

A decorative graphic consisting of a grid of grey dots of varying sizes, with several dots highlighted in red. The dots are arranged in a pattern that roughly outlines the map of West Africa.

## Disturbing a Cosy Balance?

### The ECOWAS Parliament's Rocky Road to Co-Decision

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- The Economic Community of West African States (ECOWAS) has succeeded in enhancing the powers and functions of the Community Parliament. The Supplementary Act (SA) represents an important step in the democratisation of ECOWAS in the spirit of the organisation's self-prescribed »Vision 2020«, which foresees an »ECOWAS of the people« rather than an »ECOWAS of States«.
- As is the case with other regional economic communities, ECOWAS is an institution strongly dominated by the Executive. The Community Parliament has to date been unable to counterbalance this power because of its weak mandate. The adopted treaty introduces new functions for the Parliament, though on closer inspection they remain fairly limited. On the other hand, the SA establishes a level of transparency in the ECOWAS budgetary process that was hitherto not present.
- Some of the new provisions encroach on powers that are currently held by other institutions within ECOWAS. Under the stewardship of its Speaker, the Honourable Ike Ekweremadu, however, the Community Parliament has been able to build up unprecedented political momentum.
- ECOWAS, and indeed the people of West Africa, should be lauded for not missing this opportunity to strengthen democratic representation. Giving Parliament a greater say may complicate some procedures in the short term, but over time it will serve the Community's »enlightened self-interest«, as it increases both the transparency and the legitimacy of ECOWAS' actions. A more effective parliament in essence will help to bridge the gap between the people and their institutions, and thus address a fundamental challenge facing present-day West Africa.



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## 1. The Process from an Advisory Role to Limited Co-Legislation

The Economic Community of West African States (ECOWAS) was created in 1975 by the Treaty of Lagos (ECOWAS Treaty). The creation of an ECOWAS Parliament came almost 20 years later, when it was formed alongside other Community institutions with the revision of the ECOWAS Treaty in 1993.

Established by Article 13 of the ECOWAS Revised Treaty – with its composition, functions, powers and organisation further defined in Protocol A/P2/8/94 – the Community Parliament was established with a mandate to provide advice to the Community on a variety of integration issues, ranging from respect for human rights and fundamental freedoms, through public health policies and interconnection of telecommunication and energy networks, to youth and sports, among other things. The Protocol provided for 120 seats in Parliament, with each of the then 16 Member States being guaranteed a minimum of five seats and the remaining 40 seats allocated on the basis of population. After the state of Mauritania announced it was pulling out of ECOWAS in 1999, the Parliamentary seats were reduced to 115.

It took a further six years before the first legislature of the Community Parliament was officially inaugurated in Bamako (Mali) in November 2000. One major criticism both from within and outside ECOWAS is that from its birth, the Community Parliament was quite a weak institution and a Parliament only in name because it lacked legislative capacity and, with it, the ability to influence policy. Secondly, the advisory procedure was not mandatory. Hence, Community institutions could choose whether or not to adopt opinions delivered by Parliament.

The first parliamentary term expired in November 2005 and the Community Parliament was recessed for one year, during which time Protocol A/P2/8/94 was amended through Supplementary Protocol A/SP3/06/06. That same year, the Authority of Heads of State and Government directed the ECOWAS Commission and Parliament to present proposals on the enhancement of Parliament's powers, in the hope that the next legislature would be the last one with only an advisory capacity. The second legislature, inaugurated in November 2006, formed an ad hoc committee to work on these proposals, including

study visits to other regional Parliaments, such as the East Africa Legislative Assembly (EALA), which is one of the few regional parliaments in Africa with legislative powers, and the European Parliament. Though reports and recommendations were made on the enhancement process, the term of the second legislature ended without their implementation.

Following this setback, the third legislature, inaugurated in August 2011, immediately set up an ad hoc committee to – once more – work on enhancing its powers. After one year of work, the committee submitted a Draft Supplementary Act (DSA) to the Plenary, which it proposed would replace all preceding legislation governing the Community Parliament. One significant recommendation made by the Committee was that the process of enhancement of powers should not be linked to the deeply contentious question of the parliament's election but rather to possibilities of how legislative powers can otherwise be attained. A roadmap was also established to map the process by which the Draft Act could become Community law.

It is important to note that the current speaker of the ECOWAS Parliament, the Honourable Ike Ekweremadu, has been a key pillar in ensuring that the DSA was completed in time, and that the document has been approved by the Authority of Heads of States and Government on 14 and 15 of December 2014.

It is clear that the adoption of the Draft Act was the most difficult stage, as the document encroaches on what was previously within the Executive's sole competence.

## 2. Enhanced Powers – What Exactly Is in the Supplementary Act?

### 2.1 Election of Members of Parliament

Distinctively for an African regional economic community, election of Parliamentarians within ECOWAS ought to have been by direct universal suffrage. Unfortunately, despite being in the law since 1994, this provision was not operationalised, and instead, the National Assemblies of Member States elected representatives from among themselves to serve in the ECOWAS Parliament.

Table 1: Contents of current treaty and protocol and the supplementary act

	Previous Treaty and Protocols	Supplementary Act
<b>Mode of election of parliamentarians</b>	Direct Universal Suffrage – as provision was never implemented, representatives were selected from among MPs in National Assemblies.	Representatives to be elected from among citizens by National Assemblies acting as electoral colleges.
<b>Decision-making</b>	Advisory opinions only, provided in specified areas. Opinions were not mandatory for Community institutions.	Simple opinions, mandatory assent and limited co-decision and co-legislation powers.
<b>Budgetary powers</b>	Parliament had no role. Council of Ministers only had the power to approve income and expenditure of the Community.	Parliament to exercise co-decision powers with the Council over the budget.
<b>Oversight functions</b>	No official provision of such powers offered to Parliament.	Through office of Parliamentary ombudsman, confirmation of statutory appointees, mandatory and Non-mandatory referrals.
<b>Conflict prevention and management</b>	Role not officially recognised but Parliament was in the past involved in some ECOWAS efforts to resolve conflicts.	Parliament to be involved as observer in meetings of the Mediation and Security Council. May also ask the Commission President to activate conflict management mechanism.
<b>Election monitoring</b>	Parliamentarians participated in the process, though role was not officially recognised by treaty.	Parliament to nominate a number of representatives to participate in missions.

Although universal suffrage was always a key endeavour for ECOWAS, pragmatism led to this provision being cut out under the SA. The SA proposes that, similar to the East Africa Legislative Assembly (EALA), the National Assemblies of each Member State should serve as electoral colleges to elect representatives from among their citizens, who shall serve for a four-year Parliamentary term. As is the case with EALA, the chosen representatives are also expected to represent as much as possible the political configuration within each Member State. Although direct universal suffrage would benefit the democratic legitimacy of the Parliament more, the ad hoc committee on the enhancement of the powers of Parliament noted the apprehension within ECOWAS concerning the enormous funds, political will and logistics that would be needed to carry out elections simultaneously in 15 Member States.

ECOWAS brings together over 300 million citizens, over half of whom are from Nigeria, the most populous state in Africa. Previously the 115 seats in the Community Parliament were allocated on the basis of proportionality rather than equality; Nigeria with thirty-five; Ghana eight; Cote d'Ivoire seven and the rest of the Member States had either five or six seats depending on their population size. In terms of representation, these figures represent a ratio of one Member of Parliament to about

2.6 million citizens. Compared with the East Africa Community, which is more homogenous, ECOWAS is also quite diverse, in terms of languages, religion, natural resource availability and GDP per capita, among other things. It can therefore be questioned whether such few representatives can adequately represent such a diverse region. An increase in the number of representatives would perhaps have helped to redress these shortfalls but such proposals would have presumably failed on the grounds of cost.

The SA also attempts to address one of the main challenges that have encumbered the Community Parliament throughout its life. Previously, Parliamentarians had dual roles as they were also Members of their respective national Parliament, which constituted their primary mandate. Although this dual membership had some positive effects in terms of keeping close ties between ECOWAS and National Parliaments, it also meant that membership within the Community legislature was not regular, as the diverse national election calendars in Member States affected the membership of the Community Parliament. Furthermore, the system made it difficult to carry out capacity building, initiate new programmes and deploy members in various committees and tasks, as representatives had to be replaced if they lost their seat in their respective National Assemblies. A positive effect of the

SA proposal is that representatives will now be available for the full four-year Parliamentary term and will be able to concentrate fully on ECOWAS activities. Nevertheless, the new mode of election does compromise on accountability as it denies citizens a chance to select their own representatives.

Officials within ECOWAS have also expressed optimism that such representative positions will now become attractive to senior level personalities from both the private and public service sector within West Africa. Such persons would include former government ministers, speakers of Parliament, Members of Parliament, senior civil servants and retired military and other security agency officials. It is hoped that such a variety of persons would bring on board diverse experience and enrich the debates and the quality of interventions made by Parliamentarians.

It should however be emphasised that ECOWAS Member States should guard the selection process from abuse at the very outset. EALA Member States have faced criticism that this mode of election lacks transparency and is

sometimes not free and fair as all political parties do not always get fair representation. In addition, political losers in national elections have been »gifted« representative positions from their parties to give them a »soft landing« and the process is fraught with favouritism for preferred candidates.

## 2.2 Referral of Matters to the Community Parliament

The SA provides for two ways in which matters can be referred to Parliament: mandatory and non-mandatory referral. This is another channel through which Parliament sees itself exercising oversight functions over the Community. Non-mandatory referral relates to matters that need not be referred to Parliament and will be applicable in four areas: international agreements with consequences for the Community institutions, finances or litigation; membership, sanctions, suspension or exclusion of Member States by the Community; creation of institutions in the Community; and finally, Community defence, peace and security policies. These four impor-

Table 2: Mandatory and non-mandatory referral

Non-mandatory referral	Mandatory referral
Matters that need not be referred to Parliaments	Matters for which Parliament's opinion must be sought
<ul style="list-style-type: none"> <li>■ International agreements with consequences for Community institutions, finances or litigation</li> <li>■ Membership, sanctions, suspension or exclusion of Member States by the Community</li> <li>■ Creation of institutions in the Community</li> <li>■ Community defence, peace and security policies</li> </ul>	<ul style="list-style-type: none"> <li>■ Community Budget</li> <li>■ Revision of the Treaty and its Annexes</li> <li>■ Confirmation of Statutory Appointees with exceptions</li> <li>■ Annual audit reports of community organs</li> <li>■ Adoption and review of community texts related to human and financial resources</li> <li>■ Cooperation in the area of radio, television and other media links</li> <li>■ Inter-connection of energy networks</li> <li>■ Youth and sports</li> <li>■ Science and technology</li> <li>■ Community sectoral policies on education, public health, environment, agriculture, community mining, monetary integration, community citizenship, culture and tourism and defence, peace and security</li> <li>■ Promotion and protection of women and children's rights</li> <li>■ Promotion and protection of human rights</li> <li>■ Community measures on prevention of corruption, financial delinquency and cross-border crimes</li> <li>■ Measures related to free movement, right of stay, residence and establishment of Community citizenship</li> </ul>

tant situations touch at the core of political integration and it is very likely that the executive would not, as yet, agree to extend such a mandate to another Community organ. The Supplementary Act does, however, leave a door open through this procedure should the Executive wish to have Parliament involved at some level.

Mandatory referral, on the other hand, corresponds to a situation in which Parliament's opinion must be sought. It is notable that in the SA, these relate to areas that were previously within the advisory ambit of Parliament, as well as a few new areas, which include the Community budget, revision of the Revised ECOWAS treaty, confirmation of the appointment of statutory officers, annual audit reports of Community organs, Community policies on defence, peace and security, measures taken on the prevention and fight against corruption and measures related to free movement of Community citizens.

Interestingly, the area of defence, peace and security is highlighted under both mandatory and non-mandatory referral. It is not clear whether this is deliberate or an oversight on the part of the drafters. In any case, the provisions are inconsistent and create confusion concerning how this would be implemented in practice.

## 2.3 Decision-Making Powers of Parliament

It is of vital significance that the role of the Community Parliament in decision-making has been increased considerably under the SA. Once matters are referred to Parliament, it can deal with them in one of three ways: through simple opinion, mandatory assent and, finally, co-decision-making, as well as co-legislation with the Council. It should be noted that the latter two forms of decision-making were not previously within the ambit of Parliamentary powers and thus provide Parliament with wider scope of action within the Community.

The giving of a simple opinion means that the opinion of the Parliament is not binding. Such cases are generally related to areas in which Parliament previously had only an advisory capacity. The mandatory assent of Parliament is an opinion which will be binding on the institution that requests it and will be required in such areas as the selection of statutory appointees, although statutory officers appointed by the Authority of Heads of State and Government are exempted from Parliament's reach. This is indeed one of the ways in which Parliament will exercise oversight functions over other institutions of the Community. Other areas in which mandatory assent must be obtained include the

Table 3: Three ways in which Parliament deals with matters referred to it

Simple Opinion	Mandatory Assent	Co-Decision	Co-Legislation
Opinion of Parliament that is not binding	Decision by Parliament that is binding on organ that requests it	Decision made jointly by Council of Ministers and Parliament	Legislation made jointly by Council of Ministers and Parliament
<ul style="list-style-type: none"> <li>■ Inter-connection of communications links and telecommunications networks</li> <li>■ Interconnection of telecommunications systems</li> <li>■ Cooperation in the area of radio, TV and other media links</li> <li>■ Common educational policy</li> <li>■ Youth and sports</li> <li>■ Scientific and technological research</li> <li>■ Community culture and tourism policy</li> <li>■ Social integration</li> </ul>	<ul style="list-style-type: none"> <li>■ Appointment of statutory appointees, with some exceptions.</li> <li>■ Protection of human rights and fundamental freedoms</li> <li>■ Community measures related to corruption, financial crimes, free movement of citizens, community citizenship and monetary integration</li> </ul>	<ul style="list-style-type: none"> <li>■ On matters related to ECOWAS economic and monetary integration policies, including the Community Budget</li> </ul>	<ul style="list-style-type: none"> <li>■ Exercised only in matters related to ECOWAS economic and monetary integration policies</li> </ul>

protection of human rights and fundamental freedoms, as well as Community measures related to the fight against corruption, free movement of citizens, Community citizenship and monetary integration.

Lastly, at a higher level, Parliament now has the power to co-decide and co-legislate with the Council. However, the powers of co-legislation will be exercised only in relation to ECOWAS economic and monetary integration policies. Many other legislative areas would have benefitted from Parliament's reach but understandably such processes do take time. In the case of the European Parliament – which inspired ECOWAS strongly – it was many years before it gained the wide powers it now has under the Lisbon Treaty.

#### 2.4 Budgetary Powers

Under the SA, the Parliament will exercise co-decision powers with the Council on matters related to ECOWAS economic and monetary integration policies – including the budget of the Community. Previously, the power to approve all income and expenditures of the Community and its institutions was the preserve of the Council of Ministers alone and the process was fairly opaque. This SA provision is essential as it introduces a measure of transparency and control to the budgetary process that was previously lacking.

Under the Lisbon Treaty, the European Parliament obtained considerable powers over the EU Budget process. Somewhat similar to the EU procedure, the SA provides that the ECOWAS Community budget is to be adopted by the Parliament and the Council. However, unlike the EU procedure, which provides that the Council is obliged to forward its position to the Parliament, the ECOWAS procedure does not. The SA further states that in case of a conflict between the ECOWAS Parliament and the Council, this shall be referred to a Conciliation Committee for resolution. To avoid a situation in which the Community would be unable to function due to lack of agreement on the budget, at the beginning of the financial year, a sum equivalent to one-twelfth of the proposed budget for that year shall be spent each month, pending the agreement of the Conciliation Committee.

It is crucial to mention that, at present, the entire budget and conciliation process is not outlined in the SA and

further regulations are to be elaborated at a later stage. It therefore remains to be seen whether Parliament will be likely to exercise strong control over the process.

#### 2.5 Conflict Prevention, Conflict Management and Election Monitoring

ECOWAS has had historical and more recent experiences with fragility and volatility in the sub-region, including such threats as terrorism, transnational organised crime, piracy, coups, armed conflicts and environmental degradation. ECOWAS has intervened in Member States either militarily or through political diplomacy in response to such situations as the military juntas in Guinea and Niger, the attempted coup in Cote d'Ivoire and, most recently, the outbreak of armed conflict in Mali. ECOWAS has various Protocols, Resolutions and strategies for dealing with conflict and security matters, including the 1999 Protocol on the Mechanism for conflict management, peace-keeping and security. So far, however, the application of the various instruments remains ad hoc.

It is fair to say that the Community Parliament has so far not played a prominent role as far as conflict prevention and management in the sub-region are concerned. The SA attempts to redress this by including Parliament in the meetings of the ECOWAS Mediation and Security Council at the ministerial and ambassadorial levels. It would only have minor influence however, because Parliament is limited to observer status at these meetings. Furthermore, only in exceptional circumstances – which are yet to be defined – would the Parliament be allowed to ask the President of the Commission to activate the Conflict management mechanism. Beyond this, there is no further role that has been defined for Parliament in the process. This is unfortunate as Parliament could have been included more actively, for example, by means of early warning mechanisms, holding meetings with the national parliaments of affected Member States, ensuring that representatives are included in the delegation in a political mediation mission and so on. This is not to say, however, that Parliament is completely prevented from acting, as it has undoubtedly done in previous conflicts, but the SA could have gone further to explicitly recognise such action.

As for election monitoring, the inclusion of Parliament in the process is now officially recognised as it will be able to nominate a number of representatives to participate

in the process. In any event, to some extent Parliament has already been involved, most recently in Mali and Guinea-Bissau.

## 2.6 The Office of the Parliamentary Ombudsman

The SA provides for the establishment of the office of an ECOWAS Parliamentary ombudsman but the structure, role and specific duties of the office are yet to be outlined. According to discussions with officials at the ECOWAS Parliament, enthusiasm is widespread about what such a role could look like and how much it will increase the responsiveness to ECOWAS' citizens. Under the SA, one of the stated objectives of the Parliament is to ensure the right of scrutiny and involvement of the West African populations in the process of integration.

In the case of the EU, the European Ombudsman is elected by the European Parliament and is empowered to receive complaints from any EU citizen or resident, whether natural or legal, in a Member State. These complaints should concern instances of maladministration or violation of an EU law by EU institutions, bodies, offices or agencies, with the exception of the Court of Justice acting in its judicial capacity. The ombudsman is empowered to examine such complaints, conduct inquiries and, where facts of maladministration are established, to refer the matter to the concerned body which is expected to inform him of its views within three months. The person lodging the complaint is also informed of the outcome. Additionally, the ombudsman is expected to give an annual report to the Parliament on the outcome of his inquiries.

It is not yet clear what direction the office of ECOWAS Parliamentary ombudsman will take or whether the EU ombudsman's office will serve as an inspiration in outlining its mandate. Some dissenting voices within ECOWAS felt that such an office should rather have been created as an ECOWAS body than as a Parliamentary body because its mandate would extend to all ECOWAS institutions. In any event, concerted advocacy will be required to ensure that citizens know of the existence of such an office and what type of complaints can be brought forward, or whether these would be better dealt with by a national ombudsman or the ECOWAS Court of Justice. Nevertheless, if the office is not granted the necessary powers and ability to carry out its functions, this role will remain ceremonial and fail to achieve its full potential.

## 3. Potential and Prospects of Enhancement

The approved treaty introduces new powers for Parliament, though on closer inspection, these powers remain fairly limited. Co-legislation between Parliament and the Council of Ministers, for example, is restricted to economic and monetary integration policies. International agreements and sanctions will not necessarily be referred to Parliament either. Generally speaking, the Executive continues to enjoy the substance of legislative prerogative. On the other hand, the SA introduces a level of transparency in the ECOWAS budgetary process that was hitherto not present. As the entire budget and conciliation process is not yet operationalised, the implementation of this provision may take some time, however. Similarly, the added value of the proposed office of a Parliamentary Ombudsman will materialise only when the structure and specific duties have been outlined.

Despite their limited reach, some of the new provisions introduced by the SA encroach on powers that are currently held by other institutions within ECOWAS. The political process to pass the Act therefore required a fine balancing act between competing interests, such as democratic principles versus practical considerations or the ambition to reform versus the need to build consensus. Under the stewardship of the current Speaker of the ECOWAS Parliament, the Honourable Ike Ekweremadu – who is also Deputy President of Nigeria's Senate – the Community Parliament was able to build up unprecedented political momentum, despite the enhancement process encountering a number of setbacks.

Opponents of reform from the ECOWAS Commission argued that the envisaged changes would complicate procedures and disturb tried and tested practices. Certain representatives of civil society held that the Community Parliament should earn the trust of the people through political action first, before demanding that its powers be increased. The Court of Justice seemed reserved about the prospect of a Parliamentary Ombudsman possibly interfering with the Court's mandate, which is rather weak already. The strongest case against strengthening the role of Parliament used to be the lack of legitimacy of a parliament whose members are not elected by direct universal suffrage. Those employing this argument have been quick to clarify that organising ECOWAS-wide elections was of course not practicable either.



One of the key accomplishments of the Supplementary Act is to have found a constructive compromise on this issue. While the employment of National Assemblies as electoral colleges to elect representatives from among their citizens certainly provides less legitimacy than election by universal suffrage, it has some important structural advantages in comparison with the present system: representatives will have no additional national mandates and be physically present and engaged in their committees for the full four-year term; this will attract candidates with a genuine regional agenda and is quite likely to stimulate parliamentary action; it will also make sustainable capacity-building easier.

At present, the ECOWAS Parliament lacks the support structures needed to cope with an increased portfolio. With the enhancement of its powers, it is essential to assign sufficient resources to hire additional staff knowledgeable in legislative drafting, budgeting and election monitoring, among other specialisations. Communication between the ECOWAS Commission and Parliament also needs to improve to ensure better sharing of information between them. If this transition is managed well, however, the enhancement of parliamentary prerogatives in ECOWAS may serve as a rare example of a formal enhancement being followed by a functional one.

As is the case with other regional economic communities, ECOWAS is an institution strongly dominated by the Executive. The Community Parliament has thus far been unable to serve as an authoritative expositor of ECOWAS policy-making, let alone as an institutional counterbalance to the Heads of State and Government or the Council of Ministers and the Commission. The considerable diplomatic backing for the enhancement agenda garnered by the Honourable Speaker among Heads of State suggests that the most vigorous veto-players may have been found – interestingly – outside the Authority. All things considered, ECOWAS, and indeed the people of West Africa, should be lauded for not missing this opportunity to strengthen democratic representation – especially because the changes introduced by the SA are modest. Giving Parliament a greater say may be a challenging diplomatic endeavour and undoubtedly complicate certain procedures in the short run. It nonetheless serves what Immanuel Kant and Alexis de Tocqueville called »self-interest rightly understood«, as it increases the transparency, accountability and legitimacy of the Community Parliament and of ECOWAS as a whole. A more effective parliament will, in essence, help to address the fundamental challenge in present-day West Africa, namely, to bridge the gap between the people and their institutions.



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