



GABON RESEARCH NOTE

Another succession battle in the offing

For sheer chutzpah, Bongo's crew leave Yar'Adua's handlers in the dust. Forget about muddling through; they have simply arranged for the president of the Supreme Court¹ to insert (sic) a convenient provision into the Constitution.

1) Article 16 of the Constitution vests in the sole person of the president of the Republic the prerogative of convening, determining the agenda, and chairing meetings of the council of ministers. The *de jure* paralysis of the executive branch since early October² and the veil of secrecy surrounding both Mr. Bongo's current condition and his prognosis were bound to trigger two related questions. **How permanent is the medical crisis** that has confined him to a critical care ward in the King Fahd Medical City since Oct. 24th, and **does it warrant triggering the provisions of Article 13³?**

2) In a transparent move to head off the incipient debate on the issue of vacancy, prime minister Emmanuel Issoze Ngondet sought the advice of president of the Supreme Court, who opined that **the framers had not envisaged the contingency of the President being 'temporarily incapacitated'**. So far, so good.

However, **she then proceeded to introduce a new Constitutional provision**, authorizing either the vice president or the prime minister to **"discharge certain presidential responsibilities in the event of the incumbent's temporary incapacity, with the approval of the Supreme Court."** And, within 48 hours of this extraordinary demarche – i.e. on Friday 16th - the Cabinet had indeed met, under the chairmanship of vice president Pierre Claver Maganga Moussavou.

3) Title VI defines the role of the apex court, and **nowhere is there any mention of the jaw-dropping prerogatives that the Court has now asserted⁴**. Predictably, the decision has been condemned as a usurpation of power by Gabon's opposition parties and civil society alike⁵.

At the same time the African Union, reacting with unusual alacrity⁶, has announced its intention to field a fact-finding mission to Libreville. As might have been anticipated, the response of the local authorities has been unenthusiastic. While welcoming the AU's expression of concern for the health of his stricken head of state, Gabon's foreign minister has cited last Friday's cabinet session as proof that the organs of state are functioning normally and pointedly declared that, **"la solidité des institutions gabonaises n'est plus à prouver."**

Bottom line: The AU has no authority to intervene unilaterally⁷, so **the status quo is likely to drag on until Mr. Bongo's continued absence makes a farce of the temporary incapacity claim**. That is when the political crisis can be expected to erupt.

¹ It is worth pointing out that the head of the top Court, Marie-Madeleine Mborantsuo, was hand-picked by President Ali Bongo, there being no requirement for legislative confirmation.

² I.e. before Mr. Bongo's ill-fated journey to attend

³ In the event of the permanent incapacity of a sitting head of state, the relevant article entrusts to the Constitutional Court the responsibility of declaring that a vacancy has arisen, whereupon the President of the Senate takes over the presidency of the Republic while a snap election is organized. This must be held within 30 to 45 days of the vacancy being declared.

⁴ More specifically, Title XII, which spells out the modalities for amending the Constitution, stipulates that, in order to be considered, proposed changes require the support of at least one third of either legislative chamber and a favourable opinion from the Constitutional Court. To be adopted, the draft amendment then requires either a simple majority in a national referendum or a two-thirds majority in the National Assembly.

⁵ E.g. *"C'est un coup d'État."* (Jean- Gaspard Ntoutoume Ayi, leader of the Union Nationale party")

"Mborantsuo n'est plus dans la logique institutionnelle, mais dans une logique de confiscation du pouvoir coûte que coûte." (Marc ONA ESSANGUI, founder and president of environmental NGO BrainForest)

⁶ As will be recalled, that at the AU's headquarters, Mr. Bongo has been held in very low regard ever since the almost transparent ballot-stuffing through which he stole the 2016 election from the consensus opposition candidate Jean Ping – a former chairman of the African Union's executive commission. Ping himself has chosen to keep a low profile over the last month – presumably keeping his powder dry for the main event.

⁷ As will be recalled, during the succession drama created by the sudden death of President Omar Bongo in 2009, the AU offered to field a 'good offices' mission to Libreville and was politely declined.

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