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Elections are a backbone of democracy. In West Africa, however, elections are often contentious and triggers of violence. The Economic Community of West African States (ECOWAS) through its Electoral Assistance Unit therefore works towards enhancing electoral standards in West Africa. It partners with Friedrich-Ebert-Stiftung (FES), a German private, non-profit organization committed to the ideas and basic values of social democracy, which through its regional project West Africa facilitates regional exchanges of experiences and debates about the roles and responsibilities of key stakeholders in electoral processes.

In addition to identifying 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), this second edition of the comparative study highlights recent developments and changes in legal frameworks for elections in some countries in the region. Similarly, this new edition provides more relevant examples from recent electoral experiences in West Africa. 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.

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ELECTORAL COMMISSIONS IN WEST AFRICA - A COMPARATIVE STUDY

Second Edition

# ELECTORAL COMMISSIONS

in West Africa  
A Comparative Study

Second Edition



Authors:  
Mr Mathias HOUNKPE  
Prof. Ismaila Madior FALL

**FRIEDRICH  
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A Comparative Study

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## Preface

Elections are the main pillars of democracy and have become a commonly accepted means to legitimize governance institutions in West Africa. However, elections are also 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 raise the credibility and acceptance of elections, reduce the risk of violent conflicts and thereby contribute to the consolidation of democracy in West Africa. In this regard, Friedrich-Ebert-Stiftung (FES) has been facilitating the exchange of experiences and discussions on the roles and responsibilities of the main actors in electoral processes at the regional level.

Undoubtedly, the Economic Community of West African States (ECOWAS) offers the most appropriate platform for this process. The ECOWAS Supplementary Protocol on Democracy and Good Governance (2001) contains important provisions on acceding to political power and the conduct of elections in the sub region. Thus, ECOWAS is increasingly involved in providing assistance and monitoring elections. The establishment of the ECOWAS Network of Electoral Commissions (ECONEC) in February 2008 was a welcome initiative. The mandate of this network is to facilitate the sharing of experience and work towards the harmonization of electoral standards in West Africa. Various meetings of this network held since August 2008 have brought to the fore the need for a comparative and comprehensive study on election management bodies in all the fifteen ECOWAS Member States.

During the first phase of the study which was launched by FES and the ECOWAS Electoral Assistance Unit, the results of field surveys conducted by the two authors, Madior Fall and Mathias Hounkpe, were confirmed and completed by a questionnaire filled by all the electoral commissions.

This initiative was crowned with the publication of the first edition of this book in September 2009.

The interest generated by this first edition which gave quite a broad and comprehensive view of electoral practices and operations of electoral commissions in West Africa led Friedrich-Ebert-Stiftung (FES) and the ECOWAS Electoral Assistance Unit to commission a reviewed and updated second edition which highlights current practices and experiences of electoral commissions that had already been described in detail in the first edition.

The benefit of the second edition is that it reflects recent developments and amendments in the legal framework for elections in some countries of the region such as Cote d'Ivoire, Guinea, Togo and Benin.

Similarly, this new edition provides more relevant examples of electoral practices. In fact, between the two editions, many elections were held, which enabled the authors to improve illustrations with more specific examples.

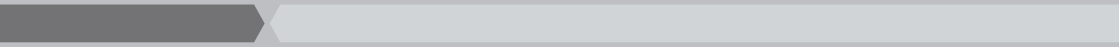
The study at hand is therefore the fruit of a long process which required contributions and assistance from several actors to whom we extend our renewed appreciation. We will mention, among others, ECONEC and its officials for their support to this project; officials of the ECOWAS Department of Political Affairs for their continuous assistance, the authors, Mathias Hounkpe and Madior Fall for their perseverance and sustained efforts to update data in the first edition; the translators for the translation of this book into English and FES offices in West Africa, in particular, FES Dakar and FES Cotonou for facilitating the work of the two researchers.

This book identifies similarities and differences in operations of electoral commissions in West Africa and brings out lessons learnt and best practices which will be useful for those who have the ambition of improving electoral processes and introducing high electoral standards in West Africa.

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# TABLE OF CONTENTS



# TABLE OF CONTENTS

INTRODUCTION	1
<b>PART I: COMPARATIVE ANALYSIS OF ELECTORAL COMMISSIONS IN WEST AFRICA</b>	<b>7</b>
<b>CHAPTER I: STATUTES AND RENEWAL OF ELECTORAL COMMISSIONS</b>	<b>11</b>
1.1 Statutes of Electoral Commissions	11
1.1.1. Appointment of members of Electoral Commissions	11
1.1.2. What judgement can be made on the various systems?	17
1.1.3. Qualifications required to be a member of an Electoral Commission	18
1.2 Renewal of Electoral Commissions	20
1.2.1 Tenure of members and duration of the Commission	20
1.2.2 Anticipated termination of functions of members of the Electoral Commission	23
<b>CHAPTER II: OPERATIONS OF THE ELECTORAL COMMISSION</b>	<b>31</b>
2.1 Internal structuring	31
2.2 Prerogatives	40
2.3.1 Electoral Commissions with reduced prerogatives	41
2.3.2 Electoral Commissions with important prerogatives	44
2.4 Financial system	57
2.5 Evaluating experiences of Electoral Commissions	62
2.6 Is it possible to have an ideal Electoral Commission?	66
<b>PART II: MANAGEMENT OF ELECTIONS IN WEST AFRICA</b>	<b>69</b>
<b>CHAPTER III: PROBLEMS RELATED TO THE MANAGEMENT OF ELECTIONS IN WEST AFRICA: SOME GOOD AND POOR PRACTICES</b>	<b>75</b>
3.1 Problems and challenges related to the structure of Electoral Commissions	76
3.1.1 Tenure of the Commission and Members	76

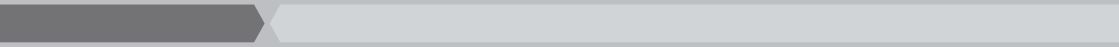


<b>3.1.2</b>	Conflicts between models of Electoral Commissions	<b>81</b>
<b>3.1.3</b>	Autonomy or independence of the Electoral Commission	<b>86</b>
<b>3.1.4</b>	Preparation of election officials	<b>93</b>
<b>3.1.5</b>	Restricted missions of the Electoral Commission	<b>96</b>
<b>3.1.6</b>	Problems of relationships between the Electoral Commission and its branches	<b>98</b>
<b>3.2</b>	Problems and challenges of operationalising the electoral process	<b>102</b>
<b>3.2.1</b>	Political dimension of managing elections	<b>102</b>
<b>3.2.2</b>	Relationship between the Electoral Commission and other institutions involved in the management of elections	<b>107</b>
<b>3.2.3</b>	Anti-fraud mechanisms to ensure the genuineness of the process	<b>109</b>
<b>3.2.4</b>	Establishment, conservation and updating of electoral registers	<b>113</b>
<b>3.2.5</b>	Learning mechanism (learning by doing)	<b>117</b>
<b>3.2.6</b>	Access of candidates (parties) to the media	<b>120</b>
<b>3.3</b>	Problems and challenges regarding the financing of elections	<b>122</b>
<b>3.3.1</b>	Cost of elections	<b>122</b>
<b>3.4</b>	Security of elections	<b>126</b>
<b>3.4.1</b>	Role of security forces in elections	<b>128</b>
<b>3.4.2</b>	Legal structure/framework for the participation of security forces in elections	<b>131</b>
<b>3.4.3</b>	Preparation/ awareness creation among security forces for their role during elections	<b>134</b>
<b>PART III: ELECTORAL PRINCIPLES, NORMS AND STANDARDS IN WEST AFRICA</b>		<b>139</b>
<b>CHAPTER IV: TOWARDS THE HARMONIZATION OF ELECTORAL NORMS AND STANDARDS IN WEST AFRICA</b>		<b>141</b>
<b>4.1</b>	Relevance of the adoption of norms and standards for elections	<b>141</b>
<b>4.1.1</b>	Importance of factors conducive to the adoption of norms and standards	<b>141</b>
<b>4.1.2</b>	Experiences of standardisation in Africa	<b>143</b>
<b>4.2</b>	Proposals for a minimum of core standards	<b>144</b>
<b>CHAPTER V: TYPE OF ASSISTANCE IN ELECTORAL MATTERS (ECOWAS)</b>		<b>149</b>
<b>5.1</b>	Capacity building actions	<b>151</b>

<b>5.1.1</b>	Training activities	<b>152</b>
<b>5.1.2</b>	Identification and suggestion of specific support to weak points in the electoral system	<b>153</b>
<b>5.2</b>	Search for solutions to the problem of enforcement of electoral laws	<b>154</b>
<b>5.2.1</b>	Search for solutions to the cost of elections	<b>155</b>
<b>5.2.2</b>	Future actions and proposed solutions	<b>156</b>
<b>Conclusion</b>		<b>161</b>
<b>Appendices</b>		<b>165</b>
<b>References</b>		<b>179</b>



# INTRODUCTION



# INTRODUCTION

Free and democratic elections constitute a 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 post independence political regimes, 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 quickly and 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. Often, under the pretence of the need to build up fledgling Nations or achieve economic and social development, governments in power displayed little respect for civil liberties and right of objection.

When it is not a clamp down on the political opposition, then it is an election without choice or a semblance of election which is organized with results known well in advance and a huge majority of votes in favour of those in power. In fact, the first changes of political regimes took place only around the 1990s, which is thirty years after the attainment of political independence from colonial masters. The absence of democracy on the African continent is mostly reflected in the lack of change in political regimes and regular renewal of the political class and elites.

In all the cases, official bodies in charge of the organization of elections, especially Ministries of Interior in Francophone countries, no longer inspired confidence in the transparent and equitable management of electoral contest. The democratic opening of the 1990s 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, genuine 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 experiences in the organization of free and competitive elections in the West African sub-region, the first evaluation

can be made. However, it comes as no surprise to note that this has been quite contrasting like the national democratisation experiences themselves. 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 very disturbing cases to the extent that the Electoral Commission has, to a great deal, failed in carrying out its mission, compromising its credibility and endangering the overall political climate.

Close to two decades after the commencement of transitions to democratic regimes and succession of electoral cycles, elections still remained questionable 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 by consensus. Tensions leading to confrontations which threaten the stability often arise during the preparation of elections, while conducting elections, and after election results have been declared. As a matter of fact, be it upstream where stakeholders do not agree with the rules which govern the electoral process or the modalities for the organization of elections, or downstream where candidates who lost elections view the outcome of elections as not being a true reflection of the will of the electorate and choose to contest the results of polls.

In this regard, the situation varies among the West African countries covered in this study: some countries have succeeded in finding rules and modalities for the more or less consensual organization of elections: this is, for example, the case in Ghana, Mali, Benin and Cape Verde. There are countries in which lack of agreement on electoral regulations has led to the boycott of elections by a significant section of the opposition. This is the case in Burkina Faso, Senegal, among others. There are other countries in which political negotiations were carried out in order to find agreements binding all stakeholders in order to avoid the possibility of crises affecting the electoral process and leading to violent confrontations: this is, for instance the case of Togo and Cote d'Ivoire. 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, despite apprehensions, some hope for social peace: countries such as Cote d'Ivoire, Liberia, and Sierra Leone belong to this last category.

Answers provided to electoral crises are essentially of two kinds: at the internal level, there is the continual definition or redefinition of elections regulation bodies with 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 the 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 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 analysis of Electoral Commissions in West Africa with the following objectives:

- Identify trends, key similarities and differences in electoral laws throughout the sub-region;
- Underscore major challenges which the management of elections entails for new Democracies in 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 results of the study are structured as follows:

- **Part One:** Comparative analysis of National Electoral Commissions of West African Countries
- **Part Two :** Election Management in West Africa
- **Part Three:** Electoral principles, norms and standards in West Africa

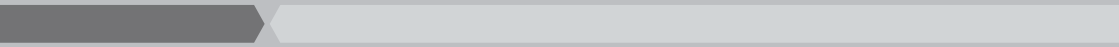






# **PART ONE**

## Comparative Analysis of Electoral Commissions in West Africa



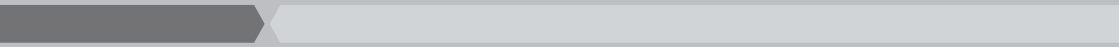
## Comparative Analysis of Electoral Commissions in West Africa

A study of Electoral Commissions in West Africa is also an opportunity to compare national democratic experiences, beyond the issue of the differences among them. At the time when West Africa has embarked on 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 laws and around the following three areas:

- **The Statutes of these Commissions**, which allow for the presentation of the formal provisions which govern the membership of these bodies, more specifically their mode of appointment, duties attached to their posts and consequently their independence from actors in the political game, be it the ruling government or political parties aspiring to exercise this power.
- **Operation of the Commissions**, i.e. their terms and conditions of work. The provisions are always required but what is being referred to here is another facet of Electoral Commissions. It is specifically how they organize their work 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 has for a long time raised 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 experiences of Electoral Commissions**, ends this first part of the study. It is presented in the form of an analysis 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 responsible for the regulation of the electoral game. In fact, experience shows that the establishment of Electoral Commissions is sometimes informed by the experiences 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 in the definition of common standards or “electoral standards” at the sub-regional level (West Africa), such as the ones which will be addressed in the second part of this study.



# CHAPTER ONE



# CHAPTER 1

## STATUTES AND RENEWAL OF ELECTORAL COMMISSIONS

### 1.1 Statutes of Electoral Commissions

The statutes of Electoral Commissions have some similar characteristics and differences that stem from the history of democratization of each country, its legal tradition and the balance of the political forces which gave rise to the establishment of the Electoral Commissions. In order to understand the basic facts concerning these statutes, it will be necessary to thoroughly study the mode of appointment of the members of the Commissions (1.1.1) and the duration of their functions (1.1.2).

#### 1.1.1 Appointment of members of Electoral Commissions

In the determination of the “profile” of the members of the Electoral Commissions, the first option involves appointing only members who are not politically inclined, or on the contrary including 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 consideration of the political dimension, with the risk of partiality which is expected to be averted precisely through a balanced representation<sup>1</sup> 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 to be appointed into the Commission.

The first option appears more realistic. Since it is elections that are stake and these are of key interest to political parties, it is therefore logical that stakeholders in elections are represented in Electoral Commissions. In other words, it is assumed under this option that nobody is better placed to organize and promote transparency in elections than those who are involved in them. The disadvantages of this partiality can however be easily foretold. Opening up Electoral Commissions

<sup>1</sup>Balanced representation should not especially be understood as proportional representation. In fact, the specific of each country imposes the mode of sharing of membership the Commission among the categories of stakeholders that represented on it. In Togo, following the Comprehensive Political Agreement the number of members from the opposition was two times higher than that of the ruling government, however, the opposition and parliamentary majority each now has (05) members. Political parties outside parliament have three (03). While in Benin preference is given to proportional representation of political stakeholders (especially those represented in parliament).



to political formations implies the risk of reproducing political rivalries within them.

The arbitration function which suggests objectivity and impartiality 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 in the choice of their representatives on the Commission.

The second option – exclusion of any political consideration in the composition of the Electoral Commission – has the advantage of stretching the requirement of the independence of the Commission to the very end, thus considering it as a statutory or ethical 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 acquired essentially through political activism. Electoral controversies and difficulties to which this 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 magistrate, who deals normally with judicial matters, is not necessarily a good judge of electoral matters which do not always 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 fair 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 defence 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 and fielding candidates for each type of election. Attempts are made through its composition to include all the authorities involved in the electoral process. For its efforts at ensuring representation, the composition needs to be reproduced exactly as follows:

- **Chairman:** A Magistrate of at least grade II elected by his peers. Where there is no Grade II Magistrate, the president of the country may appoint by Decree any person known for his impartiality, competence and integrity after consultation with political parties;
- **First Vice Chairman:** A Magistrate of at least grade II elected by his peers and in a case where the Chairman is not a Magistrate or person known for his impartiality, competence and integrity;
- **Second Vice Chairman:** a representative from a legally recognized group of Women Associations;
- **Two Secretaries:** appointed by INEC among its members, namely, one representative of the association for the defence 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 fielding candidates in elections;
- 1 representative of each of the independent candidates contesting the presidential election;
- 1 representative for all independent candidates in parliamentary and local elections
- 2 representatives of the associations for the defence 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 Freedoms;
- 1 representative of the Directorate of Women Affairs;
- 1 representative of the National Guard
- 1 representative of the Police Force;
- 1 representative of the Directorate of National Motor Fleet 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 Civilian Protection in the Ministry of the Interior;
- The representative of the Budget Directorate at the Ministry of Finance;
- The representative of the Directorate of Public Freedoms at the Ministry of the Interior;

- The representative of the Directorate of Civilian Protection at the Ministry of the Interior;
- 2 representatives for all Trade Unions;
- 1 representative of non affiliated trade unions
- 1 representative of the High Commission of Nigeriens abroad
- 2 representatives of the Directorate of Information and Communication Technology;
- 2 representatives of the Ministry of National Defence;
- 1 representative of National Gendarmerie
- 2 representatives of the Ministry of Communications;
- 2 representatives of private media
- 3 representatives of legally recognized groups of women associations.

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

In **Benin**, members of the Autonomous National Electoral Commission (ANEC) 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 covering all socio-professional bodies or associations.

In **Cote d'Ivoire**, the Independent Electoral Commission (IEC) comprises members appointed also by presidential decree, upon proposals by Parliament, Institutions and various Ministries, movements that took part in the 2002 rebellion (on exceptional basis until the next general elections) as well as by political parties.

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

**Guinea Conakry** also has this type of tripartite composition of the INEC with 10 representatives from the majority party, 10 representatives from opposition parties, 3 representatives of civil society and 2 representatives from Government.

This composition including 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 Deputy Executive secretaries), a representative of the president of the country, two representatives of government, a representative of each of the political parties or coalition of political parties with an appointment based on 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**, following the Comprehensive Political Agreement, the number of members from the opposition was two times higher than that of the ruling government, however, the opposition and parliamentary majority now have (05) members each. Contrary to what obtains in most countries in the sub region political parties outside parliament have three (03) representatives elected by Parliament and the government appoints one member. It is interesting to note that, contrary to what pertains in the other **ECOWAS** countries, members of the Togo INEC are appointed by Parliament.

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 therefore do not have only politicians as members. This opening is noticeable in the composition of Niger's and Mali's INEC as mentioned above since associations which are permitted to make suggestions, include Trade Unions, the judiciary, the Co-ordination of the women's association and even cultural and religious organizations.

The **Cape Verde** Electoral Commission, called National Election Commission (NEC) is made up of five (05) members. Its members are elected by members of 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 reference 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 do not represent political parties but are expected to enjoy the confidence of a large political force represented at the National Assembly. It must be added that up until now, although no reference 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 stated in the law. Consequently, a member of Government, a sitting Magistrate, a member of cabinet, an elected political officer, and a member of a support group to a party shall not be members of the INEC or its branches. Similarly, top functionaries of the territorial administration (Governors, Chairmen and Deputy Chairmen of local governments, areas) are 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 defined 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 branches is incompatible with the functions of the members of Government, the Military, Paramilitary, Sitting Magistrate, 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 Mayors, chairmen of CRD, chairmen of area councils, and District Chairmen”.

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, in **Liberia** for instance, 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, meets the criteria of good morality and probity. It is also necessary to add that members of the Commission must not belong to or 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 precautionary 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 on proposals 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 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 regulated at least at the procedural level. Members of the Ghana 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 country a double restriction on the power of appointment by the Head of State, strictly speaking at the procedural level – through the need to consult 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 advocates. There is therefore a certain obligation to follow 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.

### 1.1.2 What kind of judgment can be made on all these different systems?

A priori, it may be tempting to limit the power of appointment. By erecting procedural obstacles, multiplying formalities, one can guard against the emergence of a presidential arbitrariness. This option may therefore turn out to be a positive one. It could however be tragic if the appointment of members of the Electoral Commission should become an opportunity to re-enact a "guerrilla war" between the various bodies involved, or, on the reverse, give rise to "bargaining" in relation to balancing of political forces. In this case, the effects will be the exact opposite to what is desired.

### 1.1.3 Qualifications required for becoming a member of an Electoral Commission

In general, the conditions which must be fulfilled to become a member of an Electoral Commission are not excessively rigorous. 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 regulations are silent on these conditions. The Commission is instituted, the appointment and status of members mentioned, but nothing is said about the very capacities of the members.

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 point, the INEC in Niger and in Lusophone countries, especially, **Guinea Bissau** are exceptions since members of the body are not appointed by virtue of their individual capacity but as members representing Institutions.

The "negative" formulation of conditions required to be member of the Electoral Commission involves excluding people who have been sentenced by law courts. In the case of **Guinea Conakry or Cote d'Ivoire** for example, it is indicated that persons who aspire to become a member of the Commission must not have been sentenced for a crime punishable by the deprivation of 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 impediments.

**Cote d'Ivoire and Ghana** share another trait which does not exist elsewhere: the need to comply with tax regulations of the country.

There are 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), not being a member of the security services (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 show some disparities if not some disorderliness that defy any arrangement. In fact, in some cases, it is the law or the constitution which stipulates the required age whereas in other cases, one would need to search for same in the Statutes or Rules of Procedure of the Commission to find 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.

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

Authorities and procedures for the appointment of members of the Commission		"Profile" of Members		
		A part of politically committed members	Non politically committed members	Others
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 in consultation with other Institutions			Senegal, Ghana, Sierra Leone, Liberia	
Appointment by another institutions, e.g. Parliament		Togo, Guinea Bissau	Cape Verde	



## 1.2. Renewal of the Bureau of an Electoral Commission

This item brings up 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 termination of the function of the members of the Electoral Commission: resignation or dismissal.

### 1.2.1 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 in **Benin**, **Niger** and **Mali**, the Electoral Commission has only 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 tenure of office 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 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 ad hoc body. The 4 members of the Permanent Administrative Secretariat (PAS) 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 register. 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**, the INEC is only constituted when elections are due as is the case in Benin. However, there is no administrative structure ensuring permanency contrary to the PAS/INEC in **Benin**.

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 declaration of the final results of the election. However, it is established within the INEC of Niger a permanent general secretariat made up of an administrative service and a committee in charge of the electoral register.

The same situation is seen in **Togo** where according to the law, the INEC is permanent but the function of the members of INEC comes to an end as soon as a new INEC is set up.

There is a second more frequent case characterized by a permanent 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 a term of office renewable once. This is the case in **Cote d'Ivoire**, **Nigeria** and **Senegal**, where a specific duration is assigned to tenure of members of the Commission, who work during this period, whether there are due elections or not. 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 functioning, even after the elections. Only the 'local Commissions' which were set up as well as other members of the Central Commission which are not members of the Bureau disappear.

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 upcoming election; 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 term of four years whereas that 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 tenure of 7 years,

re-eligible only once. It is presently being suggested that 3 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 ANEC**).

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 where the 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 term of office. The tenure 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 once a new INEC is established. The tenure 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 tenure of members of the Electoral Commission. The 1992 Constitution provides that the Chairman of the Electoral Commission shall enjoy the same terms and conditions of service of an Appeal Court Judge. This means that once he meets the requirements for maintaining his position, the Chairman of the EC is irremovable until the retirement age fixed at 70 years for an Appeal Court Judge. With regard to the two Vice Chairmen, while benefiting from the same type of protection, their conditions are slightly different from that of the Chairman. They enjoy the same terms and conditions of services as a High Court Judge. In other words, the Vice Chairman of the EC are irremovable so long as they meet the legal requirement for maintaining their position and this until the retirement age set at 65 years for High Court Judge.

The situation of the remaining four members of the Electoral Commission is different and rather ambiguous. In fact, the provisions of the Constitution and the law on the Electoral Commission, which are quite specific on the terms and conditions of the Chairman and Vice-Chairmen, are silent on the tenure of the other four members of the Commission. In practice, these members are expected to remain at their position until they retire, even if they intervene only intermittently. The Chairman and the two Vice-Chairmen of the Electoral Commission can request to benefit from their right to retire at 60 but they can also remain in their position for six months after the legal retirement age. (Constitution and Electoral Commission Law).

## 1.2.2 Anticipated termination of functions of members of the Electoral Commission

Concerning the anticipated termination of functions of members of the Electoral Commission, the following comments can be made: the situations vary depending on the context and the willingness to shield members of the Electoral Commission against arbitrary sanctions.

In this regard, the rules of procedure of **Benin's** ANEC only provide for an anticipated termination 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 an unfortunate gap. Whenever they are cited, these causes remain conventional: physical inability to exercising the mandate, resignation, etc. In the case of **Benin**, incidents linked to the dismissal of the Chairman of INEC some days before the elections held in 2007 are no doubt of the type that should push legislators to deal more comprehensively with the issue of anticipated termination of duties of the members of the Commission (Bearing in mind that **Benin** INEC is not a permanent body).

In **Cote d'Ivoire**, the provisions of Act 2004-642 of 14th December 2004 which governs the IEC are short but cover, undoubtedly, all the possibilities of anticipated termination of functions of members of the Commission. The laws stipulates as a matter of fact that these functions end following any physical or mental disability duly confirmed by a doctor appointed by the Constitutional Court upon the request of the Chairman of the IEC, or due to a resignation received by the Chairman of IEC or a dismissal by the Constitutional Council for failures 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, questions can be raised about their evasive nature when it comes to stating the reasons for forced resignation or 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 member of INEC cannot be sued, declared wanted, arrested, detained or judged for opinions expressed or acts committed in the exercise of his 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 termination of duties of the members of the Electoral Commission. For example, in **Gambia**, the

President of the country can dismiss any member of the Commission for: (a) failure to accomplish his mission, (b) any circumstance which disqualifies someone, (c) bad conduct. But before dismissing any member, the president must set up a tribunal of 3 High Court judges to establish the truth.

The same legal regime is in force 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) failure to accomplish his duty, (b) any circumstance which disqualifies someone, and (c) bad conduct. In this case, the President of the country must refer 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 be endorsed by the **Senate**. Dismissal is, however a more difficult procedure than appointment, since it requires precisely a 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 is the most detailed since it dwells on the dismissal procedure, which 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 magistrates. 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 provided that the termination of the 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 consultations with ANEC. On the other hand, if the incapacitation of the member is prolonged beyond 5 statutory meetings of the Commission, the tenure of office will be terminated; a decree provides for his replacement by another person from the same institution which he represented. This new member shall complete the remaining part of the tenure in question.

In spite of these statutory guarantees aimed at ensuring the stability of functions, member of the ANEC are not completely shielded from the arbitrariness of the

executive. This is illustrated by the unfortunate incident of the resignation of Moustapha Toure, Chairman of ANEC at the request of the President of the Republic. The former Chairman of ANEC said "The President of the Republic asked me to see him and this happened on 5th November 2009 at the palace. When I arrived in his office, he clearly indicated to me that he no longer trust me. He repeated on several occasions these words: "you are against me; you are fighting against my party'. The resigning INEC Chairman provided more details on the Head of State's intention: "Since I no longer trust you, he added, I am asking you to return the mandate I entrusted to you when this lost trust was not there. I asked the President to give me time to reflect and provide my response. He said no and requested that I tender my resignation before leaving the meeting. I did not comply knowing that the television cameras were ready to receive my statement. For me, the issue was not to give in, because I had to consult, after reflection, my family, friends and collaborators. I understood the President's intentions. I had to take into account what transcends the two of us, the future of the country and steering of its destiny. Meanwhile, taking a decision as demanded by the Head of State, in my view, required some time for reflection as the political future was at stake". (Interview with Moustapha Toure, Chairman of INEC). The events which led to this resignation show that, in spite of the legal guarantees, the status of member of INEC requires men of character capable of defying and resisting all pressures (See *La Gazette du Pays et du Monde* n° 37 of 10 to 17 December p. 11).

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 marked by their shortcomings. Sometimes, the issue of anticipated termination 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 nature of these bodies for the regulation of elections in West Africa ought to have led to greater precision as much as possible on the conditions 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 in **Nigeria** and in **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

already stated.

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: Duration of the tenure of the Commission and that of its members**

Duration of the members of the Commission		Duration of the tenure of the Commission			
		Ad Hoc Commission	Ad Hoc Commission Ad + SAP	Permanent Commission	
Permanent	Number of un-limited tenure				Ghana
	Number of limited tenure				Nigeria, Liberia Côte d'Ivoire, Senegal, Gambia, Sierra Leone, 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				

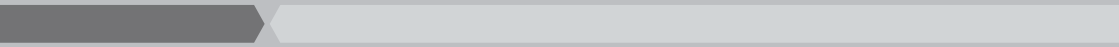
## Summary of Chapter I

- 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 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, Gambia, Nigeria) or in consultation with other Institutions (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 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 terms of office (Benin, Niger, Togo). In others, the tenure is intermittent only for some 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 termination of duties of members of the Commission, the issue was practically not 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.





# CHAPTER TWO



# CHAPTER II

## OPERATIONS OF ELECTORAL COMMISSIONS

The operations of the Electoral Commissions will be dealt with from three perspectives:

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

### 2.1 Internal Structuring

The 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 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 (known as bureaus in francophone countries) and comprise branches which cover the administrative demarcation of the country.

In **Burkina Faso**, the organization and operations of the INEC are determined by the decision of the Chairman of the Institution after deliberations of its members. INEC is endowed with a permanent administration led by a Secretary General who reports to the Chairman. The Secretary General, chosen among people occupying posts of category A of the administration of the territory, is appointed by Cabinet decision upon the proposal of the Chairman of the INEC. The accountant of the INEC is appointed by the Minister in charge of Finance. Beyond the minimum personnel, INEC may call for all the expertise which it considers useful for the accomplishment of its mission.

The branches 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 branches are set up by INEC only at the time of national elections and referenda, about six (6) months before the election and their tenure ends with the declaration 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 decision of the chairman of the Commission on the Rules of Procedure after deliberation of its members. This decision also determines the organizational and operational rules of its sub-organs, branches as well as those of the Permanent Administrative Secretariat (PAS).

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 by Cabinet upon proposal of the INEC. The administrative secretary is aided by an assistant.

PAS is responsible for:

- The management of the administrative personnel of INEC;
- 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 register and national electoral property.

Contrary to the situation observed in most of the Electoral Commissions considered in this study, Togo's Electoral Commission has branches only at the level of each district and in each area of Lome known as Independent Local Electoral Commission (ILEC). Each ILEC is made up of seven members, including 1 magistrate (Chairman), 1 member appointed by Government, 2 members chosen by the majority in parliament, two members designated by the opposition in parliament and 1 member designated by political parties outside parliament.

In **Togo**, unlike what is observed in the sub region, 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 Head of the local authority;
- One representative of the Mayor of Lomé Municipality;
- One commandant of the brigade of gendarmes or in his stead, one officer

- in charge of the district capital police station;
- The central police commissioner for the city of Lome the head of 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 General assisted by a permanent Deputy Secretary General. The two are appointed by a decree of the President of the Republic upon the proposal of the Chairman of INEC following consultations with political parties. They participate in INEC's work on a consultative basis and are independent from any power or authority except that of the Chairman of INEC as stated in Directive no 2010-31 of May 2010 on the Electoral Code.

The secretary general of INEC performs the following duties:

- Organizes the permanent General Secretariat of INEC;
- Manages the properties of INEC
- Manages the administrative personnel of PAS;
- Receives, manages and preserves any documentation relating to the elections, especially the electoral register;
- Prepares and submits the budget of PAS to government;
- Prepares and submits to the Chairman of INEC the budget of elections and that of the Committee in charge of the electoral register and that of the Administrative Committees (AC).
- Administers funds allocated to the Permanent General Secretariat and its structures
- Transmits each year to the Minister of the Interior a copy of the updated national electoral register as well as the annual report of activities of the committee in charge of the electoral register latest by 31 January of the New Year.

INEC may furthermore divide itself 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;
- 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 the rules of procedure adopted in a plenary session by 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 have voting rights are:

- Representatives of legally recognized political parties and fielding candidates;
- Representatives of the independent candidates;
- The representative of the Directorate of Political and Legal Affairs of the Ministry of the Interior;
- The 2 representatives of Associations for Human Rights and the Promotion of Democracy;
- The representative of the National Commission for Human Rights and Fundamental Freedoms;
- The 3 representatives of the legally recognized women's associations;

The new electoral code<sup>2</sup> has an innovation and features specific to Niger which are reflected in the establishment of a Committee in charge of the electoral register. Placed under the authority of the Secretary General of INEC, the Committee is led by a Coordinated assisted by a deputy. They are appointed for a three year term of office, renewable once. Other members of the Committee are:

- 2 rapporteurs, one representing associations for the defence of Human Rights and the other the State;
- 1 representative from each legally recognized political party
- 1 representative of the National Statistical Institute;
- 1 representative of the service in charge of issuing national identity cards,
- 1 representative of the High Commission on new Information and Communication Technologies;
- The Director of the Registry at the Ministry of the Interior;
- The Officer in charge of the computerization unit of INEC
- 1 representative of the National Geographic Institute of Niger.

Its role is to conduct an electoral registration in order to compile the voter's register, ensure the compilation of a computerized and permanent voter's register and update the electoral register as well as compile a new register when the need arises. Its operations are defined in a directive by the Chairman of INEC. It has administrative committees to enable it fulfil its mission.

<sup>2</sup> Directive n°2010-031 of 27 May 2010, on the Electoral Code

In the light of the above, it is obvious that the Commission also comprises representatives of other ministerial departments acting as advisers to the Commission as 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 when necessary. RECs are the concrete implementation units on the ground and NEC is the general supervisor.

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 effectively assume its role, the NEC is assisted by three permanent advisers:

- An adviser from 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 from the Ministry of Communications for the management of issues relating to public education and allocation of media slots;

A permanent adviser from the Directorate of General Support Services to the Electoral Process (DGAPE).

NEC holds weekly meetings 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 ask 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 voting.

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 has been 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 Region 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 Region<sup>3</sup>.

The ANEC coordinator in the region has a regional electoral committee (DEC) under his direct control which supervises the activities of the provincial Electoral Commissions (PEC), under whose authority the area Electoral Commissions (AEC) work. These commissions ensure the good performance of the tasks entrusted to the census agents and members of the polling stations (on the day of elections). For each region, a capital is designated, because each Regional Electoral Commission must be located in a regional capital.

The national office of ANEC is assisted by a technical committee made up of persons recruited by ANEC upon a call for applications which defines the profiles required. This committee helps the office to control the allocation of airtime 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 office 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. As an organ of ANEC, it is naturally dissolved together with ANEC once the elections are concluded.

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

In **Cote d'Ivoire**, the Independent Electoral Commission (IEC) is made up of:

- 1 Representative of the President of the Republic
- 1 Representative of the President of the National Assembly;
- 1 Representative of the President of the Economic and Social Council
- 2 Magistrates nominated by the High Council of the Judiciary
- 2 Lawyers nominated by the Bar
- 1 Representative of the Ministry in charge of Territorial Administration
- 1 Representative of the Ministry in charge of Security
- 1 Representative of the Ministry of Finance and Economic Planning
- 1 Representative of the Ministry of Defence
- 3 Representatives of movements which claimed responsibility for the

<sup>3</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 region and 3 coordinators for 2 region; now (at least since the electoral law of November 2007), it is 1 ANEC coordinator per region.

armed rebellion in 2002, subject to disarmament (exceptional until the upcoming general elections)

- 2 Representatives of each party or political grouping having at least a seat in the National Assembly or having won at least a municipal, regional, general council of district election.

In the light of the above, it is difficult to determine the exact number of members in the IEC.

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” a fully fledged organ,

Then, there is a “**Bureau**” which is an executive and managerial body. It is made of 8 members: 1 Chairman, 4 Vice chairmen, 1 Permanent Secretary, 1 permanent Deputy Secretary, 1 treasurer, 1 assistant treasurer and, all elected among the members of the Central Commission for a period of 6 years. The Chairman is elected for a period of 6 years non renewable. The tenure of other members of the Bureau is renewable once.

Finally, there are Local Commissions which ensure the representation of IEC at the local level. These local Commissions are subdivided into regional and provincial commissions, which are facilitating bodies, and sub-regional, community commissions and diplomatic representations, which are implementation bodies for electoral operations. The Local Commissions are supervised by members appointed from within the Central Commission. All local Commissions 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 Commission 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 rules of procedure. The office of INEC is assisted by an administrative secretary. INEC is represented by its branches 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 of a maximum 3 members per district.

In **Mali**, the National Electoral Commission has 15 members. It is represented throughout the country. The branches of the Mali INEC are constituted as follows:

- The Bamako District Electoral Commission is made up of 6 members, including 4 political party representatives and 2 civil society representatives;
- The Regional Electoral Commission is made up of 6 members, including 4 political party representatives and 2 civil society representatives;
- The Provincial Electoral Commission is made up of 6 members, including 4 political party representatives and 2 civil society representatives;
- The Consular or Embassy Electoral Commission made up of 2 political party representatives and one civil society representative.

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 (Autonomous National Electoral Commission) 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 members and is present in all the states where the electorate, i.e. citizens from Senegal in a given country, has a sizeable number of at least 500 individuals).

In **Liberia**, the National 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) Supervising the general administration of the Commission;
- (b) Assuming the role of the secretary to the Commission: attend meetings and prepare the minutes of the meetings;
- (c) Preparing and preserving information for the Commission;
- (d) Managing and supervising the administrative subdivisions;
- (e) Discharging all the responsibilities which the Commission might consider useful to entrust to it.

NEC equally has a legal division which is the legal arm of the Commission. The legal 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 Minister of Justice 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 at the request of the Commission;
- (d) Provide any legal support on the organization of elections as the Commission would wish.

There are also 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 agent (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 either to transmit messages from the Commission or convey messages from the grassroots to the top.

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 attached to or may support the Commission in the execution of its mission. The Executive Secretary and the other members are appointed by the Commission on the terms and conditions it has defined.

The Executive Secretary of the Commission is in charge of:

- The daily management of the affairs of the Commission;
- Taking notes and preparing the minutes of meetings of the Commission;
- Supervising 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 has 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 on the electoral law.

Discussions on Electoral Commissions centre mainly on these two 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 Commissions according to the scope

and intensity of their prerogatives. Thus, it will be appropriate to distinguish 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, have a set of roles which transcend the electoral register and encompass a regulatory function on democracy. Those ones will be referred to as Electoral Commissions with important prerogatives (Strong Central Referee Commissions).

### 2.3.1 Electoral Commissions with reduced prerogatives (line referee Commissions)

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

The ANEC of **Senegal** has some relatively important powers 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 register to the declaration of results. The Ministry of the Interior determines the sites for polling stations, prepares the electoral register and manages the electoral register under the supervision of ANEC. It ensures equal opportunities for candidates in terms of access to the media and this is done in collaboration with the agency in charge of media monitoring, the National Broadcasting Regulatory Council (NBRC). This is also applicable to the conduct of referenda. Nevertheless, ANEC is subject to some limitations, given that the Ministry of the Interior 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 ballot papers, establishment of polling stations, and choice of members of these polling stations.

The Senegalese ANEC must submit an annual activity report to the President of the country one month before the year ends at the latest, as well as a report after each election or referendum. The publication of these reports shall take place 15 days after their presentation to the Head of State. In Senegal, the study on the electoral process needs to mention the Ministry of the Interior which is the main administrator of elections. Unlike countries where Electoral Commissions are empowered to manage the entire electoral process, the Ministry of the Interior is responsible for the material organization of elections and referenda through its decentralized services. The temporal unit of the Ministry of the Interior entrusted with the organization of elections is the General Directorate of Elections (GDE)

established to better ensure the Government's involvement in the organisation of elections<sup>4</sup>. Governed by the provisions of article 14 to 18 of Decree no 2003 -292 of 8th May 2003 on the organisation of the Ministry of the Interior, the GDE appears as the main agency if not the keystone in the organization of elections in Senegal. In this respect, it ensures<sup>5</sup>

- The compilation and revision of voter's registers in collaboration with the Directorate for the Automation of the Ministry of Interior Files;
- Maintenance of electoral registers;
- Design, production, installation and conservation of electoral documents and archives;
- Organization and monitoring of the distribution of voters' identity cards;
- Control of conditions under which ballot papers are printed;
- Implementation and control of principles applicable in terms of electoral propaganda in collaboration with territorial authorities;
- Support to security services as far as the security apparatus deployable during elections is concerned;
- Provision of training for administrative officials, legal authorities and the elected on the electoral process;
- Production and design of electoral cards;
- Sensitization and civic education campaigns;
- Adaptation of computer tools to electoral needs; analysis of voting;
- Dissemination of technical information on elections, especially on the implementation of the electoral process and various statistics; support to legal authorities in the performance of their duties related to the electoral code;
- Preparation and execution of the budget for the revision of the electoral register and election in collaboration with competent authorities;
- Management of funds for the accomplishment of the mission entrusted to the General Directorate of Elections.

The Electoral Commissions that were established everywhere in Africa are in response to the concern of making 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 the hope not only of seeing a genuine multiparty democracy on the 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 state institutions, be they administrative or judicial,

<sup>4</sup> Article 14 of Decree no° 2003-292 of 8th May 2003 on the organization of the Ministry of the Interior

<sup>5</sup> Idem, article 15

are often seen as either being 'at the service' of the ruling government or as not being endowed, in terms of laws or deeds, with powers which can ward off the pressures put on them. Under these conditions, the established Electoral Commissions are expected to ensure directly the sanctioning of infringements on 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 on 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 invalidated: in what way can the Commission come in, does it actually have a power to invalidate elections or parts of it?

The second case involves 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 responsible for them. It is therefore more of a criminal offence.

Most of the time and for reasons easily understandable, this second aspect of the punishment is entrusted to 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.

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

The declaration of election results is out of the purview of the Senegalese ANEC. At the departmental level as at the national level, there is a committee in charge of vote counting. The committee is mainly made up of professional Magistrates. 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 contestations 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 must 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 declares the final results on irregularities which can compromise the genuineness of the election.

### 2.3.2 Electoral Commissions with important prerogatives (Central Referee Commissions)

Apart from the **Senegal** and **Mali** 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 other countries (**Guinea Conakry, Guinea Bissau<sup>6</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 register 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 registers, contribution to the civic education of citizens in terms of expression of suffrage, locations and density of 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 operations (security of ballot papers, transportation and transfer of the report 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 report 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) within a certain number of days following the declaration of the provisional results. ANEC is in charge of the reception and accreditation of observers and measures to facilitate their mission on the ground during the voting exercise;

<sup>6</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 register. It manages the list as established by the Ministry of Interior.

- During the post electoral period, the compilation 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 endorsing legislative and presidential elections) and the Supreme Court (in charge of endorsing 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 Cabinet which officially fixes this date and informs the citizens about it. Its function is strictly restricted to the management of elections. As a non-permanent institution, it is dissolved 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 conducts the registration of the electorate and controls and preserves electoral registers but the PAS/ANEC is responsible for the conservation and update of the register. It determines the conditions under which polling stations are established and takes into account the demographic and social data to determine the site for polling stations and registration centres. Nevertheless, the determination of the size 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. This is an innovation in Benin since until 1996, ballot papers were printed by the Ministry of the Interior. In 1999, 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 recognized 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 a voter. 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 entrusted 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 declaration of the results, the Benin law makes a distinction depending on the election in question. ANEC is not always competent to declaration results. According to Article 45 of the November 2007 law on the general rules for elections in the Republic of Benin (presently in force), 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 forwards them to the Constitutional Court for verification of regularity, consideration of claims and declaration 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 appropriate judicial authorities. It is only the Constitutional Court and the Supreme Court – depending on elections concerned – that are competent to sanction 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 submitted to the president of the country. This report is submitted 45 days after the declaration 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 registration, approve the conformity of electoral documents, order the printing and monitoring of ballot papers, ensure the material organization of the elections, guarantee equality in the distribution of airtime among candidates, and declare the results.

In **Guinea Conakry**, The Guinea electoral law<sup>7</sup> amended in 2009, clearly states that

<sup>7</sup> *The Law in force prior to the Directive no 015/PRG CNDD 2008 of 4th January 2009 on the management of the electoral process by the National Council for Democracy and Development (CNDD) to transfer the organization of elections to INEC.z*

the INEC is responsible for the organization of elections. It ensures the design, organisation, decision making and execution from the registration of voters to the declaration of provisional results. The prerogatives stipulated in the law are very important (control over the entire process, nomination of supervisors, verification of electoral material, review of election related issues) but does not include the organization of election. This was prior to the directive by the junta currently in power which makes INEC the main election management body. The Law of 22nd April 2010 on the amendment of the electoral code adopted by the CNT is full of similar provisions and confers on INEC the prerogative to organize any election and referendum in Guinea. To achieve its objectives, it can request for assistance from various ministerial departments, especially that of Territorial Administration. The prerogatives of INEC have therefore been expanded compared to the 2009 Law mentioned above.

In addition, the Constitution adopted by the CNT in May 2010 makes the INEC a constitutional institution. Besides, according to the said Constitution, its role would include the compilation and updating of the electoral register, organisation and supervision of voting operations as well as the declaration of provisional results.

In **Cote d'Ivoire**, The Independent Electoral Commission also ensures the preparation, monitoring and supervision of elections. Its prerogatives are as follows:

It is responsible for the registration of voters as well as the establishment and updating of electoral registers. It is also in charge of the printing and distribution of voter identity card. It manages the voter's register.

It determines the sites of polling stations and is in charge of the selection and training and dismissal of members of polling stations. It consists of 3 members (1 chairman and 2 secretaries), appointed by the IEC and the representatives of candidates or political parties. IEC is also empowered to decide who qualifies to vote, a prerogative which in some countries (Benin for example, as we have seen) lies with the judicial authorities.

The Ivorian Electoral Commission is consulted by government authorities to determine the date of elections and that of the commencement of electoral campaigns. It presents proposals to the government in this regard. It guarantees the right to campaign and the right to vote. The IEC also proposes to government the location and number of electoral constituencies.

The Commission takes all necessary measures to ensure equal treatment of election candidates in terms of access to official print media and broadcasting organizations through the National Broadcasting Commission (CNCA). It is worth

noting this particularity. 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 are two bodies for monitoring the press, one which observes the media during elections, and one which does so throughout the year. The Independent Electoral Commission, however, does not intervene directly 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 assignment of this exceptional competence reveals the willingness to deal with the electoral process in a comprehensive manner and allows the Electoral Commission to cover the various dimensions as much as possible.

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

The **Ivorian** IEC has the power to declare, definitively, 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 declare the results.

The IEC does not have any power to sanction. Irregularities observed can only be dealt with by the Constitutional Council and the legal authorities. The IEC only receives complaints, which it forwards to the administrative authorities or competent courts which, evoking the Ivorian law, decide "without wasting time". The IEC also has the possibility of inviting, in the first instance, the culprits to stop their acts, and, in case of their refusal, get in touch with the authorities that are entrusted with the power to sanction. Cases may be referred to the IEC by the administrative authorities, political parties, candidates contesting 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 this report are forwarded to the speaker of the National Assembly, justices of courts competent in electoral matters, and the Minister in charge of territorial administration. The report is published after the final declaration of results. Contrary to other countries, there is no specific deadline for the presentation of this report.

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

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 compliance of their activities with national laws; the Supreme Court is expected to monitor the regularity of the financial accounts.

In **Niger**, The Niger 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;
- Publication of provisional results and their transmission to the Constitutional Court;
- Ensuring the respect for rules and regulations on election matters;
- Informing the electorate;
- Taking the initiative and making arrangements for the smooth running of election and referendum processes;
- Informing and sensitizing voters to ensure high voter turnout;
- Ensuring strict compliance with the provisions of the electoral code.

### **2.3.3 Electoral Commissions with very important prerogatives(Strong Central referee Commissions)**

In addition to the powers 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 elections management bodies in terms of the powers and control over the electoral process. It has the responsibility to compile the electoral register and to review it on annual basis. 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 the Interior, 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 it empowered to receive.

It determines the sites of polling stations on the basis the geographical data available and even 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 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 the recruitment and training of staff of the polling stations and those hired for the election processes.

The Commission is also responsible for conveying election materials and ballot papers at the end of the polls.

It has the power to declare 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 it is at the constituency level or at the polling centre level.

The Commission gives accreditation to election observers and provide them with general information necessary for the accomplishment of their mission, when the need arises.

The Commission also has the duty of receiving 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 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 enforcement and monitoring of electoral regulations;
- The possible amendment of proposals (addition, abrogation, etc.) to the electoral code to be presented to Parliament;
- The registration and accreditation of political parties and independent candidates who satisfy the required minimal conditions;
- Suspension of accreditation when proven that the political parties or candidates are engaged in acts that will destabilise the country;
- The conduct of elections to public positions including 'chiefdoms' election and referenda, and the publication of results;
- The formulation and monitoring the implementation of rules for organizing elections into public positions in accordance with the constitutional and electoral laws, and in consultation with the Liberian President and all other relevant government agencies;
- The recruitment 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 demarcation of electoral constituencies based on the available population figures;
- Function as the only judge for objections relating to the election results. All appeals against its decisions must be referred to the Supreme Court.

The decisions of the Commission can be subject to appeal before the Supreme Court of Liberia. The Commission decides the time for registration of the electorate on the electoral register.

The list must be preserved as prescribed and must be made accessible to the public. Applications can be submitted to the registrar for the necessary corrections to be made to the lists. Every objection can be addressed to the registrar who forwards it to the magistrate, who in turn rules on 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 polling stations to serve these zones. The list of the polling stations must be displayed at least 10 days prior to the day of election. There is a sheriff of polling station who is assisted, if need be, by some rapporteurs.

Upon the directives of the Commission, the clerk of writs must publish all decisions necessary for the organization of elections at least 90 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 stations. 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 returning officer does the summing up of the results in his constituency and forwards same to the Commission.

The Commission collates all the results on constituency basis 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 at the Supreme Court of Liberia.

Every act of rebellion or revolt can be taken up by the Commission at its own discretion or request of the Ministry of Justice. The Commission can recommend the temporary suspension of any person (especially of uniformed men) who hinders any citizen from carrying out his civic responsibility or who punishes as a result of a vote cast. 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 audit of financial expenses of parties or independent candidates.

The Commission must be informed of 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**, the Commission is responsible for the conduct and supervision of registration activities of voters for all the public elections and referenda. It is also responsible for the conduct of the elections of the Speaker and Deputy Speaker of Parliament, the registration and monitoring of political 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 re-demarcates the zones based on the census results. The Commission ensures that voters' registers at both the constituency 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 courts.

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 transfers for people who have changed 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 provisional results of the election are made available, the Commission declares and publishes 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 civil chamber 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 to 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 submit campaign accounts to the Commission.

The Commission registers parties as well as coalitions 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 have 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 register.

In **Nigeria**, First and foremost, the Electoral Commission in **Nigeria** has a mission for civic and electoral education. It deals with the public dissemination of information necessary for this purpose. It can also formulate 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 objections to the electoral registers and further makes a periodic review of these registers. 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 determines 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 possibility targeted by the Nigerian law is the risk of breakdown of public peace and tranquillity.

Such a power is remarkable. This is worth stressing in the African context where the postponement of elections arouses, rightly or wrongly, 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 manoeuvres. The fact that such a power is conferred on the Commission is to naturally pacify political and pre-election climate.

It is this Commission which also determines the establishment and distribution of polling stations on both the national territory and the demarcation of

constituencies 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, depending on the election in question.

The Electoral Commission is not obliged to make a systematic report after each election; it is expected to make reports 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 body, the Commission is responsible for the registration of political parties. It also sees to the legality of their activities, i.e. their compliance with the constitutional norms (especially the prohibition of any parochial or discriminatory propaganda). It also controls the regularity of their accounts.

In conclusion, it is proper to stress one peculiar prerogative 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 parties to public service media. The **Nigeria** electoral law is even extremely strict 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 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 the 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 determines in part the failure or success of the Electoral Commission. However, the observation of the practice has enabled us to see that a very wide area of prerogatives is not always a factor of success. It may happen, as in the case of Mali, that a Commission endowed with lesser prerogatives is more efficient than a Commission vested with more powers. For an example, the exercise of all these prerogatives requires some resources. On a practical note, it is revealing that a number of Electoral Commissions complained about the inadequate resources allocated to them or about the stinginess 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		
		Reduced	Strong	Very strong
Power of sanction	Yes	Senegal	Cape Verde	Nigeria, Liberia, Gambia, Ghana, Sierra Leone,
	No	Mali, Guinea Conakry	Benin, Cote d'Ivoire, Niger, Togo, Guinea Bissau, Burkina Faso	

## 2.4 Financial System

“Democracy is priceless, though it has a cost” – so goes a saying. The truthfulness of this adage is confirmed especially in the area of elections. In view of the huge financial resources required 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 Benin ANEC is fixed by decrees by Cabinet. This budget has been uneven. It saw a steady rise between 1996 and 2006 and but was drastically reduced in 2007. In 1996, it actually rose to nearly FCFA 3.5 billion after implementation. In 2006, this budget went up to over 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 affected all the members of the ANEC, was decided as a result of criticisms arising over the cost of elections in Benin compared to other countries in 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 to which they are likely to fall.

The budget of the ANEC in **Benin** is decided by consensus between the government, ANEC itself and foreign partners, through the Ministry of Foreign Affairs, may provide logistics or financial support to 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 meet 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 replace the Commission in the event of failure. In the worst scenario, one could imagine the government granting inadequate resources to the Commission with a view to interfering in the election process.

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

The remuneration of the permanent members of the IEC is aligned on that of the serving administrative prefect. These are members of the office, a set-up restricted to 12 members who continue even after the holding of elections. As for the chairman of the IEC and the 3 Vice Chairmen, 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 an autonomous budget adopted by parliament. The electoral law aligns 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 elections and submitting it for the approval of government, and (b) managing the material and financial resources at its disposal. One can assume that the Commission also receives funds from the national sources as well as from financial and technical partners of the country.

Law N°002-2002/AN of 2002 amending law N°014-2001/AN of July 3, 2001 on the electoral code, stipulates that the remunerations and other benefits of the Chairman, the Vice-chairmen, the rapporteurs and other members of the INEC and its branches are to be fixed by cabinet decree, upon the proposal of the Minister of Finance and the Secretary General of ANEC at the rank of Chief Director in a ministerial department.

In **Niger**, the INEC has a budget for the organization of each election. It prepares the budgets which it submits to government. It ensures proper use of the financial resources at its disposal in accordance with the rules and principles of public accountability. The Chairman of the Commission is the authorising officer of the budget for organizing elections. A period of 2 months is given to INEC to submit a financial report to the accounts department of the Supreme Court and to the Auditor General.

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 Bureau under the direction and direction of the Chairman. The Chairman is the authorising officer for the budget of the Commission. To this end a public accountant is provided for him. The financial management of INEC is subject to the supervision of the Auditor 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 electoral law of June 2007, the budgets have been directly submitted to 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 must 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. At the end of each year, NEC must prepare a general report backed by an 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 firm 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 based on the funds of the 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 by 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 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 make some adjustment and identify priorities thus neglecting some how some aspects of its work.

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

The emoluments of members of the Commission are modest within the context of the country. The Chairman's conditions of services are aligned 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 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 law, 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.

With regard to sources of funding for the Mali INEC, there is no mention of the possibility of donations or support from foreign countries or development partners. In Nigeria, there are plans to establish a fund known as the Independent National Electoral Commission Fund comprising resources allocated for the running of the Commission, interests on investments made from the fund as well as donations to the Commission. The disbursement of the fund must be based on rules established by the Commission itself. The Electoral Commission of **Nigeria** must on its part submit to the Ministry of Finance by the 31st August of each year a budget for the following year and presents its accounts for auditing as soon as possible at the end of each budget year. This rule is more important than it appears.

The recognition of 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 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 for 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 resources allocated to for the Nigerian Electoral Commission are rather adequate. In any case, 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 prepared in consultation with state authorities in accordance with the rules of public accounting system. The resources necessary for the functioning of ANEC are recorded as a separate line in the general budget. These funds are authorised within the national budget and are available, as a rule, at the beginning of the fiscal year. The chairman of the Commission orders the expenditures. An accountant 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 development partners which take interest in the matters of governance and election assistance). Nevertheless, it seems the option chosen is to give precedence to state funding on a subject which actually bears on sovereignty. The remuneration of the Chairman of ANEC is equivalent to 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 activity). This remuneration is rather suitable. Up until today, there has not been any reported case of corruption.

The financial system of Electoral Commissions is facing a major challenge: on the one hand, the Commissions' autonomy in relation to the ruling government which are often tempted to capitalize on the fact of providing the financial resources to influence the Commissions in their interest; on the other hand, their non exclusive dependence with regards to the resources from outside the country, i.e. other states and multilateral organizations. In fact, the political situation in certain countries such as **Benin**, where members of parliament capitalize on the lack of financial resource as an excuse to try to extend their term of office and postpone the date of parliamentary elections, shows the need for the state to have control of the financial resources required for the organization of elections in order to follow the election timetable. The invalidation this decision by the Benin Constitutional Court does not completely render baseless the argument of lack of funds when sponsors are sometimes not ready to finance 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 the performance of these bodies which emerge with the democratic transition of the 1990s.

## 2.5 Evaluating the experiences of Electoral Commissions

In certain respects, the picture is quite uneven. 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 intervention in the electoral process, and the success or failure of elections.

Two pictures are presented:

It sometimes happened that the initial optimism was dampened, given 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 achievements. 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 undeniable success. This institution came to fit perfectly into the democratic transitions. Its ways of managing elections has not aroused any major protest and Benin 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, the 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 areas 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 was alleged to have made some deals and was dismissed by his counterparts 4 days to the first round of elections.

All these developments are of course regrettable and the Electoral Commission of Benin could 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 in 2008, the country has not experienced 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 inadequate resources. The available data bring to the fore recurrence of problems to dispatch election materials and the need to develop a decentralisation policy in this regard. Nevertheless, the legitimacy 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 rather mixed. There are two cases in point. First of all, it happens that the quality of work done by the Commission varies considerably: at times it performs well, at other times it does not. 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 moderated. 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 it is confronted with, in addition to dealing with common complaints on the funds allocated to the Commission.

In the case of **Mali**, the crisis occurred in the aftermath of 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 organize elections lies with the government – more precisely with the Ministry of the Interior and the Department in charge of elections – and the Electoral Commission has no other role than to supervise elections and ensure their regularity. The mixed feature of the Malian experience is due to the 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 is undoubtedly affected by the peculiarities of the present Ivorian political situation. The political arrangements tend, in fact, to replace 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 logic of law and predictability which it entails do not correspond at all with the logic of

politics, made out of precarious equilibriums and momentary alliances. Such a situation is indeed not imputable to the Commission but certainly does not favour its legitimacy. The main lesson from the Ivorian situation is that it brings to the fore 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 various 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 unresolved. Thus during the presidential election of February 2007, ANEC was still demanding two weeks to the holding of the elections the transfer of the necessary funds for the accomplishment of its tasks. The deadline of 15th 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 root of the boycott of the 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 **Senegal ANEC**. Countries such as **Nigeria, Togo or Guinea Bissau** also face this problem.

It is necessary to declare that under some extreme assumptions, 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 reputation 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 stem from the design and the legal texts which set it up, and not from 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 however been observed that the **Nigerian Commission**, from the view point of its constitution and privileges, was one of the most prepared body 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.

## 2.6 Is it possible to have an ideal Electoral Commission?

For the purpose of this study, is it possible to bring out criteria assisting 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 in the definition of the Electoral Commission. Countries such as , which democratized from the bottom through a renegotiation of the rules governing 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 in the past proved to be relatively effective in the organization of elections as was in the case of **Senegal** in 2000 and **Cape Verde** in 1991, the task of the Electoral Commission was inevitably limited to the supervision of the electoral process, whereas Electoral Commissions were endowed with very important prerogatives when 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**) and Lusophone countries (**Cape Verde**) compared to the Francophone countries which are rather characterized by a presidential system of government, which makes the independence of the other institutions from 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 scope of the Electoral Commission show to a very large extent these political power relationships. The demands for a strong Electoral Commission 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 appointing authorities of members of the Commission (**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 worse 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 a permanent 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 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 including the budget of the Electoral Commission in the annual national budget 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 ECOWAS countries.

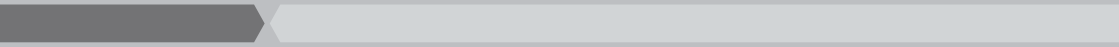


## Summary of Chapter 2

- 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 demarcation of the country.
- The principles of internal structuring of electoral Commissions are distributed, on one hand, between the constitutional, legislative and regulatory texts governing them (notably in the Anglophone countries and Niger) and the texts resulting from their self-organizing ability on the other.
- Different types of electoral Commissions can be distinguished by their scope 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 demarcation, monitoring of the functioning of political parties, etc.
- 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).
- In all the cases under study, electoral Commissions are expected to present a report to the competent 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 Government in terms 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.

# **PART TWO**

## Management of elections in West Africa



## 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 are or 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 must necessarily be addressed by regulations on election management and Electoral Commissions.

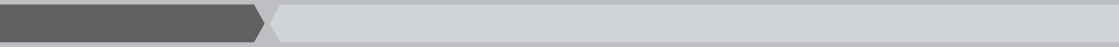
Secondly, every major issue and concern will be identified, wherever possible with illustrations. As a matter of fact, these are comments made essentially in the West African sub-region on methods that may be regarded as examples of "best practices" or "practices to improve upon" (if not poor practices). 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 helps, on the one hand, to avoid considering the various solutions adopted in different countries of the sub-region as optimal 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 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 does not ultimately provide or contribute to finding solutions to practical problems that arise so often during the organisation of elections in most of the young Democracies of West Africa.



# CHAPTER 3



## CHAPTER III

### PROBLEMS RELATED TO THE MANAGEMENT OF ELECTIONS IN WEST AFRICA: SOME GOOD AND POOR PRACTICES

Since the third wave of democratization 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 raising a number of important questions that require relevant answers if one wants to ensure quality 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 Government in the electoral process are issues that deserve serious brainstorming if we are to improve the quality of elections. Some problems have already been highlighted 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 Government in the electoral process. In other words, how to segment the tasks required in order to manage elections and to apportion them to Government, the Electoral Commission and other state institutions for qualitative elections?

The degree of associating Government 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 issue 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 so that they can be sustained by the economies.

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 various Institutions in the electoral process. But it also has a link with 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.

Furthermore, 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 (described as an example to improve upon) 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 tenure 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 if only partially, on several dimensions of the performance of the Commission.

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 possibly its renewal.

These factors may also affect the stability and legitimacy of the Commission. Indeed, it will be very difficult for a Commission 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 itself. 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 duties 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 to the extent that it does not 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 necessarily unique (that is to say there is no single solution applicable everywhere). The evidence is that a review 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 best and poor 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 Commission 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 tenure of the Electoral Commission and its members, comes from Ghana. On July 06 1993, the Ghanaian parliament passed Act. 451 establishing the Electoral Commission entitled "The Electoral Commission Act". Under this act Ghana's Electoral Commission was established with 7 members: one Chairman, two Vice-chairmen and 4 other members.

But the specifics that make the Electoral Commission of **Ghana** a good example in terms of what interest us 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, cannot be relieved of their post (unless they commit 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 hold their position 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 tenure and that of the Commission is 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 the other Electoral Commissions as the renewal of mandates does not depend on political power.

An example to improve upon: **the ad hoc Electoral Commission**

Considering the models of Electoral Commissions implemented in the region, some countries may be presented as 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.

It is true that in the countries in question (with the exception of **Mali**), a Permanent Secretariat (PS) of the Electoral Commission is set up to manage the transition period between two elections. However, these Permanent Secretariats have limited functions (prerogatives) compared to the functions (prerogatives) conventionally entrusted to Electoral Commissions.

In **Niger**<sup>8</sup>, for example, the PS is responsible for managing the properties of the INEC, including electoral materials. It has lost the right to update and manage the electoral registers to the Committee in charge of managing the register. However, the PS has retained the right to ensure the conservation of the electoral registers as well as the provision of information to those who make the request. With few differences, the situation is almost the same in **Togo** where the PS (known as the General Secretariat of INEC) is authorized to only keep the electoral register.

**Benin**, with its Permanent Administrative Secretariat (PAS) of the ANEC (Autonomous National Electoral Commission), is in the same situation (that is to say the ANEC is established on an ad hoc basis with a Permanent Secretariat) with some nuances, however. In the case of **Benin**, PAS is authorized to maintain and update voter lists, prepare the budget for future elections, disseminate electoral regulations, etc. Despite the different forms mentioned, these models still pose problems.

Indeed, the ad hoc nature of the Electoral Commissions in question, despite the existence of PS, is among the factors that will affect the quality of elections and the level of performance of various Commissions 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 upcoming election;

<sup>8</sup> Electoral code: decree no. 99-37 of 4 November 1999.

- For the committee to ensure appropriate planning activities of the electoral process, since it does not control the period of its composition and 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 register, among others. Since the establishment of CENA, only one has benefited from the legal time frame for the preparation, that is to say at least 3 months before the election.

## Box 1

### Tenure of the Electoral Commission and that of its members

It is clear that the issue of tenure of office for 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 elections management by paying attention to a number of factors in the choice between permanent a Commission and an ad hoc Commission. One could, for example, pay attention to the issues below.

1. If the Commission is entrusted with almost all the tasks of the election process,
  - i. It is preferable that it is made permanent to the extent that the tasks of the election process are accomplished practically from one election to another
  - ii. When the Commission is ad hoc
    - 1- it would be better to install it early enough so that it has sufficient time to fulfil its mission
    - 2- to provide a Permanent Secretariat with missions sufficiently expanded to perform the necessary tasks between elections and provide relevant support to the ad hoc Commission
    - 3- ensure that the running of the Permanent Secretariat does not entail costs that are too high in relation to the state budget.
2. If the Commission shares the tasks with other institutions,
  - i. if its role is limited to the supervision and control of the electoral process it should
    - 1 – be installed early enough so as to provide it with enough time to follow all the important stages of the process, for example voter registration
    - 2 – be given the necessary resources and properly positioned in the institutional framework of the electoral process so that the Commission can properly play its role
  - ii. If it has a role to play in the technical management of the process, it is preferable to
    - 1- install early enough if it cannot be permanent, taking into account the tasks of the planning process for it to make a relevant contribution; and
    - 2 - ensure it has the necessary resources for the preparation and implementation of tasks assigned.

### 3.1.2 Conflicts between models of Electoral Commission

One of the first issues confronting government and political leaders of a country who 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 between the Electoral Commission and the Public Administration, in other words, the degree of involvement of the latter in the electoral process that must be tolerated without compromising the expected quality of the process.

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 handicap 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 nearly the same if the relationship between the agencies (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 unique and applicable in the same manner everywhere.

Despite and because of the 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 on the other hand to recognize the good and/or poor practices in the region. A distribution of roles and coordination between election management Institutions could be considered good if it fulfils some preconditions:

- 1- The tasks are assigned to the agencies best equipped to accomplish them (a form of complementarity in the distribution of roles);
- 2- 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 automatically lead to the expected results;
- 3- 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 poor practices can be appreciated through both the content of the legal framework of elections and a review of the management of past elections and in 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 the 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 Electoral 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 regulatory measures (that is to say make rules) as it deems necessary for the proper management of the electoral process. These prerogatives 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>9</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 considered as 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 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 to the electoral process (DGAP), which is under the Ministry of the Interior and is an important component of the electoral institutional machinery besides the Commission. In accordance with article 2 of the regulation stated above, the DGAP provides technical, administrative and logistic support as stated in the electoral code. Its functions are to:

<sup>9</sup>The emphasis is ours

- Study and propose improvements to the electoral system and prepare the necessary draft regulations to this effect;
  - Ensure voters' registration;
  - Collaborate with the National Electoral Commission in the process of taking actions related to elections;
  - Collect and process all information on electoral materials
  - Conduct legal, statistical and electoral sociology studies to improve the electoral process to ensure full and effective participation;
  - Take charge of the production and distribution of ballot papers in accordance with the law;
  - Plan and coordinate the technical, financial, administrative and material support to the electoral process.
- In addition, the DGAPE, in collaboration with the NEC, is responsible for:
- Providing technical support to local electoral commissions;
  - Approving the budget of local commissions and their integration into its own budget<sup>10</sup>;
  - Drawing up a schedule for activities within the electoral process;
  - Preparing elections budget (by including budgets of local commissions);
  - Identifying and selecting the necessary electoral material and controlling the award of contracts for their procurement;
  - Deploying electoral material (both for the registration and polls) on the ground; Etc.

The Electoral Commission supervises and takes the necessary steps to ensure the regularity of the process. Today, **Cape Verde** is well known to have an effective electoral system. The model adopted by **Cape Verde** functions on the basis of sharing roles between the Electoral Commission and Public Administration Services. Within this electoral institutional framework, the role of technical support to the organization of elections is entrusted to the General Directorate for Support Services to the electoral process (DGAPE) which is a department of the Ministry of the Interior. The Electoral Commission, on its part, supervises and takes the necessary measures to guarantee the regularity of the process.

#### **An example to improve upon: The Commission where tasks are not clearly divided (e.g. Guinea<sup>11</sup>)**

Unlike the good examples presented above, there are cases 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 actual sharing of roles. The relationship between the various

<sup>10</sup>In the new electoral law, local commissions submit their budgets directly to the Ministry of Finance.

<sup>11</sup>The information provided here 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 L/95/011/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.



agencies involved in the process to ensure qualitative elections is not properly articulated. The consequences of this situation on the performance of the Commission and on the quality of elections are obvious and include the following:

- Tasks which are considered necessary, indeed essential for the proper conduct of elections will not be completed 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 to organize and function due to a poor combination of representatives of institutions.

The provisions of electoral laws on the Guinean Electoral Commission<sup>12</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 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".

No rules are provided regarding the management of elections by INEC. Is it a structure that has specific tasks 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 technical features of ballot papers are set by regulation and communicated to ... the INEC ...", while it is the Electoral Commission which is responsible for this operation elsewhere.

It is worth noting that the Guinea electoral law has undergone some changes to the extent that it is the INEC which is the "institution responsible for the organization of all political elections and referenda in Guinea" (Article 2 of the electoral code currently in force in Guinea). In spite of this development, it is still stated in the same article 2 that the INEC "shall be technically assisted by ministerial departments concerned by the electoral process, especially the Ministry in charge of territorial administration". Without further details, the operationalisation of this support may become problematic as observed during the management of the 2010 presidential elections by the INEC.

Although the case of Guinea is an extreme case, the Electoral Commission of

<sup>12</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.

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 on elections), 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 entrusted 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 and permanent structure for the management of elections. 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 observed in **Senegal** where the opposition has challenged the central role of the Ministry of the Interior and the timid role of CENA in contravention to the electoral law, thereby eroding the legitimacy of the electoral system.

## Box 2

### The conflict between the models

With regard to the distribution of roles among several institutions in the management of the 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 Commission that administers the entire electoral process, one should ensure that:
  - i. It has the means to accomplish its mission: sufficient time, human, financial and material resources;
  - ii. It has the necessary authority (part of the powers conferred upon it) to manage all aspects of the process;
  - iii. It enjoys adequate assistance it may need from other state institutions.
2. For a Commission that shares the management process with other agencies,
  - i. If it must have a role in the management of the elections, ensure that:

- a. It is given at least the following tasks:
  - 1 The determination of who may vote;
  - 2 Reception and validation of candidates;
  - 3 The organization of elections;
  - 4 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 well articulated;
  
- ii. If it does not have a role in the technical management of elections, that is to say if it is only an organ of supervision, ensure that:
  - 1 It is installed in time (if it is not permanent) to monitor and control all the major stages of the electoral process;
  - 2 It is assigned, in all decision-making frameworks in the management of elections, the position relevant to the monitoring and control;
  - 3 It has adequate means to accomplish its mission.

### 3.1.3 Autonomy or independence of Electoral 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, the recourse to Electoral Commissions was motivated by the need for neutrality, impartiality and reduction or complete elimination of the effects 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 Commission vis-à-vis state institutions or political parties.

By autonomy or independence of an Electoral Commission, we certainly do not 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 to act in a way that is

most compatible with flexibility requirements of the electoral context. 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 of a Commission could largely depend on precautions that are taken, for example:

- In the implementation of the Commission's management control and the behaviours and attitudes of its members, it is necessary that special attention is paid to the choice of mechanisms and institutions to control the Commission and its members so as to reduce both the risks of exploitation of the control and 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;
- In establishing relations between the Commission and other agencies of the electoral process, if these relationships are not properly articulated, they could lead to a 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. This could make the freedom of action and the room to manoeuvre of the Commission dependent on the actions of such institution, thus reducing its autonomy.
- To ensure that the environment is motivating enough for members to be willing to effectively use the resources at their disposal to preserve the autonomy of the Commission. 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.

The 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 (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 major 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 (for example, in relation to the provision of resources and the involvement of public services) and judges who deals with 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 officials 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 office of the Commission and that of its members, (b) the background of commissioners, including the links between them and the political actors, and (c) the working conditions of members, i.e. essentially the emoluments of different categories of members, the means provided and 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 office of the Commission and that of its members, has already been discussed above. Also in this second category is the background 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 its independence from any person and 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- Leave the freedom of choice of resources (e.g. appointment of persons required for the proper organization of the electoral process, regulation where necessary with penalties for their crimes, etc.) to 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 a posteriori 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 inclusion of expenditures, including salaries, fees and pensions in the budget of the state (consolidated fund). This avoids debates during the electoral process on the availability of resources, opportunity costs and other delays that result in the organization of elections;
- e- Are very clear about the fact that obstructing and interfering with the Commission's work are considered as crimes.

All the above elements mentioned under the legal framework for elections in Ghana help reduce the risk that the country's electoral Commission finds itself 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 background and procedure for selecting members of the Commission, 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 of members of the Commission being 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 emoluments of members, especially as regards the Chairman and Vice-chairmen are clearly "specified" - through their assimilation to positions in public service - by law. This reduces the possibility of influence of members of the Commission 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 can help increase the chances that the Commission is independent, and, in case of misuse, lead to the weakening of the autonomy of the Electoral Commission. This is the case in several countries of the sub-region, including **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 an unavoidable handicap to 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 two 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 at the time;
- 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 commission. 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 Niger 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;

The emoluments of members of the Commission are determined by cabinet decree, 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 which thus has the potential means to give incentives to members in one direction or another.

### Box 3

#### The autonomy of the Electoral Commission

It is unanimously recognized that the autonomy of the Electoral Commission, whatever its place and role within the institutional setting and electoral process, is essential to guarantee quality elections. It is also agreed that the autonomy of Electoral Commissions is neither spontaneous nor inevitable; rather, it is to a large extent the result of measures taken deliberately by political actors, including legislators. Possible provisions include the following:

1. Regarding the protection of the Commission against external influence, there is the need to ensure that:
  - i. The procedure for determining and making available the resources necessary for the management of the process that is within the purview of the Commission reduces the risk of its exploitation by other institutions and / or other actors in the process.
  - Record operational and management expenses in the general state budget and specify the conditions for the release 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 electoral process. For example, align the salaries with those of public services that are 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. Take measures that will prevent the arbitrary downward review of salaries of members of the Electoral Commission;

- Give precedence to a priori controls<sup>13</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) over simultaneous control which give the chance to those in charge of controls to influence the Commission in the management of elections and introduce delays in the management of elections;
  - Consider the possibility that the procedures for procurement and for the proper management of resources may not always be met without however compromising the judicious management of public resources.
- ii. The tasks that pertain to the Commission as well as the functions and privileges accruing to it are clearly defined:
- 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;
  - Avoid modes of composition of branches of the Commission which reduce the minimum required authority. This is the case, for example, when members of the national Commission and those of the branches are appointed by the same groups (political or otherwise). This may make it difficult to operationalize the latter as it can reduce the authority of the national Commission and its autonomy;
  - Ensure that the provisions relating to the prevention and possibly sanctions in case of indiscipline and obstruction of the Commission are applied.
- i. The tasks assigned to other Institutions in the process are done in a proper and timely manner to ensure that this does not undermine the autonomy of the Commission:
- Ensure that the poor functioning of other institutions does not influence the performance of the Commission and its autonomy;

<sup>13</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.

- Give the Commission most of the major tasks of the electoral process;
  - 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.
- i. Encourage members to adhere to the autonomy granted them by the law by ensuring that:
    - 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;
    - 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 within the Commission
  - ii. Increase the likelihood that any misconduct of the Commission is identified and punished. For example by:
    - Avoiding, 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
    - 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 clear-cut division of tasks among actors are taken to ensure that each category of actors in the electoral process knows what to do and when and how to do it to guarantee quality elections. It is not necessary to dwell extensively on the need to prepare all the actors in the process since the effects of lack of preparation are obvious and easy to foresee.

In the remainder of this section, emphasis will be laid on the preparation of election officials - that is to say members of polling stations and registration teams as well

as other actors in the electoral process. Indeed, the electoral process would necessarily benefit from the proper preparation of all actors who are involved. These include media practitioners, 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 the important links in any electoral process provide an adequate and timely contribution to the quality of the said process. It is absolutely essential to have a good understanding of the electoral legal framework, be it only in relation to provisions relating to their duties, rights and responsibilities. It is equally essential that precautions are 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 of polling station to polling agents who are not adequately trained or do not understand their duties and obligations.

#### 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 of the Commission 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 the non involvement of candidates (or parties) in their selection. 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 reduce the time needed for that.

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

In the same way that some measures, whenever they are taken within a legal context, help to reduce chances of poor 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 Commission 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 under the same conditions;
- c. The law is either flexible or does not provide the criteria to be met for people can be an electoral agents. This engenders the risk of unqualified people operating as electoral agents (**Benin**).

#### Box 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. Putting in place, preferably, a permanent Commission so that it can have enough time to prepare elections, including the training of electoral agents;
2. Setting 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 elections
5. Adopt an appropriate method of training for the electoral agent. One can for instance
  - i. 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 legal framework of the elections

### 3.1.5 Restricted missions of Electoral Commissions

Another issue that demands 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 an inappropriate 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, a review of 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 **Mali** 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 pinpoint 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 identify models of task distributions and their demands in terms of legislative measures required for their efficiency.

#### A good example: The Liberian Electoral Commission

In terms of task distribution between the different stakeholders in 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 instructions. 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.

#### An example to improve upon: **The Benin 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 time frame. This made it difficult for the Commission to carry out some of its missions such as the establishment of the electoral register which has almost 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.

## Box 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. For a Commission in charge of the totality of operations
- i. 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.
- ii. 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 assigned to it
  - There is an administrative committee (like a permanent administrative secretariat) to ensure the implementation of necessary tasks between two elections

**For a Commission which is partially in charge of the electoral process, it should have:**

- i. 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
- ii. A role in the technical and practical management of the process and be provided with all the resources 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 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 institution 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 body 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 background 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 body. 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 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 detrimental to the quality of elections.

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 low. 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 based on experiences observed in the sub region.

#### 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 Benin Electoral Commission**

As an example that needs to be improved, 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 educational 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 politicized.

## Box 6

## Number and structuring of 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:
  - i. The control and supervision of the process is easy and realistic;
  - ii. The centralization of the results and eventually the declaration of provisional results at the local level could be easily done and in the shortest time limit. This helps to declare provisional results quickly at the national level and decrease considerably the risks of electoral fraud in the process;
  - iii. The number of people for each branch should not hamper the proper functioning of the branch;
  - iv. 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:
  - i. Each lower level is set up under conditions that encourage the adoption of a behaviour that fits the hierarchical relations. Particularly important are:
    - Members' background, 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 qualifications;
    - The conditions of recruitment: qualification criteria; avoid that the qualification criteria at the lower level are more stringent than those of personnel at the higher levels of the Elections Management Body, etc;
    - 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 of operationalising the electoral process**

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

The model of involvement of the political class (representatives of political parties and/or candidates for the various elections) in the functioning of the Electoral Commission – known as “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, the level of responsibility of its actors, 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 involvement 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 of elections. Given the fact that only the political management of elections is discussed here, only the first point, i.e. factors likely to influencing the level of political actors' trust in the management of Electoral Commission, will be discussed in this section.

In view of 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 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 they will be reassured without compromising the quality of elections 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 them at each level of the election management body are likely to contribute to 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 place them so that they could follow the electoral process; it is 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 demand 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 necessarily 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 associating 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 right 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 Benin 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 2007-25 of November 17th 2007, relating to the general regulations for elections in the Republic of Benin currently in force, political actors appoint 16 out of the 17 members of the ANEC.

The same goes for the composition of the ANEC branches which are established at three levels: departmental, provincial 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 Provincial 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 **Benin** 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 Chairman or the Vice-chairman, 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-compliance 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 to electoral agents (registration officers 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 an understatement.

On the contrary, the consequences of the extreme politicization of the ANEC<sup>14</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 opportunistic and strategic purposes;
- Gradual but constant loss of the credibility of the 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.

## Box 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 likely to contribute to a relevant participation of the said actors in the functioning of the Electoral Commission. To determine the factors in question, let's remind ourselves that the main objective of involving 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. (1) Things that should be avoided:
  - i. The involvement of political actors in the direct management of elections through the Electoral Commission;
  - ii. The use of proportionality as the criterion for determining the size of the representation of political groups in the Commission;
  - iii. The involvement of every political stakeholder (especially every legal party) without any discrimination in the management of election
2. (2) Things that should be done:
  - i. The association of political actors as observers in the work of the Commission, decision-taking process and implementation;
  - ii. The creation of a framework for permanent discussion between political actors and the Electoral Commission to solve any apprehension and difficulty;
  - iii. 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 when they deem it necessary.

<sup>14</sup>It is necessary here to understand the ANEC and its subdivisions (up to the level of electoral agents).

### 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 collective initiative, 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 institutions involved in the electoral process is effectively established and measures are taken for its proper functioning. The necessary relationships have to be established between the Commission and the Government (the executive) to ensure that resources are actually 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 allocation of resources (budget) for 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. 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) etc.

#### 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. These involve elements that can be considered as good practices to be adopted in establishing relations between the Commission and other institutions in the electoral process. The



following examples can be cited in terms the good relationship between the Commission and:

- a. The executive in Ghana, conditions provided for the determination of the budget which ensure a certain protection against any possible 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 various 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**) etc;
- c. Civil Society Organizations, 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**) and involvement in the sensitization of citizens .and observation of the electoral process as is the case in **Benin and Ghana**.

### Box 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 lack of clarity in the relationships (or a bad structuring of the relationship) between the Commission and the other Institutions which would adversely affect the quality of the electoral process. Therefore, it is possible to:

1. Entrust the essential tasks of the electoral process to the Commission (this already decreases the need to liaise with other institutions) and provide it with sufficient resources to carry out its mission; further, one should:
  - i. Avoid that another Institution of the electoral process has a discretionary power over the determination of the resources and conditions and their release for the Commission's work;
  - ii. Ensure that there are regulations which provide for the framework ( and possibly conditions) of collaboration with actors such as security forces, the media, civil society organisations, political parties, etc.;

- iii. 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;
  - iv. 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 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. There is the need, for example to:
- i. Clearly define the roles of each Institution involved. This is the starting point for a good structuring of the tasks between many actors;
  - ii. 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 that can help address possible failures in the course of the process.

### 3.2.3 Anti-fraud mechanisms to ensure the genuineness of the process

To guarantee a genuine process, meaning the implementation of measures 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 a genuine 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 and this has been the situation since the beginnings of democracy till today. They occur in most Democracies, 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 the consolidation of the young Democracies of West Africa and for their 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 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 electoral fraud and corruption.

The search for solutions to the challenge mentioned above needs to take into consideration a number of factors that help determine the capacity of the Commission to fight against electoral fraud. The relationship between the Commission and the judiciary as already mentioned, as well as those that should bind the Commission and public security forces, is an important part of the issue. It is also important to determine in a relevant way a principle of subsidiarity 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 and between the Commission and its branches.

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 voters, Institutions or administrative procedures.

A good example: **Some best practices**

At this level, since there is no unique example of a particular country that can be used as a model regarding provisions 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 as good examples in the sub-region<sup>15</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 approach 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 arriving at a consensus with the actors of the political class);
- Establishment of the electoral register: follow the examples of many countries in the sub-region (Ghana, Sierra Leone) in establishing permanent and electronic electoral registers;
- Electoral campaign: take necessary measures to ensure equitable rights for every actor during this phase of the electoral process (Ghana, Benin, Gambia, etc.)

b. **On the election day**

**Voting:** choose the duration of the voting period and the size of polling stations (number of voters per polling 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 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, etc.**)

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 etc.**).

<sup>15</sup>It is thus not necessary to present the less positive examples.

## Box 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 for 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 fraudsters as well as to identify and punish any election fraudster.

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 in 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 devices to be converted into electoral victory if precautions are not taken.

Thus, it is necessary to:

- i. Ensure the minimum access to the media for every candidate, regardless of his income;
- ii. Reduce the possibility of using money to influence the electorate, for instance, by forbidding the distribution of goods and other largesse during the election period;
- iii. Reduce, as much as possible, the possibility of people using their position in government (distribution and inauguration of public policies) during the electoral period to influence the electorate;
- iv. Plan for adequate means to control acts of electoral fraud or corruption. For example, provide resource to the Auditor General or its equivalent to look into electoral expenditures.
3. Adequate measures are taken to dissuade potential fraudsters:
  - i. Adopt actions that will increase transparency in the electoral process;
  - ii. Reduce discretions of the actors of the electoral process, especially when they are not needed.

4. Adequate measures are taken to identify and punish fraudsters:
  - i. Increase the responsibility of actors in the electoral process;
  - ii. Develop a systematic way to detect actions of electoral fraud;
  - iii. Develop a systematic way to sanction people convicted of electoral fraud;
  - iv. Reduce the involvement of political actors in the direct management of elections; this reduces the chances of sanctions against fraudsters being craftily presented as witch hunts.
5. Adopt measures that enable actors of the electoral process to enjoy their rights, which reduces the possibility of electoral fraud:
  - i. 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 registers

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 register is one of the key components of any electoral process. The preparation of the electoral register, its conservation and updating are not necessarily simple exercises and may be subject to manipulation by politicians. A faulty electoral register – 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 register in any democracy, whatever is its age and degree of consolidation, is undoubted. The electoral register 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 register is not a necessarily easy exercise. This exercise can be handicapped by genuine 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 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 register in order to compromise the outcomes of elections in their favour. All this constitutes risk factors for the reliability and accuracy of the electoral register.

An incorrect and biased electoral register 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 register, the rationale behind democracy is hence compromised. In the first instance, where citizens are excluded from the electoral register, 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 register 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, aside from technical and financial means, the need to take measures to guarantee a register 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 register are crucial in guarding against the risks of deliberate or inadvertent bias.

A good example to follow: **The case of the Electoral Commission of Gambia**

Monitoring the management of elections in the sub-region, especially with regards to electoral registers, 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 possibly 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 registers, while it is not easy to identify a good example from all angles within the region, on the contrary, it is easy to pinpoint at least one bad example. This is the case in the Republic of Benin where the modalities for the establishment of an electoral register 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 register 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 register 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, etc.

This disastrous situation and doubtful quality of the electoral register in **Benin** is essentially the outcome of four factors:

- a. The Electoral Commission (ANEC) is not only of an ad hoc one but has in most cases been established after the legally determined deadline. Consequently:
  - Electoral officers, especially registration officers, are systematically insufficiently prepared;
  - The process of establishing the electoral register is done within a short time frame and often improvised;
  - The register 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 register does not function in most of the cases:
  - It is often impossible to respect the legal time frame needed for registration and amendments;
  - Mechanisms for the self-monitoring of the electorate do not function - for example, members of the registration team are designated by political parties and the precaution which consists in avoiding that two of the members of the registration team are from the same party is not respected. This is because, generally, political parties are not able to have representatives in all areas and/or the prefer controlling only some areas.
  - External control mechanisms – through the authorization of political parties and civil society organizations to send representatives to all polling stations – also do not function. This is due to the fact that both political parties and civil society do not have the capacity to deploy



- c. representatives to a significant part of the country;  
The criteria for the identification of citizens are not sufficiently reliable. For example:
- it is possible to register without presenting an identity card;
  - Witnesses are not reliable;
- d. The Benin electoral register is also ad hoc, it becomes outdated every six months after its establishment. Another example under this category is the case Senegal where the electoral roll is subject to suspicion from the opposition and part of public and constitutes the main bone of contention in electoral problems in the country.

### Box 10

#### Establishment, maintenance and updating of the electoral register

The question of the electoral register can be conveniently addressed by paying attention to certain important factors. In order to improve the quality of the electoral register, 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:
  - i. Ensure that those who have lost their civic status are excluded from the electoral register;
  - ii. Ensure that the deceased persons do not remain on the electoral register;
  - iii. Remove all possibility of double registration (which favours multiple voting);
  - iv. Guarantee the possibility of verification of the process of updating the electoral register by all interested parties; Opt for the most reliable criteria for voter identification in order not to undermine 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 experiences digesting, them and drawing 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 fact, 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 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 and the Auditor General for the verification of the financial management of the Commission.

This absence of measures to learn from past experiences is not specific to **Niger**. Indeed, 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.

## Box 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 eventually 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 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:
    - i. Guarantee minimum transparency in the execution of the electoral process so as to facilitate the collection of relevant information by all actors;
    - ii. 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;
    - iii. 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 in the electoral process;
  4. Ensuring that lessons drawn are transformed into institutional and legal reforms. This implies that there should be a link between the framework where the resultant proposals for institutional and legislative reforms are made and legislators. This can be achieved through:
    - i. The association of legislators with the work of the frameworks of exchange
    - ii. 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 main 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 prerogatives 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 coverage of the electoral campaign is concerned.

Beyond the foregoing, the Gambian electoral legislation makes provision for measures which increase the involvement of the Electoral Commission in the management of candidates' access 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.

## Box 12

### The access of candidates to the media

Two reasons explain the need for the management of candidates' access 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:
  - i. Define clearly who does what to guarantee the access of candidates to the media;
  - ii. Define the means of (rapid) redress in case of disagreement over the manner in which the access is managed;
  - iii. 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:
  - i. Provide for the space of time for the candidates in the public service media (radio, television, print press);
  - ii. Provide for time in the private press in a systematic way, if necessary at the expense of the State;
  - iii. Negotiate with public and private media for the reduction of the cost of access to the media during the election

- campaign;
    - iv. 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 airtime available upon request by the candidate. This avoids the waste of resources caused 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:
  - i. Training of (public and private) media presenters in the run-up to each electoral exercise;
  - ii. Contribute to the formulation 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:
  - i. Sharing broadcast time proportionally according to the results of past elections;
  - ii. Taking into account the size of the political parties in the sharing of airtime.

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

#### 3.3.1 Cost of elections

Having decided to build systems of liberal democracy in West African countries, the cost of elections has become a concern 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. However, the real issue is that, like the other issues related to elections management, the solution to the problems of cost is not a simple one.

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 fact, costly elections and cheap elections cannot be tolerated in the new Democracies. If the costs of election are too high this puts an unbearable pressure on the already scarce resources of the countries, with all the risks that this entails for the quality of the elections. For example, it is likely that election schedules may not be observed or expenditures may not be met for lack of resources and the quality of the elections will be adversely affected. All these constitute a threat to the quality of elections. The possibility to resort to external funding does not offer total guarantee against this risk.

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/cost balance.

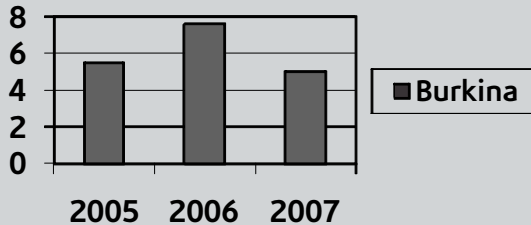
With regards to this issue, the practice in the sub-region reveals some countries where the elections are quite costly and others where the Commission and the political authorities seem to have a certain control over the costs.

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 millions of 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.



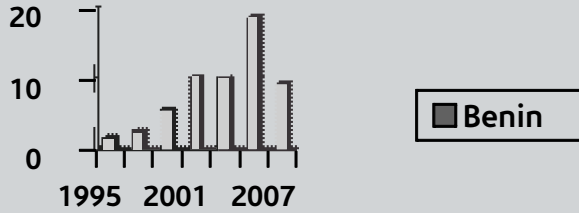
### An example to improve: The Electoral Commission of Benin

The Republic of Benin is one of the new democracies of West Africa where trends in the costs of elections constitute 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.

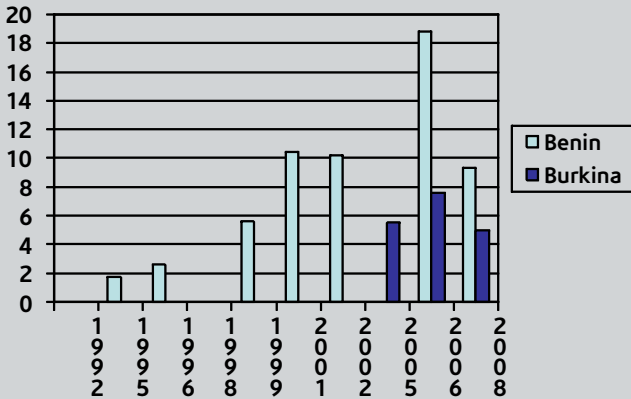
The following are some key shortcomings:

- 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, consumables, 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 the price of electoral 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 trend in the costs of elections in Benin from 1991 to 2007.



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



### Issues relating to cost of elections

The control of the costs of elections should concern 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 cost elements based on the situation prevailing in the countries.

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

1. Pay attention to conventional costs: these are compulsory costs irrespective of the level of political development. These include:
  - i. The voting list;
  - ii. Essential electoral material;
  - iii. The training and preparation of polling agents (vote counters and returning officers);
  - iv. Logistic and organizational arrangements;
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:
  - i. The type and quality of voting material: ballot boxes, screens, ballot paper, seals, indelible ink, etc.;
  - ii. The duration of the observer mission;
  - iii. The campaign for awareness-raising among ordinary citizens;
  - iv. The assistance to political parties;
3. Take measures aimed at helping to control the operation cost of the Electoral Commission;
4. Take measures aimed at reducing the waste of acquired voting material.

### 3.4 Security of elections

Political elections are, ideally, a non-violent competition where several groups of political actors compete with 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, 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 rejection of the whole process or the election of illegitimate political authorities, etc.

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 attacks on election material storage sites to steal them) etc.

Just like the actions described above, their perpetrators are equally of different origins. They can be national actors, for example supporters of political actors (candidates or political parties) or the political actors themselves. Officials 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 also 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 perpetrators 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 involve the security forces in 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 provide satisfactory answers 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? Etc.

Finally, it is necessary to specify that the prevention of security threats in the context of elections cannot be limited to the recourse 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 issue 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 to address these risks.

The electoral legislations of the sub-region are very brief if not cautious about the involvement of security forces in election management. In most of the laws, there is only a simple reference 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 Togo

In **Togo**, for instance, within the framework of Comprehensive Political Agreement signed between the main political actors in the country in August 2006 in Ouagadougou a special force in charge securing the election is set up by decree at the approach of each election. For the 2007 parliamentary election, the Security Force for 2007 Parliamentary elections (FOSEL 2007) was set up, while for the 2010 presidential election it was the Security Force for 2010 Presidential Election (FOSEP 2010). FOSEP 2010 was established by decree n°2009-278/PR of 11th November 2009 and its mission was to<sup>16</sup>:

- Maintain peace and security and ensure the free movement of persons

<sup>16</sup>Extracted from the paper presented by the FOSEP 2010 Commander during a workshop o experts on the theme : " The role of security forces in electoral processes in West Africa" organised by Friedrich Ebert Foundation in Abuja Nigeria, from 29 to 30 March 2010.

and goods throughout the national territory prior, during and after the 2010 presidential election;

- Take the necessary measures to maintain public order in respect of the organization of the elections;
- Ensure security of rally and public events venues during the electoral campaign, polling stations, candidates, electoral commissions and heads of political parties as well as electoral material while observing the strictest neutrality as possible towards all.
- With regard to the preparation of security forces before their participation in the electoral process, substantial progress has been achieved since the 2007 parliamentary elections. In fact, since that time, no member of the Security Forces can be involved in the electoral process without receiving prior training. Training starts several months (sometimes six months) ahead of the polls and this is takes a pyramid format. In others words, a training of trainers is done at the national level, most often in the capital. These trainers, in turn, train others (cascading training) in the lower ranks.

The example of **Ghana** could still be mentioned among the success stories. From this perspective, it seems to be the most elaborate (even if there is still room for improvement). The same applies to the case of Guinea Conakry. This last case which is considered as a positive development in terms of preparing the participation of Security Forces deserves a few words.

Within the framework of the presidential election held in June 2010, a decree was issued to establish a Special Force to secure the electoral process (FOSSEPEL). This force was placed under the joint supervision of the INEC as well as the Ministry in charge of Security and Civilian Protection. Its mandate was essentially to maintain peace and security throughout the electoral period. It could therefore take any measure in order to maintain public order in relation to the elections: secure the entire electoral process and ensure the security of rally and public events venues, polling stations, candidates, electoral commissions, leaders of political parties and electoral material in total neutrality. Though its mandates end after the transitional period, it is an illustration of the involvement of security forces in the electoral process, even when the electoral code is silent on the issue.

#### An example to improve: **The Electoral Commission of Benin**

The electoral law of **Benin** – like most electoral regulation in almost all the other countries in the region – does not make any special provision for 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. He resolves the issue through a terse formula which reads "... the minister in charge of public security shall maintain the security of the citizens and operations during the entire 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 and Benin has not yet experienced serious disturbance due to the failure of the security apparatus.

However, it must be admitted that the **Benin** Security Forces are not prepared to manage serious problems in terms of securing the electoral process. The risks are therefore real that in case of a certain level of security, the ANEC cannot rely on the SF to solve them while respecting the fundamental rights and freedoms of citizens and ensuring the integrity of the electoral process.

## Box 14

### The role of security forces during elections

The delicate nature of the issue of security forces' participation in the 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 recourse 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 recourse to security forces can be necessary to protect:
  - i. Members of the Electoral Commission and its branches (up to the polling agents);
  - ii. Voters, registration officers and their installations during the registration of voters (the establishment of the voting list);
  - iii. Political leaders, especially those who are candidates, and voting inspectors, with special attention to leaders of the opposition;

- iv. Agents of political parties during the campaign;
  - v. Headquarters of political parties and of candidates;
  - vi. Participants at various public meetings and events taking place during the electoral campaign;
  - vii. Electoral material during their
    - Production: for example, ballot papers;
    - Transportation to various electoral constituencies;
    - Safe storage throughout the territory;
2. The day of voting : it is possible to resort to the public security forces for:
    - i. Securing the voting centres and their immediate surroundings during the election;
    - ii. Protecting electoral agents during the counting of the votes and the transportation of electoral documents to the collation centres ;
    - iii. Protecting the collating and voting centres at the various venues;
  3. The post-voting stage: the recourse to security forces can be justified at this stage to ensure:
    - i. 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.)
    - ii. 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:
    - i. Static actions which consist essentially in keeping watch over places and the storage of electoral materials;
    - ii. Dynamic actions which consist essentially in protecting demonstrations and the transfer of electoral and other material;
    - iii. Stand-by actions which consist essentially in the mobilization of troupes to intervene should the need 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 bodies 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>17</sup> electoral code is one of the rare exceptions where several measures have been provided for 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. INEC shall contribute to the training of security agents by the Ministry in charge of security;
- b. INEC shall supervise the security outfit provided by the Ministry in charge of security;
- c. INEC shall 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 involvement of security forces in the electoral process. This silence of the law concerns most aspects of the involvement of security forces in the management of elections and as expected the framework within which they can be involved in the electoral process.

Nevertheless, the INEC always sets up a defence and security sub-committee which helps to ensure the tranquillity and security of the electoral process. This sub-committee is composed exclusively of all the defence and security forces.

<sup>17</sup>Law no 2009-015 of 12 August 2009 amending law n°2000-007 of 05 April 2000, amended by Law n°2002-001 of 07 February 2003, decree n°2003-014 of 20 October 2003, Law n°2005-001 of 21 January 2005 and Law n°2007-009 of 7 February 2007, law no 2007012 of 14 June establishing the electoral code. And law no 2009 002 of 2nd April 2009.

## Box 15

### The legal framework for the involvement of security forces in election management

The framework within which the security forces can be involved 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:
  - i. The persons responsible for ensuring security in each possible situation (for example, in a voting centre, during an electoral campaign rally);
  - ii. How to resort to security forces and which procedures to follow;
  - iii. The ranks of security forces mobilized for the events;
  - iv. The framework in which the involvement of security forces in the running of elections must be organized;
  - v. The provision of adequate means for the participation of security forces;
  - vi. The various prohibitions which could trigger or justify the recourse 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:
  - i. Codes of ethics for most actors of the process: media, civil society, political parties and candidates, to make each and everyone avoid behaviours and stands that could provoke violence;
  - ii. Increase awareness among all actors, especially the citizens;
3. Concerning the framework of intervention, it should be designed in a way to deal with all the possibilities mentioned above. They can consist in:
  - i. 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;
  - ii. Create and maintain conditions of exchange guaranteeing the rapid circulation of correct information;  
Provision of adequate recourse for the participation of the security forces in the maintenance of security during elections;

### 3.4.3 Preparation – Creating awareness among 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 skills 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 training. Only a few countries make reference 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 also provides that the Togolese INEC 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 between the Commission and the Ministry of the interior, the law recognizes the need for training and provides that this should be done in collaboration with the INEC.

**Cape Verde** can also be included in this category. The Security Forces (police) supervises the electoral process. They all operate under the direction of the Ministry of the Interior. The police guarantee the freedom and transparency of the electoral process, distribution of ballot papers. If there are problems, it is the Electoral Commission which can call on police forces. During each election, the Security Forces undergo training for their sensitization on the electoral process. In principle, they are positioned far from the polling stations but are called upon to secure the polling station and accompany agents responsible for the conveying electoral material and votes.

An example to improve upon: The Electoral Commission of **Gambia**

Article 129 of the said code on the “provision of security agents” states 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' register 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 operate. 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' register (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 possible need to prepare them for that.

### Box 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 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, ensuring that they do not go into action upon false information;
5. A code of good behaviour.

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

## Summary of Chapter 3

- On the subject of the distribution of roles of the electoral process among institutions, 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 tenure of office of the Commission and its members, it must be ensured that the term of office the Commission corresponds 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 term of office of members of the Commission ensures its 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 act 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

## Summary of Chapter 3

available for the management of the elections) and that measures are taken to facilitate 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 Judiciary and those between the Commission and public security forces; then a kind of principle of subsidiarity 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 well 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) as well as the cost of ensuring reliability (costs that help to improve the transparency of the process and which depend largely on the political environment within the country). Measures must be taken to help reduce the operational costs of the electoral Commission and 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 to 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 for the participation of security forces in the electoral process must provide a clear framework for the rules (legislation) and organizations (e.g. committees) which have been established for the resolution of security problems.
- The preparation which should be given to members of the security

## Summary of Chapter 3

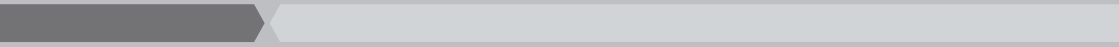
forces to ensure their relevant contribution to the electoral process should include training on the content of the process (what is going to be done, the types of behaviour forbidden because they might generate violence, etc.), their roles (what is expected of them, the hierarchy to be respected in 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 for the engagement of security forces in order to ensure non-violent elections.

# **PART THREE**

## Electoral Principles, Norms and Standards in West Africa





## CHAPTER IV

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

At 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 and norms because they have been accepted by countries considered as democratically advanced and by countries that have made important progress in democratization. Moreover, the electoral field 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 conducive to the adoption of norms and standards (1.1) and the existence of conclusive experiences in this respect (1.2).

##### 4.1.1 Importance of factors conducive to the adoption of norms and standards

The beginning of democratization in most African countries in general and in West Africa in particular has led to political crises related to the outburst of conflicts caused essentially by the lack of a consensus in 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 rationally and by consensus rules governing elections have led the international community as well as regional and sub-regional organizations to adopt legal measures that are used to indicate minimal norms to guarantee the reliability of elections.

At the global level, efforts are made to set up the principle of open and transparent elections as the only means 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 been devoted to the harmonization of principles that will govern elections. In this respect, the universal declaration of human rights enshrines the political pluralism and its principle of designating leaders through elections governed by universal suffrage, periodicity, honesty, equality, freedom and the secrecy of elections. These principles have been more clearly stated in article 25 of the international Pact on Civic Political Rights of 1966 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, ensuring the expression of free will of the electorate, have access to public employment on the basis of equal opportunity.

At the regional level, the Constitutive Act of the African Union and the African Charter on Democracy, Elections and Good Governance of 2007 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 kingly authority of States. 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. However, the enforcement of these sanctions appears to be problematic depending on the situation.

ECOWAS has certainly gone far in the proclamation of democratic principles to

promote 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 the judiciary, 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.

Specifically, 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 assistance from 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 observe. Based on this sub-regional instrument to guarantee democratic principles, it would be advisable to set up at the level of ECOWAS, a mechanism for monitoring the violations of the basic principles governing elections by states; this mechanism would need the support of ECOWAS. This mechanism will be used to draw attention to countries which require proactive measures to safeguard social peace, democratization and development.

Thus, the protocol is at the same time a good basis and a source of legitimization for the adoption of electoral norms and standards in the West African region. This can prove all the more achievable if it is known that elsewhere on 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 case of Southern Africa countries united within the framework of the SADC which have the most interesting experience in the field of harmonization of electoral standards and practices aimed 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 was the reason behind the conference of Windhoek held from 11th to 14th June, 2000 under the theme “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 brought together 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 research and broad consultations in the whole Southern Africa has led to the development and 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 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:

- The need for a comprehensive institutional and legal framework;
- The 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 polling stations, secrecy of the poll, as well as the vote counting process;
- 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.

Based on the experience of the SADC region, proposals on developing a minimal number of standards and norms can be formulated to reinforce the quality of the conditions for the conduct of elections in the ECOWAS region.

#### **4.2 Proposals for a minimum of core standards and norms**

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

An effort to combine the various national legislations and best practices allowed 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 Cote d'Ivoire and Togo into political crisis. There are also the legislative and regulatory texts which govern the electoral process, laws relating to elections management and supervision bodies (the Electoral Commissions), laws relating to the access of political parties to the media, and laws relating to the financing of political parties.

Besides, the best electoral practices deserving to be upgraded into standards need to be documented. It will then be possible, from the perspective of the existing protocol on governance and democracy to define accurately guidelines on:

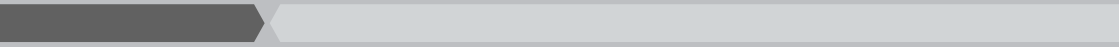
- consensus for the definition of the rules of elections;
- The respect of the principle of periodicity of the elections according to which the elections must be held at regular intervals and with fixed dates;
- The genuineness of the poll in the broad sense with components such as meeting the criteria 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 4

- The determination and harmonization of the norms and standards of elections at the level of the West African sub-region can be enhanced by a certain number of factors.
- There are first of all the efforts to establish norms and standards at the universal level. For example, the universal declaration of human rights which enshrines political pluralism and its 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 Constitutive Act of the African Union and the African charter on democracy, elections and governance are attempts at defining norms for 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 for the 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 making, 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 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 standardization by the top, while relying on the ECOWAS Protocol on Governance and Democracy, it is necessary to define with the maximum precision the main principles such as consensus for the definition of electoral rules, the genuineness of the poll in the broad sense of the word (with components such as meeting 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.

# CHAPTER 5





# CHAPTER V

## TYPES OF ASSISTANCE ON ELECTORAL MATTERS (ECOWAS)

The 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 suggested some lines of thought. 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 suggestions 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 that can lead to peace and the expression of the character of the people. The community is gradually building regional legal and institutional frameworks that are necessary in coping with the challenges of establishing 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 Security Commission, the Council of Elders, the ECOWAS ceasefire Monitoring Group (ECOMOG), and the electoral unit in the Department of Politic Affairs are other examples.

The (sub-) regional legal framework developed at the level of the community and mentioned above stipulates certain mandates for member countries as well as to 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 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 ECOWAS in the consolidation of democracy and particularly in the management of elections in member countries. They provide for example that ECOWAS be involved in the preparation, organization and supervision of elections in its

Member States. More specifically, the regional texts in question provide that at the request of member States, 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, as elections approach, send a fact finding mission to the country which may be followed by an exploratory mission and finally by a mission to observe the election in question.

Under this framework, ECOWAS has, essentially through the activities of its electoral unit, 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 sent to each of the countries mentioned above. Wherever it became necessary, ECOWAS sent logistics support as was the case in Sierra Leone in 2007, where the mission was praised by all, starting from members of the **Sierra Leone Commission**, as helpful and timely.

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 build the capacity 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 ECOWAS observers. It has also held a workshop for the evaluation of instruments produced and used during ECOWAS observer mission and organized a seminar on the cost of elections in the sub-region.

In spite of all the initiatives mentioned above, there is currently a unanimous agreement 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 registers, 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 also have sub-regional dimensions. Thus, for example, the disparity of systems of administration of elections and their powers do not favour the possibility of sharing experiences and lessons drawn from good as well as poor 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, ECOWAS provides legal as well as institutional means to help address them. Beyond the mandates determined by the regional legal framework for it, ECOWAS has put in place an electoral unit whose objectives are in line with most of the challenges that member countries encounter in the management of elections. The Electoral Unit of the community aims, indeed, at building the capacity of member states in the electoral administration, developing a code of conduct for elections for the ECOWAS region, contributing to the improvement of the quality of observer missions, and helping Electoral Commissions of the sub-region to rationalize the costs of elections.

The available provisions at the level of 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 ECOWAS can provide to its member countries within the framework of the management of elections is presented in two categories: actions for capacity building (1), and so-called future actions and proposed solution (2).

### 5.1 Capacity building actions

The first category of support that ECOWAS can provide to its Member States in the framework of elections management 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 make 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 capacity building for 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 the national electoral process, actions which can only be undertaken by regional institutions such as ECOWAS cannot be neglected. The said actions for capacity-building may range from training activities for stakeholders in the process to initiatives for improving the legal electoral framework, managing the costs of elections, controlling electoral fraud and corruption, observing

### 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 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 have 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 can 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 best practices and for collective brainstorming on the bad practices and the ways and means to reduce

<sup>18</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.

them. These regional workshops can also involve experts in electoral issues who are likely to go beyond individual experiences of the member countries in order to produce useful results for everybody. We deem it necessary at this point to stress the significance and benefits 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>18</sup>. This can be in the form of a website created at the level of 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 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 beneficial 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-fulfilment of their obligations are quite obvious, it is not as easy to see the risks coming from key actors who are incapable of enjoying their 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. In this way, the inability<sup>19</sup> 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

<sup>19</sup>It is not only the inability 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.

appears through the difficulties the said actors have in appointing representatives at every level of the electoral process where there is the need to ensure good quality. In fact, it happens frequently that parties and candidates are unable to send representatives to even one third of the registration and polling stations. Even when they are able to send representatives, their agents are 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 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 among 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 happens that Electoral Commissions or a department or head office of a Ministry has insufficient resources (of any sort) for a positive contribution to the organization of elections.

ECOWAS can contribute to the resolution of the above mentioned challenges in different ways. Its contribution can consist in logistic support, training activities and teaching techniques in a specific domain and related to specific 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 concern to which 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 compliance with electoral laws 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 varying 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 sought at the sub-regional level. 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 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 problem of high 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 find solutions to the exponential rise in the cost of elections in three ways: support can come in the form of training activities, sharing of some electoral inputs and various kinds of 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 in the subject as well as experiences in the region.

As far as sharing 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, kits needed to establish electoral registers, 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 Future actions and suggestions for solutions

This section on the future 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:

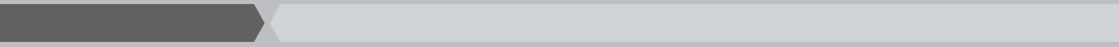
- Put in place frameworks for identification and updating of the challenges for the management of elections in the sub-region;
- Initiate brainstorming exercises on the major concerns relating to voting, especially issues such as how to vote and why;
- Initiate exchanges on the trends in electoral laws 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 5

- The regional legal framework, especially the two texts mentioned above, is clear enough about the mandates given to 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, at the request of 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 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 the capacity of member countries in terms of electoral administration, the development of an ECOWAS code of conduct for elections, 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 in the process to initiatives for improving the legislative electoral framework, managing the costs of elections, controlling electoral fraud and corruption, observing elections, and improving the security of elections.
- Future 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 of managing of election 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 elections 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



## CONCLUSION

After 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 legal 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 helped to analyse the various Electoral Commission through the comparison of the various legislations (part 1) and their practices (part 2). The analysis of laws governing Electoral Commissions 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 provide the legal and institutional framework 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.

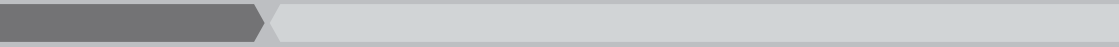
In general, the comparison of experiences allows for a more balanced picture of electoral systems in West Africa: cases of success exist together with mixed experiences and outright failures. In addition, drawing from national and regional experiences, some countries have amended their electoral laws (Nigeria, Guinea Conakry, Cape Verde, Togo, Niger, Cote d'Ivoire) with the aim of improving the quality of their polls. Others have also followed the same path (Benin, Mali, Senegal) but the process is not yet concluded.

The study, while trying to go beyond the formal legal framework 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 issue 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 the definition of standards for the purpose of establishing norms to ensure free and fair elections within ECOWAS Member states, the Study tried to identify some trends. It tried to prove that despite the existence of different legal 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.

# APPENDICES





# APPENDIX 1

The classification in this annex is based on the legal framework and institutional regulations of each country at the time 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	Elections management bodies	Denomination of the Electoral Commission	Number of members of the NEC
Benin	Independent	Permanent Administrative Secretariat	4
		Autonomous National Commission	Electoral 17
Burkina-Faso	Independent	Independent National Commission	Electoral 15
Cape Verde	Joint	Bureau for Electoral Assistance National Electoral Commission	N/A 5
Côte d'Ivoire	Independent	Independent Electoral Commission	N/
Gambia	Independent	Independent Electoral Commission	5
Ghana	Independent	Electoral Commission	7
Guinea (Conakry)	Independent	Independent National Commission	Electoral 22
Guinea Bissau	Independent	National Electoral Commission	8
Liberia	Independent	National Electoral Commission	7
Mali	Joint	Ministry of Territorial Administration	N/A
		Independent National Commission	Electoral 15
		General Directorate for Elections	N/A
Niger	Independent	Independent National Commission	Electoral 33
Nigeria	Independent	Independent National Commission	Electoral 13
Senegal	Joint	Ministry of Interior - General Office for Elections	N/A
		Autonomous National Commission	Electoral 12
Sierra- Leone	Independent	National Electoral Commission	5
Togo	Independent	Permanent Administrative Secretariat	N/A
		Independent National Commission	Electoral 9

Duration of the tenure	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

## APPENDIX 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>

## APPENDIX 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 for elections, the term “activity” can be assimilated or used interchangeably with the term “task”.

**Electoral Administration:** Necessary measures to realize or implement 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 projected electoral incomes and expenses in relation to some activities of an organization or part of an organization for a specific period to come.

**Legal framework:** Collection of legal 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, implementation 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 used to propose choices during a referendum.

**Candidate:** Authorized person (who satisfies all legal requirement) 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 elected position 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 implement any aspect of the electoral process at any level is acquired at the national level of the NEC.

**Decentralized NEC:** Model of electoral administration in which the power to conduct and to implement the different electoral processes and /or the different aspects of electoral processes are delegated by the NEC to sub-national NECs and national sub-branches of the NEC at the national level.

**Joint 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 a NEC, or for political parties, in respect of participation in an electoral process.

**Constitutional Council:** A body which can be either a part of the judiciary or of a distinct body in charge of ruling on the constitutionality of laws and, in some cases, other tasks, including those related to electoral processes.

**Conventional costs:** Normal cost related to the implementation of an electoral process in a stable electoral environment. They include basic costs of voters' registration, demarcation 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 institutions 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 regulations, the procedure and registration on electoral register 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 term of office:** Period of time a member of an organization serves at his/her post after being elected or nominated.

**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 applications made by political parties and candidates who fulfil the conditions set to take part in an election.

**Post-electoral evaluation:** Retroactive effect of an 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 joint 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:** Process of executing activities, tasks and functions of electoral administration.

**Registration of Voters:** Action of noting the names and other pertinent information about eligible 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.

**Instrument of direct democracy:** An instrument which gives to citizens the right to directly participate in the political decision-taking process. It can be in the following three forms: referendum, initiatives from citizens or recall vote.

**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 electing leaders of political institutions as defined by the constitution or the institutional framework.

**Qualified majority:** Necessary majority of votes cast for a proposal to be adopted; it should get more than 50% plus 1 of the votes cast; for example 2/3 or 3/4.

**Simple majority:** A majority that requires that potential candidates for an election ( in an instrument of direct democracy) obtain the highest number of valid votes cast.

**Member of a NEC:** A person appointed or elected to be part of the body or 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 runs its own budget.

**Joint 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 state Ministry or local authority. 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 conditions more or less favourable conditions 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 body 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 have access into an electoral process can evaluate and present a report on the compliance with the legal 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 as well as preparation of the elections take place, and legal 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 body in charge of conducting 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, registration on the electoral registers, nomination of the candidates and political parties and of the registration of propositions, campaigns, voting, collation and counting of the votes, resolution of the electoral differences and declaration of the results.

**Referendum:** Tool of direct democratic vote of the electorate on a public political issue such as the amendment 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 administrative institutions 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 documents can be drawn 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 registers”.

**Electoral regulations:** Subsidiary rules to the legislation, often dictated by the body 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.

**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 claims:** Complaints presented by the different electoral actors over the procedures of disputes resolution within the framework of the electoral process as far as decisions, actions, or absence of actions by electoral administrators or other participants in the electoral process are concerned.

**Resolution of electoral dispute:** Process of hearing 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 joint 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 symbol 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.

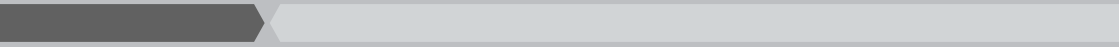
**Electoral tribunal:** Court of Justice or other bodies before which and electoral actors can challenge the validity of an election, or challenge the behaviour of candidates, political parties or members of the NEC.

**Membership vacancies:** System in which members of the NEC are not appointed at the same time and the duration of their term of office 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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