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PEACE AND SECURITY COUNCIL
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BRIEF ON THE EVOLVING SITUATION IN TOGO

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I. INTRODUCTION

1. Following the death on Saturday 5 February 2005 of General Gnassingbé Eyadéma, President of the Republic of Togo for 38 years, the Togolese Army appointed Mr. Faure Gnassingbé, one of his sons hitherto a Minister in Togolese government, to succeed him. The military justified this decision by citing the absence from the Togolese territory of Mr. Fambare Ouattara Nabatcha, President of the National Assembly, who under the terms of the Togolese Constitution, should assume the position of acting President.

2. As a matter of fact, the army had decreed the closure of the land, sea and air borders of the country, thus preventing the President of the National Assembly who was returning from a mission to Europe, from arriving in Lomé, and therefore found himself blocked in Cotonou.

II. DEVELOPMENTS

3. On Sunday 6 February, at an Extraordinary Session, the National Assembly comprising 81 Deputies, 71 of whom belong to the Presidential Party – the Togolese People's Rally (RPT) – removed Mr. Nabatcha from office as Speaker of the National Assembly, and decided by 67 votes for, and 14 against, to appoint Mr. Faure Gnassingbé the new President of the National Assembly. At the same time, the Deputies amended Articles 68 and 144 of the Constitution. The modified version of Article 65 stipulate that the new President would complete the mandate of his predecessor, that is up to 2008, without having to organize early election. In the new version of Article 144, the expression "during the interim period" was suppressed to allow Mr. Gnassingbé to "legally" accede to power. The Deputies moreover amended Article 152 of the Electoral Code which allows any Deputy who had transferred his/her seat to an alternate member for reasons of incompatibility, to regain such a seat where the reasons for the incompatibility, particularly as a result of cessation of ministerial duties, no longer exist.

4. The military hierarchy immediately gave their allegiance to Mr. Faure Gnassingbé who was sworn in before the Constitutional Court on 7 February.

5. It is needful to recall the provisions of Articles 65 and 144 of the Togolese Constitution. On the issue of vacancy of office, Article 65 stipulates as follows: "In the event of vacancy of the position of the President of the Republic as a

result of death, resignation or permanent disability, the duties of President shall be exercised provisionally by the President of the National Assembly. Such vacancy shall be ascertained by the Constitutional Court on the advice of the Government. The Government shall convene the electorate within sixty days of the vacancy for the election of a new President of the Republic for a mandate of five years”.

6. Regarding review of the Constitution, Article 144 provides as follows: “The initiative to review the Constitution devolves concurrently on the President of the Republic on the advice of Prime Minister and to not less than one-fifth of the Deputies that make up the National Assembly. The proposal to review or the draft review shall be deemed adopted if it is approved by four-fifths majority of the Deputies comprising the National Assembly. In the absence of this majority, the draft proposal adopted by two-thirds majority of the National Assembly Deputies shall be submitted for a referendum. No review procedure may be undertaken or continued during the interim period or during the vacancy or where such a review is prejudicial to territorial integrity”.

7. It is therefore clear that the manipulations to which the Togolese Deputies lent themselves are at variance with the Constitutional procedures spelt out in Article 65 and contravene from the prohibitive clause contained in Article 144. What we are witnessing therefore is a real military coup d'état coupled with a Constitutional coup d'état in flagrant violation of the fundamental principles enunciated by the AU and ECOWAS.

III. AFRICAN AND INTERNATIONAL REACTIONS

8. President Olusegun Obasanjo, Current Chairperson of the African Union immediately warned that the AU would not accept the unconstitutional transfer of power in Togo. At the same time, the Chairperson of the AU Commission Alpha Oumar Konaré voiced very serious concern over the military coup d'état. The Peace and Security Council meeting in its 24th Session on 7 February 2005, strongly condemned the way by which the *de facto* authorities organized the succession in violation of the Togolese Constitution and the relevant AU instruments. Council, among other things, urged the *de facto* authorities in Togo to scrupulously abide by the provisions of the Togolese Constitution and demanded that the Armed Forces refrain from any interference in the political life of the country.

9. ECOWAS and UN called for restoration of Constitutional legality. The European Union and France also called for strict compliance with the procedures spelt out in the Constitution.

10. The Permanent Council of the Francophonie (CPF) comprising representatives of Member States of the International Organization of the Francophonie (IOF) meeting in an Extraordinary Session on 9 February, adopted a resolution strongly condemning the coup d'état perpetrated by the Togolese Armed Forces as well as the repeated violations of all the existing Constitutional provisions. The CPF further announced the suspension of Togolese representatives from participation in IOF organs, and the suspension of Francophone multilateral cooperation, with the exception of programmes that are of direct benefit to the civilian population and those that could help reestablish democracy.

11. On 9 February 2005, the Current Chairperson of the African Union and the Chairperson of AU Commission participated in the ECOWAS Extraordinary Summit held in Niamey. On that occasion, ECOWAS Heads of State and Government strongly condemned the military intervention, which was nothing but a coup d'état. They also condemned the manipulations of the Constitution intended to window dress the coup d'état, and reaffirmed the principle of non-recognition of any government that seizes power by unconstitutional means. The Heads of State and Government further decided to send a high level delegation to Lomé composed of Presidents Mamadou Tandja, Mathieu Kérékou, John Kufuor, Amadou Toumani Touré and Olusegun Obasanjo, as well as the ECOWAS Executive Secretary and the Chairperson of the AU Commission. The delegation was mandated to address the *de facto* authorities in Togo on the need to return to the *statu quo ante*, by allowing the succession to President Eyadema to be conducted in conformity with the provisions of the Togolese Constitution of 1992, as amended in December 2003.

12. Mr. Faure Gnassingbé having decided at the last minute to hold the meeting in Kara, in the north of the country, stronghold of his late father, the delegation which had already arrived in Cotonou decided not to travel to that venue. A Togolese delegation led by the Prime Minister Koffi Sama was summoned to Niamey where President Tandja reaffirmed to him the position of ECOWAS.

13. On 12 February, the Opposition organized a protest march in Lomé but the demonstration was suppressed by the army killing three people. The Chairperson of the AU Commission immediately issued a Press Release condemning the repression and deploring the loss of lives. The Togolese nationals residing outside the country for their part, similarly rallied to demand the resignation of Mr. Faure Gnassingbé and respect for Constitutional legality.

14. On 15 February, an ECOWAS delegation comprising the Niger Foreign Minister and ECOWAS Deputy Executive Secretary held talks with Mr. Faure

Gnassingbé in Lomé, as well as with members of the Togolese Government on the question of return to Constitutional order. The optimism exhibited by ECOWAS delegates after these discussions, gave the impression of a possible breakthrough which Mr. Gnassingbé was expected to announce in a statement that the Togolese people and observers awaited in vain. On 17 February, Mr. Gnassingbé proceeded to Abuja for talks with President Obasanjo.

15. Taking advantage of the lifting of the ban on demonstrations announced by the authorities on 18 February, the opposition organized a peaceful march in Lomé, attended by nearly 25,000 people. The opposition announced that it would organize further marches every Saturday until Mr. Gnassingbé leaves office.

16. On 19 February, Mr. Gnassingbé announced that Presidential election would be held within 60 days and that he would remain in power until that date. Following that announcement, a new delegation led by Togolese Prime Minister again proceeded to Abuja in an attempt to justify the decision.

17. Mr. Gnassingbé's decision to remain in power has been strongly condemned by the International Community. ECOWAS immediately announced Togo's suspension, decided to recall the Ambassadors in Lomé, imposed on Togolese leaders travel restrictions to ECOWAS Member States and an arms embargo.

18. The United States which gave its immediate support to ECOWAS, indicated that it would not recognize the legitimacy of Mr. Gnassingbé and called for his immediate resignation. For its part, the European Union called for "immediate return to Constitutional order in Togo" adding that by remaining in power, Mr. Gnassingbé was "contravening the Constitutional and legal order".

19. Further to its Press Release of 19 February reiterating AU's principled position on the absolute need to restore Constitutional legality, the Chairperson of the AU Commission, in another Press Release dated 20 February, recalled the suspension of Togo from participating in AU activities until the effective return to Constitutional legality in that country, all in conformity with the relevant positions of the Constitutive Act, the Lomé Declaration on Unconstitutional Changes and the Rules of Procedure of the Assembly of the Union, and expressed AU's support for the sanctions imposed by ECOWAS. He called on other African countries and the International Community at large to lend their full support towards effective implementation of the sanctions.

20. On 22 February, the Togolese National Assembly met again and the Deputies once again revised the Constitution. They restored Articles 65 and 144 to their regional version. However, Mr. Faure Gnassingbé remained the self-proclaimed President of the Republic.

IV. RECOMMENDATIONS

21. In light of the aforesaid, the Peace and Security Council may wish to:

- reiterate AU's strong condemnation of the military coup d'état which took place in Togo and the Constitutional manipulations intended to legally window dress the coup d'état, as well as its rejection of any election that may be organized under the conditions enunciated by the *de facto* authorities in Togo;
- demand a return to Constitutional legality which entails first and foremost the resignation of Mr. Faure Gnassingbé and respect for the provisions of the Constitution regarding succession to the Head of State;
- confirm the suspension of Togo from participation in the activities of all the organs of the African Union and ask the Commission to ensure scrupulous implementation of this suspension measures;
- endorse the sanctions imposed by ECOWAS on the *de facto* authorities in Togo and ask all Member States to strictly observe the sanctions;
- mandate ECOWAS to take all such measures as it deems necessary to restore Constitutional legality in Togo within the shortest possible time;
- request the Chairperson of the Commission to formally contact the United Nations Secretary General and Security Council, the EU, IOF and bilateral partners to lend their unflinching support to the sanctions imposed by ECOWAS and the initiatives of African leaders aimed at resolving the crisis resulting from the coup d'état;
- encourage the holding of a joint ECOWAS Executive Secretariat/AU Commission meeting to agree on the mechanism for monitoring strict compliance with the sanctions against Togo and determine the political support measures that need to be taken to backstop the stabilization and reconciliation process in Togo once Constitutional legality is reestablished, including more especially the holding of free and transparent election open to everyone.

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