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# Lessons from Electoral Management and Processes in West Africa

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**South African Institute of International Affairs**

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## ABSTRACT

This paper is based on case studies from six West African countries (Republic of Benin, Cape Verde, Ghana, Nigeria, Senegal and Sierra Leone). It points out key historical and material forces that helped frame and shape the electoral management and processes of these countries. These are: the state as a site for zero-sum politics; the progressive violation of the principle of isolation of administration from politics; and the combination of political and legal influences that help foster a culture of impunity.

In reviewing national debates over strengthening electoral management and processes against the background of political reforms aimed at the democratic management of diversity, the paper focuses on five main challenges. These are, respectively: the preferred model of electoral management bodies (EMBs); the cost of elections; electoral dispute adjudication; EMBs' partnerships with state and non-state stakeholders; and presidential term limits.

The trend is towards adopting one of the following EMB models: the single independent (Republic of Benin, Ghana and Nigeria); two or more independent (Sierra Leone); and hybrid or mixed (Cape Verde and Senegal). These three models seek to strengthen EMBs by entrenching them in constitutions (Ghana, Nigeria and Sierra Leone); or creating them through ordinary processes of legislation such as electoral laws, as in much of francophone Africa. An apparent conflict of interest among incumbent public political elective office-bearers remains a stumbling block in legislating reforms to make EMBs independent of party and political control.

The paper also examines challenges confronting EMBs, including the increasing cost of elections, controversy over electoral dispute adjudication and institutionalising partnerships with stakeholders.

Noting gains and reversals in electoral management since the 1990s, the paper concludes that the major challenges facing African EMBs revolve around contradictions between the political economy and mainstream ethical values.<sup>1</sup>

## ABOUT THE AUTHOR

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## ABBREVIATIONS AND ACRONYMS

AEDR	alternative electoral dispute resolution mechanism
AGR III	Third African Governance Report
CENA	Commission Electorale Nationale Autonome (Autonomous National Electoral Commission)
CNE	Comissão Nacional de Eleições (National Election Commission)
CRE	Comissão de Recenseamento Eleitoral (Electoral Registration Commission)
CSO	civil society organisation
DGAPE	Direcção-Geral de Apoio ao Processo Eleitoral (General Directorate for Electoral Process Support)
DRC	Democratic Republic of Congo
EC	electoral commission
ECOWAS	Economic Community of West African States
EMB	electoral management body
ICCES	Interagency Consultative Committee on Election Security
INEC	Independent National Electoral Commission
IPAC	Inter-Party Advisory Committee
NEC	National Electoral Commission
SLPP	Sierra Leone People's Party
UNDP	UN Development Programme
UNECA	UN Economic Commission for Africa

## INTRODUCTION

This paper summarises the observations and findings of a comparative study of the contribution of electoral commissions (ECs) to the strengthening of democracy in West Africa, carried out in 2009–2010. The study was conducted in six countries, namely the Republic of Benin (Benin), Cape Verde, Ghana, Nigeria, Senegal and Sierra Leone. It has been supplemented by findings from the Third African Governance Report (AGR III) of the UN Economic Commission for Africa (UNECA), for which the author prepared two background papers, respectively ‘Election Administration and Management in Africa’ and ‘Political Architecture: State-Building and Diversity’.<sup>2</sup>

The study was prompted and informed by one major socio-political trend in West Africa. This is that ever since the mid-1980s a high degree of importance has been attached to the redesign of election management and processes as democratic mechanisms for managing diversity in the sub-region. Those new designs, and the governance architecture fashioned out of them, are part of a broader constitutional and political reform movement aimed at strengthening democracy as a way to promote sustainable socio-economic development in the sub-region, as in Africa generally.

The reform movement was the outcome of attempts by pro-democracy coalitions to improve domestic and external accountability mechanisms. The reforms emerging out of those campaigns rest on two pillars. The first is the establishment of constitutionally entrenched domestic institutions for the promotion of democracy, in effect acting as a fourth branch of government. These institutions include, for example, bodies protecting human rights and promoting anti-corruption programmes and independent ECs. The second pillar is formed from supranational or intergovernmental institution-building initiatives such as the Economic Community of West African States (ECOWAS) Commission and its court and parliament. The new institutions derive their anchoring visions from regional standards and codes such as the ECOWAS Protocol on Democracy and Good Governance, and the African Charter on Democracy, Elections and Governance. Virtually all ECOWAS member states have acceded to these. The Protocol and Charter reflect a strong commitment to achieving targets for constitutional government, strengthened and credible free and fair electoral governance; and the establishment by Regional Economic Communities of benchmarks, codes and standards for monitoring progress towards meeting those targets at regional level.

The governance architecture arising from the reform movement, of which election management is a cornerstone, is based on the following six premises:

- democratic political succession, with fixed presidential term limits, within the framework of competitive party and electoral politics, superintended by independent electoral management bodies (EMBs);
- affirmative action-type politics to promote and protect significant community diversities;
- promotion and protection of socio-economic and group rights;
- separation of powers;
- promotion and devolution of power to multiple centres of political authority;
- electoral and party reform to promote inclusion and participation; and
- the establishment of horizontal governance institutions with oversight and (usually) investigatory powers of accountability and transparency in governance.<sup>3</sup>

Through desk research, interviews and focus group discussions and using the comparative method, the study sought to identify and explain similarities and differences between the structures and operations of EMBs in the six countries concerned. Their varying histories, political cultures and political economies acted as independent and intervening variables. In effect each country study was set against the backdrop of the specific economic and cultural factors (that is, the developmental circumstances) that shaped the nation's colonial and post-colonial politics and political economies. It looked at the mandate of the particular EMB and examined whether and how far it fulfilled that mandate. It also examined the method of appointing EMB members and its effect on that body's independence and effectiveness. Finally, it assessed the EMBs' contribution to improved election management.

Specific developmental circumstances have framed and shaped electoral governance in general and in particular the place and role of EMBs in electoral governance. First among them is the structural character of the state as a setting for zero-sum politics, with elections becoming the continuation of war by other means. Second is the progressive violation of the principle of separation of administration from politics, which is a core element of constitutional government. Third is a political and legal culture of impunity that tends to encourage, condone or in some cases reward exemption from penalties for poor electoral governance. The Nigerian Bar Association, for example, identified a legal framework for the conduct of elections that encourages and rewards such behaviour as a major source of deficient electoral administration and management in Nigeria.<sup>4</sup>

A significant issue in the debate on constitutional and political reform in West Africa continues to be the improvement of governance to ensure electoral integrity and protect the electoral mandate through free and fair elections.

Argument increasingly has focused on the following issues in the redesign of EMBs and electoral governance:

- the preferred model of an independent EMB, including its powers and functions, unbundled to create more than one EMB, professionalising and modernising it with information and communication technology;
- the cost of electoral administration and management, particularly of elections and voter registration;
- electoral dispute adjudication;
- the role of different stakeholders as partners of the EMB in electoral administration and management; and
- the politics of constitutional term limits and presidential succession.

## MAJOR FINDINGS

### **Preferred EMB model, appointment and autonomy**

Table I shows various EMB models in Africa. Three of them are utilised in the six countries under review. Benin, Ghana and Nigeria use the single independent EMB; two or more

independent EMBs exist in Sierra Leone; and Cape Verde and Senegal employ the hybrid/government system.

**Table 1: Models of African EMBs**

Classificatory model	General characteristics	Country examples
Single independent EMB	Full responsibility for management and conduct of elections, with members chosen on their personal merit and integrity or professional background and/or party political affiliation	Angola, Benin, Botswana, Central African Republic, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Nigeria, South Africa, Uganda, Zimbabwe
Two or more independent EMBs	Shared responsibility, with one EMB responsible for election management and administration and the others for regulating party political activities and finance or constituency delimitation	Sierra Leone, Tanzania
Hybrid EMB: Government/civil service-based EMB, under an independent oversight supervisory body of experts, usually judges	Main or core electoral functions undertaken by the civil service, but under the supervision of an independent body	Cape Verde, Côte d'Ivoire, Democratic Republic of Congo, Guinea, Senegal
Fully government-controlled EMB**	Management and administration of elections are solely under the control of government.	
Government-controlled but decentralised**	Limited control, co-ordination and supervision of a national authority independent of government	

\*\* Note: These models hardly still exist in West Africa. This results from a trend of replacing non-autonomous or fully government-controlled EMBs inherited at independence (notably in francophone and lusophone countries), with autonomous or semi-autonomous ones. For example, constitutional and political reform designed to insulate EMBs from executive branch control led to the hybrid EMBs replacing inherited government-controlled EMBs in Cape Verde and Senegal.

Source: Abstracted from Hounkpe M & IM Fall, *Electoral Commissions in West Africa: A Comparative Study*; Lopez-Pinto R, *Electoral Management Bodies As Institutions of Governance, Bureau for Development Policy*; Kambale P, 'Overview: The contribution of electoral management bodies to credible elections in West Africa', in Fall IM, *et al.*, *Election Management Bodies in West Africa*<sup>5</sup>

The structure of West African EMBs reflects three broad trends. The first is towards establishing one or more independent or autonomous EMBs as horizontal institutions, in other words a fourth branch of government. Those EMBs are designed as permanent institutions, the existence of which typically is guaranteed by the constitution and which cannot be dissolved through ordinary legislative process. They are meant to exist

in perpetuity with an independent and professionalised bureaucracy and are generally endowed with constitutional or other statutory guarantees of separate budgetary appropriations, in some cases (such as Nigeria) as a first charge on the national consolidated revenue fund.

The second trend is the establishment of hybrid or mixed EMBs in which the main or core electoral functions are performed by a ministry, department or agency, within the executive but under the supervision of an independent body. In Senegal the Ministry of the Interior, under the supervision of the Autonomous National Electoral Commission (CENA: Commission électorale nationale autonome) and to some extent the Commission de recensement des votes, which is in charge of ballot counting, performs the core electoral functions. In Cape Verde three bodies, respectively the National Electoral Commission, the Directorate General for Electoral Process Support (DGAPE: Direcção-Geral de Apoio ao Processo Eleitoral) within the Ministry of Internal Administration, and the electoral registration committees (CRE: Comissão de recenseamento eleitoral) share the functions. Under the mixed EMB the ministry, department or agency vested with the core electoral functions also serves as the secretariat, responsible for implementation. The independent EMB with oversight powers over the elections has its own secretariat to handle its administration.

The third trend is to move away from the last two models shown in Table I. Such a move took place in Benin, Cape Verde and Senegal. Failure to insulate administration from politics, reflected for example in abuse of the power of incumbency by governing parties for unfair electoral advantage, has led 'almost invariably in the direction of independent ECs regardless of national political tradition'.<sup>6</sup>

Whichever course the reform takes, its objective is to strengthen the EMBs by entrenching them in the constitution (Ghana, Nigeria and Sierra Leone) or creating them through the ordinary legislative process, as has happened in much of francophone Africa.

### **Policymaking and implementation**

Table 2 provides a typology of policymaking and implementation under the independent, mixed and the (virtually defunct) government-controlled models of EMBs.

**Table 2: Typology of policy areas in three EMB models**

<b>Policy area</b>	<b>Independent EMB</b>	<b>Hybrid/mixed EMB</b>	<b>Government-controlled EMB</b>
Electoral policymaking.	Independent of executive branch of government	Independent of executive branch of government	Institutionally under executive branch of government
Electoral policy implementation	Independent of executive branch of government	Institutionally under executive branch of government	Institutionally under executive branch of government

Source: Adapted from Wall A, *Electoral Management Design: The International IDEA Handbook*. Stockholm: International IDEA, 2006, p. 119



The modality for guaranteeing EMB independence has also featured in debate. The discussion ranges over four main areas. The first is the qualifications required for membership of the EMBs; the second the extent of, and limits to the power of the executive branch to appoint and remove EMB members, and under what conditions; and the third is security of tenure of those members. The fourth and final issue is the EMBs' revenue base and powers of procurement and the extent to which EMBs are shielded from the encumbrances of the civil service's financial and procurement rules.

### **Methods of appointment**

The case studies underscored the importance, in terms of the integrity of the electoral process, of the method of appointing EMB members. In Nigeria the Electoral Review Committee proposed that the National Judicial Council play a part in the appointment of members of the country's Independent National Electoral Commission (INEC). In Senegal the debate focused on expanding the number of CENA agencies in order to break the monopoly over the nomination process presently held by the president. In Sierra Leone the power of the president to dismiss members of the National Electoral Commission (NEC) has been challenged as possibly undermining the NEC's independence.<sup>7</sup>

In all six countries, however, there is still a major stumbling block to efforts to strengthen the independence of EMBs and protect them from interference by the executive and the legislature. The problem is an apparent conflict of interest on the part of elective office-bearers should they attempt to introduce reforms that might make EMBs independent of partisan party and political control. To do so would run counter to the interests of such political figures, who benefit from the current weakness and dependence of EMBs and from flawed electoral administration and management.

In countries where EMBs are entrenched in the constitution the executive and legislature have sometimes used the process of enacting electoral laws to whittle down or frustrate the powers of EMBs. For example, Nigeria's Electoral Act of 2010 as amended, at sections 31(1) and 86(1) contains provisions that reduce the oversight and supervisory role of INEC in party political nomination processes. This is in apparent violation of the provisions of paragraph 15(c) of the Third Schedule of the Constitution of the Federal Republic of Nigeria of 1999.

### **Independence and effectiveness**

A study of EMBs in the West African region concludes that<sup>8</sup>

formal guarantees [of independence] do not in practice provide a criterion for an effective comparison between the institutions, given that the EMBs studied have almost identical legal provisions protecting their independence, yet have widely differing degree[s] of independence in practice. Although the different systems of appointment and composition do have an impact, other factors often play at least an important and sometimes more important role. A political party commission like the CENA in Benin, whatever its defects, has sometimes conducted elections with more independence and competence than an expert commission such as [that] in Nigeria; while the governmental model in Cape Verde has a longer tradition of effective performance and independence in action than has the system of

the same type in Senegal. Issues such as the size of the country (Nigeria vs Cape Verde), the relative balance of powers among political parties (Benin vs Sierra Leone) and the strength of other institutions (the courts and the civil service in general) are all critically important. Nevertheless the configuration of the EMB can make a difference.

Box I shows the most important of these factors.

**Box 1: Factors bearing on the independence and effectiveness of African EMBs**

- 1 **Strength and character of EMB members**, especially the chair. In Ghana and Sierra Leone, the chair of the commission is credited with ensuring the quality of elections and resisting pressure from political parties; by contrast in Nigeria, at least until the appointment of a new chair in 2010, there was no trust in the leadership of a commission regarded as being in the pocket of the ruling party.
- 2 **Security of tenure of EMB members** appears more important than the process for appointing them. In Ghana, for example, the appointment of the chair and two vice-chairs of the EC is at the discretion of the president but the appointments are life-long. In Senegal, however, legal guarantees of security of tenure did not prevent the president from dismissing the chair of the CENA.
- 3 **Stability of administrative personnel**. The more temporary staff that have to be recruited at election time, the worse the competence of election management and the greater the opportunity for improper external influence.
- 4 **Security of funding**. Whether funding for the EMB comes from central government or directly from international donors, an absence of guaranteed and predictable funding insulated from political interference by the regime or the instability of donor preferences creates major challenges.
- 5 **The degree to which the EMB has effective control over all tasks that must be completed in the electoral process** – or at least the extent to which the tasks of various bodies are clearly delineated and understood by all parties so that there is no attempt at duplication or challenge to the authority of a particular institution. The quality of EMB performance is often directly proportional to the extent to which it controls the complete chain of events in the electoral process.
- 6 **The extent to which the EMB enjoys – and exercises – a mandate in relation to political parties** is particularly important. In francophone African countries it is rare for an EMB to play a part in the internal management of political parties. In Ghana, by contrast, the EC has fully taken on board its role of supervising internal party elections, and on its own set up the Inter-Party Advisory Committee (IPAC), a trust-building institution without a formal role in the electoral process.
- 7 **The quality of collaboration between the EMB and other institutions and stakeholders** in the elections. For example, the generally good relationship between the EC and the Political Parties Registration Commission in Sierra Leone, or the DGAPE and the CNE in Cape Verde may be compared with the dysfunctional relationship between the interior ministry and the CENA in Benin or Senegal, which has led to confusion even over basic management of electoral materials.

Source: Fall IM *et al.*, *Election Management Bodies in West Africa*. Dakar, Senegal: Open Society Initiative for West Africa, 2011

### Security of tenure

Cases have occurred in which members of the EC have been removed from office arbitrarily despite constitutional and legal guarantees for their removal only through due process. In Nigeria in 1989, albeit then under military rule, the chair and members of the EC were removed and the commission reconstituted before the expiration of their tenure. The chair and members of the reconstituted commission were themselves summarily removed in the wake of the annulment of the 12 June 1993 presidential elections. In 2011, under civilian rule, Nigeria's president ordered the chair of INEC to proceed on terminal leave about a month before the end of his tenure. In Senegal in 2009 the president virtually forced the chair of the EC to resign in violation of his security of tenure under law.

Despite statutory guarantees of independence, Senegal's CENA and its members are constantly subjected to pressure from the executive branch. The resignation of Moustapha Toure from his position as chair of the CENA in November 2009 on the request of the president of Senegal illustrates the extent of control that the executive wields over the CENA. According to Toure the president 'clearly explained ... that he no longer had confidence in me. He repeated several times: 'you are against me; you are fighting against my party. Since you no longer have my confidence ... I am asking for restitution of the mandate I entrusted in you in the days before you lost my confidence'.<sup>9</sup>

In Sierra Leone in 2007 the president removed two members of the EC in the wake of a crisis within the commission over the declaration of the results of the 2007 presidential runoff elections, without the due process provided for in the constitution. Similar interference had occurred earlier: in December 1964 the Sierra Leone People's Party (SLPP) government had removed an allegedly pro-All People's Congress member of the country's EC and moved to 'sanitise' the commission by removing staff whose loyalty to the SLPP was alleged to be in doubt. Also in 1992, the president removed members of the EC without due process.

There are examples of similar occurrences in countries outside the six-nation study: in Malawi in December 2011 the president unilaterally issued an order 'to close the Malawi Electoral Commission immediately', on the grounds of alleged mismanagement of MWK<sup>10</sup> 1.4 billion – though the tenure of its members as provided for under the country's constitution was yet to expire – thereby virtually removing them without due process.<sup>11</sup> In Nigeria the president dismissed members of INEC during the 1996 presidential elections.

In taking account of perceptions of the independence and performance of EMBs it is useful to refer to the main results of the expert opinion survey in the 40 countries undertaken for the AGR III on behalf of UNECA. In response to questions about the extent of the independence and performance of their EMBs<sup>12</sup>

in only 17 of the 40 countries did more than half the expert respondents consider the EMB to be independent and fairly or fully competent. The overall performance of the EMBs is uneven in Africa. In Cape Verde, Ghana, Mauritius and South Africa, they are credited with organising free, fair and credible elections, unlike the Democratic Republic of the Congo, Kenya, Nigeria, Uganda and Zimbabwe, where controversy and litigation have dogged the performance of ECs. Only in 11 countries did more than half the experts rate it good or very good. Similarly, only in 12 and 14 countries did more than half the experts rate their national and local elections, respectively mostly or always free, fair, and generally transparent.

In short, the performance of most EMBs in Africa is not too encouraging – but with a few bright spots – and needs to pick up substantially for them to earn credibility and public confidence.

In considering whether the procedure for appointing and removing the EC is mostly or always open, transparent and credible, AGR III shows that according to the expert opinion survey ‘in only 10 of the 40 countries did more than half the respondents consider the procedure to be mostly or always open, transparent and credible’.<sup>13</sup> Offering examples of the summary removal of EMB members by the executive authority in some countries, AGR III concludes that ‘EMB top officials need to be appointed and dismissed by an independent body in an open and transparent process in order for them to be insulated from interference by the executive in their duties. A more powerful check on the executive might be to extend the Ghana model, which grants security of tenure to the chairperson and deputies of the EMB until their retirement and to all members of EMBs (as is generally the case with High Court and Supreme Court judges in many African countries), apart from official misconduct.’<sup>14</sup>

## COSTS OF ELECTORAL ADMINISTRATION AND MANAGEMENT

### Revenue base

The present study shows that the cost of elections and the proper management of their finances is a problem for EMBs in all six countries. All of them suffer from chronic structural problems and budget deficits, and ‘rather than relying on the civil service, large numbers of temporary staff must be recruited and equipment purchased, often through procurement process that must be conducted under extreme time pressures’.<sup>15</sup> The increasing cost of elections is common to all six. In Benin, for example, ‘election costs increased exponentially ... causing some of the key players to question the reliability of election management by CENA’.<sup>16</sup>

Apart from the operational costs of core election-related activities such as voter registration, voter education, constituency delimitation, printing of ballot papers, purchase of ballot boxes and election-security management, there are the costs of electoral administration and management. These include fixed costs such as – in several countries where legislation provides for it – funding of political parties; salaries, emoluments and other entitlements of EC members and their bureaucracy; and administrative annual capital, operational and recurrent costs other than salaries of EMB members.

‘What is noteworthy however is that [election-related] costs per voter ... vary widely [among African countries], suggesting that a regime’s commitment to free and fair elections is another major commitment, as is the EMB’s relationship with the country’s executive, parliament and ruling party, particularly in states lacking this commitment [sic].’<sup>17</sup> (See Box 2.)

**Box 2: Election costs per voter in Africa**

Data on election costs in Africa are sparse and rarely up to date, making comparisons difficult. What information can be gleaned suggests that cost variations reflect the democratic environment: stable, transitional, authoritarian or post-conflict. Elections in countries with a longer multi-party democratic history are consistently less expensive per voter than those that are a novel undertaking – a trend that cuts across regions and levels of economic development. This is suggested by the range of per voter costs:

Botswana \$2.7, Democratic Republic of Congo (DRC) \$2.5, Ghana \$0.7, Lesotho \$15, Liberia \$6.1, Malawi \$2.1, Mauritius \$11, Mozambique \$6.4, Namibia \$1.8, Nigeria \$8.0, Senegal \$1.2, Seychelles \$5.8, South Africa \$7.3, Tanzania \$7.6 and Uganda \$3.1.

(Note: These figures are illustrative in that they range from 1992 for Angola to 2011 for Nigeria.)

Source: UNECA, Third African Governance Report (AGR III)

In general the cost of elections and prudent management of finances are major issues for most EMBs and the challenge remains of how to rationalise expenditure to reduce election costs where resources are scarce.

**External political party funding**

A further cost element in election administration and management, generally under-reported (if reported at all), is the funding of electioneering campaigns by political parties, their members and benefactors, especially those from the private sector and business world. To this must be added election-related contributions of other public agencies incurred as part of resource-sharing arrangements between the agencies and the EMBs; and the abuse of the power of incumbency by parties to deploy state resources during elections for unfair electoral advantage. Box 3 illustrates the costs of elections in Benin, Cape Verde and Ghana.

**Box 3: Funding of elections: Benin, Cape Verde and Ghana****Benin**

In Benin the increase in election costs brings with it fears for the future of funding if nothing is done. In recent years election costs have increased very rapidly. The CENA's budget is:

- presidential elections: 1996 \$3.6 million; 2001 \$14.5 million; 2006 \$26 million; and
- legislative elections: 1995 \$2.4 million; 1999 \$7.5 million; 2003 \$14 million.

**Cape Verde**

Each of the three key bodies involved in election management is funded separately.

To date the DGAPE's normal operating budget is about \$850,000. In an election year the DGAPE budget covering normal operations and the conduct of elections rises to nearly \$1.2 million. Prior to the adoption of a 2007 electoral law this budget included that of the CRE.

The normal operating budget of the CNE outside election years is of the order of \$337,000 and in election years, more than \$3.37 million. For the 2008 local elections the CNE budget was some \$5.4 million, of which at least \$2.7 million was to be used to support political parties.

#### **Ghana**

The EC's annual budget since 2007 includes four groups:

- staff salaries and remuneration (on average \$8 million);
- administrative expenses (\$4 million);
- other expenses (\$4 million); and
- capital budget (\$6 million).

Elections on average (for example in 2004) cost \$24 million. In 2008, however, the EC budgeted \$50 million to meet the costs of updating technology for voter registration, renewing its car fleet and increasing election officials' fees.

Source: Fall IM *et al.*, *Election Management Bodies in West Africa*. Dakar, Senegal: Open Society Initiative for West Africa, 2011

### **Donor contributions**

A further challenge is dependence on donors to meet election costs. This dependence raises questions of sovereignty, national ownership and the sustainability of donor funds over several electoral cycles. Table 3 shows the example of Sierra Leone between 2006 and 2009. It shows actual comparative costs of contributions to the budget of the NEC by the government, the donor 'Basket Fund' administered by the UN Development Programme (UNDP), and others.

**Table 3: Actual comparative costs of contribution to Sierra Leone NEC, 2006–2009 (%)**

Description	2006	2007	2008	2009
Government	50	15	14	27
Basket Fund UNDP	48	81	86	73
Others	2	4	–	–
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Modified from Fall IM *et al.*, *Election Management Bodies in West Africa*. Dakar, Senegal: Open Society Initiative for West Africa, 2011

### **Adjudication of election disputes**

Adjudication of electoral rules by courts, primarily by way of certification of results and electoral dispute resolution, has become another significant factor in West Africa's electoral governance. It complements two other major issues of rule-making and rule application.

Intended to douse or mitigate pre- and post-election violent conflict, electoral dispute resolution is a serious problem for almost all countries in the study and underscores persistent doubts about the credibility of elections and of EMBs themselves. For example, electoral dispute resolution has become the rule rather than the exception in Nigeria where election tribunals sat in adjudication over more than 1 250 petitions after the 2007 elections, although at 731, the number of petitions was substantially lower after the 2011 general elections.<sup>18</sup>

The judiciary, in particular the higher judiciary, often finds itself embroiled in the politics of presidential political succession. This is especially true when an election yields a close vote between parties and – particularly – between presidential candidates, as it did in Sierra Leone (in 2007), Kenya (2008, 2012), Ghana (2008, 2012), Zimbabwe (2008), Côte d'Ivoire (2010) and Senegal (2012).

A further problem associated with electoral dispute resolution that has emerged in the six review countries is delay in resolving disputes. According to one account, 'the major obstacle attending electoral dispute resolution in Ghana has been [low public] confidence in the ability of the courts to provide timely responses to election-related complaints. Recent electoral cycles have been marred by high-profile cases which have remained in adjudication for the full term of the presidential and legislative seats [as in the case of] a 1996 election dispute where judgment against Mrs Adotey's position as a Member of Parliament for the Ayawaso West Wugon Constituency came in after she had served her term in parliament as MP for the constituency.'<sup>19</sup>

It was to avoid such a situation that the 2010 electoral law in Nigeria fixed a time frame for the resolution of election disputes, after which any outstanding cases for adjudication would automatically lapse. Similarly, Malawi's Chief Justice issued a Practice Direction (No. 2) which provides for a period of 24 days within which a High Court should rule on election-related cases before it.

To strengthen electoral dispute adjudication Ghana and South Africa have opted for 'non-formal' alternative electoral dispute resolution mechanisms (AEDRs) to complement or support 'conventional' or 'formal' methods. The AEDR is generally put forward on the grounds that it:

- involves the application of indigenous dispute resolution practices to election disputes;
- emphasises conciliation and not litigation;
- saves time and money; and
- is suitable for resolving intra-party disputes that are non-justiciable under electoral law by providing recourse for aggrieved party members to continue intra-party disputes through extra-legal means.<sup>20</sup>

South Africa's Independent Electoral Commission established a conflict management programme in 1999 as an AEDR mechanism. The programme has proved effective in reducing the number of challenges before the courts while electoral disputes in general have diminished. There were 1 113 disputes arising out of the 1999 elections, falling to 314 in the 2000 elections and to 253 in 2004.<sup>21</sup>

## ROLE OF STAKEHOLDERS

In the face of structural and political fragility in the typical West African state and the complex inter-sectoral nature of electoral governance, with crisscrossing institutions and individuals in government, the private sector and civil society, EMBs in the countries under review have evolved differing strategies and mechanisms to try to square their autonomy with the need for co-operation and partnership with stakeholders in state and society, including political parties. In doing so EMBs must also take account of African regional and continental institutions and of pressures from the international community.<sup>22</sup> Such relationships are necessary to ‘strengthen public confidence in the integrity and validity of election results thereby helping to engender public ownership of the electoral process itself and democracy generally by all stakeholders’.<sup>23</sup>

There is a wide range of areas in which collaboration is necessary. They include training for EMB staff; oversight of party political activities; civic and voter education, voter mobilisation, election observation, and electoral mandate protection; and the deployment of armed forces and security services for election-related logistics and security. Taken together these activities constitute a procedural minefield that demands skilful negotiation if EMBs are not to jeopardise or lose altogether their control of the election process.

There are three main areas that may serve as a brief illustration of the stakeholder challenges EMBs face. They are respectively oversight of party political activities; voter education, voter mobilisation, election monitoring and electoral mandate protection; and the deployment of armed forces and security services personnel.

### **Oversight of party political activities**

The extent to which EMBs hold an oversight mandate in party political activities, and their exercise of it, differs by country. Unlike EMBs in anglophone countries, those in francophone countries rarely have a role to play in the internal management of political parties. In resolving oversight challenges EMBs in anglophone countries have established working relations with political parties and civil society organisations (CSOs) through platforms for inter-party dialogue. Their remit includes the creation of a political environment conducive to reducing violent inter- and intra-party conflicts and election-related violence through the adoption of an agreed code of conduct for political parties.

Examples of such platforms are the IPACs in Nigeria and Ghana, and Sierra Leone’s National Code of Conduct Monitoring Committee. Their success in meeting their remit has varied and is weakened in almost all cases by a lack of enforcement powers. Similar initiatives involving collaboration between EMBs, political parties and CSOs have been introduced in Burundi, the DRC, Kenya, Lesotho, Malawi, Rwanda, South Africa, Tanzania and Zambia.<sup>24</sup>

### **Voter education, mobilisation, election observation and mandate protection**

For countries in the study, voter education and mobilisation, election observation and electoral mandate protection are important functions vested in the powers of their EMBs. In performing them, however, EMBs have had to collaborate, sometimes uneasily and



acrimoniously, with relevant government ministries, departments and agencies such as the National Commission for Civic Education in Ghana, Nigeria's National Orientation Agency and the National Commission for Democracy in Sierra Leone. In addition it has been necessary to arrive at relationships with political parties and with umbrella pro-democracy and pro-electoral reform CSOs, including faith- and community-based bodies.

The extent and effectiveness of the collaborations have been mixed. For example, in Benin 'the EC has no special or systematic relationships with political parties and candidates, civil society or media. Relations between civil society, the media and the EC are opportunistic and essentially follow the needs of the moment.'<sup>25</sup>

Generally, coalitions of pro-democracy and pro-electoral reform CSOs such as the Transition Monitoring Group and the Alliance for Credible Elections in Nigeria, and Ghana's Christian Council, National Peace Council and Institute for Democratic Governance provide the impetus for bringing about improved electoral management.<sup>26</sup>

Such coalitions and other CSOs play a vital role as observers at elections. Their primary objective is to ensure that rules and regulations on voting procedures and the collation and announcement of election results are followed in a manner that protects the electoral mandate. In this, the role of national observation groups is reinforced by that of ECOWAS and African Union observation teams and of regional civil society networks such as the West African Civil Society Forum. Through its Election Observation Unit, Electoral Assistance Unit and 'Council of the Wise' ECOWAS has sent observer teams, typically led by a former head of state, to monitor elections in almost all West African countries and those elsewhere on the continent.

The ECOWAS Protocol on Democracy and Good Governance is the basic document for its election observation missions. In 2004, the Kofi Annan International Peacekeeping Training Centre and the ECOWAS Commission started a programme of training selected participants for election observation and basic peacekeeping skills, from among whom members of ECOWAS election observation teams would be drawn.

The election observation work of ECOWAS has received mixed assessments. Its election observation team sent to Togo has been criticised for endorsing the 'flawed' 2005 presidential elections that saw Faure Gnassingbe succeed his late father, President Gnassingbe Eyadema. Some observers condemned its election observation methodology while others failed to discern any impact from the observation teams' reports on the policy process within ECOWAS.

Nonetheless there is a democracy-promoting and credible election-promoting role which ECOWAS election observation work symbolises. In addition to the work of its electoral assistance unit, it has promoted a network of West African EMBs to share experience. It has also established the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security. Furthermore, putting in place management routines and professionalising the election observation work of ECOWAS has the potential to strengthen democracy in West Africa over time.

In the extremely closely contested presidential elections in Ghana (2008 and 2012), Senegal (2012) and Sierra Leone (2007), the leadership of the ECOWAS observation teams played a critical part through quiet behind-the-scenes diplomatic brokerage that prevented stalemate from degenerating into violent conflict.

**Box 4: Election situation rooms**

A novel approach to election observation in Nigeria is the 'election situation room' co-ordinated by the Policy and Legislative Advocacy Centre. The remit of this body is to monitor, anticipate and offer prompt advice to the INEC on flashpoints on election day. This – commendable – approach has been replicated in Liberia and Senegal. In the latter case it provided a rallying point for CSOs to anticipate and ultimately foil attempts by the presidency to manipulate the electoral, legislative and judicial process to the disadvantage of opposition parties during the 2012 presidential elections. There is now a debate among the group of CSOs involved in the election situation room to redesign it in the run-up to the 2015 general elections in Nigeria.

According to a memorandum circulated to participants,<sup>27</sup>

[T]he new vision of a situation room necessarily requires an expansion of its existing functions and role, beyond the 'event' of elections to the on-going 'process' of democratic governance in Nigeria because there is arguably a clear and present danger to Nigeria's fragile democracy, which [demands] a bold, clear, innovative and consolidated response from Nigeria's notoriously fractious civil society. We will, therefore, necessarily have to turn the page on the old Situation Room model ... and quickly ... design a new model which is fit for the purpose of guiding the democratic governance processes leading up to 2015 and beyond. The new Situation Room should be defined by the understanding that the real 'situation' facing us, is not only just about elections but about the existential crisis confronting Nigeria today.

The new situation room consists of six components. These are administration; research, policy and programmes; technology; networking, advocacy and outreach; elections logistics and security; and media. The aim is to bring about synergies in the structure and functions of co-operating CSOs in a way that will enhance their effectiveness in working toward free and fair elections in 2015, as well as their advocacy of good governance principles anchored on open, transparent and accountable democratic practices.

**Deployment of armed forces and security services**

The challenge of maintaining security during elections is frequently underscored by a zero-sum approach to party and electoral politics. This is especially true in the war-like pre- and post-election environment that is created around highly competitive elections for presidential political succession, examples of which have been found in Côte d'Ivoire, Ghana, Kenya, Senegal, Sierra Leone, Togo and Zimbabwe in recent years.

Insofar as they demand from the police force duties beyond their normal remit the challenges point to a vital need for EMBs to work with security agencies, the armed forces and paramilitary bodies to protect and ensure the integrity of the electoral process. Inter-agency arrangements put in place to this end can create problems of autonomy for the EMB, especially in respect of its constitutional or statutory authority to conduct elections and its ability to control military and security personnel assigned for electoral duty.

Ideally it must be able to do so without alienating its partners or surrendering authority to the military and the security agencies. Some problems may arise over the payment of armed forces and security personnel for electoral duty, and their non-partisan approach to securing and delivering election materials may be in doubt.<sup>28</sup>

A basic problem is therefore the absence (or inadequacy) of legislation to define the duties of military and security personnel in the electoral process, and of the institutional framework for undertaking their tasks. In the case of Benin, 'in practice, there are no formal rules regarding the relationship between [the] CENA and security forces for election security'.<sup>29</sup> In Ghana, the EC initiated an ad hoc National Election Security Task Force 'which brings together the Election Commission and other actors relevant to the security of elections, including various sections of the security forces'.<sup>30</sup>

In Nigeria, a major reform in election administration and management carried out by the INEC before the 2011 general elections 'was a new approach to securing the elections ... [H]itherto the Commission essentially left [securing the elections] to security agencies, especially the police. This time around, it took the initiative based on a number of principles – co-ordination, harmonisation of activities, open discussion of issues and clear rules of engagement. The Commission working with the major security agencies created the Interagency Consultative Committee on Election Security (ICCES) as the framework for securing the election. [The] ICCES was also replicated in the States'.<sup>31</sup>

## CONTESTED POLITICS: CONSTITUTIONAL TERM LIMITS AND PRESIDENTIAL SUCCESSION

As previously noted, a limit on the number of presidential terms is a major pillar of the renegotiated constitutional and political architecture of the African state. The importance attached to it represents a reaction to the high incidence of 'sit-tight' presidents and self-proclaimed presidents-for-life. Most African countries have adopted constitutional presidential term limits varying from two to three consecutive terms, each term typically of two to seven years. In the case of Mozambique there is constitutional provision for a president who has served two consecutive five-year term limits to stand again for election after a five-year interval.<sup>32</sup>

Constitutional presidential term limits generally have been respected and observed across Africa. In some countries where limits have worked fairly well and enjoyed substantial public support, however, there have been political pressures to strengthen rather than eliminate them as a means toward more effective presidential government. In Ghana, for example, the call is for a move to two consecutive five- rather than four-year terms while in Nigeria there are calls for a switch to a single six-year term.

Across Africa there is strong popular resistance to attempts by incumbent presidents to extend their tenure through constitutional amendments or extra-constitutional or unconstitutional means. They cannot now extend their tenure at will or become presidents-for-life, as was general practice before the introduction of entrenched constitutional provisions on term limits. If they want to extend their tenure beyond constitutionally stipulated limits they must undergo a process of amending entrenched constitutional provisions – usually rigorous and vigorously contested – and in the process deal with mobilised (and sometimes incendiary) public opposition.

Two prominent attempts that failed amid stiff public protest took place in Nigeria and Malawi. In 2006 and 2007 Nigerian President Olusegun Obasanjo allegedly sought to amend the country's constitution to approve a third term for himself and in 2002 Malawi's EC rejected the nomination of President Bakili Muluzi as presidential candidate after he had served the stipulated two terms. In both cases it was the strength of mobilised opinion in state and society that defeated attempts to extend tenure beyond constitutional term limits.<sup>33</sup>

The case of Senegal is different. Although President Abdoulaye Wade secured a ruling from the constitutional court in January 2012 that he was eligible to stand for a third term, it came after he had been forced amid violent opposition to drop his proposals for two constitutional amendments aimed at lowering the proportion of votes required for a first-round victory from 50% to 25%; and creating the position of an elected vice president. Both these proposed amendments were allegedly intended to secure Wade's re-election in the face of a fractured opposition, and make his son vice president. Violent protests greeted the court ruling. The presidential elections of February 2012 went into a second round in March in which Macky Sall defeated Wade with 68.8% of valid votes cast to Wade's 32.2%.

## CONCLUSION

Since the 1990s Africa has witnessed progress and reversals in electoral administration and management. Several EMBs, for example those in Benin, Botswana, Ghana, Mauritius, Sierra Leone and South Africa, have performed creditably in a relatively professional, non-partisan and efficient manner. They have built public confidence in electoral administration and management.

EMBs – the fulcrum around which electoral administration and management revolves – still, however, face daunting challenges. If political institutions and processes lack transparency and accountability, general confidence in the EMB tends to be low, although the fault usually lies in contradictions in the political economy and in the mainstream ethical values within which the EMBs operate.

When an election yields a close vote between parties and particularly between presidential candidates, as happened in Sierra Leone (in 2007 and 2012), Kenya (2008, 2012), Ghana (2008, 2012), Zimbabwe (2008), Côte d'Ivoire (2010) and Senegal (2012), there is a likelihood of an explosive situation that must be carefully managed. The flare-up can assume the form of a violent conflagration of ethnic, ethno-regional or religious conflict, as it did in the aftermath of close and highly contentious presidential elections in Kenya in 2007 and Côte d'Ivoire in 2010. EMBs themselves have become objects of attack in Nigeria (in 2007), Kenya (2007), Zimbabwe (2008) and Côte d'Ivoire (2010). That such eruptions have generally been contained is due to improved arrangements for election dispute adjudication, which impel aggrieved parties to seek recourse to, and accept, court decisions; as well as to swift brokered intervention by third parties from African regional and continental bodies and from the international community.

As part of their diversity management and voter education role, therefore, African EMBs need to be particularly sensitive to the needs and challenges of different categories of stakeholders. They should seek to build bridges of understanding and collaboration across

the treacherous and thin divide between maintaining their autonomy and independence on the one hand, and on the other engaging state and society stakeholders as partners in working towards credible elections.

It is their task to engineer a broad-based coalition for building and strengthening electoral administration and management, and to foster and promote electoral integrity. To do so is to invest in democratic consolidation and sustainable development in Africa. This is a challenge that is likely to endure, in view of the structured institutional neutrality of EMBs and their crucial position at the epicentre of the electoral process.

## ENDNOTES

- 1 This paper is based on a presentation to the round table discussion 'Making Elections More Legitimate in Africa', organised by the South African Institute of International Affairs (SAIIA), the Institute for Research and Debate on Governance, and the Embassy of France in South Africa, held at Jan Smuts House, University of Witwatersrand, Johannesburg, 25 March 2014.
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- 3 See Jinadu LA, 'Building Effective Democratic Institutions in Africa', in *African Peer Review Mechanism, Working for the Peoples of Africa: A Decade of Self-Assessment*; background papers, Midrand, South Africa, African Peer Review Mechanism Secretariat, 2013.
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- 6 Mozaffer S & A Schedler, 'The comparative study of electoral governance – introduction', *International Political Science Review*, 25, 1, p. 15.
- 7 Kambale P, *op. cit.*, p. 5.
- 8 Fall IM *et al.*, *op. cit.*, pp. 4–5; cf. Mozaffer S & A Schedler, *op. cit.*, p. 15, 'we should see institutions that are independent on paper, but intimidated, colonised or neutralised in practice by government authorities. And we should see electoral authorities acting independently despite their formal subordination to government agencies.'
- 9 Fall IM *et al.*, *op. cit.*, p. 188.
- 10 The three-letter currency code for the Malawian Kwacha.
- 11 UNECA, AGR III, *Malawi Country Report*, 2012, p. 47, see also pp. 122–124.
- 12 *Ibid.*, p. 126.
- 13 *Ibid.*, p. 122.
- 14 *Ibid.*, p. 125.
- 15 Fall IM *et al.*, *op. cit.*, p. 9.

- 16 *Ibid.*, pp. 31–32.
- 17 UNECA, AGR III, pp. 184–185.
- 18 INEC (Independent National Electoral Commission), *Report on the 2011 General Elections*. Abuja: INEC, p. 38.
- 19 UNECA, AGR III, *Ghana Country Report*, 2012, p. 47.
- 20 Jinadu LA, ‘Election Administration and Management’, *op. cit.*, p. 63.
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- 22 Hounkpe M & IM Fall, *op. cit.*, chapters 3–4.
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- 26 For the Nigerian experience, see Ibeanu O, *Independent National Electoral Commission*, mimeo; 2013, pp. 9–10; Jinadu AL, ‘The Civil Society, Democracy and Electoral Governance in Nigeria’, *Nigerian Electoral Journal*, forthcoming. For Ghana, see Hounkpe M, ‘Ghana’, in Fall IM *et al.*, *op. cit.*, pp. 101–102.
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- 28 Adekanye A & R Iyanda, ‘Security Challenges of Elections in Nigeria: An Overview’, in Olurode L & A Jega (eds), *Security Challenges of Election Management in Nigeria*. Abuja: INEC and Friedrich Ebert Stiftung, 2011; Jinadu LA, ‘Comparative Analysis of Security Challenges of Elections in Nigeria’, in Olurode L & A Jega, *op. cit.*
- 29 Hounkpe M, ‘Benin’, in Fall IM *et al.*, *op. cit.*, p. 27.
- 30 Hounkpe M, ‘Ghana’, in Fall IM *et al.*, *op. cit.*, p. 101.
- 31 Ibeanu O, *op. cit.*, p. 10.
- 32 Jinadu LA, ‘Political Architecture: State-Building and Diversity’, *op. cit.*, pp. 16–17.
- 33 In 2001 President Frederick Chiluba of Zambia failed to secure a constitutional amendment to enable him to serve beyond the constitutional term limit. Presidents who succeeded in extending their term limits through constitutional amendments include Sam Nujoma (Namibia, 1998); Blaise Compaore (Burkina Faso 1997 and 2000); Lansana Conté (Guinea 2001); Gnassingbe Eyadema (Togo 2002); Omar Bongo (Gabon 2003); Yoweri Museveni (Uganda 2005); Idriss Déby (Chad 2006) and Paul Biya (Cameroon, 2008).

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