



Pan African
Lawyers Union



WEST AFRICAN BAR ASSOCIATION
Association des Barreaux de l'Afrique de l'Ouest (ABAO)
Associação de Barreiros da África Ocidental (ABAO)



CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE

May 27, 2022.

His Excellency,
Ambassador Bankole Adeoye,
Commissioner for Political Affairs
African Union,

Your Excellency,

JOINT LETTER TO THE AFRICAN UNION ON TRENDS IN DEMOCRACY, ELECTIONS, AND GOVERNANCE IN WEST AFRICA

Introduction: [The Pan African Lawyers Union](#), [The West African Bar Association](#), [The West African Civil Society Forum](#), and [The Cyrus R. Vance Center for International Justice](#) of the New York City Bar Association organized a four-part webinar series on Democracy, Elections, and Governance (DEG) to discuss democratic backsliding and resurgence of coups in Africa. This series, entitled “Trends in Democracy, Elections, and Governance in Africa: Spotlight on West Africa,” is part of a broader African-wide review of DEG to contribute to current discussions on unconstitutional change of governments and governance in Africa.

Background: The past 18 months have been turbulent for democracy in Africa. Many African states witnessed unconstitutional changes of governments. Military leaders have toppled the governments of Mali, Chad, Guinea, Sudan, and Burkina Faso. A similar attempt to overturn the democratic government in Guinea Bissau was thwarted. [The African Charter on Democracy, Elections, and Governance \(ACDEG\)](#) and the [ECOWAS Protocol on Democracy and Good Governance](#) (the ECOWAS Protocol) created an accountability framework for governance. Both aim to ensure free, fair, and credible elections as the basis of legitimate government, build democratic institutions, and ensure the rule of law. The ACDEG requires state parties to establish and strengthen democratic institutions, the rule of law, human and peoples’ rights, and independent electoral systems. In addition to this, the ACDEG proposes developing a constitutional state based on the rule of law, strengthening democracy, and adopting common principles of good governance in Africa. But despite the broad objectives that signatories to these frameworks have agreed to pursue and presumably be held accountable for fulfilling, nations in Africa and West Africa, in particular, continue to grapple with incidences of illegitimate governments via coup d’état.

Objectives: It is on this premise that the Vance Center, the West African Bar Association, the West African Civil Society Forum, and the Pan African Lawyers Union launched a four-part webinar series to evaluate the implications of these developments for human rights and the rule of law, and the role that lawyers, bar associations, and Civil Society Organizations can play in supporting credible elections and good governance in the continent. The specific objective was to analyze the issues and provide guidelines/action points for institutions interested in DEG in West Africa. These outcomes have been synthesized into this communique being presented to the African Union at this May 2022 Extra-Ordinary Summit on Unconstitutional Changes of Government and Terrorism in Africa, in Malabo Equatorial Guinea.

Modality: The four meetings, which incorporated moderators and panelists following the 3G principles (Gender, Geographic and Generational diversity) were held in the following order:

1. The first installment, which took place on May 5, 2022, focused on the role of governments and intergovernmental institutions, the gaps in DEG implementation, and how they have affected democratic principles in Africa. Panelists answered questions such as: - Are ECOWAS's and AU's current punitive measures in West Africa adequate to deter future coups? Could the AU and ECOWAS have done more to avoid these sanctions being disregarded? What are the next steps in situations where citizens seem to validate/support the unconstitutional changes of government, for example, in Mali? The webinars also addressed 'Civil Coups'/'Constitutional Coups' issues whereby incumbents manipulate constitutions, laws, institutions and/ or electoral processes to perpetuate themselves in power, including through prolonging terms of office and age limits. The panelists noted that most of these coups happened during the COVID-19 pandemic, which has been devastating for the informal economy and already cash-strapped Africans. Panelists also considered the lack of appropriate responses to date from either ECOWAS or the AU, the impact of COVID-19 on DEG, and the timing of recent coups. The meeting also considered the role of the ACDEG and the ECOWAS Protocol and the opportunities for NGOs and lawyers to support the implementation of these standards.
2. The second installment, which took place on May 10, 2022, examined the role of the private sector and professionals (private sector associations, lawyers, law societies and bar associations, etc.) in ensuring accountability for DEG. Panelists discussed issues such as: - The role of the private sector and professionals in building and protecting DEG in countries and regions; The role of the regional courts—ECOWAS Court, the African Court, and the African Commission- in reinforcing DEG principles that states have

already acceded to in regional and continental legal instruments, declarations and decisions; Electoral disputes, independence of the judiciary and the role of bar associations. The regulations or actions of lawyers in aiding and abetting malfeasance/corruption in electoral disputes. They also discussed the issues of judicial independence/compromise of courts' rulings that have affected elections/democratic governance and the need to review the ECOWAS Protocol on Democracy and Good Governance and/ or ACDEG.

3. The third installment was held on May 17, 2022, and looked at civil society's role in DEG and the means of ensuring the protection of civic space. Panelists made presentations on topics such as the role of digital technology and electoral processes. Panelists raised the issues of the use of internet shutdowns, the introduction of social media taxes, targeting of online activists and its effects on freedom of expression and participation, as well as misuse of digital technologies. The discussion also focused on ECOWAS and AU sanctions and disproportionate impacts on the poorest people in targeted countries who are already saddled with the burden of bad governance. Also discussed were questions about the failure to note early warning signs by West African governments and ECOWAS. Also, there were concerns that these sanctions are advancing extremism, poverty, youth unemployment, human rights violations, and harm to the environment.
4. The fourth installment, which took place on May 19, 2022, looked at the international community's role in increasing accountability and enforcement of the tenets of DEG. Panelists discussed issues such as - How international actors are perceived in the context of DEG in Africa and are these perceptions changing? - Are interventions by international actors, such as aid conditionalities, sanctions, etc., effective? - What are the roles and impacts of international election observers? - What are the role and impact of the United Nations, especially its peace and security and human rights infrastructures?

Key Findings:

The panelists agreed that the manipulation of constitutions and lack of constitutional limits lead to an increased risk of civil unrest and fuel the belief that leaders are not in power to serve the public interest but their own. As such, red flags that trigger election manipulation and unconstitutional change of government can be prevented by reviving the AU early warning systems to develop indicators and tools to prevent rather than react to these issues. Authorities should establish a regional election observatory that can monitor election content and processes and warn against trends that may affect DEG in Africa. In addition, civil society, legal practitioners, and bar associations

should support and strengthen the oversight mechanisms of the judiciary, the media and lawyers before, during, and after elections. It is essential to ensure DEG reforms to push against unconstitutional changes of government and pursue effective citizen political participation, enforcement of quota-based gender representation, and the expansion of democratic spaces to accommodate marginalized voices.

Furthermore, lawyers should mobilize to provide technical, legal, and material support to civil society organizations, challenge repressive laws, support anti-corruption initiatives, and institute public interest litigation on DEG. Finally, AU and ECOWAS should initiate sanctions targeting specific individuals in power and their families rather than economic sanctions that would further increase hardship on citizens. More States should ratify the ACGEG and support the operationalization of the Peace and Security Committee on sanctions.

Recommendations:

- The manipulation of constitutions and lack of constitutional limits lead to an increased risk of civil unrest and fuel the belief that leaders are not in power to serve the public interest but their own
- AU member states should pay attention to grievances leading to civil unrest and ensure access to justice for those impacted
- States should accelerate the ratification of the ACDEG and speed up the operationalization of the Peace and Security Committee on sanctions
- AU should establish a regional election observatory that monitors election content and processes and warns against and reports negative trends.
- States should boost and revive the utilization of the AU early warning system to develop indicators and tools which can be used to prepare guidelines to prevent these occurrences
- The ECOWAS protocol should be amended with the proposed new provisions on the definition of age and two terms limit for all heads of State to ensure zero tolerance of unconstitutional change of government. In addition, it should adopt other proposed innovations on the strong promotion of internal party democracy, campaign financing, corruption management, and improved information technology.
- AU should strengthen the oversight institutions in Africa and ensure the independence of the judiciary and the media. The clear state capture of the judiciary in the region is detrimental to justice and functional democracy.

- Bar Associations should seek to strengthen lawyers' roles before, during, and after elections and encourage legal practitioners to support access to justice and the rule of law.
- AU and member states should effectively engage legal practitioners in Africa and ensure that lawyers support the convergence principles listed in ECOWAS Protocol by instituting public interest litigation and supporting anti-corruption efforts.
- Bar Associations should support civil society organizations, and lawyers should provide technical, legal, and material support to defend human rights defenders and challenge repressive laws. In addition, international NGOs and Bar Associations should support DEG issues by drawing the international communities' attention.
- The role of CSO and media in DEG reforms is critical to push against unconstitutional changes of government and for effective citizen political participation, enforcement of quota-based gender representation, and the expansion of democratic space to accommodate marginalized voices. The civil society sector should be on the watch to demystify the brainpower & detailed criminality that go into rigging elections, making the enlightened notion of electoral democracy unworkable. Investigative journalism is key to ensuring the eradication of corruption and election crises.

Specific Requests to the African Union

- ACDEG is a powerful instrument that should be relied on for DEG. It befits the AU leadership to continue to encourage member states to domesticate AU standards by expressly incorporating them into national laws
- AU should revive and boost the AU early warning system to provide guidance for prevention before the breakdown of law and order in AU member states. AU should pay greater attention to the red flags and alarms by civil society organizations
- AU should identify volatile states through its early warnings mechanisms to forestall coup d'états and continue to have more robust and timely engagement with such states
- AU should set up structures and address the multifaceted root causes of the instability that leads to these problems
- AU should speed up the operationalization of the AU Peace and Security Committee on Sanctions as required by the [Ezulwini Framework](#)

- AU should initiate sanctions targeting specific individuals in power and their families rather than economic sanctions, which further increase hardship on citizens
- AU should be proactive in condemning unconstitutional change of government through prolonged-term limits or constitutional amendments. Undemocratic heads of states have utilized these means to instigate dissatisfaction in citizens leading to coup d'états

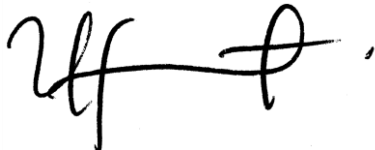
Conclusion: The West African Bar Association, the Pan African Lawyers Union, the Vance Center, and the West African Bar Association urge the AU to be proactive in implementing these recommendations and pledge to continue these robust conversations and work with CSOs, citizens, and other partners to galvanize actions to support these on DEG in Africa.

Thank you so much Your Excellency for your consideration.

You remain in our highest regards.

Sincerely

On Behalf of WABA, PALU, WACSOF, and the Vance Center

A handwritten signature in black ink, appearing to read 'Uf A', with a horizontal line extending from the 'f' and a small flourish at the end.

Adaobi Egboka
Africa Program Director.