Symposium on IFFs: “Make Noise!” Revolt and the State’s Illicit Flows

By:

Dunia P. Zongwe

May 6, 2024

“Make noise!”, implored the then-President of Gabon, Ali Bongo Ondimba, in an emotional video to “all the friends that we have all over the world” recorded and shared immediately after the military unseated him. Shortly after the military staged that coup against President Bongo on August 30th, 2023, state television showed a video of troops searching the homes of former Cabinet members and seizing trunks, suitcases, and duffel bags overflowing with banknotes. Inside the suitcases, stacks of currency notes neatly bundled together with paper bands; and more cash scattered around the suitcases on the floor.

The Gabonese people reacted to the news of the coup by ‘making noise’, but not exactly the kind of noise that the deposed leader had in mind. Rather than protest against the putsch, residents of Libreville and other cities around the central African country erupted in cheers and chants, praising the military and making memes to mock Bongo’s call to arms. What at first blush had appeared as a military coup began to look like a popular uprising against a kleptocratic

regime.

Revolutions against state-sponsored IFFs

Extrapolating from this, I submit that policymakers and lawmakers should enshrine in their national constitutions a duty to revolt. Constitutionally enshrining a duty to revolt (R2R) against state-sponsored illicit financial flows (SIFFs) would compel African countries to tackle this sort of endemic corruption.

SIFFs constitute state complicity in graft, utilizing legitimate channels to systematically extract and launder assets abroad, as Bongo allegedly did via French properties and banks before Gabon's military unseated him this year. A group of plaintiffs, including Transparency International and a Gabonese national, revealed this hidden ill-gotten wealth in an ongoing lawsuit against the Bongo family filed in France in December 2008.

The Gabonese duffel bags of cash televised in September this year demonstrate the inadequacy of existing measures to stem state-abetted graft. The African Union's High Level Panel (HLP) on IFFs promotes policy harmonization, however, its non-binding provisions slip towards toothlessness, given that states themselves drive SIFFs. Implementing the HLP needs muscular institutional ruptures with graft.

Crucially, existing anticorruption measures are crippled by the fact that SIFFs blur the lines between licit and illicit finances. Therefore, policymakers should embed anti-corruption norms within the constitution to enable the people to revolt against enduring SIFF regimes such as the Bongo dynasty.

The costs of IFFs

According to the United Nations Conference on Trade and Development (UNCTAD), illicit financial outflows cost African countries $88.6 billion annually, representing 3.7% of the continent's gross domestic product (GDP). Definitions remain contested, but at their core, these flows embody the concept of (1) transnational transfers of assets that are (2) related to illegitimate activities in their generation, transfer, and use phases. They encompass tax and commercial practices, illegal markets, theft, and corruption.

The problem's stakes involve more than state corruption itself. Hemorrhaging investment potential through SIFFs compromises African growth. The Washington Consensus' neoliberal shock therapy once promised prospering middle classes. Instead, poverty, unemployment, and inequality indicators largely deteriorated amidst liberalization enabling venal political-business cronyism. Even sectoral successes like telecoms and banking saw profits drained abroad rather than reinvested domestically.

Yet the intermingling of licit and illicit renders SIFFs challenging to counter, especially absent political will. Laws and mechanisms targeting SIFFs remain blunted by state capture. Hence, the necessity to probe the potential of constitutional law and constitutionalism to counteract the entrenchment of state power that benefits from illicit flows.

Specifically, I ask: Would embedding a constitutional 'duty to revolt' better incentivize state accountability regarding IFFs than current anti-graft schemes? Scholars have not yet sought to answer this particular question. Some scholars like Gerring and Thacker link the type of political institutions and perceptions of corruption. However, others like Anna Persson and her co-authors insist that anti-graft efforts fail because they mischaracterize this phenomenon. Still, none have addressed revolution as a constitutional tool against state graft.

A constitutional duty to revolt

This research piece offers a novel D2R proposal requiring states to account for SIFFs given their central positionality, diverging from the relevant literature, which concentrates on graft's private sector facilitation. While some scholars would object to the constitutional nature of the D2R, my case for the D2R as a constitutional duty rests on the principle of popular sovereignty, which already underpins nearly all constitutions in the world.

I define the duty to revolt as an obligation that a constitution places on citizens to revolt against their rulers if they access or use political power in a way that contravenes the letter or the spirit of the constitution. Seen from this vantage point, SIFFs constitute an exercise of state power that offends the spirit and principles of the constitution, especially popular sovereignty, which obliges rulers to utilize the country's resources to benefit citizens, and not to enrich themselves through IFFs and other subterfuges.

The significance of popular sovereignty for the D2R explains the grassroots character of this obligation. Indeed, the D2R stems from a grassroots, bottom-up push against centralized power and authority. A D2R injects bottom-up accountability, given elites' vested interests, against top-down, rent-seeking reform.

The D25 also embodies a contractarian nature. The social contract theory posits that the legitimacy of a government derives from the consent of the governed. I infer from this axiom that, "if the government reneges on the terms of the social contract, as determined by the citizens, then the citizens have the right withdraw their consent and to revolt against that government."

Thirdly, the D2R partakes of anarchism. As Lucien van der Walt (2018: page 351) enthused,

anarchism rejects capitalism, landlordism and states (all seen as centralising wealth and power in the hands of small ruling classes), as well as the authoritarian family, and multiple forms of inequality, including gender, colonial, national and racial oppression.

This anarchist perspective also frames the D2R as opposing the consolidated power structures that disenfranchise the masses and marginalized communities. Moreover, it casts the D2R as a moral stance against authoritarian control that infringes on basic rights and egalitarian ideals.

The D2R rarely features national constitutions expressly, except for the Congolese and South Sudanese. Unlike most countries, the Democratic Republic of the Congo (DRC) and South Sudan both have constitutions that expressly enshrine the D2R. Article 64 of the Congolese Constitution explicitly endows all Congolese citizens with the duty to oppose any individual or group of individuals who seize power by force or who exercise it in violation of the provisions of this Constitution. Likewise, Article 4 of the South Sudanese Constitution encodes the D2R: "Every citizen shall have the duty to resist any person or group of persons seeking to overthrow the constitutional government."

The above D2R constitutional provisions directly speak to the coup in Gabon as the military staged it days after Ali Bongo declared himself the winner of the

latest presidential elections marred by accusations of vote-rigging, in an apparent attempt to re-access power by violating the constitution.

Gabon's oil curse

Gabon's oil curse typifies the intersecting dynamics between state corruption, neoliberalism, and IFFs. With Sub-Saharan Africa's third highest GDP per capita, equatorial forests covering over 80% of its land, and 250,000 metric tons of exploitable manganese reserves (actually, Gabon stands out as the world's second-biggest producer of manganese), Gabon enjoys upper middle-income status atypical on the continent. Yet a third of its citizens live below the $5.50/day poverty line. Life expectancy stands at 67 years, 10 years lower than Hungary with comparable income.

Under the 55 years of the Bongo dynasty, Gabon constituted a predatory petro-state. Gabon exports about 190,000 barrels of oil daily, but experienced negative per capita income growth between 1990 and 2020. The Bongo family and its cronies reportedly embezzled 25% of oil revenues. In addition, the Bongos owned 39 properties in France, 70 bank accounts, and nine luxury cars worth a total of 1.5 million euros. Roughly a quarter of Gabonese children (23%) are malnourished while Bongo's regime squirreled away funds in tax havens or ransacked them on luxuries – epitomizing SIFF racketeering.

The proposed duty to revolt empowers citizen checks against such squandering of sovereignty and destinies common across Africa's resource-rich states. Enshrining a right to civic action against unconstitutional violations of public trust combats cultures of impunity. If regimes realize that their rule hinges on delivering shared prosperity, they are more likely to govern in citizens' service.

The wisdom of noisy constitutional revolutions

The D2R channels revolutionary energies into system strengthening rather than volatility. After revolting against dictators from Bashir to Mubarak during the 2011 Arab Spring, civil societies now struggle democratically reconstituting states. Constitutionalizing incentives for public sector integrity may achieve through procedure what turmoil alone cannot.

If the political elites understand that their subjects' patience depends on those elites confronting graft, progressive social contracts become mutually reinforcing. State-citizen quid pro quo aligns state capacity with public welfare.

Mechanisms enabling public pressures against venality also bolster democratization. However, no metric can pledge to eradicate systemic corruption. By entrenching participative expectations in the constitution, the D2R instead nourishes cultures of accountability through collective action.

In Kiswahili, 'Bongo' means 'lie', as in 'falsehood'. Perhaps, Gabonese citizens should have guessed that the Bongo's presidencies would bode ill for their beloved nation. But, rather than try to divine the qualities and virtues of future Presidents through such omens, government strategists, policymakers, and civil society should bet on constitutionalism and strong institutions. In that sense, constitutionally embedding state responsibility for SIFFs may positively reshape development outcomes across Africa most effectively. With a constitutional D2R, citizens in Gabon and elsewhere on the continent could afford to put food on the dinner table and hope to never see again on television their tax monies stashed in duffel bags.

View online: Symposium on IFFs: "Make Noise!" Revolt and the State's Illicit Flows

Provided by Afronomicslaw