

Policy and legislative mechanisms for promoting presidential term limits within ECOWAS

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This study is part of the **Citizens' Campaign for Term Limits**, which aims to combat the desire for power of African leaders who run for, or serve, more than two presidential terms through constitutional changes and flawed electoral processes. This Pan-African campaign seeks to mobilise African civil societies around the issue of democratic transitions.

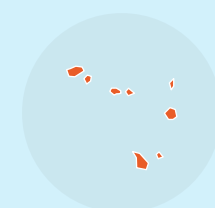
This study was written, at TLP's request, by the **African Network of Constitutional Lawyers (ANCL)**, a partner association based in South Africa, whose work focuses on the development of constitutionalism and democracy in African countries. It is the result of several months' research and analysis by members of the ANCL, including judges, lawyers, academics, activists, NGOs, research institutes and academics. The ANCL is affiliated to the International Association of Constitutional Law (IACL).



CAMPAGNE CITOYENNE
POUR LA LIMITATION
DES MANDATS



AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS
RÉSEAU AFRICAIN DE DROIT CONSTITUTIONNEL
REDE AFRICANA DE JURISTAS CONSTITUCIONALISTAS



CAPE
VERDE

ACRONYMS

ACDEG	African Charter on Democracy, Elections and Governance
AU	African Union
EAC	East African Community
ECOWAS	Economic Community of West African States
MOU	Memorandum of Understanding
PSC	Peace and Security Council
PTL	Presidential Term Limit
REC	Regional Economic Community
SADC	South African Development Community
UNOWAS	United Nations Office for West Africa and the Sahel

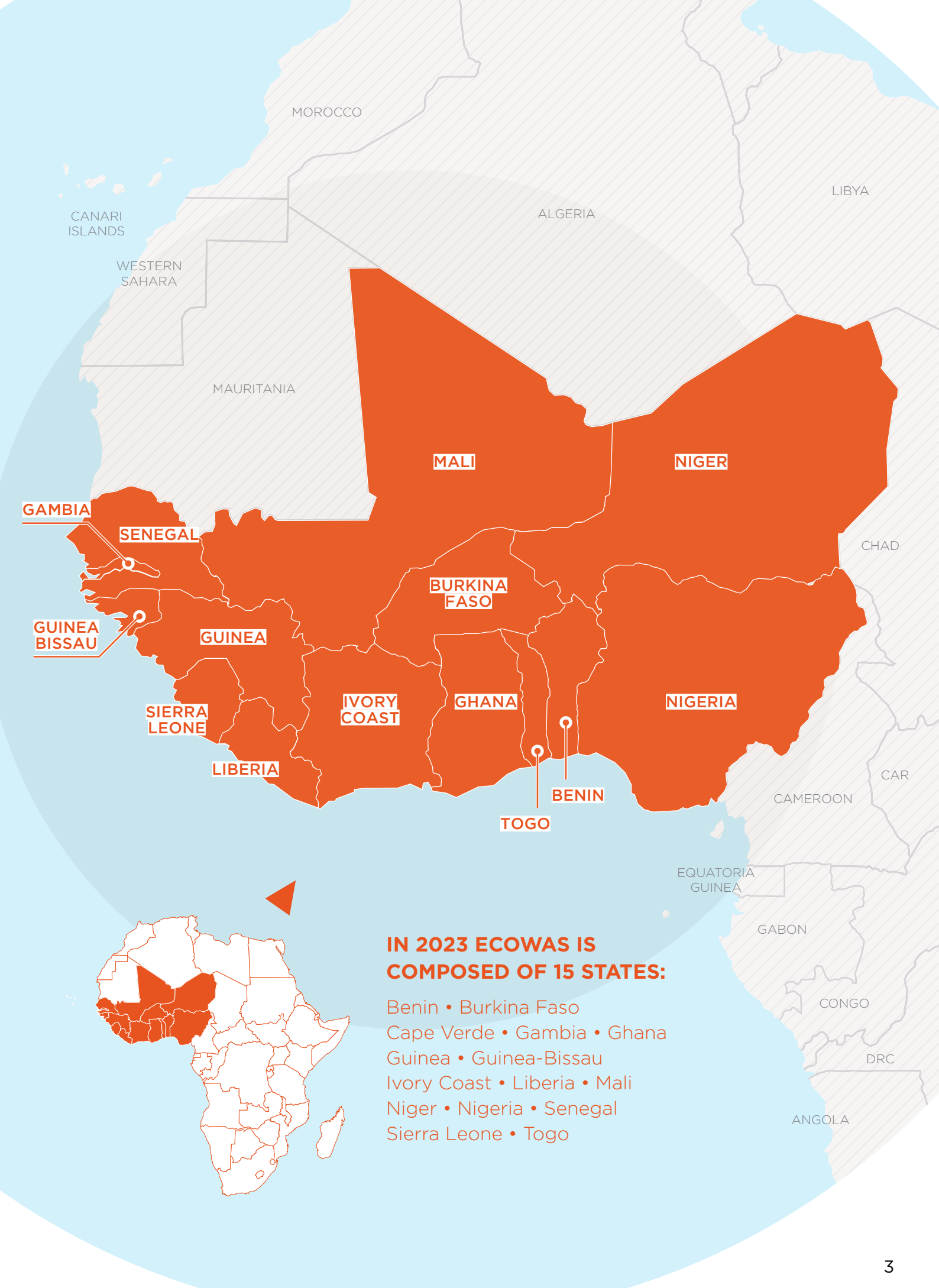
POLICY AND LEGISLATIVE MECHANISMS FOR PROMOTING PRESIDENTIAL TERM LIMITS WITHIN ECOWAS

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**IN 2023 ECOWAS IS
COMPOSED OF 15 STATES:**

Benin • Burkina Faso
Cape Verde • Gambia • Ghana
Guinea • Guinea-Bissau
Ivory Coast • Liberia • Mali
Niger • Nigeria • Senegal
Sierra Leone • Togo

01. Introduction

The Economic Community of West African States' (ECOWAS) initial objective was to promote integration and economic development for West African states. However, since the 1980's ECOWAS has established mechanisms and institutions to promote peace, security and the rule of law in West Africa. This has become particularly important in the wake of presidential term limits contravention, a practice which is threatening the fabric of democracy, peace and security all over Africa, not least in ECOWAS member states. The problem is compounded by the increasing involvement of the military in governance.

In order to extend its area of authority over member states beyond economic integration, ECOWAS revised its official Lagos Treaty of 1975 by adopting a Revised Treaty of ECOWAS 1993. Subsequent Protocols have further transformed the role of ECOWAS.

In the post-colonial period, the involvement of the military in the running of government, adversely, affected most countries in West Africa.¹ Between 1960 and 2005, only two countries (Cape Verde and Senegal) of the 15 member states of ECOWAS did not experience a coup d'état and a military regime during that period.² The years 1960 to 1962 and 2000 to 2005 marked the absence of coup d'états and direct military control of political power in West Africa. In 1963, the president of Togo, Sylvanus Olympio, was assassinated in a coup d'état, although the military did not take overpower. However, within this period where military regimes were absent in the ECOWAS region, 7 out of the 15 Heads of State were military personnel who transitioned to civilian life before coming to power. More so, from 1983 to 1989, 13 West African countries were controlled by military regimes.³

The turn of the 1990s witnessed a rapid progress in the democratisation process and the sharp fall in the number of military controlled regimes.⁴ However in recent years, the ECOWAS region has experienced military take overs. A notable example is the event of 05 February 2005, after the death of President Gnassingbé Eyadéma of Togo, where the military appeared on TV to announce that they were conferring power on the late president's son, Faure Gnassingbé, contrary to constitutional provisions. This demonstrates the implications of the military's in-

tervention in political issues. Military takeovers were also witnessed in Mali, Guinea and Burkina Faso in 2020, 2021 and 2022 respectively. More recently, Niger witnesses a military coup on 26 July 2023.

The foregoing information concerning political developments within ECOWAS shows that ultimately, ECOWAS member states have continued to grapple with the presence of military led governments. The military's coming to power undoubtedly obstructs democratic progress in most ECOWAS states and threatens political stability in the region. Linked to this adverse democratic trend are concerns around political reforms that have challenged electoral reliability, legitimacy and acceptability in member states. The execution of some of these political/constitutional reforms has caused crises, which have led to the recurrence of military coups. Recent reforms have centred on presidential term limit (PTL) provisions which are intended to restrict the number of terms a president can serve in office. These limits became widespread in Africa in the 1990s during the third wave of the continent's democratisation. There were PTLs in Africa prior to the 90s, although they were not widespread and did not change the de facto length of a president's term in office, with African leaders ruling twice as long as leaders elsewhere. However, the recent resort by authoritarian regimes to the alteration of these limits to extend their stay in power is an urgent cause for concern. Research shows that about 16 countries have modified or evaded term limits for their presidents and a good number took such action in the past six years.⁵ This concern without doubt, forms part of the premise on which the ECOWAS Parliament called for the amendment of the Protocol on Democracy and Governance.⁶

This policy paper seeks to inform the debates around the amendments and also identify entry points pending the adoption of amendments to the Protocol. It discusses the challenge of non-adherence to PTL and its impact on the ECOWAS region. It examines the role of ECOWAS, the effects of recent political reforms for democracy and stability and draws on comparative regional and international practices in addressing the issue of term limits. Recommendations aimed at enhancing ECOWAS mechanisms for protecting and promoting presidential term limit adherence are also offered.

02. Presidential term limit contravention

While political reforms are important for improving democracy and inclusiveness, several problematic political reforms promoting unconstitutional retention of power have been introduced across the region. These include the amendment of normative provisions on eligibility for political leadership and the elimination or amendment of presidential term limits. In Ivory Coast and Guinea for instance, Alassane Ouattara and Alpha Condé made efforts to remain in power beyond the two-term limit using constitutional reforms.⁷ A similar scenario also played out in Togo when President Faure Gnassingbé in 2019 adopted a constitutional reform that paved the way for a fourth mandate after spending 14 years in office.⁸ In addition, Senegal's president, Macky Sall, has rejected claims that it would be unconstitutional for him to seek a third term in the next election, scheduled for February 2024.⁹

Scale of the Problem

Decline of PTL Observance in West Africa based on:

- ➔ Military takeover
- ➔ Abuses by incumbents

More generally, the situation of PTLs in ECOWAS member states is diverse, ranging from states that never had a presidential term limit, states that once had but successfully removed PTLs, states that have unsuccessfully attempted to remove PTLs, and states that comply with PTLs. PTLs help to prevent autocratisation as they promote rotation in office and avert civil strife, coups d'état, and violence. In 2006, there was an attempt by President Olusegun Obasanjo to amend the Nigerian constitution to allow him to serve a third term.¹⁰ This attempt was rejected by the Nigerian Senate.¹¹ Meanwhile, Ghana has enjoyed political stability because there is a PTL, and it is honoured by the state leadership.¹² Niger's President Mahamadou Issoufou also respected the PTL.¹³ Gambia has never had PTLs, although the incumbent promised to ensure that PTLs were introduced in the country after long years of authoritarianism.¹⁴ In Burkina Faso, the then Blaise Compaoré, failed in his attempt to amend the Constitution to remove PTLs based on a popular revolution that overthrew him.¹⁵

Other measures to evade PTLs have been '*resetting the clock*' and the principle of parrainage. Resetting the clock involves revising a constitution and later arguing that the incumbent is entitled to serve a fresh term under the new or modified constitution, and that past terms served do not count.¹⁶ Parrainage is the principle of sponsorship from other elected officials, requiring presidential candidates to receive a certain level of support in the form of signatures before they can run for president. Incumbents have used this to fend off political opposition during elections.¹⁷

States that evade PTLs or those without PTLs have leaders who cling to power, rig elections and remain unaccountable to the people. This has usually resulted in protests and instability in the region. Even in states that have provisions on PTLs, the rules have not always been very efficient in stopping incumbents from seeking re-election. This is related to the fact that compliance and enforcement of PTLs in different states have not been the same. The discrepancy can be traced back to an array of factors. For instance, in Benin and Senegal, strong democratic norms and institutions ensure strict adherence to PTLs, fostering political competition and enabling peaceful transitions of power. These countries have successfully resisted attempts by incumbents to overstay their term limits, as witnessed in Senegal's 2012 presidential election when President Abdoulaye Wade's bid for a third term was met with massive public opposition, resulting in his defeat. The outcome of the 2023 political unrest in Senegal may temper or further confirm this position. In contrast, in states such as Guinea and Ivory Coast, weaker democratic structures and practices have allowed incumbents to exploit loopholes or manipulate constitutional provisions to extend their tenure. For example, in Guinea, President Alpha Condé amended the constitution in 2020 to reset term limits, allowing him to run for a third term. Similarly, in Ivory Coast, President Alassane Ouattara sought a contentious third term in 2020, arguing that the constitutional changes in 2016 reset the clock on term limits. These actions have led to political instability and societal unrest, indicating the need for stronger regional mechanisms within ECOWAS to promote consistent adherence to democratic principles, such as PTLs, across all member states.

The combined effects of military takeovers, removal of term limits, and the dearth of democratic governance and constitutionalism, have made the question of stability in West Africa even more prominent today. ECOWAS and other concerned actors have demonstrated misgivings about constitutional reforms that have foiled successful handover of power by incumbents and the sustainability of inclusive developments in the region. More critically, the amendment of a constitution by incumbents in order to retain power has allowed opportunities for abuse. Also, many other recent constitutional and legislative reforms across member states have directly or indirectly compromised the rule of law and democracy.

In view of the prevailing circumstances, it is necessary to assess whether ECOWAS is sufficiently equipped to efficiently prevent or manage orchestrated constitutional reforms on PTLs in member states.

03. The Structure of ECOWAS

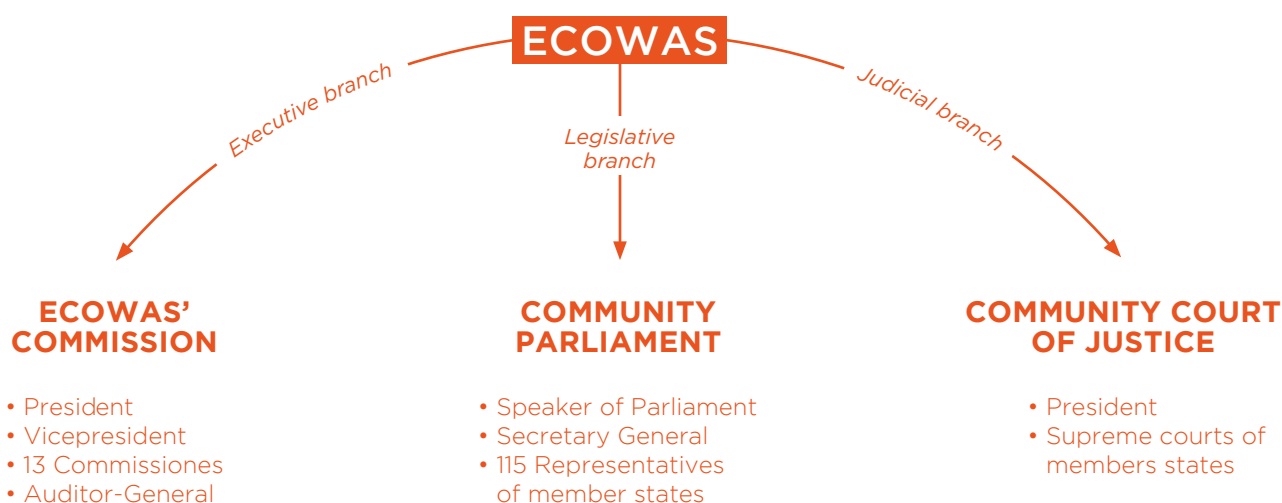
ECOWAS was established on 28 May 1975.¹⁸ Presently, it has fifteen member states namely, Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Niger, Nigeria, Mali, Togo, Senegal, and Sierra Leone.¹⁹ ECOWAS consists of three arms of governance, these are the executive, the legislature and the judiciary. The Chairperson of the Authority of Heads of State and Government is at the helm of the organisation.²⁰ The Chairperson is a current Head of State and Government appointed by other Heads of State and Government to direct the affairs of ECOWAS for a period of one year.²¹ Additionally, the Minister overseeing ECOWAS matters in the country of the Chairperson of the Authority of Heads of State and Government takes over as the Chairperson of ECOWAS Council of Ministers.²² The ECOWAS Council of Ministers is responsible for making recommendations to the Authority of Heads of State and Government.²³

The Executive arm of ECOWAS is headed by the President of ECOWAS Commission who is appointed by the Authority of the Heads of State and Government for a non-renewable period of four years.²⁴ It is noteworthy that the ECOWAS Secretariat became a Commission in 2007, and the President of ECOWAS Commission is assisted by a Vice President, 13 Commissioners and the Auditor-General of ECOWAS Institutions.²⁵ The Commission is made up of experienced bureaucrats who provide leadership in their various capacities.²⁶

ECOWAS was formed initially from the region's former French, British and Portuguese colonies following post-colonial independence throughout the region (particularly in the 1960s and 1970s). The main objective of the ECOWAS is economic cooperation, but it has since evolved to include political and military cooperation.

The legislative arm of ECOWAS is the Community Parliament, and it is headed by the Speaker of the Parliament. The ECOWAS Parliament comprises 115 members, distributed on the basis of the population of each member state.²⁷ The Secretary General of the Parliament directs the administrative functions of the Parliament. Pending elections that might take place in future by direct universal suffrage, parliamentarians are seconded from national parliaments to the ECOWAS Parliament for a period of four years.²⁸ The judicial arm of ECOWAS is the ECOWAS Community Court of Justice,²⁹ which is headed by the President.³⁰ The Court interprets and applies Community laws, protocols and conventions. It further provides advisory opinions on legal issues and has jurisdiction to rule on fundamental human rights breaches.³¹

ECOWAS' three arms of governance



04. ECOWAS normative framework on democracy and good governance

The ECOWAS Protocol on Democracy and Good governance³² is one of the main documents towards ensuring that democratic principles and good governance practices are upheld in West African states. One of the key provisions of the ECOWAS Protocol is Article 1(b), which requires member states to hold free, fair, and transparent elections.

ECOWAS principles include separation of powers; free, fair, and transparent elections; zero tolerance for power obtained by unconstitutional means; a politically neutral ECOWAS defence force; strict adherence to democratic principles; decentralisation of power at all levels of governance, non-discrimination; recognition of rights set out in other international and regional instruments; freedom of association; freedom of the press; enjoyment of special status by former Heads of State.

Article 1 of the ECOWAS Protocol on Democracy and Good Governance lays down constitutional principles that states shall follow including free, fair and transparent elections.³³ Article 2(1) prohibits modifications to electoral laws six months prior to elections *'except with the consent of a majority of Political actors'*. Article 8 states further that civil society organisations must be involved in election matters and educate the public on the need for peaceful, non-violent elections. Article 12(1) provides for election monitoring and assistance by the ECOWAS and stipulates that the ECOWAS can assist in any election if a state so requests.³⁴ Article 13 provides for election observation missions to gather information on the conditions under which elections are conducted and report on the elections process.³⁵

Chapter 2 of the Protocol provides the modalities for implementation of the Protocol, and for sanctions. Article 45 states that ECOWAS may sanction a member state where democracy is abruptly ended or where there are massive violations of human rights. The sanctions can include suspension from ECOWAS, refusal to recommend candidates from the member states for elective posts in international organisations, and refusal to organise ECOWAS meetings in the member state's jurisdiction.³⁶ Article 1(c) of the ECOWAS Protocol speaks to *'zero tolerance for power obtained or maintained by unconstitutional means'*. This represents a legal commitment to a representative form of democracy

and practically means that change of government beyond democratic means is not acceptable in West African states.

However, the issue of leaders who use unconstitutional means to extend their terms in office is not specifically addressed. It could be argued that evading term limits makes credible elections unlikely, as the chances of opposition victory following retention of power through opportunistic reforms by an incumbent is very unlikely. There is however a case where an incumbent, President Abdoulaye Wade of Senegal, who evaded term limits lost an election in 2012. Nevertheless, it is generally difficult for opposition parties to win credible elections after an incumbent has altered the system to stay in power beyond their term limit. Bakare argues that the ECOWAS Protocol does not adequately address recent undemocratic political reforms in the region that have fuelled instability.³⁷ Further, although Kyirewiah acknowledges that the ECOWAS has a zero tolerance policy towards military coups in West Africa,³⁸ the scholar notes that the Protocol fails to address certain actions that lead to the overthrow of democracies, for instance, PTLs amendments.³⁹ Indeed, the manipulation of PTLs is as unconstitutional as military overthrows of democracies.⁴⁰ In order to provide considerable insight with regard to the foregoing submissions, this policy report shall now turn to some examples of challenges confronting ECOWAS in its interventions in the region.

4.1 Challenges confronting ECOWAS intervention: some examples

Constitutional reforms have been a challenging component of democratic transitions in West Africa. This section focuses on the recent change of national constitutions and other policies relating to political leadership and term limits which have increasingly become sources of instability in the ECOWAS region. These constitutional reforms have either been implicitly exploited for tenure elongation by sitting presidents or constituted legal barriers that have prevented opponents from participating in elections. In 2020 for example, President Alassane Ouattara of Cote d'Ivoire ran for and won a third term despite term limits in his country. His eligibility was based on the problematic argument that a constitutional change during his second term had reset the term count (in line with the argument, Ouattara can run for a fourth term). This led to violence and the death of at least 50 people in the country. The ECOWAS congratulated the President on the victory, urging him to restore peace after the elections, and he was not condemned for the disregard of PTLs.⁴¹ The ECOWAS Parliament Facebook page reflected that the Community did send an electoral observation mission to Cote d'Ivoire in 2020.⁴²

Similarly, Alpha Condé of Guinea amended the state's constitution which allowed him to reset the clock on his term and run for a third term in 2020. Condé won the elections, and the inauguration was held with reported attendance of some ECOWAS and United Nations representatives, without any condemnation of the violation of PTLs. The election protests were accompanied by violence and at least 21 people were killed.⁴³ Protests continued after the elections, arguably emboldening a subsequent military coup d'état in 2021 where Condé was overthrown.⁴⁴ It was only after the military coup that the ECOWAS spoke about the situation in Guinea through its *'extraordinary summit of the ECOWAS authority of heads of state and government on the situation in Guinea and Mali'*. The ECOWAS then imposed sanctions on Guinea including the suspension of financial assistance to Guinea from the Community, and sanctions targeting specified individuals, including asset freezing and travel bans.⁴⁵

Likewise, Togo's Constitution remains at the heart of its current political turmoil. In Togo, the constitutional reform of May 2019 was adopted under rather controversial circumstances. It created an opportunity for a fourth mandate for the incumbent President Faure Gnassingbé in 2020.⁴⁶ It is worth noting that Faure's father amended the Constitution in 2002 to allow himself unlimited terms of office. Since then, there have been demands for a return to two-term limits in Togo. Acceding to pressure, Faure Gnassingbé in 2019 proposed a constitutional amendment to return to two-term limits, but only with effect from 2020, thereby ensuring that the three terms he already served would not count. The amendments were made without seeking the approval of the citizens through a referendum. The ruling party dominated Legislature was used to unilaterally amend the Constitution. The political outcome of this action is the entrenchment of an authoritarian and undemocratic culture in the governance of Togo. It is important to note that although term limits were reintroduced, they can still be removed through referendum as per Article 59 of the Constitution of Togo. The risk of evading presidential term limits remains real as Togo alongside Senegal and Cote d'Ivoire rejected ECOWAS' attempt to adopt two-term limits. The rejection of term limits by some leaders poses a real risk to political stability and democratic governance, particularly in countries where leaders have been in power for many years and have not been subject to meaningful electoral accountability.

4.2 ECOWAS differing approach to military coups and tenure elongation by incumbents

From the preceding section, it is noticeable that the responses of ECOWAS to military coups and unconstitutional retention of power by incumbents has been inconsistent. The Community seems to prioritise sanctioning military coups. It's most recent swift response to the Nigerien coup is a glaring manifestation of that selective approach. ECOWAS in

effect threatened military intervention in Niger if the military junta did not restore power to civilian rule. Although military intervention is unlikely, as in the circumstances it may exacerbate instability in Niger, the legality of the move is a moot point.⁴⁷ Perhaps the most concerning sanctions are those that affect the ordinary Nigerien. These sanctions include ECOWAS suspension of relations with Niger, suspension of loans and commercial transactions, closure of member state's land and air borders with Niger and the imposition of economic sanctions. These sanctions have cumulatively undermined trade and the effects are already being felt by ordinary citizens who have to bear the brunt of rising costs of living and increased insecurity and instability. Whilst the sanctions are broadly envisaged within provisions of ECOWAS instruments, including the 2012 Supplementary Act,⁴⁸ ECOWAS could have focused more on targeted sanctions on the coup leaders pursuant to articles 6(ix) and 9 of the 2012 Supplementary Act.

Despite its intolerance towards military coups, constitutional coups which sometimes precipitate military coups are not addressed by ECOWAS. This is probably because there is no organised, steady monitoring of compliance with governance standards in the ECOWAS region. Even the Supplementary Protocol does not provide for the establishment of a body that might be entrusted with such responsibility. Hence there is a lack of institutional oversight. ECOWAS should prevent crises related to power transfers in order to restore some sense of accountability in West African politics. ECOWAS' role in facilitating dialogue between government and opposition groups in Togo is commendable. Nevertheless, Faure Gnassingbé's third and fourth terms hamper efforts towards strengthening democratic culture in Togo. The mediation that should put an end to the crisis in Togo may be worsening it.

ECOWAS' silence towards Gnassingbé regime's manipulation of the Constitution in his favour is not encouraging. The implication is that incumbent leaders could change the Constitution to either extend or limit the presidential term. Under the prevailing circumstances, ECOWAS's commitment to promoting democracy is being challenged. It is true that the Community adopted normative and legal instruments to advance democracy and constitutional convergence in member states in order to maintain stability and security. But the practices of enacting and implementing political reforms in recent times within the region have relatively sustained instability, thereby posing a serious threat to peace and security in the region.

05. Comparative approaches

To effectively implement the foundational principles of constitutionalism, democracy, and rule of law, which are enshrined in the ECOWAS Protocol, ECOWAS can draw inspiration from other international or regional instruments and their related governing bodies. To that end, this section first examines ECOWAS institutions. It then provides a comparative analysis of the African Union (AU), the Southern African Development Community (SADC) and the East African Community (EAC). The comparative analysis provides valuable context and perspective on the issue of presidential term limits within the broader regional framework. The analysis also informs recommendations advanced for enhancing ECOWAS' normative provisions and policy direction for promoting presidential term limits in the region.

5.1 ECOWAS Institutions and advocacy for PTLs

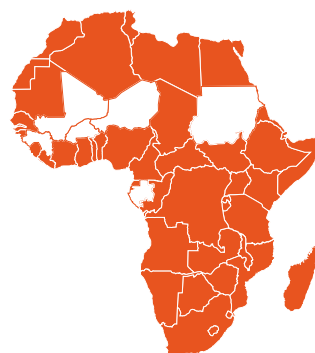
As indicated previously, ECOWAS is composed of several institutions that could potentially play significant roles in the enforcement of Presidential Term Limits (PTLs). They include the ECOWAS Commission, ECOWAS Parliament, ECOWAS Court of Justice, Authority of Heads of State and Government and the ECOWAS Council of Ministers.

- **The ECOWAS Commission** which is the key organ responsible for executing ECOWAS policies, is uniquely placed to implement PTL norms. The ECOWAS Commission could oversee the enforcement of term limit provisions in the proposed revision of the ECOWAS Protocol and other proposed guidelines or resolutions on PTL that ECOWAS could adopt.
- **The ECOWAS Parliament** on the other hand is a forum for dialogue, consultation, and consensus among representatives from all member states which could serve as a platform for discussing PTL issues in the region and adopting appropriate parliamentary measures such as resolutions. It could serve as an avenue for discussing the importance of PTLs and adopting resolutions aimed at encouraging member states to respect them.
- **The ECOWAS Court of Justice** which is mandated to interpret and apply the provisions of the ECOWAS Treaty could be seized to interpret and apply all PTL provisions from ECOWAS protocols, proposed treaties and resolutions. The Court could potentially play a crucial role in adjudicating disputes over PTL violations.
- **The Authority of Heads of State and Government** which comprises the Heads of State and Government of each member state is the most powerful organ of ECOWAS. It wields the most political power and will, where applicable, to effect any change. Therefore, it would be pivotal in adopting and enforcing PTL norms. Moreover, its members could individually or collectively act as champions of term limits within their respective countries. Advocacy strategies

aimed at ECOWAS institutions could identify incumbent champions of term limits who could serve as a potent catalyst to influence other member states to respect PTLs. This strategy could stimulate a peer pressure mechanism, where leaders who are respecting term limits leverage their influence to persuade others to follow suit. Such an approach could resonate particularly well in the West African context, where regional solidarity and peer influence play significant roles in shaping policy decisions.

- **The ECOWAS Council of Ministers** which comprises the Foreign Ministers of member states, could also play a key role in adopting decisions and policies related to term limits, and could also provide a platform for discussion and advocacy on the issue.

Essentially, each of these ECOWAS institutions, when effectively leveraged using a top-down institutional advocacy approach, coupled with the influence of PTL champions could significantly contribute to the promotion and enforcement of PTLs in West Africa.



5.2 The African Union (AU)

The African Union (AU) offers valuable lessons for ECOWAS - from effective norm-setting mechanisms to the challenges in implementing them. These insights can inform ECOWAS's strategy to promote and protect PTLs within its jurisdiction.

The African Charter on Democracy, Elections and Governance (ACDEG), a key instrument of the AU, emphatically advocates for democratic governance, rule of law, and human rights. It denounces the unconstitutional change of government and specifies sanctions for power gained or maintained illegally, including constitutional amendments that infringe upon democratic principles. The ACDEG, in conjunction with institutions like the AU Election Observation Missions, African Peer Review Mechanism, and the AU Peace and Security Council, work concertedly to promote democracy. ECOWAS can draw insights from these practices, considering the creation of similar mechanisms to oversee and safeguard the democratic process. It should be acknowledged that though these mechanisms can be instructive to ECOWAS, they are not without their challenges. This was demonstrated by instances in Chad ⁴⁹ and Equatorial Guinea ⁵⁰ where the AU mechanisms

were not effective in enforcing PTLs. As Wiebusch and Murray assert, while the AU has a zero-tolerance policy against military coups, its record in addressing constitutional coups is poor.⁵¹ The AU has not invoked Article 23(5) to sanction any state for constitutional coups. This is owing to the lack of clarity on the meaning of the African democracy principles referred to in that provision, and also the lack of guidelines to help determine when these principles have been infringed.⁵² When PTL evasions pose a threat to peace and security in states, the AU has been reluctant to vigorously interfere in 'domestic matters'.⁵³ The AU's frameworks can be used as a basis for robust engagement with constitutional changes on the continent; however, they are not being utilised to their full potential.⁵⁴

One promising measure is the guidelines for constitutional changes proposed by the AU Peace and Security Council (PSC). This initiative, being developed by the AU Commission, aims to establish a framework for evaluating constitutional amendments and preventing their misuse for power preservation and consolidation.⁵⁵ ECOWAS could consider adopting a similar strategy, defining its own guidelines for constitutional amendments. However, guidelines alone may not suffice. The AU's experience underlines the necessity for clear monitoring mechanisms and enforcement measures to uphold such guidelines. Moreover, ECOWAS must pay attention to the inherent tension between regional norms and national sovereignty, a recurring theme in the AU's attempts to enforce democratic standards. ECOWAS, therefore, should strive to promote term limits in a manner that is sensitive to national sovereignty but firm in advancing democratic values.



5.3 The South African Development Community (SADC)

The South African Development Community (SADC) is another regional entity from which ECOWAS can glean some limited insights. The SADC Treaty of 1992 and the SADC Protocol on Politics, Defense, and Security Cooperation 2001 both emphasize the principles of peace, security, human rights, democracy, and the rule of law, akin to the principles espoused by ECOWAS.⁵⁶ The SADC Organ on Politics, Defense, and Security Affairs, which aims to foster peace and stability in the region, offers an example of an institutional mechanism that ECOWAS could emulate. However, caution needs to be exercised in terms of the tendency to prioritise immediate stability and peace over the rigorous enforcement of

democratic norms such as PTL, although the latter is required to create a suitable environment for long-term sustainable stability and peace to thrive. Another limitation to SADC's approach is the tendency to define 'significant conflict' by reference only to large-scale violence, military coups, and civil wars. The exclusion of constitutional changes to PTLs represents a missed opportunity for safeguarding democratic principles.⁵⁷ ECOWAS can therefore aim to have a more expansive definition which more clearly incorporates PTL evasions.



5.4 The East African Community (EAC)

The East African Community (EAC), similar to ECOWAS, emphasises good governance and adherence to democratic principles.⁵⁸ Nevertheless, its execution regarding PTL violations, can provide valuable insights and lessons for ECOWAS.

A key lesson to note is that the EAC Treaty only provides for sanctions against members who fail to fulfill certain obligations which are mainly financial in nature without expressly addressing or referencing PTL violations.⁵⁹ This suggests that ECOWAS needs to ensure that any proposed guidelines or amendments to the existing protocol should impose both economic and political sanctions. Also, the EAC Protocol on Peace and Security, while designed to promote security and cooperation among states, does not offer a framework for handling constitutional coups.⁶⁰ Wepundi and Sharamo also argue that the EAC architecture on peace and security has not translated to practical interventions against coups, whereas the ECOWAS and SADC have set good standards for coup prevention.⁶¹ Additionally, the EAC's silent acceptance of Rwanda's multiple constitutional amendments to extend presidential terms highlights the importance of a proactive response to such democratic breaches.⁶² From this example, ECOWAS can learn to maintain vigilance against such constitutional amendments and to consistently respond to PTL violations. Basically, the EAC's experience accentuates the need for ECOWAS to develop explicit norms and proactive measures to handle constitutional coups and PTL violations. This involves maintaining a holistic view of member obligations, both economic and political, and ensuring active interventions against breaches of democratic principles.

06. Policy direction: enhancing ECOWAS' normative provisions

Notwithstanding the significant prospects of the Supplementary Protocol on Democracy and Good Governance, experiences drawn from more than two decades of its operation have shown some weaknesses. This particularly relates to prevailing constitutional reforms in the region. Ensuring the existence of proactive and sustained democratic institutions are also imperatives for peace, security and stability in the region. This necessitates a systematic and consistent monitoring of compliance with governance standards in the region. The achievements of the objectives of the Protocol to promote constitutionalism, democracy and rule of law require different measures.

○ Adopting a code on PTLs:

The time has come for ECOWAS to promulgate a code on presidential term limits of varied duration (four or five years) in the proposed amendment (on term limits) to the ECOWAS Supplementary Protocol. This will considerably improve respect for rule of law. The move to amend the Protocol is aimed at ensuring that Heads of States and Governments do not alter their respective constitutions to stay beyond two terms in office for any reason or in any form. There is a need for ECOWAS and its partners to address the issues of legality and legitimacy of leadership. In confronting these issues, ECOWAS and other regional bodies need to take into consideration the manner in which power has been acquired, sustained, executed and transferred. The legality and legitimacy of leaders should not stem from opportunistic laws, even if they are at times judged peaceful by incumbent allies. The ECOWAS and its member states should show that they are willing and able to promote and achieve constitutional and representative governments, and respect for the rule of law and human rights in the sub-region.

Indeed, the legality and legitimacy of a political process should emanate from consultative and largely participatory processes in order to ensure the credibility of the emerging leadership. Different measures applied to different cases expose the vulnerability of ECOWAS to opportunistic political manipulations. It is submitted that after about ten years in office, no regime can credibly claim to accomplish much more. What is even more critical is that term limits be codified by ECOWAS to function at the greatest value in order to ensure that no person can serve more than two terms. There are indications that countries without term limits are likely to lack stability, and an increased number of these countries are facing armed conflicts, while only two of the 21 countries with term limits are in conflict.⁶³

- The development of guidelines on constitutional amendments would be a natural extension of the current efforts of ECOWAS through the ECOWAS Protocol and would help to further strengthen democracy and the rule of law in the region.
- Strengthening ECOWAS institutions is paramount to promoting democratic governance and preventing constitutional abuses in West Africa. This strategy necessitates targeted advocacy efforts aimed at different institutions, depending on their mandate and ability to incite change. One proposition is the promotion of a resolution encouraging member states to respect term limits, regardless of whether amending the protocol on term limits is immediately achievable. This resolution would underscore ECOWAS' dedication to democratic governance and the rule of law and could exert pressure on member states to observe term limits. In pushing for the adoption of such a resolution, it is crucial to identify which ECOWAS bodies have the highest potential for action. This could include the ECOWAS Commission or the ECOWAS Parliament. The Authority of the Heads of States and Governments, as the highest decision-making body, can also be pivotal, albeit its powers should be cautiously appraised. In addition to pushing for resolutions and amendments, a fundamental reconsideration of ECOWAS' structure is necessary to bolster its democratisation. This could entail moderating the excessive powers of the Authority of the Heads of States, a body whose members may not always champion democratic principles, especially if they resist such principles in their own countries. Enhancing parliamentary representation within ECOWAS can also be a significant step toward democratisation, particularly through electing parliamentarians rather than appointing them. This would introduce a broader range of perspectives and mitigate the risk of concentrated power. Examples such as Togo's opposition to the amendment of the protocol twice underscore the need for this structural democratisation. Although the ECOWAS Commission is inclined toward reform, consensus or unanimity within the Authority of the Head of States is required, indicating the urgency to moderate its overwhelming authority. By democratising the structure of ECOWAS, we can create a more effective institution that is equipped to champion and implement democratic principles and term limits across West Africa.

○ Effective use of sanctions and suspensions:

Sanctions are contained in the Supplementary Protocol to ensure Member States comply with democratic principles. However, the issue of leaders who use unconstitutional means to extend their terms in office is not specifically addressed. Sanctions as provided in the Supplementary Protocol implicitly and practically have stronger impact on the gene-

ral population than the implicated incumbent. Targeted sanctions may be a better option in order to maximize their effects. But this can only be effective if the highest authority structure of ECOWAS, namely the Authority of the Heads of State and Government, ECOWAS Council of Ministers and the ECOWAS Commission are supportive. It is also imperative that ECOWAS considers the progressive application of suspension of election support, including election observation boycotts, trial and restraining of implicated persons from contesting elections, and non-recognition of regimes arising from such elections.

Sanctions can further be used as an intermediate step between mediation and use of force on an implicated incumbent. This however is recommended to be used as a measure of last resort. The use of force and how such intervention will happen should be adopted as a legal code – this can be included in the proposed amendment to the Supplementary Protocol. The objective here is to foster predictability and avoid the appearance of expediency. Fundamentally, sanctions must be applied with a greater degree of consistency, as selective or non-application of such sanctions will undermine confidence in regional governance frameworks.

○ **Sustained Proactive Democratic Institutions:**

A major barrier to democracy in the ECOWAS region is the concentration of extreme power in the executive arm of government and existence of very fragile checks and balances. Strengthening democratic institutions require concrete checks on the use of power by the executive arm of government. A free and effective court system, legislature, civil society organisations, and independent media with inclusive political participation and political equality are imperatives that have been recognized as critical for inclusion in the Supplementary Protocol.⁶⁴ Such efforts will help create democratic regimes with shared values and allies who will assist to garner democratic support when claims regarding tenure elongation are brought to the fore.

In contrast, it is valuable to draw lessons from institutions like the European Union (EU), which has designed a structure promoting democratic functioning and checks on executive power. The EU structure is balanced, with powers shared among several institutions, including the European Commission, European Council, and European Parliament. Each institution has a specific role and operates independently, thereby reducing the excessive concentration of power. This structure facilitates checks and balances, critical for any democratic system. Specifically, the European Parliament comprises directly elected representatives from all member states, ensuring a broad range of perspectives and greater democratic legitimacy. Lessons from the EU's approach, such as enhancing parliamentary representation, dispersing power, and reinforcing checks and balances, can help guide the reform

process within ECOWAS. Adapting these aspects to the unique political context of West Africa could strengthen ECOWAS's democratic functioning and enable it to better promote term limits among its member states.

Emerging trends have shown that upholding the constitutional legality of the state and strengthening human rights in line with ECOWAS' normative principles are crucial for sustainable democracy in West Africa.⁶⁵ It is also necessary that the implementation process should contemplate the involvement of several actors. Heads of government of member states should be reminded often to raise consciousness regarding the execution of the normative principles and rules set out in various ECOWAS codes within their various jurisdictions.

○ **Systematic and consistent monitoring of compliance with governance standards:**

The existence of a systematic and consistent monitoring of compliance with governance standards will help to harmonise institutional and organisational oversight. In that regard, ECOWAS can work with other RECs to exercise oversight functions as well as share policies and principles that will serve to facilitate the achievement of democratic principles. Coordination between the ECOWAS and RECs is crucial to having a substantial impact on democracy.

Here, the ECOWAS can sign an MOU to coordinate their activities with regard to presidential term limit adherence. The MOU must specify the responsibilities of each signatory organisation by articulating clearly the rules of engagement and distribute competencies. Ideally, such MOU between the ECOWAS and the RECs should lead to a coordinated and combined effort to create, protect and promote term limit adherence by the organizations in their member states. One way to increase the effectiveness of joint ECOWAS-RECs action is to make threats more credible. This will help ECOWAS prevent crises related to power transfers. It will further assist in restoring some sense of accountability in West African Politics.

○ **Strengthening ECOWAS engagement with Civil Society Organisations:**

Civil Society Organisations should be supported to educate the peoples on the dividends of equal commitment to a representative form of democracy that includes competitive presidential elections. A major role of civil society is to represent the interests of various groups of rights-holders and thereby promote and channel their participation in decision-making and in holding the incumbent government accountable. Civil Society can advocate and empower citizens to exercise unrelenting pressure against opportunistic constitutional reform to deter an incumbent government's attempt to extend its stay in power undemocratically.

Conclusion

From the comparative analysis, African organisations are focused on addressing military coups and pay little attention to constitutional coups. ECOWAS needs to update its mechanisms to ensure that constitutional coups are detected, and culpable states are sanctioned.

ECOWAS also needs to develop a culture of publicly condemning regimes that violate PTLs. African organisations have not been quick to act on constitutional coups, and they do not call out states that evade PTLs. On this aspect, ECOWAS needs to adopt the UN model of condemning PTL violations as and when they occur and calling states to foster democracy and non-violent elections.

ECOWAS also needs to utilise its election observer missions to their maximum potential. African organisations tend to give social rewards to non-compliant states by congratulating them on elections preceded by PTL evasions. ECOWAS should develop stricter guidelines on observation missions' reportings to ensure that information is gathered to indicate when there are PTL violations.

This policy paper therefore suggests directions that ECOWAS and member states can follow to forestall unilateral amendment of constitutions on issues around presidential term limits. The policy direction anticipates that a combination of strengthened regional normative instruments and practical support for member states can help overcome democratic backsliding in the region. The implications of the prevailing constitutional transitions and reforms in the region reveal the relationship between extended term limits and instability that the region has experienced. Strengthening ECOWAS normative democratic instruments to reinforce valuable democratic tenets, practices and mechanisms in order to encourage transparency and accountability against opportunistic reforms is necessary. Member states must also undertake efforts to ensure that constitutional reforms are collective, all-encompassing, and originates from credible processes.

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