



## Vibrant and Effective Legislature: Panacea to Unconstitutional Changes of Government in Africa

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### Abstract

Unconstitutional change of government currently witnessed in some parts of Africa is no doubt a response to failing democracies as it is being practiced in these countries. There is a growing dissatisfaction among the citizens with the way the government is being run – executive recklessness, corruption and oppression of the masses by the elites and those in power. However, one of the pillars of democracy is the doctrine of Separation of Powers. The crux of this doctrine is to divide government responsibilities among the different branches in such a way as not to permit any one branch from exercising the core functions of other. The essence of this is to prevent the concentration of power on one branch and each branch of government acting as checks and balances on the other. This is where the legislature plays an important role in checkmating the excesses of the executive arm and restore public confidence in government as in developed democracies. Unfortunately, we have not seen much of this in African democracies. Rather than the legislature playing its constitutional role of law making and oversight functions over the executive and judiciary can make public institutions and officers and thus making them accountable for their actions, reverse is the case. We see a legislature that is a tool in the hands of the executive to rubber stamp their corruption and silence perceived opposition. In this paper, we shall examine the role of the legislature in ensuring good governance and stable constitutional government in Africa.

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### Introduction

Unconstitutional change of government according to Article 28E of the Malabo Protocol <sup>[1]</sup> is a criminal offence. The Protocol defined unconstitutional change of government thus:

**1. For the purpose of this Statute, ‘unconstitutional change of government’ means committing or ordering to be committed the following acts, with the aim of illegally accessing or maintaining power**

- a) A putsch or coup d’état against a democratically elected government;
- b) An intervention by mercenaries to replace a democratically elected government;
- c) Any replacement of a democratically elected government by the use of armed dissidents or rebels or through political assassination;
- d) Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections;

- e) Any amendment of the Constitution or legal instruments, which is an infringement on the principles of democratic change of government or is inconsistent with the Constitution;
- f) Any substantial modification to the electoral laws in last six (6) months before the elections without the consent of the majority of the political actors.

## 2. For the purpose of this Statute, ‘democratically elected government’ has the same meaning as contained in AU instruments.

From the forgoing, it is clear that the spates of changes in government presently experienced in some African countries are no doubt unconstitutional. However, it has been asserted that “The rashes of successful military takeovers in some African countries signpost the failure of democracy on the African continent <sup>[2]</sup>.” It therefore means that whereas unconstitutional change of government could be considered as a crime under the Malabo Protocol, it is obviously as a result of the failure of our democratic institutions. It can therefore be said that ‘unconstitutional change of government is only but a symptom of bad governance’. If therefore we genuinely desire to find a lasting or permanent solution to the issue of unconstitutional changes of government in Africa, we must be prepared to tackle the issue of bad governance. Of course, to have a healthy democracy, there must be a proper balancing of power between the three arms of government – executive, legislature and the judiciary and each arm must be active and alive to their responsibilities. And when this is not in place, the result is dictatorial and despotic governments. This appears to be what is playing out in most of the African so called democracies <sup>[3]</sup>.

Sadly, the legislature as one of the institutions having the responsibility of fostering true democracy and ensuring good governance in Africa have not fared very well in this regard <sup>[4]</sup>. The legislature in African countries unlike their counterparts in the West seems more or less the stooges of the executive <sup>[5]</sup> instead of fulfilling their role of making laws for the good governance of the nation and acting as checks and balances for the executive. It has however been argued that the weakness of the African Legislature stems from their colonial history of the fact that they were mere appendages to give legitimacy to the government in power <sup>[6]</sup>. Rivers State in Nigeria since the 30<sup>th</sup> of October, 2023 have been witnessing what seem like a drama as the State’s House of Assembly is bent on unsettling the state Governor who is perceived as disloyal to his master. Sadly, these law makers are presumably acting under the control of the immediate past governor of the state. The question begging for answer is ‘are these law makers acting for the good of the state and the electorates or for the powers that be’?

In this paper therefore, we shall be discussing the Legislature/Parliament as one of the democratic institutions saddled with the responsibility of ensuring good governance and fostering true democracy.

### Causes of unconstitutional change of government (UGG) in Africa

The following have been identified by the African Peer Review Forum of Heads of State and Government as catalysts, causes and triggers of unconstitutional change of government in Africa <sup>[7]</sup>.

1. Integrity of democratic elections.
2. Diversity management and human rights.

3. Constitutional order and state legitimacy.
4. Economic governance and public sector accountability.
5. Popular uprising, militarisation, and terrorism.

Looking at these points, it is safe to hold that the Legislature plays a vital role in the determining and forestalling unconstitutional change of government in Africa. This is because, to a very large extent, a vibrant and an effective legislature will put in place electoral laws that will ensure the integrity of an election. Quite often, dictatorial government uses weak laws and legislation to perpetuate themselves in power which the AU Charter does not permit <sup>[8]</sup>. It has been observed that “while military mutinies are observed to dominate unconstitutionality in Africa, constitutional manipulations mostly by incumbents and ethnicity are equally observed to be powerful drivers contributors <sup>[9]</sup>.” Moreover, where leaders are not held accountable for their actions or in actions, there is the tendency for them to continue in such misbehaviour. Fortunately, this happens to be one of the major roles of the Legislature in a democratic setting. However, most African Legislatures fail in this regard in holding the Executive and its agents accountable because of their compromised position. Since the return to constitutional democracy in Nigeria in 1999, several probes by way of oversight functions have been initiated by the Nigerian National Assembly; sadly, no one has been brought to book or made to account for their fraudulent actions <sup>[10]</sup>. Painfully, the Nigerian National Assembly probes have been described as movement without motion <sup>[11]</sup>.

### The Legislature and Good Governance In Africa Role of the Legislature in Ensuring Good Governance in Africa

To achieve good governance in any country of the world, an effective and efficient Legislature must be in place. This is necessary to checkmate the activities of the other arms of government particularly the Executive, in ensuring transparency and accountability to the citizens of the country. It has been asserted that the performance of the Legislature in any nation will either make or mar democracy in the nation <sup>[12]</sup>. Whereas democracy is a government of the people, by the people and for the people, one of the ways the people can participate closely in the affairs of governance of their state is through effective representation. This aspect of democracy is most fulfilled by the legislature/ parliament as one of its core functions <sup>[13]</sup>. Thus, through the legislature, the citizens of a country are able to deliberate and air their views/ opinions on issues that affect them as the legislative houses are composed of members representing the different geographical zones of the nation. In carrying out this avowed duty as the voice of the people, the Legislative arm of any democratically elected government is expected to perform three major functions as stated by the Economic Commission for Africa and these are:

1. Making new laws, changing existing laws and repealing laws which are no longer needed – formulation of laws for the maintenance of peace, orderliness and progress of a country is the main function of the legislature.
2. Representing and articulating the views and wishes of the citizens in decision making processes and – being representatives of the people, they ensure that the wishes and the mandates of the electorates who elected them are carried out by the government.
3. Overseeing the activities of the Executive so that the

government is accountable to the people – by its oversight function, the Legislature is able to regulate and checkmate the activities of the Executive <sup>[14]</sup>.

Good governance includes institutional and structural arrangements, decision making processes, policy formulation and implementation capacity, development of personnel, information flows and the nature and style of leadership within a political system <sup>[15]</sup>. Good governance possesses the following attributes, which are: accountability, transparency, according to the law, responsiveness, inclusiveness/ equitability, effectiveness/ efficiency and participatory <sup>[16]</sup>. Good governance according to the United Nations has to do with one that is “participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law <sup>[17]</sup>.” From these definitions, it is obvious that the Legislature as a democratic institution has a fundamental role to play in ensuring good governance in any nation. This is with regard to the decision making process, policy formulation, accountability, information flows, effectiveness of leadership and transparent relationship between the rulers and the ruled, particularly on the allocation of scarce resources and power to the various segments of the society. Where these are absent, it can be said that what we have is bad governance and the result will be violent conflicts which could lead to instability and crisis in a state <sup>[18]</sup> as presently being witnessed in some African nations. The former Secretary General of the UN <sup>[19]</sup> harping on the need for good governance said: Good governance and sustainable development are indivisible. That is the lesson of all our efforts and experiences, from Africa to Asia to Latin America. Without good governance -- without the rule of law, predictable administration, legitimate power, and responsive regulation - - no amount of funding will set us on the path to prosperity <sup>[20]</sup>.

Thus, the peace, stability and prosperity of any nation is hinged on the quality of governance that is in place in such nation or state.

However, we have not seen a very strong Parliament in Africa that will checkmate the executive and hold them accountable for their actions and misrule. Lamenting the failure and frustration of the Legislature in this regard, a former Chairman of the Executive Committee of the Commonwealth Parliamentary Association said: “Parliament performed a rubber stamp function in that the government took Parliament for granted and expected rubber stamping of government Bills and other proposals which are routinely submitted to Parliament for approval <sup>[21]</sup>.” Part of the challenge of the African Parliament as has been argued is the lack of ‘proper institutionalization of the parliament <sup>[22]</sup>’. This leads credence to the fact that the problem with the parliament in Africa is systemic.

### **The Quality of Members of the Parliament viz-a-vis their Effectiveness**

It has been asserted that the reason why we have a weak and ineffective legislature in Africa is the quality of the persons that are elected to represent us in the Parliament <sup>[23]</sup>. Thus, “many African legislators lack the educational qualification, information, freedom and independence to perform their constitutionally mandated functions effectively and efficiently <sup>[24]</sup>.” Though studies have shown that a considerable number of members of the Legislature are well

educated like in Nigeria <sup>[25]</sup> this has however not translated to a vibrant and effective legislature as expected. It is one thing to be well educated but it another to fully grasp and understand the very essence of legislative representation. As Prof. Lumumba noted in his Keynote Address to the Nigerian Legislature in 2016, many who aspire to public offices do so not with the intention of serving the people but to steal and amass wealth. This according to him can be seen from the amount of money they spend in their campaigns and elections <sup>[26]</sup>. Therefore, the integrity and quality of character of our legislatures will determine their vibrancy and effectiveness. Until we have in Africa law makers who are in politics not just for the purpose of enriching themselves but to make a difference, we cannot have a vibrant and effective legislature. It has been argued that the idea of African leaders’ involvement in politics – parliamentarians inclusive - is to capture power for themselves <sup>[27]</sup>. Therefore, the dearth of principled and visionary men in the African legislative business has rather produced a very weak parliament. To demonstrate the height of greed and desperation of African legislatures, the Mace of the Nigerian Senate have been stolen or removed from the hallowed chambers twice <sup>[28]</sup>. Though it may be argued that the African Legislature by the provisions of the various national constitutions enjoys measure of independence they have however been described as little more than constitutional conveyer belts for presidential policies and legislative proposals <sup>[29]</sup>.

### **Ways of Ensuring Good Governance by the Legislature**

The control that Legislature exerts over the Executive stems from one fundamental principle that the Legislature embodies the will of the people and must therefore be able to supervise the way in which public policy is carried out in order to ensure that the yearnings and aspirations of the entire nation are in concordance with the said public policy <sup>[30]</sup>. In doing this, they must ensure that laws are enacted that will checkmate the excesses and recklessness of the other arms of government <sup>[31]</sup>.

In most western countries where the expectations of the entire citizenry are met, we hardly find unconstitutional government coming into power. However, the contrary is the situation in most African countries where poverty, unemployment, lack of infrastructural facilities, corruption and all manner of vices are in prevalence. These anomalies in most African countries can be reduced and curbed, if a vibrant, effective and efficient Legislature is in place. Sadly, the legislative arm of most African countries compromises its purpose by rubber stamping the illegal activities of the Executive <sup>[32]</sup> that only impose woe and anguish on the citizens. Besides, it has been asserted that the Legislature instead of helping to fight against corruption and bad governance have itself been champions of same <sup>[33]</sup>. The question therefore is, ‘what manner of persons do we have as members of the Legislature?’

Some of the oversight functions that can assist the Legislature in checkmating and curbing Executive recklessness that may result in unconstitutional change of government include:

1. Regulation of National Borrowings – the Legislature should ensure that loans are borrowed only for good reasons and not for frivolities. Where taking a loan will steep the country into further degradation rather than development, the Legislature should refuse approving it.
2. Scrutiny of Nominees – recommendation for appointment of nominees into top notch government

- offices such as Ministers, Ambassadors, etc., by the Executive should be thoroughly scrutinized by the Legislature to ensure that appropriate, capable and competent persons are appointed rather than allies and cronies of the members of the Executive.
3. Regulating Government Expenditure – the Legislature must ensure a good and proper management of revenue generated by the government. If the activities of government are to be deemed as the actual will of the people, then the electorates must reserve their powers of ensuring that the resources they put at the disposal of the government officials and agencies are judiciously expended for the public good<sup>[34]</sup>. Therefore, money raised or received by the government is required to be paid into one form of consolidated revenue fund and payment from some other fund must be authorized by the constitution or by an Act of the National Assembly. No withdrawal can then be made from the consolidated revenue fund without legislative authorization<sup>[35]</sup>.
  4. Approval of Annual Budget – before the implementation of annual/supplementary budget of a country, it must be presented to the Legislature for approval and until this is done the Executive cannot make any spending. Through this process the Legislature is able to regulate the spending of the Executive and also able to determine whether the monies in the government coffers is being misappropriated or not.
  5. Impeachment – where the Executive performs far below the expectation of the electorates, the Legislature may decide to pass a vote of no confidence on such government and thereby remove same from power.
  6. Scrutiny of contracts – this is to prevent inflation of prices of awarded contracts and also to ensure that the right people or organizations are awarded contracts. Many instances exist that members of the Executive arm of government float companies just for the purpose of diverting the contract sum to themselves.

These are some of the ways the Legislature can checkmate the activities of the Executive to ensure good governance where the will and aspirations of the electorates prevail over selfish personal gains that can lead to unconstitutional change of government in African nations. Sadly, these functions have been carried out more in breach than in actually checkmating the activities and policies of the Executive. What we have seen in the African Parliament is that those who are supposed to checkmate the executive colluding in terms of budget padding and other terrible vices. However where there is no will power on the path of the Legislature to carry out these duties tenaciously but rather collaborate with the Executive to do wrong, unconstitutional government will continue to be the order of the day in Africa.

### **Effect and Impact of Effective Legislature On Stability Of Government In Developed Democracies**

Whereas it is true that there cannot be a perfect human system, there are however several ways in which the Legislature in the West had performed better than their African counterparts. The constitutional democracy and good governance enjoyed by the United Kingdom today as against monarchical dictatorship can be traced to Parliamentary vibrancy<sup>[35]</sup>. The American Congress in the performance of its legislative functions sees itself as trustees of the nation<sup>[36]</sup>. One of the beauties of developed democracies is the fact there

is less of party control and influence on the members of the parliament<sup>[37]</sup>. This is due to the fact that the members of the Legislature see themselves more as representatives of the people rather than their different political parties. This is in contrast to the African Legislators where partisanship and nepotism rules and governs their actions and activities.

Besides, the Legislators in developed democracies are much more disposed to evaluating their performance in relation to set out goals<sup>[38]</sup> while in Africa, that doesn't seem to count. Legislators in developed democracies are conscious of the fact that if they lose in their re-election bid if they fail to perform as representatives of the people<sup>[39]</sup>. But this does not appear to be the case in Africa as most members of the Parliament won their elections either because they paid for it or rigged their opponent out. Members of Parliament being conscious of the fact that performance will enhance their chances of returning there is a deliberate effort on their part to make meaningful and positive impact.

Thus, the Executive knowing the scrutiny that is coming from the parliament, are much more careful with their policies and actions. The American Congress exercised this function severally and recently in the failed bid to impeach President Bill Clinton over his romantic affair<sup>[40]</sup>. However, we have not seen much of this form of legislative vibrancy in Africa. Even where there are obvious reasons and cases of gross misconduct that would have warranted the removal of an executive, due to corruption, such is usually swept under the carpet. This has been the unfortunate situation of the Legislature in African democracies.

### **Unconstitutional change of government and the legislature in Africa**

Having looked at the role of the legislature in some developed democracies vis-a-viz their African counterparts, it is obvious that the African legislature have failed those whom they represent. Since it is obvious that some of the reasons for forceful and unconstitutional change of government ranges from corruption, abuse of power and national resources by a privileged few, harsh economic situations, indifference by those in power to the sufferings and plight of the people, dissatisfaction among the populace with the policies and programmes of the government, etc., what has the Legislature done to forestall or address these issues? Rather, it can be said that they are partners in crime with the Executive as the Legislature were used to give approval to some of these policies.

Besides, in some of the countries where their Constitution and laws have been changed, amended or altered to allow a dictatorial or an authoritarian government, such modifications were done and carried out with the help of the Legislature. This was exactly what happened 2020 in Guinea by the former President Alpha Condé when he had to change the Constitution to allow him stay in power<sup>[41]</sup>. Whereas it is possible under military governments to suspend the constitution of a country and rule with their own decrees, this is not always the case. In certain instances, the military or the unconstitutional government in power uses the legislature to legitimize their government and to remain in power.

Though however, there have been very few instances in Africa where the legislature stood up to resist the executive like the aborted 'THIRD TERM AGENDA' in Nigeria under President Obasanjo, a careful examination of the situation revealed that they only acted in response to some external forces. It is therefore correct to say that unconstitutional

changes of government in Africa is due to the failure of the Legislature to perform their role as provided in the various national constitutions.

## Conclusion and Recommendations

### Recommendations

#### 1. Attitudinal Change in the Pursuit of Good Governance in Africa.

One of our greatest threat and challenge to good governance is our attitude to corruption and ill-gotten wealth. According to Prof. Lumumba <sup>[42]</sup>, Africa is good at justifying and rewarding big thieves while condemning and vilifying those who stole small amount of money <sup>[43]</sup>. How sad to note that those who stole from the nation's treasury to enrich themselves are honoured and given chieftaincy titles in their communities.

#### 2. Nepotism and Tribalism

The greatest challenge of fighting corruption in Africa is sentiments – tribal, religious, communal, etc. In the opinion of Lumumba, when you turn a blind eye on the misbehaviour of a leader and shield him from every form of scrutiny just because he is from your tribe, you are destroying the system <sup>[44]</sup>. This is because when the man from the other tribe does the same or worse things his people will also shield and protect him. This is no doubt the reason why the fight against corruption had remained evasive.

#### 3. Overhauling of the Election Process

It is obvious that all is not well with our electoral process particularly into the Legislative Houses in Africa. When winning elections is all about who has more money to buy votes and more tugs to rig the election, we can never have the best of candidates. The fact is, you cannot ask the man who got into the parliament through crooked means to regulate another man who is acting crookedly. The Parliament should come up with laws that will regulate the amount of money one can spend in an election.

#### 4. Calibre and Quality of Men Aspiring to be Legislators

There should be deliberate and conscious voter education and awareness as to who should qualify to be voted for as a legislature/ parliamentarian. Men of dubious and unquestionable character should be rejected by the public instead of being celebrated. The Master Jesus speaking to those who had accused of the adulterous woman said: "He that is without sin among you, let him first cast a stone at her <sup>[45]</sup>." Thus one of the reason why the Legislature cannot stand up to the Executive's misbehaviour is that they do not have the moral justification to do so. By this, one is not saying that the Legislator should be saints but that they should have at least the integrity to stand up to the Executive.

#### 5. Part-time Legislators

Law making in Africa is seen as money making business. Therefore, politicians do everything within their powers just to win parliamentary elections because of what they know that they are going to make as law makers. It is therefore recommended that instead of having job seekers as full time members of the legislature, it should rather be those who are committed to serving the nation on part-time basis without any remuneration save sitting allowances. These part-time legislators should be men and women of repute who have

distinguished themselves in their fields of endeavour and are willing to contribute their wealth of experience for the good governance of their states/ nations.

## Conclusion

It has been argued that one of the challenges of bi-camera legislature and the presidential system of government being run by many African states is that it is too expensive. But Mitchell Obama speaking on their experience at the White House expressed the fact that what they got as a family was paid for by the family and not the American government <sup>[46]</sup>. The question therefore is 'where did Africa get the kind of system of government that they are running?' This means that our problem in Africa is not about the system of government, but the persons running the government.

From the foregoing, it is clear that unconstitutional change of government is usually due to prolonged Executive misbehaviour and bad governance. If these recklessness and corruption are curtailed early and nipped in the bud by the Legislature, we will not have an unconstitutional change of and a forceful takeover of government by the aggrieved and dissatisfied populace. This however can only happen when we have a vibrant and an effective Legislature.

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