

The Status of Former Presidents in African Political Regimes

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In his book « Les Chemins de la vie » (Paths of life), the former President of the Republic of Cote d'Ivoire Mr Henri Konan BEDIE tells us that when President Leopold Sedar SENGHOR willingly left power, President Felix Houphouët BOIGNY entrusted him: "Me, I do not like these stories of former presidents"¹. President Houphouët BOIGNY was probably not wrong in a political environment where "the post-presidential futures" were uncertain². To illustrate this situation, in her work on the issue, Sandrine PERROT shows that in most cases former presidents are "put out of the picture" with executions, detention and exiles. She explains that those who were able to avoid those types of unfortunate endings were forced or brought to explore other domains in order to survive. Thus, there have been "economic reconversions", reconversions in international activities or even "religious reconversions". Some even preferred to mobilize their resources to return to politics, sometimes even to the highest jurisdiction to recapture the power and honors they lost³.

Hence, the lack of statutes for those who retired from presidential duties is the reason why those who were in that position likened their end of reign to a loss of status and resources that transform them into simple forgotten or humiliated citizens. In this context, the situation of former chief of states has always been of interest to writers on African issues and Africans that are in favor of the creation of a status to recognize former chief of states⁴. These writers tried to emphasize the positive link between the existence of a status for former chief of states and the conception of power, all of this going towards viewing a qualitative progress for states and a salute for democracy. For instance, El Hadj MBODJ suggests in that same vein that "one should encourage the adoption of legislation related to the status of former chief of states in order to ensure them on the material and political level"⁵.

However, this theoretical preoccupation was not seen favorably by the African constituent and legislators because those who were on the top of states, the holders of presidential power, future and potential beneficiaries of such a status envisaged a life-time mandate. That is the reason why their humiliations and sufferings were post-mortem. Subsequently, it was neither right, nor necessary to create a status for former chief of status, a "category" that was rare or non-existing. It was also not surprising to only see the existence of an embryo of status in countries such as

¹ H.K. BEDIE, *Les chemins de ma vie*, Paris, Plon, 1999, p. 47.

² The word is coined by Sandrine PERROT in her book *Y a-t-il une vie après le pouvoir ?*, CEAN, Travaux et Documents n° 51-52, 1996, p. 21 et s.

³ Idem, p. 21 et s.

⁴ On the issue, « What should be the fate of former chief of states? Possible scenarios» in *Africa International* n° 235, February 1991 ; E.H. MBODJ, *La succession du Chef d'Etat en droit constitutionnel africain*, op. cit., pp. 564-565 ; S. PERROT, *La situation des anciens Présidents d'Afrique Noire*, Ph.D. Thesis, African Studies : CEAN-IEP de Bordeaux, 1995,

⁵ Idem, p. 564.

Senegal⁶ and Cameroon⁷ where chief of states intentionally left power, or in a country like Benin where the high number of military coup has therefore created many former chief of states. On the opposite, the issue of a status was neither important nor relevant in countries like Cote d'Ivoire where the life-time presidency of Houphouët BOIGNY did not give room to the existence of former chief of states.

Nowadays, the constitutionalism that emerged from democratic transitions contains two factors that are conducive to the "emergence" of former chief of states: on the one hand, the limitation of presidential mandates to two or three that ineluctably brings chief of states to abandon power and on the other hand, the political protagonism that can foster the replacement of those currently holding power by others, through the ballots. The democratic departure from dedicated⁸ or envisaged⁹ power, be it pacified and intentional, it therefore becomes important and even necessary to "legislate" in order to create a status for those who leave power. It is within this framework that some of the new regimes have incorporated in their charter the principle to grant a particular status¹⁰, in line with their rank, for former chief of states. This principle was then officially put into legislative texts or rules. Two concerns appear in these constitutional and legislative arrangements: the content analysis of the status of former chief of states and the specific problem related to their symbolic integration in the institutional machinery of the regimes.

In order to reassure retired third-generation chief of states, the new regimes gave them privileged status (I). However, one can see through these legislative and constitutional texts that the granting of these advantageous statutes is subjugated to certain conditions (II).

I – Privileged statutes

These privileges contain material advantages but sometimes also a protection through jurisdiction (*lato sensu*). To make sure that chief of states from the democratic period are not stressed by the

⁶ It is the intentional departure of President SENGHOR that brought the creation of a law that institutes an annual stipend for former chief of states (Law no 81-01 from January 29th 1981 that sets a stipend for former chief of states, JORS no 4814, special number, Thursday February 5th 1981, pp 101 – 102)

⁷ In Cameroon, the decree no 81-407 from September 10 1981 confers material advantages to former chief of states

⁸ Since democratic transitions started, many chief of states left power after losing the elections

⁹ Even the chief of states that are still in power foresee their departure at a date already known in advance. Thus, the Malian President Alpha Oumar KONARE publicly announced that he would leave power after his second mandate in 2002 ; The Senegalese President Abdou DIOUF set his departure date for 2007 if he were to be reelected in 2000, but he lost that election and left. Togo's President EYADEMA announced under the pressure of political events that he will not be a candidate for the presidential election of 2003; Gabon's president Omar BONGO is the most expressive when he declares at the even of the 1998 presidential election: "In seven years, at the end of the mandate, if I am reelected I will be 70 years old. That is too much. One must know when it is time to leave, play with your grand-children, travel around the world, give advice to those who come see you instead of walking with four legs, become bad-tempered and go off without being conscious of it. Is power a drug? It is possible. But I know how to cure ». V. J.A. n° 1975 du 17 au 23 novembre 1998, p. 29.

¹⁰ As stated by Nicéphore Dieudonné SOGLO in *Jeune Afrique* : « After all, what are the chief of states asking to transfer power? That one gives them garanties » J.A. n° 2028 du 23 au 29 novembre 1999

problems related to their means of subsistence once they leave power and are not tempted to neither embezzle nor accumulate wealth from the national heritage, the new regions have accepted to grant material and logistical advantages. Hence the loss of power is not assimilated to a social decline. For instance, the legislator in Burkina Faso¹¹ consents to a civil allowance for former chief of states and the amount will be determined by a decree taken par the Cabinet meeting. Moreover, former chief of states have a vehicle and a driver and security. This pension and advantages are personal and for a life-time. The same arrangements exist in Gabon. The legislator in Guinea is more generous as indicated by article 2 of the “organic law related to the conditions under which former presidents are granted material advantages and security. The same applies in Niger¹² and Central Africa¹³. Many chief of states fear judiciary pursuit once they leave power that can lead them into degrading and shameful situations. The fear to face justice and eventually prison is the reason why they want to sustain themselves in the presidency to keep their power position which gives them immunity and impunity.

Also, some of the constitutions and legislative texts and rules adopted after a transitional period institutionalize the immunity of former president for facts that occurred during his mandate. Beyond affirming the principle of protection within the constitutional text, the legislator also gives, to the closest detail, the protection framework for the former president. For example, article 4 of the Guinean law mentioned above provides a permanent immunity to former presidents for acts that occurred when he was in charge. Article 5 adds that former presidents are protected against offenses, insults and abuse. They can not be cited nor summoned to a tribunal, even as a witness. Article 6 details sentences for those who have offended, slandered, abused or insulted a former chief of state.

A round-up of these arrangements reveals a will to “turn against” the idea to take to court the retired chief of states and guarantee them an immunity, or even total impunity. But should that be granted to any chief of state, especially those who came to power with extra-constitutional means or solely to those who were democratically elected?

II – The restrictions to taking advantage of the status

In a continent prone to political instability where taking power with extra-constitutional means which was for a long time considered the main road to accessing power, has enabled the coming to power of leaders who do not really respect democratic norms, it is necessary to determine the criteria to access power and exercise the latter with the help of democratic principles. Subsequently, the respect of those criteria by chief of states should be the general condition to take advantage of the status once you leave power. This does not seem to be the option of the

¹¹ V. Law n° 18/92 du 23 December 1992 grants a civil allowance and other advantages for former chief of states.

¹² V. Decree n° 94-036/PRM from 4 march 1994, which creates the platform to apply law n° 94-005 from 3 February 1994, that sets the regime that applies to the pension of former presidents, JORN du 1er may 1994.

¹³ V. Law n° 97-012 from 31 October 1997 that grants an allocation and advantages to former presidents and its decree of application from 4 march 1998.

constituents from the democratic era. In fact, the analysis of the constitutional and legislative arrangements for this very issue indicates that the idea to distance chief of states that came to power through a military coup was not very well studied or was rather softly discussed¹⁴. The constituents in Guinea¹⁵ and Togo¹⁶ do not indicate any restriction or condition; they give the status to any chief of state, regardless of the manner in which he came to power and how he implemented it and left. That is not the opinion of other constituents in Mali, Niger, Central Africa and Benin. Article 52 in the Constitution of Mali which is reproduced by article 62 of the Constitution of Niger from May 12th 1996 states that the pension is only granted to former presidents that have their civic rights¹⁷. Article 35 of the Constitution of Central Africa only grants the pension to “former presidents elected democratically and that have their civic rights”.

Nevertheless, the dynamics of democracy that started since a decade should progressively bring the constituents to only grant the status to chief of states that arrived democratically to power and that exercised it democratically (2). By reducing the minimum conditions to take advantage of this status granted to former chief of states, the new constitutions have shown an important realism because by giving setting a maximum set of conditions such as that only democratically elected chief of states can benefit from the pension would consist in institutionalizing a right not adapted to the facts. Because the fact is that many former chief of states from the first and second generation did not always come to power in a democratic manner. Only banishing the military coup and institutionalizing competition for power can lead the constituents to foresee integration in the fundamental laws of certain number of conditions to grant the status. Thus, only the former chief of states, who came to power, exercised it and left it in a democratic manner should take advantage of the status.

Moreover, the granting of a status to former chief of states confers them a certain immunity that give them a special jurisdiction protection. However, that immunity should not be assimilated systematically to impunity. Thus, the former chief of states should answer for crimes and offenses of common law that they committed when they were in charge. In addition, even if the national legislations are reluctant to doing it, the engagement responsibility of former chief of states is more and more taken into consideration by international law and jurisdiction and is being effective on the African continent with the perspective of organizing the trial of former president Hissene Habre.

Going beyond material and judiciary protection, certain constitutional and legislative texts arranged somewhere, be it symbolic, in favor of former chief of states so that they will not be “forgotten” by the democratic process. Only, the study of different legislations shows that the institutional place granted to former chief of states seems insignificant to us. Thus, we believe it needs to be improved to grant them an “active” retirement, especially when they desire it.

¹⁴ V. art. 36 de la Constitution of Guinea, 75 from Constitution of Togo

¹⁵ V. art. 36 de la Constitution.

¹⁶ Art. 75 de la Constitution

¹⁷ In the new Constitution of Niger dated 1999, article 58 does not mention that clarification. It only states that the law sets the advantages granted to former presidents and explains the modalities to grant a pension to former presidents and chief of states