

Elections are a backbone of democracy. In West Africa, however, elections are often contentious and triggers of violence. Friedrich-Ebert-Stiftung (FES), a German private, non-profit organization committed to the ideas and basic values of social democracy, therefore works towards enhancing electoral standards in West Africa, and facilitates regional exchanges of experiences and debates about the roles and responsibilities of key stakeholders in electoral processes.

The comparative study at hand identifies similarities and differences in the set-up, roles and functioning of national electoral commissions in the 15 member states of the Economic Community of West African States (ECOWAS). By providing lessons learnt and best practices, the study shall assist those who seek to improve electoral processes and who aspire to introduce electoral norms and higher electoral standards in West Africa, most notably the ECOWAS Network of Electoral Commissions (ECONEC).

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ELECTORAL COMMISSIONS IN WEST AFRICA

A COMPARATIVE STUDY

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## FOREWORD

Elections are key pillars of democracies and have become the commonly accepted means to legitimize governance institutions in West Africa, on the one hand. On the other hand, elections are one key trigger of violence and insecurity in the region. A better management of electoral processes by key stakeholders – electoral management bodies being the most important ones - could enhance elections' credibility and acceptance, reduce the likelihood of violent conflict and thereby contribute to the consolidation of democracies in West Africa. To that end, Friedrich-Ebert-Stiftung (FES) facilitates regional exchanges of experiences and debates about the roles and responsibilities of key stakeholders in electoral processes.

Without a doubt, the Economic Community of West African States (ECOWAS) provides the most appropriate forum for such a process. The ECOWAS Supplementary Protocol on Democracy and Good Governance (2001) contains important prescriptions concerning the accession to political power and the conduct of elections in the sub region, and ECOWAS has been increasingly involved in election monitoring and assistance in the region. One welcome initiative was the formation of the ECOWAS Network of Electoral Commissions (ECONEC) in February 2008, which is mandated to facilitate experience sharing and to work towards the harmonization of electoral standards in West Africa. In August 2008, FES had the honor to facilitate the first meeting of the ECONEC Steering Committee in Abidjan, Cote d'Ivoire.

During the Abidjan meeting, FES presented its study “Electoral Commissions in West Africa – The Quest for Electoral Standards in the ECOWAS Region” conducted by Madior Fall in 2007 and early 2008.

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The study compares the roles and operations of electoral commissions in Benin, Côte d'Ivoire, Ghana, Mali, Nigeria and Senegal. Mathias Hounkpe added insights into the electoral systems of the remaining ECOWAS countries. Inspired by the two presentations, the ECONEC Steering Committee asked both experts to deepen and consolidate their findings into one comprehensive comparison of the electoral management bodies of all 15 ECOWAS member states.

The terms of reference for this comprehensive study were subsequently developed in collaboration with the ECOWAS Electoral Assistance Unit. After the draft study was presented and validated at the ECONEC Steering Committee meeting in Niamey, Niger in May 2009, all electoral commissions had the chance to answer to a questionnaire in order to supplement and verify the authors' findings.

The study at hand is the result of this process, which required inputs and assistance of many actors. One has to thank ECONEC and its leadership for the support of this project; the Electoral Assistance Unit, namely Interim Head Francis Oke, for the conceptual input; the authors Matthias Hounkpe and Madior Fall for their endurance and their relentless efforts to consolidate all findings; the translators and Stephanie Schulze for making this book available in English and the FES offices in West Africa, most notably FES Dakar and FES Cotonou, for facilitating the work of the two researchers.

The book at hand identifies similarities and differences in the way electoral commissions operate in West Africa, and provides lessons learnt and best practices that shall assist those who aspire to improve electoral processes and introduce electoral norms and higher electoral standards in West Africa.

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## INTRODUCTION

Free and democratic elections constitute the fundamental criterion for democracy, at least in its thriving liberal acceptance since the fall of the Berlin Wall. However, this is a basic criterion which is often lacking in political regimes after accession to independence, even if they claim to be democratic. As a matter of fact the political development of the African continent reveals that attainment of democracy has been arduous. Democratic deficits were first experienced in form of political authoritarianism; regimes which were established in quick succession were characterized mostly by their totalitarian tendencies, i.e. their attempts to govern almost all aspect of citizen's lives while not tolerating any serious form of opposition to their regimes. Often, under the pretence of the need to build up fledging nations or achieve economic and social development, governments in power displayed little respect for civil liberties and right of objection.

Whenever no heavy burden weighs on the political opposition, elections leave no choice or appear like organized enactments with results known well in advance and scores of votes in favour of those in power. This was the case of many changes of power which took place in the 1990s, thirty years after the attainment of political independence from colonial masters. The absence of democracy on the African continent has, among others things, resulted in a lack of political changes and renewal of the political class and elites.

In all the cases, official bodies in charge of the organization of election, especially Ministries of Interior in Francophone countries,

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did not inspire confidence in the transparent and equitable management of electoral contest. The democratic opening of '90s was therefore characterized by the establishment of bodies expected to organize the electoral processes with a degree of independence.

Fierce battles were therefore fought in this context by the opposition and those in power, the configurations given to these electoral commissions being a show of a real willingness on the part of governments to promote free, sincere and democratic elections. The learning process of the electoral practice has consequently reconciled Africa with multiparty democracy. Much was then invested in these new bodies, which were expected to be the new watchdog of democracy.

With nearly twenty years after the first experience in the organization of free and competitive elections in the West African sub-region, the first report card can be prepared. There were cases in which electoral commissions succeeded very well in playing their role of managing (or organizing) elections. Nevertheless, one can notice some mixed experiences, calling for a measured judgment. Finally, there are some more worrisome cases in a situation where the electoral commission has, to a great deal, failed in carrying out its mission, compromising its credibility and contributing to a negative overall political climate.

Close to two decades after the commencement of transitions to democratic regimes and succession of electoral cycles, elections still remained subject to caution and prone to crisis in several new democracies. In countries of the West African sub-region, elections have been the primary conflict generating factor, despite the setting up of electoral commissions according to a more or less consensual mode. Tensions leading to confrontations which threaten the stability often arise during the preparation of elections, while conducting elections, and

after election results have been proclaimed. As a matter of fact, be it in the upstream where stakeholders do not agree with the rules which govern the electoral process or the modalities for the organization of elections, or in the downstream – candidates who lost elections view the outcome of elections as not being a true reflection of the will of the electorate.

In this regard, the situation varies among the West African countries represented in this study: some countries have succeeded in finding rules and modalities for the more or less consensual organization of elections: this is the case in Ghana, Mali, Benin and Cape Verde. There are countries in which a lack of agreement on electoral regulations has led to the boycott of elections by a significant section of the opposition (Burkina Faso, Senegal). There are other countries in which political negotiations were carried out in order to find agreements which committed all stakeholders in order to avoid the possibility of crises which affect the electoral results leading to violent confrontations (Togo). Still in other countries which were in a post-conflict period, the rules of the electoral game were redefined after discussion among protagonists; this enables us to foresee notwithstanding some hope for civil peace (Cote d'Ivoire, Liberia, and Sierra Leone).

Answers provided to electoral crises are essentially of two kinds: at the internal level, there is the continual definition or redefinition of electoral regulations into more or less extended powers (electoral commissions); at the ECOWAS level, the adoption of the Supplementary Protocol on Good Governance and Democracy and the establishment of an Electoral Assistance Unit to regulate electoral processes in West African sub-region are noteworthy. As a matter of fact, in order to conjure the electoral demons in the new democracies of West Africa, ECOWAS adopted the Supplementary Protocol to

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bring to the fore the general principles which must govern electoral processes with view to preserving democracy and social peace.

In the light of these considerations, this study focuses on the fifteen member countries of ECOWAS and aims essentially at making a comparative study of electoral commissions in West Africa with the following objectives:

- Identify trends, similarities and key differences in electoral laws throughout the sub-region;
- Underscore major problems which the management of elections constitute for West Africa (reflecting lessons learnt from best practices);
- Suggest some food for thought for the improvement of electoral processes and the harmonization of electoral standards in West Africa.

Therefore, the study is structured as follows:

- **First Part** : Comparative analysis of National Electoral Commissions of West African Countries
- **Second Part** : Election Management in West Africa
- **Third Part** : Electoral principles, norms and standards in West Africa



**PART ONE**  
**COMPARATIVE ANALYSIS OF**  
**ELECTORAL COMMISSIONS IN**  
**WEST AFRICA**





**A** study of electoral commissions in Africa is also an opportunity to compare national democratic experiences, beyond the issue of the differences among them. At the time when West Africa is committed to a real dynamic of political integration especially through ECOWAS, it is interesting to see in what way convergence could be attained among countries in electoral matters. The comparative study of electoral commissions of West African countries is conducted in this paper essentially from the perspective of the electoral law and around the following three areas:

- **The constitution of these commissions**, which allows for the presentation of the formal provisions which govern the membership of these bodies, more precisely their mode of appointment, duties attached to their posts and consequently their independence from the actors of the political game, be it those in power or political parties aspiring to exercise this power.
  - **Operation of the commissions**, i.e. time of commencing work, manner of organisation and, above all, their powers and prerogatives, knowing that they owe their existence to the need for an impartial, neutral, just and independent management of the electoral process which is subject to suspicions of organized and unpunished frauds. The independence of the commissions is not confined to only the prerogatives which the law accords them, but also extends to the means at their disposal and the financial systems in which they operate.
  - **The appraisal of the experiences of electoral commissions** must finish during this first part of the study. It is carried out in form of a report on the work done. It is interesting beyond the formal presentation of the laws to embark on a form of practical evaluation of these bodies for the regulation of the electoral game. Experience shows in fact that the establishment of electoral commissions is sometimes
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informed by the experiences undergone in other countries, and that many countries try to take into account lessons learnt in other contexts. A comprehensive evaluation of experiences is useful for the purpose of this study in that it allows for the consideration of those constant variables or similarities which are capable of inspiring a work on the determination of the common standards or “electoral standards” at the sub-regional level (West Africa), such as the one which will be dealt with in the second part of this report.

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## CHAPTER

### STATUS AND TERMS OF OFFICE OF ELECTORAL COMMISSION

#### 1.1 Status of Electoral Commissions

**T**he constitutions of electoral commissions comprise some similar characteristics; the differences stem from the history of democratization of each country, its legal tradition and the relationship of the political forces which gave rise to the birth of the electoral commissions. In order to understand the basic facts concerning these constitutions, it will be necessary to thoroughly study the mode of appointment of the members of the Commissions (1) and the duration of their tenures (2).

##### 1.1.1 Appointment of members of the electoral commissions

In the determination of the “profile” of the members of the electoral commissions, the first alternative consists in appointing only members who are not politically inclined, or on the contrary include people selected on the basis of their political affiliation. In other words, the neutrality expected of the electoral commission may take two shapes:

- Either a deliberate taking into account of political considerations, which is expected to bring the danger of partiality to the fore precisely through a balanced representation of political forces;

- Or an exclusion, in principle, of any political consideration, which is manifested not only in the exclusion of political parties in the selection of members of the commission, but also in the demand for non-partisan affiliation of the members appointed into the commission

The first choice appears more realistic since elections are the topic considered, which are of key interest to political parties; therefore, it seems logical that stakeholders in elections be represented in electoral commissions. In other words, it is assumed that nobody is better placed to organize and promote transparency in elections than those who are engaged in them. The disadvantage of this partiality can however be easily foretold. Opening up electoral commissions to political formations implies the risk of reproducing political rivalries within them. The arbitral function which suggests the staying aloof and absence of partiality is likely to be absent in this case. Obviously, this does not mean that people appointed by the political formations will automatically comport themselves in partisan manner, and neither is it obvious that political stakeholders, going by their particularistic definitions, will first of all be guided by neutrality.

The second option – exclusion of any political consideration in the composition of the electoral commission – comprises the advantage of stretching the exigency of the independence of the commission to the very end, enshrining it in the statutory principle or the deontological principle. In that way, any suspicion of partiality or “politicization” weighing on the commission is far removed. The disadvantage of such a conception lies meanwhile in the fact that it does not ensure the expertise of the commission. By “expertise”, we mean at this point in time the mastery of electoral issues from the standpoint of political activism. This does not however mean that expertise in the management of elections is obtainable essentially

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through political activism. Electoral controversies and difficulties to which this one can give rise may, in terms of their resolution, require experience and knowledge which are not always acquired in other sectors of activities. An excellent judge, who deals normally with judicial matters, is not compulsorily a good judge of electoral matters, issues which do not provide legal clarity of the matters which are normally dealt with in law courts. A good human rights activist, desirous of defending the violated rights of such persons, is not necessarily best suited to deal with issues relating to elections, in view, for example, of the emotional and passionate charge which often characterizes this kind of matter, or the need to be seen as being balanced in the administration of sanctions when all the faults detected are not those of only one party.

In most countries, it is stated clearly that these stakeholders – government, parliament, political parties and civil society – appoint members according to variable modalities.

In *Burkina Faso*, the INEC is made up of 5 members proposed by the party in the majority, 5 members proposed by the opposition parties, 5 members by civil society organizations (CSO) among which 3 are proposed by religious organizations, 1 by traditional rulers and 1 by associations for the defense of human rights and freedoms.

In *Niger*, the country's INEC, contrary to what obtains in Burkina Faso, does not have, as one can see here below, a fixed number of members due to the fact that this number depends on the number of the political parties legally recognized. Attempts are made through its composition to include all the authorities involved in the electoral process. For the purpose of ensuring representation, the composition deserves to be reproduced exactly as follows:

- **Chairman:** a sitting judge proposed by his peers. Where there is no judge, the president of the country may appoint any person known for his impartiality, competence and integrity by presidential authorisation and after consultation with political parties;
  - **First Vice Chairman:** a judge from the headquarters proposed by his peers, given that the chairman is not a judge or a representative of the Niger's Bar Association;
  - **Second Vice Chairman:** a representative from a legally recognized group of Women Associations;
  - **Two Secretaries:** appointed by INEC among its members, out of whom one representative must be from the association for the defense of human rights or the promotion of democracy, and one representative of the state;
  - **Members:**
    - 1 representative of each of the legally recognized political parties;
    - 1 representative of each of the independent candidates to the presidential election;
    - 1 representative of the associations for the defense of human rights and promotion of democracy;
    - 1 representative of the Ministry of Justice;
    - 1 representative of the Ministry of Foreign Affairs;
    - 1 representative of the National Commission on Human Rights and Fundamental Liberties;
    - 1 representative of the Directorate of Women Affairs;
    - 1 representative of the National Intervention and Security Force;
    - 1 representative of the Police Force;
    - 1 representative of the National Motor Park and Administrative Garage;
    - The Director General of political and legal affairs in the Ministry of the Interior representing the Government of Niger;
    - The representative of the Directorate of Civil Protection in the Ministry of the Interior;
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- The representative of the Office of the Director General of Budget at the Ministry of Finance ;
- The representative of the Directorate of Public Liberties at the Ministry of the Interior;
- The representative of the Directorate of Civil Status at the Ministry of the Interior;
- 2 representatives for all Trade Unions;
- 2 representatives of the Directorate of Information and Communication Technology;
- 2 representatives of the Ministry of National Defense;
- 2 representatives of the Ministry of Communications;
- 2 representatives of legally recognized groups of women associations.

An alternate person is appointed for each member who will replace such in case of absence or inability to participate in the meetings.

In *Benin*, members of the Independent National Electoral Commission (INEC) are officially appointed by the president of the country upon the proposal of government, parliament (quotas allotted proportionally according to the size of the political parties in the National Assembly), and civil society, the latter covering all socio-professional bodies or associations.

In *Cote d'Ivoire*, the Independent Electoral Commission (IEC) comprises members appointed, also via presidential authorization, upon the proposal by parliament, institutions and several ministries as well as by political parties.

In *Mali*, political stakeholders are also involved in the appointment of members of the National Electoral Commission (NEC), since the majority party and the opposition are both allowed to make proposal in this regard. Civil societies also have their representatives in the Commission.

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In *Guinea Conakry*, this type of tripartite composition of the INEC can be found with 10 representatives of the majority party, 10 representatives of the opposition parties, 3 representative of civil society and 2 representatives of government.

This composition as a mixture of representatives of political parties and civil society organizations also prevails in the National Electoral Commission of Guinea Bissau (NEC), which consists of an executive secretariat established by parliament (comprising one chairman, one vice chairman, one executive secretary and two assistant executive secretaries), a representative of the president of the country, two representatives of the government, a representative of each of the political parties or coalition of political parties with an appointment respecting the political configuration of parliament, a representative of the national communication council and a representative of each of the candidates at the presidential election.

In *Togo*, the composition of the electoral commission, which is also called INEC, offers a peculiarity which it shares with all the members of the commission. It accords, probably as a result of the particular situation of just getting out of crisis and crisis of confidence in the legislative election of 2007, a pride of place to the representation of the opposition. It is interesting to note that members of the Togo INEC are, contrary to what obtains in most of the other member countries of ECOWAS, appointed by the National Assembly.

It is however noted that in the case of Benin, Guinea Conakry, Mali, Nigeria and Burkina Faso, commissions are explicitly open to civil society and have only members with a political affiliation. This opening is noticed in the composition of Niger's and Mali's INEC as mentioned above: in the rank of the associations which are permitted to make suggestions, the trade union of the judiciary, the

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co-ordination of the women's association and even cultural and religious organizations are represented.

The *Cape Verde* electoral commission, called National Election Commission (NEC) is made up of five (5) members. Its members are elected by members of the parliament through secret ballot with two third (2/3) majority. Although the fact that members of the NEC are elected by members of parliament is not peculiar to Cape Verde, it is meanwhile interesting to note that contrary to what applies for several other countries of the sub-region, no allusion is made here to the political configuration of the parliamentary institution or to the general national political scene. This is for the simple reason that in Cap Verde, members of the NEC who do not represent political parties are expected to enjoy the confidence of a large political force represented at the National Assembly. It needs to be added that up until now, although no allusion has been clearly made to the need to take into consideration the political configuration of the parliament in the choice of members of the NEC, the opposition has always been taken into consideration (even when the majority has only 2/3 of the votes) and it does happen that the chairman of the NEC is one of the members appointed by the opposition.

In *Senegal*, it is on the other hand very clearly indicated that members of the INEC must be independent minded persons, of course of Senegalese nationality, and above all, known for their political neutrality. Incompatibilities which are found in most of the laws of other countries are even declared by the law. Consequently, a member of the government, a sitting judge, a member of the ministerial cabinet, an elected political officer, and a member of a support group to a party may not be members of the INEC or its parts. Similarly, top functionaries of the territorial administration (governors, chairmen of local governments, charimen of local development areas) are

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excluded from being members of the electoral commission. Senegal is, by every empirical standpoint, seen as opting for a “non-politicized INEC”.

It is in *Guinea Conakry* that this regime of incompatibilities is pursued with most rigour and detail. In fact, article 9 of the law relating to the Guinean INEC provides that "the function of members of INEC or its parts is incompatible with the functions of the members of the government, the military, paramilitary, sitting judge, head of political party, candidates during election, governor, chairmen of local governments areas, chairmen of local development areas, general secretaries of local government areas, municipal councils, local development areas, office of the mayors, chairmen of CRD, chairmen of councils of quarters, and chairmen of districts”.

It is this Senegalese option of a politically neutral commission which appears to be expressly or implicitly accorded more importance in most of the English speaking countries (*Gambia, Ghana, Nigeria, Sierra Leone, Liberia*). Thus for instance in Liberia, the NEC (National Electoral Commission), which is an independent public body, is made of five (5) members: one chairman, one vice chairman and 3 members called commissioners. The president of the country appoints, with the consent of the Senate, members of the NEC to their respective posts for a period of 7 years. To become member of the NEC of *Liberia*, one needs to be at least 35 years of age and, going by what obtains in the composition of the electoral commissions of other countries, the electoral commission meets the criteria of good morality and probity. It is also necessary to add that members of the commission must not belong to nor be affiliates of a political party, and that two members should not come from the same county. The prohibition of affiliation extends to all employees of the electoral commission.

The same careful measures of avoiding politically inclined persons are applied in *Sierra Leone* and in the *Gambia* where all persons who, during the last two years preceding the presentation of their candidatures to the commission, were candidates at the legislative elections, occupied a post in an organization which supported candidates at the legislative elections, supported candidates in the local elections, or occupy a post of responsibility in the public service, are not eligible.

Is the authority which officially appoints members of the commission at liberty to reject candidates presented to it or in other words, is its power to appoint restricted or based on any condition? For instance, in the case of Liberia (but it is the same things in most of the English speaking countries), it is the president who proposes and accepts the decision of the Senate. There is therefore no restriction of proposal at the level of the president, but the Senate can reject proposals.

Apart from the Lusophone countries which strengthen the prerogatives of parliament in the appointment of members of the commissions (Cape Verde, Guinea Bissau), in all other surveyed countries it is the president of the country who officially appoints the members of the commission. Meanwhile, this power of appointment is more or less based on circumstances. Thus in the cases of *Benin*, *Mali* and *Cote d'Ivoire*, this power to appoint was simply mentioned, without much detail, which gives the impression that the president of the country must endorse the proposal which was made to him and does not have the power to reject it. In legal parlance, one would say that his hands are tied. The same thing obtains in *Burkina Faso*, *Guinea Conakry* and *Niger*.

On the other hand, in the examples of the Anglophone countries (*Ghana*, *Gambia*, *Liberia*, *Sierra Leone*, *Nigeria*), the power of the Head of State is conditioned at least at the procedural level. Members of

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the Ghanaian electoral commission are appointed by the president of the country "in consultation with the council of state". In Nigeria, not only this condition exists, but it is stated that the action of appointment taken by the Head of State must be confirmed by the senate. There is therefore in this latter country a double restriction to the power of appointment of the Head of State: strictly speaking at the procedural level – through the obligation to agree with the council of state, and at the level of effectiveness of its power, the entry into force of the action which he takes depending on the intervention of the Senate. In the real sense of things, it would no doubt be more accurate in the case of Nigeria to talk of a 'joint decision' of the president of the country and the Senate.

In *Senegal*, the obligation on the president of the country is to choose members of the INEC after consultations of institutions, associations or organizations such as those of lawyers, university lecturers and human rights defenders. There exists therefore a certain obligation of procedures like in Nigeria, but in the true sense of the matter, this one is quite weak, and nothing binds the Senegalese Head of State in the choice which he makes of the persons.

### **1.1.2 What kind of judgment can one make out of all these different systems?**

A priori, it may be tempting to limit the power of appointment. By presenting procedural obstacles, multiplying formalities, one can only prevent the emergence of a presidential arbitral power. This option may therefore turn out to be a fortunate one. It could however be tragic if the appointment of members of the electoral commission should become an opportunity to re-enact a "guerilla war" between the various bodies involved, or, on the reverse, give rise to a "merchandising" in relationship with balancing of political forces. In this case, there will be a rigorously inverse effect of the person sought for.

### **1.1.3 Qualifications required for becoming a member of electoral commissions**

In general, the conditions which must be fulfilled to become a member of an electoral commission are not excessively elaborate. The concern for qualifications is aimed at having people within the commissions who could guarantee neutrality or a balanced representation of political forces taking part in the electoral contest.

It is remarkable that legal systems cover little of these conditions. The commission is instituted, the appointment and status of members mentioned, but nothing is said about the capacities of the members themselves.

The conditions required to be a member of the electoral commission are in most of the countries formulated in "positive terms" and only sometime in "negative terms".

The "positive" formulation consists in stating that members of the commission must possess such and such qualities. These qualities are often integrity, probity, morality, neutrality and impartiality. This condition is for example expressly required in *Benin, Guinea Conakry and Nigeria*.

On this note, the INEC in *Niger* and in *Guinea Bissau* are an exception since members of the body are not appointed by virtue of their individual positions as members representing institutions.

The "negative" formulation of conditions required to be member of the electoral commission consists in excluding people who have been

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sentenced by law courts. In the case of *Guinea Conakry* or *Cote d'Ivoire* for example, it is indicated that the person who aspires to become a member of the commission must not have been sentenced for a crime, a punishment depriving him of his civic rights or embezzlement of public funds.

*In Ghana*, the condition for membership of the electoral commission is aligned with that of members of parliament, a function which is quite important in the English tradition. The exclusions provided for are quite numerous and are described in a circumstantial manner. There are at least five categories of offences which constitute impeachment.

*Cote d'Ivoire* and *Ghana* share another trait which does not exist elsewhere: the need to be in line with the fiscal regime of the country.

One finds some conditions which are peculiar to a country, like the express demand of a certain level of education – ability to read and write (*Côte d'Ivoire*), membership of a group representing the civil society for the chairman (*Burkina Faso*), a certain age (35 year at least to become member like in *Liberia*; 50 years of age at least for the chairman of the commission, and 40 years of age for other members in *Nigeria* ; maximum age of 70 years and 65 years for the same persons in *Ghana*), and should not be member of the security cults (*Ghana*), at the same time a minimum age of 35 years and a maximum age of 70 years applies.

The study of these various conditions may provide a confused feeling, indeed rebellious disorderliness to every injunction. In fact, in some cases, it is the law or the constitution which stipulate the required age whereas in other cases, one would need to search for same in the statutes and internal regulations of the commission so as to come by

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the relevant standards. Sometimes, these documents are deficient, which may be the root cause of some difficulties, as we saw in the case of *Benin* during the legislative elections of April 2007, where the chairman of the commission was 'dismissed' some few days before an important voting exercise.

To sum up, concerning the required conditions for becoming member of the electoral commission, two variables are important: proven impartiality and absence of a culpable judicial past.



**Table 1:**  
**Classification of commissions by profile and member appointment authority**

		"Profile" of Members		
		A part of politically committed members	Non politically committed members	Others
Authorities and procedures for the appointment of members of the commission	Appointment by the president upon suggestion by other bodies	Benin, Niger, Burkina Faso, Cote d'Ivoire, Mali, etc.		
	Proposal and appointment by the president with the consent of other institutions		Liberia, Gambia Nigeria, etc.	
	Proposal and appointment by the president with consultation of other institutions		Senegal, Ghana, Sierra Leone, Liberia?	
	Appointment by another institutions, e.g. the parliament	Togo, Guinea Bissau	Cape Verde	

## **1.2 Terms of office of electoral commissions**

### **1.2.1 Duration of the mandate of the members of electoral commissions**

This item brings us to dealing with three issues:

- Duration of the tenure of the members of the electoral commission, and the possibilities of re-appointment or re-election to this post
- Duration of the electoral commission: is it a permanent body or an intermittent body which only exists during the period of election and disappears while awaiting the next one?
- Conditions for the premature or anticipated stoppage of the function of the members of the electoral commission: resignation or dismissal

### **1.2.2 Tenure of members and duration of the commission**

Regarding the first two issues, the countries under study bring three different situations to the fore:

In particular cases such as the ones in *Benin, Niger and Mali*, the electoral commission only has an intermittent existence. It is established on the eve of elections and disappears immediately after, to re-surface during the next elections. It is an institution which is re-constituted at a given interval.

In *Benin*, the duration of the mandate is between 45 days (a month and a half) and 6 months, depending on the provision of the electoral laws and the date of the effective installation of the members of the commission. Nevertheless, there is a 'Permanent Administrative

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Secretariat' of INEC which is made up of 4 members and which, as its name connotes, is endowed with some degree of permanency, whereas the commission itself is an intermittent body. The 4 members of the permanent administrative secretariat are divided as follows: a permanent administrative secretary, aided by 3 assistants respectively in charge of conservation of the administrative memory, maintenance of the electoral properties and supervision of the professional bodies in charge of computerization and updating of the permanent electoral list. With regards to the duration of the membership of the autonomous national electoral commission, it is necessary to state that no legal provision limits the number of tenures of members of the electoral body.

In *Mali*, INEC no longer exists.

It is in this category that one can place the electoral commission of *Niger*. The chairman and the vice chairmen of INEC as well as the other members are appointed by presidential decree. Their tenure ends 3 months after the proclamation of the final results of the election.

The same situation is seen in *Togo* where according to the law, INEC is permanent but the function of the members of INEC will come to end 45 days after the proclamation of the results.

There is a second more frequent case characterized by the permanence of the institution and determination of tenure with variable duration for its members. Most of the countries are in this category. There are countries in which members of the commission have one renewable mandate. This is the case in *Cote d'Ivoire*, *Nigeria* and *Senegal*, where a specific duration is assigned to a mandate of the members of the commission, who work during this period, the existence of electoral deadlines being of little importance.

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This is a 'full time' tenure. It is 6 years renewable once in *Cote d'Ivoire* (with the exception of the chairman of the IEC, who is only eligible to the post of the chairman once). As for the IEC itself, one can consider it to be a permanent body, since its office is always on ground, even after the elections. Only the 'local commissions' which were set up disappear.

Likewise in *Senegal*, the tenure is 6 years renewable only once, with a renewal of one third of its members every 3 years. The INEC has a permanent existence, only its members (at the regional, departmental levels and abroad) have their existence tied to electoral deadlines; they disappear as soon as the election is concluded.

In *Burkina Faso*, the duration of the tenure of the members of the INEC is five (5) years renewable once. Members swear to an oath before the Constitutional Council and enjoy immunity.

*Guinea Bissau* is in a similar category since the executive secretary of the National Electoral Commission enjoys a permanent status with a mandate of four years whereas the mandate of the members ends after the elections.

In *Cape Verde*, members of the NEC are elected for a period of 6 years renewable once. They cannot be dismissed, but their decisions can be re-considered by the Constitutional Court (before, it used to be by the Supreme Court) but only two of them (the chairman and the secretary) are engaged on a full time basis. The others are brought on board whenever elections are approaching and cease to function on account of the commission some weeks after the elections.

In the *Gambia*, members of the commission are appointed for a tenure of 7 years, re-eligible only once. It is presently being suggested that 3

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of the first members (chosen by casting lots) spend at least 7 years so as to allow for continuity within the commission through the partial renewal of membership (following the example of what the law provides for the Senegalese INEC).

*In Nigeria*, the tenure of members of the commission is 5 years, renewable once. But the electoral commission has permanent members, who continue to work after elections.

There are countries whose laws provide members of the electoral commission with a non-expressly renewable mandate. In *Liberia*, members of the electoral commission have a non-renewable 7 year mandate. The mandate of the electoral commission of *Sierra Leone* is subject to the same legal regime.

There is another case which deserves mention, which is that of *Togo* where the INEC is permanent, but its membership is not. In fact, the tenure of the members of INEC ends 45 days after the proclamation of the final results of the election for which it is established. The mandate of members of INEC is renewable. INEC presents its general activity report to all the institutions concerned by the elections 45 days at most after the declaration of the final results of the election.

Finally, *Ghana* presents a particular case in the sense that no duration is assigned to the mandate of the members of the commission who remain on duty until retirement. The only limitations are in respect of age and moral standing.

### **1.2.3 Anticipated stoppage of functions of members of the electoral commission**

Concerning the anticipated stoppage of functions of members of the

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electoral commission, the following comments can be made: the situations vary according to the background and the willingness of shielding members of the electoral commission from arbitrary sanctions.

In the same sense, the internal regulations of the *Benin* INEC only provide for an anticipated stoppage of functions for members of the decentralized bodies of the Commission. It seems that no regulations are provided for members of the national commission, which constitutes a regrettable gap. Whenever they are cited, these causes remain classical: physical impossibility to exercising the mandate, resignation, etc. In the case of Benin, incidents linked to the dismissal of the chairman of the INEC some days before the elections held in 2007 are no doubt the type which could encourage the legislator to deal more comprehensively with the issue of anticipated cessation of duties of the members of the commission (remembering that Benin INEC is not a permanent body).

In *Cote d'Ivoire*, the provisions of the law ref. 2004-642 of 14th December 2004 which govern IEC are short but cover, undoubtedly, all the hypotheses of anticipated stoppage of functions of members of the commission. The laws stipulates as a matter of fact that these functions end following any physical disability duly confirmed by a doctor appointed by the Constitutional Court upon the request of the chairman of the IEC, or due to shortcomings in carrying out their duties as members of the commission, decided on the basis of 4/5 majority of the members of the IEC. Such provisions are certainly encompassing, but, there again, it is permitted to ask questions on their evasive nature in the case of forced dismissals.

In *Cape Verde and Guinea Bissau*, it is stated that members of the electoral commission cannot be sacked. In *Guinea Conakry*, it is clearly mentioned that except in case of outright official misconduct, a

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member of INEC cannot be sued, declared wanted, arrested, detained or judged for opinions expressed or acts committed in the exercise of its functions. For any offence, the pursuit of the case before the law court is only possible after the opinion of the INEC office has been sought.

Laws in the Anglophone countries (*Gambia, Liberia, Sierra Leone, Nigeria, Ghana*) contain abundant provisions on the possibility of anticipated cessation of duties of the members of the electoral commission. For example, in *Gambia*, the president of the country can sack any member of the commission for: (a) incapacity to accomplish his mission, (b) any circumstance which disqualifies someone, (c) bad conduct. But before sacking any member, the president must set up a tribunal of 3 judges of a higher court to establish the truth.

The same legal regime is observable in *Sierra Leone* where, in line with constitutional provisions, the president of the republic can sack any member of the commission for reasons relating to (a) the inability to accomplish his duty, (b) any circumstance which disqualifies someone, and (c) bad conduct. In this case, the president of the country must forward the case to a law court which he will set up in line with the procedures provided for in the constitution.

In the case of *Nigeria*, it appears that the prospect of a dismissal of a member of the commission does exist. Motives behind such dismissal are not specified, according to the data collected. It is simply provided that the president of the country shall make pronouncement of this sanction, which must meanwhile have the support of 2/3 majority of the members of the Senate. The rule of 'parallelism of forms' is then respected, since the appointment of members of the commission should enjoy the consent of the Senate. Dismissal constitutes however a more difficult procedure than appointment, since it requires precisely a

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qualified 2/3 majority. This requirement is understandably so to strengthen the protection of the members of the commission.

The *Ghanaian* law on the issue dealt with here, which is the most verbose since it dwells on the dismissal procedure, remains thus judicially very important, with the stages of hearing, instruction, etc. The final decision is taken by the president of the country, who as the final authority officially appoints and dismisses members of the electoral commission. He must however act, as stated by the Ghanaian law, in accordance with the recommendations of the committee made of 5 members out of which 3 are judges. It can therefore be rightly said that the presidential competence on matters of dismissal is tied and not free.

In the case of *Senegal*, it is anticipated that the cessation of tenure of members of the INEC occurs upon the resignation of the person or in case of a physical or mental disability detected by a doctor designated by the council after the view in accordance with INEC. On the other hand, if the inability of the member is prolonged beyond 5 statutory meetings of the commission, the tenure will be terminated; a bylaw provides for his replacement by another person from the same institution which he represented. This new member shall fulfill the remaining part of the tenure in question.

In all, provisions relating to the voluntary or involuntary resignation of members of electoral commissions call for three main comments.

First, it appears that many of them are characterized by their shortcomings. Sometimes, the issue of anticipated cessation of duties is totally evaded (*Mali*), sometimes it is quickly dealt with through an extremely general mention of the causes of the dismissal. Obviously, it will be unreasonable to ask a legislator or a constituent to be exhaustive on the matter, but the intervention of these bodies for the

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regulation of elections in West Africa ought to be as precise as possible on the condition of their dissolution or on that of the dismissal of their members.

In the second instance, it has been noticed that in some countries (*Ghana, Gambia, Sierra Leone* and *Nigeria*), the political power – the Head of State more precisely – was expected to effect the dismissal of members of the commission. If such a rule can explain the intrusion of the political power which it constitutes, as it was seen through the procedural rule of 'parallelism of forms', is nonetheless worrisome. It is however true that in the two cases, the power of the Head of State is not without conditions: it must enjoy the 2/3 majority of the Senate of *Nigeria* and *Ghana*, and it must be exercised in accordance with the recommendations of the committee in charge of directing the procedure for the dismissal, as it was already noticed.

Finally, the issue of collective resignation of members of the electoral commission is not dealt with by the texts. The cases which were cited only have to do with individual situations and behaviours.

**Table 2:**  
**Durations of the tenure of the commission and that of its members**

		Duration of the tenure of the commission			
		Ad Hoc Commission	Ad Hoc Commission PAS	Permanent Commission	
<b>Duration of the members of the commission</b>		Number of unlimited tenure			Ghana
	Permanent	Number of limited tenure			Nigeria, Cote d'Ivoire, Senegal, Gambia, Sierra Leone, Liberia, Burkina Faso
	Partially intermittent	Number of un-limited tenure			
		Number of un-limited tenure			Guinea Bissau, Cape Verde
	Intermittent	Number of un-limited tenure	Mali	Benin, Niger	Togo
		Number of limited tenure			

\* PAS = Permanent Administrative Secretariat

## Summary of Chapter 1

- The conditions for becoming a member of electoral commissions can be essentially summed up as follows: (i) only people who are neutral (who do not belong to any political party) can be included as members of the commission, which is the case in almost all Anglophone countries and in Cape Verde or (ii) a balanced representation of political forces taking part in the electoral contest need to be assured, which is the case in all Francophone countries with the exception of Senegal as well as Guinea Bissau.
- The authority and procedure for the appointment of members of the electoral commissions also vary from one country to the other. There are cases where the president of the country appoints members on the proposal by other bodies (Benin, Niger). There are also cases where the appointment is done by the president of the country but with the required consent of another institution (Liberia, Senegal, Ghana, Sierra Leone). There are finally cases where parliament, e.g. an institution which handles the appointment (Togo, Guinea Bissau and Cape Verde).

- The duration of the exercise of the functions as a member of the electoral commission also presents some variations. In some countries, membership is intermittent (appointed in an ad hoc manner, just for each election) with a number of unlimited mandates (Benin, Niger, Togo). In others, the tenure is intermittent only for a part of the members of the commission (Guinea Bissau, Cape Verde), and finally the case in which the tenure is continuous (Burkina Faso, Cote-d'Ivoire, Nigeria, Senegal, Gambia, Sierra Leone, Liberia, Ghana).
- The duration of electoral commissions is generally twofold, namely: ad hoc commissions (Benin, Niger, Mali) and permanent commissions (in all the other countries of the sub-region).
- As for anticipated cessation of duties of members of the commission, the issue was not practically dealt with in Francophone and Lusophone countries. On the other hand, members of the commissions can either be dismissed by the authorities that appointed them or by the president of the country in line with the existing laws.

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## CHAPTER

### OPERATIONS OF ELECTORAL COMMISSIONS

**The operations of the electoral commissions will be dealt with in three fields:**

- Structuring of the commissions, their 'organizational chart';
- Their prerogatives;
- Their financial regime.

#### **2.1 Internal structuring**

**T**he principles of internal structuring of electoral commissions are distributed between legislative, regulatory and constitutional legal texts (notably for Anglophone countries) on the one hand, and the laws resulting from the self-organization capacity on the other hand. The main goal of these principles is to guarantee the proximity and effectiveness of the commissions.

In general, electoral commissions have executive bodies (offices) and comprise parts which cover the administrative sections of the country.

In *Burkina Faso*, the organization and operations of the INEC are stipulated by the decision of the chairman of the institution after deliberation of its members. INEC is endowed with a permanent

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administration led by a permanent secretary and placed under the authority of the chairman. The secretary general, chosen among people occupying posts of category A of the administration of the territory, is appointed by decision of the Council of Ministers upon the proposal of the chairman of the INEC. The accountant of the INEC is appointed by the minister in charge of finances. INEC may call for all the competences which it considers useful for the accomplishment of its mission.

**The constituent parts of INEC are:**

- At the provincial level, the independent provincial electoral commission (IPEC) made up of 2 persons appointed by the parties and political formation of the government in power, 2 persons designated by the opposition, and 2 by CSOs;
- At the community level, the independent community electoral commission (ICEC);
- At the village level, the independent village electoral commission (IVEC).

All the constituent parts were put in place by INEC only at the time of national elections and referenda, about six (6) months before the election and their tenure terminates with the proclamation of the final results of their respective electoral constituency. At the municipal level, only community electoral commissions (ICEC) and the village electoral commissions (IVEC) are established. ICECs reflect as much as possible the composition of IPEC.

In *Togo*, the rules of INEC's internal operations are fixed by the decisions of the chairman of the commission after deliberation of its

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members. The organizational and operational rules of its sub-organs are determined, as well as those of the permanent administrative secretariat.

The Togolese INEC is also endowed with a permanent administrative secretariat (PAS) led by an administrative secretary. The administrative secretary is appointed through a decision taken in the Council of Ministers upon proposal of the INEC. The administrative secretary is aided by an assistant.

**PAS is responsible for:**

- The management of INEC personnel;
- The management of administrative and electoral materials of INEC;
- Information of the public on the activities of INEC upon the directive of the president;
- The conservation of the electoral list and national electoral property.

Contrary to the situation observed with most of the electoral commissions considered in this study, local electoral commissions are equally assisted by technical committees. Each ILEC (Independent Local Electoral Commission) is assisted by a technical committee made up as follows:

- One representative of the governor;
  - One representative of the Lomé Municipality;
  - One commandant of the brigade of gendarmes or in his stead, one officer in charge of the region's headquarters police station;
  - The central police commissioner for the city of Lomé, the head of
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- the detachment of the keepers of territorial security;
- The head of the communications service or in his absence, the person in charge of post office, and one ICT expert or statistician;
- One representative of the traditional chiefs.

In *Niger*, INEC also has a permanent general secretariat led by a permanent secretary appointed by the decision of the president of the republic upon the proposal of INEC.

**The secretary general of INEC does the following:**

- Organizes the permanent general secretariat of INEC;
- Ensures the preservation, management and updating of electoral lists;
- Manages the administrative personnel of the PAS;
- Receives, manages and preserves any documentation relating to the elections;
- Prepares and submits the budget of PAS to the government;
- Prepares and submits the budget of elections and that of the Administrative Committees (AC) to the chairman of INEC.

INEC may furthermore be divided into as many sub-committees that it deems necessary. Up until now, it is subdivided into five (5) sub-committees which are:

- The administrative and legal sub-committee;
  - The defence and security sub-committee;
  - The logistics sub-committee;
  - The finance sub-committee;
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- The communications and accreditation sub-committee.

Decisions within the electoral commission are taken by consensus or a simple majority of the members in attendance. The organization and modes of operation of INEC are stipulated by internal regulations adopted in a plenary session with a simple majority of the members of the commission.

It is interesting to note that despite the very high number of members of INEC, all of them do not have voting rights. In fact, those who participate in internal elections are:

- The representatives of legally recognized political parties;
- The representatives of the independent candidates;
- The representative of the state ;
- The representative of the Association for Human Rights and the Promotion of Democracy;
- The representative of the National Commission for Human Rights and Fundamental Freedoms;
- Two representatives of the legally recognized women's associations.

The membership of the commission also comprises representatives of other ministerial departments and advisers to the commission in the case of *Cape Verde*. In this country, the practical management of the electoral process is done jointly by three bodies – NEC, DGAPE and REC – involved in the organization of elections in the country. DGAPE is the body which organizes the elections from the technical point of view; it lends its support in terms of electoral expertise to the two other bodies whenever such becomes necessary. RECs are the concrete implementation units on ground and NEC is the general supervisor.

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As a matter of fact, NEC is mainly in charge of supervising the whole electoral process and settles eventual litigations brought to its knowledge. In order to suitably assume its role, NEC is assisted by three permanent advisers:

- An adviser of the Ministry of Foreign Affairs for the management of issues relating to citizens from the Diaspora (whose number exceeds that of the nationals living on the national territory);
- An adviser to the Ministry of Communications for the management of issues relating to public education enlightenment and allocation of media slots;
- A permanent adviser from the Directorate of General Support Services to Electoral Processes (DGAPE).

NEC holds one meeting per week in which representatives of all political parties take part. Until the adoption of the last electoral law in June 2007, representatives of parties could only demand for clarification on issues, but they were not permitted to take part in the discussions. With the new law, they participate in the discussions but without the possibility of casting vote.

NEC, for the purpose of supervising the management of election practices, sends a delegate to each of the twenty-two (22) electoral constituencies. These delegates are chosen freely by the NEC among persons whose moral standing and probity are above board. Political parties can contest the proposal of a person if he does not possess the qualities required of a delegate designated by the NEC.

In **Benin**, the number of ANEC members has varied from one election to the other: 17 members in 1996, 23 in 1999, 25 until 2007, and since the adoption of the last law on the general rules for elections in the Republic of Benin, which dates back to November 2007, the number of ANEC members has been brought down to 17. The number of members of the national bureau of ANEC has equally changed: 5 in 1996, 9 in 2003 and 7 in 2006; it was brought back to 5 since 2007. These variations are linked with changes relating to the territorial administration of the state (subdivisions of the territory) and the developments at the level of the electoral body itself.

In each department (old departments which comprise two new departments each), provisions are expected to be made for ANEC coordinators. In law n°2007-025 on the general rules for elections in the Republic of Benin mentioned here above, provisions are made for one coordinator from ANEC per department<sup>1</sup>.

The ANEC coordinator in the department has a departmental electoral committee (DEC) under his direct control which supervises the activities of the community electoral committees (CEC), under whose authority the village electoral committees (VEC) work. These latter committees ensure the good implementation of the tasks entrusted to the census agents and members of the polling booths (on the day of elections). For each department, a headquarters is designated, because each departmental electoral committee must reside in a headquarters.

The national office of ANEC is assisted by a technical committee made up of persons recruited by ANEC upon invitation to present applications which fulfil the profiles required. This committee helps

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<sup>1</sup> It is necessary to recognize the fact that, over time, this number which follows the example of all the other concerning Benin ANEC, has changed. Often, it was 2 coordinators per department and 3 coordinators for 2 departments; now (at least since the electoral law of November 2007), it is 1 ANEC coordinator per department.

the office to ensure the control of the allocation of time for the chapters among the candidates, relationship with the press, expenses relating to campaigns, etc. The technical committee functions as a matter of principle under the authority of ANEC, and in collaboration with all the institutions involved in the organization of the election.

The national bureau of ANEC is also the spokesperson of government and other institutions involved in the organization of the election. Furthermore, it gives accreditation to international observers, press representatives and NGOs. Being an emanation of ANEC, it is naturally dissolved together with ANEC once the elections are concluded.

ANEC supervises and monitors the organization of elections in the embassies and consulates of Benin abroad. For the presidential election, it appoints members of the census offices and those of the polling booths, upon the proposal of the political parties or candidates engaged in this election.

In *Cote d'Ivoire*, the Independent Electoral Commission (IEC) comprises 31 members. The IEC is permanent through its bureau, made up of 12 members who effectively continue to function after the elections. It consists of three organs.

There is first and foremost the 'central committee' of IEC, a fully fledged organ, made of 31 members.

Then, there is an office which is an executive and managerial organ. It is made of 12 members: 1 chairman, 4 vice chairmen, 1 permanent secretary, 2 deputy permanent secretaries, 1 treasurer, 1 assistant treasurer and 2 advisers, all elected among the members of the central committee for a period of 6 years.

Finally, there are local committees which ensure the representation at the local level of IEC. These local committees are subdivided into regional and departmental committees, which are training bodies, and sub-regional, community committees and diplomatic representations, which are implementation bodies for electoral operations. All local committees disappear at the end of the activity for which they are established, but the IEC continues to exist through its office.

Abroad, the diplomatic and consular offices of Cote d'Ivoire play the role of the local committees of IEC at the place where they are located.

In *Guinea Conakry*, INEC is managed by a bureau of 5 members (1 chairman, 2 vice chairmen, 1 rapporteur and 1 treasurer) and comprises working committees established by its internal rules. The office of INEC is assisted by an administrative secretary. INEC is represented by its member organizations at the level of the Conakry municipality, regions, urban communities, provincial and diplomatic missions.

In *Guinea Bissau*, the electoral commission is managed by a permanent executive secretariat which comprises the chairman of NEC, the vice chairman, an executive secretary and two assistant executive secretaries. The commission is represented in each region. The regional offices of INEC are made up of a chairman and a representative of each party or coalition of parties. The chairman has his own prerogatives which include the representation and operations of the electoral commission. The executive secretariat as a collegiate body has prerogatives in the administration and management of the commission.

In *Ghana*, the electoral commission consists of 7 members. 3 of these members work as permanent appointees and on full time basis for the commission, the 4 others are only brought on board from time to time. At the local level, the electoral commission is represented through a maximum of 10 offices per region and 3 offices per division of a department. The commission only receives Ghanaian votes from abroad during presidential elections. In fact, there are numerous issues on the organization of the votes of Ghanaians living abroad, and it does not appear as if the laws adopted on this issue – already prepared – will be implemented during the next electoral contests (2008).

In *Mali*, the National Electoral Commission has 15 members. In the District of Bamako, the capital, the commission has 6 members at the level of the region and local government. Some of its members are installed to maintain close relations with the embassies and consulates of Mali abroad, and the NEC is itself represented in these diplomatic missions.

In *Nigeria*, the electoral commission comprises 13 members. It is represented across the entire national territory. The commission has representations in all the states of the federation and the federal capital.

In the case of *Senegal*, ANEC has three levels of representation. There is first of all a representation of ANEC at the departmental level (the Autonomous Departmental Electoral Commission, ADEC, about 34 offices with 9 members per ADEC), then at the regional level (the Autonomous Regional Electoral Commission, AREC, 11 offices with 7 members each) and finally abroad, in the embassies and consulates (the External Delegation of ANEC, EDCENA, which has each 7

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members and which is present in all the states where the electoral body, i.e. citizens from Senegal in a given country, has a sizeable number of at least 500 individuals).

In *Liberia*, the electoral commission (NEC) is endowed with several technical divisions for the accomplishment of its mission. For example, an administrative division is established within the premises of NEC which should include as many administrative subdivisions as possible. The administrative division is managed by an executive director appointed by the chairman of the commission with the consent of the Senate. The executive director has the following main responsibilities:

- (a) Supervise the general administration of the commission;
- (b) Assume the role of the secretary to the commission: attend meetings and prepare the minutes of the meetings;
- (c) Prepare and preserve information for the commission;
- (d) Manage and supervise the administrative subdivisions;
- (e) Discharge all the responsibilities which the commission might consider useful to entrust to it.

NEC equally has a judicial division which is the legal arm of the commission. The judicial section must be made up of 2 lawyers (serving as legal advisers of the commission), 2 officers in charge of legal research (Legal Research Officers) and as many other staff as the commission may consider necessary for its smooth running. The appointment of the members of the judicial section is done after consultation with the Chief Justice of the Supreme Court and the Ministry of Liberia. The missions of this section are as follows:

- (a) Represent the commission before the supreme court on all litigations relating to elections;

- (b) Advise the commission on any legal issue;
- (c) Provide the commission with legal advice on any issue with legal implications to the request of the commission;
- (d) Provide any legal support on the organization of elections as the commission would wish.

There are further electoral officers (election magistrates) at different levels: clerk of the writ, registrars, sheriffs, poll clerks, etc.

In the *Gambia*, the electoral commission must appoint an officer in charge of voters' registration and an intermediary staff (returning officer). The commission may appoint the same person to occupy the two posts. The returning officer serves as the intermediary between the commission and the grass-root stakeholders.

For the conduct of elections, the commission may appoint chairmen of the polling stations whose task consists in ensuring that the elections are well conducted. Nobody can qualify to be chairman of the polling station if in the past he or she had been convicted of electoral malpractice. The commission appoints as many electoral officers as it may deem necessary for the proper conduct of the elections. Every citizen may contest the appointment of an electoral officer; the commission shall consider the contestation and its decision is final.

In *Sierra Leone*, the commission must have an executive secretary and as many staff as the effective accomplishment of the task entrusted to the commission may require. Meanwhile, some public officers may be detached or may support the commission in the execution of its mission. The executive secretary and the other members are appointed by the commission on fixed the terms and conditions.



The executive secretary of the commission is in charge of:

- The daily management of the affairs of the commission;
- Taking notes and prepare the minutes of the meetings of the commission;
- Supervise support staff of the commission;
- Any responsibility which the commission may entrust to his care

At the level of each region (district), there is a regional electoral team made up of 5 persons: (a) a regional electoral assistant, (b) a trainer (c) a trainer of the electorate, (d) an officer in charge of logistics, and (e) an additional trainer. Each electoral constituency is endowed with a team of 2 constituency election monitors (CEM).

Although the number and tenure of members of electoral commissions vary, there are some common denominators in terms of their structuring between the national levels and the local levels. In most of the permanent or ad hoc commissions, there is an internal sub-organ which constitutes the permanent nucleus of the administration of the body.

## **2.2 Prerogatives**

In general, the powers and prerogatives of the electoral commissions bring to the fore two issues:

- The first one concerns their control of the electoral process;
- The second one concerns the effectiveness of their powers, particularly their power of sanctioning infringements to the electoral law.

Discussions on electoral commissions centre mainly on these two

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issues. The credibility of each commission often depends on whether the law grants or limits such powers.

It is possible to attempt a ranking of electoral commission according to the spread and the intensity of their prerogatives. Thus, it will be appropriate to differentiate electoral commissions with limited prerogatives (Line Referee Commission) and the electoral commissions with important prerogatives (Central Referee Commission). Among the latter, there are some which besides the prerogatives which they share with the others, possess a set of roles which transcend the electoral list and encompass a regulatory function on democracy. Those ones will be referred to as electoral commissions with important prerogatives (Strong Central Referee Commissions).

### **2.2.1 Electoral commission with reduced prerogatives (line referee commissions)**

In *Mali*, *Guinea Conakry* and *Senegal*, the electoral commission has largely a supervisory role: it monitors the electoral process but does not organize elections.

The *Guinean* law<sup>2</sup>, recently amended in 2009, provides very clearly that INEC shall be in charge of the organization of elections. It ensures the preparation, organization, taking of decisions, and implementation from voters' registration on electoral lists to the declaration of the provisional results of the elections. The prerogatives enumerated by the law are important (control of the entire process, appointment of supervisors, verification of electoral materials, consideration of issues relating to elections, etc.), but do not encompass the organization of elections. This was the situation before the military junta currently in power promulgated a decree which

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<sup>2</sup> The existing law before the passing of the law n°015/PRG/CNDD/2008 of 4th January 2009 on the management of electoral process by the National Council for Democracy and Development (CNDD) provides for the transfer of the organization of elections to INEC.

makes INEC the central body for the management of elections. At the moment, however, the exact application of this decree remains vague.

The ANEC of *Senegal* has some relatively important functions but is not responsible for the organization of elections, which is the duty of the Ministry of the Interior. It is, as a matter of principle, visible at all levels of formulation, organization, decisions making and execution of electoral operations, from the registration on the electoral list to the declaration of results. The Ministry of the Interior determines the venues for polling stations, prepares the electoral list and manages the electoral file under the supervision of ANEC. It ensures the equality of candidates in terms of access to the media, the National Broadcasting Regulatory Council (NBRC) and supervises the conduct of referenda. Nevertheless, ANEC is subject to some limitations, given that the Ministry of the Interior which remains in charge of the physical organization of elections. It thus has no power in the determination of the date for elections, preparation of the voting papers, establishment of polling booths, and choice of members of polling stations.

The Senegalese ANEC must submit an annual activity report to the president of the country one month before the end of the past year at the latest, as well as a consecutive report on each election or referendum. The publication of these reports shall take place 15 days after their presentation to the Head of State.

The electoral commissions that were established everywhere in Africa tally with the concern to make elections more transparent and constitute in this regard a democratic achievement, at least in principle. For a long time, many countries only witnessed a mockery of elections, with results well known in advance, the scores exceeding often, for the party in power, 90% of the votes cast. The establishment of electoral commissions fits perfectly into a situation where one has

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the hope not only of seeing a genuine multiparty democracy on ground, but putting an end to all the forms of masquerading and electoral malpractices. The transfer of power to sanction to these bodies appears to many political stakeholders and observers as the only means of improving electoral transparency, knowing that the organs of the state, be they administrative or judicial, are often seen as either 'at the service' of the power or as not being endowed in terms of laws or deeds, attributes which tend to preserve the pressures put on them. In these conditions, it is expected of the established electoral commissions that they ensure directly the sanctioning of infringements of electoral laws or at least to report promptly to the appropriate sanctioning authority, which is often the judiciary.

In fact, the issue of sanctioning infringements to electoral law aims at two different situations. Sanctions may first concern the electoral results. If some irregularities have been committed, the election should just be invalid: in what way can the commission come in, does it actually have a power to invalidate elections or parts of it?

The second case concerns the suing the persons suspected to have orchestrated the irregularities. The punishment envisaged, at this stage, no longer has anything to do with the electoral results, but the individual held to be responsible for them. It is therefore more of a penal offence.

Most of the time and for reasons easily understandable, this second aspect of the punishment is entrusted to the care of the law court, and is out of the scope of the electoral commission. The latter has never, as a matter of principle, had the power to inflict any freedom-depriving punishment or sanctions. Only judges can exercise such justice on behalf of the state. In other words, one can only expect interventions of the electoral commission on the first aspect of the repression, i.e. total or partial invalidation of the election results.

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The ANEC of *Senegal* has the power to take measures which are immediately binding, measures of injunction, rectification, sanitization, and substitution to a defaulting authority. Political parties, candidates or electors can bring cases before it. Its court has therefore a wide range of action. ANEC can itself bring matters before competent courts for penal sanction wherever it discovers irregularities.

The proclamation of election results is out of the purview of the Senegalese ANEC. At the departmental level, there is a committee for the censuring of votes. The committee is mainly composed of professional judges. It is this committee which declares the provisional results of the consultation and which transmits its report to the Constitutional Court. The latter may receive all litigations within 48 hours of sending these results. It decides on the basis of these and declares the final results, against which of course there is no appeal. It needs to be pointed out that if ANEC cannot in the real sense of the word invalidate the results, it however has all the liberty to draw the attention of the constitutional council to its observations. The latter proclaims the final results on irregularities which can compromise the sincerity of the election.

### **2.2.2 Electoral commission with important prerogatives (Central Referee Committee)**

Apart from the Senegalese electoral commission, almost all the electoral commissions have important prerogatives encompassing the entire electoral process. Thus there are specific prerogatives which are common to all of them.

On the list of general prerogatives, the electoral commissions of

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other countries (*Guinea Bissau*<sup>3</sup>, *Cape Verde*, *Gambia*, *Benin*, *Togo*, *Ghana*, *Nigeria*, *Liberia*, *Sierra Leone*, *Niger*, *Cote d'Ivoire*, *Burkina Faso*) have among their main missions : (a) the establishment, management and conservation of the national electoral file and (b) the organization and supervision of electoral and referendum operations.

They are in charge:

- During the pre-electoral period, of all the preparatory operations before electoral consultations, notably : updating and keeping of the national electoral register as well as electoral documents and materials, review of the electoral lists, contribution to the civic education of citizens in terms of expression of suffrage, locations and density of the polling stations; the frame for those issues is essentially determined by the law, but the details are left for the electoral commission; it conducts the operation leading to the printing of the ballot papers;
- During electoral consultations or referenda, of anything that ensures the quality and credibility of elections: the electoral commission is in charge of supervising the operations (security of ballot papers, transportation and transfer of the minutes of the election, etc.) leading to the declaration of the provisional results by it; facilitating the monitoring of ballots by administrative courts and political parties. At the end of the voting exercise, the counting of the vote is done at the polling station and the results (by the polling stations) announced publicly and pasted while signed copies of the minutes are distributed to all the representatives of the political parties and candidates and sent to all the branches of the commission. Appeals and other claims are sent to the constitutional council (or its equivalent) in a certain number of days following the declaration of the provisional

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<sup>3</sup>The case of Guinea Bissau presents a peculiarity which deserves to be underscored here. Whereas it manages all the other key aspects of the electoral process, the electoral commission of Guinea Bissau does not control the preparation of the electoral list. It manages the list as established by the Ministry of Interior.

results. ANEC is in charge of the reception and accreditation of observers and the taking of any measures to facilitate their mission on the ground during the voting exercise;

- During the post electoral period, of the publication of all the electoral documents and materials as well as ensuring their preservation.

Specifically,

### **In Benin**

The Benin ANEC is an autonomous institution, it does not depend on other 'public power' (government or parliament). Its general missions are the preparation of elections as well as the consolidation of the election results, which it puts at the disposal of the Constitutional Court (in charge of sanctioning legislative and presidential elections) and the Supreme Court (in charge of sanctioning municipal and community elections).

ANEC is associated with the determination of the election date by the governmental authorities; it is a decision made at the level of the Council of Ministers which officially fixes this date and informs the citizens about it. Its function is strictly encapsulated in the management of elections. A non-permanent institution, it disappears as soon as the election ends. It therefore has no mandate for supervising other elections (professional or within the party, for example). This is a national electoral commission.

ANEC implements the head count for the electorate and controls and preserves electoral lists. It determines the conditions in which polling stations are established and takes into account the demographic and social data to determine the place for the polling stations and

registration booths. Nevertheless, the determination of the magnitude of the constituencies (allocation of seats to be filled on the portion of the national territory) is the responsibility of the National Assembly.

ANEC is competent to undertake the printing of the ballot papers. In Benin, a new system has been established in 1999, where the single ballot was instituted and ANEC has become very competent in this respect.

ANEC also has as its mission the training of the members of the polling stations upon proposal from the political parties. This training is often supported by civil society organizations and international institutions operating in Benin.

ANEC has however no mandate to comment on the quality of an elector. Litigations concerning this issue are brought either before the Constitutional Court or before the Supreme Court.

ANEC contributes to the provision of election logistics such as the transportations of ballot papers. This transportation is done under the supervision of the members of the Local Electoral Commissions (LEC), the Departmental Electoral Commission (DEC) and national coordinators which have been commissioned by ANEC with the supervision of elections in a department. In the accomplishment of this mission of securing the electoral results, these stakeholders enjoy the support of the security forces.

ANEC has the power to accredit national and international observers.

The consolidation of results is carried out by ANEC. Concerning the proclamation of the results, the Benin law makes a difference depending on the election in question. ANEC is not always competent to proclaim results. According to Article 45 of the November 2007

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law on the general rules for elections in Republic of Benin (presently in application), the autonomous national electoral commission (ANEC) declares the final results of local elections: “the autonomous national electoral commission consolidates the results of the legislative and presidential elections, the autonomous national electoral commission shall forward them to the Constitutional Court for verification of regularity, consideration of claims and proclamation of final results”.

The *Benin* ANEC, whenever it observes irregularities during the monitoring of elections such as fraudulent acts committed by individuals or groups of individuals, can only inform the respective judicial authorities. It is only the Constitutional Court and the Supreme Court – depending on elections concerned – that are competent to sanction committed irregularities. This means that ANEC does not actually have any power to punish.

Once it has accomplished its missions in the electoral process, ANEC prepares a report which is communicated to the president of the country. This report is deposited 45 days after the proclamation of the final results at the latest. Members of ANEC then forward their archives to the permanent administrative secretariat of ANEC where they are preserved.

ANEC does not have any other powers aside from the ones explained above. It cannot exercise the right of monitoring political parties.

### **In Guinea Bissau**

The electoral commission of Guinea Bissau has power to supervise the electoral head count, approve the conformity of electoral documents, order the printing and monitoring of ballot papers, ensure

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the material organization of the elections, guarantee the equality in the distribution of time among candidates, and proclaim the results.

### **In Cote d'Ivoire**

The Independent Electoral Commission of Cote D'Ivoire ensures also the preparation, monitoring and supervision of elections.

It determines the establishment of polling stations. It has power to carry out the printing of the ballot papers as well as the choice and training of the members of the polling stations. It consists of 3 members (1 chairman and 2 secretaries), appointed by the IEC and the representatives of candidates and political parties. IEC is equally empowered to decide on electors, a prerogative which in some countries (Benin for example, as we have seen) is the scope of the judicial authorities.

The Ivorian electoral commission is consulted by the authorities to determine the date of elections and that of the commencement of electoral campaigns. It presents a proposal to the government in this regard.

The commission takes all necessary measures to ensure equality of treatment of election candidates and access to official newspapers and broadcasting organizations through the National Broadcasting Commission (CNCA). In some countries, the existence of a regulatory body for the media, charged almost systematically with ensuring equal access of divergent opinions to means of broadcasting, constitutes sometime a reason for reducing the powers of the electoral commission on the issue of equal treatment of candidates. In Cote d'Ivoire, there exist two bodies for monitoring the press, one which observes the media during elections, and one which does so

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throughout the year. The Independent Electoral Commission however does not intervene in a direct manner in matters concerning the equal access to the media; rather, it acts through the channel of the National Commission on Broadcasting and Communications by reporting its observations to the latter. The role of this exceptional competence reveals the willingness to deal with the electoral process in a comprehensive manner and allows the electoral commission to apprehend the various dimensions.

Another prerogative is the transportation of the ballots papers and guaranteeing the security of the voting venue. IEC may in fact ask for the support of the public for this purpose. It collects the reports on the voting exercise and centralizes the results.

The Ivorian IEC has the power to proclaim, in the final analysis, the results of all the elections, with the exception of the presidential election and referenda. For these two consultations, it is the constitutional council that is competent to proclaim their results.

IEC does not have any power to sanction. Irregularities observed can only be dealt with by the constitutional council and the legal authorities. IEC only receives complaints, which it forwards to the administrative authorities or competent courts which, evoking the Ivorian law, decide "without wasting of time". IEC also has the possibility of inviting, in the first instance, the contraveners to stop their acts, and, in case of their refusal, get in touch with the authorities which are endowed with the power to sanction. IEC may also be informed by the administrative authorities, political parties, candidates during elections, and the electorate itself.

At the end of each election or referendum, IEC presents a report on the conduct of the referendum to the president of the country. Copies of

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this report are forwarded to the speaker of the National Assembly, chief justices of courts competent in electoral matters, and the minister in charge of territorial administration. Contrary to other countries, there is no specific deadline for the presentation of this report.

IEC has the power to accredit national and international observers to elections.

It is however not empowered to intervene in the life of political parties. Its mission remains strictly an electoral one. If it accomplishes its mandate of supervising the conduct of electoral campaigns, it does not intervene on the issue of funding of political parties. It is the Ministry of the Interior which registers political parties and ensures the conformity of their activities with national laws; the Supreme Court is expected to monitor the regularity of the financial accounts.

### **In Niger**

The Nigerien Independent National Electoral Commission is charged with:

- The effective execution of the election activities and their material setup;
  - The establishment and the composition of polling stations;
  - Guaranteeing the regularity of voting activities and ensuring the free exercise of electorates rights;
  - The compilation of results;
  - The management and conservation of election files;
  - Ensuring the respect for rules and regulations on election matters;
  - The information of the electorate;
  - Taking the initiative and disposition for the election and referendum processes.
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### **2.2.3 Electoral commissions with very important prerogatives**

In addition to the attributions enumerated above, electoral commissions of some Anglophone countries enjoy certain prerogatives which their Francophone and Lusophone counterparts do not have.

#### **In Ghana**

The Ghanaian electoral commission is no doubt one of the best equipped monitoring organs in terms of the power to compile the electoral list and to produce an annual review of the list. A complete overhauling of the lists is also done every ten years. It controls and supervises all public elections as well as referenda. It also promotes civic and electoral education of the populace.

As a notable feature in the African setting where monitoring of the activities of political parties is often the duty of government authorities and more precisely of the Ministry of Internal Affairs, in Ghana, the electoral commission undertakes the registration and controls the activities of political organizations. Similarly, the commission is empowered to audit the accounts of these parties which are usually brought to it.

It determines the establishment of polling stations on the basis the geographical data available and even fixes the number of constituencies. The constitution equally empowers it to regularly check the relevance of the zoning according to countries. If the need for any modification arises, the commission takes care of it by itself.

It has the mandate on all matters of printing the ballot papers.

Nonetheless, in view of its desire to be transparent in its activities, the commission invites political parties to participate in its working sessions when carrying out this particular mission.

It ensures recruitment and training of staff of the polling stations and those hired for the election processes.

The commission is equally responsible for the movement of the election materials and ballot papers at the end of the ballot. It has the power to announce the results of the presidential election. More specifically, the chairman of the commission carries out such a formality. As for other elections the results can be announced by other individuals so designated by the commission, whether at the zonal level or an entirely new voting centre.

The commission accredits election observers and their papers if there is need for general information necessary for the accomplishment of their mission.

The commission equally has the duty of sourcing and distributing materials and financial resources allocated to political parties by the Ghanaian government. The distribution may not be rigorously even but it may be subjected to the previous performances of the parties concerned. The Ghanaian electoral commission has the power to invalidate election results before their announcement or publication. The commission investigates allegations of irregularities when brought to its notice and nullifies the results if these allegations are established. On the other hand, when the allegations are made after the announcement and publication of the provisional results, only the Supreme Court of Ghana can invalidate the electoral results. In either of these cases, the annulment of one election presupposes the organization of a new one.

The electoral commission of Ghana equally has the power to rectify errors or certain irregularities. Every person who feels aggrieved by the said error or irregularity can also refer to the commission.

### **In Liberia**

In Liberia, in addition to what obtains in Francophone countries regarding the organization of elections, the following can be added as other prerogatives of the electoral commission:

- The application and production of text materials relevant for the conduct of elections;
  - The possible amendment of proposals (addition, abrogation, etc.) to the electoral code to be presented to the National Assembly;
  - The registration and accreditation of political parties and independent candidates who satisfy the required minimal conditions;
  - The conduct of elections to public posts including 'chiefdoms' election and referenda, and the publication of results;
  - The elaboration and implementation of rules for organizing elections into public posts in accordance with the constitutional and electoral laws, and in consultation with the Liberian president and all other relevant government agencies;
  - The nomination of all employees deemed necessary for the effective functioning of the commission, in consultation with the president of Liberia and all other necessary government agencies;
  - The division into constituencies based on the available population figures;
  - Function as the only judge for objections relating to the election results.
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The decisions of the commission can be subject to appeal before the Supreme Court of Liberia. The commission decides the time for registration of electorates on the electoral list. The list must be preserved as prescribed and must be made accessible to the public. On the order of the registrar, the lists could be recalled (in good or due form) for necessary corrections. Every objection can be addressed to the registrar who forwards it to the delegate (magistrate), who in turn rules over it within a period of 30 days.

The Minister of Justice must forward the list of convicted persons who have lost their civic rights and are still under sanction to the commission in December of every year. The commission must produce the geographical map for elections by voting zones (of 2,000 voters and above) and ballot stations to serve these zones. The list of the polling stations must be pasted at least 10 days prior to the day of election. There is a chairman (sheriff) of polling station who is assisted, where need be, by some reporters.

Upon the directives of the commission, the decision maker (the clerk of writ) must publish all decisions necessary for the organization of elections at least 10 days before the day of election.

The ballot papers are made in the pattern chosen by the commission and are printed by it. The commission decides on everything that guarantees the security and secrecy of the vote (by way of thumb printing with indelible ink as a way of voting).

The commission stipulates conditions under which every party or independent candidate can send their agents to the polling station (or voting zone). Votes are counted on the spot and the results are sent in three copies: one in a sealed ballot box sent to the commission, one to the delegates at the election, and the last to be kept in custody of the sheriff (chairman of the polling station). To discard with spoilt ballot papers, the chairman must consult the party agents and independent



candidates. The delegate at the election does the summing up of the results in his constituency and forwards same to the commission. The commission collates all the results according to constituencies and declares the results within 15 days.

Objections by independent candidates or political parties must be forwarded to the commission. After enquiry, the commission can decide to annul the election of a person, confirm another or organize new elections. All those not satisfied with the decisions of the commission can file an appeal to Supreme Court of Liberia.

Every act of rebellion or revolt can be taken up by the commission on its own discretion or request of the Ministry of Justice. The commission can recommend the temporary suspension of every person (especially of uniformed men) who hinders any citizen from carrying out his civic responsibility or who reacts to voting punishment meted out. Among the authorized persons at the polling stations are the observers and the police or military officers who are so accredited.

Moreover, the commission is responsible for:

- Prescribing information which parties or independent candidates must provide and how;
- Ensuring the conduct of financial expenses of parties or independent candidates.

The commission must be intimated with all the contributions to parties or independent candidates. Every fund collected against the provision of the existing law must be refunded to the commission within 21 days.

### **In Gambia**

In Gambia, the commission is responsible for the conduct and supervision of registration activities of the voters for all the public elections and referenda. It is equally responsible for the conduct of the elections of the speaker and deputy speaker of the National Assembly, the registration of political parties, and the formation of parties. It ensures that elections into public offices and referenda are held in accordance with the law and that candidates for various elections satisfy prerequisite conditions and declare their assets while validating their candidature. The commission announces the results of the elections and referenda which it organizes, employing legal and constitutional provisions on election matters. It ensures that electoral agents act in conformity with the law and gives appropriate directives for the proper conduct of elections. It restructures the zones based on the census results. The commission ensures that voters' registers at both the constituency level and national level are well kept.

The commission decides on the time for updating of election registers. To that effect, it has to create registration centres which will be made more easily accessible to the citizens. The commission draws up the lists of voters as well as those of people who are disqualified. Any representative or police agent can confiscate any voters' card suspected not to be genuine at any time.

All complaints must be addressed to the appropriate registering officer; objections or other appeals could only be considered upon payment of a sum fixed by the commission. A judicial process is provided to decide submission and other appeals against the decisions of the commission and its branches. The Supreme Court is the last resort for all who are dissatisfied with the decision of the lower rank. The local administrative authorities must ensure that the list of people

above 18 years and those deceased is forwarded to the commission on request. In addition to this, it is necessary to add that those who by virtue of their profession can be aware of the deceased must be called upon, such as hospital directors etc. The commission is also in charge of transferring matters for people changing their residence.

As each election approaches, the commission must publish all relevant information to the proposed election in the official newspaper. The returning officers are empowered to make adequate publicity of the decisions of the commission with respect to the date and level of participation at the area of operation. The commission determines with discretion the map of the polling stations. The number of voters per polling station must be between 100 and 2,000. The commission must ensure that all precautions for effective functioning of the polling stations have been taken.

The chairman of the station and the authorized agents for the polling station must ensure that adequate measures are taken for the proper conduct of the election. When the elections are to last more than a day in a zone, the commission can authorize a chairman to oversee several stations (at the time). Each candidate can assign two agents per station in order to enhance the credibility of the elections.

At the close of activities of the polling station the chairman first and foremost seals the ballot boxes before completing the first part of the election papers. The boxes are then taken under the supervision of the chairman and other agents and candidates' representatives to the collation centre. At this level each representative must confirm that the due process has so far been followed. Normally the commission ought to have published the list of the collation centres in the official newspaper before the elections and each candidate has the right to appoint a collation agent at each centre having submitted all the ballot boxes in the zone.

Once all the votes from his zone are entered, the returning officer can organize the collation in presence of the representatives of the candidates. Wherever the elections last several days the collation cannot be done until the last day of elections. Candidates, returning officers, electoral agents and representatives of the candidates are allowed to watch the collation exercise. A candidate or his representatives may request that the vote be recounted. In the event of a vote tie, the returning officer reports to the commission which then recommends new elections. The returning officer takes the results and spoilt ballot papers back to the commission. Every candidate or representative who has any reservations with regards to the manner in which the operation was carried out can obtain a copy of the report from the returning officer before he forwards it to the commission. Once the results of the election are made available, the commission declares the final results.

Marches or other gatherings organized within the scope of the campaign must receive the consent of the commission.

Complaints on matters of violation of the rights of candidates and parties during the campaign are addressed to the commission. The commission produces a code of ethics (conduct) to be signed by all the candidates and political parties for the campaign period. Certain categories of people could lodge their complaints before the court room of the Supreme Court.

A law can complement the constitutional provisions as regards the prerogative of the commission for the registration and dissolution of the political parties. The same is applicable for the management of parties by the commission including sanctioning of all associations posing as political parties without being duly registered as such. Applications for the establishment of political parties are addressed to

the commission. Within a period of a month after the election every party or independent candidate must account to the commission on his election campaign.

The commission registers parties as well as coalition groups and other groupings of political parties. It is aware of the dissolution of political parties. The commission is to ensure that parties' internal management conforms to democratic values, that act and conduct of members do not violate the legal provision in force, and that the parties possess a national character. Any party that feels unduly treated by the commission can appeal to the Supreme Court. In such a case, a person who has once been convicted of a fraudulent attempt is automatically displayed as disqualified on the electoral list.

### **In Nigeria**

First and foremost, the electoral commission in Nigeria has a mission for civic and electoral education. It is concerned with the public dissemination of information necessary for this purpose. It can also elaborate rules and other ethics of political parties especially during the electoral campaigns.

The electoral commission is empowered to print ballot papers and voters' cards. It rules on the objections to the electoral lists and further makes a periodical review of these lists. It fixes dates for various elections.

Every document relating to the election should have been endorsed by the commission with its stamp thereon. This implies that it is its right and duty to verify every act connected with the elections. This also means that no major judicial operation can be carried out without its notice.

The commission fixes election dates; if for one reason or another elections initially slated cannot hold on the fixed date, the commission has the power to shift the election and fix another date in future. One hypothesis feared by the Nigerian law is the risk of breakdown of peace and tranquillity of the public. Such a power is remarkable: it is worth stressing in the African context where election reports arouse, true or false, some tension among the political actors. Any government which embarks on this is immediately suspected of wanting to prolong its tenure or make some fraudulent manoeuvrings. The fact that such a power is conferred on the commission is to naturally pacify political and pre- election climates.

It is this commission which equally determines the establishment and distribution of polling stations in both the national territory and election zones in general (i.e. number of constituencies for all elections).

It is responsible for the security of election activities and may solicit the support of public security forces. The announcement of results is never the duty of the political or governmental authorities. It is made by people who are generally independent and who act as supervisors on the election in question.

The electoral commission is not obliged to make a systematic report after each election; it is expected to make report only when there is need. There is, therefore, no institutionalized duty of the commission to account for its activities at given intervals. This, of course, implies the commission may make its report a day after each election.

The relationship maintained by the Nigeria Electoral Commission with the political parties are also indicators of the willingness to confer a power hold on the political game in general. As a permanent

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body, the commission is responsible for the registration of political parties. It also sees to the legality of their activities, i.e. their conformity with the constitutional norms (bearing on all programmes, personal or discriminatory). It also controls the regularity of their account.

In conclusion, it is proper to stress one peculiar attribution of the Nigerian electoral commission which was already partly mentioned in the case of the Ivorian electoral commission. It is empowered to ensure equal access of political partners to public service media. The Nigeria electoral law is even extremely stiff against those who contravene the directives of the commission since it expects that the commission can impose sanctions to the extent of withdrawing the broadcasting license of the media in question.

The Nigeria electoral commission can bring cases of infringements to the electoral law before the tribunals so empowered. However, it has two prerogatives significant enough in the sanction against election irregularities. On the one hand, it can disqualify, i.e. reject a candidature if this apparently stems from irregularities. The law stipulates measures taken to curb irregularities. The attribution of such a power is glaringly risky. It is in fact easier to sanction recognized irregularities once the election has been done, than to prevent infractions, the evidence of which remains difficult in any case. At the worst, the exercise of such a power could suppress the suffrage right as a fundamental right. On the other hand, the electoral commission sees, as noted, to equitable access of political parties to public media. The Nigerian law is very clear on the fact that refusal to comply with the observations and directions of the commission could lead to withdrawal of broadcasting license which has been allotted to broadcasting media.

In conclusion, the scope and nature of the prerogative depends in part on the failure or success of the electoral commission. However, observations of the practice enable us to see that a very important domain of prerogative is not always a factor of success. It may occur, as in the case of Mali, that a commission endowed with lesser prerogatives is more efficient than a commission vested with more power. Finally, the importance of the exercise of prerogatives is a function of the importance of other factors. As an example, the exercise of these entire prerogatives requires some resources. It reveals that on a practical note, a number of electoral commissions complained about the low resources allocated to them or about the parsimony with which they were awarded. The problem with the financial system under which the electoral commissions evolve therefore deserves to be studied.



**Table 3:**  
**Scope, power and capacity of electoral commissions to sanction**

		Scope of prerogatives of the commission		
Power of sanction		Reduced	Strong	Very strong
	Yes	Senegal	Cape Verde	Nigeria, Liberia, Gambia, Ghana, Sierra Leone,
	No	Mali, Guinea Conakry	Benin, Cote d'Ivoire, Niger, Togo, Guinea Bissau, Burkina Faso	

### 2.3 Financial System

“Democracy is priceless, though it has a cost” – so goes a saying. The truthfulness of this adage is confirmed especially in the domain of elections. With respect to the importance of financial resources for the operations of the commission, legislations are in place throughout the region to varying degrees in order to enable the commission to be efficient and autonomous. The budget of “CENA” of **Benin** is fixed by decrees by the Council of Ministers. This budget has undergone a steel edge revolution. Because of a steady rise between 1996 and 2006, the budget was drastically reduced in 2007. In 1996, it actually rose to nearly FCFA 3.5 billion after implementation. In 2006, this budget went up by more than FCFA 10 billion and decreased to FCFA 8 billion in 2007.

At a first glance, these figures appear astronomical. However, if we consider the financial remunerations of members of ANEC we will realize that the 2006 December decree promulgated by the new regime has drastically cut the allowances of these members. The daily allowances of the chairman of ANEC were reduced from FCFA

35,000 in 2006 to FCFA 17,500 in 2007. This reduction, which affects all the members of the ANEC, was decided as a sequel to criticisms arising over the subject of the cost of elections in Benin compared to other states of the sub-region. All over the world, the proposed allowances correspond with the average income of a civil servant in Benin, which is considerably low. Such a situation, no doubt, poses some problems: it discourages qualified persons from being members of the Autonomous National Electoral Commission. On the other hand, the low remunerations of members of the ANEC obviously expose them to temptations.

The budget of the ANEC in *Benin* is unanimously decided between the government, ANEC itself and foreign partners, although the Minister of Foreign Affairs may provide logistics or financial support to the commission. It is apparent that the consultation is only final when it comes to deciding the final budget of the commission.

The budget of the Independent Electoral Commission of *Cote d'Ivoire* is drawn from that of the state. The commission presents its needs and the government looks into how to go about them. Such a rule is not unusual, but within the context of Ivorian electoral legislation it could be inimical to the independence of the commission since the administrative authorities could stand in for the commission in the event of defiance. In the worst scenario one could imagine the government granting little recourse to the commission with a view to interfering in the election process.

There are always possibilities for the Ivorian Electoral Commission to solicit supplementary means to those made available by the authorities, for instance by receiving donations.

The remuneration of the permanent members of the IEC is in line with that of the serving administrative prefect. These members are

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technocrats, a set-up restricted to 12 members who continue even after the date of elections. As for the chairman of the IEC and his vice, their salary is similar to that of the members of the Ivorian Constitutional Council.

The budget of the electoral commission of Guinea Bissau is subject to the autonomous budget adopted by parliament. The electoral law bases the salary of its chairman on that of the ministers.

In Burkina Faso the Independent National Electoral Commission is responsible for the management of the financial resources allocated for the accomplishment of its mission during the pre- election period; it is charged with the responsibilities of (a) preparing a budget proposal for election consultations and submitting it for the approval of the government, and (b) managing the material and financial resources at its disposal. One can assume that the commission also receives funds from the national resources as well as from financial and technical partners of the country.

Law N°002-2002/AN of the year 2002, a modification of law N°014-2001/AN of July 3, 2001 of the electoral code, stipulates that the remunerations and other benefits of the chairman, the vice-chairmen, the secretaries and other members of the INEC and its branches are to be fixed by decree of the council of ministers, upon the proposal of the Minister of Finance and the secretary general of ANEC in the rank of secretary general in the ministerial department.

In *Niger* the INEC has a budget for the organization of each election. It prepares the budgets which it submits to the government. It ensures proper use of the financial recourses at its disposal in accordance with the rules and principles of public accountability. The chairman of the commission releases the budget for organizing elections. A period of 3 months is given to INEC to send a financial report to the accounts

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department of the Supreme Court and to the Minister of Finance.

Nothing is mentioned about the remuneration of the members of INEC and its branches but being an ad hoc institution, one can presume that the situation will be comparable to that of Benin.

In *Togo* the INEC prepares its operational budget and election budget. The state makes the necessary resources available for the operation and accomplishment of the missions of the commission. The commission can also receive donations, gifts and grants with the consent of the state. The administrative, financial and accounting management of INEC is taken care of by the budget under the direction and responsibility of the chairman. The chairman orders the budget of the commission. To this end an accountant general is provided for him. The financial management of INEC is subject to the supervision of the accountant general.

In *Cape Verde*, the budgets of the NEC and CRE were hitherto approved by DGAPE and integrated into the budget of the latter. However, since the adoption of the new electoral law in June 2007 the budgets have been directly prepared by the Ministry of Finance.

In *Liberia* members of the NEC, election agents and other employees of NEC are entitled to legitimate allowances as well as provisions for recurrent expenses within the context of their functions. Members of NEC enjoy some police protection during their tenure. Expenses relating to elections and operations of the commission must be included to the national budget.

The commission should submit an annual budget to the National Transitional Legislative Assembly, NTLA, for approval. After approval the NTGL must ensure that the funds are disbursed quarterly in line with the programme of expenditure of NEC.

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At the end of each year NEC must prepare a general report in consonance with the audit guaranteeing a proper management of resources both from the government and partners.

In *Gambia*, the commission submits a yearly estimate of its expenditures to the President of the Republic who forwards it to the National Assembly as it is. The president may have his own comments and observations. The resources of the commission are made up of (a) the National Assembly's provisions, and (b) all donations and funds made available except from political parties. The funds may be deposited into the account of the commission. The accounts must be audited by the auditor general or any audit agency chosen by the commission. In any case, the chairman of the commission must submit the results of the audited accounts to the National Assembly 3 months after the elections.

The electoral commission in *Ghana* has a budget prepared out of the funds of national treasury. Indeed, there are two budgetary lines: one has to do with the administration of the commission, its day-to-day operations; the other is to enable the commission accomplish its task of managing elections.

It therefore has a feature which is more provisional and depends on the circumstances. The first budgetary line is drawn according to the general procedure to which all state agencies are subjected and which runs as follows: the electoral commission presents a budget proposal to the government authorities and it implements it according to the available resources and based on the needs of the other government agencies. The other budgetary line which relates to the management of the electoral process also requires the presentation of a budget proposal to the commission. This proposal as a rule must have the backing of the authorities which can neither amend nor reduce it without the consent of the commission. This feature is important in the

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African context where the question of the budget determination and resource allocation often constitutes a bone of contention between the authorities and members of the electoral commission. However, the commission considers that the means at its disposal do not allow it to optimally accomplish its mission. The game of processes which emerges leads the commission to act as a referee who is devoid of some priorities in its action.

As in other countries, the electoral commission of Ghana may receive financial support from other countries via some development agencies.

The financial emoluments of members of the commission remain modest within the context of the country. The chairman views his condition aligning with that of the judge of the Court of Appeal, his deputies are treated like judges of the Supreme Court and other members enjoy benefits that are determined by the parliament.

In the case of the *Malian* INEC, the state determines the budget. It does not make reference to any consultation whatsoever at this level. In terms of the laws the state allocates to the commission all the resources necessary for carrying out its mission. There is no published information on the allowances of the members of the institution. The external signs of these emoluments (allocations of various material resources) however suggest that they are modest enough. In the resources of the Malian INEC, there is for instance no possibility of donations or support from foreign countries or partners in development.

The electoral commission of *Nigeria* must on its part present a budget proposal to the National Assembly which has the power of approval. This rule is more important than it appears.

The budgetary initiative of the electoral commission implies that it is better placed to express its needs. Indeed it is not a matter of expressing one's

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needs; the National Assembly has the right not to accept the proposal as it is. However, the right to evaluate its own needs is not recognized by all electoral commissions. Its existence is naturally to emphasize the independence of the election monitoring body which is less than ever under the tutelage of the government. It seems that funds are rather provided for the Nigerian electoral commission. In all cases it is not often reported that the commission suffers any lack, on the contrary there have often been cases of misappropriation of these funds.

The electoral commission may receive donations or support from other states or donors. These are deposited directly into the account of the election monitoring body.

Allowances of members of the commission are not published in the documents made available to the public.

The budget of the *Senegalese* ANEC is made in consultation with authorities of the state and application of the rules of public accountability. The resources necessary for the functioning of ANEC remain the object of the autonomous list in the general budget. These funds are allowed within the context of the financial laws and are disbursed as a rule at the beginning of the fiscal year. The chairman of the commission orders the expenditures. An accountant general appointed by the Minister of Economy and Finance is attached to the commission. Nothing in its financial regulations prevents ANEC from receiving foreign financial support (states or partners in progress which take interest in the matters of governance and election assistance). Nevertheless, the option seems to have taken to benefit funding by the state on a subject which bears effectively on sovereignty. The remuneration of the chairman of ANEC was made to tally with that of a Member of Parliament (in 2005, it stood at about one million two hundred thousand FCFA), while other members earn about half of this amount (but they all have another professional

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activity). This remuneration is rather suitable. Up until today, there has not been any reported case of corruption.

The financial system of electoral commissions comprises a major challenge: on the one hand, that of the commissions' autonomy against the ruling powers which are often tempted to capitalize on the fact of providing the financial resources to influence the commissions toward their interest; on the other hand that of their exclusive independence with regards to the resources from outside the country, i.e. other states and multilateral organizations. In fact, the political atmosphere in certain countries such as Benin, where members of the parliament capitalize on the lack of financial means as an excuse to extend their mandate and that of the legislators, shows the need for the state to have a control of the financial resources required for the organization of elections in order to follow the election timetable. The invalidation of elections by the Beninese Constitutional Court does not completely render baseless the argument of lack of funds when sponsors are not disposed to elections as a factor sometimes affecting the timely conduct of elections.

For all that, the independence of electoral commissions should not be seen as an opportunity to indulge in the waste of resources as observed in some countries. In this respect, the independence must include the need to rationalize the resources at the disposal of the commission and effectively utilize the funds allocated to it.

Having considered the status and working conditions of electoral commissions, it is now proper to look at reports of these organs which emerge with democratic transition of the 1990's.



## **2.4 Evaluating the experiences of electoral commissions**

In certain respects, the picture contains much contrast. Just as the democratic experiences have not always been convincing in all the countries, attempts to stabilize the electoral game sometimes came to an abrupt end. One can even say that it is the destiny of the electoral commissions which appear as a barometer – the yardstick for measuring the success – or failure – of democratic experiments.

In order to make the assessment objective, we will base our attempt on some criteria such as the degree of confidence in the commission, the quality of its interference in the electoral process, and the success or failure of the elections.

### **Two pictures are presented:**

It sometimes happened that the initial optimism was found not to be out of place, that without functioning in an absolutely irreproachable manner, the electoral commission can be adjudged to have carried out its mission in a more than honourable manner to the extent that one can very much talk of its successful achievement. As an illustration, the Cape Verde electoral commission enjoyed a high degree of confidence and this was shown from its inception by its conduct of peaceful elections, the results of which were accepted by all the protagonists of the election.

The ANEC of Benin no doubt ranks among those African electoral bodies which have achieved an incontestable success. This institution came to fit perfectly into the democratic transitions. Its ways of managing elections has not aroused any major protest and Beninese political stakeholders have apparently accepted it. Thus, it does not have any major problem of legitimacy.

It is true that since its successful inauguration more than a decade ago, ANEC has gone through rather difficult periods. First of all, there is the persistent problem of funds allocated by the authorities. The complaint is indeed quite frequent – but very few similar organs are ready to admit to have all the funds necessary for the execution of their mission at their disposal. One cannot, however, forget that in 2006 and 2007 the issue of the prompt deployment of funds was raised, with many observers thinking that the authorities have not shown all the diligence it required in this regard. Some branches of the electoral body complained about the slow dispatch of election materials to zones located in the interior part of the country. In 2007, ANEC was faced with some internal problems connected to the conditions in which its chairman would have made some deals, so that he was dismissed by his counterparts 4 days to his first round of elections.

All these vicissitudes are of course regrettable and the electoral commission of Benin would have avoided them. Considering the main mission of the electoral commission, which is stabilization and transparency of elections, the outcome of the assessment is also rather positive. In spite of some problems in the organization of local elections of 2008, the country has not had any post-election crisis in relation to the election itself.

Similar observations apply to the electoral commission of Ghana. It has rather religiously followed the various electoral processes initiated by the country even if it equally complains of its relatively low resources. The available data are a revelation of the recurrence of problems to dispatch election materials. Nevertheless, the legality of the commission is to a very large extent admitted, to the point that one can also in this case talk of its success in the administration of elections.

The electoral commissions of Niger and Burkina Faso could be put in this category with respect to the peaceful nature of elections in these countries.

The electoral commissions of some post-conflict countries such as Liberia and Sierra Leone were able to ensure a conduct of electoral processes commended by national and international opinion. However, one needs to emphasise that the success of these elections is no doubt also connected to the involvement of the international community in the conduct of the said elections and that it is certainly proper to await the resultant electoral cycles before pronouncing any verdict.

In other cases, the judgment one can make on the national electoral commission is more reserved. Two comments are aimed at the quality of work done by the commission: it has happened that the commission has acted in deviance of the constitution, inhibiting its effective functioning. Furthermore, it also happened that the commission only succeeded in certain aspects of its mission and failed in others. In both cases, for the assessment to be realistic, it must be shaded. Most of the West African countries would rightly be classified into this category. For instance, in this category are the cases in which one could conclude that the body in charge of election management had to resolve the crises confronted with, in addition to dealing with common complaints on the funds allocated to the commission.

In the case of Mali the crisis occurred a day before the 1997 election. At that time, the election commission was legally empowered to organize elections and announce the results. For lack of experience the commission's election management had been somewhat erratic. These indecisions slightly marred the second mandate of the Head of State at that time. Whatever the case, one can promptly draw some lessons from these unfortunate experiences since the responsibility to

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organize elections lies with the government – more precisely with the Ministry of Internal Affairs and the general delegations at the elections – and the electoral commission has no other role than to supervise elections and ensure their regularity. The mitigated feature of the Malian experience is a contrasting trait of its electoral history.

The Independent Electoral Commission of Ivory Coast also arouses a mixed evaluation while no doubt hoping that it will be able to accomplish the on-going electoral process. It shares the peculiarities of the present Ivorian political setting. The political arrangements are in fact inclined to be substituted by legal norms and the electoral commission has to bear the brunt of the situation. It has turned out to be a kind of hostage of an unpredictable political game. The right of logic and prediction which it possesses does not correspond at all with the logic of politics, made out of precarious equilibriums and momentary alliances. Such a situation is indeed not imputable but certainly does not favour legitimacy. The main lesson from the Ivorian situation is its bringing to the fore of the relationship between the general political context and the development, in terms of legitimacy, of the election monitoring body.

The Senegalese ANEC has been able to overcome some diverse problems regularly faced by the National Election Observatory (ONEL) which it replaced in 2005. It has succeeded in attaining the permanent status as an institution and acquired the powers to sanction. It is however regrettable that the current burning issue of budget allocation is still very much unsolved. Thus during the presidential election of February 2007, ANEC claimed yet two weeks from the holding of the elections the payment of the necessary credits for the accomplishment of its tasks. The deadline of 15<sup>th</sup> January 2007 for the release of this budget was not respected. The Senegalese electoral system has been undergoing a serious crisis of confidence, which was at the origin of the boycott of the

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legislative elections in June 2007 by almost all the opposition parties. It was the electoral register of which ANEC is in charge that was at the heart of the controversy. Understandably, this deadlock in political dialogue cannot but affect the credibility of the Senegalese ANEC. Countries such as Nigeria, Togo or Guinea Bissau also demonstrate this problem.

It is necessary to declare that in these extreme hypotheses, the electoral commission went through some difficulties in the accomplishment of the missions which were assigned to it. It is however expedient that there should be some understanding on the issue. The judgment made here is more or less a judgment of value which would eventually touch on the value of the members of the commission or their merits. Furthermore, it does happen, as we will see later, that the reasons for the failure of the national electoral commission are visible in its design and in the legal texts which set it up, and not in the work done by its members. In this connection, it is rather the electoral commission of Nigeria which, no doubt, has had to undergo the most serious crisis these last few years. The conditions in which the presidential elections of 2007 were organized are, in the view of almost all observers, very disastrous. The authorities themselves recognized this indirectly. It has yet been seen that the Nigerian commission, from the view point of its constitution and privileges, was one of the most prepared instances to assume its mission with independence. The reasons for this paradox no doubt deserve to be clarified, but it is obvious that it will be difficult for the Nigerian commission to push aside the reproach which it is presently suffering from. It is true that other electoral commissions, such as Phoenix, have succeeded in turning new leaves after some crises.

## **2.5 Is it possible to have an ideal electoral commission?**

For the purpose of this study, is it possible to bring out criteria assisting

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in the identification of the 'ideal electoral commission' capable of ensuring the organization of the best elections? It is difficult to evolve the ideal profile for a commission for several reasons.

**First of all**, the specific history of each country is an important feature of the definition of the electoral commission. Countries such as Benin which democratized from below through a renegotiation of the political system through a national conference have a more independent electoral commission than countries where democratization was rather operated from the top with concessions made unilaterally by those in power, such as Senegal.

**Secondly**, the effectiveness and reputation of the state administration are crucial in the determination of the areas of competence of the electoral commission. In fact, in countries where the administration has the past proved to be relatively effective in the organization of elections as was in the case of Senegal in 2000, the task of the electoral commission was forcibly limited to the supervision of the electoral process, whereas electoral commissions were endowed with very important prerogatives whenever the administration disqualified itself due to its past partisan attitude.

**Thirdly**, the legal tradition in the Anglophone countries as opposed to the Francophone and Lusophone countries is an important factor of influence on the determination of the status and the prerogatives of the electoral commission in the political system. In general, the guarantees of independence against the power of the executive are easily granted in the Anglophone countries (Ghana, Nigeria), compared to the Francophone countries which are rather characterized by a presidential system of government, which makes the independence of the other institutions against the president of the country more difficult.

**Fourthly**, in each country, a specific political power relationship was at the root of the establishment of the electoral commission. The importance and dimension of the electoral commission shows to a very large extent these political power relationships. The demands for a strong electoral have had more chance of succeeding in countries where the pressure of the opposition is strong than in countries where this has rather proved to be weak.

In the final analysis, in the light of a combination of the advantages which the different commissions present, some indications may be provided on what could be an example of an electoral commission which combines all advantages.

With regards to the appointment of members, the general option should tend towards the diversification of the authorities to appoint members of the commissions (Ghana, Nigeria, Benin). The appointment of all the members by only the president of the country (as it is the case in Senegal) is certainly the least approach to adopt.

As far as the profile of the members are concerned, the option should be the definition of the intellectual and professional profile of members (as it is the case in Senegal) so that not just anyone will find himself or herself as a member of an electoral commission.

Regarding the terms of office, the desirable option to ensure the effectiveness and continuity of the work of the commissions appears to be the permanence of the body. This is the option agreed upon by most of the commissions. Even Benin appears to be tending toward the same.

With regards to prerogatives, the study has shown that the success cases are generally recorded in countries (Benin, Ghana) where the electoral commissions have prerogatives which extend to the entire electoral process. On the other hand, countries where the

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commissions are confined to the supervisory role are still witnessing some contestations of the electoral process (Mali, Senegal).

As for the financial regime, the best solution consists in registering the budget of the electoral commission in the fiscal law of the year alongside that of the other public institutions, instead of leaving the determination of its amount and allocation to the goodwill of the executive.

In conclusion, instead of tending toward the definition of an ideal electoral commission, the comparative study of electoral commission of some West African countries enables us to affirm that the comparison of the various experiences shows that in most of the cases each country can learn one from the other. This learning can be facilitated by the adoption of electoral norms and standards in the ECOWAS countries.



## Summary of Chapter II

- The internal structuring of electoral commissions is carried out between the national and local levels, which have an executive body (bureau) and branches depending on the administrative division of the country.
- The principles of internal structuring of electoral commissions are distributed between, on one hand, the constitutional, legislative and regulatory texts governing them (notably in the Anglophone countries and Niger) on the one hand, and the texts resulting from their self-organizing ability on the other hand.
- Different types of electoral commissions can be distinguished by their duration and intensity: there are those with limited prerogatives (Mali, Senegal, Guinea Conakry); those with strong prerogatives (Cape Verde, Benin, Cote-d'Ivoire, Niger, Togo, Guinea Bissau), and finally commissions with very strong prerogatives (Nigeria, Liberia, Gambia, Ghana, Sierra Leone), in other words, those which are entrusted with functions that are largely above the main tasks of the electoral process such as the territorial division, monitoring of the functioning of political parties, etc.

- In all the cases under study, electoral commissions are expected to present a report to the respective authorities annually and at the end of each election. In almost all of the Anglophone countries, the report is preceded in a systematic manner by an administrative audit either by the auditor general or a credible firm of external auditors.
- The ideal commission does not exist because some parameters need to be taken into consideration. It is necessary to take into account the specific historical background of each country (the case of Benin), the reputation and the effectiveness of the administration of election management (in Senegal in 2000), the legal tradition depending on whether it is an Anglophone, Francophone or Lusophone tradition to which the country adheres, and finally the political power relations.
- Concerning the financial regime, laws have been applied to a certain extent to define a system which allows the electoral commissions to be effective and independent. Budgets are determined either in agreement with the executive (this is the case in almost all the Francophone countries) or with the parliament (this is the case in almost all the Anglophone countries and Cape Verde).



**PART TWO  
MANAGEMENT OF ELECTIONS  
IN WEST AFRICA**



This second part is mainly devoted to the analysis of important issues raised by the organization of elections in West African countries. These are issues that the legal framework for the creation and functioning of electoral commissions is supposed to address in order to achieve a better management of electoral processes in emerging democracies in West Africa.

More specifically, it will first focus on reviewing the difficulties that may be encountered in the organization of elections in new democracies within the West African sub-region. Indeed, mainly based on the results of observing the evolution of the implementation of elections in the region, it identifies a number of concerns which are necessary for regulations on election management and electoral commissions to address for the purpose of providing lasting solutions.

Secondly, every major issue and concern will be identified, wherever possible with illustrations. As a matter of fact, these are comments made essentially in the West African sub-region on things that may be regarded as examples of "best practices" or "practices to improve upon" (if not less good practices). Sometimes it will just be, according to the situation in the countries studied, the provisions in electoral laws or a certain behaviour observed in the practical management of elections in some countries of the sub-region.

This exercise is necessary for several reasons. It allows, on the one hand, for the avoidance of the consideration of the various solutions adopted in different countries of the sub-region as final remedies. On the other hand, this exercise also allows for an evaluation of the various solutions implemented in the new democracies of West Africa, not only in relation to themselves and / or between them (which as a matter of comparative analysis is provided in the first part of this document), but also and especially in relation with the

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concerns and problems which they are supposed to solve. It is important to note that the exercise of comparing different methods of managing elections would be a mere vain intellectual exercise if it did not ultimately provide or contribute to finding solutions to practical problems that arise so often during the organisation of elections in West Africa.

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## CHAPTER

### **THE PROBLEMS FACING THE MANAGEMENT OF ELECTIONS IN WEST AFRICA AND SOME RELATIVELY GOOD OR BAD PRACTICES**

**S**ince the third wave of democratization has reached the shores of West Africa in the late 1980s, all countries have opted for the adoption of constitutions worthy of liberal democracies and for the establishment of multiparty systems of democracy. One immediate consequence of this option was the use of elections as a preferred means of acceding to power. More recently, all countries of the sub-region in the process of democratization have also opted to reduce the influence of the executive power (especially through the Ministry of the Interior) on the management of elections. But these choices do not go without creating their own problems and raise a number of important issues that must necessarily find relevant answers if one wants to ensure quality of elections in emerging democracies in West Africa.

In fact, after twenty years of experience in democratization in the region, it is easy to conclude that the use of competitive elections in general, but especially the option of reducing the degree of involvement of public administration in the electoral process are issues that deserve serious brainstorming if we are to improve the quality of elections. Some problems have already been proved by experiments of election management in different countries, but others can be anticipated and prevented before they actually occur.



Given the complexity of the electoral process and the variety of activities it comprises, we should expect a series of varied issues. One of the first issues that come to mind is that of determining the optimal degree of involvement of public administration in the electoral process. In other words, how to segment the tasks required in order to manage elections and to apportion the public administration, the electoral commission and other state institutions for qualitative elections?

The degree of associating the administration is obviously not the only important question that needs to be resolved. Another equally important issue is that of ensuring the effectiveness of the electoral commission. This assumes of course that issues relating to the independence or autonomy of the electoral commission should be tackled. It also requires the consideration of issues concerning the organization and operation as well as the credibility of the commission. One should also consider issues relating to the security of the electoral process and their implications for each category of actors involved in the management of elections, including public security forces.

The question of the cost of elections, partly for the purpose of reducing the degree of involvement of public administration, also deserves special attention. The high cost of elections may be a definite threat to the quality of the electoral process and ultimately to democracy. Developing countries must therefore find a formula that streamlines the cost of elections while still guaranteeing a high quality.

These concerns, as revealed both by observations of elections in the West African sub-region and by theoretical considerations, relate to the most important aspects of the organization and functioning of electoral commissions.

Before turning to the problems and issues mentioned above, it is advisable to make two remarks.

First, it is necessary to emphasize that the various factors discussed below are not necessarily independent of each other. Indeed, some of the issues overlap and sometimes are the determinants of each other. For example, the question of autonomy is related to the mode of division of roles between different institutions of the electoral process. But it also has a link to the political dimension of the election management, etc. It will therefore, in practice (and in assessing the suggestions made here), incorporate and make tradeoffs in choosing solutions that are effective throughout the system rather than some of its components only.

Further, it is also necessary to emphasize that for most of the problems discussed there is no single or best solution applicable everywhere. For many issues, it will be good, wherever possible, just to indicate a case seen as a positive effort (qualified to give an example) and another case of not enough effort (described as a less good example not to say a bad example). There will be no question of highlighting the best and worst cases. Sometimes, several countries may be in the same situation but only one will be presented as an example (good or bad).

### **3.1 Problems and challenges related to the structures of electoral commissions**

#### **3.1.1 Tenure of the commission and its members**

Whatever the type (model) chosen for the institutional management of elections, one of the major issues which must necessarily be answered is that of the duration of the mandate of the electoral commission and its members. This issue is important insofar as the permanent characteristics of the commission and the provisions relating to the terms of office of commissioners necessarily have an influence, even

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if only partially, on several areas of the performance of the committee.

Indeed, the above mentioned factors, i.e. the ad hoc nature of the electoral commission and the conditions relating to the tenures of its officers, have some connections with several aspects of the contribution that the electoral commission can make to the management of elections. These factors may, for example, affect the independence of members of the committee since it is recognised that the less time one person remains on a post, the more sensitive one is to the concerns of those one owe the appointment and finally its renewal.

These factors may also affect the stability and legitimacy of the commission. Indeed, it will be very difficult for a committee whose members are constantly renewed (sometimes almost 100%) or is itself reinstalled each electoral term (that is to say who is seen in action for a few months to several years apart) to consolidate. It will be difficult to win the respect of citizens and key stakeholders involved in the electoral process, to leverage the experience of the practical management of elections and finally to enjoy the level of legitimacy necessary to carry out its delicate mission.

The same factors mentioned above also contribute to determining the quality of work performed by the electoral commission. Indeed, it would be difficult for a commission in such a situation to accumulate experiences and draw lessons for improving the electoral process. It is also difficult to properly prepare for one's contribution to the various elections held so far, it will neither control the time of its installation and by extension the time available for the preparation and organization of elections.

The fundamental question that follows from the above is: how to determine the terms in question to prevent the commission from falling into the traps listed above? The answer is neither simple nor

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necessarily unambiguous (that is to say there is no single solution applicable everywhere). The evidence, observations of electoral commissions in the sub-region (the first part of this document), shows that West African states have, from the late 1980s up until today, tested several models .

Despite the difficulties in finding and identifying optimal solutions to the concerns expressed above, it is still possible to provide criteria against which to assess solutions and recognize the good and less good practices in the region. An ideal solution should help ensure the independence of the electoral commission, create favourable conditions for the accumulation of experiences and ensure the good management of electoral resources, and this without turning the committee into an uncontrollable force, but rather one that can pursue its own goals independently. This last point does not necessarily (or only) concern time.

#### **A good example: The electoral commission of Ghana**

*An example that deserves to be closely examined, in terms of the office of the electoral commission and its members, comes from Ghana. On July 06 1993, the Ghanaian parliament passed law No. 451 establishing the electoral commission, entitled "The Electoral Commission Act". Under this act Ghana's electoral commission was established with seven members: one chairman, two vice-chairmen and four other members.*

*But the specifics that make the electoral commission of Ghana a good example in terms of interest here are the following. First, the commission is permanent: that is to say, it is established forever. Secondly, at least three of its members, including the chairman and two vice-chairmen, are*

*appointed for life (unless committing serious offenses) to the extent that the law places them under the same terms and conditions of service as the Judges of the Court of Appeal (in the case of the chairman) and those of the High Court (in the case of the vice-chairmen). The conditions for putting an end to the tenure of commissioners (members of the electoral commission) are clearly defined by law. The chairman and the two vice-chairmen function in their posts until the official age of retirement provided for judges of the category in which they are respectively classified, unless they want to leave voluntarily or they become unavailable (death or prolonged absence).*

*The consequence of the conditions granted to Ghanaian electoral commissioners over the duration of their mandates and that of the commission are quite obvious. One should expect, and experience in managing elections in the country has helped Ghana, to see the commissioners more independent from those who selected them and / or politicians than their counterparts of the ad hoc electoral commissions. One should also expect that the Ghanaian commissioners enjoy greater authority and have more responsibilities than those of the other electoral commissions as the renewal of mandates does not depend on political power.*

### **An example to improve: The ad hoc electoral commission**

*Considering the implemented models of electoral commissions in the region, some countries may be presented as case examples that should not be followed. The concerned countries should not be considered as examples for one*

*fundamental reason. For all of them, their electoral commissions are ad hoc, that is, their members are selected and installed just for the period of one election. Generally, the commissioners are chosen a few weeks prior to each election and must leave their posts a few weeks after the final results of the process. In this category, the Autonomous National Electoral Commission (CENA) of **Benin** comes on top, being almost the oldest.*

*In those cases a permanent secretariat (SP) of the electoral commission is expected to manage the transition period between two elections. The permanent secretariat has the tasks of an electoral commission with limited functions. In **Niger**<sup>4</sup>, for example, the SP is practically responsible for maintaining the electoral materials during the period between elections. It is acknowledged that the SP has the right to provide the update, management and conservation of the electoral register and the dissemination of information to those who request it (Article 15). With few exceptions, the situation is almost the same in **Togo** where the SP (known as the general secretariat of INEC) is authorized to retain the electoral register (not updated as in **Niger**).*

***Benin**, with its permanent administrative secretariat (SAP) of the CENA (National Autonomous Electoral Commission), is in the same situation (that is to say CENA is established on an ad hoc basis with a permanent secretariat) with some nuances, however. In the case of Benin, SAP is authorized to maintain and update voter lists, prepare the budget for future elections, disperse the election material, etc. Despite the different forms mentioned, these models still pose problems.*

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<sup>4</sup>Electoral code: decree no. 99-37 of 4 November 1999.

*Indeed, the ad hoc nature of the electoral commissions in question, despite the existence of SPs, is among the factors that will affect the quality of elections and the level of performance of various committees in the countries concerned. Indeed, with an ad hoc electoral commission, it is practically difficult:*

- *To capitalize on the experiences of its members, especially since nothing prevents the renewal of members of such boards at a high rate because politicians appoint new representatives to each election. For example, in **Benin**, the renewal rate of members of the CENA is at least 75% and sometimes it reaches 100%;*
- *For the electoral commission as an institution to ensure an efficient management of knowledge and to grow over time. For example, in **Benin**, the election management does not seem to improve but quite the contrary;*
- *For the electoral commission to control the legal framework of elections, especially with the frequency of repeated changes, even when justified, made on election laws generally on the eve of each election deadline;*
- *For the committee to ensure appropriate planning activities of the electoral process, since it does not control the period of its composition and its installation, that is to say, the time available for preparation and organizing a ballot. For example, in **Benin** it happened once that the electoral commission was installed within 45 days of voting and then had to proceed with the establishment of the electoral list, among others. Since the establishment of CENA, only one has received the legal time frame for the preparation, that is to say at least 3 months before the election.*

## Focus 1

### **Term of office of the electoral commission and that of its members**

It is clear that the issue of tenure of the commission and that of its members does not (and cannot) have a single applicable solution in all countries of the sub-region. However, it is possible to reduce some inconveniences in the electoral management by paying attention to a number of factors in the choice between permanent commission and an ad hoc committee. One could, for example, pay attention to the items below.

1. If the commission has almost all the tasks of the election process,  
**It is preferable that it be sustainable to the extent that the tasks of the election process accomplished practically from one election to another.**  
**When the committee is ad hoc**
  - It would be better to install it early enough so that it has sufficient time to fulfil its mission
  - To provide a permanent secretariat with missions sufficiently expanded to perform the necessary tasks between elections and provide relevant support to the ad hoc committee
  - Prevent the permanence of the permanent secretariat to involve expenses too high compared in relation to the state budget.
2. If the commission shares the tasks with other institutions,  
**it should, if its role is limited to the supervision and control of the electoral process**
  - Be installed early enough so as to provide enough time to follow all the important stages of the process, for example voter registration



- Give the necessary and proper positioning in the institutional framework of the electoral process so that the commission can properly fulfil its role  
**it should receive assistance in the technical management process**
- To be installed early enough if it cannot be sustainable, taking into account the tasks of the planning process for it to make a relevant contribution and to ensure it has the necessary means for the preparation and implementation of tasks assigned.

### **3.1.2 The conflict between models of electoral commission**

One of the first issues confronting government and political leaders of a country when they decide not to entrust the management of elections exclusively to public administration, especially the Ministry of the Interior, is that of knowing what shape should be given to the institutional framework for managing elections. This is the choice on how to share roles in managing the electoral process from the electoral commission and the public administration or if you will, the degree of involvement of the latter in the electoral process that must be tolerated without compromising the expected quality and results.

Responding appropriately to the above question is important for the quality of the electoral process and the results that it produces. Indeed, an institutional framework for election management which does not provide a good distribution of roles between different agencies and institutions involved in the process is likely to constitute a disability rather than a factor conducive to good election management. Similarly, even if the roles of each institution have been well allocated, the risks would be much the same if the relationship between the agencies and institutions involved is not well designed.

The fundamental question that follows from the above is: what is the optimal degree of involvement of public administration in election management (sharing of roles and coordination of agencies) that increases the quality of electoral processes? The answer, as it is the case for most of the concerns raised in this chapter, is obviously not simple, and we should expect that it is not unequivocal and not equally applicable everywhere.

Despite and because of two difficulties mentioned above, it is preferable and possible to shed light on some elements and criteria against which we can assess the best solutions (i.e. those that are acceptable) and the

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other to recognize the good and / or bad practices in the region. A joint management institution of elections could be considered good if it fulfils some preconditions:

- The tasks are assigned to those agencies best equipped to accomplish them (a form of subsidiary)
- The link between the agencies is arranged so that any task initiated by one of them is pursued in a timely manner by other agencies supposed to continue the work so as to necessarily lead to the expected results
- Agencies are arranged in a way so as to enable the smooth functioning of mechanisms that give credibility to the process (control, balances, security, settlement of disputes, etc.)

All good and less good practices can be appreciated through both the content of the legal framework of elections and the observation of the management of past elections and in their relation to the issues discussed above.

#### **A good example: The electoral commission of Sierra Leone**

*In our view, there is no model that could be considered the best in relation to the subject matter in this section. More importantly, whatever model chosen in a country, the tasks of the process should be fully implemented within a framework that reassures both politicians and ordinary citizens. In light of the available experiences, the example of Sierra Leone can be regarded as a promising example. Of course, that is not the only one in the sub-region.*

*The example of the electoral commission of Sierra Leone presents a situation (a strong central referee) where*

*virtually all transactions and tasks of the electoral process are entrusted to the election commission. Indeed, it is the electoral commission of Sierra Leone which is the institution responsible for the conduct and supervision of all public elections in the country. For instance, it is authorized to establish a committee, to appoint any person and take any available regulation (that is to say make rules) as it deems necessary for the proper management of the electoral process. These rights go beyond those dimensions directly related to the preparation and holding of elections, to cover areas such as establishing and updating the electoral roll, dividing the territory into constituencies, and conducting and supervising all public elections<sup>5</sup> and not just those relating to the selection of political authorities.*

*It is the full responsibility assigned to the electoral commission of Sierra Leone that made the elections to be deemed credible by both national and international observers.*

*Despite the good reputation the Sierra Leonean model enjoys, other modes of organization of elections can also be considered as positive examples. One can mention the model adopted by **Cape Verde** which runs, contrary to the case of Sierra Leone, on the basis of sharing of tasks between the electoral commission (known as National Electoral Commission) and the public administration services. In this electoral institutional framework, the technical support function for the organization of elections is entrusted to the directorate general of support services in the electoral process (DGAP), which is under the Ministry of the Interior. The electoral commission supervises and takes the necessary steps to ensure the regularity of the process.*

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<sup>5</sup> Those that are available.

### **An example to improve: The commission where tasks are not clearly divided (e.g. Guinea)<sup>6</sup>**

*Unlike the good examples presented above, there are countries where the management of elections is entrusted to several institutions (including an electoral commission) but within a legal framework which is not very clear compared to the genuine sharing of roles. The relationship between the various agencies involved in the process to ensure qualitative elections are not properly articulated. The consequences of this situation on the performance of the committee and on the quality of elections include the following:*

- *Tasks which are considered necessary, indeed essential for the proper conduct of elections will not be completed by default due to inappropriate distribution of roles;*
- *Tasks will be carried out but in such confusion created by conflicting powers and others in such a way that the process would be compromised;*
- *Structures (committees) established to carry out specific tasks will not work properly, for instance because of the inability of organization and functioning due to a bad combination of representatives of institutions.*

*The provisions of electoral laws for the Guinean electoral commission<sup>7</sup>, called Independent National Electoral Commission (INEC), largely reflect the situation described above. In the organic law amending the electoral code of 2007, it is said, for example, that "the Ministry of Interior is*

<sup>6</sup>The information on Guinea is derived from the organic law no. 91/012/CTRN carrying the electoral code modified by the organic laws no. L93/038/CTRN of 20 August 1993 and L95/011/CTRN of 12 May 1995. It needs to be added that a regulation decreed by the military regime has come to improve the fortune of the Guinean electoral commission.

<sup>7</sup>It is true that the law where this content is mentioned no longer exists. Nevertheless, it perfectly illustrates the situation that is described above.

*the administrative authority which organizes the elections in collaboration with the INEC ... as such, the INEC is involved in the design, organization, decision making and execution of the entire electoral process from registration to vote until the announcement of provisional results " (Art.2).*

*No rules are provided regarding the management of elections by INEC. Is it a structure that has specific tasks detailed in the electoral process? Is it an oversight body for elections? Is it a control structure to give credibility to the electoral process? These questions are not explicitly dealt with in Guinea's electoral laws. It appears that in some cases INEC is simply informed on what happens, for example, in section L69, it is said that "... the wording and specifications of its ballots are set by regulation and communication is done ... at the INEC ... ", while it is the electoral commission which is responsible for this operation elsewhere.*

*Although the case of Guinea is an extreme case, the electoral commissions of several other countries also suffer from this shortcoming, even if only partially, that is to say, only on certain dimensions of the electoral process. This is for example the case of **Mali**, where the management of the electoral process is based on the electoral law (law No. 06-044 of 4 September 2006 election law), divided between at least three bodies: the Ministry of Territorial Administration, which is the mastermind behind the organization; the general delegation for elections, which is empowered with tasks like handling ballots; and the electoral commission, which is responsible for supervising the electoral process. The difficulties of the management of the electoral process are such that politicians and public opinion seemed to support the*

*establishment of a single structure and permanent electoral management. This solution has recently been adopted by the Malian government in creating the directorate general of elections.*

*A division of roles between government and the electoral commission which is detrimental to the credibility of elections is also observable in **Senegal** where the opposition has challenged the central role of the Ministry of the Interior and the timid role of CENA in infringements of the electoral law, thereby eroding the legitimacy of the electoral system.*

## Focus 2

### **The conflict between the models**

With regard to the distribution of roles among several institutions during electoral processes, there is no single model that should be followed by all countries. Whatever the model adopted by a country, it should take measures to ensure the proper functioning of the system and contribute to producing quality results in the management process. It could, for example, depending on the model, consider the items below.

1. For a board that administers the entire electoral process, one should ensure that:

**It has the means to accomplish its mission: sufficient time, human, financial and material resources**

**It has the necessary authority (part of the powers conferred upon it) to manage all aspects of the process**

**It enjoys adequate assistance it may need from other state institutions**

2. For a commission that shares the management process with other agencies,

**If it must have a role in the management of the elections, ensure that:**

- a. It is given at least the following tasks
  - The determination of who may vote
  - Reception and registration of candidates
  - The organization of elections
  - The counting and announcement of results



- b It has adequate resources to perform the tasks assigned to it, and that
- c Relations between the commission and other institutions of the process are fairly well articulated

**If it does not have a role in the management of elections, that is to say if it is only an organ of supervision, ensure that:**

- It is installed in time (if it is not permanent) to monitor and control all the major stages of the electoral process
- It is included in all senior decision-making in the management of elections, the position relevant to the monitoring and control
- It has adequate means to accomplish its mission

### **3.1.3 Autonomy or independence of election commissions**

Whatever the type of institutional framework, the electoral commission's autonomy is one of the most important issues requiring resolution. This question deserves to be taken seriously if only for the simple reason that it is a very symbolic truth that all the West African countries (and often elsewhere in Africa) have found it necessary to qualify their electoral commissions as autonomous or independent. In most new democracies in the region, electoral commissions were motivated by the need for neutrality, impartiality and reduction of the consequences of an electoral administration that is dependent on political powers. It is clear that these goals are difficult to reconcile with any form of dependence of the committee vis-à-vis state institutions or political parties.

By autonomy or independence of an electoral commission, we certainly do mean a complete freedom without any form of control. Independence, in this case, should not be confused with the right to freely dispose of public resources or to manipulate the electoral process without credible monitoring or accountability. Rather, it should be understood primarily as a kind of freedom of action and assessment of the expediency of action, which requires flexibility. For example, depending on the country and the circumstances, it might be useful and necessary that the procedures for public procurement are not always adhered to, that the procedures for the recruitment of public officials are not always met by the Commission in the selection of its officers, etc.

Maintaining an appropriate level of autonomy could largely depend on precautions that are taken, for example:

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- 1 In the implementation of the commission's management control and the behaviours and attitudes of its members; it is necessary that special attention be given to the choice of mechanisms and institutions to control the commission and its members so as to reduce both the risks of exploitation and control of those that could result in an insufficient level of control. The exploitation of control mechanisms, i.e. the ability of leaders of supervisory institutions (and therefore political camps that dominate the concerned institutions) to influence the commission and its members is clearly a risk to avoid at all costs;
- 2 In reporting between the commission and other agencies of the electoral process; if these reports are not properly articulated, they could be the basis of reduced autonomy of the commission. This is especially the case when the tasks of the election process are shared between the commission and other institutions that have freedom of action;
- 3 To ensure that the environment is well rated such that members will want to effectively use the resources at their disposal to preserve the autonomy of the committee. By doing so, the influence of factors that could encourage members of the committee to deliberately submit to or advocate for the control of other stakeholders is minimized.

Independence and autonomy should help empower the commission in relation to due processes and in relation to the actions and initiatives it undertakes. This can be achieved through a clear and specific legal framework about the procedures at all stages of the electoral process

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(for both the organization and functioning of the commission). The same level of clarity and precision of the legal framework is needed for all levels of responsibility of members of the commission as well as other actors involved in the electoral process and at each stage of organization and management of the elections.

The autonomy of the electoral commission must be guaranteed both vis-à-vis other institutions involved in the electoral process and its own members. The merits of the need to protect the commission's influence from manipulation by other key institutions of the electoral process are obvious. This presupposes that the conditions for the autonomy of the commission vis-à-vis all stakeholders of the electoral process, including the executive and judiciary on electoral disputes, are well reflected in the legal provisions. The involvement of local authorities in countries where decentralization has taken place also needs to be clearly defined and properly regulated.

However, the autonomy of the commission is unlikely to be threatened by other institutions of the electoral process. Of course, the motivations and objectives of the facilitators of the commission may also constitute a threat. This would be the case if leaders of the commission (at the national level and in various branches) are placed in an environment that encourages them to pursue goals other than those of the proper organization of free elections. To avoid this situation, at least three factors should be considered: (a) the time, that is to say, the term of the commission and that of its members, (b) the origin of trustees, including the links between them and the political actors, and (c) the working conditions of members, i.e. essentially the treatment of different categories of members, the means provided and

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the influence that other institutions involved (above all the executive power) in the electoral process may have on the commission and its members.

Regarding the second category of factors likely to influence the autonomy of the commission, the significance of the time, considered both in relation with the tenure of the commission and that of its members, has already been discussed above. Also in this second category is the origin of commissioners; this point will be discussed further in the section on the political dimension of the commission. In the remainder of this section, emphasis will be laid more on other factors mentioned above.

#### **A good example: The electoral commission of Ghana**

*Several factors contribute to guaranteeing the autonomy of the electoral commission of Ghana, even if it can be further improved. In the first category of factors, we have those relating to the influence of other institutions on the commission; the legal framework of elections provides it with a strong basis.*

*Indeed, law No. 451 of July 6, 1993 establishing the electoral commission is clear on the latter's independence from any person of any authority (Article 3). Several provisions of the law establishing the commission help ensure the effectiveness of its autonomy. One can mention in this category provisions that:*

- a Assign almost all tasks regarding the preparation, organization and practical control of the electoral process to the commission, reducing the possibility of sudden interference from other institutions;*

- b Allow freedom of choice of means (e.g. appointment of persons deemed necessary for the proper organization of the election process, regulation where necessary with penalties for their crimes, etc.) at the discretion of the commission, also reducing the possibility of interference from other players in the process, for example in selecting necessary human resources for the conduct of an election;*
- c Focus on the subsequent control through the requirement of an annual audit by the auditor general, thus reducing the potential for manipulation of controls in order to influence the preparation and / or organization of elections;*
- d Require the recording of expenditures, including salaries, fees and pensions in the budget of the state (consolidated fund). This avoids debates established during the electoral process on the availability of resources, opportunity costs and other delays that result in the organization of elections;*
- e Be very clear about the hazards faced by obstruction and interference with the commission in fulfilling its mission, considered as crimes.*

*All the above elements mentioned under the legal framework for elections in Ghana help reduce the risk that the country's election commission is found under the negative influence of other actors. In addition, there are other additional provisions to secure the independence of the commission's members. The latter category includes the following aspects:*

- a. *The origin and the procedure for selecting members of the committee, which will be discussed in detail below in the section on "political dimension of electoral management". The measures taken to that effect in the electoral legislation of Ghana reduce the risk that members of the commission be sensitive to the needs and interests of other actors in the electoral process, especially those authorities who have proposed and / or appointed them;*
- b. *The treatment of members, especially as regards the chairman and the vice-chairmen is clearly "specified" - through their assimilation of positions in public service - by law. This reduces the possibility of influence of members of the committee through the manipulation of their working conditions.*

*Although the electoral commission of Ghana provides some positive examples regarding its autonomy, it is not an ideal model. It is still possible to improve conditions so as to increase its autonomy. For example, the documents do not appear to prohibit (as in Gambia, for instance) the selection of political figures as members.*

### **An example to improve: The electoral commission of Niger**

*Most of the factors mentioned above, when properly used to help increase the chances that the commission is independent, can also, in case of misuse, explain the weakening of the autonomy of the electoral commission. This is the case in several countries of the sub-region, for instance in Niger; where, despite legal provisions for the independence of the commission, it:*

- a Is not in charge of all tasks of the election process (e.g. It does not establish the electoral roll); this, indeed, is not necessarily a handicap, inevitable for the good management of elections;*
- b Has no fixed time for starting its activities, although the law stipulates that the mandate of the commission shall end three months after the announcement of the final election results. This necessarily creates some uncertainties with respect to the time actually available for the preparation and organization of elections by the commission and therefore may have some influence on its autonomy. Indeed, it is quite possible that the actual starting time of the preparations is influenced by the political atmosphere in the meantime;*
- c Prepares and submits the budget to the government. This, as shown by many examples of other countries in the region (e.g. **Benin**), is a weakness that can become crucial for the autonomy of the commission and for the quality of elections. Indeed, the government may use its discretion over the budget to blackmail the commission and thereby reduce its autonomy;*
- D Has almost no influence on the composition of its branches, except that it appoints the chairman of each local board. This raises the risk that the management of parts of the commission is difficult and that the articulation between its different levels may be problematic.*



*The case of Niger not only poses problems relating to the autonomy of the commission vis-à-vis other institutions of the electoral process, it also exhibits some weaknesses regarding the creation of an environment that encourages commission members wanting to enjoy their autonomy (thus ensuring that of the commission). For example:*

- a Niger, like several other countries in the region (e.g. Benin) has opted for an ad hoc electoral commission. This makes the members of the Nigerien commission sensitive to the concerns of those who appoint them, especially when they come from a political camp and have direct interests in the outcome of the election;*
- b The law does not make provisions for the treatment of the members of the commission, which suggests it will be determined in the budget of each election. This also constitutes a big risk that the members of the commission will be influenced by the government who thus has the potential means to give incentives to members in one direction or another.*

### Focus 3

#### **The autonomy of the electoral commission**

It was unanimously agreed that the autonomy of the electoral commission, whatever its place and role within the institutional setting and electoral process, is essential to the quality of elections. It is also agreed that autonomy of electoral commissions is neither spontaneous nor inevitable; rather, it is the result of provisions taken deliberately by political actors, including legislators. Possible provisions include the following:

1. Regarding the protection of the commission against external influences, ensure that:

**The procedure for determining and making available the resources necessary for the management of the process that return to the commission reduces the risk of exploitation of it by other institutions and / or other actors of the process.**

- Record operating expenses in the general governmental budget and specify the conditions of availability of resources at the right time
- Define the criteria for determining salaries of the members of the commission so as to prevent its exploitation by actors who have interests in the outcome of the election process. For example, match those of the body of the administration clearly defined and / or entrust their determination (and modification) to an authority (e.g. the national commission for fixing the salaries of members and election officials) that has the least possible interest to use it to influence members of the commission

- Focus *a priori* controls<sup>8</sup> (during preparation of the operating budget of the commission and other bodies responsible for the organization of elections) and especially *a posteriori* (after running costs) to control agents that may introduce delays in the management of the election
- Consider the possibility that the procedures for procurement and for the proper management of resources may not always be met.

**The tasks that pertain to the commission as well as the functions and privileges accruing to it are clearly defined:**

- 1 Avoid terse and vague formulations such as "... such a task is accomplished by such an institution in collaboration with the commission ..." which can sometimes be interpreted according to the strict minimum by the authority which decides the operationalization of legal provisions
- 2 Avoid modes of composition or dismemberment of the commission which reduce the minimum required authority. This is the case, for example, when members of the national commission are appointed by the same groups (political or otherwise) as well as those of the same branches. This may make it difficult to operationalize the latter as it can reduce the authority of the national commission and its autonomy
- 3 Ensure that the provisions relating to the prevention of indiscipline and obstruction of the commission are adhered to

**The tasks assigned to other institutions in the process are**

<sup>8</sup>The details on *a priori* controls of the means made available to the commission are given later on in the document, for instance in the section on the costs of elections.

**done in a proper and timely manner to ensure that this does not break down the autonomy of the commission:**

- 1 avoid the malfunctioning of other institutions to influence the performance of the commission and its autonomy
  - 2 give the commission most of the major tasks of the electoral process
  - 3 give the necessary means (legal and otherwise) to the commission to possibly compensate for any failure on the part of other institutions in the process
2. Regarding the protection of the commission and its members, ensure that necessary measures are taken:

**Encourage members to adhere to the autonomy granted them by the law by ensuring that:**

- 1 The mode of composition and treatment of members of the commission does not encourage them to accept instructions from other players involved in the electoral process
- 2 The interests of members of the commission do not conflict with free and fair elections. This may be the case, for example, when representatives of candidates (parties or individuals) have a casting vote in the decision-making of the commission

**Increase the likelihood that any misconduct of the commission is identified and punished:**

- 1 Avoid, wherever possible, that other actors in the process (e.g. the executive) are involved in the identification and punishment of offences committed by members of the commission
- 2 Anticipate possible ways to help members of the commission to manage violations of laws in a credible manner.

### **3.1.4 The preparation of election officials**

Adequate preparation of all actors involved in the electoral process is another concern that should receive the attention of all those who care for qualitative management of elections in West Africa. This implies that all initiatives that help to ensure the precise division of tasks among actors be taken. It is obvious that negative consequences for the quality of the election process will arise if the clear distribution of tasks is not guaranteed.

In the remainder of this section, emphasis will be laid on the preparation of election officials - that is to say members of polling and census teams. Indeed, the electoral process would necessarily benefit from the proper preparation of all actors who are involved. These include leaders of the media, security guards (whose role will be discussed later in this document under section D “Security and Elections”), judges on electoral disputes, ordinary citizens and the members of the electoral commission. The process will necessarily and inevitably gain in quality if each of these actors has a clear idea of the role and function he /she is to fulfil.

The proper preparation of election officials is crucial to ensure that these important links in any electoral process provide an adequate and timely contribution to the quality of that process. It is absolutely essential to have a good understanding of the electoral legal framework, not least in relation to provisions relating to their duties, rights and responsibilities. It is equally essential that precautions be taken to ensure that election officials have the prerequisites and necessary competencies to perform the tasks entrusted to them. It would, for example, be very risky (for the quality of the electoral process) to entrust the management to polling agents who are not adequately trained or do not understand their duties and obligations.

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### **A good example: Commission with appropriate powers**

*Although the importance and centrality of the quality of agents (competence, knowledge of legal provisions, etc.) for the success of the elections are established, few legal regulations regarding the measures to ensure their proper and relevant training exist in the region. Despite this fact, it is nevertheless possible to identify conditions that are already planned for some electoral commissions, which are likely to contribute to reducing the risk of mismanagement of elections. These include:*

- a Sustainability of the electoral commission. This should normally allow time for members to organize for the identification, recruitment and especially training of election officials (e.g. the case of **Ghana**);*
- b Control of the appointment of election agents by the electoral commission (e.g. the case of **Sierra Leone**) or else appointment in a way that the candidates are not involved in the selection of their own posts. This may also help to ensure a reasonable period for preparing election officials;*
- c Prescribing eligibility criteria for election officials, so as to reduce the risk of selection of agents who do not have the necessary background to perform their tasks. For example, agents (facilitators of the poll) unable to write, read and speak the language of work (and therefore the organization of elections);*
- d Stability of the electoral legal framework. This can make the recycling of former officials easier and reduces the time needed for that.*

**An example to improve upon: Ad hoc committee  
(The case of Benin)**

*In the same way that some measures, whenever they are taken within a legal context, help to reduce chances of bad organization of elections, similarly, whenever they are neglected, they could have dramatic consequences on the quality of the electoral process. Regarding the specific case of the preparation of electoral agents, some measures can reduce the chances of it being done the way it should be. For example, whenever:*

- a. The committee is ad hoc; it does not necessarily control the deadline for the organization of elections and therefore cannot plan the preparation of elections and the training of electoral agents in a pertinent way. This is the case for example in Benin, where electoral commissions sometimes have less than 45 days to prepare;*
- b. Candidates (party sponsored and independent) are involved in the nomination of electoral agents (e.g. the case of Benin). In this case, the training of electoral agents would take place only after the candidates are known i.e. in most cases only some weeks before the elections. And definitively this has an impact on the quality of the training (duration, content, training and profile of trainers), i.e. training is conducted in a few hours by trainers who were previously trained in the same conditions;*
- c. The law is either flexible or does not provide the criteria to be met for people can become an electoral agent. This engenders the danger of unqualified people operating as electoral agents (**Benin**).*



#### **Focus 4**

##### **Preparation of electoral agents**

To increase the chances that electoral agents are well prepared, a certain number of measures ought to be taken. We can cite for instance:

1. Put in place, preferably, a permanent committee so that it can have enough time to prepare elections, including the training of electoral agents
2. Set in advance clear criteria of eligibility for electoral agents
3. Ensure that the agents are trained in time to adequately accomplish the tasks entrusted to them
4. Make the legal framework available early enough to enable electoral agents to be trained accordingly. For instance, avoid frequent amendment of the electoral code and especially avoid the adoption of it only some weeks before the election
5. Adopt a pertinent method of training for the electoral agent. One can for instance have a reserve or a pool of electoral agents who are already trained in the basics of their functions

**Organize a retraining at the coming of any election to take into consideration any eventual amendment of the juridical framework of the elections**

### **3.1.5 Restricted missions of electoral commissions**

Another issue that demands to be given special attention relates to the determination of the missions of the electoral commission. Even if the need to involve an independent commission in the management of the electoral process to increase its quality is obvious, the determination of the mode in which tasks and responsibilities are distributed may not be that simple. A bad resolution of this issue, namely a non pertinent distribution of the different tasks of the process, may cause the tasks not to be accomplished or so badly done that it will affect the quality of the electoral process in a substantial way.

The sharing of roles among several institutions involved in the electoral process could be difficult and might not have a unique solution applicable everywhere, for at least two reasons. First, one must acknowledge the fact that the determination of the missions of an electoral commission is not easy in the sense that the tasks of managing elections are not only multiple and varied, but also, in most cases, interdependent and complementary. Secondly, monitoring electoral practices (at least in the West African sub-region) enables us to notice that having a high number of prerogatives is not always a contributing factor to success (the 2007 elections in Nigeria illustrate this), and that sometimes a commission with fewer prerogatives can be more effective in ensuring a high quality of elections (e.g. the National Election Monitoring Group (ONEL) in Senegal, the electoral commission of Niger and, to a lesser extent, the Malian electoral commission).

From all the foregoing, it will be delusive to point out a model in terms of task distribution between the different actors of the electoral process. Despite this, it is possible to pin point good and bad cases of task distribution with positive or disastrous consequences on the

elections held in the sub-region in these last few years. It is also possible to differentiate models of task distributions and their demands in terms of legislative measures for their efficiency.

### **A good example: The Liberian electoral commission**

*In terms of task distribution between the different stakeholders of the electoral process, the case of Liberia is a possible model and a success. It is the scenario in which almost all the tasks involved in the electoral process are entrusted to the electoral commission. This formula, though not a panacea as can be seen in the case of Nigeria, has helped to run high quality elections in Liberia, for instance, because in addition, the commission generally has the following:*

- a. Means (resources) needed to face the multiple and various demands of the tasks;*
- b. Enough time to prepare very well for the elections; it is a permanent commission with permanent members;*
- c. Enough authority and legitimacy to command respect for its institutions. For example, according to the law the Liberian electoral commission is the only institution authorized to run any public elections and empowered to take every measure needed for a good election; and all this backed with sanctions against any offender.*

*While the Liberian electoral commission, having almost total control over the activities of the electoral process, is a positive example, in other countries in the region the task sharing proved to be disastrous.*

### **A case to improve upon: The Beninese electoral commission**

*As a non-recommendable example of task distribution, we can cite the case of the electoral commission of Benin which constitutes the second category, where the electoral commission has only partial prerogatives on the electoral process. This formula, which in itself is not a fatality, had generated difficulties in the case of Benin and other emerging democracies which employed it in the sub-region because:*

- a. Not only is the commission established in an ad hoc manner (set up on the eve of every election), but it was also (in 10 out of 11 elections organized so far in the country) set up too late compared to the legally stipulated timeframe. This made it difficult for the commission to carry out some of the missions it was entrusted with, such as the establishment of the electoral list which has never followed the legal provisions on the matter;*
- b. Measures are not taken to ensure that other institutions involved in the process accomplish their own part of the tasks effectively;*
- c. Some tasks, although necessary for the quality of the electoral process, are not taking care of or are carried out in an unrealistic manner. That is for example what happens when electoral regulations are not popularized or the register of political parties legally approved is not updated by the Ministry in charge (creating the possibility for illegal parties to take part in the elections).*

*Although the case of Benin, where roles in organising elections are shared among several institutions, is a basic*

*example, there are also cases of poor elections management despite the fact that the electoral commission was in charge of almost every operation (e.g. Nigeria 2007). Finally, we need to admit that it is less a question of a model suitable everywhere than that of creating a conducive environment for the good performance of each model.*

## Focus 5

### Modalities for sharing roles in an electoral process

Though there is no unique and best model, it is still possible to point out some of the factors which are likely to contribute to the determination of the success of each task distribution. Without being exhaustive, the factors mentioned below can be useful in the choice of a model.

- i. Case of a commission in charge of the total operations  
It will be ideal if the commission is permanent because the electoral process in itself is a cycle implying activities from one election to the other.  
If the commission has to be ad hoc, then one should ensure that
  - It is set up early enough to enable it to fulfil the tasks it is entrusted with
  - There is an administrative committee (like a permanent administrative secretariat) to ensure the implementation of necessary tasks between two elections
- ii. For a commission which is partially in charge of the electoral process, it should have:

**Only a supervisory and monitoring function in the process, i.e. intervene if need be and cause necessary measures to be taken to ensure a good training for the electoral agents. A role in the technical and practical management of the process and be provided with all means necessary to properly undertake the preparation of electoral agents.**

### **3.1.6 Problem of the relationship between the commission and its branches**

From the observation of the organization and functioning of the institutions in charge of the management of elections in the region, it appears that the determination and structuring of the relationships between their different levels of management (central/national, local, etc.) is also a question worth considering. Indeed, every independent or autonomous institution involved in the management of elections in West Africa has not only an organ at the national level, which is called electoral commission in the scope of this study, but also local agencies, well known as branches of the commission. This makes the issue of good arrangement of the organs at the different levels of management a question which, when neglected, can have serious negative consequences on the quality of elections.

The structuring of the different levels of an election management institution can be studied in relation to many aspects, of which three important aspects which complete each other without being independent are discussed in this section. It is in the first place the determination of the number of branches; then the origin of the members of each – meaning who is eligible, who chooses them and according to which criteria; and the position of every branch in the administrative chart (scope of administration) of the election management institution.

As it can easily be noticed, a poor management of the issues mentioned above can have dramatic consequences on the electoral process. A wrong determination of the number of the level of branches or of their size can also cause additional costs to the elections; a superabundance of actors who finally may not be suitable for the organization of elections or an insufficient number of personnel can also be prejudicial for the quality of elections.

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The search for solutions to the above mentioned issues is not simple and the probability of reaching a solution suitable for the whole sub-region is small. Indeed, it is more possible that the characteristics of most aspects mentioned above depend on the specificity of each country – legal, administrative, territorial, political tradition, etc. – therefore, finding one model that will work everywhere may not be expected. Having noted this, it is nevertheless possible to point out factors that may help to identify good and bad examples.

#### **A good example: The Ghanaian electoral commission**

*From the points of view we are interested in, the evaluation of the Ghanaian example will be done in two dimensions. The first dimension concerns the determination of the number of branches and their respective sizes; the second dimension concerns the structure of the relationship between these two different levels.*

*Even if it is difficult to estimate the challenges which the current conditions are putting on the Ghanaian electoral process vis-à-vis the first dimension mentioned above, some aspects of the said process suggest that there should not be many challenges. To cite only a few examples, it is the rapidity with which the results of elections are declared. It is also the ease with which the electoral commission carried out its various tasks at every level of the electoral management. These elements, although they are not formal proofs, can be considered as signs of good national territorial coverage in a way that eases the organization of elections.*

*Concerning the second dimension, which relates to the*



*structure of the relationship between the different levels of the branches, two factors constitute important guarantees for the Ghanaian success. First, there is the fact that the commission at the national level is allowed to establish, recruit and determine the conditions for collaborating with the other levels of the commission. Then, there is the fact that the commission is the authority to decide if the collaboration with stakeholders at any level of branches will continue or not. These two factors on their own give a certain authority to the national commission and help to make the coordination of its activities at any level easier.*

*This does not exclude cases of dysfunction of the national commission itself. But this raises another type of issue which is not discussed in this section.*

### **An example to improve upon: The Beninese electoral commission**

*As a typical bad example, the case of Benin can be cited, although it is true that based on the aspects of the issues under consideration, some countries are still worse than Benin. There are various obstacles to a good election management in Benin as a result of poor structuring of the relationship between the National Electoral Commission (ANEC) and its branches. For instance, members of the ANEC and its branches (even up to the district level, i.e. the AEC) are all appointed by the same people, mostly members of parliament. Sometimes, the education level required from some lower branches (from the electoral agent for instance) is higher than that required from the higher branches. Consequently, some of the following problems have arisen in the past:*

- A. Insubordination of lower ANEC levels vis-à-vis the ANEC, or between different lower levels of the ANEC (for example, between the CEC—Communal Electoral Commission-- vis-à-vis the DEC – Departmental Electoral Commission), simply because they are all appointed by the same people and therefore seem to have the same legitimacy;*
- b. Insubordination between lower levels of the ANEC is basically caused by the fact that the level of competence required from them are not the same;*
- c. Difficulty for the ANEC to control and ensure that its instructions are followed by lower level branches because the whole system is too much politicized.*

## Focus 6

### **Number and structuring of the branches of the electoral commission**

Although a model type in terms of number of branches and the nature of structuring that should exist between them cannot be given, elements to take into account in order to help improve on the quality of elections from this angle can nevertheless be suggested. Regarding the:

1. First dimension, meaning the number of branches and their size, it is not possible to suggest a formula that will be better than any other and practicable everywhere. However, it must be ensured that these two factors are chosen in a way that:

the control and supervision of the process is easy and realistic;

The centralization of the results and eventually the declaration of provisional results at the local level could be easily done and in the shortest limit of time. This helps to declare provisional results quickly at the national level and decrease considerably the risks of electoral fraud in the process;

The number of people should not hamper the proper functioning of the branch;

The number of branches should not become an additional obstacle to the good functioning of elections.

2. On the second dimension, related to the structuring between the different levels, it should be ensured that at least:

Each lower level establishes conditions that incite the adoption of a behaviour that fits the hierarchic relations. Particularly important are:

- Members' origins, meaning groups from which they are selected: avoid as much as possible parties and candidates' representatives for it is difficult to control them; preference should be given on the basis of qualification;
- The conditions of recruitment: qualification criteria; avoid that lower level personnel have higher qualifications than those of the higher level;
- The recruitment and evaluation of the lower level personnel should depend on personnel of higher level, especially at the national commission.

## **3.2 Problems and challenges related to operationalization of the electoral process**

### **3.2.1 Political dimension of managing elections**

The model of association of the political class (representatives of political parties and/or candidates for the diverse elections) to the functioning of the electoral commission – called “level of politicization of the electoral commission” or “political dimension” of the management of elections – is also a challenge that needs to be taken up seriously when we decide to use a commission to run elections in a country. This factor – level of politicization of the electoral commission—is important because it can have an impact on the autonomy of the commission, at the level of responsibility of its actors, on the behaviour of political actors vis-à-vis the electoral results, and especially on the neutrality of the commission and its members.

The real question that the political dimension is posing for the management of elections is the following: what should be the nature of the association and at what level should political actors (or their representatives) be associated with the functioning of the electoral commission in order to ensure the following three results: (a) gain the confidence of partisan actors (parties and candidates), (b) gain the confidence of citizens, and (c) ensure a reasonable level of credibility to elections. Given the fact that only the political management of elections is discussed here, only the first point, i.e. factors susceptible of influencing the level of political actors' trust in the management of electoral commission, will be discussed in this section.

Given the importance of elections for partisan actors, the minimum requirement from an institution in charge of the management of elections, and moreover from an electoral commission, is that it

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reassures the said actors on the quality of the process (and the results it gives) and guarantees that nothing is done (nor will be done) against their respective interests. In other words, the nature and the degree of association of political actors with the functioning of the electoral commission must be such that the former will be reassured without tarnishing the quality of the electoral management.

The assessment of the association of political actors in the direct management of elections needs to take many parameters into consideration. For instance, among all the partisan actors, the person who should be allowed to be associated with the functioning of the electoral commission must be decided. One needs to reflect on levels of branches where the association with partisan actors can help add the qualities needed, the expected results of the electoral process. One must also ensure that the prerogatives given at each level of the election management institution are susceptible to take part in the achievement of the targeted objectives regarding the association of politicians.

Concerning the proportion and degree of association with representatives of political groups who are authorised to take part in the functioning of the electoral commission, it must be more qualitative than quantitative. If, indeed, the political dimension of the election management serves only to reassure political actors that the political process will not be biased against their interests, the question then is to know where to put them so that they could follow the electoral process, rather a question of quality than quantity. In other words, the political parties that are officially authorised to be associated with the management of the process must be less worried about their capacity to influence decisions of the electoral institution than to position themselves and present prerogatives to ensure that the electoral game will not be biased against them.

Observatory positions should therefore be created for political actors, rather than decision taking or direct organization positions in the electoral process. The following section deals with this issue.

### **A good example: The electoral commissions of Ghana and Cape Verde**

*Just like in most of the issues raised in this study, dealing with the political dimension of the management of elections is not necessary simple and does not have a straight jacket solution which is applicable everywhere. Nevertheless, it is possible, just as in the other cases, to show some examples that had produced recommendable results. Two examples are discussed below: Ghana and Cape Verde.*

*In Ghana, one of the technical departments of the electoral commission, especially the one in charge of operations, is responsible for organizing a monthly consultation meeting between the commission and a group of political parties within the framework of the IPAC (Inter-Party Advisory Committee). This forum helps to establish a permanent platform to maintain the dialogue with active political parties in a transparent way. The aim of the meeting is to review the progress made and to remove any bottleneck in the election organization process and in the accreditation and management of political parties. Following the monthly national meeting, regular meetings are held at the regional and local levels in a decentralized way with the aim to taking into account the concerns of political parties and to ensure they are well tackled.*

*This forum of permanent consultations between the commission and political actors is still of an informal character (not dealt with in electoral laws), even though it has helped to organize peaceful elections which the majority of the political actors believed were credible. In addition to the framework, legal means are provided for political actors to use against any decision of the commission with which they do not agree, including the choice of citizens involved in the management of elections.*

*The National Electoral Commission of Cape Verde (NEC) presents another alternative which is also effective in terms of association with political actors with the functioning of the electoral commission. Indeed, the NEC holds weekly meetings in which all representatives of the various official political parties take part. Until the electoral law now in force was adopted in June 2007, representatives of political parties were just authorised to seek explanations on grey areas, they were not allowed to take part in the discussions during NEC meetings. But with the new law, they take part in the discussions without the power to vote. This is an important mechanism for transparency in the functioning and especially the decision-taking process at the level of the NEC; it is a mechanism that helps to reassure the actors concerning the election management by the NEC.*

### **An example to improve upon: The case of the Beninese electoral commission**

*In the Republic of Benin, under the pretext of ensuring the transparency and impartiality of the electoral commission*



*(ANEC), the law allows it to be highly politicized. Highly politicized means that on the one hand, almost all members of the commission are appointed by political parties, and on the other hand, that the political configuration in parliament in the choice of representatives of ANEC and in the establishment of its board need to be taken into consideration. In Act N° 2007-25 of November 17<sup>th</sup> 2007, relating to the general regulations for elections in the Republic of Benin currently in force, political actors appoint 16-17 members of the ANEC.*

*The same goes for the composition of the ANEC branches which are established at three levels: departmental, communal and at the district level. Indeed, at the first level of the subdivision, the Departmental Electoral Commission (DEC) is made up of 11 members, with 10 appointed by political actors. The Communal Electoral Commission (CEC) is made up of 7 or 9 members (depending on the size of the commune), with respectively 6 and 8 appointed by political actors. At the district level, the District Electoral Commission is made up of 3, 5 or 7 members (depending on the size of the district), with respectively 2, 4 or 6 appointed by political actors.*

*In addition to this extreme politicization of the ANEC and its branches (which is unique in the sub-region), the Beninese case has a peculiarity. For some time now, it has become a norm that the board of the commission—which is elected within the commission by its members—has to be set up according to the political configuration of the commission. Contrary to this, in many electoral commissions in West Africa it is suggested that some positions, such as the*

*presidency or the vice-presidency, be attributed to the representative of civil society in the commission. This issue is taken so seriously that during the 2008 local elections, the Constitutional Court asked for the reconstitution of the ANEC board three times on the grounds of non-conformity with the political configuration of the commission.*

*The high level of politicization of the ANEC and its branches is an important cause of difficulty in the management of elections in Benin, if not the main source of challenges and with the most disastrous consequences. Politicization, first done at the level of the ANEC and its branches, finally spread even over electoral agents (census takers and members of polling stations) who, according to Act N° 2007-25 of the general electoral regulations in the Republic of Benin currently in force, are appointed based on the political configuration. This high politicization, which became exaggerated with time, is supposed to allow every key political force to take part in the management of the electoral process to ensure transparency in the management of elections. But today, it is obvious that the results are still far from this goal, and this is still a euphemism.*

*On the contrary, the consequences of the extreme politicization of the ANEC<sup>9</sup> on the electoral process in general are multiple. We can mention for example:*

- *The transformation of the ANEC into an instrument of partisan fight where finally each political group employs its representatives to misuse, sometimes with success, the electoral process for opportunist and strategic purposes;*
- *Gradual but constant loss of the credibility of the*

<sup>9</sup>It is necessary here to understand the ANEC and its subdivisions (up until the level of electoral agents).

*ANEC among the population in general and even among the political actors themselves;*

- *Permanent tension within the ANEC which is a handicap for its normal functioning, thus affecting its efficiency;*
- *The transformation of the ANEC into an instrument of periodic satisfaction of political clients (this explains partially the high rate of renewal noticed from one ANEC to the other);*
- *Gradual but constant degradation in the quality of elections held in Benin.*

## Focus 7

### **Political dimension to election management**

In this section, the aim is not to try to suggest a unique model of association (suitable everywhere) of political actors with the management of elections by the electoral commission. Nevertheless, it is possible to point out a certain number of factors susceptible to contribute to a pertinent participation of the said actors in the functioning of the electoral commission. To determine the factors of this question, let's remind ourselves that the main objective of the implication of political actors in the management of elections is to help them to make sure that the process is not biased against them. In the current case, the suggested factors are grouped into two categories: (1) those things that should be avoided and (2) those things that should be done:

1. Things that should be avoided:
  - The involvement of political actors in the direct management of elections through the electoral commission;**
  - The use of proportionality as the criterion for determining the size of the representation of political groups in the commission;**
  - The involvement of every political stakeholder (especially every legal party) without any discrimination in the management of election**
2. Things that should be done:
  - The association of political actors as observers in the decision-taking process and implementation;**
  - The creation of a framework for permanent discussion between political actors and the electoral commission to solve any apprehension and difficulty;**

**Provide, at least for political actors, a fast and credible means of appeal against the decisions of the commission and other institutions of the electoral process.**

### **3.2.2 Relationship between the electoral commission and other institutions involved in the management of elections**

The relationship between the electoral commission and other institutions involved in the management of the electoral process is worth a particular attention on the part of anyone involved in making efforts to improve the management of election in West Africa. Indeed, if this question is not well discussed, even with a perfect distribution of the functions together with adequate means for each institution, the electoral process may suffer severe deficiencies. For instance, in the best scenario, each of the said institutions will correctly play its part, but if the handover cannot function, the coordination for the synergy of efforts needed for the success of the electoral process, which is a group movement, may fail. Furthermore, in a case where the relationships are not clearly defined attempts to infringe on each other's field of responsibility can be observed, risking confusion and conflicts of all kinds.

To solve this problem, it should be ensured that at least the relationship between the electoral commission and the other institution involved in the electoral process is effectively established and that measures are taken for its proper functioning. Necessary relationships have to be established between the commission and the government (the executive) to ensure that means are effectively made available by the government for a proper functioning and management of the commission. Links with the parliament (the legislative) should also be planned to ease the prevision of the budget of the commission and the creation of favourable conditions for the electoral legal framework. Attention should also be paid to the relationship between the commission and the judiciary since this latter contributes to the management of electoral disputes at all levels of the process, depending on the variable modalities in Anglophone and Francophone countries.

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Other important relationships concerns those between the commission and local authorities (in decentralised countries), between the commission and civil society (depending on its participation level in the electoral process), between the commission and the authority in charge of media regulation, and between the commission and institutions in charge of public security (public security forces).

### **A good example: Electoral commissions of some countries**

*This section presents some positive examples regarding good practices for establishing relationships between the commission and other institutions of the electoral process from various countries in the region. The following examples concern the good relationship between the commission and:*

- a. The executive; in **Ghana**, conditions are provided for the determination of the budget which ensure a certain protection against any eventual desire of the government to manipulate the commission. In terms of security, the establishment of a framework of collaboration (partially informal) between the commission and security forces is in place;*
- b. The judiciary; the different measures provided by the law regarding the different levels and time limits of appeal, as it is the case in **Liberia** and **Benin**; the sharing of roles between the declaration of the results and the management of the electoral disputes (as in **Ghana**);*
- c. Organizations of civil society; the creation of a framework for collaboration, most of the time informal,*

*to include civil society in the composition of the electoral commission (**Benin, Mali, Senegal, Burkina Faso**); create awareness among citizens (**Benin and Ghana**).*



## Focus 8

### **Relationship between commissions and the other institutions of the electoral process**

The most important thing at this level is to avoid above all a deficit of precision in the relationships (or a bad structuring of the relationship) between the commission and the other institutions, which would hamper the quality of the election process. Therefore, it should be assured that:

1. The essential tasks of the electoral operations are handed over to the commission (this already decreases the necessity to liaise with other institutions) and the latter has sufficient means to carry out its mission; further, one should:

**Avoid that another institution of the electoral process has a discretionary power over the determination of the means and conditions of the commission's work;**

**Ensure that there are regulations which provide the conditions for the collaboration of the actors such as security forces, the media, civil society organisations, political parties, etc.;**

**Ensure that a framework for periodic exchange exist between the candidates (political parties or individuals) and the commission during the whole electoral process and even after;**

**Ensure that reports of the commission are submitted at various levels to increase monitoring and improvement of the process; several Anglophone countries have set a good example by submitting reports to the parliament which means that the commission's information is widely available and the role of political actors in elections can be debated.**

2. Share the functions between many institutions, including the

commission (as it is the case in many Francophone countries) and ensure that the relationships between the commission and the other actors of the process are defined in a pertinent way. This includes the following:

Clearly define the roles of each institution involved. This is the starting point for a good structuring of the tasks between many actors;

Ensure that measures are taken to avoid a situation where at a given period in time no one knows who should take care of a particular task;

Plan mechanisms susceptible to help fix eventual failures in the course of the process.

### **3.2.3 Anti-fraud mechanisms to ensure the sincerity of the process**

The guarantee of the sincerity of the process, meaning the implementation of measure to help reduce the risks of electoral fraud and corruption, should also be a concern when an electoral commission is used to run elections. The establishment of special commissions to manage electoral processes in the region stems from the desire of all to increase the transparency and credibility of elections. Notwithstanding the various types of electoral commissions, they all have a key position in ensuring the sincerity of the electoral process and in the fight against electoral fraud and corruption. Indeed, whether it is simply a supervising institution or active in the management of elections, the commission will always have a position that enables it to contain the tendencies of the different actors of the process in general, but especially that of political actors towards electoral fraud.

Electoral fraud and corruption are phenomena that are present in every political system that conducts elections. They occur in almost every democracy, though at a different level, in various forms and with different effects on the electoral process. In new democracies (such as those of the West Africa) characterized by weak institutions, (including those responsible for the fight against fraud and corruption) and a deficit in democratic culture, the phenomenon takes a particular dimension not only due to its magnitude but also due to its spread and manifestations as well as its disastrous consequences for democracy and for development in general. Therefore, electoral fraud ought to be fought at all cost.

Electoral fraud and corruption must be prevented and fought against at various levels, but for the purpose of clarity, it has been divided

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here into two categories. A first category will focus on cases of fraud that occur or may occur outside the institutions of election management, meaning by people who are not members of the electoral commission or of its branches. As for the second category, it presents cases of fraud which are committed within the electoral commission, by members of the commission or of its branches and other electoral agents. The fundamental question here is what legal measures to take so that the commission could help to control fraud and electoral corruption.

The search for the challenge mentioned above needs to take into consideration a number of factors that help to determine the capacities of the commission in terms of fight against electoral fraud. The relationship between the commission and the judiciary as already mentioned, as well as those that should bind the commission to public security forces, is an important part of the issue. It is also important to determine in a pertinent way a subsidiary principle in the sharing of the functions, depending on the type of fraud (and those who commit it), between the commission and the other actors as well as within the commission itself.

The search of solutions to the phenomenon must also take into consideration the complexity of the problem. Electoral fraud is committed at every level of the process – meaning before, during and after the elections. It is also done by every actor involved in the process, from the ordinary citizen to actors of the commission, political parties, representatives of civil society organizations, and members of other institutions in the electoral process. It appears in various ways, for example by manipulating the voters, the institutions or the administrative procedures.

## Some good examples

*At this level, since there is no unique example of a particular country that can be used as a model regarding the provisions set to prevent electoral fraud and corruption, certain elements noticed in the sub-region are used here. These elements are not prioritised or presented in an exhaustive manner; rather, they present what can be considered good examples in the sub-region<sup>10</sup> in accordance with the recommendations of the 2001 ECOWAS Protocol on Good Governance and Democracy.*

### **a. Period before the election day**

- *Electoral law: follow the model of the provisions of the regional (ECOWAS) and continental (AU) legal frameworks which forbid an unilateral manipulation of the electoral legal framework at the coming of elections (prohibition, by the 2001 ECOWAS Protocol on Good Governance and Democracy, of any modification of the electoral law 6 months before the elections without meeting a consensus with the actors of the political class);*
- *Establishment of the electoral list: follow the examples of many countries in the sub-region (**Ghana, Sierra Leone**) in establishing permanent and electronic electoral lists;*
- *Electoral campaign: take necessary measures to ensure equitable rights for every actor (**Ghana, Benin, Gambia**)*

### **b. On the election day**

- *Voting: choose the duration of the voting period and the size of polling stations (number of voters per polling*

<sup>10</sup> It is thus not necessary to present the less positive examples.

*station) so that the collation and counting of votes can be easy and if possible end in day time (**Benin**); take security measures to reduce risks of intimidation or of trouble during the voting process (**Benin, Ghana**);*

- *Keeping of electoral documents: take necessary measures to avoid the manipulation of the said document for partisan purposes (**Sierra Leone**).*

*c. After the election*

- *Transportation of the electoral documents to the points of collation: establish a mechanism against violence (**Ghana**) and manipulation (**Liberia, Sierra Leone**).*

## Focus 9

### **Fight against electoral fraud and corruption.**

Competitive elections are indispensable for the survival and the strengthening of democracy, but their success and pertinence demand that a certain number of conditions should be met. Indeed, to ensure a reasonable quality to any election, it is necessary that the basic fundamental principles that sustain it are followed. For example, it needs a clear, fair and equitable rules; it must always be, at least in most cases, the best that wins. It is also necessary to ensure that adequate measures are taken to dissuade in a credible way possible defrauders as well as to identify and punish any electoral defrauders.

To ensure that the above mentioned principles are followed, one should ensure that:

1. The rules of the game are clear, fair and equitable and cannot be unilaterally amended, especially for the interest of a party;
2. In most cases, it is the best who wins: in democracy, the best is the one who presents the best message and offers (by the means he has) the best chances to improve the livelihood of the citizens, and not the one who has more money or other artifices to be converted into electoral victory if precautions are not taken. Thus, it is necessary to:

Ensure the minimum access to the media to every candidate, regardless of his revenue;

Reduce the possibility to use money to influence the electorate, for instance, by forbidding the distribution of goods and other liberalities during the election period;

Reduce, as much as possible, the possibility of people using their position in government (distribution and inauguration of public politics) in the electoral period to influence the electorate;

Plan for adequate means to control acts of electoral fraud or corruption. For example, give the means to the court of account or its equivalent to look into electoral expenditures.

3. Adequate measures are taken to dissuade possible eventual defaulters:

Adopt actions that will increase transparency in the electoral process;

Reduce discretions of the actors of the electoral process, especially when they are not needed.

4. Adequate measures are taken to identify and punish defaulters:

Increase the responsibility of actors of the electoral process

Develop a systematic way to detect actions of electoral fraud;

Develop a systematic way to sanction people convicted of electoral fraud

Reduce the implication of political actors in the direct management of elections; this reduces the chances of sanctions against defrauders being craftily presented as witch hunts.

5. Adopt measures that incite the actors of the electoral process to realise their rights, which reduces the possibility of electoral fraud:



Help each category of actor (candidates, the media, civil society, political parties, etc.) to play better his role in ensuring the credibility of the electoral process.

### **3.2.4 Establishment, conservation and updating the electoral lists**

In all democracies worthy of this name, i.e. in any regime that is governed by its citizens, the list of people authorized to take part in elections, i.e. the electoral list is one of the key components of any electoral process. The preparation of the electoral list, its conservation and updating are not necessarily simple exercises and may be subject to manipulation by politicians. A faulty electoral list – be it due to manipulation, negligence or ignorance – may have disastrous consequences for the quality of the electoral process, the legitimacy of the elected officials, sometimes even on the stability of the country, and finally on democracy itself.

In fact, the crucial nature of the electoral list in any democracy, whatever is its age and degree of consolidation, is undoubted. The electoral list is the part of democracy which determines, at each stage of the development of the society concerned – including at the time of adopting the constitution – the size and composition of those in society who are empowered to establish the objectives, determine the activities and the means of carrying them out, and control the management of the entire society. To therefore imagine that this list will be (deliberately or not) incorrect, and that those who take most important decisions for the survival, stability, and development of the society (i.e. those in government) are not necessarily the representatives of those who are governed, means that one cannot call it a democratic system anymore.

Guaranteeing reliability and accuracy of the electoral list is not a necessarily easy exercise. This exercise can be handicapped by objective hindrances especially when one is in a new democracy with limited resources. For instance, it can be difficult to identify citizens in a reliable manner (due to a lack of documents to prove the civil status),

or the necessary technical and financial means may not be given. However, it is equally possible that politicians attempt to take advantage of their positions within the context of managing elections to manipulate the process of establishing the electoral list in order to compromise the outcomes of elections in their favour. All this constitutes the risk factors for the reliability and accuracy of the electoral list.

An incorrect and biased electoral list is obviously a threat to democracy. Whether the bias consists in the exclusion of citizens or encourages the integration of unqualified people (foreigners or nationals who are not authorized to take part in elections) in the electoral list, the rationale behind democracy is hence compromised. In the first instance, where citizens are excluded from the electoral list, the political system which results from it is not totally legitimate and violates the fundamental rights of these citizens. In the second case, democracy is biased because the results of the elections no longer reflect necessarily the will of the citizens and therefore the decisions of the people in power no longer reflect the concerns of the people.

The real problem which the electoral list poses is therefore that of knowing the conditions which should be established to narrow down the risks of establishing biased lists voluntarily or otherwise. This presupposes the necessity, aside from technical and financial means, to take measures to guarantee a list which right from the beginning is as reliable as possible. This also means that the appropriate conservation and above all the regular updating of the list are crucial in guarding against the risks of prejudices.

**A good example:  
The electoral commission of Gambia**

*Monitoring the management of elections in the sub-region, especially with regards to electoral lists, does not allow for the presentation of a practical situation in a country as an example which others could follow. Meanwhile, by referring to existing laws in the sub-region, a case stands out and deserves to be appreciated and eventually improved upon. This is the Gambian electoral law which provides for instance for the following:*

- a. A link between the judicial system and the commission, such that the latter provides on an annual basis available information on people who lost their civic rights;*
- b. A link between the administrative and health system of the commission so as to help the latter to be annually informed on death cases.*

**An example to improve upon:  
The electoral commission of Benin**

*In area of the quality of electoral lists, if it is not easy to identify a good example in all parameters within the region; on the contrary, several negative examples exist. This is the case in the Republic of Benin where the modalities for the establishment of an electoral list bring together most of the weaknesses which can be found in that field. For most of the stakeholders in the electoral process in Benin, the electoral list is of doubtful and controversial quality. Political*

*stakeholders of all political shades (election winners and losers) have had to denounce the unreliable nature of the electoral list during almost all past elections. Main points of contention have been the suffrage of minors and foreigners, especially those living in the border region of the neighbouring countries.*

*The doubtful quality of the electoral list in Benin is essentially the outcome of four factors:*

- a. The electoral commission (ANEC) is not only of an ad hoc nature but was in most cases established after the legally determined deadline. Consequently:*
  - Electoral officers, especially censor agents, are systematically insufficiently prepared;*
  - The process of establishing the electoral list is done within a short timeframe and often improvised;*
  - The list is established on an annual basis and is not computerised, exposing it to manipulation;*
- b. The mechanisms provided for guaranteeing the quality of the electoral list does not function in most of the cases:*
  - It is often impossible to respect the legal timeframe needed for registration and amendments;*
  - Mechanisms for the self-monitoring of the electorate do not function - for example, members of the censoring team are designated by political parties and the*

*precaution which consists in avoiding that two of the members of the censoring team are from the same party is not respected;*

- *External control mechanisms – through the authorization of political parties and civil society organizations to send representatives to all polling stations – do equally not function. This is due to the fact that both political parties and civil society do not have the abilities to deploy representatives to important parts of the country;*
- c. *The criteria for the identification of citizens are not sufficiently reliable; it is for example possible to register without presenting an identity card;*
- d. *The Benin electoral list is also ad hoc, it becomes outdated every six months after its establishment. This is avoided for example in Senegal, where the electoral roll is subject to control by the opposition.*

## Focus 10

### **Establishment, maintenance and updating of the electoral list**

The question of the electoral list can be conveniently addressed by paying attention to certain important factors. In order to improve the quality of the electoral list, the following is suggested:

1. Make the list more reliable by opting for a permanent and computerised electoral list, including security measures that are as tight as possible (according to available means);
2. Guarantee conditions that allow the follow-up and checking of the list at all stages:  
**Ensure that those who have lost their civic status be excluded from the electoral list;**  
**Ensure that no the deceased persons remain on the electoral list;**  
**Remove all possibility of double registration (which favours multiple voting);**  
**Guarantee the possibility of verification of the process of updating the electoral list by all interested parties;**
3. Opt for the most reliable criteria for voter identification in order not to undermine the manifestation of the will of the people.

### **3.2.5 Learning mechanisms (learning by doing)**

If there is a characteristic common to the new democracies of West Africa and to which the key players of these political systems must pay attention - that is to say the political parties, the candidates, civil society, ordinary citizens, etc. – it is that they are all in a process of “learning by doing”. This means that they are obliged, in a way similar to the old democracies, to learn democracy by practising it, by acting it out. The immediate consequence is the need to provide the general mechanisms for collating the experiences gone through, digest them and draw lessons from them in order to strengthen and reform the institutional framework.

The above remark on democracy in general is also valid for the electoral process in each of the countries in the sub-region. The new democracies of West Africa should, in fact, take the necessary measures to benefit as much as possible from the lessons learnt from their experiences in the management of elections, both at the national and regional level and even beyond. Although some initiatives of this sort already exist at the sub-regional level (for instance, this very document and the creation of RESAO are a result of that logic), more measures are still necessary within each of the new democracies of West Africa.

In effect, each of these democracies in transition should avail itself of the means of drawing lessons from its own experiences in electoral matters in a systematic way. In more concrete terms, it is about the need to provide for mechanisms to identify the relevant experiences resulting from each election organized in the country (experiences resulting both from the successes and the failures), analyse them, and draw relevant lessons from them for the benefit of the organization of future elections. All this would be useless if provision was not made for a channel through which, if necessary, the lessons drawn could be

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translated into legislative instruments aimed at improving the quality of the electoral legislation.

### **A good example: The electoral commission of Ghana**

*Once again, there is no one country which has demonstrated sufficiently pertinent practices which could be presented as a positive example which other countries in the sub-region should emulate. However, one can advance certain observations made in Ghana which can serve as sources of inspiration for the others:*

- a. The monthly forums that the Ghanaian commission holds with the IPAC with the aim of exchanging views with key players (which are the political parties) on the activities of the electoral process. Although this has not yet been formalized, it constitutes all the same a good example which should be followed;*
- b. Along the same lines, the Ghanaian commission holds periodical meetings with stakeholders who can contribute to drawing lessons from past experiences such as civil society organisations, national observers, religious groups, trade unions, parent-teacher associations, etc.*

*It must be noted that these frameworks are up until now of an informal nature and should eventually be formalised; however, they possibly contribute more to improving the performance of the commission than the initiation of real institutional reforms would.*

**An example to improve upon:  
The electoral commission of Niger**

*The Republic of Niger constitutes a typical case of new democracies where past experiences have not been used to improve either the legal framework (the electoral code in particular) or the electoral practice. The electoral code of the country only provides for the submission of a financial report to the accounts department of the Supreme Court for the verification of the financial management of the commission.*

*This absence of measures to learn from past experiences is not specific to Niger. In effect, it is present in most of the other new democracies of (Francophone) West Africa where, by general rule, the only requirement to the commission consists of producing and submitting a report.*

## Focus 11

### **The mechanisms of learning (learning by doing)**

In new democracies in general and those of West Africa in particular, the capacity of the actors of the electoral process to learn from their own experiences can play a decisive role in the improvement of the quality of the elections and finally in the consolidation of democracy. But for that to happen, specific measures must be taken to guarantee that past experiences are recorded, analysed properly and serve to improve the legal and institutional framework of the management of the elections. This can be achieved by:

1. Identifying those who are capable of helping to learn from electoral experiences. They include ordinary citizens, civil society organizations, institutions of the electoral process (judiciary, Ministry of the Interior, security forces, media regulation authorities, etc.), political parties, candidates, etc.;
2. Creating the conditions which encourage each category of actors to make a contribution:  
**Guarantee minimum transparency in the execution of the electoral process so as to favour the collection of relevant information by all actors;**  
**Create exchange frameworks with each or part of the actors of the process. This would encourage the latter to bring forth their remarks and observations on the process;**  
**Take seriously the points of view and observations of other actors of the electoral process. This does not mean that one**

**must necessarily retain and take into account their observations, but at least be able to explain objectively their inappropriateness or the provisional inability to take them into consideration. For example, avoid making them feel that they are talking for nothing, as some Ghanaian political actors say about meetings that they have with the electoral commission.**

3. Creating a framework (preferably formal) of exchange of experiences at the end of each electoral period among the various successful actors. The framework may not be singular; it can be organized for each category or for groups of key players of the electoral process;
4. Ensuring that lessons are drawn and that the resultant proposals for institutional and legislative reforms are elaborated for legislation. This can be achieved through:

**The association of legislators with the work of the frameworks of exchange  
Prescribing the need for the legislators to make use of the lessons learnt from electoral experiences**

### **3.2.6 Access of candidates (parties) to the media**

The issue of access of political actors to the media has become one of the greatest worries in present-day democracies because the latter cannot function properly without the good functioning of the former. In effect, in every competitive democracy worthy of its name, and especially in every new democracy, one of the principal objectives is to ensure that at the end of each electoral competition, the best wins. The best should normally be the one who will have convinced the voters of his objectives for society and of his ability as well as that of his team to achieve them. None of this is possible or even imaginable without resorting to information and communication technologies, especially the media (radio, television, print media, etc.).

But to talk of access to the media is to talk of financial resources. The use of the media is one of the greatest drains on the campaign budgets of candidates and political parties. That is why it is indispensable to pay particular attention to this matter in order to avoid a situation in which finally only candidates who have considerable financial means win the elections. We would cease to be in a political system where the best (those with the best programmes and the most capable teams) win, that is to say we would no longer be in a democracy worthy of the name.

The situation in most countries of the sub-region with regards to the management of access of political actors to the media is almost the same. The general approach is summed up in the adoption of measures which guarantee equal access of candidates (parties or persons) to the public service media during the period of the electoral campaign. In spite of this similarity throughout the region, some specific traits exist, even if only from the point of view of legislation, which can be cited by way of good or less good examples.

### **A good example: The electoral commission of Gambia**

*The lots of the Gambian electoral commission in the management of equitable access of candidates to the media (public and private) are a bit broader than elsewhere in the sub-region. In fact, just like some of its West African counterparts, the electoral commission of Gambia guarantees equal treatment of candidates as far as the media cover of the electoral campaign is concerned.*

*Beyond the foregoing, the Gambian electoral legislation makes provision for measures which augment the involvement of the electoral commission in the management of the access of candidates to the media. These measures help to reduce the importance of financial resources in the access of the election candidates to the media, be it private or public. These are measures which, for example:*

- a. Stipulate the acceptance of the contents of the code of ethics applicable during the electoral campaign by political parties as a condition for authorizing their participation in the elections;*
- b. Direct all private radio and television stations to accord a minimum space of time to all candidates during the period of the electoral campaign;*
- c. Direct all private and public radio and television stations to prepare and present, within a given period of time, their proposals of rates applicable to the candidates during the campaign period. These price proposals are then followed by negotiations with the commission to determine the rates which will finally be applied. The*

*commission has the obligation to publish the agreed rates and to make them available (free of charge) to all those who wish to have them.*

## Focus 12

### **The access of candidates to the media**

Two reasons explain the need for the management of the access of candidates to the media (private or public). The first reason relates to the fact that the proper management of access to the media helps guarantee that useful and necessary information is made available for an appropriate choice by the voters. The second reason stems from the fact that the proper management of access to the media reduces the risk of money becoming a determinant factor in the choice of the elected. Therefore, certain precautions should be taken:

1. Establish clear rules:

**Define clearly who does what to guarantee the access of candidates to the media;**

**Define the means of (rapid) redress in case of disagreement over the manner in which the access is managed;**

**Define who has the right to what and which procedures to follow;**

2. Take measures which will guarantee a minimum level of equity in the access to the media:

**Provide for the space of time for the candidates in the public service media (radio, television, print press);**

**Provide for time in the private press in a systematic way, if necessary at the expense of the state;**

**Negotiate with public and private media for the**



**reduction of the cost the access to the media during the election campaign;**

**Provide a method of utilizing the allotted time so as to reduce the costs to the state while reducing the importance of money for the access to media; this can be achieved by:**

- Making use of broadcasting time conditional on the request by the candidate. This avoids the waste of resources occasioned by the non-utilization of allotted space by certain candidates;
  - For the utilization of the time offered at the expense of public funds, place all candidates under the same conditions of registration or presentation of their material so as to ensure that the difference between the candidates does not depend on the ability to make use of sophisticated technologies.
3. Take measures for the adequate preparation of the actors involved in the information management of the electoral campaign:

**Training of (public and private) media presenters in the run-up to each electoral exercise;**

**Contribute to the elaboration and adoption of a code of ethics regarding the coverage of electoral activities by media presenters;**

4. Eventually, in certain cases depending on the will of the political authorities, take advantage of the management of the media to reinforce the political

party system. This can be done, for example, by:

**Sharing broadcast time proportionally according to the results of past elections;**  
**Taking into account the size of the political parties in the sharing of broadcasting time.**

### **3.3 Problems and challenges regarding the financing of elections**

#### **3.1.1 The cost of elections**

Having decided to build systems of liberal democracy in West African countries, the cost of elections has become a preoccupation which cannot be ignored. In most countries of the sub-region, one observes a substantial increase in the cost of elections from year to year. In certain countries, the leaders have even used that as a pretext (sometimes with success) to postpone the elections, as was the case in Senegal which postponed the 2006 legislative elections to 2007, thereby disrespecting the legally determined electoral timetable. Others have used this pretext to claim that the cost of elections must be controlled through the manner in which they make resources available to the electoral commission, in order to disturb the running of the elections and thus influence the quality of the electoral process.

The solution of the problem regarding the costs of elections is not simple because it confronts the new political actors of West Africa with a sort of Cornelian dilemma: it becomes a matter of choosing between quality and cost. These two variables being positively linked, the quality is supposed to rise at the same time as the financial means required for the elections increase, which poses a problem for developing countries with limited resources. It follows therefore that elections are too costly for these young democracies. The question then is how to fix the costs and still have fair elections.

In effect, the costs of elections should neither be too high nor too low. If the costs of election are too high this puts an unbearable pressure on the already lean resources of the countries, with all the risks that this entails for the quality of the elections. The possibility to resort to external funding does not offer total guarantee against this risk.

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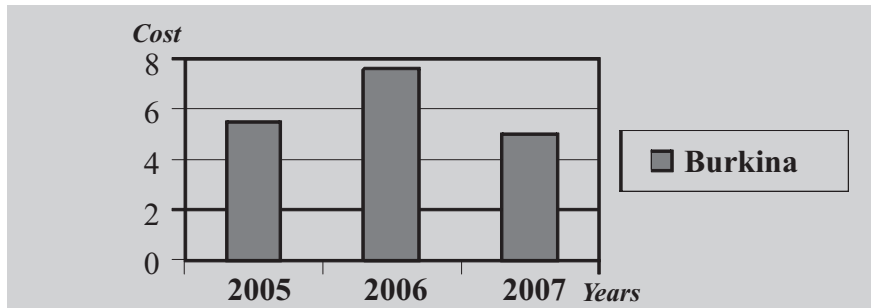
On the contrary, if the costs of the elections are too low, the result is almost the same as above: the quality of the elections will be compromised. The elections could be of such poor quality that democracy can only come out as a loser. According to the circumstances, for example, for countries coming out of a deep crisis, economic worries could constitute a sure threat to stability and peace.

The core questions therefore are: how to avoid (1) costly elections (whatever the quality may be), because it will not only be a luxury for the country, but may even reduce the chances of the consolidation of democracy; and (2) elections where the concern to reduce costs would compromise the minimum guarantees of quality, thus becoming a danger to the democratic system. In other words, the issue is how to rationalize the cost of democracy in striking the best quality/price balance.

With regards to this issue, the practice in the sub-region reveals some countries where the elections are quite costly and others where the commission and the political authorities seem to have a certain control over the costs.

#### **A good example: The electoral commission of Burkina Faso**

*On this count, it is proper to take a close look at Burkina Faso, which is one of the countries where elections have become the least expensive in the sub-region. In the graph below, the costs are presented in million Euros (vertical axis). Benin is an example where election costs are very high. It is interesting to note that in spite of the relatively low level of costs in Burkina compared to that of Benin, the quality of the Burkina Faso electoral process is however at an acceptable level.*



### **An example to be improved: The electoral commission of Benin**

*The Republic of Benin is one of the new democracies of West Africa where the evolution of the costs of elections constitutes a major concern. In effect, in Benin, the cost of elections in recent years has experienced exponential increases to the point of becoming a major source of worry and leading certain key players to question the suitability of ANEC for managing elections. Without wishing to attribute all the causes of the cost increase to ANEC, there are some elements which indicate that it has a considerable share of the responsibility.*

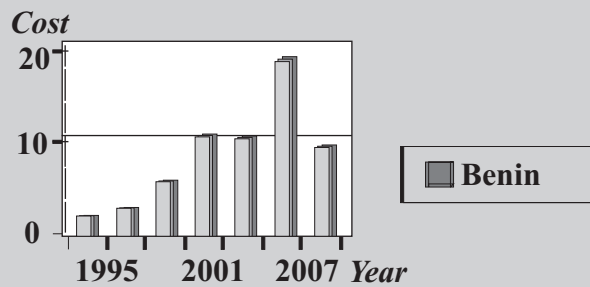
*The following are some key shortcomings:*

- a. The tendency of representatives of political parties to transform ANEC into a mechanism for the extraction of public funds. This is reflected in the disputes within the institution over the choice of service providers (vehicles, consumption goods, catering services, etc.);*
- b. The absence of mechanisms guaranteeing the return and safe-keeping of electoral material within ANEC (this*

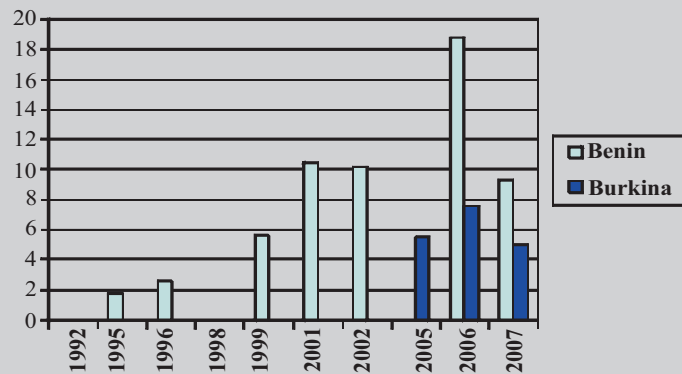
concerns material directly utilized for voting as well as material used for the functioning of ANEC and its subsidiaries);

- c. The absence of a sort of price-level barometer for electoral price inputs;
- d. The absence of a clear and appropriate legal framework on the policy of remuneration of ANEC members and electoral agents.

The graph below (the costs are in million Euros) shows the evolution of costs of elections in Benin from 1991 to 2007.



A comparative graph between Benin and Burkina Faso shows the disparity between them:



### Focus 13

#### Issues relating to cost of elections

The control of the costs of elections should preoccupy the actors of the electoral process in all the new democracies of West Africa. The fundamental problem to resolve is how to organize elections where the costs are neither exorbitant (prohibitive) nor under-funded (of poor quality). Without being in a position to propose a definitive answer to the above fundamental question, it is all the same possible to indicate some core elements.

In order to control the costs of elections, one should :

1. Control regular and compulsory costs, such as for:  
**The voting list;**  
**Indispensable electoral material;**  
**The training and preparation of polling agents (vote counters and returning officers);**  
**Logistic and organizational measures;**
2. Control the costs of confidence-building and increased transparency: these are costs which boost the reliability of the process and which depend to a large extent on the political climate. One can mention:  
**The type and quality of voting material: ballot boxes, screens, ballot paper, seals, indelible ink, etc.;**  
**The duration of the observer mission;**  
**The campaign for awareness-raising among ordinary citizens;**  
**The assistance to political parties;**

3. Take measures aimed at helping to control the cost of the functioning of the electoral commission;
4. Take measures aimed at reducing the waste of the acquired voting material.



### **3.4 Security of elections**

Political elections are, ideally, a non-violent competition where several groups of political actors oppose each other in seeking the approval of voters. It is expected of all actors involved in the election to conform to predetermined rules so as to enable the voters to proceed with serenity and in full knowledge of the issues regarding the devolution of power among the different competitors. Unfortunately, as in all competitions, it often happens that some actors resort to certain actions either in the form of violence on other actors or in the form of fraudulent behaviour, thereby provoking conflicts.

If such actions take place during the electoral process, and if nothing is done to eradicate them, the consequences for the results of the elections, for peace and even for the democratic system as a whole, are well known. Sometimes, it is the disqualification of certain candidates or political parties; at other times it is the endless electoral dispute. Yet some other times, it is the complete abandonment of the whole process, or the election of illegitimate political authorities.

The actions in question, which can be observed in the majority of the new democracies of the region, can take several forms. These security threats can affect the actors of the electoral process, the infrastructure, and the polling information or material. They can take the form of intimidation on the part of stakeholders in the electoral process (voters, polling agents, etc.) to force them to adopt the desired behaviour. They can equally take the form of violations of laws and regulations with the aim of deterring other candidates and influencing the election results (e.g. attempts to deprive other actors of their fundamental liberties or manipulation of the ballot).

Just like the actions described above, their actors are equally of

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different origins. They can be national actors, for example supporters of political actors (candidates or political parties) or the political actors themselves. The presenters of the institutions concerned in the electoral process (lawmakers, members of the executive, judges of electoral disputes, officers of the structures of election management, security agents, etc.) can equally be the sources of acts leading to violence. However, sometimes foreign actors intervene in the electoral process in a way as to cause violence. This can for instance be the case when the electoral process attracts international terrorism or members of organized crime.

From the foregoing, the need for associate bodies specialized in the area of security to safeguard elections in West Africa becomes apparent. This poses the following problem: how does one associate the forces of security to the running of the electoral process in an appropriate manner? In other words, given the intimidating nature of these forces and the potential for violence for which they are known, how can they be associated in order to reduce the security threats without, by so doing, generating other forms of risk for the process?

To contribute satisfactory replies to this fundamental question, it is necessary to analyse the key aspects of the matter from different angles. A number of preliminary questions must be addressed in order to guarantee an appropriate involvement of these actors in elections, such as: what tasks can be assigned to them? Can their involvement be provided for in the legal framework of the elections? How can they be prepared for their appropriate participation in the electoral process?

Finally, it is necessary to specify that the prevention of security threats in the context of elections cannot be limited to the resort to security forces. In effect, there are several types of actions which could be initiated in order to reduce the risks of the eruption of violence during

the electoral period. The rest of this section is essentially dedicated to the conditions of the association of security forces with the electoral process.

### **3.4.1 The role of security forces in elections**

From the foregoing, it is obvious that the electoral process has an important security dimension and that a good part of the threats regarding security during elections can be considerably reduced by the appropriate involvement of security forces. Once this state of affairs is recognized, the question which then arises is its operational aspect, that is, the concrete implementation of the participation of security agents for the prevention and management of security issues during elections. One important is: which tasks can be assigned to the public security agents in securing elections?

To respond to this question, one needs to determine the threats to which each stage of the electoral process is exposed. The activities in question vary from territorial demarcation to the management of disputes and the announcement of result, to the establishment of the electoral roll, the creation of awareness among voters, the registration of candidates, and the management of electoral campaigns. In order to answer the above question, it is necessary to identify the potential security risks for each type of activity during the electoral process and deduce the positive role that security forces can play from them.

The electoral legislations of the sub-region do not provide for the question of the association of security forces in election management. In most of the laws, there is only a simple allusion to the fact that the electoral commission can resort to security forces any time it deems this necessary. However, there are certain cases where the law has gone further and others where it has remained rather silent.

In practice, electoral commissions resort to security forces for a number of tasks in order to increase security during elections.

### **A good example: The electoral commission of Benin**

*The electoral law of Benin – like in many other countries in the region – does not reserve a special place to the issue relating to the role of security forces in elections. However, it is noticeable that the legislator was conscious of the security problems that could arise in almost all stages of the electoral process. It resolves the issue through a terse formula according to which “... the minister in charge of public security maintains the security of the citizens and operations during the whole electoral period, from the electoral campaign up to the final declaration of the polling results ...” (art. 147). In spite of that, security forces are used for several security tasks during the process. They intervene to protect:*

- *Authorities of the commission;*
- *Installations of the commission;*
- *Places for the production of sensitive electoral documents (such as ballot papers);*
- *The transportation of sensitive material;*
- *Installations of electoral courts (at least up to the declaration of the final results).*

**AN EXAMPLE TO IMPROVE UPON: THE  
ELECTORAL COMMISSION OF GUINEA CONAKRY**

*In the electoral law of Guinea, almost nothing is said on the involvement of security forces in the running of elections and less still on the role they could fulfil.*

## Focus 14

### **The role of security forces during elections**

The delicate nature of the issue of the participation of security forces in managing elections cannot be ignored. This issue – the determination of the role which should fall to them – can be addressed, and eventually resolved, through a proper appreciation of the security problems which arise at each stage of the electoral process. Presented below are some ideas (with no intention to be exhaustive) regarding the stages where the need for security and hence for the resort to security forces could arise. For this purpose, it is being proposed to divide the electoral process into three stages, namely:

1. The stage before the voting: during this stage, and according to the specificities of each country, the resort to security forces can be necessary to protect:

**Members of the electoral commission and its agents (up to the polling agents);**

**Voters, vote counters and their installations during the registration of voters (the establishment of the voting list);  
Political leaders, especially those who are candidates, and voting inspectors, with special attention to leaders of the opposition;**

**Agents of political parties during the campaign;**

**Headquarters of political parties and of candidates;**

**Participants at various public meetings and demonstrations taking place during the electoral campaign;**

**Electoral material during their**

- Production: for example, ballot papers;
  - Transportation to various electoral constituencies;
  - Safe storage over the full extent of the territory;
2. The day of voting : it is possible to resort to the public security forces for:

**Securing the voting centres and their immediate surroundings during the election;**

**Protecting electoral agents during the counting of the votes and the transportation of electoral documents towards the centres of assembly;**

**Protecting the assembly and voting centres at the various venues;**

3. The post-voting stage: the resort to security forces can be justified at this stage to ensure:

**The security of the safe-keeping of electoral documents on the way to the national electoral commission and other institutions (the electoral dispute judges, etc.)**

**The protection of electoral dispute judges and their workplaces.**

4. From the foregoing, it is possible to establish a categorization of possible actions of security forces during elections:

**Static actions which consist essentially in keeping watch over places and the storage of electoral materials;**

**Dynamic actions which consist essentially in protecting demonstrations and the transfer of electoral and other material;**  
**Stand-by actions which consist essentially in the mobilization of troupes to intervene should the necessity arise.**



### 3.4.2 Legal structure and framework for the participation of security forces in elections

Once the tasks which could be assigned to security forces are globally known, it is equally indispensable to ensure that the framework of their intervention in the electoral process is clearly defined. By framework of the intervention of security forces we mean not only the organs within which they will evolve but also the rules which govern their involvement for a successful accomplishment of their duties. This is extremely important in view of the fact this can have dramatic consequences on the electoral process.

The frameworks of action will necessarily vary with the specific context of each country. Whatever form they are given in any given context, it is absolutely necessary to pay particular attention to two factors: their number and the composition of each of them.

#### **A good example: The electoral commission of Togo**

*The Togolese<sup>11</sup> electoral code is one of the rare exceptions where several measures have been provided for concerning the participation of security forces in the running of elections and the role which it entails for the commission. Although Togo's situation in 2007 is special from the security point of view, the effort that has been made nevertheless needs to be recognized. The electoral code provides, for example, that:*

- a. ANEC should contribute to the training of security agents by the ministry in charge of security;*
- b. INEC should supervise the security outfit provided by the ministry in charge of security;*

<sup>11</sup> Decree n°2007-012 of 14 June 2007 being amendment to Decree n°2000-007 of 05 April 2000, amended by Decree n°2002-001 of 07 February 2003, decree n°2003-014 of 20 October 2003, decree n°2005-001 of 21 January 2005 and decree n°2007-009 of 7 February 2007 establishing the electoral code.

*c. INEC should supervise the electoral campaign in collaboration with, among others, the ministry of security*

**An example to improve upon: The electoral commission of Niger**

*Niger's electoral code is one of the most silent on the framework and involvement of security forces in the electoral process. Nevertheless, CENI always maintains a defence and security sub-commission which helps to ensure the tranquillity and security of the electoral process. This sub-commission is composed exclusively of all the defence and security forces.*

## Focus 15

### **The legal framework of the association of security forces with election management**

The framework in which the involvement of security forces will be operated in the running of elections includes not only the rules (legislation) but also the organizations (committees and others) established in practice for the resolution of security problems. In order to offer the best suggestions at this level, it is important to distinguish two types of security problems: there are actions of direct violence on persons or property, and actions of the type that can provoke violence responses from a political camp.

1. Actions of direct violence: with regard to these actions, the law must be very clear about :

**The persons responsible for ensuring security in each possible situation (for example, in a voting centre, during an electoral campaign rally);**

**The manner to resort to security forces and which procedures to follow;**

**The positions of security forces mobilized for the events;**

**The framework in which the involvement of security forces in the running of elections must be organized;**

**The provision of adequate means for the participation of security forces;**

**The various prohibitions which could trigger or justify the resort to security forces (e.g. prohibition to carry arms at polling stations);**

2. Actions of indirect violence: regarding these types of actions, preventive measures deserve priority. The measures in question should include :

**Codes of ethics for most actors of the process: media, civil society, political parties and candidates, to make each and everyone to avoid behaviours and stands that could provoke violence;**

**Increase awareness in all actors, especially the citizens;**

3. Concerning the framework of intervention, it should be designed in a way to deal with all the eventualities mentioned above. They can consist in:

**A joint operation framework including at least members of the commission and authorities of the bodies of security forces authorized to participate in the process;**

**Create and maintain conditions of exchange guaranteeing the rapid circulation of correct information;**

**Provision of adequate means for the participation of the security forces in the maintenance of security during elections;**

### **3.4.3 Preparation – Creating awareness of security forces for their role during elections**

Once the roles of security forces during elections have been defined, and the legal as well as the organizational frameworks of intervention have been established, the issue of the necessary preparation to guarantee a high standard of participation remains. This preparation is necessary in view of the fact that the abilities expected of the security forces involved in the process are not the same, depending on the role assigned to them.

The observation of the elections in the sub-region does not reveal many examples of countries where security forces involved in the running of elections follow specific rules. Only a few countries make allusion to the issue in their electoral legislations.

#### **A good example: The electoral commission of Togo**

*Among the legislations on the issue of running elections in the West African sub-region, only the Togolese electoral code is clear on the need for specific training of security agents within the framework of elections. The law equally provides that the Togolese CENI should contribute towards the training of the said agents organized by the ministry in charge of security.*

*Although relatively vague concerning the concrete framework of collaboration with the commission, the law recognizes the need for training and determines that this should be done in collaboration with the CENI.*

**An example to improve upon:  
The electoral commission of Gambia**

*Article 129 of the said code on the “availability of the security agents” determines in its first paragraph that the inspector-general of the national police is required to make available to the electoral commission as many security agents as the latter deems necessary for the peaceful running of elections, from the establishment of the voters' list to the conduct of the voting itself.*

*Its second paragraph, article 129 of the electoral code, addresses the issue concerning the authority to which security forces in the electoral process are obliged. This paragraph is clear on the fact that every agent placed at disposal for the elections works under the authority of the electoral commission, and that he remains on duty up to three days after the end of the establishment of the voters' list (for the list relating to this task) and 7 days after the declaration of the election results.*

*Although the Gambian electoral code, as we have just seen, has made provision for measures concerning a form of involvement of the security forces in the running of elections, it has remained completely silent on the eventual need to prepare them for that.*

## Focus 16

### **Training of security forces for an appropriate collaboration in the running of elections**

The involvement of security forces in the running of elections is a very delicate exercise and therefore demands that all possible precautions be taken to reduce the risks that their contribution may cause more harm than good. The training of security agents involved in the process is part of the measures to be taken to achieve this objective. This training should make it possible to bring to their knowledge the following points on:

1. The process: what is to be done, the types of behaviour which are forbidden, etc,
2. What is expected of them;
3. The hierarchy which must be respected in the accomplishment of their mission;
4. The elements to which attention must be paid: for example, take care not to go into action upon false information;
5. A code of good behaviour.

To conclude, it has to be noted here that the members of the electoral commission and of its branches, and the electoral officers (vote counting and returning officers) should, in their appropriate trainings, be made aware of the means and mechanisms of the engagement of security forces in order to carry out peaceful elections.

### Summary of Chapter III

- On the subject of the distribution of roles of the electoral process among institutions, and whatever the model adopted by a country, it is essential to adopt measures which guarantee the smooth functioning of the system and which contribute to a high quality of the election process. The tasks must be clearly defined and shared among the institutions involved in the running of the elections in the country concerned, adequate means must be provided for the accomplishment of the missions by each institution involved, and a coordinated relationship among the different institutions involved must exist.
- Regarding the guarantee of the independence or autonomy of the electoral commission, measures must be taken to protect it against influences that might compromise its functioning and performance (for example, on the part of the executive) and against internal forces of the commission which might work against its proper functioning (e.g. members of the commission who adopt a certain behaviour which might compromise the election results).
- Concerning the duration of the mandate of the commission and its members, it must be ensured that the mandate of the commission is in accordance with its responsibilities. For example, avoid the last-minute installation of an *ad hoc* commission which nevertheless has the responsibility of almost all tasks of the electoral process. Make sure that the duration of the mandate of the members of the commission



enables the latter's smooth functioning and increases its autonomy.

- In order to determine the degree of the politicization of the electoral commissions, it would be better to avoid the involvement of political actors in the direct management of elections and to resort to proportionality as a criterion of representation of politicians on the commission. However, political actors can perform as observers of the electoral process and create the necessary conditions (legal, institutional, etc.) for the proper functioning of elections and for redress where necessary.
- Regarding the relationship between the electoral commission and the other institutions involved in the electoral process, it should be ensured that necessary relationships are effectively established between them (for example, between the commission and the executive, even if just to ensure that the necessary resources are made available for the management of the elections) and that measures are taken to enable the smooth functioning of the links established.
- For the fight against electoral fraud, attention must first be paid to the relations between the commission and the judicial and those between the commission and public security forces; then a kind of principle of the subsidiary should be established to regulate the sharing of roles and responsibilities between the commission and the other actors of the electoral process (political parties, civil society, media, etc.) as within the commission itself, and

between the latter and its branches. Finally, attention must be paid to the complexity of the phenomenon in view of the fact that electoral fraud is practised at all stages, by all actors involved in the electoral process and in many forms.

- Concerning the determination of the cost of the elections, attention must be paid to the basic costs (the compulsory costs whatever the level of political development of the country). Measures must be taken to help reduce the operation costs of the electoral commission and to help reduce the waste of acquired electoral material.
- Regarding the security of elections in terms of the involvement of security forces in the electoral process, attention must be paid to security problems in the pre-electoral period where, depending on each case, it might be necessary to protect the actors involved, electoral material and premises. During the voting, ensure that the places of voting and all the operations that take place there are secured, as well as the transportation of electoral documents and materials towards the centres of collation of results. Finally, during the post-electoral period, it is necessary to secure the electoral jurisdictions, the electoral commission and its members, etc.
- The legal structures of the participation of security forces in the electoral process must provide a clear framework for the rules (legislation) and organizations

(committees) which have been established for the resolution of security problems.

- The preparation which should be given to members of the security forces to ensure their relevant contribution to the electoral process should include training on the content of the process (what is going to be done, the types of behaviour forbidden because they might generate violence, etc.), their roles (what is expected of them, the hierarchy to be respected in the accomplishment of their mission), the elements to which they must pay attention (e.g. not take action on the basis of false information) and a code of good behaviour.
- The members of the electoral commission, those of its branches and the electoral officers must receive their own training and be made aware of the means and mechanisms of the engagement of security forces in order to ensure non-violent elections.

**PART THREE**  
**ELECTORAL PRINCIPLES, NORMS**  
**AND STANDARDS IN WEST AFRICA**



# 4

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## CHAPTER

### **TOWARDS THE HARMONIZATION OF ELECTORAL NORMS AND STANDARDS IN WEST AFRICA**

**A**t the time of the triumph of liberal democracy with democratic contests as the principal means of gaining access to power, elections must be in accordance with a certain number of principles and standard norms of fair elections if they are to reflect the will of the people. These are standard norms because they have been accepted by countries said to be democratically advanced and by countries that have made important progresses in democratization. Moreover, the electoral domain is becoming the arena for the development of common values which are considered as principles of a good electoral process. It is in this perspective that universal or regional organizations try to set standards to guarantee a conduct of elections whose results are accepted by all political stakeholders. It is also in this perspective that ECOWAS adopted the 2001 Supplementary Protocol on Democracy and Good Governance, the protocol that constitutes a sort of political constitution inspired by democratic values for West African states. But if the will to harmonize electoral standards and practices for the advent of peaceful democracies in all ECOWAS member countries is of an evident pertinence, this implies the formulation of minimal norms and standards.

#### **4.1 Relevance of adoption of norms and standards for elections**

This relevance is seen through the importance of factors which are favourable to the adoption of norms and standards (1.1) and the existence of conclusive experiences in this respect (1.2).

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#### **4.1.1 Importance of factors favourable to the adoption of norms and standards**

The beginning of democratization has favoured, in most African countries in general and in West Africa in particular, the occurrence of political crises related to the outburst of conflicts caused essentially by the lack of a consensus for the definition of the rules of the political competition or by the conduct of electoral processes (*Côte d'Ivoire, Togo, and Guinea*). The lack of consensus has even caused the boycott of elections by the main opposition in certain cases (Malian presidential elections in 1997 and Senegalese legislative elections in 2007). The temptation to choose non democratic means to accede to power is still high and the difficulty to determine rational and consensual rules governing elections have caused the international community as well as regional and sub-regional organizations to adopt legal measures that are used to indicate minimal norms guaranteeing the reliability of elections.

At the global level, efforts are made to set up the principle of open and transparent elections as the only modality to have access to power and to bring out the standards of what should be normal elections. It is in this vein that many international legal instruments for the promotion of human rights have devoted themselves to the harmonization of principles that will govern elections. In this respect, the universal declaration of human rights consecrates the political pluralism and its corollary as the principle to designate leaders through elections governed by universal suffrage, periodicity, honesty, equality, freedom and the secrecy of elections. These principles have been more clearly stated by the international Pact on Civic Political Rights of 1966, article 25 of which makes provision for the right of every citizen to take part in the direction of public affairs, vote and be voted for during periodical, free elections through universal suffrage with equal rights in terms of secret ballots, in ensuring the expression of free will of the electorate, to accede on the basis of equal conditions to have access to public employment.

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At the regional level, the constitutive act of the African Union and the African Charter on Democracy, Elections and Good Governance are trying to bring out the norms of good elections. It is in this perspective that the African Union adopted “the main principles for the missions of the African Union on the management, supervision and monitoring of elections” in February 2002 while in July 2003 they adopted the declaration on the principles governing local elections.

Within the scope of the ECOWAS sub-region, the attempt to define democratic principles in general and standards in terms of elections has been both ambitious and voluntary in asking countries to respect minimal requirements of democracy. It is a rather new process: for a long time, constitutionalism was exclusively the business of states. The organization and functioning of political regimes, modes of access to power and principles governing the conduct of elections were traditionally under the jurisdiction of kings. Organizations for integration and international organizations were carefully avoiding intervention in such matters, in the name of respect for the sovereignty of states and the principle of non-interference in the domestic affairs of other states in order to focus on economic and developmental matters. After the fall of the Berlin Wall, the requirements of democratization at the universal level forced most of the sub-regional and continental organizations for integration to release a certain number of democratic principles, the respect of which is more or less required from the member states of these organizations. Moreover, the donors and the western countries made democratic conditionality a precondition to the provision of their aid. It is in this perspective that regional integration organizations such as the Economic Community of West African States (ECOWAS) and later the African Union formulated constitutional and democratic principles, the non-respect of which attracts sanctions – whose application, however, appears problematic depending on the situation. ECOWAS has certainly gone far in the proclamation of democratic principles to promote

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democracy in the West African region with the “ASP 1/12/01 Protocol on Democracy and Good Governance”, in addition to the Protocol relating to the Mechanism of Prevention, Management, Conflict Resolution, Peace Keeping and Security. This protocol has brought out principles considered as being common to all states of ECOWAS: the separation of powers, the development of parliaments, independence of justice, and freedom of the Bar. The protocol considers elections as the only valuable means to have access to power, it condemns unconstitutional changes, poses the principles of popular participation in making decisions, the confinement of the army, secularism of the state, respect for fundamental rights, and freedom to create political parties.

Precisely this text prohibits any substantial reform of the electoral law within six months preceding elections without the consent of a large majority of the political stakeholders/actors. It prescribes the regular organization of elections at a particular date, the observation of elections and the assistance from the ECOWAS. In addition to the constitutional and electoral principles, the protocol addresses good governance principles and recommends the promotion of women and children's rights. To ensure the respect of these provisions and to avoid manipulation of the constitutional norms by the leaders, the protocol makes provisions for sanctions applicable to states in the event of non-observance of the principles. On the particular point of elections which interests us here, the protocol draws up a list of principles that states are required to respect. Based on this sub-regional instrument of guarantee of the democratic principles, it would be wished that, on the scale of ECOWAS, a mechanism be set up to follow-up the violations of the basic principles governing elections by states; this mechanism would need the support of ECOWAS. The set up of this mechanism will be used to draw attention to countries where civil peace, democratization and development are in danger. Thus the protocol is at the same time a good basis and a source of legitimization for the

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adoption of electoral norms and standards in the West African region. This can prove all the more realizable if it is known that elsewhere in the continent there are conclusive experiences of harmonization of electoral norms and practices.

#### **4.1.2 Experiences of standardization in Africa**

It is certainly the states of Southern Africa united within the framework of the SADC which have the most interesting experience in the field of harmonization of electoral standards and practices aiming at making elections democratic, transparent and non-contestable. The experience is the result of a process of research, brainstorming and consultation which can be source of inspiration for Member States of ECOWAS. The will of the SADC member states to put together the conditions to hold fair elections has been at the origin of the conference of Windhoek from 11th to 14th June, 2000 entitled “In search of electoral norms and standards” (see principles of supervision of elections in the SADC, Electoral Handbook n° 13, EISA, Electoral Commissions Forum) which gathered representatives of governments, electoral commissions, political parties, civil society, research institutes and experts in electoral politics of the SADC region. The conference aimed at defining a set of criteria which can be used as main principles for the electoral practice and which contribute to setting up a healthy and favourable environment for elections. The forum emphasized the need to work out regional standards and norms which serve as a basis and reference for discussions at the national level and as a guide for better electoral management. Thereafter, a process of intense researches and broad consultations in the whole Southern Africa has led to the development and the adoption of a document entitled “Principles of management, monitoring and observation of elections in the SADC countries” on November 6, 2003 in Johannesburg. The document stresses the need to have a political, constitutional and healthy legal order to ensure the

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conduct of free, equitable, credible and legitimate elections as the fundamental and preliminary condition for the democratic management of elections. The recommended principles take into account the following major factors:

- Need for a complete institutional and legal framework;
- Importance of transparent and accessible pre-election procedures (including the registration of voters and the nomination of candidates);
- The equitable use of the media and public resources, as well as issues relating to the funding of political parties;
- The organization and management of the election period including the site, provision and access to the polling stations, secrecy of the poll, as well as process of counting the votes;
- The post-electoral phase, counting in the way in which electoral litigations can be solved and the means set up to guarantee that the results are accepted by all;
- Required conditions for credible, impartial and professional monitoring and observation of the electoral process, without obstacles.

Inspired by the experience of the SADC region, proposals that go into the development of a minimal number of standards and norms can be formulated to reinforce the quality of the conditions of conduct of elections in the ECOWAS region.

#### **4.2 Proposals for a minimal number of norms and standards**

In spite of the existence of different legal traditions (Anglophone, Francophone and Lusophone), difficulties relating to the requirements of respect of state's sovereignty for the regulation of elections and the differences between the levels of democratization of the Member States of ECOWAS, research and consultations are necessary for the definition of main principles of the electoral practice

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in the West African region. These main principles, which will be intellectually informed by national laws and best electoral practices, can be formulated as orientations.

An effort to combine the various national legislations and better practices allow us to bring out a minimal number of electoral norms and standards. The electoral legislation is made up of the constitutions which in the majority of the Francophone countries regulate the presidential elections in general and particularly the conditions of eligibility of the president, which led countries like Ivory Coast and Togo into political crisis. There are also the legislative and regulative texts which govern the electoral process, laws relating to the structures of management and supervision of elections (the electoral commissions), laws relating to the access of the political parties to the media, and laws relating to the financing of political parties.

Moreover, the best electoral practices deserving to be set up as standards need to be documented. With the existing protocols in mind, the main principles on the following issues can be defined:

- The consensus for the definition of the rules of elections;
- The respect of the principle of periodicity of the elections according to which the elections must be held in regular intervals and with fixed dates;
- The sincerity of the poll in the broad sense with components such as the gathering of criteria for competitive elections, which include: clarity and acceptance of the electoral legislation, independence of the structure of management of elections, confidence in the electoral system, existence of credible legal ways for the benefit of all stakeholders (candidates and citizens);
- Freedom and equality in the access of the candidates to the media;
- The respect of equality and the preservation of public funds in the system of financing of political parties and candidates;
- Guarantee of the right to vote and to be eligible: freedom of

candidature guaranteed by reliable procedures in the event of arbitrary invalidation of candidature, requirement of a consensus on the restrictions on the freedom of candidature;

- Guarantee of the freedom of the expression of the vote: freedom to vote without fear of reprisals, secrecy of vote, defence and security of vote, transparency of the counting exercise;
- A reasonable deadline for the publication of results;

Required conditions for a credible monitoring of the electoral process.

### **Summary of Chapter IV**

- The determination and harmonization of the norms and standards of elections at the level of the West African sub-region are favoured by a certain number of factors.
- There are first of all the efforts to establish norms and standards at the universal level., such as the universal declaration of human rights which consecrates political pluralism and its corollary as the principle of the designation of leaders through elections governed by universal suffrage, periodicity, honesty, equality, freedom and the secrecy of the vote (universal level); the partnership of the African Union and the African charter of democracy, elections and governance attempting to define norms of fair elections (regional level).
- Then there are those at the level of ECOWAS: the “Protocol ASP 1/12/01 on Democracy and Good Governance”, in addition to the “Protocol relating to the Mechanism of Prevention, Management, Resolution of Conflicts, Peace Keeping and Security” which states principles considered as common to all ECOWAS states and considers, among other things, elections as the only valid way of access to power, condemns unconstitutional changes, poses the principles of the popular participation in decision makings, and advocates the confinement of the army, the secularism of the state, the respect of fundamental rights, and the freedom to create political parties;

- There are finally conclusive experiences elsewhere on the continent. We have the example of the SADC where efforts were made in the determination of norms and standards as well as in their harmonization at the level of the whole sub-region.
- In spite of the differences in legal traditions and other difficulties related to the requirements of respect of state's sovereignty, proposals for the development of a minimal number of norms and standards to reinforce the quality of the conduct of elections in the ECOWAS region can be formulated.
- In the perspective of democratic levelling by the top, while relying on the Protocol on Governance and Democracy of ECOWAS, it is necessary to define with the maximum precision the main principles such as the consensus for the definition of electoral rules, the sincerity of the poll in the broad sense of the word (with components such as gathering the criteria for competitive elections), the respect of equality and the safeguarding of public money in the system of financing of political parties and candidates, the guarantee of the freedom of expression of the vote (freedom to vote without fear of reprisals, secrecy of the vote, defence and security of the vote, transparency of the counting), and a reasonable deadline for the publication of the results.

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## CHAPTER

### **TYPES OF ASSISTANCE ON ELECTORAL MATTERS (ECOWAS)**

**T**he second part of chapter III discussed some of the major challenges that the management of elections and the recourse to electoral commissions in the new West African democracies pose and suggests some ideas for reflection. Again in chapter III, suggestions were made about factors which could be taken into consideration in the quest to resolve the challenges mentioned above by each country. This last chapter, chapter V, complements chapter III with propositions to resolve the challenges that come with the management of elections in West Africa which could be implemented at the supranational level, especially at the level of the Economic Community of West African States (ECOWAS).

The consolidation of democracy in West Africa is in fact one of the priorities of ECOWAS which realized very early that there could be no economic progress (or development) in the sub-region without this adequate political framework susceptible to lead to peace and the expression of the character of the people. The community is gradually building regional judicial and institutional frameworks that are necessary in coping with the challenges of erecting and consolidating democracy in most of the countries of the sub-region. The Protocol relating to the Mechanism of Prevention, Management, Resolution of Conflicts, Peace Keeping and Security of 1999 and its additional Protocol on Democracy and Good Governance of 2001 may be cited in this respect. The creation of such institutions as the Defence and

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Security Commission, the Council of Elders, the ECOWAS ceasefire follow-up Group (ECOMOG), and the electoral unit in the Department of Politic Affairs are other examples.

The (sub-) regional judicial framework made at the level of the community and mentioned above stipulates certain mandates to member countries as well as to the ECOWAS itself in relation with the challenges to which they are exposed today. Specifically, the regional legal framework in question, particularly the Protocol relating to the Mechanism of Prevention, Management, Resolution of Conflicts, Peace Keeping and Security and its additional Protocol on Democracy and Good Governance, prescribe specific mandates to the ECOWAS concerning the challenges that come with the management of elections in member states of the community.

These two legal texts, in effect, are clear enough on the mandates which fall on the ECOWAS in the consolidation of democracy and particularly in the management of elections in member countries. They prescribe for example that the ECOWAS be involved in the preparation, the organization and the supervision of elections in its member states. More specifically, the regional texts in question provide that at the request of member states, the ECOWAS can send help and assistance in any form useful for the organization of all elections in the country in question. In this framework, ECOWAS shall, in the eve of the election, send an information mission to the country which may be followed by an exploratory mission and finally by a mission to observe the election in question.

In this framework, the ECOWAS, essentially by means of the activities of its electoral unit, has already intervened in almost all election processes in the region. It has, in fact, conducted pre-electoral missions in many countries, notably in Senegal, Nigeria, Mali, Sierra Leone, Togo, Côte d'Ivoire, Gambia, Benin, Ghana, Guinea Bissau, and Equatorial Guinea. Elections observation missions have also been

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sent to each of the countries mentioned above. Wherever it became necessary, ECOWAS sent logistical support: such was the case in Sierra Leone in 2007, where the mission was praised as helpful and well-coordinated.

The activities of ECOWAS for the consolidation of the management of elections in the sub-region go beyond assistance during the period of elections. In reality, it has initiated actions to reinforce the capacities of electoral commissions and to improve the quality of different missions within the framework of elections in the past few years through its electoral unit. Thus, for example, it has widely contributed to the creation of a network of West African electoral authorities and to the development and distribution of a manual for the observers of ECOWAS. It has also held a workshop for the evaluation of instruments produced and used during missions of observation of the ECOWAS and organized a seminar on the cost of elections in the sub-region.

In spite of all the initiatives mentioned above, there is unanimous agreement today on the fact that there still remain several unsolved challenges to attaining the desirable quality of organizing elections in the sub-region. At the level of each ECOWAS member state, challenges include the ineffective training of electoral agents, insufficient programs on raising citizens' awareness (on how and why to vote), incorrect electoral lists, and the high costs of elections. Among the challenges of new West African democracies regarding the management of elections are the absence of "learning by doing" mechanisms, widespread electoral fraud and corruption, and the endless challenging of results.

Current challenges are not limited to the difficulties caused by the management of elections to each of the countries of the community; they equally have sub-regional dimensions. Thus, for example, the disparity of systems of administration of elections and their attributions do not favour the possibility of sharing experiences and

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lessons drawn from good as well as bad practices. In the same way, there is not yet any true operational framework of exchange among the actors involved in the management of elections in the countries of the sub-region, which makes possibilities for learning from one another difficult.

Concerning the different challenges mentioned above, the ECOWAS provides legal as well as institutional means to help taking them up. Beyond the mandates determined by the regional legal framework for it, the ECOWAS has put in place an electoral unit whose objectives are in the same line with most of the challenges that member countries encounter in the management of elections. The Electoral Unit of the community aims, indeed, at reinforcing the capacity of member states in the electoral administration, at developing a code of conduct for elections for the ECOWAS region, at contributing to the improvement of the quality of observation missions, and at helping electoral commissions of the sub-region to rationalize the costs of elections.

The available provisions at the level of the ECOWAS, even if they can and deserve to be improved, offer a series of opportunities to member states in the search solutions to problems that they encounter in the management of elections. In the remainder of this chapter, the forms of support that the ECOWAS can send to its member countries within the framework of the management of elections is presented in two categories: the actions of reinforcement of capacities (1), and so-called prospect actions and the proposition of solutions (2).

### **5.1 Actions of reinforcement of capacities**

The first category of support that ECOWAS can send to its member states in the framework of the management of elections includes actions for capacity-building. These are actions which are likely to complement those planned (and implemented) at the national level to improve the capacity of member states (and of their electoral commissions) to bring

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forth a relevant contribution to the management of elections. Indeed, on the basis of the weaknesses noticed in the preparation and conduct of elections as well as in the management of electoral disputes, a number of urgent needs arise regarding the reinforcement of capacities of actors of electoral processes in the region.

The search for solutions to the different needs observed at the level of key actors (including electoral commissions and their members) of electoral processes in the community can be conducted on two levels: national and regional. The two are interlinked: for those initiatives which may be taken at the national level to improve national electoral process, actions which can only be undertaken by the regional institutions such as the ECOWAS cannot be neglected. The said actions of capacity-building may range from training activities for the stakeholders of the process to initiatives for improving the legislative electoral framework, for managing the costs of elections, for controlling electoral fraud and corruption, for observing elections, and for improving the security of elections.

### **5.1.1 Training activities**

Training activities for most of the actors are vital to the electoral process, as was explained in the preceding parts (especially part II). They must be initiated and implemented for institutional actors, especially members of the electoral commission (and its divisions), leaders of the executive involved in the electoral process (Ministries of Finance, the Interior, Foreign Affairs, etc.), and members of electoral jurisdiction, such as the Constitutional Court, the Supreme Court, the constitutional council, and the countries' lower courts.

These training activities may have to be extended to non-institutional actors. These include, for example, leaders of civil society organisations who have a critical role in the improvement of the quality of the electoral process. They also include leaders and members of political parties whose crucial role in the management of

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elections is undisputed. To these two categories of actors, we may also add leaders of the media and ordinary citizens.

It will be beneficial for members in the category of institutional actors to be made aware of the legal framework for the management of elections, their role, possible risks in violating any rule, and the threat they put on the elections and on democracy if they deviate from any legal prescription. Concerning members of the last category – i.e. the ordinary citizens – they need to be educated on why to vote as well as on how to participate in the electoral process and to defend his/her vote.

The training activities mentioned above – because they are organized through sub-regional initiatives – need to possess at least one principal characteristic: they must offer the opportunity to the different target groups to share their experiences with other countries in the sub-region with the help of ECOWAS.

These training activities take the form of workshops organized particularly for all or parts of the key actors of the electoral process of a given ECOWAS member country. The workshops must be organized in such a way that they will allow participants to identify, reflect and search for solutions to problems that come with managing elections in their country based on the experiences of other countries in West Africa. Involving experts who have a good knowledge of countries in the sub-region or elsewhere in the world in these workshops will be an added value.

The training activities may also be in form of meetings that bring together actors of relevant categories coming from the different countries in the sub-region. In this case, these are true workshops to share experiences and good practices and for collective brainstorming on the bad practices and the ways and means to reduce them. These regional workshops can also witness the participation of experts in electoral issues who are likely to go beyond individual experiences of

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the member countries in order to produce useful results for everybody. We deem it necessary at this point to underline the significance and the beneficial nature of experience-sharing during the training.

To these two categories of direct training of actors involved in the electoral process (at the national and regional level), a third category of initiatives can be added. It is about the possibility of creating a framework of information and expertise that contributes to finding solutions for urgent needs of actors in electoral processes of a member country of the community<sup>12</sup>. This can be in the form of a website created at the level of the ECOWAS which offers information pertaining to electoral practices, challenges met here and there, pertinent solution and ideas, etc.; it can also consist in setting up a team of experts from the ECOWAS or elsewhere to suggest answers to urgent questions expressed by the different actors of member countries within a short period of time.

### **5.1.2 Identification and suggestion of specific supports to the weak points of the electoral process**

Training activities for key actors of the electoral process with regards to their rights and duties naturally do not exhaust the concerns for the support of ECOWAS which can be crucial and pertinent. Another dimension of the electoral process where the intervention of ECOWAS structures can be profitable is the one which relates to what can be referred to as weak points of the electoral process. More specifically, it is about the shortcomings noticed at the level of key actors and/or specific stage of the electoral process which cannot be completely corrected by training and awareness-raising activities.

The shortcomings in question can be related to deficiencies at the level of the key actors of the electoral process: they may not know or adhere to their rights and obligations. Although the risks which arise from non-respect of their obligations are quite obvious, it is not as easy to see the risks coming key actors who incapable of enjoying their

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<sup>12</sup>These could function like the emergency service in hospitals where first care will be given while awaiting for more stable conditions to seek for the real remedy to patient's condition.

electoral rights. Indeed, the accepted rights of the different actors of the process (political parties and candidates, media personnel and civil society organisations, ordinary citizens, etc) were provided so that each category of actors can contribute to the improvement of the quality of the electoral process and its credibility<sup>13</sup>.

In such a way, the incapacity of the said actors to enjoy their right constitutes automatically a loss in terms of quality of the electoral process. At the level of political parties and their candidates, the above mentioned inability appears through the difficulties the said actors have in appointing representatives at every level of the electoral process where there is need to ensure good quality. In fact, it occurs frequently that parties and candidates are incapable of sending representatives to even one third of the registration and polling stations. Even when they are able to send representatives, their agents often not well prepared, ignoring their roles, rights and duties and electoral laws. This leads to a lower quality of elections and paves the way for electoral fraud and corruption and creates favourable conditions for challenging and the results of the elections and sometimes the whole democratic system.

The above mentioned remarks relating to political parties and candidates go for all other actors in the electoral process. Civil society organisations in the sub-region are generally not capable of making the contribution expected of them, which include awareness-raising in citizens and participating in the observation of the electoral process for the improvement of the quality of elections. This is also true for the media professionals, ordinary citizens and formal institutions taking part in the electoral process. It sometimes occurs that electoral commissions or a department or head office of a Ministry have insufficient resources (of any sort) for a positive contribution to the organization of elections.

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<sup>13</sup>It is not only the incapacity that accounts for the fact that key actors of the electoral process do not enjoy their rights. The non inciting environment (legal, social, etc) can also contribute and in that case, one can even have the capacity but not having the desire to use it in order to enjoy your rights.

ECOWAS can contribute to the resolution of the above mentioned challenges in different ways. Its contribution can consist in logistic support, in training activities and in teaching techniques in a specific domain and related to precise aspects of the electoral process. The above mentioned suggestions about the different forms which training activities can take are also relevant here and can be undertaken within the framework of sharing experiences.

## **5.2 Search for solutions to the problem of enforcement of electoral laws**

Another worry to which the ECOWAS can help find solutions is the question of respect of electoral legislation. The gap between electoral legislation on the one hand and law enforcement on the other has a severe impact on election management. Indeed, there exists a serious deficit in terms of respect of electoral legislation in the new democracies of the sub-region. This particularly affects those provisions which are supposed to reduce electoral fraud and corruption. Despite the fact that every country of the region experiences – albeit to a different degree – problems of non-respect of legal texts, legal actions leading to the arrest of perpetrators of acts of violation of the electoral legislation in the said countries are rarely taken.

These problems have many roots, amongst others the inadequacy of the ordinary judicial system for electoral matters and the inadequacy of classic means planned to report infractions and to initiate first acts of legal procedures.

Solutions to these challenges can be elaborated at the sub-regional level. The ECOWAS can initiate actions to identify the types of deviation from electoral laws and set up appropriate frameworks to study them and look for means to reduce them. These actions, as those mentioned above, can be taken at the national level (based on

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experiences from others) or at the sub-regional level, bringing together actors of the electoral process of different member states.

### **5.2.1 Search for solutions to the cost of elections**

The last concern discussed in this section is the one related to the control of the costs of elections in West African countries. The challenges of escalating costs of elections for countries with limited resources have already been discussed in the second part of this document. Undoubtedly, the search for solutions to this problem has necessarily a national dimension, but it has a regional and even international dimension as well.

ECOWAS can help member countries in reducing the costs of elections in three ways: support can come in the form of training activities, in reciprocal efforts in terms of electoral inputs, and in direct assistance.

The support to member states in the form of training activities can take two forms. Just as the suggestions mentioned above for the training activities, support in this area could be in form of sessions of experience-sharing between actors involved in the drafting, execution and control of the election budget. It can further be in the form of training activities on the same subject but bringing together national actors and experts mastering the subject matter.

As far as reciprocation of electoral inputs at the community level is concerned, it can also take various forms depending on the nature of the input. It may consist in the setting up of a stock of electoral input at the ECOWAS level which will be made available to every member of the community at the same rhythm as elections take place. Based on the nature of the input, it can also be made of smaller stocks available in many countries and easy to spread within a smaller geographic radius. The input can for instance include ballot boxes, polling booth,

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kits needed to establish electoral lists, and materials such as indelible ink.

Acts of direct assistance are the easiest to put in place. This type of action can also take on diverse forms. It can consist in logistical support and aid for the acquisition of materials necessary for the conduct of elections. But it can also be in form of intellectual support, making experts available to help an electoral commission or other key actors of the electoral process, for example civil society, the media, or political parties, to contribute to the management of specific elections.

### **5.2.2 Prospects of actions and suggestions for solutions**

This section on the prospects of actions and suggestions for solutions deals with initiatives at the community level with the main objectives of identifying and initiating reflections and suggesting solutions to the main challenges for election management. We are interested at this level mainly in actions which must be initiated prior to any other action mentioned above. It is somehow the regional equivalent of the “learning by doing” actions mentioned in Chapter 3 for every ECOWAS member. ECOWAS can contribute in a special way at this level by initiating a series of actions, such as:

- Put in place frameworks for identification and updating of the challenges for the management of elections in the sub-region;
- Initiate brainstorming exercises on the major concerns relating to voting, especially issues such as how and why to vote;
- Initiate exchanges on the evolution of electoral laws and practices in the different countries of the sub-region so as to contribute to the process of harmonizing the norms to be observed during elections as expressly desired by the community through its supplementary Protocol on Good Governance and Democracy.

## Summary of Chapter V

- The regional legal framework, especially the two texts mentioned above, is clear enough about the mandates given to the ECOWAS in the strengthening of democracy and particularly in the management of elections in the member states of the community. They prescribe in particular that on request by member states, ECOWAS can provide aid and assistance in any form needed to organize and conduct elections.
- ECOWAS, through its electoral unit and for the sake of strengthening election management in the sub-region, has initiated actions to build up the capacity of electoral commissions and improve the quality of the different missions it sends to monitor elections.
- The ECOWAS electoral unit has as major objectives the building up of capacities of member countries in terms of electoral administration, the development of an ECOWAS code of conduct for elections, the improvement of observer missions and assisting electoral commissions within the sub-region to rationalize the costs of elections.
- The search for solutions to the different needs of key actors in the electoral process (including electoral commissions) ranges from training activities for the stakeholders of the process to initiatives for improving the legislative electoral framework, for managing the costs of elections, for

controlling electoral fraud and corruption, for observing elections, and for improving the security of elections.

- Prospects of actions and suggestion of solutions focus mainly on initiatives at the community level with the principal aim of identifying and initiating reflections and proffering solutions to the major challenges that the management of election is facing in West Africa.
- As for the actions to be taken in this domain, ECOWAS could for instance create frameworks for the identification and updating of the challenges to electoral management, initiate deep reflections on the major concerns relating to voting (How to vote? Why to vote?), and initiate actions of reflection and exchange on the evolution of electoral legislations and practices in the different countries of the sub-region.

## CONCLUSION

**A**fter embracing democracy in the early 1990's, African states in general and those of West Africa in particular were faced with the problem of election management. Everywhere efforts were progressively made to define a system of management of elections suitable for traditional and political traditions of every country and which would ensure free and fair elections.

This study aimed at making a comparative analysis of the different systems of election management through institutions called electoral commissions (EC, NEC, IEC), with the general task to regulate the democratic competition, improve the electoral process, and harmonise electoral standards in West Africa.

The study compares the internal regulations and practices of the various electoral commissions in the region. It reveals that there are many similarities leading to the emergence of electoral laws which are peculiar to ECOWAS member states and some differences related to the democratic history of each country. Legislations that emerged with more or less consensus in the region establish the judicial and institutional scope of free and fair elections. Nevertheless, it is clear that some laws can ensure the independent and effective functioning of electoral commissions better than others.

In general, the comparison of experiences allows for a more balanced picture of electoral systems in West Africa: cases of success exist together with mixed experiences and outright failures.

The study, while trying to go beyond the formal legal scope of electoral commissions, tried to review a list of challenges encountered in the organization of elections within the new democracies of West Africa in order to come up with relevant solutions. The approach adopted was to address every main question by studying it with the help of illustrations of “good practices” and “cases to improve”. The main interest of this study is not just to offer a simple intellectual exercise, but rather to set up an analytical framework for electoral systems in West Africa in order to find or help find solutions to real and chronic problems in organising elections which most countries in the region face.

With regards to standard definitions for the purpose of establishing norms for ensuring free and fair elections within the ECOWAS member states, the study tried to identify some trends. It tried to prove that despite the existence of different judicial traditions (Anglophone, Francophone and Lusophone countries) and difficulties relating to the demand of respect for the sovereignty of states, initiatives can be taken to define key principles of managing elections in the West African sub-region.

## **ANNEXES**

## ANNEX 1

The classification of this annex is based on the legal type and institutional regulations of each country at the moment of this publication. The aim is not to judge the performance and the level of independence of the actions of the NEC. The number of members of the NEC does not include the members of parliament.

Country	Organism in charge of elections	Denomination of the Electoral Commission	Number of members of the NEC
Benin	Independent	Permanent Administrative Secretariat	4
		Autonomous National Electoral Commission	17
Burkina-Faso	Independent	Independent National Electoral Commission	15
Cape Verde	Mixed	Bureau for Electoral Assistance National Electoral Commission	N/A 5
Côte d'Ivoire	Independent	Independent Electoral Commission	31
Gambia	Independent	Independent Electoral Commission	5
Ghana	Independent	Electoral Commission	7
Guinea (Conakry)	Independent	Independent National Electoral Commission	22
Guinea Bissau	Independent	National Electoral Commission	8
Liberia	Independent	National Electoral Commission	7
Mali	Mixed	Ministry of Territorial Administration	N/A
		Independent National Electoral Commission	15
		General Delegation for Elections	N/A
Niger	Independent	Independent National Electoral Commission	30
Nigeria	Independent	Independent National Electoral Commission	13
Senegal	Mixed	Ministry of Interior - General Office for Elections	N/A
		Autonomous National Electoral Commission	12
Sierra- Leone	Independent	National Electoral Commission	5
Togo	Independent	Permanent Administrative Secretariat	N/A
		Independent National Electoral Commission	9



Duration of the mandate	Elected by	President appointed or elected by	Members : expert or partisan
5 years	Parliament among workers	Highest ranked Public Servant(ex officio)	Expert
<i>Ad hoc</i>	Legislature, Head of State, Civil Society	NEC	Partisan
5 years	Civil Society, Governmental, Opposition party	NEC (Civil Society representative)	Partisan
N/A	N/A	N/A	N/A
6 years	Legislature	NEC	Expert
6 years	Political Parties, Civil Society, the Executive and the Judiciary	Head of State	Mixed
7years	Judicial Services Commission, Public Servant Commission	Head of State	Expert
unlimited	Head of State in consultation with the Council of State	Head of State	Expert
5 years	Head of State	ANEC	Mixed
4 years	Head of State	Head of State	Expert
7 years	Head of State with the approval of the Senate	Head of State with the approval of the Senate	Expert
N/A	N/A	N/A	N/A
<i>Ad hoc</i>	Party in power, Opposition and Civil Society	INEC	Partisan
N/A	Head of State	Head of State	Expert
<i>Ad hoc</i>	Political Parties, Civil Society and Government	Head of State	Combined
5 years	Head of State on the proposition of the Council of State and with the approval of the Senate	Head of State	Expert
N/A	N/A	N/A	N/A
6 years	Head of State after consulting political Parties and with approval of the Parliament	Head of State	Expert
5 years	Political Parties and Legislature	NEC	Expert
N/A	N/A	N/A	N/A
Non specified	Parliament upon proposition of the original bodies.	INEC	Partisan

## ANNEX 2

Every website on this list was tried and is operational as at April 2009. It does not encompass the websites of every electoral commission in the West Africa.

Country	Name of the NEC	Web Site
Benin	Autonomous National Electoral Commission	<a href="http://www.gouv.bj/spip.php?rubrique140">www.gouv.bj/spip.php?rubrique140</a>
Burkina-Faso	Independent National Electoral Commission	<a href="http://www.ceni.bf">www.ceni.bf</a>
Cape-Verde	National Electoral Commission	<a href="http://www.cne.cv">www.cne.cv</a>
Côte d'Ivoire	Independent Electoral Commission	<a href="http://www.ceici.org">www.ceici.org</a>
Gambia	Independent Electoral Commission	<a href="http://www.iec.gm">www.iec.gm</a>
Ghana	Electoral Commission	<a href="http://www.ec.gov.gh/node/76">www.ec.gov.gh/node/76</a>
Guinea (Conakry)	Independent National Electoral Commission	<a href="http://www.ceniguinee.org">www.ceniguinee.org</a>
Guinea (Bissau)	National Electoral Commission	N/A
Liberia	National Electoral Commission	<a href="http://www.necliberia.org">www.necliberia.org</a>
Mali	Ministry of Territorial Administration	<a href="http://www.matcl.gov.ml">www.matcl.gov.ml</a>
Niger	Independent National Electoral Commission	N/A
Nigeria	Independent National Electoral Commission	<a href="http://www.inecnigeria.org">www.inecnigeria.org</a>
Senegal	Autonomous National Electoral Commission	<a href="http://www.cena.sn">www.cena.sn</a>
Sierra- Leone	National Electoral Commission	<a href="http://www.nec-sierraleone.org">www.nec-sierraleone.org</a>
Togo	Ministry of Interior, Permanent Administrative Secretariat	<a href="http://www.cenitogo.tg">www.cenitogo.tg</a>

## ANNEX 3

### **GLOSSARY**

**Electoral activity:** A part of the electoral task that can be entrusted to an individual or a group of people. In some operational plans in elections, the term “activity” can be assimilated or used interchangeably with the term “task”.

**Electoral Administration:** Necessary measures to realize or put in place any aspect of an electoral process.

**Local Authority:** A body established as the legislative or executive branch of government or else a body elected at any sub-national level lower than a province, region or any equivalent level.

**(Electoral) Budget:** A document giving a detailed summary of the electoral incomes and expenses in relation to some activities of an organization or part of an organization for a specific period to come.

**Judicial framework:** Collection of judicial information which can be used to define or influence the electoral process; mainly constitutional provisions, electoral laws, other legal texts with an incidence on electoral processes, such as policies of political parties, and laws for the restructuring of legislative organs, subsidiary rules and regulations, and codes of conduct.

**Electoral calendar:** Document containing a certain number of tasks, dates and deadlines of their implementations during the planning, setting up and competition towards an electoral event.

Electoral campaign: Political activity, including meetings, tours, addresses, parades, broadcasted debates and other broadcasted events aiming at informing the electorate or to gain their supports for the project of a political party or a candidate especially during an election. It can also be proposed to electors during a referendum.

Candidate: Authorized person (who satisfies all legal conditions) to contest in an election as representative of a political party or without any support from any political party.

Independent candidate: A candidate to an eligible post and who is not appointed by any political party.

Voter's ID card: ID card to identify a person as registered voter in conformity with the provisions made by the electoral law.

NEC: National Electoral Commission

ANEC: Autonomous National Electoral Commission

INEC: Independent National Electoral Commission

Partisan NEC: Electoral commission whose members are not appointed on the basis of competence but rather on their partisan affiliation.

Ad hoc (or temporary) NEC: Electoral commission set up only during the electoral period and which is not permanently operational.

Centralized NEC: Organizational chart of the NEC, especially in unique constitutional countries in which the power to conduct and put any aspect of the electoral process in place at any level is acquired at the national scale of the NEC.

Decentralized NEC: Model of electoral administration in which the power to conduct and to put in place the different electoral processes and /or the different aspects of electoral processes are given by the NEC to sub-national NECs and national sub-branches of the NEC at the national level.

Mixed NEC: A NEC whose members consist of both non-partisan experts and representatives of political parties or groups of interest.

Permanent NEC: A NEC with continual activities in the electoral cycle as a whole and which is in charge of electoral issues both during and in-between electoral periods.

Constituency: Synonym of electoral constituency used especially in some Anglophone countries.

Electoral constituency: One of the geographic zones into which a country can be divided for electoral purposes.

Code of conduct: Set of general behavioural rules, for instance for members and personnel of an NEC, or for political parties, in respect of participation in an electoral process.

Constitutional Council: Organ which can be either a part of the judicial branch or of a distinct organism in charge of ruling on the constitutionality of laws and, in some cases, other tasks, including those related to electoral processes.

Classic costs: Normal cost related to the implementation of an electoral process in a stable electoral environment. They include basic costs of voters' registration, delimitation of constituencies, voting, collation and counting of votes and transmission of results and voter awareness campaigns. Sometimes they are also called "direct costs".

Diffused costs: Costs related to elections which cannot be deducted from the general budgets of organisms that help to implement an electoral process. They are also called “indirect cost”.

Reliability (integrity) cost: Necessary costs to ensure the security, integrity, and political neutrality in the electoral process. They are particularly pertinent for elections in post-conflict societies or emerging democracies.

Electoral cycle: Complete steps from the preparation, implementation and evaluation of elections or instruments of direct democracy, considered as an electoral event in continuous series. In addition to the steps of an electoral process, it includes also pre-electoral activities such as the review of juridical regulations, the procedure and registration on electoral list the consultation process and the planning of the next elections.

Democracy: A political system in which sovereignty is in the hands of the people who can use it directly or through elected representatives.

Democratization: The process of reinforcement of democratic character of a political regime (reforms).

Nomination of candidates: Process through which political parties, organizations or individuals present their intention to compete in an election; this is most of the time subject to meetings based on qualification criteria set by the law.

Donors: Countries or intergovernmental organizations that provide support in the form of money or technical assistance to the electoral process in another country.

Duration of mandate: Period of time a member of an organization serves at his/her post after being elected or nominated.

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Civic education: Educative information and/or program aiming at increasing citizens' understanding and knowledge on their rights and responsibilities.

Voters' education: Process by which voters are being informed about the electoral process, notably information and procedures for voters' registration, voting and other elements of the electoral process.

Voter: Person who can vote during an election.

Election: Nomination, by votes from the electorate, of people to occupy a political, economic and social function. They are elected members.

Primary elections: Public elections in which a political party elects its candidates for upcoming elections.

Registration of political parties and candidates: Action of accepting demands made by political parties and candidates who fulfil the conditions set to take part in an election.

Post-electoral evaluation: Retroactive effect of evaluation of the organization of an electoral process, or of some specific levels of the process, which is fulfilled after the electoral period.

Experts of the NEC: An Independent NEC in the scope of the independent or mixed model of election management in which every member is elected on the basis of his/her expertise, reputation or rank in the society. See non-partisan electoral commission.

Management of elections: Activities execution process, tasks and functions of electoral administration.

Registration of Voters: Action of noting the names and other pertinent information about admissible voters in a register or voters' list.

Registration of political parties: Compilation of a list of political parties that fulfil legal or regulatory provisions and qualifications thus entitled to privileges such as the proposition to nominate candidates for elections.

Implement of direct democracy: An implement which gives to citizens the right to directly involve in the political decision-taking process. It can be in the following three forms: referendum, initiatives from citizens, or vote recall.

Opened list: A form of proportional representation list in which voters can express their preference for both a party and a group and for one, or sometimes for more than one, candidates on the list proposed by the party or group.

Proportional representation list: A system in which each participant or group proposes a list of candidates for a given electoral constituency; voters vote for a party and parties obtain seats based on the number of vote each of them had. Elected candidates are chosen from the list. This is often called "PR List". Common variations of this are "closed PR list" on which voters are restricted to vote for only a party or group, and "opened PR list" on which voters can express their preference for both a party or group and for one, or sometimes for more than one" candidate of that party or group.

Electorate law: One or several laws governing every aspect of the process of elections of driving forces of political institutions as defined by the constitution or the institutional scope.

Qualified majority: Necessary majority of votes cast for a proposition to be adopted; it should get more than 50% plus 1 of the votes cast; for example  $\frac{2}{3}$  or  $\frac{3}{4}$ .

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Simple majority: A majority that requires that potential candidates for an election (potential in an implement of direct democracy) get the higher number of valid votes cast.

Member of a NEC: A person appointed or elected to be part of the organ or the committee in charge of the elections and the implementation of the commission's authority and functions.

Non-partisan member: Members of an electoral commission who had been appointed not as a political party's representative.

Governmental model of elections management: A model of elections management where elections are exclusively and solely organized and managed by the executive branch of the government through a Ministry, such as the Ministry of the Interior, or through local authorities. This model does not exist anymore in the West African sub-region.

Independent model of elections management: A model of elections management in which elections are organized and managed by a NEC, which is institutionally independent and autonomous from the government (the executive), and has and run its own budget.

Mixed model of elections management: A model of electoral management with double structure having a political component for follow up and supervision of the NEC, and which is independent from the executive and a component in charge of the implementation of the process, and which is within a governmental ministry or local collectivity. It can also be a function sharing (in the effective management of the electoral process) between an independent organ and a governmental unit.

New Democracies: They are new countries who opted for the democratic system as the way their societies are managed by creating

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conditions more or less favourable for its implementation. These countries include mostly those of the third group to accept democracy from 1989 to 1990 after the fall of the Wall of Berlin.

Observers: Accredited persons to observe, note, testify and evaluate an electoral process without stepping in.

International observer: Representative of an international organization, association, government or professional organism who is authorized and accredited to observe and evaluate the preparation or the voting process in a foreign country.

National observer: Individual or representative of an organization who is authorized and accredited to observe and evaluate the performance of the electoral process in his/her own country.

Electoral observation: A process by which observers accredited to access into an electoral process can evaluate and present a report on the respect of the juridical instruments and regional as well as international norms during an electoral process.

Electoral period: Central part of electoral cycle including series necessary steps in the implementing an electoral process, often starting by the official announcement of the date of the elections and ending with an announcement of the final results.

Post-electoral period: One the three periods of the electoral cycle, in which an audit and an evaluation are organized and in which the laws, regulations, and administration are reformed and implemented.

Pre-electoral period: One of the three periods of the electoral cycle, in which the planning and preparation of the elections take place, and in which juridical provisions and procedures are reviewed.

Plan of operations: A plan that defines responsibilities and deadlines of every activity which must take place to respond to the organization of strategic objectives.

President of the NEC: In some countries, that is the official name of the president of the organ in charge of carrying on the electoral process (for example the electoral commission).

Electoral process: Series of the needed stages in the preparation and organization of an election. The electoral process generally includes the promulgation of the electoral law, the registration on the electoral lists, the nomination of the candidates and political parties and of the registration of the propositions, the campaigns, the vote, the collation and counting of the votes, the resolution of the electoral differences and the proclamation of the results.

Referendum: Tool of direct democratic vote of the electorate on a public political question such as the modification of the constitution, or a bill. The result of the vote can be compulsory or consultative.

Register of birth, marriage and death: A central data base containing information from public infrastructure of a country implying the obligation to collect information from many sources and including information such as the name, sex, nationality, age, marital status and the address of every citizen; electoral registers and other document can taken from it if necessary.

Electoral register: The list of people registered as been apt to vote. In some countries, it is known as “voters list” or “electoral lists”.

Electoral regulations: Subsidiary rules to the legislation, often dictated by the organ in charge of the elections (NEC) or the Ministry, based on the powers given by the electoral law which governs the different aspects of the organization and administration of an election.

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Financial regulations: Subsidiary rules to the legislation often set by the electoral body or the Ministry in charge of the financial management of the public sector governing financial management issues.

Electoral claiming: Claims presented by the different electoral actors over the procedures of disputes resolution in the scope of the electoral process as far as decisions, actions, or absence of actions by electoral administrators or other participant in the electoral process are concerned.

Resolution of electoral dispute: Process of listening and judgment of every complaint, suspicion, claim or contestation related to any stage of the electoral process.

Secretariat: Unit under the NEC in the independent model and the mixed model of electoral management, which includes NEC workers, in charge of the implementation of decisions taken by the NEC. In the governmental model of electoral management, the secretariat is usually the only component of the NEC and can also take the function of policies making.

General secretariat: Expression often used to refer to the head of the NEC secretariat, who can be or not a member of the NEC.

Party emblem: A figure or the identification sign given to a candidate or a political party based on the electoral law.

Electoral system: Group of rules and procedures which provide for the electorate the vote and which translate these votes into seats for the parties and parliamentary candidates.

Electoral tribunal: Court of Justice or other bodies before which and electoral actor can challenge the validity of an election, or challenge

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the behaviour of candidates, political parties or members of the NEC.

Members adhesion vacancies: System in which members of the NEC are not appointed at the same time and the duration of their mandates is not the same; it is generally used to ensure the continuity of the NEC activities.

Vote of the Diaspora: Mechanism by which voters who are permanently or temporarily out of the country can vote; it is also called vote from outside of the country.

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