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from

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on

“Status of enhancement of powers of a regional Parliament: Evidence from ECOWAS
Parliament”

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INTRODUCTION

The Parliament or Legislature is a strong pillar of representative democracy in any country or group of countries. The traditional role of every parliament in a democratic setting is to represent the people, enact laws for the society and oversight the Executive arm of government.

Efforts are being made in sub-Saharan Africa, particularly in West Africa, to promote representative democracy within the rule of law with a view to enhancing the standard of living of the citizens. Increasing the standard of living of West African citizens was the *raison d'être* for the establishment of the Economic Community of West African States (ECOWAS) as a regional economic community (REC) created to integrate and develop the member countries (or states) of the Community. ECOWAS is also one of the RECs that serve as the building blocks for the formation of the African Economic Community (AEC).

To actualize regional representative democracy in West Africa, the 1975 treaty establishing ECOWAS was revised in 1993 to create, among others, a Community Parliament also known as ECOWAS Parliament. Pending election of Members of Parliament by direct universal suffrage¹, Parliament is expected to serve as an advisory and consultative body to the decision making organs of the Community especially the Authority of Heads of State and Government and Council of Ministers. Over a period of time, the Parliament is to move from an advisory body and evolve gradually to a co-decision making and legislating body.

In spite of the efforts made since the inauguration of both the ECOWAS Parliament in 2000 and the First Legislature in 2001 up till the end of the Third Legislature which ended in August 2015, the Parliament is yet to become a co-decision making and legislating Parliament. This important issue of enhancement of powers of the ECOWAS Parliament is also a cardinal agenda item of the Fourth Legislature which was inaugurated in February 2016. It is, therefore, pertinent to examine the status of the enhancement process and the activities needed to be implemented before its adoption as a Supplementary Act which would complement the ECOWAS Treaty. This is the focus of this communication.

2. OVERVIEW OF ECOWAS

2.1. Preamble

The Economic Community of West African States (ECOWAS) was established on 28 May 1975 in Lagos, Nigeria via a treaty. The 1975 treaty was revised in 1993 and the 1993 Treaty was also revised in 2006. ECOWAS is a 15-member regional group comprising Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo. They are categorized as 8 francophone, 5 anglophone and 2 lusophone countries.

Its geographical size is 5.1 million square kilometre, which is 50.1 percent of the land surface area of Europe. Its economic size, measured in terms of gross domestic product (GDP), in 2016 is estimated by the International Monetary Fund (IMF) as

¹ Election by direct universal suffrage is not feasible now in ECOWAS because of the huge financial costs involved in conducting elections simultaneously in the fifteen Member States.

\$571.434 billion², which is 41.0 percent of 2016 GDP estimates of group of sub-Saharan African countries.

The vision of ECOWAS is the creation of a borderless region where the population has access to its abundant resources and is able to exploit same through the creation of opportunities under a sustainable environment. The vision involves transformation of ECOWAS from “an ECOWAS of States to an ECOWAS of People”. ECOWAS is meant to be a region governed in accordance with the principles of democracy, rule of law and good governance.

ECOWAS underwent restructuring in 2006, which led to a consolidation of the Community spirit, strengthening of supra-nationality as well as the adoption of a new legal regime (decisions directly applicable in Member States and by the Institutions). There is now a new regime for the ECOWAS Community Acts. Before the new legal regime came on board, obligations of Member States were captured principally in Protocols and Conventions, which are subject to lengthy Parliamentary ratification processes. These processes delayed the entry into force of the legal texts thereby impeding the integration process. Decisions of the Authority were, however, immediately applicable and binding on Member States, whilst those emanating from the Council of Ministers were only applicable and binding on the Community Institutions.

However, under the new legal regime, the principle of supra-nationality becomes more pre-eminent and there is now a de-emphasis on the adoption of Conventions and Protocols. Community Acts are now Supplementary Acts, Regulations, Directives, Decisions and Recommendations. Thus, the Authority passes Supplementary Acts to complement the Treaty. Supplementary Acts are binding on Member States and the institutions of the Community.

On its part, the Council of Ministers enacts Regulations and Directives and makes Decisions and Recommendations. Regulations have general application and all their provisions are enforceable and directly applicable in Member States. They are also enforceable in the institutions of the Community.

2.2. Institutions of ECOWAS

The highest institution of ECOWAS is the Authority of Heads of States and Government, which consists of all Presidents of the fifteen Member States of ECOWAS. The next institution is the Council of Ministers. Other institutions are ECOWAS Commission, the Community Parliament, the Community Court of Justice, Specialized Technical Committees, the ECOWAS Bank for Investment and Development (EBID), West African Health Organization (WAHO) and the Inter-governmental Action Group against Money Laundering and Terrorist Financing in West Africa (GIABA).

ECOWAS comprises three arms of governance, namely, the Executive, the Legislature and the Judiciary. At the helm of the organization structure is the Chairman of the Authority of Heads of State and Government. The Chairman is the

² IMF (2016) World Economic Outlook Database, October edition.

current Head of State and Government appointed by other Heads of State and Government to oversee the affairs for a period of one year, renewable once. The Minister in charge of ECOWAS affairs in the country of the Chairman of the Authority automatically becomes the Chairman of Council of Ministers. Similarly, that country presides over all other ECOWAS statutory meetings for the year (ministerial and senior level, such as the Technical Committees).

At the helm of the Executive arm of the Community is the President of ECOWAS Commission appointed by the Authority for a non-renewable period of four years. He is assisted by a Vice President and 13 Commissioners. The Commission facilitates the implementation of all ECOWAS programmes, projects and activities in the ECOWAS Member States.

The legislative arm of the Community is the Community Parliament headed by the Speaker of the Parliament. The administrative functions of the Parliament are directed by the Secretary General of the Parliament. Pending elections by direct universal suffrage in future, parliamentarians are seconded by national Parliaments to the Community Parliament for a period of four years.

The judicial arm of the Community is the Community Court of Justice, headed by the President. The Court is composed of seven (7) independent Judges who are persons of high moral character, appointed by the Authority of Heads of State of Government, from nationals of Member States, for a four-year term of office, upon recommendation of the Community Judicial council. The Court ensures the interpretation and application of Community laws, protocols and conventions. The administrative functions of the Court are handled by the Court Registrar who is assisted by other professional staff.

Details about the ECOWAS Parliament are provided below.

- ECOWAS Parliament

The ECOWAS Parliament was created in November 2000 in Bamako, Republic of Mali in compliance with the 1993 Revised Treaty of ECOWAS. Its first ordinary session was held in January 2001 and the Republic of Mali provided the first Speaker of the Parliament.

Following a restructuring of ECOWAS Institutions by the Authority of Heads of State and Government in 2006 in which the life span of the Legislature was reduced from five to four years, the second Legislature was inaugurated in November 2006 for a four year period till 2010 under the Speakership of the Republic of Niger. The third Legislature from August 2011 – 2015 was under the Speakership of the Federal Republic of Nigeria. The current Legislature, from 2016 – 2020, was inaugurated in February 2016 and its Speaker is from the Republic of Senegal. In fact, Speakership of the Parliament is based on alphabetical order. It is expected that the next Speaker would come from Sierra Leone.

There are 115 Members of Parliament drawn from the 15 Member States based on the population of each Member State. Irrespective of the population of each country, the minimum number of Members per country is five (5). Nigeria has the highest number of Members, which is thirty five (35).

The 115-Member Parliament has an advisory and consultative role towards the decision-making organs of the Community. In accordance with relevant provisions of its Protocol, the Parliament may consider any matter concerning the Community in particular issues relating to Human Rights and Fundamental Freedoms. Parliament may also be consulted for its opinion on matters concerning the Community and the opinion of the Parliament shall also be sought in certain areas enumerated in the Protocol.

The structure of the Parliament consists of the Plenary which is the highest decision-making body of Parliament; a Bureau comprising the Speaker and four Deputy Speakers as the governing board; a Conference of Committee Bureaux that represents all Standing Committees of Parliament; and a General Secretariat under the leadership of the Secretary General to provide technical, administrative and financial services to the Parliament.

The Parliament sits in session three times in a year consisting of two ordinary sessions in May and September and an extraordinary session at any time in the course of the year to discuss an urgent specific agenda item.

Currently, the Members of ECOWAS Parliament are elected from amongst Members of the National Assemblies of Member States for a period of four years. Proceedings in ECOWAS Parliament are governed by its Rules of Procedure and plenary decisions are adopted by way of Resolutions.

3. POWERS BEING SOUGHT BY THE ECOWAS PARLIAMENT

Article 4(2) of the Supplementary Protocol A/SP.3/06/06 amending Protocol A/P.2/8/94 relating to the Community Parliament states that “the powers of the ECOWAS Parliament shall be progressively enhanced from advisory to co-decision making and subsequently to a law making role in areas to be defined by the Authority”. In compliance with the provisions of the Article, the ECOWAS Parliament seeks enhancement of its powers to enable it perform effectively its statutory role as a regional Parliament.

Proposals in the draft Supplementary Act have been reviewed to involve the Parliament in the legislative process in the following manner:

3.1. Mandatory Referral

Referral to the Parliament will be mandatory in the following areas:

- Community budget;
- Revision of the Treaty and its annexes;
- Annual Audit Reports of Community organs and institutions;
- Adoption or Review of all Community Acts relating to ECOWAS Economic and Monetary Integration including trade, customs, free movement of persons, goods and services, infrastructure, monetary cooperation, industry and mining, private sector and investment promotion;
- Other integration matters covered by the Technical Committees established under New Article 22, new paragraph (1.b) of the Supplementary Protocol A/SP.3/06/06 amending the Revised Treaty; and
- Any other sectoral policy decided upon by the Authority.

3.2. Non-Mandatory Referral

Referrals to Parliament will not be mandatory in the following areas:

- International Agreements affecting the Community Institutions;
- Membership, sanction, Suspension or Exclusion of Member States by the Community;
- Creation of Institutions as referred to in Article 3 of the Treaty; Community defense, peace and security policies.

3.3. Opinion of Parliament

Subsequent to a matter being referred to Parliament, two possibilities become available to Parliament: Opinion and Mandatory Assent

3.3.1. Opinion

An Opinion of Parliament will be required on the consideration of the Community Budget, the annual audit reports on Community Institutions, and other areas referred to under Article 9.1e of the Supplementary Act.

3.3.2. Mandatory Assent

The Council of Ministers shall continue to adopt Community instruments in line with Community Regulation. However, preceding the adoption by Council, matters within the following specific areas shall require the mandatory assent of Parliament:

- Revision of the Treaty and its annexes;
- Promotion and protection of Human Rights and Fundamental Freedoms.
- Adoption or Review of all Community Acts relating to ECOWAS Economic and Monetary Integration policies including trade, customs, free movement of persons, goods and services, infrastructure, monetary cooperation, industry and mining, private sector and investment promotion.

4. NEXT STEPS

Following the adoption of the report of the Ad-hoc Committee on Enhancement of Powers of ECOWAS Parliament in October 2016, the following activities have been noted for implementation:

- i. Presentation of Draft Supplementary Act on Enhancement of Powers (in a descending order) to:
 - Legal Experts from Member States
 - Ministers of Justice
 - Council of Ministers
 - Authority of Heads of State and Government for consideration and adoption.
- ii. Election of Members of Parliament through Direct Universal Suffrage in future.
- iii. Following election by direct universal suffrage, there would be inauguration of a Legislature with full powers to undertake the traditional roles of Parliament which include representation, legislation and oversight.

5. CONCLUSION

The ECOWAS Parliament strives to represent the peoples of West Africa. Currently, the Members of Parliament are indirectly elected by citizens into ECOWAS

Parliament through the national Parliaments. Ultimately, the Members of Parliament will have to be elected through direct universal suffrage.

Efforts have been made by all successive Legislatures to enhance the powers of the Parliament. However, up till now, a Supplementary Act on the enhancement of powers of ECOWAS Parliament is yet to be adopted by the Authority of Heads of State and Government. Renewed efforts are being made to ensure that the Supplementary Act is adopted.

As part of the gradual evolution of the Parliament, all areas in the Draft Supplementary Act which are contentious with the roles and powers of the Council of Ministers, ECOWAS Commission and ECOWAS Court of Justice have been removed. All the contentious areas will be revisited once the representatives are elected through direct universal suffrage.

It is believed that enhancement of powers of the ECOWAS Parliament will bring ECOWAS closer to the peoples of the region. It will also promote regional integration and development in West Africa which will ultimately lead to an effective functioning of the African Economic Community (AEC). It is expected that all the outstanding activities necessary for the adoption of a Supplementary Act on the enhancement of powers of ECOWAS Parliament will be effectively implemented as soon as possible.

REFERENCES

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