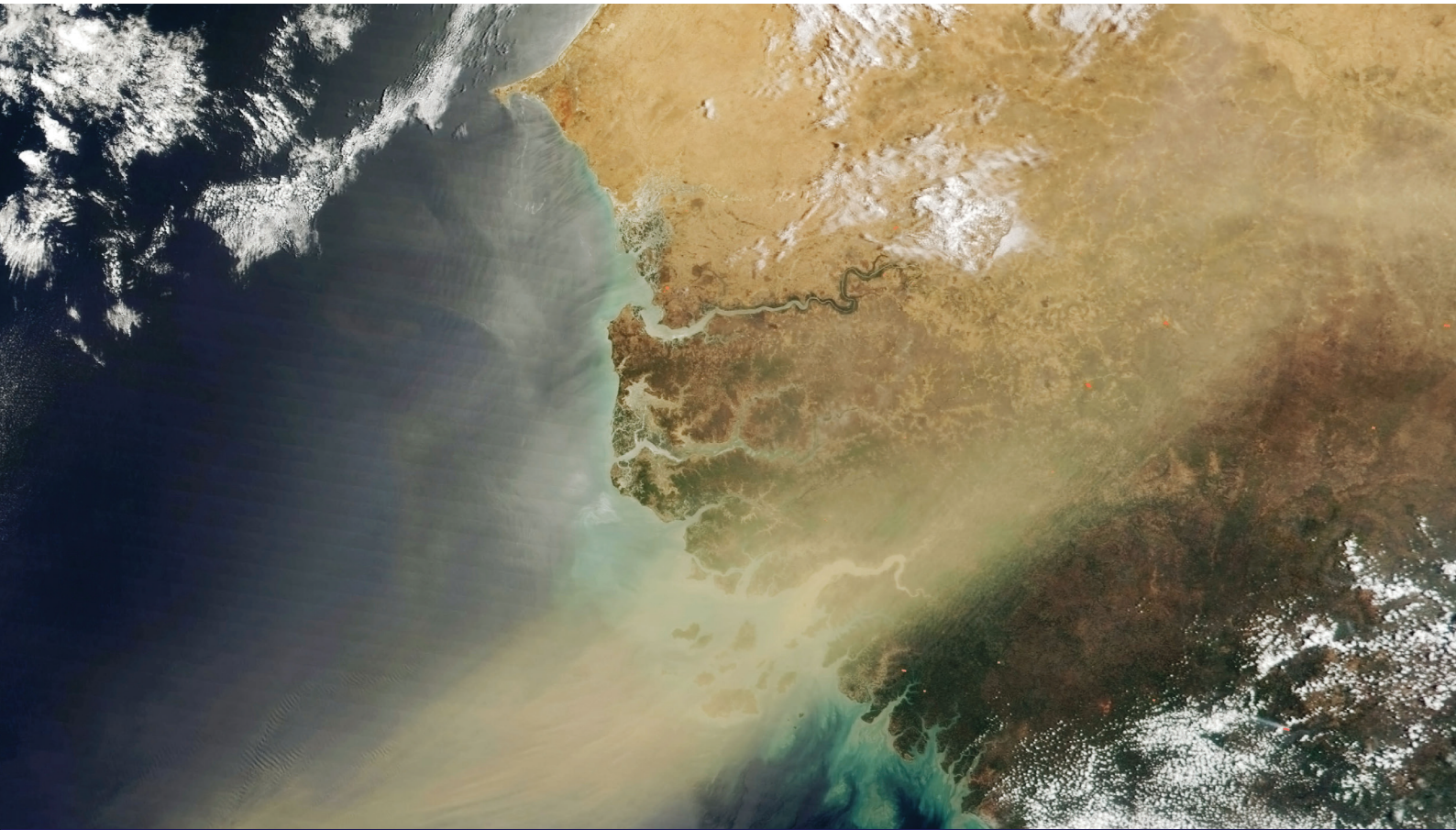




Centre for Democracy & Development
Centre pour la démocratie et le développement

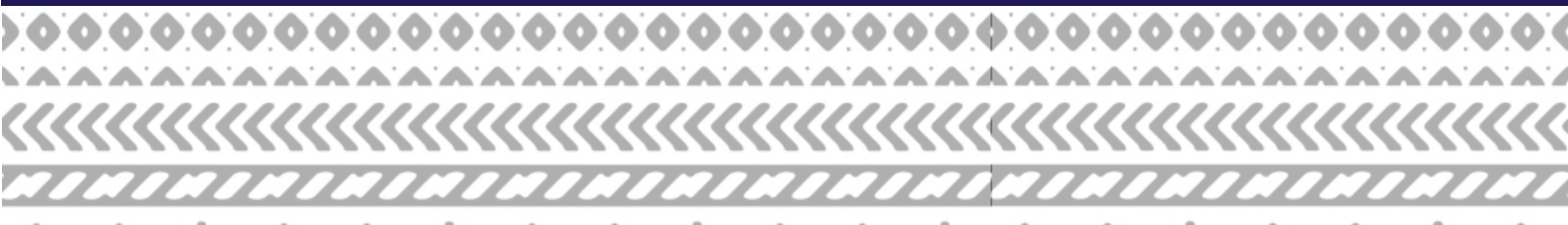
Research Paper



POLITICAL REFORMS AND DEMOCRATIC INERTIA IN WEST AFRICA: CONTEXT, IMPLICATIONS AND THE WAY FORWARD

MUBIN ADEWUMI BAKARE

February 2023





ABOUT THE CDD

The Centre for Democracy and Development (CDD) was established in the United Kingdom in 1997 and subsequently registered in Lagos – Nigeria in 1999 as an independent, not-for-profit, research, training, advocacy and capacity building organization. The Centre was established to mobilize global opinion and resources for democratic development and provide an independent space to reflect critically on the challenges posed to the democratization and development processes in West Africa, and also to provide alternatives and best practices to the sustenance of democracy and development in the region. CDD envisions a West Africa that is democratically governed, economically integrated – promoting human security and people-centered development. The mission of the center is to be the prime catalyst and facilitator for strategic analysis and capacity building for sustainable democracy and development in the West African sub-region.



TABLE OF CONTENTS

Introduction	4
Political Reforms, Governance and Instability in West Africa: A Theoretical Reflection	5
Context of Recent Political Reforms in West Africa	6
Constitutional Reform Favouring Tenure Elongation	7
Extra-Constitutional Reforms in West Africa	9
Implications of Political Reforms on Stability, Peace and Security	13
The Way Forward for Ecowas and Member States	16



INTRODUCTION

With the restoration of democratic order in The Gambia in early 2017, the West Africa region gained the attention of the world as a site of democratic consolidation in Africa. The Economic Community of West African States (ECOWAS) vehement rejection of the undemocratic retention of power by former President Yahya Jammeh and its threat to apply force, coupled with Gambians' resistance, resulted in a peaceful, democratic handover of power. In addition, many West African states have gone through more than one electoral cycle without serious menace or military interregnum. This would suggest that principle of accessing political power through credible elections under the watch of civil society and international actors is gradually taking root across the region. However, despite these democratisation, the region has witnessed setbacks in the face of emerging political developments.

According to the 'Freedom in the World Report, 2021'¹, of the 12 countries with the most significant decline in democracy year-on-year, five were in West Africa. The Economist Intelligence Unit's Democracy Index for 2020² showed that only Ghana and Cabo Verde still qualify as fully-fledged democracies in the region. This democratic backsliding portends political instability and its attendant economic consequences for the ECOWAS region are worrying. Central to the discouraging democratic trend are concerns about political reforms that have undermined electoral integrity, inclusiveness and legitimacy. The application of these reforms have fuelled crises and led to the resurgence of coup d'états in the region.

Progressive political reforms are critical for the thriving of democracy and inclusive socio-economic development. But in the recent past, a number of problematic political reforms have been introduced which have favoured unconstitutional retention of power or sought to exclude or disqualify political opponents³. The changing and/or modification of constitution as it relates to eligibility for political leadership and term limits has taken place in Togo, Senegal, Burkina Faso, Cote d'Ivoire, Benin and Guinea in the last decade. These constitutional reforms, which largely followed contentious processes, supported incumbents to extend their time in power. In Togo for instance, after changing the constitution through a controversial legislative process, President Faure Gnassingbé, who had already spent 14 years in office, contested and won another five-year term 2019, amid sustained protests that saw at least 16 people killed⁴.

ECOWAS, and other international actors, have called into question these political reforms that have impacted governance dynamics and the sustainability of social, economic and political processes in the region. This is in line with their commitment to the ECOWAS Supplementary Protocol on Democracy and Good Governance that was adopted over two decades ago to provide a concerted regional response to structural conflicts and instability in the region. The protocol prohibits the



modification of the constitution or the electoral codes six months to the election unless such amendments have the blessings of the majority of the political actors. However, its limitation to a six month timeframe and equivocation of concessions by the majority of the political actors have proven ineffective safeguards for constitutional democracy.

This article will, therefore, ask whether ECOWAS is well-equipped to prevent or manage tenure elongation orchestrated through constitutional and electoral reforms in member states. To do this it will analyse the context of recent political reforms in West Africa, including political reforms induced by ECOWAS; examine implications of recent political reforms to democracy and stability; and suggest policy directions through which ECOWAS and member states can prevent and manage undemocratic retention of power.

POLITICAL REFORMS, GOVERNANCE AND INSTABILITY IN WEST AFRICA: A THEORETICAL REFLECTION

Democracy in practice is a work in progress. The continuous need for improvement of democratic processes and development have necessitated calls for political reforms in West Africa that can deliver more accountable governments. In theory, these reforms should aim to find solutions to pressing or potential challenges in the polity that can enhance political liberalisation, generate greater political accountability and improve democratic dividends for ordinary citizens. However, reforms do not always follow this trajectory and can be instrumentalised to serve political goals. According to Reich⁵, there are three clusters of political conditions under which policy reform can occur: political will, political factionalism and political survival. These three models can help situate the conditions and motivations under which political reform happens in West Africa. It illustrates that whilst some reform efforts aim to solve societal problems or address historic injustices, others are opportunistic and aim to extend stays in power or reduce the space for political opposition. While policy reform choice are conditioned by these clusters, they are not mutually exclusive:

Political will: Under this model there is a deliberate commitment and decision by political leaders to improve governance, respect for human rights and strengthen the relationship among the organs of government in a manner



that promotes the rule of law, integrity and justice. This model is more common in political circumstances where there is 'a strong mandate, strong state, narrow coalition and strong leadership'⁶. Its model emphasises a technocratic approach with a rational actor model of decision-making, and tends to ignore political constraints to policy reform⁷.

Political factionalism: Here political reforms serve the desires of different social groups - interest groups, victims, women, political parties - who have suffered historical or on-going injustice or marginalisation. For instance, gender equality laws were adopted in Guinea and Senegal to increase the percentage of women to be considered for both elective and appointed positions as women were underrepresented in decision-making bodies.

Political survival: This model is driven by a desire to ensure preservation of the status quo, meaning that politicians seek reforms to preserve their pecuniary interests. Essentially, political elites seek to protect individual interests in order to maintain or expand their existing control over resources⁸. Reforms of this nature are often driven by the personal interest of incumbent governments at the expense of popular aspirations.

CONTEXT OF RECENT POLITICAL REFORMS IN WEST AFRICA

In the post-colonial era, national liberation movements that metamorphosed into political parties quickly monopolised power under the guise of preserving independence. Across most of the region, political power was maintained by force and dissent, and competition was not tolerated. The 1990s marked a transition towards democracy following the end of the Cold War and political reforms supported the creation of more liberal constitutions and multi-party electoral systems with regular elections. However, reforms undertaken since 2015 in a number of West African contexts have reverse these gains and supported a growing disconnection between the political elite and the people⁹. This paper, therefore, focuses on understanding recent efforts to change national constitutions and other ancillary policies, relating to political leadership, such as term limits and inclusivity, which have increasingly become the sources of instability in the ECOWAS region.



CONSTITUTIONAL REFORM FAVOURING TENURE ELONGATION

Whilst unconstitutional retention of power practices such as incumbent government's refusal to concede victory to winner in election; a complete removal of terms limits; and a skewed succession process to enthrone a quasi-monarchic transition are now less common and frequent, politicians have adopted more complex and sophisticated ways to retain power in the region.

Recent constitutional reforms in Togo, Cote D'Ivoire and Guinea, have reset the tenure clocks of incumbent leaders to zero. In each case the incumbents had reached their absolute term limits but successfully argued that under new constitutions, which still include term limits, they should be given a fresh mandate for a further two-terms. They argued, by invoking the application of the non-retroactivity principle of law, that newly adopted constitutions have no legal effect on previous term of office of incumbent and hence previous terms in office of political leaders should be considered null and void.

In Cote d'Ivoire, the 2016 constitutional reform process, which saw the adoption of a new constitution, and marked the birth of the Fourth Republic in the country, was marred by political wrangles. Initially debates emerged about whether it was sufficient to simply revise the old constitution, rather than create a new document. In the end, the decision was taken to pursue a new constitution, despite opposition parties' boycotting the process. There were some positive elements to the new basic law. For example, the repeal of the principle of *ivorite* in the revised constitution should allow for more inclusive political processes and entrenched national unity and stability. But the legality of a term-limit reset was hotly debated.

A referendum was held to secure popular approval. According to the *Commission Electorale Indépendante* (IEC), 42.42% of registered electorates took part, with over 90% voting in favour of its adoption. However, the vast majority of these voters were from regions considered as strongholds of the ruling *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* (RHDP)¹⁰ after political opposition encouraged supporters to boycott the process, which only increased perceptions of the constitutional review as primarily a political project.

In Guinea, President Alpha Conde looked to follow a similar process and get a new constitution approved by popular referendum that would allow



him to reset the term-limit clock and allow him to extend his decade in power. Conde even sought to extend the tenure of a term from five to six years and consolidate his grip over the constitutional court by removing a clause requiring the President to be held accountable for crimes committed while in office.

The credibility of the referendum process for the adoption of the new constitution was also dented by a process marred with irregularities. On the day of the referendum, local media outlets and social media reported that there were not enough “No” ballots at some stations while others had voter cards confiscated and were told to wait outside while someone voted for them¹¹. Voter turnout was another source of disagreement between civil society actors and the government. While the former noted a turnout rate of 30% and less than 15% in the Conakry, the government pegged the official turnout rate at 58%, with 89% voting in favour of the new constitution¹². At least 12 people were killed, with dozens more, including opposition leaders, arrested in protest against the document¹³ but the constitution was passed and shortly after Conde successfully secured a third-term as president. Although he was deposed in a coup d’état less than a year later.

In Togo, the constitutional reform of May 2019, which was adopted under controversial and non-inclusive circumstances, paved the way for a fourth term for incumbent President Faure Gnassingbé in 2020. The necessary legislative majority to pass changes to the basic law came after a boycott by the opposition coalition of the December 2018 legislative elections enabled the ruling party, alongside its allied political parties, to secure a four-fifths majority in parliament. The legislature adopted the new constitution which reinstated two term limits on the presidency. However, the application of the new constitution meant that all previous terms were discounted, allowing the incumbent to stand for, and win, what was a fourth term in 2020, but what was regarded as a first term, constitutionally.

In these three cases of constitutional reforms processes largely followed procedures set out in the relevant constitutions, as measure such as required majorities were achieved and required referenda and/or legislative adoption were also realised. However, superficial compliance with constitutional requirements smartly disguised constitutional and legal manipulations. Hence, beyond requiring that constitutional reform should follow established constitutional procedure, ECOWAS and member must ensure that the process is legitimate, inclusive and safeguards respect for human rights and the rule of law.



EXTRA-CONSTITUTIONAL REFORMS IN WEST AFRICA

Besides clear cut constitutional reforms that have reset the clock of president's terms to zero, incumbent government have also made efforts, either by adopting policies which embed exclusionary principle or by exploiting the restrictive interpretation and instrumentalisation of the judiciary, to disqualify strong presidential opponents. Electoral reforms around sponsorship and candidates' filling/registration fees have also been applied to undermine competitive and participatory democracy in ECOWAS member states.

Parrainage policy

Parrainage is the process of endorsement or sponsorship of candidates for elections. The policy requires a candidate to amass a number of signatures from citizens or elected officials in a specified number of regions across the country to be eligible to contest. The rationale for this policy is hinged on the need to address the unbridle proliferation of candidates, enhance competitiveness and deepen the quality of an election.

Parrainage has been entrenched in recent electoral reforms undertaken in some French-speaking ECOWAS member states, but there are marked variations in both nature and substance of the policy. While some member states adopted citizen-parrainage, others preferred elected officials-parrainage. Due to the application of parrainage in Benin Republic, the multiplication of registered political parties, which had grown from 118 in 1998 to more than 250 in 2019, has been reduced to four. Senegal, known for its frequent reforms, introduced parrainage for presidential aspirants and political parties/political formation in 2018. According to the Electoral Code as amended, a potential candidate is required to gather sponsorship of a minimum of 0.8% (53,457) and a maximum of 1% (66,820) of registered voters in at least seven regions, with a minimum of 2,000 per region¹⁴. Based on this requirement, the Constitutional Council confirmed the eligibility of only five out of 27 candidates for the 2019 presidential election.

However, this decision was contested by many political actors, who argued that the sudden modification was not a consensual decision and that it threatened to undermine political participation. Furthermore, concerns were raised that the list of sponsors, which contains sensitive information about electorates such as names, date and place of birth and their voter registration numbers, and which is attached to the endorsed candidate's nomination form for the Constitutional Council's validation - undermines the secrecy of the ballot. It also increases the political risks and exposure



for electorates who grant their sponsorship to a candidate as they may be subject to harassment and attacks by other political parties. In fact, in 2021 the ECOWAS Community Court of Justice ruled in the case ECW/CCJ/APP/59/18 that the Senegalese government must restore the rights of disqualified candidates by abolishing the parrainage system which constitutes a real obstacle to the freedom and secrecy of the exercise of the right to vote and a serious infringement of the right to participate in elections as a candidate¹⁵.

TABLE I: ECOWAS MEMBER STATES AND NATURE OF PARRAINAGE

S/N	Countries	Nature of Parrainage
	Burkina Faso	At least 50 endorsements by elected official
	Senegal	minimum of 0.8% (53, 457) and a maximum of 1% (66,820) sponsorship by electorates, spreading across at least 7 region of the country
	Benin Republic	10% of the country parliamentarians or mayors
	Niger	20,000 endorsement by citizens for independent candidates
	Cote d'Ivoire	at least 1% of the registered electorates in 17 out of the 31 regions across the region

Source: Compiled by the author

In Cote d'Ivoire, parrainage was introduced during electoral reforms in 2020. Every presidential candidate is required to gather signatures of at least 1% of the registered electorates in 17 out of the 31 regions across the country, to be eligible to contest. The Constitutional Council approved just four presidential candidates - incumbent Alassane Ouattara, Henri Konan Bédié, Affi N'Guessan and Kouadio Konan Bertin - out of the 44 applications in 2020. Of the 40 rejected applications, nine failed to meet parrainage requirements. But the procedure and modalities for assessing the validity of signatures in Cote d'Ivoire in the period moving towards the election was contested by some unsuccessful candidates including



Albert Mabri Toikeusse, who had contested presidential elections in the recent past, winning 2.3% of the vote in 2010. The lack of transparency and accountability in the process of validating sponsorships undermined the credibility of the approach and does not align with inclusive democratic practices.

Conversely, Benin Republic and Burkina Faso – at least prior to the January 2022 coup d'état - operate *grand électeurs* parrainage, where only elected officials are allowed by the law to sponsor candidates for presidency. In Burkina Faso, the January 2020 reform of the electoral code required every presidential candidate to be sponsored by at least 50 elected officials. When sponsors are municipal councillors, they must be located in at least seven of the thirteen regions of the country. In Benin Republic, the electoral code requires candidates to be endorsed by 10% of mayors or parliamentarians. In both countries the application has been an obstacle which has prevented new political parties and independent candidates from participating in the electoral process as elected officials, loyalty to their existing parties, are hard to gain endorsement from. In these contexts, established political parties have used parrainage as a tool to stifle equal access to competitive elections and limit citizens' options for renewing leadership.

Filing Fees

Many member states have also adopted or increased filing or registration fee as a conscious efforts to regulate and check the proliferation of frivolous candidature. However, one impact of this approach has been to limit the right to participation. In fact, in some cases, filing fees were introduced to weaken competitive elections. In Benin Republic, the filing fee was increased from 15 million CFA to 250 million CFA ahead of the presidential election of 2021; a 1500 % hike. The introduction of this fee was part of the reason that led to only two parties - the Republicans and Progressive Union - putting forward presidential candidates.

Even where fees have not been dramatically increased their existence reduces the opportunities for young and female electorates. In Burkina Faso, Mali and Niger Republic, every presidential candidate is required to pay the sum of 25 million CFA (US\$42,500) as filling fee to be eligible to contest for presidency; sums vastly above the financial threshold of an average citizen. In Nigeria, the cost of an expression of interest form and payment of nomination fee amounts to US\$67,000 for a presidential aspirant in the ruling party; this in a country where the minimum wage is US\$70 a month.



TABLE II: ECOWAS MEMBER STATES AND CANDIDATES FILING FEES

S/N	Countries	Filing Fee (\$)	Estimated Gross National Income per capita (Female) (\$)	Estimated Gross National Income per capita (Male) (\$)
	Niger	42,500	5 ¹⁸ 36	1,859
	Burkina Faso	42,500	1,541	2,727
	Mali	42,500	1,516	3,019
	Guinea	110,500	2,266	2,554
	Benin Republic	425,000	2,837	3,673
	Nigeria	46,750	4,107	5,692

Source: Compiled by the Author. 1 million CFA is equal to US\$1,700.

Across ECOWAS member states, not only do filing fees constitute a genuine setback for the enjoyment of political rights, but it constitutes a major barrier, particularly for women, for who aspire to hold position of responsibilities. There is need for policymakers at both ECOWAS and member states levels to review filing fees downward, taking cognisance of the economic realities of the ECOWAS region. In particular, gender dimension needs to be incorporated and mainstreamed in fixing filing fees for presidential candidacies. Among others, wavers or discounted fees should be provided for female presidential candidates.

Efforts aimed at addressing the multiplicity of candidacies can be focus more on stringent and due diligence in political parties' registration, rather than imposing high filing fees on individuals.



IMPLICATIONS OF POLITICAL REFORMS ON STABILITY, PEACE AND SECURITY

Democracy is not just an event repeated periodically. Instead, it encompasses governance process where human rights and liberties are upheld and democratic accountability and checks on executive power are guaranteed through effective policy implementation on a daily basis. Therefore, contentious political reforms have multifaceted implications for democracy, human rights, stability, peace and security in West Africa.

Erosion of the independence of democratic institutions

The progressive application of opportunistic political reforms has come hand in hand with the erosion of key democratic institutions. The judiciary is increasingly instrumentalised by political actors to undermine human rights, the rule of law and justice. In Senegal, Khalifa Sall, a former mayor of Dakar, and Karim Wade, the son of former president, two of the most prominent opposition politicians, were barred from the presidential election due to criminal cases that were widely viewed as politically motivated¹⁹. In addition, as Cote d'Ivoire moved towards the October 2020 presidential election, President Ouattara's regime used the judiciary to arrest and sentence political opponents as a means to either exclude them from the presidential race or to weaken the support base of these opposition parties. In Guinea, in order to ensure that third term bid of his passed through, President Alpha Conde replaced the head of the Independent National Electoral Commission, removed the head of the Constitutional Court and ousted the Minister of Justice who opposed the constitutional changes.

Growing authoritarianism

Less reliant on popular support, authoritarian regimes utilise strong ties to key actors – political party members, the security sector or ethnic groups – to stay in power through coercion and patronage networks. In West Africa, in a desperate bid to extend their tenure through opportunistic reforms, political leaders have increasingly turned to these authoritarian structures.

In the period leading to enactment and application of new constitution in Cote d'Ivoire was marred by arbitrary arrests and a crackdown on members of opposition party figures, including Pascal Affi N'Guessan. In addition, activist Pulchérie Edith Gbalet and her two colleagues, were arrested and detained in August 2020 after they called for protests against the third-term bid of President Ouattara. More broadly the government banned civil protests and



restricted freedom of expression throughout the country during this period, in violation of their right to freedom of expression. In Togo, key opposition figures and civil society actors were also arrested and detained arbitrarily for protesting the extension of the Presidents time in office. In contravention of law, authorities detained Ouro-Djikpa Tchatikpi a Parti National Panafricain (PNP) counsellor for more than three months without appearing in court or being charged, before eventually releasing him without charge.

In Benin Republic, after the April 2019 parliamentary elections, citizen protests against the results were met with arbitrary arrests and a violent police crackdown which resulted in the death of several unarmed protesters²⁰. Government also clamped down on freedom of expression and access to information. Online media was severely restricted and local media forbidden from broadcasting about the presidential polls. The African Court on Human and Peoples' Rights has indicted the government in Benin for committing several human rights violations related to political participation including the right to participate freely in electoral process and the right to an independent judiciary and impartial electoral bodies. In short, the application of political reforms have been led to serious concern of human rights abuses and violation across West Africa.

In Guinea, where resetting the term-limit clock and increasing the power of the presidency went against the wishes of the Guinean population, 82% of whom told Afrobarometer that they favour a two-term limit, there was violent repression that killed at least 21 people in post-election violence²¹. Furthermore, the main opposition candidate, Cellou Dalein Diallo, was held under house arrest, without charge, from 20-28 October, one of Guinea's main online news outlets was suspended from 18 October to 2 November for 'inciting citizen to violence', and internet and telephone networks were severely disrupted or shut down between 23-27 October to make it difficult for people to communicate, get information, or report on unfolding events.

Whilst the introduction and application of political reforms have been met with fierce resistance by citizens who have demonstrated a sustained commitment to democratic values by pursuing peaceful and legal means to protect their democratic rights. However, government responses to citizens' resistance to these reforms have led to serious human rights violations and disrespect for the rule of law.

Inter-communal crises and threats to social cohesion

The majority of ECOWAS member states have tumultuous recent histories of political instability, civil war and violent conflicts which have weakened national unity and deepened ethnic mistrust. These post-conflict societies are characterised by concerns around addressing issues of reconstruction, reconciliation, and social cohesion. The progressive application of opportunistic reforms for term elongation by incumbent government in West African states has excluded opposition parties. The growing absence of inclusive politics has reawakened historical mistrust and tension among communities.

Growing instability, resulting from political reforms that sow exclusion and marginalisation has heightened tension among already fractured communities. In part this is because political parties often have strong ethno-regional support bases and so decisions are seen through this prism. During the last few years,



there has been a spike in intercommunal conflict leading to record levels of civilian casualties and forced displacements in the region. In the Forestière region of Guinea, voting conflicts sparked sectarian violence that led to several mosques and churches being burned and more than 15 people killed²². Similarly, intercommunal violence erupted in Conakry on 23 October 2020, when hundreds of armed men from different ethnic groups, including Malinké and Konianké, considered to be sympathetic to the ruling party, attacked ethnic Fulani, perceived to be opposition supporters, in Enta Marché neighbourhood²³.

In Cote d'Ivoire, at least 15 people were killed in inter-communal violence in August and September 2020 across the country after Ouattara announced his intention to run for a third term²⁴. Recently, intercommunal clashes occurred in Bongouanou, the stronghold of opposition candidate and former Prime Minister, N'Guessan, as residents from different ethnic groups fought with machetes while houses and shops were set on fire²⁵. These inter-communal crises are being nourished by the dissemination of hate speech and inciting statements by political actors online, through social media platforms. For instance, inter-communal violence in Mbatto in 2020, a rural community in Cote d'Ivoire, which claimed many innocent lives was fuelled by the propagation of doctored videos, inciting one ethnic community against the other, on WhatsApp and Facebook.

Threats to regional peace and security

Growing policy diffusion on constitutional reform for tenure elongation and exclusionary electoral reforms have challenged consolidated efforts geared towards building resilience and conflict prevention across member states. Guinea's coup d'état in September 2021, which ousted Alpha Conde, provides a clear illustration of the direct impact that political reforms can have on political instability.

Researchers have also shown that violent extremism is usually a result of both external and domestic dynamics²⁶. Extremist groups exploit vulnerabilities such as grievances, marginalisation, governance deficits, legitimacy crisis and security gaps to lure members and integrate into communities. Increasing terrorist attacks in the northern region of Cote d'Ivoire have been attributed to inter and intra communal clashes²⁷. Communal tensions that have been further deepened by Ouattara's efforts to secure a third term. Whilst in the Tillabéri region, no more than 130 kilometres from Niamey the capital of Niger Republic, jihadi insurgents have appropriated political grievances to promote their terrorist activities²⁸. The political crisis in Tillabéri could have a significant impact on the insecurity situation in the entire region due to its geostrategic location: it is a border region surrounded by Benin Republic, Burkina Faso and Mali. It also serves as an important reminder that political grievances in one country can spread into others in the region given the porous nature of borders. Just as political reforms related to tenure elongation can be exported from one country in the region, to others.



THE WAY FORWARD FOR ECOWAS AND MEMBER STATES

Strengthening ECOWAS legal democratic instruments, including norms to enthrone good democratic practices and mechanism to enhance checks and balances and democratic accountability against opportunistic reforms can help overcome recent instability in the region. Furthermore, member states' efforts to ensure that political reforms are not only consensual, inclusive and emanate through credible and transparent process. This is critical to complement regional initiatives and to ensure that political reforms attain their goal of deepened political liberalisation, greater political accountability and socio-economic development for the benefit of majority of the ordinary citizens.

Enhancing ECOWAS legal instruments

ECOWAS is renowned for its democratic norms and standard setting role. In fact, ECOWAS was the first African organisation to formalise governance standards in its legal documents and to take far-reaching measures to defend these standards²⁹. The Mechanism for Conflict Prevention, Management, Resolution and Peacekeeping and the Supplementary Protocol on Democracy and Good Governance are the major instruments that set democratic standards and norms to entrench democratic practice, maintain stability and support development in the region. While the Mechanism addresses immediate prevention and management of conflicts, the Protocol aims at enthrone democratic norms and standards as a measure to support structural conflict prevention and the promotion of sustainable peace in member states. The Protocol has already supported efforts to restore democratic order in Guinea Bissau, Cote d'Ivoire, Burkina Faso, Mali and The Gambia.

In spite of the Protocol's enormous potential to entrench democratic practices and culture, lessons drawn from the experience of two decades of the implementation of this legal instrument has revealed some of its weaknesses, particularly vis-à-vis emerging political developments in the region. Issues around presidential term limits, constitutionalism, democratic institutions credibility, the legitimacy of political reforms, as well as some cross cutting issue like gender and human rights are critical standards to be strengthened in the Protocol in order to improve its effectiveness, relevance and responsiveness.

(i) *Presidential term limits*

ECOWAS has a zero tolerance stance towards power obtained or maintained by unconstitutional means and supports the free, fair and transparent election as only means to access power. However, these principles have come under scrutiny in the face of recent trend of undemocratic retention of power



through opportunistic constitutional reforms. The evasion of term limits by incumbents, through invocation of principle of prospective application of law to extend presidential terms, undermine the efficacy of the ECOWAS Protocol on Democracy and Good Governance.

To strengthen the Protocol, a presidential two term limit of varied duration/length should be clearly institutionalised as part of the Constitutional Convergence Principles. However, having presidential term limits institutionalised in the constitution is not an end in itself, rather, it is a means to ensure that leadership succession is structured and peaceful, while safeguarding democratic principle and maintaining stability in West Africa. Indeed, the institutionalisation of presidential two term limit in national constitutions did not prevent incumbent presidents from extending their tenure in Togo, Cote d'Ivoire and Guinea, even in the face of sustained domestic protests and pressure from the international community.

In addressing these concerns some member states have introduced the 'unamendable clause' in their constitutions, to ensure that provisions around term limits can never be changed. However, this approach is less effective when the principle of non-retroactivity of law is invoked when a new constitution is adopted. Therefore, ECOWAS should work to support reforms that limit presidential terms to an absolute maximum of two terms.

In keeping with the foregoing, the 2015 proposal by the ECOWAS Commission to adopt a regional obligation on term limits could be re-introduced for consideration. The timing seems appropriate as Togo and The Gambia, the two member states antagonistic to the adoption of the presidential term limit in 2015, have since retraced their steps.

(ii) ***Strengthen democratic institutions***

A major challenge facing democracy in West Africa is excessive power wielded by the executive arm and flawed checks and balance exerted on this autocratic tendency. Strong democratic institutions exert checks on the exercise of power by the executive. The promotion of the independence of the judiciary, parliament and the media in the Protocol is not enough. An important priority moving forward is to safeguard the space for these democratic institutions from executive arms and state-capture.

For the judiciary, appointment, composition and financial autonomy should be regulated by the ECOWAS Protocol on Democracy and Good Governance to better insulate it from politics. Independent professional judicial bodies in member states should be responsible for the appointment of judges, who are then ratified by the national parliament, with little or no involvement of the executive. Financial autonomy of the judiciary should be guaranteed in law and practice with a separate budget line in national budgets. Judiciary professional bodies should enforce compliance of judges to professionalism and impose sanctions when the latter is found wanting in the discharge of their professional duties.

ECOWAS democratic legal instruments should enhance parliamentary basic



function in political governance processes to deter undemocratic practices in member states. Besides, regular capacity enhancement on key legislative functions - oversight, representation and law-making - parliamentarians should be encouraged to put national interests above party, regional or religious considerations when considering important political reforms. In this regards, the tension between party loyalty and partisanship should be resolved in favour of bipartisanship and patriotism in legislative practice and debate, particularly on matters of constitutional reform for undemocratic retention of power by an incumbent.

Non-state actors like the media and civil society also have a vital role to play in upholding democratic accountability. They can be an early warning system that detects and raises awareness about contentious political reforms. In this regard, ECOWAS engagement with civil society and the media should be further strengthened. They can support these groups to educate the public on reform implications with the expectation that a more informed general public will exert sustained pressure against illegal or illegitimate political reform. More broadly speaking ECOWAS should refocus its democratic supports towards institutional building in between elections, rather than on the polling processes themselves.

Reforming electoral process

The Protocol on Democracy and Good Governance bans any electoral reform in the six months prior to the holding of an election, except if such reform is agreed upon by the majority of political actors. The six months timeline during which reform can be accepted has outlived its importance as opportunistic reformers have undertaken reforms to support undemocratic retention of power between one to four years ahead of the holding of elections. The ECOWAS Protocol should be revised to reflect this reality. Rather than limiting when electoral reforms can take place, ECOWAS and member states should concentrate on making sure that reforms abide by democratic tenets of consensus, inclusivity, and transparency both in process, content and when it comes to implementation.

Reaching consensus on political reforms is not easy. While consensus does not equate unanimity, the reductionist conception of pluralism has restricted the scope of actors require to consent to, or approve, political reforms. More often than not, at the expense of the 'social movement' consensus around political reforms has confined within the sphere of political parties either organised in a political dialogue or in the national parliament. But attaining consensus on political reforms should be hinged on broad based pluralism of stakeholders, including civil society organisations, traditional and socio-cultural authorities, trade unions and professional bodies. This approach to political reforms accords more legitimacy, credibility and sustainability to the process. Regardless of the mode of adoption of the reforms, ECOWAS should establish a standard for political reform to be legitimate and conducted in compliance with extant legislations which ensures higher degrees of popular participation and accountability.

Expanding democratic support

ECOWAS currently offers democratic support through trainings, technical electoral assistance and monitoring polling processes. But this support needs to be expanded to incorporate new initiatives to enhance constitutionalism, participation, pluralism and



human rights. ECOWAS should facilitate the development of a ‘Model Constitutional Law’ that will be hinged on the Constitutional Convergence Principles. Such a model law should contain legal, regulatory and philosophical frameworks and standards as enshrine in the Protocol of Democracy and Good Governance. It should also reflect international best practices on electoral management and administration, leadership succession, party registration, democratic and good governance norms. In addition, given controversies surrounding parrainage policies across select member states, ECOWAS should facilitate the development of regional guidelines on parrainage.

Similarly, ECOWAS needs to maximise its engagement with former heads of states to promote peaceful transfers of power and after-office security. Already the ECOWAS Commission uses these figures to head election observation missions and act as chief mediators in dialogue processes, but these are ad hoc in nature and limited in scope. Besides these time-limited roles, ex-presidents could be appointed as champions of a democratic cause or issue; as regional human rights advocates; or as a roving peace ambassadors. This initiative should not be the burden of the ECOWAS Commission alone, other regional institutions, like the ECOWAS Parliament and the Community Court of Justice should engage the service of former regional leaders to complement the work of the Commission in realising its goal of a peaceful, democratic and integrated region.

Finally, ECOWAS democratic support should include periodic evaluation of the implementation of the ECOWAS Supplementary Protocol on Democracy and Good Governance in member states. This can ensure ECOWAS Constitutional Convergence Principles and other democratic standards and norms are reflected in the member states legal, regulatory and policy frameworks. The evaluation could also assess structural and immediate risks of both existing and intended political reforms and frameworks that favour undemocratic retention of power in member states. This will give ECOWAS an active role in monitoring and enforcing constitutionalism and respect for democratic standards across the region. By so doing, conflictual issues and underlying grievances in the political, electoral and governance processes can be identified earlier, generating greater opportunity to mitigate associated risks with their passage into law.

Enforcement mechanisms

Sanctions are contained in the Protocol on Democracy and Good Governance to compel member states to respect democratic and human rights principles. These sanctions have supported interventions to restore democratic order in Guinea Bissau, Cote d’Ivoire, Burkina Faso, Mali and The Gambia and enhance democratic strengthening efforts across member states. However, lessons learnt from their application show that existing sanction regimes have struggled to address emerging political reforms that favour presidential term extensions and/or policies that exclude opposition or discriminate against women and youths. To strengthen the sanction regime, ECOWAS should consider, in the event of constitutional reform that favours presidential term extension and/or policies that exclude opposition, the progressive application of suspensions of electoral support, including election observation boycotts, and as needed, the non-recognition of governments emanating from elections that take place after contentious political reforms.



Endnotes

- 1 Freedom House, 2021. 'Freedom in the World Report 2021'. Available at: [Freedom in the World 2021: Democracy under Siege | Freedom House](#)
- 2 The Economist, 2020. Democracy Index: Global Democracy Has A Very Bad Year. Available at: [Global democracy has a very bad year | The Economist](#)
- 3 Osori A., 2021. How tenure elongation and a lack of term limits weaken the integrity of elections in Africa. Centre for Democracy and Development. Available at: [How tenure elongation and a lack of term limits weaken the integrity of elections in Africa - CDD \(cddwestafrica.org\)](#)
- 4 Bado K., (2019). Togo's continuing constitutional crisis and ECOWAS's failed mediation effort. Constitution.Net Available at: [Togo's continuing constitutional crisis and ECOWAS's failed mediation effort | ConstitutionNet](#)
- 5 Reich, M. (1995), 'The politics of health sector reform in developing countries: three cases of pharmaceutical policy', Health Policy 32: 47-77.
- 6 Ibid.
- 7 Cerna L., (2013). The Nature of Policy Change and Implementation: A review of Different Theoretical Approaches. OECD. Available at: [*The Nature of Policy Change and Implementation.pdf \(oecd.org\)](#) Accessed on 30 May 2021.
- 8 Ibid.
- 9 Olukoshi, Adebayo (2018) 'Political Reforms and Link with Governance at a UNOWAS Regional Colloquium on Challenges and Prospects of Political Reforms in West Africa', Abidjan, 26-27 March.
- 10 Mubin Adewumi (2020), "Threats to Credible Elections in Cote d'Ivoire: An Overview", a publication of Centre for Democracy and Development, retrieved at: <https://cddelibrary.org/wp-content/uploads/2020/10/THREATS-TO-CREDIBLE-ELECTIONS-IN-COTE-D'IVOIRE-2.pdf>
- 11 Boucher A., 2020. Defusing the Political Crisis in Guinea. Africa Centre for Strategic Studies. Available at: [Defusing the Political Crisis in Guinea – Africa Center for Strategic Studies](#)
- 12 Ibid
- 13 Federation Internationale Pour les Droits Humains, 2020. Communiqué- Guinée: Les acquis de la démocratisation de 2010 remis en cause. Available at: [Guinée : les acquis de la démocratisation de 2010 remis en cause. \(fdh.org\)](#)
- 14 See Loi No 2018-22 du 4 Juillet 2018 portant revision du Code Electorale. Available at : [Journal Officiel N°2018-7106 du Jeudi 05 Juillet 2018.pdf \(sec.gouv.sn\)](#)
- 15 See ECOWAS Community Court of Justice Judgement on USL vs Republic of Senegal - ECW/CCJ/APP/59/18 Available at: [CCJ Official Website | Court Judgment Mandates Senegal to Remove Obstacles to Free Participation in Country's Elections \(courtecowas.org\)](#)
- 16 Government of Côte d'Ivoire (2000) Electoral Code. LOI N° 2000- 514 DU 1ER AOUT 2000
- 17 UNDP, 2020. Global Human Development Indicators, [Human Development Reports \(undp.org\)](#) accessed on date: 29/04/2019
- 18 UNDP, 2020. Ibid
- 19 Christensen, S & Ba, D, (2019). Senegal blocks popular opposition candidates from presidential race. Reuters. Available at: [Senegal blocks popular opposition candidates from presidential race | Reuters](#)
- 20 Cole J., 2021. What are the Stakes of the Upcoming Elections in Benin? Just Society, Reiss Center on Law and Security, New York University of Law. Available at: [What Are the Stakes of the Upcoming Elections in Benin? \(justsecurity.org\)](#)
- 21 Aljazeera, 27 October, 2020. Nearly two dozen dead in Guinea post-election violence: State TV. Available at: [Nearly two dozen dead in Guinea post-election violence: State TV | News | Al Jazeera](#)
- 22 RFI 30/03/2020. Guinée: retour sur les affrontements meurtriers de Nzérékoré. Available at: [Guinée: retour sur les affrontements meurtriers de Nzérékoré \(rfi.fr\)](#)
- 23 Human Rights Watch, 19 November 2020. Guinea: Post-Election Violence and Repression. Available at: [Guinea: Post-Election Violence, Repression | Human Rights Watch \(hrw.org\)](#)
- 24 Aljazeera News, (2020) 'Ethnic Clashes in Ivory Coast Opposition Stronghold, Aljazeera, 18 October retrieved at: <https://www.aljazeera.com/news/2020/10/18/ethnic-clashes-in-ivory-coast-opposition-stronghold-ahead-of-poll> (Accessed 20 November 2020)
- 25 Aljazeera News, (2020). Ibid
- 26 Kehinde Bolaji, (2010). Preventing Terrorism in West Africa: Good Governance or Collective Security? Journal of Sustainable Development in Africa Vol. 12, No.1, 2010 ISSN: 1520-5509 Clarion University of Pennsylvania, Clarion, Pennsylvania. Available at: [Microsoft Word - Preventing Terrorism in West Africa Bolaji.doc \(jsd-africa.com\)](#) ; Benjamin Maingwa (2014) Jihadism in West Africa: Adopting a Three Dimensional Approach to Counterterrorism, Journal of Peacebuilding & Development, 9:3, 17-32, DOI: 10.1080/15423166.2014.98455 ; Zyck, S. & Muggah, R. (2013), 'Conflicts Colliding in Mali and the Sahel' in Stability: International Journal of Security & Development 2: 2; Solomon, H. (2013), 'The African State and the Failure of US Counter-Terrorism Initiatives in Africa: The Cases of Nigeria and Mali' in South African Journal of International Affairs 20: 3: 427 – 445.
- 27 Assanvo W. 2021. Terrorism in Côte d'Ivoire is no longer just an external threat. Institute for Security Studies. Available at : [Terrorism in Côte d'Ivoire is no longer just an external threat – ISS Africa](#)
- 28 Bøås, M., Cissé, A. W., and Mahamane, L. 2020. Explaining Violence in Tillabéri: Insurgent Appropriation of Local Grievances? The International Spectator 55 (4).
- 29 Hartmann, C. (2013). Governance Transfer by the Economic Community of West African States (ECOWAS). A B2 Case Study Report, SFB-Governance Working Paper Series, No. 47, Collaborative Research Center (SFB) 700, Berlin. Available at : [f_0030745_24883.pdf \(columbia.edu\)](#)



© 2022 Centre for Democracy and Development (CDD-West Africa). All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Centre for Democracy and Development. Please direct inquiries to:

Centre for Democracy and Development (CDD-West Africa)
Research Department
16, A7 Street Mount Pleasant Estate (CITEC)
Federal Capital Territory (F.C.T) Abuja
research@cddwestafrica.org
cddabv@cddwestafrica.org

CDDwestafrica.org

This publication can be requested or downloaded at no cost at
westafricaninsights.org

Cover Image: NASA/ GSFC, MODIS Rapid Reponse System, Public domain, via
Wikimedia Commons



16, A7 Street Mount Pleasant
Estate (CITEC), F.C.T Abuja.
cddabv@cddwestafrica.org



Centre for Democracy & Development

Centre pour la Démocratie et Développement