimidation and rigging although some have been credible) and in more recent times, popular revolts backed by armed forces. The cost of unconstitutional changeovers has been huge on the countries involved, the sub-regions where they occur and invariably the continent as a whole.

Against this backdrop, the African Union (AU) and its Regional Economic Communities (RECs) have taken determined positions against unconstitutional power alternations.² Recognising the challenges of electoral democracy in the sub-region, the Economic Community of West African States (ECOWAS) for instance has promulgated a supplementary protocol on democracy and good governance to complement and clarify provisions in the mechanism for conflict prevention, management, resolution, peacekeeping and security. Although the efforts of some RECs have yielded some successes, these have been minimal.

Using secondary sources of information and participant observations, the paper presents a historical overview of unconstitutional power alternations in Africa, explores the provisions available to the RECs in addressing current trends and the challenges inherent in the provisions. It will conclude with some suggestions for improving the existing mechanisms available for mitigating the phenomenon in Africa.

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The history of unconstitutional power alternation in Africa may be broadly periodised into three generations. The first generation can be traced largely to the post independence period in many African states. The second generation is traceable to the post-Cold War era whilst the third generation which is the most recent, can be identified from the 2000s. The first generation of unconstitutional takeovers commenced in the early 1960s and generally involved power alternations from first generation independence leaders. The common sense of purpose around which almost all the citizens within the colonial African state rallied to fight for independence was short lived.

The realisation of the ultimate goal – the independence from the colonialists, also marked the commencement of fierce political rivalry among those who had once been a united force. Newly independent African leaders did not hesitate to imitate the structures for repressing dissent which they had fought against – the use of state security apparatus to suppress political opposition.

Gradually, the political space inherited at independence begun to shrink through the exclusionary governance practices perpetuated by a number of the first generation leaders. For instance, in 1958, President Kwame Nkrumah of Ghana enacted the Preventive Detention Act which allowed him to detain people for a period not exceeding five years, without trial. Subsequent amendments in 1959 and 1962 allowed him to extend the period of amendment indefinitely.

The exclusionary practices were made possible by the lack of viable governance institutions in some countries. Many of these institutions were either embryonic (in terms of structures as well as qualified personnel to man them) or non-existent (this was particularly so in Francophone countries where most decisions of governance were taken in the metropole and implemented in the colonies).

Channels for addressing grievances and seeking redress were also limited. Thus using the apparatus of the state and heavy handedness, leaders of newly independent African countries, perceiving themselves as the Messiahs of their countries, held on to their newfound power. In a few instances where some of these institutions were available and appeared to be fairly strong, the new leaders enacted draconian laws to circumvent the process. Again, using the example of Ghana, it was clear that Nkrumah's frustrations were compounded by the fact that the law courts appeared to be working and political trials were not yielding his expected results.³

The effects of the exclusionary governance practices in many African countries were further aggravated by the intense superpower rivalry between the United States of America (USA) and the Union of Soviet Socialist Republics (USSR). The two superpowers and their respective allies sought to establish spheres of ideological influence among the newly independent states including those within the African continent. As such, they were each ready to support the group which could further their ambitions.

Consequently, with opportunity for assistance, those who could not see viable channels for political participation in a democratic manner resorted to the use of violence to force out incumbents. Coups, successful and otherwise, counter coups, attempted and successful assassinations, and armed conflicts (many of which were proxy wars) became the order of the day in the newly independent states especially in West Africa and in the Great Lakes area. These eventually led to unconstitutional changeovers in the newly independent African states.

The beginning of the first generation of political alternations is set in 1963. The country is Togo and the victim is Sylvanus Olympio, the country's first independent leader. Shortly after the overthrow and subsequent killing of Sylvanus Olympio, several other *coup d'états* took place in Africa (Nigeria, Ghana, Congo Brazzaville, Congo etc). Whilst some of the usurpers such as Gnassingbe Eyadema of Togo were able to hold on to power for several decades, others like General Emmanuel Kwasi Kotoka were short lived as they suffered counter coups. Even though a relatively small group of leaders were able to hold on to power through repression, there

were several political hiccups with alternations between civilian and military rulers on the continent.

Subsequent to the first generation of unconstitutional takeovers, there appeared to have been a moratorium on unconstitutional takeovers. Signs of such moratorium first emerged towards the end of the 1980s when internal and external pressures against one-party regimes in Africa started to show some signs of success. At the beginning of that decade, multilateral aid agencies intensified advocacy against generally autocratic and repressive regimes in Africa. Coupled with the external pressure, the voices of social movements in various African countries became loud as they advocated participatory governance. In the end, rather than openly calling for democratic change, multilateral aid agencies advocated good governance as the way forward. The components of good governance were identified as including relative freedom and security in society, keeping corruption at bay as much as possible, and maintaining a high degree of transparency and accountability. Consequently, the good governance indicators served as conditions upon which aid was granted to African countries. The pressure that was brought to bear on governments in the wake of these conditions pushed them to speed up the process towards democratisation.

The 1990s marked the beginning of the second generation of political alternations. Despite the fact that this period marks the beginning of the third wave of democracy, it was also the period during which brutal wars ravaged many parts of Africa. This paradox can be attributed to a number of internal and external factors. These include the dynamics of the post-Cold War, the availability of information due to accelerated information communication technology and the pressures of international financial institutions.

The end of the Cold War meant that the two superpowers no longer needed the systems propped up in the individual African countries to spread their spheres of influence. Instead, with the triumph of capitalism over communism, there were two pressing needs – an eagerness to promote the creation of stability for markets and assurances of constant supplies of much needed raw materials produced in Africa. Thus, enormous pressure was placed on African leaders to democratise. Given its chequered political history, very little had been achieved in terms of strengthening the nascent institutions that were needed for the democracy project that was to be undertaken.

Consequently, those at the helm of political power circumvented the process to their advantage, maintaining ethnic-driven patronage systems behind a veil of corrupted principles of democracy, thereby deepening existing divisions and creating new ones.⁴ Like chameleons, a number of military rulers and autocratic leaders changed the colours of their garbs and donned civilian apparels thus making claims to democracy, however pretentious such claims were. It was therefore no surprising that the democracy of the early 1990s was severely flawed as the principles were interpreted by the then ruling class to suit their own political agenda. Those outside the ruling class were prevented from entering the political fold.

Over time, a lot of African countries decided to become democratic even if it meant that in the main, they only organised elections and disregarded the other principles of democracy such as the promotion and protection of rule of law, multi-party systems and political participation among others. Within the same period, a number of armed conflicts racked several parts of the continent. The end of the conflicts in the late 1990s and early 2000s ushered in democratic rule in several countries.

Finally, in the 2000s, three trends of power alternations seem to be gradually settling into the political culture comfortably. For the purposes of clarity, we categorise these trends into phases under the third generation of alternations. In Phase 1, there were attempts by incumbents to exploit the rules for contestation and alternation. Whilst some latter day attempts were unsuccessful, there have been some notable successes – Blaise Compaore of Burkina Faso, Iddris Deby of Chad, Omar Bongo of Gabon, Lansana Conte of Guinea, Sam Nujoma of Namibia,

Gnassingbe Eyadema of Togo, Yoweri Museveni of Uganda⁵ and most recently Mamadou Tandja of Niger have all manipulated the rules of the game.

All those above-mentioned in one way or the other manipulated the rules of democracy by holding referendums for the elongation of their term limits. Despite the fact that these changes were done within the constitutional order (through the use of referendums) they were still fundamentally flawed because the driving force of the processes was legality rather than legitimacy. By extending such term limits by definite terms or indefinitely, these leaders undermined a key principle in democratic systems – that different groups are entitled by law to compete for power.⁶ Overstepping the boundaries of legitimacy by exploiting legal principles is to strangle the values of inclusivity and participation which democracy seeks to promote.

Phase two of the third generation has been characterised by electoral irregularities. Although the magnitude of such irregularities tends to be higher with the incumbency, opposition candidates are also not completely blameless of electoral malpractices. Unfortunately, the international community has tacitly accepted this aberration by replacing the yardstick of 'free and fair' used in measuring the legitimacy of elections with 'credible elections reflecting the wishes of the people'.⁷ Although this may undoubtedly be a more realistic way of assessing elections, this shift seems to suggest that credible elections can take place even if they are not free and fair. This, in our view is dangerous because the credibility of elections is hinged on ensuring that a fair playing field is provided for all contestants and groups so that voters are able to exercise their franchise freely.

Finally, Phase 3 of the third generation power alternations has been *coup d'états* in different forms. Whilst some of the *coup d'états* have been directed against persons in power, others have been against the rules and processes for the legitimate acquisition of state power. A noteworthy case is the August 6 2008 power alternation in Mauritania. In that incident, the military went to the President's house, arrested him and took over the administration of the country.⁸ Despite condemnation by the AU, individual countries and the international community at large, the military has held on to power.

Another form of *coup d'états* creeping up on the continent is the Madagascar model where the military ousts an elected government; it does not take over the rule of the country but instead, instates a civilian ruler. The difference between the Mauritanian and the Madagascan models is that in the case of the former, the military directly governs the country whilst in the case of the latter; a civilian is propped up by the military to govern.

The third form is the Guinean model, glimpses of which first occurred in Togo. This is when there is a hijack of the constitutional provisions for replacing presidents in the event of the death of a sitting president. Whilst the military in Togo were unsuccessful in their attempts to overstep the constitution after the death of President Eyadema, the military in Guinea succeeded in taking over after the demise of President Lasana Conte. Unlike the two previous cases, Guinea's *coup d'état* was against the processes for legitimate acquisition of state power. Upon taking over power, Captain Moussa Dadis Camara promised he would not contest political power in any elections in 2009. He has however shifted elections from 2009 to 2010 and made pronouncements to the effect that he might be a contestant in the Presidential elections.

A brief history of the Regional Economic Communities

To serve as building blocks toward the eventual integration of the African Continent, the 1991 Treaty to establish the African Economic Community (the Abuja Treaty), proposed the creation of RECs as the basis for African integration. Article 88 of the Abuja Treaty states that the foundation of the African Economic Community is the progressive integration of the activities of the RECs, with the establishment of full continental economic integration as the final objective towards which the activities of existing and future RECs must be geared.

In 2000, the OAU/ AEC Summit in Lomé, Togo, adopted the Constitutive Act of the AU, which formally replaced the OAU in 2002. The final OAU Summit in Lusaka from 9 to 11 July 2001 reaffirmed the status of the RECs within the AU and the need for their close involvement in the formulation and implementation of all programmes of the union. From the above, RECs have long been seen as critical building blocks of Africa's development.

The maintenance of peace and security in their various regions became an important addition to the mandate of RECs, many of who were created to encourage economic cooperation, the creation of single markets and single currencies. However, the proliferation of armed conflicts and the instability occasioned by unconstitutional takeovers made the realisation of the expected benefits of the common markets elusive. The politically unstable sub-regions became unattractive destinations for investment and trade. It therefore, became evident that peace, security and stability were important preconditions to the realisation of the goals of the RECs.

Without delving into the specificities of each REC, we will discuss some common ways through which they can better mitigate unconstitutional power alternations in their regions. Our discussion is predicated on the assumption that the RECs although supra-national entities, are states writ which means that they have as much power as its member states are willing to give it. Emerging in a period where the principles of non-interference and iron clad sovereignty were the order of the day, many of the RECs did not have the legal and political authority to address unconstitutional takeover of governments. However, this changed when many governments bowed to the pressure for their states to become democracies. Metamorphosed into democratic rulers, leaders in Africa, many of who had come to power through coups and stayed on having rigged elections sought to guarantee their newly won positions of democratic leaders.

They were therefore more amenable to give RECs more power to address unconstitutional power alternations. However, the pace has not been the same throughout all the RECs. While some RECs like the ECOWAS have been able to promulgate protocols on democracy and good governance, others are in the process of negotiating similar instruments. This unevenness notwithstanding, the provisions of the Constitutive Act of the African Union which is binding on all member states, provides a legal basis for action even by RECs who may not have instruments specific to their sub-region.

A primary determinant of RECs' ability to mitigate the phenomenon of unconstitutional power alternations is dependent on the extent to which such occurrences can be predicted and timely effective action taken. Thankfully, the causes or perhaps motivations for unconstitutional changes are not shrouded in mystery. In Africa, more often than not, weak institutions, autocratic and paternalistic political leadership, cronyism and unavailable and/ or undeveloped democratic channels for interest articulation and aggregation combine in a rather interesting mix of motivators or causes, to promote unconstitutional power alternation. Although these do not justify unconstitutional alternations of power, they present real threats to democratic transitions and must therefore receive adequate attention.

The power of RECs to be able to mitigate unconstitutional power alternations, is dependent on a number of factors which include: early warning indicators generated scientifically; effective sanctions against usurpers of constitutional processes of alternation and timely; effective responses to unconstitutional alternations and the developments of common positions on democracy and good governance where they do not exist.

Although prevention is better than cure sounds like a mere cliché, it is true in that it is better to address the root causes of issues which motivate people to take power unconstitutionally rather than put in place fire fighting mechanisms after the deed has occurred. Heidrun Zinecker citing from Lowenthal and

Dominguez states that '... in most nations, effective democratic governance is still incipient, inchoate, fragile, highly uneven, incomplete, and often contradicted'.⁹ Against this background, RECs must work with their various member states to develop effective institutions to nurture democracy, create the political space for participation and enabling environments for competition. In this vein, RECs should encourage peace-building efforts in countries which although may not have witnessed manifest conflicts, suffer fragilities in various forms.

A number of authors show a correlation between slow or no growth and one or more forms of unconstitutional power alternations especially civil war and *coup d'états*. In his work *The Bottom Billion*, Paul Collier submits that low income, low and slow growth, stagnation or decline makes countries prone to civil wars and coups.¹⁰ Citing the examples of Botswana and Mauritius, Gavin Cawthra et al in their work *Security and Democracy in Southern Africa* buttress the point that there is 'a virtuous relationship between democracy and socioeconomic progress'. These assertions reveal that in their preventive efforts, RECs must pay attention to the socioeconomic conditions in the various countries by encouraging prudent economic and fiscal policies, accountability and zero tolerance for corruption in member states. The failure of democracy to provide its promised public goods has led to disillusionment among many segments of societies in African countries. The challenge is compounded with the blatant looting of the coffers of many countries in Africa by the ruling elite, many of whom are democratically elected (even if some of those elections were stage managed). Aning and Bah clearly point out the problem and proffer a solution to it when they state that 'the re-emergence of *coup d'états* is a manifestation of the weaknesses of the democratic systems that have been established; highlighting the need to ensure that democracy transcends the holding of periodic elections'.¹¹

Given the scope of activities needed for the strengthening of democracies in Africa, RECs must encourage the active participation of other stakeholders such as social movements and civil society organisations in the democratic discourse both at the sub-regional levels and at the national levels. Although some of the RECs such as ECOWAS and the Southern African Development Community (SADC) have provided useful frameworks for electoral democracy, the implementation of the principles are far from being satisfactory. For instance, in ECOWAS, most of the governments who have signed the supplementary protocol on democracy and good governance have not incorporated the principles into their domestic law. In such instances, social movements and civil society sectors can continue to push for effective implementation if they have the political space within which they can operate.

Another way through which RECs can mitigate unconstitutional power alternations is to impose effective smart sanctions on violating individuals or groups. Although Guinea has been suspended from ECOWAS and Mauritania and Madagascar from the AU, it has not led to the reinstatement of constitutional rule in these countries. This leads us to question whether the sanctions are sufficient to serve as a deterrent to would-be constitutional hijackers. This is clearly a difficult subject since sanctions must pose very little or no difficulties to the citizenry. It is even more difficult when the alternate power takes over from an entrenched civilian despot and is highly popular among the citizenry. In such instances, it appears that the RECs are constrained in applying the full rigour of the law. The decision by ECOWAS leaders to assist the Junta led by Dadis Camara to hold elections after it had unconstitutionally taken power upon the death of Conte reveals a deep challenge faced by RECs in countries where democracy was paid lip service.

Eliciting compliance through the imposition of sanctions under such tenuous circumstances can be an uphill task for RECs. Guinea and others that present similar challenges therefore require collaborated efforts between RECs, the supra-national parliaments (where they exist), civil society actors and the international community as a whole. There must be collaborated and sustained efforts until constitutionalism triumphs over the use of force.

Efforts by SADC to prevent Madagascar's Andry Rajoelina from speaking at the UN's General Assembly is indicative of the power of RECs towards mitigating the appeal of unconstitutional alternation of power. Although Rajoelina had agreed to form an inclusive government following the UN-led mediation efforts, the subsequent composition of the government was far from being inclusive. SADC's decision to prevent him from taking the floor of the Assembly was a clear signal that he was unwelcome in the comity of civilised nations.

There is also the need for RECs to make definite statements on the abuse of referendums by politicians in contemporary times. Referendums are constitutional provisions for obtaining the consent or disagreement of citizens on a given matter. However, as evinced recently, some leaders have manipulated the provisions to their advantage. In the case of Niger, identified above, although the ECOWAS have provisions against making substantial provisions against electoral laws, it is limited to six months prior to elections. This clearly explains why Niger's Tandja chose to hold his referendum early enough to avoid being caught in the web. It is therefore important for RECs to clearly state their positions on the exploitation of referendum provisions by some leaders in Africa.

RECs must also guard against their member states that undermine the efforts of the collective. It does not augur well for the efforts of the RECs when powerful leaders in the region lend support to those who undertake unconstitutional power alternations. The request of AU Chair, Muammar al-Gaddafi that sanctions should be lifted against the Junta in Mauritania provides a lesson not only to the continental body but also to RECs to guard against such leaders. Similarly, pronouncements made by Senegal's President Abdoulaye Wade on the Guinean Junta do not augur well for the efforts at curbing unconstitutional power alternations in the West African sub-region and Africa as a whole.

Finally, it is important to ensure that all RECs calibrate their policies and protocols to have a common stance on unconstitutional alternation of power. The continent already has useful legal and policy provisions which provide guidelines for issues of power alternation. The peer review mechanism within the New Partnership for African Development, or NEPAD, for instance provides an opportunity for preventive efforts. The AU Charter in Democracy, elections and governance also provide a useful legal platform for RECs to engage. Unfortunately, despite its useful principles, it is not in force because it does not have the requisite number of states to bring it in force. Efforts must therefore be made by RECs through their various organs, to encourage their members to ratify the Charter, as it will provide useful entry points especially for countries without similar treaties. Emphasis must be placed once again on the need for the RECs to negotiate space for civil society and citizen participation in these efforts. The importance of such space for political participation derives from instances where civil society has been given the space to grow, attempts of unconstitutional power alternations have been halted by citizens even without the explicit involvement of RECs.

Conclusion

Globalisation and accelerated regional integration in other continents have provided a new lease of life to RECs in Africa. It is evident that no country on the continent has either¹² the political or economic power to negotiate on its own. The implication is that the membership of RECs is much more important for states in contemporary times than has ever been. It can therefore be surmised that RECs have the potential to play a more pronounced role in the politics of states than they have ever had in the past.

Such potential must be actualised by RECs to ensure that efforts to maintain international peace and security in their regions are not be compromised by avaricious politicians, bent on manipulating and exploiting laid down constitutional provisions to their advantage. RECs in Africa must therefore be more proactive in nipping the worrisome trend of unconstitutional alternation of power in the continent, if the socioeconomic and political gains of the twenty first century are to be sustained and advanced.

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- 1 For more on this, see for example, Mukandala Rwekaza (2001), The State of African Democracy in *African Journal of Political Science*, Vol. 6, No. 2, Pp 1–9
 - 2 The Economic Community of West African States intervened in Togo and Guinea Bissau and remains engaged with Niger, Guinea Conakry and other countries where there are crises over the democratic process.
 - 3 S.G Antor and Kojo Ayeke both leaders of the Togoland Congress Party were acquitted and discharged on charges of organising, managing and operating a terrorist training camp at Alavanyo in the then Trans Volta Togoland in 1957.
 - 4 Darkwa Linda (2009), *Complementary Approaches to Co-existence Work, Focus on Coexistence and Democracy Building in West Africa*.
 - 5 For more on this, see Daniel Vencovsky (2007), Presidential Term Limits in Africa, *Conflict Trends*, No. 2 pp 15–21.
 - 6 For more on this, see Vanhanen, Tatu, *Prospects of Democracy: A Study of 172 Countries*. New York: Routledge, 1997,31.
 - 7 There has been a shift in the tone of Election Observer Missions from free and fair elections to credible elections reflecting elections.
 - 8 BBC, Wednesday 6 August 2008 17:24 UK, accessed on 5 September 2009, 09:28.
 - 9 Zinecker Heidrun (2009), Regime- Hybridity in Developing Countries: Achievements and Limitations of New Research on Transitions in *International Studies Review* Vol.11, No.2, P. 304.
 - 10 Collier Paul (2007), *The Bottom Billion Why the Poorest Countries are failing and what can be done about it*, Oxford University Press Pp 17–36.
 - 11 Aning Kwesi and Sarjoh Bah (2009), *ECOWAS and Conflict Prevention in West Africa: Confronting the Triple Threats*, Center on International Cooperation, New York University.