



Reflections on the supervision and organisation of elections in Côte d'Ivoire, 1990-2000

Daniel Ozoukou*
October 2008

Introduction

The handling of Côte d'Ivoire's first and second multiparty elections has given rise to much analysis and comment. Observations have been formulated that question the legal provisions framing the organisation of these elections, concerning candidate deposits and the foreign nationals vote (1990) on the one hand, and the eligibility of candidates to stand for the presidency of the republic (1995) on the other. Having criticised the handling of the 1990 elections, the Ivorian opposition demanded the creation of an independent electoral commission to oversee the electoral sparring in the run-up to the 1995 vote. These demands were not met, and the result was an active boycott of the 1995 elections by the main opposition parties, the *Front Populaire Ivoirien* (FPI) and *Rassemblement des Républicains* (RDR). The ruling party, the *Parti Démocratique de Côte d'Ivoire* (PDCI), which saw the organisation of elections as an inalienable attribute of government, refused to budge. Its intransigence created a pernicious climate of excitability, tension and pressure that ushered in the coup of December 1999. The fall of the PDCI prompted a constitutional reform and the creation of an independent electoral oversight body. This article looks into the legal decisions relating to the handling of the elections in 1990 and 1995 and offers a diagnosis of the early development of the new independent electoral commission.

The electoral code 1990-1995: a parody of legality

Candidate deposits

Two weeks before the 1990 presidential election, the head of state Houphouët Boigny promulgated a law requiring all candidates for the presidency to pay 'a deposit of 20 million CFA francs'.¹ This raised a twofold problem: the amount of money and the time given to comply. In a country struggling with economic recession, the sum of 20 million francs seemed both excessive and ill-timed. The deadline imposed on all candidates to pay the deposit was also problematical. The law was promulgated on 10 October, exactly two days before the close of the registration period on 12 October 1990. To many, the decision to impose a payment deadline that could not be met was both unpopular and undemocratic. Achi Koman and Kouakou Mandouadja were both rejected as candidates for the presidency because of their failure to pay the deposit.

The foreign nationals vote

In blatant violation of Article 5 of the Constitution of 3 November 1963, which restricts voting rights to Ivorian nationals alone, the Head of State decided that: 'non-Ivorians of African origin who are duly registered on the list of voters will be entitled to participate in the 1990 elections'.² This provision attracted considerable criticism. 'To me, the unhealthy use which the PDCI is seeking to make of foreigners against the interests of Ivorians

* Political analyst, ozoukoud@yahoo.fr ; +225 02 733 562 ; +225 22 503 206.

¹ Art.25, Act n° 90-1167 of 10 October 1990, *Official Journal of the Republic of Côte d'Ivoire*, 18 October 1990, p.342.

² Orders of the Supreme Court n°s 01, 02, 03, 04 issued on 12th October 1990, *Official Journal of the Republic of Côte d'Ivoire*, 8th November 1990, p.380.



intolerable' (Laurent Gbagbo of the FPI).³ The right to vote is a citizen's right, as clearly expressed by the maxim 'to be a voter is to be a citizen, and to be a citizen is to be a voter'. Pursuant to this, allowing non-citizens to vote in the presidential elections is an abuse of human rights and, indirectly, brings the honesty, and even the legitimacy, of the vote into question. This defective management of the elections was repeated in 1995.

Eligibility for the Presidency of the Republic

Article 49 of the 1994 Electoral Code stipulates that: 'No person may be elected to the Presidency of the Republic who is not Ivorian by birth and born of parents who are themselves Ivorian by birth'. This provision has been bitterly criticized both nationally and internationally. The law was considered in some quarters as 'tailor-made' to disqualify the RDR candidate, Alassane Ouattara – said to have an Ivorian mother and a Burkinabé father – from the race for the presidency. Aware of this electoral barrier, Ouattara did not deign to present his candidature to the presidential election of 1995.

The era of electoral commissions

Two bodies have been set up successively since 2000 to organise and oversee the voting process in Côte d'Ivoire: the National Electoral Commission (*Commission Nationale Electorale*, CNE) and the Independent Electoral Commission (*Commission Electorale Indépendante*, CEI).

The CNE and the elections in 2000

With a view to the 2000 elections, the ruling junta issued an order establishing the CNE.⁴ The 2000 elections saw, for the first time in the history of Côte d'Ivoire, five registered candidates for the presidency: M. Robert Guéi ('the people's candidate'), M. Laurent Gbagbo (FPI), M. Francis Wodié (*Parti Ivoirien des Travailleurs*, PIT), M. Mel Théodore (*Union Démocratique Citoyenne*, UDC) and M. Nicola Dioulo (independent). It should be noted that if these elections were able to take place up to and including the swearing in of those elected to the presidency, to parliament and to the local authorities it was thanks to the skill and sense of duty of the CNE bureau. Indeed, the ruling military had issued threats to the CNE in the exercise of its duties. The outcome of these threats was the arrest of the president of the CNE, who had refused to take part in underhand dealings of the military that aimed to interfere with the results. 'The CNE refused to proclaim the results that gave Guéi as the winner, the general arrested the president of the CNE and the Minister of the Interior proclaimed the result.'⁵

The CNE's resistance to 'armed democracy' is an exemplary case in the history of elections in Africa.

This resistance from the CNE leadership to armed force spurred republican feeling among the Ivorian people, who demonstrated *en masse* (at risk to their lives) to reject the sham of power

³ « Les étrangers de Côte d'Ivoire doivent-ils avoir peur ? » (Should foreigners in Côte d'Ivoire be afraid?) *Jeune Afrique*, 31st October – 6th November 1990, p.23.

⁴ Order n°2000-551 of 9th August 2000.

⁵ Guéi Honoré, « Commissions nationales électorales en Afrique de l'ouest » (National electoral commissions in West Africa), *Débats-courrier d'Afrique de l'ouest*, n°11, Centre de Recherche et d'Action pour la Paix (Centre for Peace Studies and Action - CERAP), Abidjan, January 2004.

imposed by armed force. ‘The presidential elections clearly revealed the perils that threaten the onward march of democracy in Côte d’Ivoire. The CNE was able to counter the threat.’⁶

The CEI: Independence in jeopardy

The CNE’s mandate came to an end on 28 June 2001, and on 9th October of the same year, the new authorities passed legislation establishing an Independent Electoral Commission (*Commission Electorale Indépendante*, CEI).⁷ ‘The CEI has been established in response to demand from the opposition parties and civil society to entrust the organisation of elections to an administration outside the state machinery, given the grievances formulated against the current partisan administration which was seeking to keep the government in power by fraudulent means.’⁸

Only one year after the creation of the CEI came the military coup of 19 September 2002. The failed putsch became an armed rebellion. Prominent amongst the rebels’ demands, many of which were political, was an amended version of the law establishing the CEI. The Linas-Marcoussis (France) agreement of 23 and 24 January 2003 set out instructions on this subject. According to one observer of the process, the government proposed several amendments to Act n° 2001-634 (which had established the CEI) which would provide for better representation of round table participants within the Central Committee, including the governing board.’⁹

A complex and top-heavy structure

The new CEI is made up of 31 members with a bureau of 12 members, three vice-presidents, four advisors, 22 permanent members with the right to participate in discussions and to vote and nine non-permanent members sitting in a consultative capacity.¹⁰ The CEI established in 2001 had 20 members of whom six made up the governing board. Political party presence was low-profile, and the commission was presided by a magistrate, M. Camille Hoguïé.

The current CEI is handicapped both by the large number of members and by the influence of the political players that control it, through the obvious presence of six representatives of the armed movement.¹¹ According to one commentator, ‘A commission under the aegis of political parties can create paralysis and deadlock.’¹² Suspicion and a crisis of confidence are threatening the cohesiveness of the commission. Indeed, 16 members of the commission had resigned in protest against the election of a representative of the PDCI, which they thought was illegal. This followed the decision by the then minister of the interior, Issa Diakité (now

⁶ CNE, *Rapport général d’activité 09 August 2000-28 June 2001 (Overall Activity Report)*, « Transparence et régularité », p.7.

⁷ Act N°2001-634 (CEI) of 9 October 2001.

⁸ Guïé H., « Les Commissions Nationales Electorales en Afrique de l’Ouest » (National electoral commissions in West Africa).

⁹ Linas Marcoussis Agreement, Annex II, « Programme du gouvernement de réconciliation nationale » (Programme of the Government of national reconciliation).

¹⁰ Centre National de Documentation Juridique (National legal Documentation Centre), *Commission Electorale Indépendante*, pp11-12 pub.2006

¹¹ Ozoukou D., « Réflexion sur l’accord de Pretoria » (Reflections on the Pretoria Agreement), *Les Echos du Matin* (Abidjan), 6th May 2005.

¹² Lanciné S., « Les modes de supervision des élections dans le processus de démocratisation des régimes politiques » Communication au séminaire : Education des jeunes à la culture démocratique, CERAP, Abidjan, 28- 30 Mars 2006.

deceased) to organise the election of the CEI president despite a boycott by the 16 delegates from the presidential political camp. Of the 31 members of the Central Committee, only 15 were able to take part in the vote. This situation clearly resulted in a lengthy period of stalemate and deadlock.

Conclusion

In conclusion, one should simply bear in mind the typology of the organisational and supervisory bodies for the 1990 to 2000 elections and draw lessons from this. During the period in question, these bodies were of three types: one non-autonomous body directed by the government, one semi-autonomous body (the CNE) and one autonomous commission (the CEI), whose independence was brought into doubt by the 19 September 2002 crisis. Undemocratic practices and electoral fraud have tangibly and irrefutably stigmatised the failure of the State in organising fair and transparent elections. The advent of the electoral commission is bringing remedies to these inadequacies as well as confidence and hope to populations. The role played by the CNE in the 2000 elections demonstrated the importance of the electoral administration's independence from the State and political parties. The need now is for a review of the CEI membership and operation.