

Supplementary Protocol of ECOWAS on Democracy and Good Governance (A/SP1/12/01)

Supplementary to the Protocol relating to the mechanism for conflict prevention management, resolution, peacekeeping and security Executive Secretary Dakar , December 2001 (Excerpts)

PREAMBLE

We, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS),

MINDFUL of the ECOWAS Treaty signed in Cotonou on 24th July 1993 , notably its Article 58;

MINDFUL of the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security signed in Lomé on 10 th December 1999;

CONSIDERING all the issues enumerated or reaffirmed in the preamble to the Protocol of 10th December 1999 referred to above;

MINDFUL of the principles set out in the OAU Solemn Declaration on Security, Stability, Development and Cooperation in Africa adopted in Abuja on 8 and 9 May 2000 and the Decision AHG. DEC 142 (XXV) on the framework for OAU'S reaction to unconstitutional change of government, adopted by Algiers in July 1999;

CONSIDERING the Harare Declaration adopted by the Commonwealth on 20 December 1991 and the Bamako Declaration adopted by the member countries of the Francophonie on 3 November 2000;

CONSIDERING also the Cotonou Declaration adopted on 6 December 2000 at the end of the 4th international conference on new or restored democracies;

RECALLING that women's rights have been recognized and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights and the Convention on the Elimination of all forms of Discrimination Against Women;

MINDFUL of the ratification of the African Charter on Human and Peoples Rights and other international human rights instruments by the majority of the Member States and their solemn commitment to eliminate all forms of discrimination and harmful practices against women;

CONCERNED about the increasing wave of international terrorism;

CONCERNED also about the increasing incidence of conflicts caused by religious intolerance, political marginalisation and non-transparent elections;

HAVING OBSERVED that to become really effective, the Protocol of 10 December 1999 needs to be complemented through the incorporation of provisions concerning issues such as prevention of internal crises, democracy and good governance, the rule of law, and human rights;

HAVING DECIDED to enhance the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security;

HAVE AGREED AS FOLLOWS:

Chapter 1

PRINCIPLES

The provisions of this chapter complement and clarify the principles set out in Article 2 of the Protocol of 10th December 1999 .

SECTION 1: CONSTITUTIONAL CONVERGENCE PRINCIPLES

Article 1

The following shall be declared as constitutional principles shared by all Member States:

a)

- Separation of powers - the Executive, Legislative and Judiciary.
- Empowerment and strengthening of parliaments and guarantee of parliamentary immunity.
- Independence of the Judiciary: Judges shall be independent in the discharge of their duties.
- The freedom of the members of the Bar shall be guaranteed; without prejudice to their penal or disciplinary responsibility in the event of contempt of court or breaches of the common law.

b) Every accession to power must be made through free, fair and transparent elections.

c) Zero tolerance for power obtained or maintained by unconstitutional means.

d) Popular participation in decision-making, strict adherence to democratic principles and decentralization of power at all levels of governance.

e) The armed forces must be apolitical and must be under the command of a legally constituted political authority; no serving member of the armed forces may seek to run for elective political.

f) Secularism and neutrality of the State in all matters relating to religion; freedom for each individual to practise, within the limits of existing laws, the religion of his/her choice everywhere on the national territory. The secularism shall extend to all parts of the State, but shall not deprive the State of the right to regulate, with due respect to human rights, the different religions practiced on the national territory or to intervene when law and order break down as a result of any religious activity.

g) The State and all its institutions belong to all the citizens; therefore none of their decisions and actions shall involve any form of discrimination, be it on an ethnic, racial, religion or regional basis.

h) The rights set out in the African Charter on Human and Peoples' Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; each individual or organization 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 on Human Rights, to ensure the protection of his/her rights. In the absence of a court of special jurisdiction, the present Supplementary Protocol shall be regarded as giving the necessary powers to common or civil law judicial bodies.

i) Political parties shall be formed and shall have the right to carry out their activities freely, within the limits of the law. Their formation and activities shall not be based on ethnic, religious, regional or racial considerations. They shall participate freely and without hindrance or discrimination in any electoral process. The freedom of the opposition shall be guaranteed. Each Member State may adopt a system for financing political parties, in accordance with criteria set under the law.

j) The freedom of association and the right to meet and organize peaceful demonstrations shall also be guaranteed.

k) The freedom of the press shall be guaranteed.

l) All former Heads of State shall enjoy a special status including freedom of movement. They shall enjoy special benefits compatible to their status as former Heads of State.

SECTION II:

ELECTIONS:

Article 2

1. 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.
2. All the elections shall be organized on the dates or at periods fixed by the Constitution or the electoral laws.
3. Member States shall take all appropriate measures to ensure that women have equal rights with men to vote and be voted for in elections, to participate in the formulation of government policies and the implementation thereof and to hold public offices and perform public functions at all levels of governance.

Article 3

The bodies responsible for organizing the elections shall be independent or neutral and shall have the confidence of all the political actors. Where necessary, appropriate national consultations shall be organized to determine the nature and the structure of the bodies.

Article 4

1. Each ECOWAS Member State shall ensure the establishment of a reliable registry of births and deaths. A central registry shall be established in each Member State .
2. Member States shall cooperate in this area with a view to exchanging experiences and where necessary providing technical assistance to each other in the production of reliable voters' lists.

Article 5

The voters' lists shall be prepared in a transparent and reliable manner, with the collaboration of the political parties and voters who may have access to them whenever the need arises.

Article 6

The preparation and conduct of elections and the announcement of results shall be done in a transparent manner.

Article 7

Adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of elections and announcement of results.

Article 8

Member States shall use the services of civil society organizations involved in electoral matters to educate and enlighten the public on the need for peaceful elections devoid of all acts of violence.

Article 9

The party and/or candidate who loses the elections shall concede defeat to the political party and/or candidate finally declared the winner, following the guidelines and within the deadline stipulated by the law.

Article 10

All holders of power at all levels shall refrain from acts of intimidation or harassment against defeated candidates or their supporters.

SECTION II: ELECTION MONITORING AND ECOWAS ASSISTANCE

Article 11

The provisions of Article 42 of the Protocol of 10th December 1999 hereby complemented by the provisions under this section.

Article 12

1. At the request of any Member State , ECOWAS may provide assistance in the conduct of any election.
2. Such assistance may take any form.
3. Also, ECOWAS may dispatch a monitoring team to the country concerned for the purpose of monitoring the elections.
4. The decision in this respect shall be taken by the Executive Secretary.

Article 13

1. As elections in a Member State approach, the Executive Secretary shall dispatch a fact-finding Mission to the Member State conducting an election.
2. This mission may be followed by an exploratory Mission aimed at:
 - Collecting all texts governing the elections concerned;
 - Gathering all information on the conditions under which the elections shall be conducted;
 - Collecting all pertinent information relating to the contesting candidates or political parties;
 - Meeting all candidates, political party leaders, government authorities and other competent bodies;
 - Assessing the status of preparations for the elections;
 - Gathering any other useful information that may provide a clear picture of the situation.

Article 14

1. The Executive Secretary shall appoint the leader and the members of the Observer/Supervisory Mission, who shall be independent persons and Nationals of Member States other than the Member State conducting the Elections.
2. The Members of the Mission shall include women.
3. Staff of the Executive Secretariat shall be designated to assist the Mission .

Article 15

1. The Observer/Supervisory Mission , with the documents collected by the exploratory Mission and the report prepared by the Mission , shall arrive in the Member State concerned at least forty-eight hours prior to the conduct of the elections.
2. The Observer/Supervisory Mission may be preceded by ECOWAS Staff, who shall prepare the meetings to be held between the Mission and the national authorities.
3. The Mission shall be expected to hold consultations with the relevant authorities of the host government for an exchange of views and in order to determine the mode of deployment in the host Member State .
4. It may establish cooperation links with NGO or any other observer team while maintaining its autonomy.

5. The members of the Mission shall show restraint and refrain from making any individual statement. Any statement shall be made collectively and on behalf of the Mission by the team leader or a spokesperson appointed for this purpose.

Article 16

1. The Mission shall remain in the country throughout the election period and until the election results are announced.

2. The Mission shall also submit a report to the Executive Secretary.

3. The Report shall comprise:

- The Mission 's own observations;
- Statements by witnesses;
- Its assessment of the conduct of the elections from the point of view of the national laws governing the elections and the universal principles in electoral matters;
- Its recommendations for the improvement of the conduct of future elections and monitoring Missions.

Article 17

1. The Observer/Supervisory Mission 's report shall be signed by all Members of the Mission and submitted to the Executive Secretary by the Mission 's leader within fifteen (15) days with effect from the date of accomplishment of the Mission .

2. Before leaving the host country, the Mission shall convene a consultative meeting for the preparation of the report.

3. Any member of the Mission , who is unable to attend the meeting, shall submit a report in writing to the Mission 's leader before leaving the country.

4. ECOWAS Staff shall assist the Mission in the preparation of the report.

Article 18

The report shall be forwarded by the Executive Secretary, together with his own observations, if necessary, to the Mediation and Security Council for recommendations to be made to the country concerned and/or to all Member States, and for measures to be taken, where necessary.

SECTION IV: THE ROLE OF THE ARMED FORCES, THE POLICE AND THE SECURITY FORCES IN A DEMOCRACY

Article 19

1. The armed forces and police shall be non-partisan and shall remain loyal to the nation. The role of the armed forces shall be to defend the independence and the territorial integrity of the State and its democratic institutions.

2. The police and other security agencies shall be responsible for the maintenance of law and order and the protection of persons and their properties.

3. The armed forces, the police and other security agencies shall participate in ECOMOG missions as provided for in Article 28 of the Protocol.

4. They may also, on the decision of the constitutionally constituted authorities, participate in peacekeeping missions under the auspices of the African Union or the United Nations.

5. Members of the armed forces may be drafted to participate in national development projects.

Article 20

1. The armed forces, the police and other security agencies shall be under the authority of legally constituted civilian authorities.

2. The civilian authorities shall respect the apolitical nature of the armed forces and police. All political or trade union activities and propoganda shall be forbidden in the barracks and within the armed forces.

Article 21

The armed and security forces personnel as citizens, shall be entitled to all the rights set out in the constitution, except as may be stated otherwise in their special regulations.

Article 22

1. The use of arms to disperse non-violent meetings or demonstrations shall be forbidden. Whenever a demonstration becomes violent, only the use of minimal and/or proportionate force shall be authorized.

2. All cruel, inhuman and degrading treatment shall be forbidden.

3. The security forces, while carrying out investigations, shall not disturb or arrest family members or relations of the person presumed guilty or suspected of having committed an offence.

Article 23

1. The armed forces, the police and other security agencies shall during their training receive instructions on the Constitution of their country, ECOWAS principles and regulations, human rights, humanitarian law and democratic principles. In this regard, seminars and meetings bringing together members of the armed forces, Police and other Security agencies and other sectors of society shall be organized from time to time.

2. Joint training sessions shall also be arranged for members of the armed forces from different ECOWAS countries, the police, other security forces, university dons and members of the civil society.

Article 24

1. The Member States undertake to strengthen their national agencies responsible for preventing and combating terrorism.

2. In accordance with Articles 3(d) and 16(1) of the Protocol, the Department of Political Affairs, Defence and Security of the Executive Secretariat shall initiate joint activities for the national agencies of Member States in charge of preventing and combating terrorism.

SECTION VII: RULE OF LAW, HUMAN RIGHTS AND GOOD GOVERNANCE

Article 32

Member States agree that good governance and press freedom are essential for preserving social Justice, preventing conflict, guaranteeing political stability and peace and for strengthening democracy.

Article 33

1. Member States recognize that the rule of law involves not only the promulgation of good laws that are in conformity with the provisions on human rights, but also a good judicial system, a good system of administration, and good management of the State apparatus.

2. They are also convinced that a system that guarantees smooth running of the State and its administrative and judicial services, contributes to the Consolidation of the rule of law.

Article 34

1. Member States and the Executive Secretariat shall endeavour to adopt at national and regional levels, practical modalities for the enforcement of the rule of law, human rights, justice and good governance.

2. Member States shall ensure accountability, professionalism, transparency, and expertise in the public and private sectors.

Article 35

1. Member States shall establish independent national institutions to promote and protect human rights.

2. The Executive Secretariat shall take measures to strengthen their capacities. The institutions shall be organized into a regional network. Within the framework of this network, each national institution shall systematically submit to the Executive Secretariat, any report on human rights violations observed on its territory. Such reports and reactions of governments shall be widely disseminated through the most appropriate means.

Article 36

Member States shall institutionalize a national mediation system.

Article 37

1. Each Member State shall work towards ensuring pluralism of the information sector and the development of the media.

2. Each Member State may give financial assistance to privately-owned media. The distribution and allocation of such assistance shall be done by an Independent national body or by a body freely instituted by the journalists themselves.

Article 38

1. Member States undertake to fight corruption and manage their national resources in a transparent manner, ensuring that they are equitably distributed.

2. In this regard, Member States and the Executive Secretariat undertake to establish appropriate mechanisms to address issues of corruption within the Member States and at the Community level.

Article 39

Protocol A/P1/7/91 adopted in Abuja on 6 July 1991 relating to the Community Court of Justice, shall be reviewed so as to give the Court the power to hear, inter-alia, cases relating to violations of human rights, after all attempts to resolve the matter at the national level have failed.

Chapter II

MODALITIES FOR IMPLEMENTATION AND SANCTIONS

Article 44

1. This Article complements the provisions of Chapter V of the Protocol of 10th December 1999 .

2. In order to give full force to the provision of Article 28 of this Supplementary Protocol and in accordance with Article 57 of the Treaty, a legal convention Incorporating, if need be, Convention A/P1/7/91 relating to mutual assistance In criminal matters, and the Convention A/P1/8/94 on Extradition shall be Elaborated and adopted not later than twelve months after the entry into force Of this Supplementary Protocol.

Article 45

1. In the event that democracy is abruptly brought to an end by any means or where there is massive violation of Human Rights in a Member State , ECOWAS may impose sanctions on the State concerned.

2. The sanctions which shall be decided by the Authority, may take the following forms, in increasing order of severity:

- Refusal to support the candidates presented by the Member State concerned for elective posts in international organizations;
- Refusal to organize ECOWAS meetings in the Member State concerned;
- Suspension of the Member State concerned from all ECOWAS decisionmaking bodies. During the period of the suspension the Member State shall be obliged to pay its dues for the period.

3. During the period of suspension, ECOWAS shall continue to monitor, encourage and support the efforts being made by the suspended Member State to return to normalcy and constitutional order.

4. On the recommendation of the Mediation and Security Council, a decision may be taken at the appropriate time to proceed as stipulated in Article 45 of the Protocol of 10th December 1999 .

Chapter III

GENERAL AND FINAL PROVISIONS

Article 46

This Supplementary Protocol shall form an integral part of the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, signed in Lome on 10th December 1999 .

ENTRY INTO FORCE

This Supplementary Protocol shall enter into force upon ratification by at least nine (9) signatory States in accordance with the constitutional procedures of each Member State .

Article 50

DEPOSITORY AUTHORITY

This Supplementary Protocol and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposit of instruments of ratification by the Member States and shall register it with the Organization of African Unity (OAU)/African Union (AU), as well as the United Nations (UN) and any other organization as may be decided by the Council.

IN FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) HAVE SIGNED THIS SUPPLEMENTARY PROTOCOL, IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES, ALL TEXTS BEING EQUALLY AUTHENTIC. DONE ATDAKAR ON THIS 21ST DAY OF DECEMBER 2001.