

# Understanding ECOWAS efforts in promoting a governance agenda

*Adapting regional norms to lessons from national crises*

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This background paper is part of a series on the Political Economy Dynamics of Regional Organisations (PEDRO). It was prepared in March 2017. In line with ECDPM's mission to inform and facilitate EU-Africa policy dialogue, and financed by the Federal Ministry for Economic Cooperation and Development, BMZ, the studies analyse key policy areas of seventeen regional organisations in Sub-Saharan Africa. In doing so they address three broad questions: What is the political traction of the organisations around different policy areas? What are the key member state interests in the regional agenda? What are the areas with most future traction for regional organisations to promote cooperation and integration around specific areas? The studies aim to advance thinking on how regional policies play out in practice, and ways to promote politically feasible and adaptive approaches to regional cooperation and integration. Further information can be found at [www.ecdpm.org/pedro](http://www.ecdpm.org/pedro).

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## 1. Introduction

As its name suggests, the Economic Community of West African States (ECOWAS) was originally conceived as a mechanism for promoting regional economic integration and development. The Community's move towards a regional governance agenda was mainly in response to a series of intractable conflicts and violent political transitions in the early 1990s. For 35 years, beginning in 1965, military coup d'états were the standard procedure for political transition in West Africa, with only Cape Verde and Senegal having never experienced a coup.<sup>1</sup>

As Diallo (2005) explains, "the crumbling away of the State and the bankruptcy of governance mechanisms led to the growth and dispersal of armed participants, with soldiers, dissidents, militias, rebels and/or mercenaries fighting with legal armed forces for political power"<sup>2</sup>. It was in reaction to these developments that ECOWAS began to develop a framework, first, for conflict management, and then for conflict prevention, with standards for preventing unconstitutional changes of government and promoting governance, the rule of law, and human rights.

This report briefly traces the origins of ECOWAS efforts to promote a shared agenda on governance before reflecting on the dynamics and issues shaping its functioning today. To do so it addresses three broad questions: What is the political traction of ECOWAS in promoting a regional governance agenda? What are member state interests in engaging ECOWAS on the governance agenda? And what are the areas with most potential regional traction within this agenda area.

The report was written based on a mix of desk research and interviews with several actors, including interviewees from the ECOWAS commission's Department of Political Affairs and Peace and Security as well as interviewees from think tanks and civil society organisations operating in the region.

## 2. On assessing the political traction of ECOWAS in the area of governance

In developing its agenda on governance, ECOWAS appears to have adopted an iterative approach, developing policy instruments to address issues facing the region as they emerged. This is in sharp contrast to the approach of several other regions in Africa and that taken at the continental level. The latter sought to promote a 'shared values' agenda based on aspirations, while the ECOWAS approach rather took a gradualist approach, starting from a two page-long declaration of principles that was subsequently enriched as needs were identified. This section seeks to reconstruct the path adopted by ECOWAS as it developed its governance architecture. It seeks to highlight the logic and different motives of the actors involved regarding the different decisions to adapt ECOWAS instruments.

### 2.1. Institutional forms in the area of governance

The ECOWAS executive, legislative, and judicial branches are all expected to support the monitoring and implementation of its governance norms and standards but the main mandate to promote governance standards and monitor implementation lies with the Directorate of Political Affairs, Peace and Security (PAPS). PAPS is under the ECOWAS executive branch, headed by the ECOWAS President and Executive

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<sup>1</sup> Diallo (2005).

<sup>2</sup> Ibid.

Secretariat (see Figure 1). As part of the ECOWAS Commission, PAPS implements decisions for and reports to the Authority of Heads of State and Government and the Council of Ministers. PAPS is divided into four directorates: Political Affairs, Peacekeeping and Security, the Early Warning and Observation and Monitoring Centre and, since 2016, the Mediation Facilitation Directorate. The establishment of the latter aims to “ensure that mistakes such as the marginalisation of ECOWAS in mediation processes in the region, the disconnect between the ECOWAS Commission and its appointed mediators, facilitators and special envoys, are remedied”. This was in direct response to the perceived failure of ECOWAS to play an effective role in Mali<sup>3</sup>.

These directorates are tasked with implementing protocols relating to the Mechanism for Conflict Prevention, Management Resolution, Peacekeeping and Security, the Supplementary Protocol on Democracy and Good Governance, and the ECOWAS Conflict Prevention Framework. PAPS is responsible for providing capacity building for electoral management bodies, observation missions, political parties, legislative bodies, the judiciary, the media,<sup>4</sup> and anti-corruption institutions. In this capacity, PAPS directly supports the ECOWAS mediation organs .

The Mediation and Security Council (MSC) is the technical mechanism authorised to take action under the Mechanism for Conflict Prevention, Management Resolution, Peacekeeping and Security and by extension the Protocol on Democracy and Good Governance. The MSC is composed of nine Member States, including the ECOWAS Chairperson, immediate past Chairperson, and seven members<sup>5</sup> elected by the ECOWAS assembly. Decisions of the MSC can be taken based on a two-thirds majority. Article 25 of the Mechanism authorises the MSC to decide on political and military interventions in member states in the “event of [a] serious and massive violation of human rights and the rule of law” or if there is “an overthrow or attempted overthrow of a democratically elected<sup>6</sup> government” as well as “any other situation as may be decided by the Mediation and Security Council”. The MSC can authorise all forms of intervention and decide on the deployment of political and military missions, approve the mandates of these missions, and review their progress.

MSC helps appoint members of the ECOWAS Council of the Wise, which also plays an important role in ensuring the implementation of governance norms in West Africa. The Council of the Wise is the Commission’s primary organ for conflict mediation, and serves as the special representative and special envoys of the ECOWAS President. Council of the Wise members are usually eminent persons from various segments of society and have been instrumental in leading ECOWAS election fact-finding missions .<sup>7</sup>

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<sup>3</sup> As noted by Odigie (2016): “[the] Mali [After Action Review] AAR from November 2013 to February 2014: noted ‘the marginalisation of the ECOWAS Commission in the mediation process, leading to inconsistencies with ECOWAS normative frameworks and hitches in the implementation of the 6 April 2012 Framework Agreement between the ECOWAS Mediator and the CNRDRE’. To bridge this gap, it was recommended that ‘all ECOWAS-mandated Mediation or Facilitation teams should work closely with the ECOWAS Commission, the latter being responsible for facilitating and backstopping the work of Mediators and Facilitators. To this end, the Commission was requested to expedite the establishment of the MFD without further delay’... developed with support from the UN and DANIDA. It has backstopped the deployment of high-level consultative missions undertaken by the ECOWAS Commission to some member states in preparation for elections. This was the case for Guinea in 2015, and Niger between November 2015 and February 2016.”

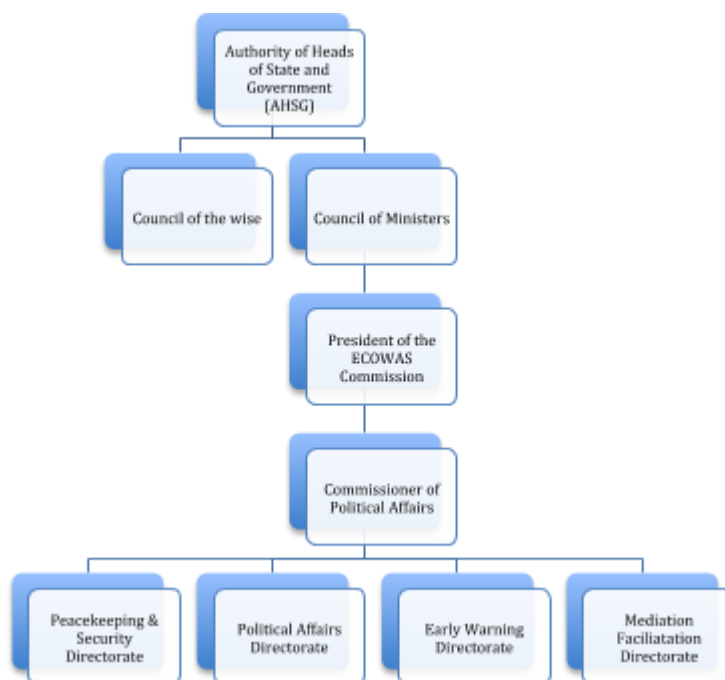
<sup>4</sup> <http://ecoslate.github.io/ecowas-sectors/political-affairs/index.htm>.

<sup>5</sup> Yabi (2010).

<sup>6</sup> Hartmann & Stiebinger (2015).

<sup>7</sup> Afolabi (2009).

**Figure 1:** ECOWAS Commission Structures for Managing Political Affairs & Peace and Security <sup>8</sup>



The ECOWAS Community Court of Justice plies tasked with supporting the implementation of democratic governance and human rights standards. Created by the Revised Treaty of 1993, the ECOWAS Court has jurisdiction to adjudicate cases involving the failure of member states to comply with formal ECOWAS policies, disagreements over the interpretation and implementation of community laws, human rights violations, and the legality of regional laws and policies .<sup>9</sup>

## 2.2. The ECOWAS governance agenda

West Africa’s efforts to resolve geopolitical crises in the early 1990s made ECOWAS the first African organisation to develop legal standards and protocols on democratic governance and human rights. The community’s involvement in managing violent conflicts in the region led to the revision of the ECOWAS treaty in 1993. The revised Cotonou Treaty included a number of peace and security standards along with norms on governance. Based on this treaty, in the late 1990s and early 2000s, member states introduced more legally binding agreements on democracy and governance.

In a region of frequent coups, civil wars, and armed insurgencies, ECOWAS member states initially considered governance as a component of the region’s peace and security strategy. Nevertheless, ECOWAS as a regional grouping has gradually developed standards that go beyond immediate concerns for peace and security and that put an emphasis on democracy, human rights, the rule of law, and effective governance. Furthermore, ECOWAS has introduced a number of agreements incorporating continental norms developed by the Organisation of African Unity and the African Union.<sup>10</sup> These aim to provide a

<sup>8</sup> Adapted by authors to include the Mediation Facilitation Directorate, which was operationalised in 2016.

<sup>9</sup> International Justice Resource Center. Economic Community of West African States Court of Justice. <http://www.ijrcenter.org/regional-communities/economic-community-of-west-african-states-court-of-justice/>.

<sup>10</sup> These include the Protocol Relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security; the Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security.

more explicit framework of reference for appropriate governance standards; and the ECOWAS Conflict Prevention Framework (ECPF) — which maintains the organisation’s stated claim of zero tolerance to unconstitutional changes of government<sup>11</sup>.

**Table 1:** ECOWAS Norms and Standards

Year	Norms & Standards	Democracy	Good Governanc	Human Rights	Rule of Law
1975	Treaty of the Economic Community of West African States (Lagos)				
1979	Protocol Relating to Free Movement				
1991	Declaration of Political Principles				
1993	Revised Treaty of the Economic Community of West African States (Cotonou)				
1999	Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping				
2001	Supplementary Protocol on Democracy and Good Governance				
2001	Protocol on the Fight Against Corruption				
2008	ECOWAS Conflict Prevention Framework				

**Source:** Christof Hartmann (December 2013): *Governance Transfer by the Economic Community of West African States (ECOWAS)*

### Declaration of Political Principles (1991)

ECOWAS member states first introduced norms on human rights and democratic governance in July 1961 in the form of a *non-binding agreement*. Through the “Declaration of Political Principles” States signalled their commitment to eight principles, including the respect for human rights and fundamental freedoms, the peaceful settlement of disputes and non-aggression, and the promotion of “democracy in the sub-region on the basis of political pluralism and respect for fundamental human”<sup>12</sup>.

<sup>11</sup> Akenroye (2012).

<sup>12</sup> Declaration of Political Principles of the ECOWAS (A/DCL.1/7/91) Abuja, 4 - 6 July 1991.

Although the two-page Declaration is brief - with little detail on the nature of democratic governance and political transition, unconstitutional changes of government, or the management of elections<sup>13</sup> - the Declaration forms the basis for subsequent and more developed and legally binding norms and standards on democratic governance, unconstitutional changes of government, elections, and human rights.

### **The Revised ECOWAS Treaty (1993)**

A number of events in the late 1980s and the early 1990s prompted ECOWAS to revise its treaty and introduce new changes both with regards to its objectives and in its institutional arrangement. The main impetus to the development of governance norms was the conflicts in Liberia and Sierra Leone. Charles Taylor's 1990 invasion of Liberia "sparked more than a war in Liberia [and neighboring Sierra Leone] but the first 'active' conflict resolution initiative of a regional body"<sup>14</sup>. ECOWAS was further prompted to revise its treaty by the establishment of the African Charter on Human and People's Rights and the African Economic Community in 1991 to address the human rights-related issues resulting from both conflicts.

West African Heads of State signed the Revised ECOWAS Treaty on July 24, 1993 in Cotonou, Benin. The Revised Treaty reaffirmed many commitments in the original ECOWAS treaty and new objectives. Although the Treaty overall makes few provisions for democracy, governance, and elections, it introduces some new standards in these areas. In particular Article 4 of the Treaty calls for:

- The "recognition, promotion and protection of human rights" in West Africa in line with the African Charter on Human and People's Rights"
- The "promotion and consolidation of a democratic system of governance in each Member State as envisaged by the Declaration of Political Principles adopted in Abuja on 6 July 1991."
- "[A]ccountability, economic and social justice and popular participation in development"<sup>15</sup> .

The Treaty restates the commitment to cooperate on the implementation of 1991 Declaration of Political Principles. Importantly, Article 58, which continues to be central to the Community's interventions in the region to date<sup>16</sup> reaffirms that "where necessary and at the request of Member States, assistance to Member States for the observation of democratic elections"<sup>17</sup> would be provided.

The Revised Treaty also introduces a number of new organisational mechanisms and institutional powers. In particular, the Revised Treaty transformed the ECOWAS Tribunal into the Court of Justice, introduced a Community Parliament, and strengthened the powers of Executive Secretariat and the Executive Secretary. In the event of failure to comply with ECOWAS' provisions, the Treaty authorises African Heads of State to imply a range of sanctions from "the suspension of new Community loans to the suspension of voting rights and participation in the activities of the Community"<sup>18</sup> .

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<sup>13</sup> Hartmann (2013).

<sup>14</sup> Goodridge (2006),

<sup>15</sup> ECOWAS 1993: Revised Treaty of the Economic Community of West African States (ECOWAS).

<sup>16</sup> Article 58, in combination with articles from subsequent protocols, provided the legal basis for the ECOWAS interventions in recent conflicts including the Gambia, Burkina Faso, Niger and Guinea. Interview with Brown Odigie, ACCORD, March 2017.

<sup>17</sup> Declaration of Political Principles of the ECOWAS (A/DCL.1/7/91) Abuja, 4 - 6 July 1991.

<sup>18</sup> Hartmann (2013).

### **Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (1999)**

Intrastate-armed conflicts and civil unrest characterised much of the 1990s for West Africa. In particular, the civil wars in Liberia and Sierra Leone required regional intervention to contain the violence that had created a significant humanitarian crisis and threatened the stability of the region. To formalise a collective approach to regional security and cooperation, in 1999 member states signed and adopted the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security. According to Hartman (2013), the introduction of the Mechanism was an “unprecedented move forward” because it took on of all the aspects of conflict, including conflict prevention, resolution, humanitarian assistance, and strengthening peace and regional security<sup>19</sup>. Indeed, among its many objectives, the Mechanism ostensibly seeks to<sup>20</sup>:

- Prevent, manage and resolve internal and inter-State conflicts;
- Strengthen cooperation in the areas of conflict prevention, early-warning, peace-keeping operations, the control of cross-border crime, international terrorism and proliferation of small arms and anti-personnel mines;
- Establish institutions and formulate policies that would allow for the organisation and coordination of humanitarian relief missions; and
- Promote close cooperation between Member States in the areas of preventive diplomacy and peace-keeping.

While the document is mainly focused on strengthening ECOWAS’ legal foundation for conflict intervention and mitigation, it includes a number of good governance principles and further statements of good intent. Specifically, “[m]ember States reaffirm their commitment to the principles contained in the Charters of the United Nations Organisation (UNO) and the Organisation of African Unity (OAU) and to the Universal Declaration of Human Rights, as well as to the African Charter on Human and People’s Rights.” In the protocol, ECOWAS commits to promote and consolidate democratic governments and democratic institutions, and protect fundamental human rights and freedoms and the rules of international humanitarian laws. Like the previous treaties, the Mechanism protocol does not expand on the process for strengthening democracy, human rights and good governance.

### **Supplementary Protocol on Democracy and Good Governance (2001)**

The Supplementary Protocol on Democracy and Good Governance is the ECOWAS answer to the 1999 Mechanism’s shortcomings in the areas of democracy and good governance. Drawing on lessons learned in mediating unconstitutional changes of government and conflict management, Heads of State decided by consensus in 2001 to adopt the Supplementary Protocol on Democracy and Good Governance. This not only coincided with efforts at the continental level, notably by the then-Nigerian president Olesgun Obasanjo, to promote a common approach to democratic governance across the continent, but was in direct response to ECOWAS efforts to broker a solution to the conflict in Sierra Leone.<sup>21</sup> The Protocol, however, only entered into force after the ninth ratification in February 2008<sup>22</sup>.

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<sup>19</sup> Ibid.

<sup>20</sup> ECOWAS 1999: Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

<sup>21</sup> Opposing factions that have access to power through unconstitutional means had no legal basis in ECOWAS. This situation has compelled ECOWAS, during the Sierra Leone crisis, to “legitimise rebel insurgencies through political appointments and other rewards as a means of ending conflict” (Addo 2005).

<sup>22</sup> Liberia is the latest country to ratify the instrument (October 2016). See Liberia: Senate ratifies 14 ECOWAS Conventions. 20/10/2016 <http://allafrica.com/stories/201610201029.html>.



The Protocol is *supplementary* because it is an integral part of the 1999 Mechanism on Conflict Prevention, Management, Resolution, Peace-Keeping and Security. Some countries signed up to and subsequently ratified the Supplementary Protocol without having ratified the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security. A case in point is Ghana, which has long been criticised for committing to governance standards as enshrined in the supplementary protocol while opposing the enforcement mechanism, notably military intervention as per the 1999 Protocol. It was only recently; in December 2016 that Ghana ratified the 1999 protocol to provide a legal basis for the possible mobilisation of its troops in the Gambia<sup>23</sup>. This was in anticipation of domestic criticism leveled at President Akufo-Addo by some members of the Parliament who were opposing the involvement of Ghana's troops in what was seen as a "declaration of war"<sup>24</sup>.

Other key actors in the region are yet to ratify the protocol, including the region's main actor Nigeria. Yet Nigeria relied on the Protocol to justify its engagement in recent crises including the Gambia.

Aside from linking governance to peace and security, the Protocol was an important step in outlining what common values should be upheld in the region. It was thus the first legal document that prescribed governance standards in an explicit way, and does so in all relevant governance dimensions. In effect, the Protocol set out a democratic governance framework to support West Africa's economic and social development<sup>25</sup>.

The Protocol incorporates the concept of "constitutional convergence". The objective is to encourage member states to adopt universal norms on democratic governance into their constitutions, therefore harmonising country constitutions to reflect common values<sup>26</sup>. The Protocol outlines 12 constitutional convergence principles that promote the rule of law with autonomy for the parliament and judiciary, free and fair elections and political participation, civilian supremacy over military forces, and civil liberties, with special provisions for women and youth (see Box 1).

**Box 1** Constitutional principles in the Supplementary Protocol on Democracy and Good Governance

The constitutional principles imply a commitment by states to strengthen parliaments and guarantee "popular participation in decision-making", to allow political parties, including opposition parties, "to carry out their activities freely" and to "participate freely and without hindrance in any electoral process".<sup>27</sup>

According to the protocol, ECOWAS commits itself to "zero tolerance for power obtained or maintained by unconstitutional means"<sup>28</sup> (Article 1c), the first time that a formal ECOWAS document tackles the issue of military coups and other forms of unconstitutional changes of government. The Protocol also calls for the de-politicisation and "neutralisation" of the army, the army's subordination to civil government, and democratic governance for the security sector to ensure the respect for human rights.<sup>29</sup>

<sup>23</sup> Gambia crisis: Nana Addo erred in deploying troops – MP. News report by Citi FM. <http://citifmonline.com/2017/01/20/gambia-crisis-nana-addo-erred-in-deploying-troops-mp/> (accessed in January 2017).

<sup>24</sup> *ibid.*

<sup>25</sup> Diallo (2005).

<sup>26</sup> Sahel and West Africa Club/OECD (2005).

<sup>27</sup> Hartmann (2013). *op cit.*

<sup>28</sup> ECOWAS 2001-a: Protocol A/SP.1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

<sup>29</sup> Diallo (2005).

Additionally, the Protocol, in Articles 1b and c, dictates that “every accession to power must be made through free, fair and transparent elections”<sup>30</sup>. Article 12 specifically mandates that ECOWAS provide assistance to Member States organising election, including by undertaking information missions, raising awareness campaigns, and monitoring elections.

The Protocol also makes provisions for public sector governance and human rights. Article 35 directs the ECOWAS Executive Secretariat to empower “independent national institutions to promote and protect human rights,” and Article 38 mandates that member states and the Executive Secretariat develop mechanisms to fight against corruption. Article 38 asserts that member states and the Executive Secretariat will jointly develop mechanisms against corruption. Moreover, the ECOWAS Executive Secretariat is also meant to strengthen the capacities of “independent national institutions to promote and protect human rights” (Article 35).

However, progress towards fostering “constitutional convergence” is not without challenges, particularly due to a lack of enforcement (see section 4). To incentivise states to support these norms, the Protocol in Article 45 reaffirms the region’s commitment to using sanctions defined in the 1993 Revised Treaty. However, as recognised by the ECOWAS secretariat, the sanctions regime remains weak; not least due to the fact that not all countries have ratified key legal instruments making any attempts to discuss enforcement unfounded<sup>31</sup>.

### **ECOWAS Conflict Prevention Framework (2008)**

The ECOWAS Conflict Prevention Framework (ECPF) attempts to consolidate ECOWAS norms and protocols in the areas of peace and security as well as governance. This is focused on the mechanisms for facilitating the transfer of governance norms in West Africa and to this provides guidelines on how member states can practically adopt the standards and norms elaborated in previous protocols on security and governance.

The ECOWAS’ Mediation and Security Council formally adopted the ECPF in 2008, outlining 14 components of conflict prevention that the community should focus on. These include provisions on democracy, political governance, human rights, and the rule of law. As with other ECOWAS protocols, the ECPF seeks to strengthen governance standards in an effort to boost conflict prevention mechanisms and enhance regional security. It contains benchmarks for all the 14 substantive components with a section on “Enabling Mechanisms,” which specifies that “Advocacy and Communication; Resource Mobilisation; Cooperation; and Monitoring and Evaluation” can be used to realise activities under the framework<sup>32</sup>. Furthermore, it calls for governments to reduce the cost of justice and improve transparency and accountability.

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<sup>30</sup> ECOWAS 2001a: Protocol A/SP.1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

<sup>31</sup> Ambassador Tunde Ayisomo, Special Representative of ECOWAS President in Liberia quoted in local media. Front Page Africa. “ECOWAS Official Wants Penalties For Regional Protocols Violations”. <http://www.frontpageafricaonline.com/~frontpag/index.php/news/1939-ecowas-official-wants-penalties-for-regional-protocols-violations>.

<sup>32</sup> ECOWAS 2008: ECOWAS Conflict Prevention Framework (Regulation MSC/REG.1/01/08); Christof Hartmann (December 2013). “Governance Transfer by the Economic Community of West African States (ECOWAS),” SFB-Governance Working Paper Series • No. 47 • December 2013.

Over the last 18 years, the ECOWAS approach to governance has evolved rather than expanded in order to deal with the stability needs of the region, therefore avoiding a swelling of the agenda. Consequently, adjustments to the institutional architecture were often coupled with an identified need (e.g. the relatively recent establishment of the mediation directorate to support the work of mediation teams). As this section illustrates, ECOWAS has accumulated a substantial body of protocols that on paper commit governments to promote and consolidate democratic governments and democratic institutions, and to protect fundamental human rights and freedoms and the rules of international humanitarian laws. There is therefore apparent traction for regional Heads of State to commit on paper, but implementation raises different challenges.

### 2.3. Implementing the governance agenda

As the above illustrates, ECOWAS has developed a wide range of instruments and approaches for enforcing governance and human rights norms. The Commission has used military intervention, diplomatic negotiations, sanctions, election observation, and legal proceedings<sup>33</sup> to compel member states to comply with its democratic governance and human rights standards. However, the enforcement mechanisms for governance and human rights are much more closely linked to its peace and security frameworks while the implementation and enforcement mechanisms for governance have been largely reactionary as illustrated by numerous country cases.

#### Guinea Bissau

In line with its Protocol on Democracy and Good Governance, ECOWAS' main approach to ensuring constitutional order, the rule of law, and a respect for human rights has consisted of a mixture of diplomatic negotiations, the use of sanctions and fact-finding missions. In the case of Guinea-Bissau ECOWAS did not act quickly to prevent attacks on democratic institutions and the deterioration of governance standards between 1999 and 2003. During this period, President Kumba Yala proved authoritarian and erratic. He dismissed three prime ministers, repressed the press, and suspended the General State Attorneys. After he dissolved the parliament in November 2002, Yala called for early parliamentary elections, which went against the time limit set by the constitution.

However, ECOWAS only reacted when General Verissimo Correia Seabra ousted Yala in a military coup in 2003 after the country had been left without a government for several months.<sup>34</sup> In 48 hours, ECOWAS sent a delegation with ministers from Cape Verde, the Gambia, Guinea, Ghana, and Nigeria to negotiate a peace agreement, which proved successful. Although the coup was unjustified, ECOWAS might have prevented it through preemptive pressure on President Yala to work within the constitution. In this case, the agreement did not call for Yala to be restored but instead supported the creation of a transitional government of national unity. While the transitional government led to peaceful legislative elections in 2004, the 2005 election proved contentious and required another ECOWAS intervention and the United Nations, which proved relatively more successful.

#### Niger

Perhaps learning its lesson from Guinea-Bissau, ECOWAS was much quicker to react to the attempts by President Mamdou Tanja of Niger to prolong his stay in power and relied in its intervention on the provisions of the supplementary Protocol on Democracy and Good Governance; particularly article 2.1

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<sup>33</sup> Hartmann (2013) C. Op cit.

<sup>34</sup> Yabi (2010), op cit.

pertaining to consultations with political stakeholders ahead of elections<sup>35</sup>. With his second term ending in December 2009, at the end of 2008 President Tandja began petitioning for the revision of the constitution to allow him to run for a third term. Having failed to secure a two-thirds majority in parliament, Tanja organised a referendum on the extension of his term, after dissolving the Parliament and Constitutional Court. ECOWAS responded to these events by calling on Tandja to annul the elections, however, once the referendum took place, ECOWAS Heads of State suspended Niger's membership and Nigeria announced that it would evaluate the possibility of an intervention. ECOWAS was saved from intervening when soldiers disposed of Tandja in a coup in 2010, which was not considered an unconstitutional change of power since Tanja held power unconstitutionally.

## Gambia

Most recently in the Gambia, ECOWAS took a strong stance regarding the refusal of President Jammeh to cede power despite losing the elections. In the lead up to the 1 December 2016 elections, political tensions in the country were high. In April 2016, the main opposition party led protests and demanded political reforms. The crackdown that followed saw arrests of 50 members of the United Democratic Party (UDP), the main opposition party. In addition, it was alleged that three detainees, including the leader of the UDP's youth leader, Solo Sandeng, were killed while in custody. The African Union (AU) and ECOWAS condemned the arrests and called for investigations<sup>36</sup>; a request that fell on deaf ears.

In May 2016, ECOWAS deployed a fact-finding mission, jointly with the AU and the UN Regional Office for West Africa and the Sahel (UNOWAS). The mission was led by the President of the ECOWAS Commission, Marcel Alain de Souza, the AU Commissioner for Political Affairs and the Special Representative of the UN Secretary-General for West Africa and the Sahel. Jammeh refused to meet them. Despite this, ECOWAS deployed another fact-finding mission in July 2016, during which it concluded that the conditions for the conduct of peaceful, free and fair elections were unsatisfactory<sup>37</sup>. ECOWAS therefore refused to send observers to monitor the December elections. Mediation efforts were then set up to convince Jammeh to leave office; however unsuccessfully.

ECOWAS did not recognise Jammeh as legitimate winner of the December 2016 elections. But it was only when the constitutional term of Jammeh's term came to an end in January and that the legitimate president, Barrow, was inaugurated on 19 January 2017 that ECOWAS intervened with a regional military force.

## Togo

There is tendency in ECOWAS to negotiate compromises that inevitably give those involved in unconstitutional power struggles a degree of political power in the end. These failings are in part a result of the failings of the Protocol on Democracy and Good Governance, which unlike the African Charter on Democracy, Elections, and Governance does not bar those involved in unconstitutional power changes to occupy public office<sup>38</sup>. This was the case in Togo. On 6 February, the Togolese parliament elected Faure Gnassingbé as president a day after his father died in the same office on 5 February 2005. This was in direct contradiction to the country's constitution, which required the president of the senate to take power and organise elections within 60 days. ECOWAS immediately imposed sanctions on Togo and a few weeks

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<sup>35</sup> ECOWAS Press Release. ECOWAS suspends Niger from Membership of Organisation. 21 October 2009. No. 113/2009 <http://news.ecowas.int/presseshow.php?nb=113&lang=en&annee=2009>.

<sup>36</sup> Odigie (2017).

<sup>37</sup> *ibid.*

<sup>38</sup> Solomon (2007).

later Gnassingbé resigned and handed power to an interim president. Nevertheless, Gnassingbé, who had the backing of the military, ran for elections and won, which were eventually accepted by ECOWAS<sup>39</sup>.

### **Burkina Faso**

Similarly in Burkina Faso ECOWAS tried to arrange a similar compromise that would allow putschists to run for elections. After a popular movement overthrew Blaise Compaore in 2014 after about 30 years in power, Burkina Faso had a transitional government preparing elections. As part of this process the Commission on National Reconciliation and Reforms released a report calling for the dissolution of the presidential guard, which had been loyal to Compaore, in order to ensure a smooth transition. In September 2015, the 1300 strong presidential guard responded by organising a coup that overthrew the interim government and kidnapped the transitional president. According to reports, the presidential guard was unhappy at a law that banned supporters of former President Compaore from running for elections.<sup>40</sup>

ECOWAS reacted immediately, strongly condemning the coup and calling for a return to the electoral processes. However, the Community undermined this statement and to a degree its credibility by proposing an amnesty for coup leaders and the possibility of the putschists running for elections.<sup>41</sup> Fortunately, the regular Burkinabe military put an end to the coup and restored the interim government. The fact that the regular military stepped in to return civilian rule is a testament to an improvement in governance in West Africa, despite ECOWAS' failures in appropriately punishing unconstitutional changes of government.

### **Constrained regional power**

While acknowledging the importance of a strong position of a regional hegemon (Nigeria) regarding a given conflict situation, interviewees<sup>42</sup> suggest that the inability of ECOWAS to intervene at an earlier stage in the situations above, despite knowing how such crises would evolve, is due to the scope of the legal instrument. Where the crisis is of a constitutional nature, the legal instruments have provided a legal basis to facilitate action. In this respect, Article 2 of the supplementary protocol on democracy and good governance<sup>43</sup> has for instance provided the legal basis for most of ECOWAS's interventions in the last decade. However, the supplementary protocol does not enable ECOWAS to engage in dialogue with the country in the event of attempts to change the constitution if such attempt respects the timeline identified by the Protocol (six months ahead of elections). In the words of one interviewee, in such situations "ECOWAS has no business in intervening as this would be seen as a domestic issue"<sup>44</sup>. This has driven a number of countries and civil society organisations to call for more 'convergence' between the constitutions of the countries by introducing terms limits (see Section 4).

## **2.4. The ECOWAS Court of Justice**

The ECOWAS Protocol on Democracy and Good Governance provides that "every individual or organisation shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument for human

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<sup>39</sup> *ibid.*

<sup>40</sup> IRIN (2015).

<sup>41</sup> Allison (2015).

<sup>42</sup> Odigie, B. (ACCORD), Chukwuemeka, B. Eze (WANEP) as well as an interviewee from the ECOWAS Department of Political Affairs and Peace and Security.

<sup>43</sup> The article stipulates the following: "No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors."

<sup>44</sup> Interviewee, civil society representative, 09 March 2017.

rights”<sup>45</sup>. In essence, ECOWAS allows individuals to hold their governments responsible for the violation of their democratic and human rights through the judicial system. At the regional level, citizens of member states have used the ECOWAS Community Court of Justice (CCJ) to bring governments to account for violating governance and human rights standards.

ECOWAS created the CCJ through the 1991 Community Protocol and included it in its Revised Treaty of 1993. The Court’s initial mandate was to adjudicate disputes between member states and ECOWAS, and disputes between individuals, represented by their country, and another member state. However, in 2004, the court was forced to reconsider its mandate when Olajide Afolabi, a Nigerian trader, sued the Nigerian government for violating the right to free movement of persons and goods. Nigeria challenged the Court’s jurisdiction and Afolabi’s standing, arguing that the 1991 Protocol did not authorise private parties to litigate before the Court. Given its mandate at the time, the Court sided with Nigeria and dismissed the Afolabi case. However, recognising the limitations in the CCJ’s jurisdiction, the Court’s judges partnered with civil society organisations to launch a campaign to expand Court’s jurisdiction to allow individuals to bring suit against their government for violation of the ECOWAS’s laws.

On 19 January 2005, ECOWAS adopted a Protocol with immediate provisional effect that expanded the CCJ’s jurisdiction. According to the Protocol, the CCJ had jurisdiction to ‘jurisdiction to determine case[s] of violation of human rights that occur in any Member State,’ as well as receive complaints from ‘individuals on application for relief for violation of their human rights.’ Since then the Court has issued about 70 judgments, many of which have been path breaking. For instance, the CCJ barred the domestic prosecution of former Chadian president Hissein Habré as contrary to the non-retroactivity of criminal law and indicted Nigeria for failing to regulate multinational oil companies that polluted the Niger Delta.

Yet the CCJ has had mixed results. In 2005, the court dismissed an election case, *Ugokwe v. Nigeria*, because the plaintiff had already brought the case before a national court. However, Nigeria did comply with a preliminary injunction issued by the court in an early stage of the case, signaling that an enforcement of CCJ verdicts is possible. In Gambia, the government ignored a judgment to pay US\$100,000 in damages to journalist Ebrima Manneh, after he had been unlawfully detained for criticising the government. Similarly, Gambia refused to compensate another journalist, Musa Saidu Khan, US\$200,000 after the court found the country guilty of unlawfully imprisoning and severely torturing Saidu Khan. By contrast, Niger on the Court’s order paid about US\$20,000 within three months to a woman who had been enslaved and also imprisoned her former slave master. The woman had sued Niger for failing to implement its own laws against slavery<sup>46</sup>.

Most recently, in the case of *Dasuki V. Nigeria*, the Court declared in its judgment of October 2016 the arrest and detention of the former National Security Advisor, Col. Sambo Dasuki as “unlawful, unreasonable and arbitrary” and has ordered the immediate release of Col. Dasuki<sup>47</sup>. The Court also ordered the state to pay N15 in compensation. However, this highly politicised case<sup>48</sup>, the government has

<sup>45</sup> Ebobrah (2007). Op cit.

<sup>46</sup> Alter et al. (2013).

<sup>47</sup> Effiong (2016).

<sup>48</sup> The case has seen the arrest of the federal judge who initially granted bail to Dasuki before he took his case to the ECOWAS Court (see statement by Judge Ademola to the Biafran Herald in October 2016, <http://www.thebiafraherald.co/2016/10/i-was-arrested-for-granting-bail-to.html>) and has recently resulted in threats by members of the parliament to also start an inquiry as to the ‘disobedience’ of the Department of State Services (DSS) with the Court orders (see Opejobi, S. Dasuki, Kanu: Reps to investigate DSS over disobedience of court orders. The Daily Post. 27 January 2017. <http://dailypost.ng/2017/01/27/dasuki-nnamdi-reps-investigate-dss->



so far refused to obey the order arguing that while Nigeria has ratified the protocol pertaining to the Court it has not yet domesticated it<sup>49</sup>.

The 'activism' of the Court did not go unnoticed. Attempts of the Gambia in 2009 – albeit under Jammeh – are a case in point. In September 2009, following a prior judgment of the Court in favor of a plaintiff, the Gambia submitted a request to the ECOWAS Secretariat to revise the 2005 Supplementary Protocol. The request revolved around the following elements<sup>50</sup>:

1. Court should only have jurisdiction in cases arising from international instruments ratified by the respondent country;
2. The Court's jurisdiction should be made subject to the exhaustion of domestic remedies;
3. Cases should only be admissible if instituted not later than 12 months after the exhaustion of local remedies;
4. Cases should not be anonymous;
5. The Court should not hear cases that are before other international mechanisms of settlement; and
6. The Court should create an appeals procedure.

The request of the Gambia was an opportunity for other member states to restrict the powers of the Court. However, this was not the case, as the Gambian request was not supported. Several interpretations of the failed backlash exist. One of them relates to the weak position of the Gambia in the region, which did not compel other countries to cooperate. However, the Court had also issued judgments that challenged other countries in the region and the Gambian proposal would have provided an opportunity to retaliate. Another explanation relates to the timing of the proposal. The proposal of the Gambia had indeed followed a decision by governments in the region, in 2006, to strengthen the Court, notably by creating a Judicial Council to support a competitive recruitment process for the Judges. Challenging the Court would therefore put into question the commitments of the countries to support an independent court. The pressure by other actors, notably the ECOWAS Commission itself and civil society organisations is also advanced as an explanation for the failure of the backlash.

### 3. On the political interests of member states

The role of the member states in shaping and implementing the ECOWAS agenda in governance is important, especially since any decisions require consensus. The principles and commitments made on paper reflect an aspirational agenda, but as seen above, in some cases can also lead to regional intervention in member state political processes. As it stands, ECOWAS member states have been at the forefront of regional action mainly where regional security was under threat as recent efforts in The Gambia show, suggesting that member state interests are more driven by minimising the potential of spillovers of instability to the region, than proactively engaging in aspects of the governance agenda. Further, the cases suggest that the engagement of ECOWAS in crises depends on the existence of a strong coalition of countries, often driven by Nigeria.

While not possible to delve into the interests of each member state around the various aspects of the governance agenda, the role of Nigeria in shaping the region's engagement is key. Often perceived to be the regional hegemon, Nigeria has indeed played a central role in coordinating ECOWAS' engagement in

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[disobedience-court-orders/](#)).

<sup>49</sup> *ibid.*

<sup>50</sup> Alter et al (2016).

several crises. It has also sought to act as a leader by cooperating with ECOWAS' engagement in Nigeria's own elections, for instance. Indeed, ECOWAS was largely involved in the election process of Nigeria's 2015 elections.<sup>51</sup> However, ECOWAS was also kept at arm's length with respect to the fight against Boko Haram, which is seen as Nigeria's domestic issue. Arguably, this also relates to the fact that the Boko Haram affected areas span beyond ECOWAS borders, requiring trans-regional cooperation.

Nigeria's ongoing struggle at the domestic level has resulted in its relative withdrawal from regional and continental affairs. As echoed by several observers, "the ECOMOG interventions in Liberia and Sierra Leone were largely the work of Nigeria as leader and big boy in the region. Today, Nigeria has neither the appetite nor the available boots on the ground to deploy given its own internal problems. The result is that ECOWAS can take decisions to act but implementation becomes a problem."<sup>52</sup> Nigeria is highly likely now to rely on the cooperation of countries such as Senegal and Ghana, as seen in recent crises in the Gambia and Togo, in order to advance its regional agenda.

Furthermore, the failure of Nigeria to shape the agenda in some recent crises, notably in Mali crisis has highlighted its fragile geopolitical position in comparison to hegemony in neighboring regions and international actors (e.g. Algeria and France in the case of Mali). Whether Nigeria will maintain its position will depend on its ability to rethink its policy towards the region, and indeed the continent, and to match its ambition with resources, both human and financial.

### 3.2. Limiting Presidential Terms in the Community

The issue of "constitutional convergence principles" contained in the Protocol of Democracy and Good Governance has generated much debate in ECOWAS. In the view of the Commission two issues are critical: regular elections as a democratic tool and limiting presidential terms. As all countries in the region are 'constitutional democracies' which identify elections as a means to accede to power, civil society organisations have argued that the challenge for ECOWAS is rather regular attempts by sitting heads of states to manipulate the constitution to their advantage.

In this respect, civil society organisations argued that: "The Protocol [on Democracy and Good Governance] is a remarkable step and veritable tool by ECOWAS to consolidate peace, security and stability in a region that has witnessed more than a decade long violent civil wars. However, as laudable as the provisions contained in the Protocol may seem, it has undoubtedly suffered diverse challenges especially relating to its implementation ... Although member states comply with the provision of the Supplementary Protocol which stipulates that "No substantial modification shall be made to the electoral laws in the last six months before the elections, except with the consent of a majority of Politicalactors", some Presidents have capitalised on this and made glaring attempts to tamper with their constitutions in a bid to elongate their tenure in office. Such allegations are evident in Niger, Benin, Burkina Faso and Sierra Leone and have created opposing camps among the populace where citizens are oftentimes manipulated to support such endeavours at the detriment of national interest"<sup>53</sup>. As a result, they proposed further revisions to the Protocol.

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<sup>51</sup> Tejpar & Lins de Albuquerque (2015).

<sup>52</sup> *ibid.*

<sup>53</sup> Ukpanah & Diallo (2014).



In May 2015, ECOWAS tabled a clause that if enacted would prohibit presidents of member countries from staying beyond two terms<sup>54</sup>. At the same time, the community was considering the adoption of a new legal regime for Acts that will make all ECOWAS decisions immediately applicable and binding on member states and eliminate parliamentary approvals. The proposal to enact a term limit was drafted by the Commission with support from the West Africa Network for Peacebuilding (WANEP). After passing through the decision-making bodies, a debate at the ministerial level ensued. Togo and the Gambia had opposed the amendments, as this would go counter to the interests of their respective heads of states. At the initiative of the foreign affairs minister of Ghana, Hanna Tetteh, a note on reservations by Togo and Gambia was introduced therefore allowing the document to be sent to the heads of states for debate<sup>55</sup>. Subsequently, the proposal to enact a term limit was however, not approved by the heads of state of member countries in May 2015 in Accra, Ghana. The major argument presented especially by Togo and Gambia, was that, enacting such a clause would interfere with the varied political contexts of each member state<sup>56</sup>.

The proposal was however not rejected but rather sent back for further consultations, therefore allowing interested parties to re-present it. With the new Gambian President, Borrow, indicating his support to constitutional terms limits, the Commission would like to reintroduce the debate in order to 'harmonise' terms limits across the region and provide a basis for intervention in countries where such limits do not exist. Arguably, however, the challenge for the region is perhaps not the terms limits (since it is only the constitutions of the Gambia and Togo that do not place terms limits) but rather the length of the presidential terms.<sup>57</sup> However, for many actors, a stronger Protocol delineating terms limits would enable the ECOWAS to intervene earlier should attempts to tamper with the constitution take place.

### 3.3. Financing regional efforts in the area of governance

Member state interests can also be somewhat interpreted to from their willingness to finance their regional organisation. In this respect ECOWAS is relatively unusual in being primarily funded by its members.

ECOWAS relies on funding mainly from four sources: I) Arrears from member states; ii) ECOWAS community levy at 0.5% of import value of member states; iii) donors/development partner's contributions and IV) assessed contributions by member states.<sup>58</sup> Based on the 2014 ECOWAS budget, about 95% of the total cost was financed from the community levy, arrears, and miscellaneous income, and only 5% by donors<sup>59</sup>. Nigeria has however been the largest contributor to the community. Between 2003 and 2011 for instance, Nigeria contributed US\$918.7m (N138bn) to the running of the Community, followed at a distance by Ghana at \$225.7m (N34bn), and Cote D'Ivoire at \$107.5m (N16.1bn)<sup>60</sup>.

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<sup>54</sup> Mail & Guardian. Two term limit? Not for us, West African presidents say, adding to Central-Africa push back. 21 May 2015. <http://mgafrica.com/article/2015-05-21-third-term-limit-not-for-us-west-african-presidents-say-adding-to-central-africa-led-push-back>.

<sup>55</sup> Interview with Chukwuemeka B. Eze, Director WANEP. 9 March 2017.

<sup>56</sup> The Togolese president, Faure Gnassingbe took office following the death of his father in 2005. Yahya Jammeh of the Gambia was subsequently removed from his functions following elections in December 2016.

<sup>57</sup> Senegal has the longest presidential term (7 years per term). Liberia is currently considering reducing the presidential term from 6 to 4 years.

<sup>58</sup> Articles 53 and 54 of the Treaty, and Protocol relating to contributions, stipulate that the community is to be finance by contributions of each member state, assessed on the basis of its GDP and per capita income and made in convertible currency under the terms declared by the IMF.

<sup>59</sup> Odhiambo et al. (2016).

<sup>60</sup> Udo & Ekott (2013).

Challenges persist with respect to late payments of dues. It was for instance only in 2016 that Nigeria paid its contribution, totaling \$54m to ECOWAS for programmes implemented in 2015 <sup>61</sup>. The ECOWAS Commissioner for Finance, in a briefing to the Second Ordinary Session of the ECOWAS parliament in October 2016 noted that member states had contributed \$185 million as of September 2016, representing 60% of the budget for the first three quarters of 2016 <sup>62</sup>. Several member states are in arrears since 2003, according to the Commissioner for Finance. An agreement to settle 'debts' to the institution were agreed in 2016, with some countries choosing to repay over a period of 3 years and others over a four-year period<sup>63</sup>.

Further, in 1999, ECOWAS leaders approved the creation of a Peace Fund (EPF), which was subsequently restructured<sup>64</sup> in 2003 and benefited from an initial seed money of US\$5 million, to cater for the timely financial requirements of maintaining peace and security<sup>65</sup>. While the initial commitment was to allocate 10% of the revenue from the community levy to the EPF<sup>66</sup>, in practice, this is not the case<sup>67</sup>. Ninety percent of the funds are not regularly paid<sup>68</sup>. Nigeria, Ghana, Mali and Senegal, for example, are the countries that made initial payments to the peace fund but with time have disengaged<sup>69</sup>. Currently, the European Commission and Germany constitute the largest donors to the ECOWAS Department of Political Affairs and Peace and Security with activities focusing on early warning and peace building as well as support to peace support operations.

## 4. On the areas with potential traction

ECOWAS is largely viewed as a pioneer in the area of governance compared to other regions in Africa. The approach of ECOWAS has largely been pragmatic as the region opted for a humble start while adapting its instruments as issues emerged. In this respect, critics have also argued that ECOWAS has been reactive and has largely failed in preempting actions by the member states. Nonetheless, its approach has allowed it to effectively respond to challenges and the region has shown its willingness to adapt to changing contexts.

Looking forward, and considering the political economy of governance reforms especially in the political arena, three key issues are worth noting.

First, and as noted above, one of the key challenges facing ECOWAS is early response. While the legal frameworks currently place some limitations in terms of ECOWAS-led early response, the Commission jointly with civil society organisations is seeking to strengthen its national networks for early response,

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<sup>61</sup> News report by Punch Nigeria, Nigeria Pays ECOWAS \$54m Community Levy. 4 October 2016.

<http://punchng.com/nigeria-pays-ecowas-15m-community-levy/>.

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

<sup>64</sup> "With the adoption of the Supplementary Protocol on Democracy and Good Governance in 2001, the Fund was restructured to make for a more flexible mechanism, able to respond speedily to threats to peace and security". AfDB (2004).

<sup>65</sup> The EPF is structured around three windows for the different areas covered by the protocols, namely: (i) conflict prevention and strengthening of capacities for preventive diplomacy, early warning systems, training, and awareness raising for peacebuilding, and good governance and people's rights; (ii) political activities, coordination of humanitarian aid, and rehabilitation; and (iii) conflict management and peacekeeping (supported by military action) AfDB. 2004. *ibid.*

<sup>66</sup> AfDB (2004). *ibid.*

<sup>67</sup> ECOWAS in need of funds – Souza. Report on Today newspaper. 28 May 2016. <https://www.today.ng/news/africa/128777/ecowas-funds-souza>.

<sup>68</sup> *ibid.*

<sup>69</sup> Udo, et al. (2013). Op cit.

therefore, ensuring a bottom-up approach to early response, coupled with a top-down approach should local initiatives fail. Civil society organisations such as WANEP are key partners in this process.

One of the weaknesses identified in interviews and analysis with respect to the enforcement capacity of ECOWAS is a disconnect between early warning and early response at the level of the Commission. While under a similar commissioner, directorates responsible for these two areas work under two different logics with one directorate (mediation and early response) recently receiving considerable attention and resources. Provided that such division is not replicated at the local level – and the indication is that there is awareness of this risk – the partnership between the Commission and local actors can prove useful, especially in low-intensity conflicts. This, however, does not fully support ECOWAS in tackling more politicised tensions, as the one we have seen in the Gambia. The crackdown on local mediators in high-intensity conflicts, including on civil society organisations, might require a different approach for which ECOWAS seems to be ill equipped.

Secondly, civil society organisations have also pointed to the need to “ensure a gradual harmonisation of the varying legal standards across the continent to guarantee uniformed and easy implementation of the rules and decisions of the body”.<sup>70</sup> Such a recommendation relates to the slow pace of ratifications as well as the lack of harmonisation between regional and continental instruments. The latter provides member states with the ability to “pick and choose”.

Related to these, and despite the difficulty in ensuring compliance with its rulings, the ECOWAS Court of Justice has a number of distinctive features that makes it a promising mechanism for norm enforcement in the region. The Court can hear all human rights and elections cases even if litigants have not exhausted local remedies. By contrast, UN and other regional courts, require petitioners to exhaust all domestic avenues. The ECOWAS position is important because it allows West African citizens an avenue for seeking justice that is independent of the state. Moreover, the Court, unlike other courts, has no designated human rights charter to apply. For example, in the slavery case in Niger, ECOWAS judges consulted the Treaty of ECOWAS, the African Charter of Human and Peoples Rights, the International Covenant of Civil and Political Rights, the Convention for the Elimination of All Forms of Discrimination Against Women, the African Charter on the Rights and Welfare of the Child, the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. ECOWAS judges are allowed to consult a broad range of sources when adjudicating human rights cases. This makes the Court a potentially important enforcement mechanism for the African Governance Architecture norms and standards.

Overall, the record of ECOWAS shows that the region is willing to enforce governance standards if linked to peace and security concerns of neighboring states and regional hegemony. The question remains as to the region’s ability to uphold principles even when those do not immediately threaten regional security.

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<sup>70</sup> Ukpanah & Diallo (2014). Op cit.

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