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ECOWAS MEDIATION IN TOGO'S 2017/2018 POLITICAL CRISIS: FEATS, DEADLOCKS, AND LESSONS

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Introduction

On August 18, 2017, opposition¹ figures in the Republic of Togo, a member-state of the Economic Community of West Africa States (ECOWAS), took to the streets to protest the continued rule of Faure Gnassingbé, the incumbent president of the country who has spent 14 years in power. They demanded constitutional reforms, and in particular, a return to the 1992 constitution, which would, bring back a constitutional provision limiting presidential tenure to two-terms of five years only. Other reforms demanded included a demand for a two-round system² for presidential elections, reform of electoral laws and the election management body, review of the voters' register, as well as voting rights for Togolese nationals in the diaspora. In a quick progression of events, the protesters made additional demands including one for an immediate end³ to the regime of Faure Gnassingbé, whose family has been accused of institutionalizing dynastic rule starting with his father, Gnassingbé Eyadéma, who ruled the country from 1967 till his death in office on February 5, 2005. For several months, on regular intervals, leaders of the opposition and civil society groups mobilized different social groups including youths and women to continue to make these demands on the

government. occasionally in violent demonstrations that led to public disorder, looting of Occasionally these protests degenerated into violent demonstrations that led to public disorder, looting of private and public goods, and loss of lives. The initial reaction of the government was to crack down on the protesters, using state apparatuses of force to shut down the internet, which was crucial for mobilization, arresting⁴ a number of activists on the streets of Lomé, the country's capital. The protests, however, continued as protesters were undeterred,⁵ and soon spread to the country's second largest city of Sokodé in the central region. Following persistent demonstrations and calls by the international community, notably, ECOWAS, France, the United Nations (UN), the European Union (EU), and the African Union Commission (AUC) for an immediate dialogue in resolving the impasses, Mr. Faure Gnassingbé finally accepted to dialogue and negotiate with the opposition.

Leveraging on a preventive diplomacy conceptual framework of analysis, this paper highlights the nuances and the herculean task of mediating political conflicts by regional organizations such as ECOWAS. It does so especially in relation to preventing protests from escalating into violent conflict, navigating deadlocks, and achieving concessions on important political and constitutional matters that might alter the existing power equation. It analyses the spate of criticism that trailed ECOWAS' mediation of the crisis during a period the Togolese president, Mr. Faure Gnassingbé, was the Chair of the Authority of Heads of State and Government of ECOWAS (June 2017 to July 2018) as well as the efforts to maintain impartiality by the Facilitators appointed by ECOWAS to assist the government and opposition stakeholders to negotiate a political settlement and implement constitutional reforms.

The paper also raises questions about the rationality of the decision of the coalition of fourteen opposition parties (C14) to boycott the December 20, 2018 legislative elections, noting that the election boycott hardly achieved its intended purpose of delegitimizing the government. It, however, commends the ability of the opposition to learn key lessons from the boycott, and emphasizes the imperative for both the government and the opposition parties to continue exploring avenues for inclusive dialogue in addressing unresolved contentious issues, not only with respect to the immediate 2020 presidential elections, but more importantly, efforts at expanding the political and civic space and strengthening the role of civil society organizations in democratic processes in the country. The paper concludes by extolling

the steadiness and the resilience of West African citizens in demanding for, and, or defending constitutional provisions that limit presidential tenures. It also notes that such vigilance and resilience are needed if democratic culture and good governance are to be deepened in the region.

A synopsis of Togo's political history

A former French colony, the republic of Togo gained independence in 1960. It adopted a new Constitution in 1961, instituting a unicameral National Assembly as the supreme legislative body with Sylvanus Olympio as president. Following the assassination of Olympio in a military coup in 1963, power was handed over to an interim government led by Nicolas Grunitzky. In a bloodless coup in 1967, then Lieutenant colonel (later, General) Gnassingbé Eyadéma overthrew Grunitzky and assumed the presidency. He introduced a one-party system in 1969 and maintained hold of power for thirty-eight years till he died in office on February 5, 2005. Following Eyadéma's death, the country's military leaders, in a show of loyalty to the Eyadéma family, moved swiftly to install his son, Faure Gnassingbé – who was at the time the minister of public works, mines, and telecommunications – as president. Togolese opposition groups and the international community, including the AU, the UN, and ECOWAS denounced the transfer of power from father to son as unconstitutional, insisting on the conduct of elections. The transfer of power without election was in effect, a breach of the constitutional convergence principles enshrined in the ECOWAS 2001 protocol on democracy and good governance, which stipulates that, “every accession to power must be made through free, fair, and transparent elections and zero tolerance for power obtained or maintained by unconstitutional means.” ECOWAS, under its then Chairperson of Authority and Nigerien president, Mamadou Tanjan, and Olusegun Obasanjo, then president of Nigeria, negotiated an end to the stalemate, resulting in Faure Gnassingbé stepping down as president to seek a legitimate mandate through the ballot box. Deputy Speaker of Togo's parliament, Bonfoh Abbass was appointed interim president. In the highly contested elections held on March 4, 2005, Faure Gnassingbé was declared the winner and duly elected president. Based on the 2002 Constitution that had no provision for a presidential term limit, Mr. Faure Gnassingbé was reelected in 2010 and 2015, respectively, for a five-year period each.

In August 2017, anti-government protests erupted in Lomé, demanding constitutional reforms. Indeed, the political history of Togo is replete with such demands which have often resulted in a series of political dialogues

with the opposition, but agreements reached have mostly not been implemented by the government.⁶ For example, in the run-up to the 2015 presidential elections, the Institute for Security Studies (ISS)⁷ published a report on ECOWAS Peace and Security highlighting the impending political deadlock ensuing from failure by the government to implement provisions of the Global Political Agreement (GPA) of 2006 it signed with the opposition in the aftermath of the 2005 disputed presidential elections. In the spirit of the GPA, a government of national unity (GNU) was formed on September 20, 2006 under Prime Minister Yawovi Agboyibo, a key member of the opposition. The GNU was expected to implement the key provisions of the GPA, namely, institutional and constitutional reforms which encompass revisions of the electoral code and reform of the national security forces, the National Independent Electoral Commission (CENI), the Constitutional Court, and the High Authority for Audiovisual and Communication (HAAC). However, all the efforts of the opposition for the implementation of the GPA were resisted by the ruling party (*Rassemblement du Peuple Togolais*, today *Union pour la République*), paving the way for Faure Gnassingbé's re-election in 2010 and 2015.

A conceptual overview of ECOWAS' preventive diplomacy tool for the peaceful resolution of political conflicts

Over the years, regional organizations, such as ECOWAS, have increasingly been deploying time and resources towards addressing the challenges of state fragility, conflict management, peacemaking, and post-conflict peacebuilding initiatives within their constituent member states.⁸ The reasons for this noticeable trend is not far-fetched as evidence shows that political instability, conflict, or war in any given member state could upset regional stability, as was the case with Liberia and Sierra Leone in the 1990s and 2000s. The mandate of regional organizations' involvement in the maintenance of peace and security and the peaceful resolution of disputes is drawn from Chapter VIII of the Charter of the United Nations. The said chapter encourages and calls for the existence of, and creation of, regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the UN.

With particular reference to the pacific settlement of disputes, Article 33 of Chapter VI encourages "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and se-

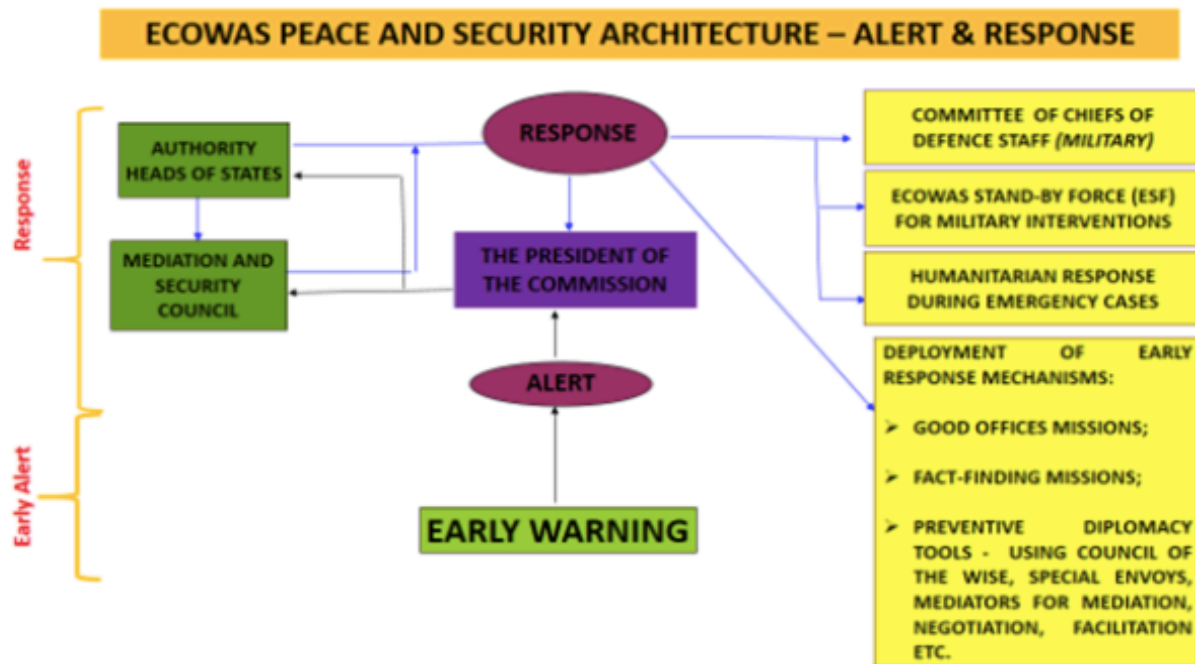
curity, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” In his report to the seventy-second session of the UN General Assembly in 2018, Antonio Guterres, the UN Secretary-General, notes that “regional and other more flexible frameworks for coherent intergovernmental support to sustaining peace have...shown great promise, in particular when they involve the necessary resolve and a common vision among the countries concerned.”⁹ He notes further that “the most crucial sources of support are usually other Member States, often those in the same region or with strong historical ties, that can provide the political and financial support necessary to the process of building a peaceful society”¹⁰ and subsequently calls for “regular dialogue, enhanced information-sharing, improved coordination, and joint approaches and activities, on the basis of comparative advantages.”¹¹

Indeed, a firm legal basis underpins the relationship between the UN and Regional Organizations on the issue of peace and security. The African Union as a regional organization is recognized by the UN, the guarantor of global peace and security, while ECOWAS constitutes one of the five Regional Economic Communities (RECs) under the AU architecture. The three organizations cooperate on issues of peace and security on the basis of the principles of subsidiarity and complementarity in accordance with the provisions of Chapter VIII of the UN Charter. Thus, as clearly stated in the 2008 ECOWAS Conflict Prevention Framework (ECPF), “key ECOWAS normative standards that speak to conflict prevention, resolution, and peace-building broadly radiate from the Constitutive Act of the AU and the UN Charter, and the related normative standards on peace and security”¹² and this includes cooperation and complementarity of efforts in the areas of preventive diplomacy and mediation.

There is no doubt that ECOWAS has been an active player in brokering peace between and among political actors across its 15 member states and has indeed recorded remarkable successes as well as shortcomings in its peacemaking initiatives.¹³ Learning from its experience of addressing political turmoil in the late 1980s and early 1990s, ECOWAS revised its 1975 Treaty in 1993, introducing a new mandate on regional security aimed to “safeguard and consolidate relations conducive to the maintenance of peace, stability and security within its region.” Regional organizations indeed play a key role in the peaceful settlement of disputes, through among others, the use of preventive diplomacy.

Preventive diplomacy as a conceptual framework of analysis in the context of this paper refers to the range of peaceful dispute resolution approaches applied before a dispute crosses the threshold to armed conflict.¹⁴ Boutros Boutros-Ghali conceptualized it as “action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.”¹⁵ It encompasses a broad range of activities and approaches undertaken by official representatives of governments and intergovernmental organizations or groups, often through quiet means in engaging parties in conflict and negotiating peaceful resolution of their disputes.¹⁶ The range of options for preventive diplomacy may include the use of good offices, special envoys, facilitation, mediation and conciliation efforts, etc. It is important to state that in any conflict situation, as rightly observed by Jose Pascal da Rocha, “achieving peace, ceasing the violence, and bringing formerly belligerent parties to talk about a common future is a difficult task.”¹⁷ Consequently, the use of good offices of eminent personalities to bring about or initiate negotiations or the engagement of special envoys, mostly respected and retired seasoned diplomats or former heads of states and prime ministers to facilitate or undertake mediation processes on behalf of regional organizations, are some of the ways through which the tool of preventive diplomacy is utilised.

The normative frameworks of ECOWAS indeed mandate it to play a preventive diplomacy and mediatory role in the region. Article 58 (2e) of its 1993 revised treaty mandates the regional organization to use “where appropriate, good offices, conciliation, mediation, and other methods of peaceful settlements of disputes”¹⁸ in the prevention and resolution of intra and inter-State conflicts. This is also amplified in its 1999 protocol relating to the mechanism on conflict prevention, management, resolution, peace-keeping, and security that specifically assigns functions and responsibilities to its various statutory mediation organs and institutions, namely, the Authority of Heads of State and Government, the Mediation and Security Council, the President of the Commission (executive secretary), the Council of Elders (Council of the Wise) and other mediators, facilitators, and special envoys. Mostly only incumbent and former Heads of State and Prime Ministers are mandated on an ad hoc basis by the Authority of Heads of State and Government to facilitate or mediate a particular conflict situation. All these institutions and organs are backstopped by a support team from the ECOWAS Commission in carrying out their mandate.



Above Figure: The ECOWAS Alert and Response Structure for conflict management, indicating its range of early response mechanism and preventive diplomacy tools (Source: ECOWAS Mediation Guidelines, 2018:26).

It must be stated that issues requiring or triggering the need for mediation by ECOWAS often include, but are not limited to, disputes over electoral processes and their outcomes as well as rivalries among political gladiators aimed at obtaining and maintaining political power. These are indeed contentious issues. Pascal da Rocha corroborates this when he notes that “what differentiate political conflicts from other social conflicts is that severity of disputes and rigidity of issues are closely related to *the quest for the exercise of political power*.”¹⁹ Conflicts in the political realm, he notes, “emanate and manifest themselves due to the fact that political and social groups conflict in the exercise of power and therefore do not respect the rules of the democratic game.”²⁰ Indeed we have seen this manifest over and over again in some member states of ECOWAS. A recent case in point was the in-fighting and struggle for power that immediately followed the success of the 2016 Coalition of political parties that came together to oust Mr. Yahya Jammeh, the former President of The Gambia. Soon after the victory over Jammeh, the ruling coalition began experiencing fragmentation, inter and intra-political wrangling that pitted the new President, Mr. Adama

Barrow, against the leadership of the United Democratic Party (UDP) over the pledge of President Barrow to respect an agreement reached with the leadership of the UDP to only serve three years out of the constitutionally mandated five-year tenure. The unpredictable political environment this has created could undermine efforts at consolidating the democratic gains achieved in Gambia.

Constitutional convergence principles that should regulate the conduct of political processes and exercise of political power by the member states of ECOWAS are well specified in the 2001 supplementary protocol on democracy and good governance. These principles, among others, include provisions that every accession to power must be made through free, fair, and transparent elections, zero tolerance for power obtained or maintained by unconstitutional means and a political space that guaranteed the right of political parties, including opposition parties to exist and operate within the limits of the law without hindrance or discrimination in any electoral process.²¹ Also significant is the provision that “no substantial modification shall be made to the electoral laws in the last six (6) months before elections except with the consent of a majority of political actors.”²²

Securing consent, agreement, or mediating on issues pertaining to political power is quite a herculean task, no less in a socio-political environment where access to state power guarantees all other privileges.²³ Regional organization(s) playing the role of a third party mediation entity or mandating a given mediation process to help political actors reach consensus on the modalities for conducting elections, resolving post-election disputes, power sharing, or constitutional reforms aimed at altering power equation in a given member state may need to tread with caution in order not to be accused of, or be seen to be partial, not only by parties to the conflict, but also by segments of the citizens.²⁴ Indeed, impartiality is a key principle enshrined in the ECOWAS mediation guidelines. The principle obliged ECOWAS mediators “to act and be seen to act as honest brokers,...must not be biased towards any of the parties and be able to run a balanced process that treats all actors fairly”²⁵ while at the same time upholding certain universal principles and values which they must take their stand on once they are violated, such as its constitutional convergence principles and other norms and values clearly enumerated in its 2001 Supplementary Protocol on democracy and good governance. It is against this context that one can objectively analyze the 2017/2018 political crisis in Togo and the mediation process undertaken by ECOWAS to broker peace and generate viable and implementable

solution(s) acceptable to both the government and the opposition.

The 2017/2018 political crisis and ECOWAS mediation efforts

The first ECOWAS attempt at resolving the political crisis occasioned by the August 2017 protests by the coalition of opposition parties and civil society groups was the mission to Lome, Togo undertaken by the then President of the ECOWAS Commission, Mr. Marcel Alain De Souza from 12 to 13 September 2017. The mission was undertaken in consonance with principle one²⁶ of its mediation guidelines that emphasized the need to prioritize preventive action through early and timely interventions. In the course of the mission, consultations were held with major Togolese stakeholders across the divide, including representatives and leaders of the opposition parties, civil society groups, the president of the Republic and some of his cabinet ministers, notably, the ministers of Foreign Affairs, Security and Social Protection and the minister of Territorial Administration. The essence of the mission was to impress on the Togolese stakeholders and reiterates ECOWAS' call and preference for dialogue as a means for resolving member states' internal political disagreements based on its various normative instruments. The mission was equally to enable the Commission to better understand the position of the government, the opposition, and the civil society groups on the thorny issue of a two-term presidential term limit.

At the end of the two-day consultation, it was apparent that all stakeholders seemed to have a general consensus on the need to embark on constitutional reforms to address the opposition's demands, including the thorny issue of a two-term presidential limit. However, despite this consensus, the modality for its implementation was problematic, as the opposition had insisted that the presidential term-limit should be applied *ex post facto* (retroactively), thus excluding the incumbent president from seeking a re-election, a position that was vehemently objected to by the ruling party and the government. Also, whilst all stakeholders had consensus on the need for dialogue between the government and opposition parties in defusing the political tension, they however, at this stage, insisted on the need for them to exhaust all internal means for finding solutions to the crisis before any recourse to 'external mediation.' It is often the case that governments, and at times, opposition parties are not always willing, receptive, or are suspicious of 'external mediation.'²⁷ The acceptance of external mediation in states' internal political crisis and processes, especially on the part of incumbent governments is always viewed as an outright acknowledgement

of its inability to effectively manage internal political and social unrest, and more importantly, “sensitivity to the prerogatives of sovereignty.”²⁸ In such circumstance, as has occasionally been experienced by ECOWAS, the entry point is to anchor its mandate on Article 25²⁹ of its protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping and security. The government of Togo had at this stage, reiterated to the ECOWAS delegation that the draft bill for constitutional amendment was already before the National Assembly and as such should be allowed to run its full course. The delegation returned from Togo and continue to appraise the socio-political developments.

Meanwhile the coalition of opposition political parties (C14)³⁰ and civil society groups continued the demonstrations against the government, demanding for a referendum on constitutional amendment that would respect two-term limits for presidents, which should be applied retroactively. With sustained political tension in Togo – and at a period the Togolese President was the Chairperson of the ECOWAS Authority of Heads of State and Government – the Authority held its 52nd Ordinary Session in Abuja, Nigeria on December 16, 2017. Amongst others, the communique issued after the meeting expressed “expresses its concern over the persisting political tension in the Togolese Republic...and strongly condemns all form of violence and excesses resulting in the loss of human life, injury and material damage.” The Authority further “calls on the Togolese political stakeholders to, promptly, with full commitment, adopt a common approach in the implementation of the political reforms, while respecting constitutional order and democratic institutions.”³¹ It equally commended “the laudable efforts by their Excellencies, Prof. Alpha Condé, President of the Republic of Guinea and the then Chairman of the AU, Nana Akufo-Addo, President of the Republic of Ghana and Patrice Talon, President of the Republic of Benin, with a view to bringing together the Togolese political parties and finding a peaceful solution to the crisis through dialogue.”³²

Prior to ECOWAS' formal appointment of President Akufo-Addo and Prof. Alpha Condé as Facilitators for the Togolese political crisis at its Extraordinary Session on Guinea Bissau held in Lomé on April 14, 2018, Presidents Akufo-Addo, Alpha Condé, and Patrice Talon had, initiated talks with Togolese political stakeholders aimed at resolving the crisis. The reason for their efforts at finding a solution to the Togolese crisis is not far-fetched, as Togo is bordered by Ghana and Benin and probable humanitarian crisis and refugee out-flow was therefore a major concern for them. Thus, both

countries had an interest in ensuring that Togo did not implode. Presidents Nana Akufo-Addo and Alpha Condé were mandated by their peers Heads of State “to assist the Togolese government and political stakeholders in the implementation of constitutional reforms, while respecting legal deadlines, democratic standards and principles and the rule of law.”³³ They equally “instructed the Commission to take all necessary measures to support the ECOWAS Mediators, and make recommendations to be submitted to the next Summit of the Authority of Heads of State and Government”³⁴ which was to be held in July 2018.

It is important to note that the international community lent their support to the ECOWAS mediation process in Togo. This is in recognition of the increasing need for a coherent, complementary and effective coordination of preventive diplomacy and mediation processes in order to avoid competition, and in particular, “forum shopping”³⁵ by parties to dispute. This was significant, against the backdrop that “decades of experiences and a number of independent studies, including the report of the Advisory Group of Experts on the Review of the Peacebuilding Architecture, have pointed to haphazard, incoherent and occasionally contradictory or competitive international efforts as a significant source of failed peacebuilding efforts.”³⁶ In this regards, the European Parliament, for example, in its motion for a resolution of the political situation in Togo, had commended the mediation initiative by ECOWAS and its roadmap for the resolution of the impasse, calling on all political actors and the government, as well as international organizations, “such as in particular ECOWAS, the AU and the UN to strive for a mediation process to ensure a proper inclusion of all democratic forces in order to ensure meaningful and needed democratic reforms.”³⁷

Deadlocks in the mediation process

President Nana Akufo-Addo initiated peace talks that lasted for about three weeks before he was joined by President Alpha Conde as a co-facilitator. It is instructive to note that “in the course of the peace talks, the Togolese political stakeholders preferred the usage of the term ‘facilitation’/ ‘facilitator’ to ‘mediation’/ ‘mediator’.” In their view, “the political situation had not escalated to a crisis level that needed a mediator.”³⁸ Equally, at the onset, “the opposition expressed some doubts about the credibility of ECOWAS and its ability to be impartial, claiming in previous mediation, ECOWAS skewed the process in favor of the government.”³⁹ Some close observers of the mediation process, however, noted that Nana Akufo-Addo was seen as a credible

facilitator and an honest broker by both parties.⁴⁰ It is imperative to note that question(s) pertaining to the credibility of a mediating entity or a mediator, raised by any of the party to dispute, especially at the beginning of any mediation, could indeed jeopardize the entire process and this has been clearly emphasized in the narration of the 2008 post-election mediation process in Kenya: “a mediation process is most vulnerable at the beginning. Getting it right at the outset is vital.”⁴¹ Perhaps, the respect the opposition parties reposed on President Nana Akufo-Addo might have helped in overcoming the initial credibility question the opposition had about ECOWAS, thus enabling the process to progress.

In the course of the mediation process, the main deadlock was not so much the number of mandates that a President should be entitled to, as all sides did agree on a two-term limit. The issue was the opposition’s insistence on the retroactive application of the two-term limit, which in effect, implied that Faure Gnassingbé, who was in his third mandate as President had to step down from office and should be ineligible to contest future elections. The government had called for a review of some aspects of the constitution that could accommodate the demands of the opposition but insisted that the President would be eligible to run for another term. The government viewed their own proposal as a good compromise but the opposition vehemently disagreed with the government’s proposal and held on to their position.⁴² Given that there was a deadlock on the modality for the implementation of the two-term limit, the facilitators tactfully called for work to begin on the less sensitive issues, or what is often referred to as “low hanging fruits,”⁴³ which included confidence-building measures such as the release of political detainees; postponement of the organization of the legislative elections and the extension of the Parliament’s mandate until the end of November 2018, while the dialogue between the stakeholders continues; as well as the lifting the ban on peaceful demonstrations across the entire country.⁴⁴ The facilitators, however, informed the parties that their concerns on the term limit and in particular, the modalities for its implementation fell outside of the mandate⁴⁵ given to them by the Authority of Heads of State and Government at the Extraordinary Summit held on 14 April 2018 in Lome, Togo, but would report same to the Summit.⁴⁶

Presidents Nana Akufo-Addo and Alpha Condé submitted their report to their peers at the 53rd Ordinary Session of the Authority of ECOWAS Heads of State and Government which held on July 31, 2018 in Lomé, Togo. Following deliberations on their report, the Authority adopted a roadmap⁴⁷ aimed

at finding a lasting solution to the political crisis. The highlights of the roadmap included:

- a.) Comprehensive revision of the voters' register for the organization of legislative elections on December 20, 2018;
- b.) Adoption of constitutional reforms by the government and all political stakeholders, taking into consideration:
 - i.) Two-round voting system for the election of the President;
 - ii.) A two-term limit for the President;
 - iii.) Reconstitution of the Constitutional Court, in particular to its composition and limit the terms of the office of its members;
 - iv.) Consolidation of the electoral process, in particular the smooth implementation and the full involvement of stakeholders in the Independent National Electoral Commission (CENI).

The Authority specifically “recommends the adoption of these reforms through the Parliament⁴⁸ in order to speed up the implementation process” and “calls on the ECOWAS Commission to provide technical support and expertise for the organization and conduct of the upcoming elections.” Besides, a monitoring committee, comprising the representatives of the Facilitators and the ECOWAS Commission, tasked with monitoring the implementation of these decisions, was instituted by the Authority. The Facilitators were further asked to continue in their efforts towards finding a speedy and lasting solution to the crisis and to present an update at its next session scheduled for December 22, 2018.

In following up on the roadmap by the Authority, the ECOWAS Commission engaged the services of two electoral operations experts to render technical assistance to the Independent National Electoral Commission (CENI) of Togo, including carrying out a comprehensive revision of the voters' register for the conduct of the legislative elections that were shifted from July to December 2018. A constitutional expert was tasked with proposing a draft constitution that would take into account, a two-term limit for presidents, a two-round voting system for presidential elections and composition, appointment and tenure of members of the Constitutional Court,⁴⁹ amongst others. The draft constitutional amendments proposed by the constitutional expert had included a specific provision precluding presidents who have already served two terms from seeking another mandate. Of course, the proposal could have satisfied the demand of the opposition, but the govern-

ment vehemently objected to it. On this, a segment of the Togolese stakeholders, including the opposition coalition and a number of media commentators particularly criticized ECOWAS for not putting more pressure on the government to accept the proposal of the constitutional expert.⁵⁰

On the conduct of the December 20, 2018 legislative elections, the opposition had insisted that all reforms should be concluded before the holding of elections, including the reconstitution of the CENI, failure of which they would boycott the elections.⁵¹ With the renewed impasse, CENI proceeded with its voter registration exercise from October 1-25, 2018 in preparation for the legislative elections. The C14 called on its supporters to boycott the exercise alleging improper composition of CENI. Following further negotiations facilitated by the ECOWAS team, the opposition was allotted eight of CENI's seventeen seats.⁵² These officials were sworn in on November 13, 2018, but not before the body had decided that voter registration would re-open for just two days to give an opportunity to those who missed the October exercise. The C14 CENI officials insisted on the cancellation of the entire voter registration process, calling for a fresh start, thus igniting yet another stalemate. With the deadlock, the C14 refused to file nominations for the legislative elections, alleging that the voter registration process was fraught with irregularities. Not satisfied with how the reform process had been handled, the C14 resumed their demonstrations on the streets of Lomé and other important cities in Togo, demanding a halt to the planned 20 December legislative elections. The government responded by issuing a statement on 5 December 2018 banning all demonstrations by the opposition, alleging a "very high risk of serious disturbances to public order."⁵³

By the first and second week of December 2018, with heightened political tensions, important religious organizations – including leaders of the Catholic, Presbyterian, Methodist, and Muslim communities in Togo – called for the postponement of the polls to prevent an escalation of violence in order to allow for an inclusive participation of all relevant actors in the election. The C14 equally called on ECOWAS to push for the postponement of the polls.⁵⁴ It would be recalled that the life-span of the legislature had actually expired in July 2018 and was only extended by six months, per the decision of the 53rd Ordinary Session of ECOWAS Authority of Heads of State and Government held in July 2018. By collective decision, the Authority had fixed the legislative elections for December 20, 2018 and the next Summit was fixed for December 22, 2018. It would have taken an Extra-Ordinary Summit of the Heads of State to consider the request for election postponement

and not a unilateral decision by the ECOWAS Commission. On his part, as co-facilitator of the dialogue process, President Nana Akufo-Addo convened a meeting with Togolese religious leaders on 15 December 2018 as well as with the C14 on December 16, 2018 with a view to finding a solution suitable to the stakeholders, especially with respect to the C14 participation in the scheduled election. The C14, however, opted to boycott the elections. The electoral body proceeded with the elections as planned and the ruling party, the Union for the Republic (UNIR) won 59 of the 91 legislative seats, with its main allied party, the Union of Change Forces (UFC), securing 7 seats and independent candidates, 18 seats. Smaller 'opposition' parties that participated in the elections won 7 seats.

At its meeting on December 22, 2018, in Abuja, Nigeria, the ECOWAS Authority of Heads of State and Government commended "the efforts of the two Facilitators aimed at ensuring that the stakeholders in the inter-Togolese dialogue respect and implement the roadmap, in a spirit of openness and responsibility and notes with satisfaction the progress and achievements made."⁵⁵ It, however, "deeply regrets the decision of the fourteen opposition political parties (C14) not to take part in the legislative elections despite the considerable efforts by the Facilitators to promote inclusive elections with equal participation of all stakeholders in the Independent National Electoral Commission (CENI)"⁵⁶ and subsequently "welcomes the firm commitment to ensure the swift adoption of constitutional reforms through Parliament."⁵⁷ In May 2019, the Parliamentarians, with only one absentee, unanimously amended the Constitution, reinstating presidential mandates to two-terms of five years each, with no retroactive application.

Reflections on the boycott of the legislative elections by the C14 opposition parties

Was boycotting the legislative elections the best alternative course of action the C14 should have taken? In other words, was it the best alternative to a negotiated agreement (BATNA)? Should the opposition have taken advantage of their significant numbers in the CENI and participated in the election, anticipating some electoral fortunes/wins? There could not have been easy answer(s) to these rhetorical questions when one is faced with a strategic decision as C14 found itself.

Therefore, in light of the foregoing analysis, it might be necessary to examine the role that election boycotts play in a democracy. What, in other

words, justifies opting out of the electoral process? Does boycotting elections by opposition parties make the democratic process and the government resulting from it illegitimate? Sara Staino of the Ace Project notes that “election boycotts have no place in a functioning democracy; participation being at the heart of the democratic process. However, boycotts could have a role to play in a democracy that is not functioning as it should be and where fair competition is impossible.”⁵⁸ Precisely, the issue of lack of a level playing field was persistently flagged by the C14, which in a sense would mean that boycotting the election was a rational choice. Sara, nevertheless, further notes that “... in most cases opposition parties have concluded that participation in the electoral process – even if it is unequal – is more beneficial than boycotting it. Choosing to be outside the electoral process is a highly risky political tactic and can come with high costs.”⁵⁹ The high costs of course include the fact that “their impacts are often minimal and can be managed by the incumbent government unless the boycott is accompanied by other measures which hinder ability to govern or there is a minimum voter participation required.”⁶⁰ In the specific case of Togo, the impact of the boycott was indeed minimal as there were neither no measure(s) to hinder the ability of the incumbent government to govern, nor any minimum voter participation required to confer legitimacy or discredit the electoral outcome.

Similarly, in a research study on the rationality of opposition parties boycotting or participating in an election, irrespective of the prevailing conditions, Matthew Frankel notes that “electoral boycotts rarely work, and the boycotting party almost always ends up worse off than before.”⁶¹ To lend credence to this assertion, Frankel observed that “a comprehensive study of 171 threatened and actual election boycotts at the national level between 1990 and 2009 demonstrates conclusively that, other than a few rare exceptions, electoral boycotts generally have disastrous consequences for the boycotting party, rarely result in desired international attention or sanction, and many times further entrench the ruling leader or party.”⁶²

The current state of the C14 indeed corroborates the assertion of Frankel that electoral boycotts generally have disastrous consequences for the boycotting party. It would be recalled that in the 2013 legislative elections, the ruling party, the UNIR, won 62 of the 91 seats, while the main opposition parties, the Save Togo Collective and the Rainbow Alliance, won 19 and 6 seats, respectively. The Union of Change Forces (UFC), now in alliance with the ruling party, only managed to secure 3 legislative seats in the 2013 elec-

tions whilst one seat went to an independent candidate, compared to 18 in the 2018 legislative elections.

The argument of this paper is that with the then prevailing disenchantment against the ruling party (UNIR) and the government in the period leading up to the legislative elections, coupled with the mass support the C14 had garnered, there was ample probability that these would have seamlessly translated into positive electoral fortunes for the opposition. If they had not boycotted the elections, they might have won a substantial number of seats, if not an outright majority. It is obvious from the results of the 2018 legislative elections that the ruling coalition party only managed to obtain 59 seats, as against 62 seats in the 2013 legislative elections. This, therefore, supports the argument that the prevailing disenchantment of the population could have yielded positive outcomes for the C14, had they participated in the elections. This would have guaranteed them a platform to make relevant contributions and impact the constitutional amendments that were eventually passed by the Parliament. Learning from this experience, the opposition parties have not only participated in the June 2019 local elections, but have signaled their readiness to participate in the scheduled February 2020 presidential elections, although they are still dissatisfied with the way and manner the constitutional reforms which they considered illegal were passed into law. They have also continued to express their lack of trust and confidence in the electoral process and the ability of the CENI to demonstrate impartiality in conducting its affairs.

Conclusions and recommendations

A few commentators have criticized ECOWAS for not taking sides with the opposition in pushing for a retroactive application of the two-term limit on President Faure Gnassingbé or for not exerting sufficient pressure on the Togolese government to postpone the December 20, 2018 legislative elections or allowing sufficient time for the constitutional reforms to be concluded. At the crux of the demand for constitutional reforms by the Togolese opposition and other socio-political groups was the retroactive application of a two-term presidential mandate that would have precluded President Faure from participating in future elections.

Does ECOWAS have a subsisting legal or normative instrument, or a precedent upon which such could be hinged? The constitutional convergence principles of its 2001 supplementary protocol on democracy and good gov-

ernance has no such provision. Indeed, an effort to introduce a region-wide adherence to two-term mandates for presidents through a proposed amendment of its 2001 Supplementary protocol on democracy and good governance did not receive the usual and needed consensus at the May 2015 Summit of the Authority of Heads of States and Government. The C14 opposition parties missed the golden opportunity presented to them by having eight of the seventeen members in CENI and leveraging on it. Their immediate focus was on preventing the incumbent president from participating in subsequent elections through a retroactive application of a two-term limit. Thus, the preoccupation with positional and distributive bargaining/negotiation rather than on the principle of integrative negotiation, with the potentialities of expanding the pie cost them a lot politically.

With the constitutional amendment restricting presidential mandates to two terms of five years each now in force, it is therefore imperative for both the government and opposition to remain committed to exploring inclusive dialogue and consultations in addressing lingering contentious issues not only with respect to the immediate 2020 presidential elections, but more importantly, efforts at expanding the political and civic space and enhancing the role of the civil society organizations in democratic processes in the country.

Although severely criticized by a segment of the Togolese population, ECOWAS remains a major stakeholder in the country's efforts at deepening democratic practices and the maintenance of durable peace, security, and stability. Drawing lessons from its internal After-Action Review (AAR) of the Togo mediation process will help reinforce its role as a credible regional organization committed to upholding the principle of impartiality and neutrality and other key principles enshrined in its mediation guidelines.

Finally, it is interesting to note that political developments in the ECOWAS region in the last decade. Of particular note are the processes that led to changes in governments in Niger, Burkina Faso, and the Gambia in 2010, 2014, and 2017. Also, the reinstatement of presidential two-term limits in Togo, and the 2019 protests by opposition parties and civil society groups in Guinea over an alleged intention to amend the constitution to pave way for third-term mandate for the incumbent president, among numerous others underlines the popular struggles of the people of the region to defend and/or enact constitutional provisions that would limit the number of presidential terms in power. The people should be resilient not only in relation to

placing demands on leaders to respect constitutional term-limits but also in upholding constitutionalism. This is because no matter how comprehensive the protections envisioned in the text of a constitution; it will mean nothing if the people are not ready to defend it. The struggle for constitutional reforms and constitutionalism in Africa should indeed be a continuous one.

NOTES

1. The opposition was led by Tikpi Atchadam and his Parti National Panafricain (PNP), the leading opposition party in Togo.
2. The two-round system will allow opposition groups to field candidates of their choice in the first round, and subsequently rally behind a preferred candidate in the second round.
3. Farida Nabourema, a Togolese human rights activist had told Al Jazeera, "they have shifted from the return of the 1992 constitution to 'Faure Must Go', meaning people are no longer just protesting for constitutional reforms or term limits, they want the end of the Gnassingbe dynasty and they clearly stated that.", Yarno Ritzen, (2018), Togo Government and opposition to hold crisis talks, <https://www.aljazeera.com/news/2018/02/togo-government-opposition-hold-crisis-talks-180214215230816.html>, 15 Feb 2018. Retrieved 14 October 2019.
4. Amnesty International notes for example that security forces used excessive force against demonstrators with at least 11 people killed during protests and that the government carried out arbitrary arrests and detentions, torture and other ill-treatment, and impunity for human rights violations persisted. <https://www.amnesty.org/en/countries/africa/togo-report-togo/>, retrieved 14 October 2019.
5. Cracking down of protesters was a key strategy employed by some African autocrats especially in the late 1980s and 1990s when citizens of most African states took to the streets to express discontent with economic hardship and political repressions and to demand civic reforms and democratization. Between November 1989 and May 1991, Michael Bratton and Nicole van de Wale (1992) noted for example, that at least twenty-one governments adopted significant reform measures to permit greater pluralism and competition within the polity as a result of the sustained pressure to liberalise the political space. See Michael Bratton and Nicole van de Walle, "Popular Protest and Political Reform in Africa," *Comparative Politics* vol 24 no.4 (July 1992): 419-442.
6. Kangnikoé Bado (2017) "Togo's popular protests and demands for constitutional reform," *International Idea*, <http://constitutionnet.org/news/togos-popular-protests-and-demands-constitutional-reform>

Accessed 15 October 2019.

7. Institute for Security Studies, "ECOWAS Peace and Security Report," Issue 10, October 2014.

8. See for example, A. Sarjoh Bah and Kwesi Aning, *ECOWAS and conflict prevention in West Africa: Confronting the triple threats*. New York: New York University, Centre on International Cooperation, 2009).

9. United Nations, "Peacebuilding and Sustainable Peace: Report of the Secretary-General to the seventy-second session of the General Assembly," A/72/707-S/2018/43. P 3.

10. Ibid., p.3

11. Ibid., p. 16

12. ECOWAS Conflict Prevention Framework, Abuja. Regulation msc reg.1/01/08,p.20.

13. See for example, the authors' account of ECOWAS peace-making efforts in Guinea Bissau and The Gambia: Odigie, B. (2019), "ECOWAS's Efforts at Resolving Guinea-Bissau's Protracted Political Crisis, 2015-2019," *The African Centre for the Constructive Resolution of Disputes (ACCORD), Conflict Trends*, Issue 2, pp. 3-11, Durban: South Africa; Odigie, B. (2017); "In Defense of Democracy: Lessons from ECOWAS' Management of The Gambia's 2016 Post-Election Impasse," *The African Centre for the Constructive Resolution of Disputes (ACCORD)*, Policy and Practice Brief, 046, Durban: South Africa. Also see Nicholas Okai, et al, "Mediating Conflict in West Africa: An overview of Regional Experiences," Accra: Kofi Annan International Peacekeeping Training Centre, 2014.

14. Craig Collins and John Packer, *Options and Techniques for Quiet Diplomacy*, Conflict Prevention Handbook Series, 1. (Sweden: Folke Bernadotte Academy, 2006), 10.

15. "An Agenda for Peace: Preventive diplomacy, peacemaking and peace keeping," Report of the Secretary-General, A/47/277 - S/24111 June 17, 1992.

16. Craig Collins and John Packer, *Options and Techniques for Quiet Diplomacy*, Conflict Prevention Handbook Series, 1. (Sweden: Folke Bernadotte Academy, 2006).
17. Jose Pascal da Rocha, *Mediating International Conflicts: Challenges and Opportunities*, BPC paper, policy brief V.4. No1, Jan-April 2016, Rio de Janeiro, PUC.BRICS, p.5.
18. Article 58 of the 1993 ECOWAS Revised Treaty. ECOWAS Commission (1993) *The Revised Treaty of ECOWAS*, Abuja, Nigeria.
19. Jose Pascal da Rocha, op. cit., p. 7.
20. Ibid.
21. See section 1, Article 1 and 2 of Protocol A/SP1/12/01 on Democracy and Good Governance, 2001, ECOWAS Commission, Abuja.
22. Ibid.
23. Bayart, Jean-Francois, "rightly captured this reality of the state in Africa in his works on," *The State in Africa: The Politics of the Belly*, second edition, Cambridge: Polity Press, 2009.
24. See for example, the works of L. Brahimi and S. Ahmed, *In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation*, Center on International Cooperation, New York University, 2008; African Union, *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya*, office of the AU Panel of Eminent African Personalities, 2008; D. Motsamai, "East African Report: Assessing AU Mediation Envoys-The Case of South Sudan," *Institute for Security Studies*, issue 10 (February 2017).
25. The ECOWAS Mediation Guidelines (2018), ECOWAS Commission, Abuja, Nigeria. p.53.
26. ECOWAS's rationale for prioritizing preventive action (early and timely interventions), principle one of its mediation guidelines, is its recognition that the "costs of managing conflict once it has erupted (whether in fielding peacekeeping operations or providing humanitarian relief), or engaging in lengthy resolution and peace-making efforts, as well as the very high

costs of recovery (rebuilding economic and political systems) and the incalculable costs in human suffering and loss of human capital require a serious commitment to conflict prevention, both operational and structural," The ECOWAS Mediation Guidelines (2018), ECOWAS Commission, Abuja, Nigeria. p.44.

27. This was the case with the Kenya 2008 post-election mediation process when President Kibaki was reluctant in accepting the intervention of the Panel of Eminent African Personalities assembled by President John Kufour of Ghana, in his capacity as the then Chairperson of the African Union. *Back from the Brink*. Op.Cit. p. 233.

28. Ibid., p. 233.

29. Article 25 of ECOWAS 1999 protocol on the Mechanism for conflict prevention, management, resolution, peacekeeping and security outlined the conditions for activating its various response tools, including mediation initiatives: In cases of aggression or conflict in any Member State or threat thereof; in case of conflict between two or several Member States; in case of internal conflict that threatens to trigger a humanitarian disaster, or that poses a serious threat to peace and security in the sub-region; in event of serious and massive violation of human rights and the rule of law; in the event of an overthrow or attempted overthrow of a democratically elected government; any other situation as may be decided by the Mediation and Security Council.

30. Coalition of fourteen opposition parties that were at the forefront for the demand for constitutional reforms.

31. ECOWAS Commission, "Final Communiqué," 52nd Ordinary Session of the Authority of Heads of State and Government held in Abuja, Nigeria, December 16, 2017, pp. 6-7.

32. Ibid.

33. ECOWAS Commission, "Significant Decisions Adopted to ensure the resolution of the protracted political crisis in Guinea Bissau," *ECOWAS*, 2018. <https://www.ecowas.int/significant-decisions-adopted-to-ensure-the-resolution-of-the-protracted-political-crisis-in-guinea-bissau/>.

34. Ibid.

35. "The convention is that parties to a conflict should not be allowed to choose between mediators, or choose mediators that suit their interests, because this inevitably delays serious engagement and real negotiation." Excerpts from *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya*, Op. Cit., p. 235.

36. United Nations, "Peacebuilding and Sustainable Peace: Report of the Secretary-General to the seventy-second session of the General Assembly," 2018. A/72/707-S/2018/43. Pg. 2-3.

37. European Parliament, European Parliament resolution on the situation in Togo, 2019. B8-0069/2019, (2019/2518/(RSP)).

38. The author's interaction with a member of the Nana Akufo Addo Mediation Team.

39. Ibid.

40. The author's interaction with a member of the Nana Akufo Addo Mediation Team; Head of the ECOWAS Mediation Facilitation Division and some stakeholders in Togo.

41. African Union, "Back from the Brink: The 2008 Mediation Process and Reforms in Kenya," Op. Cit, (2008). Pg. 232.

42. The author's interaction with a member of the Nana Akufo Addo Mediation Team.

43. Office of the AU Panel of Eminent African Personalities, "Back from the Brink: The 2008 Mediation Process and Reforms in Kenya," Op. Cit, (2008). Pg. 239.

44. Interaction with the Head of the ECOWAS Mediation Facilitation Division who backstopped the mediation process.

45. A good mastering of mandate and terms of references for any given mediation process is very critical, as party (ies) to conflicts might intentionally want mediators to work outside of the given mandate.

Mediators should be mindful of such circumstances, and tactfully seek a clarification from the mandating authority if in doubt. This slippery trap was skilfully handled by the Facilitators.

46. Interaction with the Head of the ECOWAS Mediation Facilitation Division who backstopped the mediation process.

47. ECOWAS Commission, "Final Communiqué", 53rd Ordinary Session of the Authority of Heads of State and Government held in Lomé, Togo, July 31, 2018, pp. 7-9.

48. The ruling party maintained majority in Parliament and opposition feared reforms through the parliament would not be far-reaching, especially their demand for a retroactive application of two-term limit.

49. In most Francophone countries, the Constitutional Court validates candidates for presidential elections as well as final results of presidential elections. This makes it a very important institution in the electoral process.

50. See for example, the writings of Bado Kangnikoé, Togo's continuing constitutional crisis and ECOWAS's failed mediation effort, January 30, 2019; and Togo's popular protests and demands for constitutional reform, September 25, 2017, <http://constitutionnet.org/news/togos-popular-protests-and-demands-constitutional-reform>.

51. Africa News, "Togo opposition threatens to boycott electoral census," *Africa News*, September 27, 2018, <https://www.africanews.com/2018/09/27/togo-opposition-threatens-to-boycott-electoral-census>.

52. Following negotiations, CENI was reconstituted with eight members apiece for government and opposition, and one independent person serving as chairperson.

53. Africa News, "Togo bans planned opposition protest, coalition defiant," *Africa News*, December 6, 2018, <https://www.africanews.com/2018/12/06/togolese-govt-bans-planned-opposition-protests-coalition-defiant>.

54. Wolali Ahlijah, "Togo returns to the streets to stop "unfair" legislative elections," *African Arguments*, December 17, 2018, <https://africanarguments>.

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55. ECOWAS Commission (2018) Final Communique, 54th Ordinary Session of the Authority of Heads of State and Government held in Abuja, Nigeria, December 22, 2018, pp. 7-8.

56. Ibid.

57. Ibid.

58. Sara Staino, "Role of election boycotts in a democracy," ACE Electoral Knowledge Network, 2006, <http://aceproject.org/electoral-advice/archive/questions/replies/648740562>.

59. Ibid.

60. Ibid.

61. Matthew Frankel, "Threaten but Participate: Why Election Boycotts Are a Bad Idea," Foreign Policy at Brookings, Policy Paper, No.19 (2010): 1.

62. Ibid.

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