



ISS Seminar Report

- Title:** The African Union and the Challenge of Unconstitutional Changes of Government in Africa
- Place:** ISS Conference Room, Pretoria
- Date:** Wednesday 18 March 2009
- Presenter:** Mr. Issaka K. Souaré, Senior Researcher, African Security Analysis Programme (ISS), Pretoria
- Respondent:** Mr. Francis Ikome, Senior Researcher, Institute for Global Dialogue, Pretoria
- Chair:** Richard Cornwell, Senior Research Fellow, African Security Analysis Programme (ISS), Pretoria
- Rapporteur:** Ottilia Anna Maunganidze, Intern, African Security Analysis Programme (ISS)

Africa's post-colonial history is plagued with unconstitutional changes of government, principally through the staging of military coups. The last eight months have seen the governments of three African countries being toppled by military officers (i.e. Mauritania, 6 August 2008, Guinea, 23 December 2008, Madagascar, 17 March 2009), while some other changes in government across the continent have, strictly interpreted, also been unconstitutional. The prevalence of this phenomenon, and the recent political assassination of the president of Guinea-Bissau has led many to wonder about the effectiveness and the dissuasive effect of the African Union's policy on and response to unconstitutional changes in government on the continent.

The AU, as per the July 2000 Lomé Declaration, condemns unconstitutional changes in government. On Wednesday, 18 March 2009, the African Security Analysis Programme of the ISS hosted a seminar whose aim was to unpack the AU's policy on unconstitutional changes in government and to establish whether the policy is sufficient and effective in dealing with the phenomenon.

The Chair, Richard Cornwell, in his introduction highlighted the appropriateness of the topic, given the coup d'état that took place in Madagascar just the previous day following three months of political unrest. He noted the peculiarity of the

Madagascar situation and asserted that the presentations would help to clarify issues relating to Madagascar and more generally to the trend of unconstitutional changes in government that seems to pervade the African continent.

The presentation of Mr. Issaka K. Souaré gave a general overview on the AU's policy on unconstitutional changes in government, but he used specific examples to illustrate this. He outlined the scope of his presentation as follows:

1. Conceptualisation of the notion of “unconstitutional change in government”.
2. The AU's policy position on unconstitutional changes in government and the rationale behind it.
3. An assessment of the policy.
4. Recommendations towards a better policy of a “New African Governance Architecture” (NAGA)

In terms of the Lome Declaration, an unconstitutional change in government can occur in four different situations. These instances are as follows:

1. A military coup d'état against a democratically elected government;
2. Intervention by mercenaries – i.e. foreign elements toppling the government on behalf of local actors.
3. Civil war – i.e. replacement by armed dissident groups and/or rebel movements
4. Refusal by incumbent government to relinquish power to the winning party following a free, fair and regular election.

The first three types of unconstitutional changes of governance all require that a democratically elected government be ousted and replaced by other forces, while the last one relates to the failure of governments to maintain constitutional democracy.

Souaré indicated that he would focus primarily on the unconstitutional changes in government by way of military coups. He turned then to a discussion of the AU's policy position on coups d'état and their rationale behind it.

The AU's position on coups is outlined clearly in the Lome Declaration and in Article 30 of the Constitutive Act of the African Union. This is to consider them as unconstitutional changes in government, which to be condemned by the continental body. With a particular attention to military coups d'état, African leaders declare in the Preamble of the Lomé Declaration that “the phenomenon of coup d'état has resulted in flagrant violations of the basic principles of our Continental Organisation and of the United Nations.” Souaré noted that the Lome Declaration gives great acknowledgement to the need for a strict adherence to “principles of good governance, transparency and human rights” and the “strengthening of democratic institutions”.

The policy further stipulates that the AU must suspend any country in which a coup is staged for a period of six-months, during which the new “government” must take steps towards establishing constitutionality through, for example, organising free and fair elections and respect for the constitution.

The presenter contended that the rationale behind the AU’s policy position can be best understood by looking at the events that led to the Lome talks and the eventual drafting and signing of the Declaration. Firstly, African leaders had reviewed various patterns of changes of government and had resolved that the best means to do so was through constitutional channels. In the decades immediately following independence across the continent, military coups were a normal occurrence until 1990. According to Souaré, the condemnation of various regimes emerging from coups prior to 1990 were not informed by any continent-wide policy position but based on the perceptions various countries had of the new regime, particularly about their relationship with the ousted regime (e.g. Busia after Nkrumah in Ghana, 1966; Idi Ami after Obote in Uganda, 1971; Samuel Doe in Liberia in 1980; etc.). He noted that the coup d’état that occurred in Sierra Leone in 1997 was the catalyst to the coming together of African heads of state to resolve to have a position on unconstitutional changes in government, the result of which was the Lome Declaration.

In trying to explain the rationale behind the Lomé Declaration with regard to coup d’état, the speaker opined that a coup might oust a democratic government (democratic in how it came to power and how it governs) or an undemocratic one. Whichever way it is looked at, he noted that the AU position is to ensure that the democratic process is restored by returning to the status quo ante (if the ousted regime was democratic), or established democratic order by transforming the erstwhile undemocratic order.

In his evaluation of the AU’s policy and its reactions to unconstitutional changes in government, Souaré noted that to date the AU has been consistent in its application of its policy. However, he noted that this consistency was with regards mainly to unconstitutional changes in government by way of a military coup d’état and that there appeared to be no coherent position with regards to the other forms. In this regard, he mentioned the recent examples of Zimbabwe and Kenya, where both countries went to elections but the election results were disputed and the two main parties that were claiming victory were forced into coalition/national “unity” governments.

In this regard, the speaker opined that the AU should not only be reactionary but should also begin with the condemnation of undemocratic governments or those abusing the democratic process. He thus contended that the best way would be for the AU’s position to be both reactive and preventive.

Souaré then turned to his recommendations towards a more legitimate and coherent response to unconstitutional changes in government. He argued that the best approach would be one that combines pragmatism with idealism. In this regard he listed the following as his recommendations:

1. Maintaining the Lome Declaration and being consistent in the application of the policy as well as dealing with matters on a case-by-case basis.
2. Now allowing self-legitimization e.g. prohibiting coup leaders from running in elections that they ought to organize to return the country to constitutional order, for the likelihood of them manipulating the process in their favour is high.
3. Firmer actions against obdurate incumbents i.e. move away from promoting governments of national unity *after* disputed elections.
4. Adopting a binding continent-wide policy on two-term limits of a maximum of seven years each for presidential mandates. According to Souaré, the more Africa allows itself to become democratic (through applying Samuel Huntington's theory on democratic turn-over and consolidation), the better positioned the AU will be to deal with undemocratic governments. He noted that since 1990, only two leaders (Nicephore Soglo in Benin in 1996 and Mandela in South Africa in 1999) have left power constitutionally without having served their two constitutionally allowed mandates. Almost all other leaders who have left power constitutionally during this period have done so after all their presidential terms had expired and not because they had been democratically removed.
5. Prohibition of immediate family succession.

Souaré argued that if these recommendations are strictly implemented then there is hope that constitutional democracy will prevail in Africa.

The respondent, Francis Ikome began his presentation by applauding the Lome Declaration as a great political initiative by Africans for Africa's benefit. He also pointed out that the inclusion of the Lome Declaration policy in the 2006 African Charter on Democracy, Elections and Governance has served to cement the AU's position with regard to unconstitutional changes in government and has thus given the Declaration more legal strength. He noted that there have been great strides towards democratization in Africa since 1990 and commended the reduction in incidences of unconstitutional changes in government.

Ikome noted that there are two sides to unconstitutional changes in government in Africa:

1. Conduct of the incumbent government
2. Position of those wanting to oust the government and come into power.

He argued that the Lome Declaration, though a spectacular initiative, suffers from two key shortfalls. Firstly, he argued that the Declaration takes a biased position on its definition of unconstitutionality. He noted that three of the classifications deal

with the process of acquisition of power, while only one deals with how to maintain power. Ikome argued that the Lome Declaration, in this regard, fails to acknowledge that the root cause of unconstitutional changes in government is poor governance. He argued thus that the Lome Declaration provides a shield for incumbent African leaders, especially those who are not necessarily promoting democracy. Secondly, he argued that the Declaration over-emphasizes “legality” over “legitimacy”.

With regard to implementing the policy, Ikome argued that the AU has faced dilemmas in the way in which it responds to changes in government. For example, he noted the precarious and difficult position in which the AU had to maneuver dealing with the 2005 and 2008 coups in Mauritania. He noted that the majority of the population were jubilant in 2005 that the government had been ousted, but that the AU was bound by its policy to condemn the coup. Ikome thus stated that he was of the opinion that the AU’s response has become a simple ritual of condemnation without due consideration to matters on the ground.

His second example was that of Madagascar, which he noted was a complex situation. He argued that if the AU’s policy is to assert its legitimacy, the AU has to be firm and consistent, which means that they must adhere to the policy and condemn and suspend Madagascar.

Ikome applauded the recommendations put forward by Souaré. He, however, was quick to point out that while the recommendations are noble, it should be borne in mind that the AU consists of African leaders, most of whom are undemocratic and thus it is unlikely that they would implement some of the recommendations especially with regards to presidential term limits.

Ikome, reiterating that he is of the view that the root cause of the governance crisis in Africa is the failure of African leaders to observe constitutionality and democracy, noted that the AU needs to take a firm stand on prohibiting “governments of national unity”. He argued that these coalitions are a flagrant violation of constitutionality and that they undermine foundational principles of good governance. He argued that while not strictly defined as such, these coalition governments – here he used the examples of Kenya and Zimbabwe – are unconstitutional changes in government and are tantamount to coup d’état. He argued thus that the AU was not consistent in the application and implementation of its policy since it has allowed and promoted coalition governments.

In conclusion, Ikome argued that what is needed in Africa is to get the “governance act right”. He contended that a failure to adhere to constitutional principles by incumbent governments was perpetuating the cycle of unconstitutional changes in governance.