

Elections and conflict resolution: The West African experience

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Introduction

The battle for democracy on the African continent has been long and arduous. In many African countries the absence of democracy was first experienced as political authoritarianism, enforced by quickly constituted regimes mostly characterised by their totalitarianism; their intent was to dominate practically the whole lives of their citizens, and not to tolerate any serious opposition to their aims and objectives. Under the pretext of needing to build fledgling nations, or to foster social and economic development, the political powers in charge showed little respect for civil liberties or the right to object.

When a leaden silence was not imposed on the political opposition, there were often sham elections in which the final results were known from the start and the powers that be won

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by an overwhelming majority. In fact, the first changeovers of political power between parties only started taking place around the 1990s, almost 30 years after independence. Indeed, the absence of democracy on the African continent has mostly been experienced in the lack of transparent and competitive elections and the consequences that ensued, such as a lack of an opposition, the monopoly on power by those in government, the non-replacement of class and political elitism.

The democratic opening up of the political spectrum in the 1990s was generally characterised by the appearance of structures able to organise electoral processes independently. The fierce battles have centred on presidential elections and have been waged by those in power and their opponents, supposedly revealing, as promoted by these electoral commissions, the wishes of the authorities to promote free, sincere and democratic elections. Much hope was invested in these new structures as the supposed new guardians of democracy.

More than 15 years later it should be possible to assess the results, which not surprisingly show a wide variety, in line with national experiences of the democratisation process. There are some very fortunate cases where electoral commissions managed to successfully exercise their supervisory mandate, but there are also less fortunate cases, and then also more worrying cases where the electoral commissions largely failed to fulfil their mandates, compromised their credibility and created serious obstacles for the political climate in general.

Almost two decades after the launch of democratic transitions, the objectivity of particularly presidential elections are still not guaranteed and are in fact likely to lead to crises. In West African countries elections have for the most part become the primary obvious sources of conflict. During the preparation period leading up to the election, during the election itself, or when the results are announced tense relations often end in confrontation, threatening political stability and peace. These generally stem from political players who do not agree with the rules governing the electoral process or the modalities surrounding the organisation of the elections, or from candidates who are unhappy with the outcome of the elections and contend that the results do not reflect the will of the voters.

Obviously, the particular circumstances and situations vary from one country to the next: some countries, such as Ghana, Mali and Benin, have managed to agree on the rules and modalities governing the organisation of elections, but in others, such as Burkina Faso and Senegal, the lack of agreement about the rules of the electoral process has led to boycotts by the opposition. Some countries such as Togo have managed to avoid a crisis which could affect the electoral process and end in violent confrontation by means of political negotiations to reach consensus by all the participants. In still other countries the rules of the electoral process were redefined during discussions held between all parties during a post-conflict period – this happened in the Côte d'Ivoire, Liberia and Sierra Leone.

In an effort to settle electoral matters in the West Africa Region, ECOWAS adopted a protocol on democracy and good governance in which it formulated general principles to serve as guidelines for the electoral process. It was hoped that this would preserve democracy and social order.

However, the seriousness of elections and their role in conflicts – and thus conflict resolution – in West Africa, can only be understood against the background of the role of elections as a primary source of conflict within these states.

Presidential elections as a primary source of conflict

In West Africa elections seem to have become a source of conflict to an ever increasing extent. The conflict that often accompanies the electoral process could occur at the beginning of the process, when the rules are still being defined, or after the electoral event, during the course of vote counting and announcement of results.

Before election day

It is often when the rules of the electoral game are being defined that the first signs of discord and political crisis become noticeable. Strife could surface when the eligibility criteria in order to run for the presidency are defined. Although enshrined in most constitutions, the principles governing the right to run for president, happily respected in most states, have at times been subject to restrictions aimed at excluding some candidates. This both frustrates the excluded hopefuls and their supporters, perverting the spirit of democratic competition and creating a climate of tension that could escalate into armed conflict.

Such a situation occurred in the Côte d'Ivoire where the exploitation of the issue of nationality was used to exclude Alassane Ouattara from standing as a candidate during the presidential elections of 2000. It was certainly a factor that contributed to the Ivorian civil war. It is a widely accepted requirement – generally not negotiable – that a candidate for the highest office hold the nationality of the state he or she intends to lead, found in most Western constitutional systems. However, when biased and aimed at excluding a certain candidate, it could become a highly contentious issue that threatens the political stability of a country.

This is what happened in the case in Côte d'Ivoire, when the concept of 'ivorianness' tainted constitutional legitimacy. With regard to the question of nationality, article 35 of the 1999 Ivorian constitution holds that candidates to the presidency must be of Ivorian descent, and have both Ivorian mothers and fathers. They can never have revoked their

Ivorian nationality and should never have acquired another nationality. They must have resided in the Côte d'Ivoire for an uninterrupted period of five years preceding the date of the elections, and have lived in the country for an effective total of ten years (this does not apply to Ivorians chosen to represent the state at the headquarters of international organisations or multinational corporations, nor to political exiles).

While these conditions are acceptable, they were used to invalidate the candidacy of Alassane Ouattara, using a highly debatable technical argument during the presidential elections of 2000. Alassane Ouattara was a member of the *Rassemblement des Républicains* (RDR, Rally of Republicans), and the Supreme Court accused him of having a 'dubious nationality' and excluded his candidacy, stating that documents he presented, including those based on his place of birth, his certificate of nationality, his declaration of non-revocation of the Ivorian nationality, and notably those concerning the nationality certificate of his father and mother and their civil status and the declaration under oath that he had never acquired another nationality, were 'all questionable'. The candidacy of Emile Constant Bombet of the *Parti Démocratique de la Côte d'Ivoire – Rassemblement Démocratique Africain* (PDCI/RDA, Democratic Party of Côte d'Ivoire – African Democratic Rally) was also rejected because of his involvement in a pending court case. The result was that the candidates of the two main parties – the RDR and the PDCI – were excluded from the electoral contest on the basis of very controversial arguments.

Other factors have also been used to keep opponents from the electoral contest. In Togo, for example, the candidacy of Sylvanus Olympio was rejected in 1992 because he had failed to submit a tax certificate of compliance, and again in 1997 because he had not complied with the medical procedures stipulated in the Constitution.

In both these countries the questionable exclusion of candidates from taking part in presidential elections created tensions which escalated to violence and degenerated into civil war in the case of the Côte d'Ivoire. These confrontations between the political protagonists were only resolved by regional mediation after causing havoc and extreme human insecurity.

After election day

There are very few countries in West Africa where all the players in the political game recognise and accept the results of an election. On the whole the results are contested by the opposition and obviously challenges about the validity of the results lead to tension in the political game, creating latent or open conflicts. There are numerous examples: In the Côte d'Ivoire the presidential election of 2000 was followed by violent protests which brought Laurent Gbagbo to power. In Togo, the last presidential election was the object of violent protests which ended in regional mediation and the formation of a government of unity. The 2007 Senegalese presidential election witnessed the victory

of Abdoulaye during the first round, a challenge by the opposition which led it to a boycott of the general elections and holding of a national conference with civil society organisations since 1 June 2007. The results of the Mali presidential election of 2007, during which General Toure was re-elected during the first round, have been challenged, too. In Nigeria, judgment is pending in two appeals brought by Buhari and Atiku, two opposition party candidates, against the election of President Yar'Adua.

Apart from Benin and the Manu River countries, which are emerging from conflict, there is not a country in West Africa today where election results have not been contested. Even Mali and Senegal, countries in which previous elections had been exemplary, today have to deal with post-election crises.

Given that electoral crises are such a constant factor and so persistent in African politics, it is not surprising that attention is focused on efforts to prevent and solve them.

Responses to the electoral crisis

There have essentially been two types of responses to the electoral crisis: the first is at state level and consists of setting up electoral commissions to regulate the elections and the second at ECOWAS level, consisting of the adoption of the protocol on democracy and good governance and the institution of an electoral assistance unit to regulate electoral processes in the West Africa Region.

The responses at state level: the electoral commissions

The response to the electoral crises was to distance the government powers from the management of the electoral process or at least weaken their hold on the process. This led to the emergence in Africa and in West Africa in particular of autonomous or independent national electoral commissions (such as *la Commission Electorale Nationale Autonome* (CENA, National Independent Electoral Commission) or *La Commission Electorale Nationale Indépendante* (CENI, National Independent Electoral Commission)).

These electoral commissions have certain traits in common, and their differences generally stem from each country's particular history of democratisation, its legal tradition and the relationship with the political forces which themselves have allowed for the creation of an electoral commission.

On the whole, efforts are made to ensure consensus with respect to the nomination of the members of the electoral commissions. The definition of the 'profile' of the members of the electoral commissions entail either nominating only members who are not politically engaged, or the opposite, thus involving only those who are defined by

their political allegiances. In other words, the neutrality or balance expected from the electoral commission is achieved in one of two ways:

- Deliberately taking into account the political element, but avoiding the risk of bias by ensuring a fair representation of the political powers. This position is followed in many countries like Benin, Côte d'Ivoire and Mali, where the government, parliament and political parties nominate members of the electoral commission
- Excluding any political element, by not only totally excluding members of any political party, but also requiring that members not even personally favour any particular party. In West Africa, the Senegalese legislation is one of the very few which excludes on principle the involvement of political players as members of the commission

Generally speaking, the powers or prerogatives of the electoral commissions concern two main issues, namely their grasp of the electoral process itself and their influence on it and second, the effectiveness of their powers, or more precisely, the powers required to impose sanctions based on violations of the electoral law. The debates around the electoral commissions are mostly about these two issues. The credibility of a commission depends on whether the legislation in place would accord or prevent it from using such powers. In countries such as Benin, Nigeria, Ghana and Burkina Faso, the electoral commissions have the highest powers to run the electoral process. These electoral commissions are autonomous institutions that do not depend on any other public entity such as the government or parliament. The general task of each commission is the preparation for and organisation of the elections, as well as the centralisation of the results from the ballots, which will then be at the disposal of the jurisdiction responsible for the election (constitutional court or supreme court). In some Anglophone countries the electoral commission is also responsible for keeping an eye on the everyday life or workings of the political parties. In some countries, such as Senegal and Mali, the electoral commission has the task of controlling and supervising the elections but it is the task of the home office to organise them.

The powers and prerogatives of the Côte d'Ivoire Independent Electoral Commission are a fair representation of those of a number of electoral commissions in West Africa and will therefore be discussed in more detail: this commission prepares, controls and supervises the elections. It determines where voting stations should be set up, is qualified to print the ballot papers and also selects and trains officials manning the voting stations. The commission consists of three permanent staff members, namely a president and two secretaries, while the rest are nominated by the commission, and by the candidates or political parties. The commission also makes decisions on who qualifies as voters, a prerogative which belongs to the judiciary in most countries (for example Benin). The authorities also consult the electoral commission on the date of elections and of the start of the election campaign.

The Côte d'Ivoire commission takes all the necessary measures to ensure all candidates are treated fairly with regard to equal access to official press organs (written, radio or audiovisual) through the *Commission Nationale de Communication Audiovisuelle* (CNCA, National Commission of Audiovisual Communication). In some countries this function is fulfilled by a media regulatory body, which is responsible for ensuring equal access by all opinion makers to the media. In fact, the existence of such a body would be reason enough to remove this function from the electoral commission and so make equality of treatment for all candidates more likely. The Ivorian commission is further tasked with announcing the results of all elections, with the exception of presidential election or referendum results. The announcements regarding these two are the responsibility of the Constitutional Council.

The electoral commissions which have been set up in almost every country in Africa, are first and foremost a way of making elections more transparent, and constitute in this sense a democratic asset, if only in principle. For a long time many countries have only experienced sham elections, in which results were known beforehand and the party in power often received more than 90 per cent of the votes. The creation of electoral commissions is fitting in a context where the hope is cherished of not only the establishment of a true multiparty system, but also of ending to all electoral fakery or fraud.

Against this background, the actual election events have to be analysed to determine whether electoral commissions have succeeded in their aims. However, the results are fairly uneven. Just as 'democratic experiments' have not always been convincing in all the states, the attempts to rehabilitate the electoral process have not at all times met with success. One could almost say that it is the fate of the electoral commission to act as a barometer, a means to measure the success (or failure) of the democratic experiment. This is illustrated by the following three groups of cases.

The success stories

The Benin Autonomous National Electoral Commission (CENA) is undoubtedly one of the organs on the African continent which can boast of its success. This institution has most harmoniously come to fit into a democratic transition, with all acknowledging its exemplary performance. Its arbitration of the ballots has never been seriously challenged, and the Beninese political players seem to have 'assimilated' it well. Legitimacy is therefore not an issue.

This did not come easily, for the CENA did experience some difficulties. The first of these was the nagging problem of funds allocated by the authorities, for typically of this type of institution, it is dependent on the government for the resources needed to fulfil its mandate. In 2006 and 2007 the issue of the prompt allocation of funds was raised,

and a number of observers felt the authorities had not shown the desired concern for this issue. Members of the CENA also criticised the transport arrangements for all the electoral equipment required at interior regions of the country. In addition, the CENA experienced some internal conflict in 2007, linked to procurement of tenders by its president, which resulted in his dismissal just four days before the first electoral round took place. However, despite these difficulties the Benin CENA has been successful in bringing about the rehabilitation and transparency of the electoral process and the country has not experienced any post-election crisis as a result of an election since the electoral commission was put in place.

The same could be said of the Ghana electoral commission. It too dealt well with the various electoral processes initiated in the country, even if it too complained of the relatively limited funds at its disposal. From the information on the electoral processes in Ghana it is clear that there is a recurrence of the difficulties of getting the electoral material to its destination and that there is thus a need to develop a decentralisation policy to deal with this problem. Nevertheless, the legitimacy of the electoral commission is largely acknowledged, to the point where it would certainly be possible to call its management of the elections a success.

Ambiguous results

The cases in this category are those whose organs responsible for the supervision of the elections managed to deal fairly well with several crises (despite the usual grievances about lack of sufficient funds for their functions).

In the case of Mali, the crisis started the day after the 1997 ballot was cast. At the time the electoral commission had the right by law to organise the elections and announce the results. Due to lack of experience, this commission faced a great deal of indecision about how to manage the ballot process. The ensuing chaos somewhat tainted the second term of the head of state at the time. However, Mali learnt from this unfortunate experience and solved the matter by moving the function of organising elections to the state – more precisely to the home office and the election delegation – and the electoral commission now only supervises the elections and guarantees their regularity. The equivocal nature of the Mali experience is due to the uneven character of its electoral trajectory.

The Ivorian electoral commission equally deserves a qualified vote of confidence, and it is also expected to continue its work as part of the ongoing process resulting from the 2007 Ouagadougou Agreements. The commission is burdened by the particular Ivorian political context in which political ‘arrangements’ tend to be substituted for legal norms – and it is the Independent Electoral Commission which pays the price. It has become hostage to a rather unpredictable political game in which the rationale of the law and legal process are subordinated to the machinations of the political game, which end with

a precarious stability and short-lived alliances and is unlikely to lead to legitimisation. The most important lesson learned from the Ivorian situation is the way it reveals the relationship between the general political context and the development, in terms of its legitimacy, of the supervisory organ of the elections.

The Senegalese CENA, which has replaced the Observatoire National des Elections (National Elections Observatory), has managed to overcome several of the problems that its predecessor organ faced in the past. It has become a permanent fixture and survived as an institution, in the process also acquiring sanctioning powers. Again, as in the case of other countries, funding is still an issue. In fact, only two weeks before the ballot was to be cast for the presidential elections of February 2007, the CENA still had not received the necessary funds to carry out its work, (the 15 January 2007 deadline for releasing the funds was not adhered to). In addition, after these elections the Senegalese electoral system suffered a serious crisis of confidence, which resulted in a boycott of the legislative elections of June 2007 by almost all of the opposition parties. At the heart of the controversy was the electoral roll, whose administration had been managed by the CENA. The deadlock in the political dialogue was bound to impact on the credibility of the Senegalese CENA.

The failures

Of all the electoral commissions it is the Nigerian electoral commission which has faced the most serious crisis. According to almost all the monitors, the organisation of the 2007 presidential elections was a total disaster. Even the authorities alluded to this. Why this was the case is yet to be explained, for from the perspective of its status and privileges, the Nigerian commission would seem to be one of the organisations best placed to assume an independent role. At present, however, the Nigerian commission is a discredited organisation, a situation from which it will be difficult – albeit not impossible – to recover.

The ECOWAS response

In order to prevent electoral crises, the ECOWAS adopted the 2001 Protocol on Democracy and Good Governance and created an electoral assistance unit.

The protocol was signed in Dakar on 21 December 2001 and was aimed at supplementing the so-called Lomé Protocol on the mechanism for conflict prevention, management, resolution, peacekeeping and security which had been adopted in December 1999. Although more indirectly, it is also linked to other instruments adopted as part of the same ECOWAS or a larger pan-African framework, including the following:

- Article 58 of the ECOWAS Treaty (1993), which relates to ‘the maintenance of peace’ in the broader sense

- The OAU Declaration on security, stability, development and co-operation in Africa (held in Abuja on 8 and 9 May 2000)
- The declaration by the OAU on the reaction of the OAU when faced with unconstitutional changes of government (OAU 2000a)
- The African Charter on Human and People's Rights (OAU 1981)
- The Harare Declaration adopted by the Commonwealth states (1991)
- The Cotonou Declaration adopted by the Fourth International Conference on New or Restored Democracies (2000)

The protocol consists of three chapters, with most of the content being devoted to the principles, as set out in chapter 1. Chapter 1 provides first for what the authors call the principles of constitutional convergence. This concerns a series of constitutional conditions considered by the protocol to be common to the ECOWAS member states, which in fact illustrate the 'political' aspect of economic (which is the initial purpose of the Community) integration. Conditions include the principle of the separation of powers, respect for the rights of parliaments and their members, the independence of the judiciary, guarantees of lawyers' freedom, the transparency of elections and zero tolerance for any form of unconstitutional accession to power. The state must remain neutral on religious matters and political opposition must be free. The protocol accepts that each state may adopt a system of financing political parties. Furthermore, ECOWAS member states are enjoined to ensure the unfettered exercise of public liberties, and to ensure that former heads of state enjoy a special status, particularly with regard to freedom of movement.

Within the framework of the ECOWAS region, demanding that states show respect for the principles of democracy, and attempting to define democratic principles and standards with regard to electoral matters were both ambitious and voluntarist, not to mention a novelty in Africa. For a very long time constitutionalism was considered exclusively an affair of states. The organisation and functioning of political regimes, the means of access to power and the principles governing elections were traditionally the domain of government. Regional integration and international organisations took care to avoid interference in these matters, presumably out of respect for the sovereignty of states and the principle of non-interference in their domestic affairs. The focus was therefore on economic and development issues. After the fall of the Berlin wall, universally advocated state democratisation imperatives on the whole forced regional or continental integration organisations to lay down democratic principles to which members were expected to conform. In developing countries this was intensified by statements by donors and Western countries that democracy was a precondition for the provision of aid. It is within

this context that organisations such as ECOWAS and the African Union formulated constitutional and democratic principles which carry sanctions for non-compliance (a matter which could be problematic). Clearly, however, ECOWAS has most certainly taken matters furthest with the proclamation of democratic principles to be promoted and complied with within the West Africa Region with the Protocol on Democracy and Good Governance.

It is very clear from this protocol that ECOWAS realised that no substantial reform of the electoral act could occur in the six months preceding an election without the consent of a large majority of the political players. The state's electoral roll would have to be kept up to date and its accuracy guaranteed, and the monitoring organs would have to be truly independent. Further, the results of the polls would have to be respected by all the political stakeholders. The protocol encourages a spirit of fair play as well as guarantees for the safety of participants after publication of the results. In the longer term polls would have to be held at regular and foreseeable intervals, albeit with the help and monitoring of ECOWAS.

In theory, non-compliance with the principles set out in the protocol implies that sanctions should be applied, set out in the one-page second chapter. These sanctions could include the following, application depending on the seriousness of the contravention:

- The refusal to support any applicants nominated by a state which ignored its commitments, for elective posts in international organisations
- The refusal to hold an ECOWAS meeting on the territory of the state in question
- The suspension of the said state from any leadership position in ECOWAS

However, during the period that sanctions were applied, ECOWAS would continue to monitor, encourage and support any efforts by the suspended member state to return to a normal, democratic and institutional order.

The inclusion of such an arrangement is informative, showing that while the authors of the protocol were anxious to promote democratic values, they were realistic enough not to lose sight of the difficulties encountered by a state in the pursuit of such ideals and with international commitments to uphold. Like any other legal instrument, the protocol might prove to be completely or partially impossible to implement in practice. These implementation difficulties include relevance to international treaties, interference in the sovereignty of states and the pre-eminence of a constitution over the protocol.

However, the protocol provides both a good foundation and a starting point for a legitimisation of standards adopted with regard to the elections in the West Africa

Region. That this could prove to be feasible is likely in view of the success achieved in this area elsewhere on the continent, and notably in the SADC region, where the harmonisation of electoral standards and practices has indeed been realised.

Clearly the protocol is more concerned with principles of democracy than sanctions. Apart from the principles of constitutional convergence the protocol provides for aid and assistance by ECOWAS to members states for running of elections, in line with the practice of the organisation first initiated in the 1990s. Chapter 1 further includes explicit directives on electoral matters, such as for observer missions to member states (it must be made up of persons whose independence is above any suspicion, women must be included, members must have a general idea of the terrain before being deployed, and it must produce a report after completion of its task).

It is obvious from the other aspects that the protocol deals with – amongst others the role of the armed forces, police and security forces, the importance of the rule of law and respect for human rights and good governance and the welfare of women, children and the youth – that ECOWAS realised that elections were only one, albeit an important, aspect of conflict that arose in the period leading up to elections or directly after the announcement of results.

The electoral assistance unit was instituted by the head of political affairs of the ECOWAS Commission. Its mandate is to observe the electoral process, at the request of the state concerned. The response to the electoral assistance unit has been mixed. In some cases it has achieved good results, and has even been able to avert a major electoral crisis, as happened in Guinea Bissau during the presidential election in 2006. However, other states criticise the way the observation missions function, by either arriving late or never being critical, even when other observers are.

However, the electoral assistance unit does contribute to the legitimacy of electoral processes in countries in the region, even if it does at times give the impression that it is present simply to lend credence to electoral results (while they are in fact not credible).

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