



COTE D'IVOIRE UPDATE

“Ivory Coast Begins Revision of Constitution with Vote Looming”¹

Although the National Assembly met in extraordinary session on yesterday, with the Senate due to convene today, **the constitutional-reform process does not actually get under way until Thursday**, with President Ouattara’s state of the nation address before a joint session of the Legislature.

1) This is when he is expected to identify the specific provisions that he wishes to amend² ... in the document that only came into effect in January 2017. As it happens, **ADO has steadfastly refused to elaborate on the Constitution’s ostensible deficiencies** – ever since his casual mention during an interview on national television last August³ that, “*Il y aura des modifications de la Constitution, car il y a de petites choses à revoir*”.

Naturally, this **unconvincing disclaimer has inspired a number of alarmist theories**, disseminated on social media and in the local press.

2) The provision that has attracted the most insistent speculation is Article 55 which, inter alia, establishes the eligibility criteria for prospective candidates for the presidency. One theory holds that the existing **age requirement**⁴ is to be expanded **to include an 80-year limit** – a stipulation that would immediately disqualify the octogenarian leader of the PDCI⁵. However, such an amendment would be immediately seen as specifically targeting Bédié⁶, and roundly condemned⁷.

3) A second theory, also relating to Article 55, focuses on **the two-term limit**⁸ for presidential incumbents. Ouattara has repeatedly asserted that this provision entitles him to stand for re-election this year, by virtue of its only having entered into force in January 2017. It is conceivable that he might deem it expedient to introduce language stipulating that a **new constitution ipso facto restarts the ‘mandate-clock’**. But, not only might such a precaution prove unnecessary⁹; it could actually undermine the case he has been making.

4) By far the most sensationalist of the rumours in circulation pertains to Article 56, which provides for **an automatic run-off** in the event that no candidate secures an absolute majority in the first round of the presidential election. As alleged, the intention is to discard this long-standing mechanism **in favour of a first-past-the-post process**.

¹ See Bloomberg article, posted on Mar. 3, 2020, 10.46 a.m. EST.

² Even then, not until Friday 6th will the council of ministers formally adopt a draft of the relevant amendments, for consideration by the Senate and National Assembly, during the weeks commencing March 9th and 16th, respectively. See attached [time-table](#).

³ I.e. on the eve of Cote d’Ivoire’s national day. Four months earlier, during a joint press conference with President Alpha Conde, Ouattara had chosen to field a question clearly directed to Guinean counterpart. His mischievous reply: “*La question s’adresse à moi, j’imagine. Si c’est moi, oui je vais modifier la constitution*”(1)

⁴ I.e. “*Le candidat ... doit être âgé de trente-cinq ans au moins*”.

⁵ Henri Konan Bédié, the de facto leader of the opposition will turn 86 in May.

⁶ It is worth recalling that the draft constitution that Ouattara submitted to a referendum in 2016 eliminated the 75-year age limit that had featured in the Constitution (2000) then in force.

⁷ It would moreover fly in the face of the assurances that Ouattara himself provided in his Aug. 2019 interview, viz.: “*Cette modification ne s’inscrit pas dans une intention de recaler une quelconque candidature de ses adversaires*.”

⁸ I.e. “*Il n’est rééligible qu’une fois*.”

⁹ Moreover, in neighbouring Togo, it was precisely this interpretation of the almost identical provision – “*un mandat de cinq (05) ans renouvelable une seule fois*” (see Article 59 in the 2019 Constitution) - that was deemed to entitle Faure Gnassingbé to stand for re-election last month ... for what is in fact his fourth 5-year term.

This seems a particularly hard sell, given the pivotal role that the electoral run-off has played in Côte d'Ivoire's recent history¹⁰. Any attempt to short-circuit the process so brazenly would be immediately seen as a defensive ploy by a vulnerable incumbent and denounced accordingly¹¹.

5) So, although the ruling party enjoys a commanding majority in both legislative chambers¹², we believe it is unlikely to try and move the constitutional goal-posts nearly as far as the social-media chatter suggests. The costs would simply be too great, igniting political tension at home and provoking international opprobrium¹³. We await Ouattara's state of the union address with bated breath

¹⁰ In the 2010 election, President Gbagbo won a plurality in the first round and was only defeated in the second round by the tactical alliance between Bédié's PDCI and Ouattara's RDR. It was his refusal to accept this result that paved the way for the French-led military intervention, under a Security Council mandate, that finally removed Gbagbo from power.

¹¹ It speaks volumes in this regard that, facing an uphill race in 2021, President Lungu has been scheming - thus far without success - to eliminate the automatic run-off provision in Article 101(3) of Zambia's constitution. See Bill No. 10 (2019), Clause 30.

¹² I.e. 83 of the Senate's 99 seats and 167 of the 255 seats in the National Assembly.

¹³ It is worth recalling the words of the US assistant secretary of state for Africa, delivered in an interview on RFI, a mere 48 hours after Ouattara had first broached the idea of a constitutional reform: "*Les États peuvent changer de Constitution à leur guise. Mais nous avons un problème s'il apparaît évident que le président en exercice se serve de cela uniquement pour se maintenir au pouvoir.*"

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