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ECOWAS MEDIATION GUIDELINES

ECOWAS Mediation Guidelines

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Foreword

By H.E. President of the ECOWAS Commission

During the past three decades, the West African region has witnessed violent conflict, coups d'état, civil wars and political instability in some Member States, with dire consequences for the entire region and its peoples. These periods of unrest have also slowed down the integration and development agenda of the Economic Community of West African States (ECOWAS), which was the primordial objective of the founding fathers. In many such cases, ECOWAS has successfully intervened to restore peace and stability. These interventions have been guided by ECOWAS' normative frameworks [1] and its Peace and Security Architecture.

While due credit must be accorded to the commitment of the Authority of Heads of State and Government, the efforts and personal involvement of appointed Mediators need to be emphasised and applauded. In view of consolidating the achievements and lessons-learned, and also to better prepare for future interventions and support mediators in their assignments, it was deemed necessary to create a dedicated structure within the Commission to backstop and guide ECOWAS mediation interventions, which led to the establishment of a Mediation Facilitation Division (MFD) within the Directorate of Political Affairs, under the Department of Political Affairs Peace and Security (PAPS). As part of its operationalization and current work programme, the MFD has developed this policy and operational document – the "ECOWAS Mediation Guidelines" (EMG) – especially for use by ECOWAS' Mediators, Facilitators, and Special Envoys, including members of the Council of the Wise and Special Representatives to assist them during their assignments.

This document is definitely appropriate and welcome at this point. It provides ECOWAS-appointed Mediators, Special Envoys, and Facilitators, including members of the Council of the Wise and Special Representatives a comprehensive and an informative tool on effective mediation processes, and to further guide their efforts on the peaceful resolution of disputes and conflicts. Indeed, the EMG outlines the preventive diplomacy and mediation approach in the context of ECOWAS, focuses on ECOWAS decisions making for preventive diplomacy and mediation interventions and identifies a set of key guiding principles for Mediation interventions within the region.

Additionally, the EMG:

- ✓ Provides information on ECOWAS' Normative Frameworks and Instruments on peace and security;
- ✓ Captures lessons-learnt and best practices of successful mediation processes in the ECOWAS region;
- ✓ Provides advice to Mediators, Facilitators and Special Envoys and their team of experts on the design and management of mediation processes; and
- ✓ Identifies fundamentals and principles to be considered while undertaking mediation efforts.

These guidelines have been tailored to the ECOWAS context and will be an added value to ECOWAS preventive diplomacy and mediation efforts and initiatives. It is the responsibility of the Community and all the actors who have contributed to the success of ECOWAS mediation so far to own and promote these guidelines.

In this regard, I would like to pay tribute to past ECOWAS Mediators and Special Envoys, given the fact that these guidelines have been developed based on their practical experiences in previous mediation efforts. I would therefore wish to invite ECOWAS Member States to lead the way in promoting the ECOWAS Mediation Guidelines for effective use in the Community's preventive diplomacy and mediation efforts across the region.

Marcel A. de SOUZA

President of the ECOWAS Commission

Introduction

By H.E. Commissioner for Political Affairs Peace and Security

Since the end of the Cold War, the activities of intermediaries in assisting and encouraging parties to peacefully resolve their disputes and conflicts have grown exponentially. Indeed, the number of actors engaged in preventive diplomacy, mediation and associated forms of third party – often termed benign – intervention has mushroomed. This is particularly the case in the African continent where a significant number of actors, ranging from States and individuals, to organisations such as the United Nations (UN), the African Union (AU), the Regional Economic Communities (RECs) and civil society organisations (CSOs) have become key actors.

From its creation in 1975, the Economic Community of West African States (ECOWAS) has been involved in preventive diplomacy and mediation in the West Africa region. ECOWAS experience with these particular forms of intervention is considerable, the organisation's commitment to the continued strengthening of its ability to successfully lead mediation processes unwavering.

Indeed, preventive diplomacy and mediation have been at the heart of ECOWAS' burgeoning peace and security architecture for the West Africa region – core tools in the organisation's arsenal of strategies to prevent, manage and resolve conflict and combat human insecurity. Indeed, ECOWAS peace-making experience begins in the late 1980s, early 1990s with interventions in Liberia (1990), Sierra Leone (1991) and Guinea-Bissau (1998). Later, ECOWAS intervened in a mediation capacity in Guinea-Bissau (starting in 2004-2010), in the Republic of Guinea (2007-2010), in Côte d'Ivoire (2010-2011), in Mali (2012), again in Guinea-Bissau (2015 to the present) as well as Burkina Faso (2014) and The Gambia (2016-2017).

In this context, the adoption in 2008 of the ECOWAS Conflict Prevention Framework (ECPF) and, in 2010, of the "Monrovia Declaration" emphasised the urgent need to establish a structure that would backstop mediators in the field and also ensure effective collaboration between official and unofficial mediation interventions.[2] The crisis in Mali in 2012 further brought to the fore the need for ECOWAS to establish a mediation support structure within the ECOWAS Commission.

Indeed, at the 43rd Ordinary Session of the Authority, which took place in Abuja on 16-17 July 2013, ECOWAS Heads of State and Government instructed the Commission to expedite a review of the ECOWAS Peace and Security Architecture with regard to preventive diplomacy and rapid military response capability.

By 2015, and following several experts meetings, assessments, and planning, the Mediation Facilitation Division (MFD) was established with the mandate of supporting the Directorate of Political Affairs in the coordination and monitoring of mediation efforts by ECOWAS institutions and organs, Member States and non-State actors.

It is in this context, and with the purpose of strengthening ECOWAS preventive diplomacy and mediation interventions that the Commission decided to put together a set of mediation guidelines. Under the direction of ECOWAS' Directorate of Political Affairs and in particular the Mediation Facilitation Division, these guidelines have been developed through an inclusive consultative process, involving interviews and focus group discussions with key ECOWAS Commission decision-makers, technical staff, Special Envoys and Permanent Representatives as well as partners.

The ECOWAS Mediation Guidelines also build on the vast preventive diplomacy and mediation experience of the international community, ECOWAS Member States, regional and sub-regional organisations, non-governmental organisations (NGOs), women's groups, religious leaders, the academic community, as well as mediators and mediation specialists. These guidelines have been presented, discussed and adopted after an Expert Validation Workshop.

The ECOWAS Mediation Guidelines are grounded on the series of key legal and normative instruments adopted by ECOWAS over the years as well as the organisation's practical experience with regards to conflict prevention, management and resolution. Indeed, the guidelines aim at supplementing ECOWAS' key legal and normative instruments by developing a specific normative framework underpinning mediation interventions by the organisation.

The ECOWAS Mediation Guidelines are clustered around the following key dimensions: (i) Preventive Diplomacy and Mediation in the context of ECOWAS: Legal and institutional background; (ii) ECOWAS Decision-Making for Preventive Diplomacy and Mediation Interventions; and (iii) ECOWAS Guiding Principles for Mediation.

ECOWAS GUIDING PRINCIPLES FOR MEDIATION

PRINCIPLE 1 EARLY AND TIMELY INTERVENTIONS:
PRIORITISING PREVENTIVE ACTION

PRINCIPLE 2 COMPREHENSIVE AND INTEGRATED INTERVENTIONS:
AN ECOWAS PREVENTIVE DIPLOMACY AND MEDIATION SYSTEM

PRINCIPLE 3 THE PROFILE OF THE MEDIATOR:
PROFESSIONALISM AND SKILLS

PRINCIPLE 4 PREPARADNESS AT ALL STAGES OF MEDIATION:
PROFESSIONAL MEDIATION SUPPORT, EXPERTISE AND CAPACITY

PRINCIPLE 5 CONSENT

PRINCIPLE 6 CULTURALLY GROUNDED MEDIATION

PRINCIPLE 7 IMPARTIALITY AND NEUTRALITY

PRINCIPLE 8 GENDER SENSITIVITY AND ENGENDERED MEDIATION

PRINCIPLE 9 INCLUSIVITY AND PARTICIPATION

PRINCIPLE 10 COHERENCE WITH ECOWAS AND INTERNATIONAL NORMS

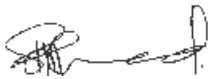
PRINCIPLE 11 SUBSIDIARITY, COLLABORATION, COMPLEMENTARITY AND
COMPARATIVE ADVANTAGE

The guidelines are a key part of the process of professionalising mediation at ECOWAS, of strengthening the organisation's capacity for mediation support, as well as, of strengthening coordination, coherence and complementarity with other actors. The guidelines summarise and clarify ECOWAS' decision-making processes regarding preventive diplomacy and mediation interventions, as well as the processes of selection and appointment of mediators, facilitators, special envoys and representatives. Importantly, these guidelines serve as guidance to the organisation's appointed mediators, facilitators, special envoys and representatives by providing a set of key principles that must underpin preventive diplomacy and mediation interventions, including the basic elements of a code of conduct for ECOWAS mediators. In addition, these guidelines define mediation and the role of the mediator, and, importantly, contain a gender perspective on mediation.

It is important to clarify that the ECOWAS Mediation Guidelines do not provide a detailed and in-depth discussion of preventive diplomacy and mediation per se, either of an academic and/or policy nature. Furthermore, while building on key lessons on mediation learned by ECOWAS over the years, it should be noted that these guidelines do not provide a comprehensive review of the organisation's past mediation efforts, which can be found elsewhere.

Finally, it is important to note that these Guidelines are complemented by a set of ECOWAS specific Standard Operating Procedures (SOPs) for Mediation, which describe in more detail the different processes, actors and how the institution's different directorates are involved in mediation.

It is anticipated that the ECOWAS Mediation Guidelines will become a pivotal tool in strengthening and enhancing the effectiveness of ECOWAS preventive diplomacy and mediation efforts in the region.



Halima Ahmed
Commissioner for Political Affairs Peace and Security

I

Preventive Diplomacy and Mediation in the Context of ECOWAS

Legal and Normative Background

I

Preventive Diplomacy and Mediation In The Context of Ecowas

Legal and Normative Background

The ECOWAS Mediation Guidelines build on a series of key legal and normative instruments that establish the organisation's mandate, powers, institutions and decision-making procedures with regard to preventive diplomacy and mediation. For the purposes of the guidelines, it is important to recall the key provisions of each of the legal and normative instruments listed in the box below as they pertain to the areas of preventive diplomacy and mediation. In the section that follows, the guidelines discuss in detail the institutional decision-making processes that inform ECOWAS preventive diplomacy and mediation interventions.

The ECOWAS Treaty, the 1978 Protocol on Non-Aggression and the 1981 Protocol on Mutual Assistance in Defence

ECOWAS was established in May 1975 with the vision of "creating a single regional economic community through integration and collective self-reliance". In its early years, although peace and security were not explicitly mentioned in the ECOWAS Treaty, Member States felt the need to agree on a set of security arrangements that would govern their relations with regards to collective security, defence and non-aggression.

To this end, ECOWAS Member States adopted two key protocols: the 1978 Protocol on Non-Aggression[3] and the 1981 Protocol on Mutual Assistance in Defence[4].

Designed primarily to address external threats and aggression as well as potential inter-state conflicts and wars, these two protocols continued, over the following two decades, to inform the practice of the organisation in matters of conflict prevention, management and resolution in important ways.

Key ECOWAS legal and normative instruments pertaining to preventive diplomacy and mediation (in a chronological manner):

- The Protocol on Non-Aggression adopted on 22 April 1978 in Lagos, Nigeria;
- The Protocol Relating to Mutual Assistance on Defence, adopted on 29 May 1981 in Freetown, Sierra Leone;
- The Declaration of Political Principles of the Economic Community of West African States, adopted on 6 July 1991 in Abuja, Nigeria;
- The Revised Treaty of ECOWAS adopted on 24 July 1993 in Cotonou, Benin;
- The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, adopted on 10 December 1999 in Lomé, Togo;
- The Protocol on Democracy and Good Governance, adopted on 21 December 2001 in Dakar, Senegal;
- The ECOWAS Conflict Prevention Framework, adopted on 16 January 2008 in Ouagadougou, Burkina Faso.

Indeed, the 1978 Protocol on Non-Aggression codified in its Article 1 the "refrain from the threat or use of force or aggression…against the territorial integrity (and) political independence of other member States". Importantly, Article 5(2) provides the first iteration of a clear role and responsibility of ECOWAS in cases of violent conflict (understood by the drafters as inter-state conflict) by stipulating the procedures to be followed in these cases: "any dispute, which cannot be settled peacefully among Member States, shall be referred to a Committee of the Authority. In the event of failure of settlement by the aforementioned Committee the dispute shall finally go to the Authority".

The Protocol on Mutual Assistance on Defence adopted in 1981 further clarifies the collective security arrangement that henceforth should guide member states

in situations of conflict. Article 2 stipulates that any armed threat or aggression directed against any Member State shall constitute a threat or aggression against the entire Community. In addition, the ECOWAS Authority is entrusted with a set of new powers, functions and institutional structures in matters of peace and security. These included, inter alia, the power to decide on armed intervention (Articles 13-18); the task of creating the Allied Armed Forces of the Community and examining general problems concerning peace and security of the Community; establishing the Defence Council at Ministerial level and a Defence Commission composed of Chiefs of Defence Staff.

The 1978 Protocol on Non-Aggression and the 1981 Protocol Relating to Mutual Assistance on Defence

These Protocols defined a set of principles that remained pivotal through the 1990s in the organisation's approach to conflict prevention, management and resolution. While both protocols focus exclusively on intervention in conflicts between two or more member states, these principles are worth highlighting:

- the respect to the territorial integrity and political independence of Member States;
- peaceful settlement of disputes and refraining from the threat or use of force or aggression;
- collective security/alliance;
- intervention in inter-state conflicts.

The 1993 Revised Treaty of ECOWAS

The eruption of the civil wars in Liberia (1989) and Sierra Leone (1991) and the ensuing spread of refugees, proliferation of small arms and light weapons, infiltration of rebels across borders, and widespread human insecurity and humanitarian crises in the region, required from ECOWAS a robust response. Although primarily internal in nature, these conflicts evidenced deep regional dimensions requiring ECOWAS to devise a set of mechanisms that would enable it to intervene. An important step was the adoption of the 1991 Declaration of Political Principles.

The 1991 Declaration of Political Principles

The series of protocols adopted by Member States during the 1990s are evidence of ECOWAS' efforts at strengthening its capacity to address internal conflicts by securing a mandate for the legitimate right to intervene in a member state under certain specific circumstances. In this regard, a pivotal legal and normative instrument was the Declaration of Political Principles adopted by the ECOWAS Authority in Abuja, Nigeria, on 6 July 1991. This declaration set out a set of principles meant to inform but also to reinforce Member States' mutual adherence to the peaceful settlement of disputes, respect to fundamental human rights, political pluralism and democracy.

At the same time, the organization began the process of revising its foundational treaty, today known as the Revised ECOWAS Treaty adopted in 1993.[5] This revision had a dual purpose: to accelerate the process of regional integration and to address the debilitating effects on the integration agenda caused by civil conflicts in some member states.

The 1993 Revised ECOWAS Treaty contains key provisions of relevance to the guidelines. First and foremost, it recommits Member States to the gradual strengthening of the supranationality of the regional body. Indeed, the preamble of the Revised ECOWAS Treaty reads that the Heads of State and Government of ECOWAS are "convinced that the integration of the Member States into a viable regional Community may demand the partial and gradual pooling of national sovereignties to the Community within the context of a collective political will".

Article 4 on Fundamental Principles – which was not part of the original 1975 ECOWAS Treaty – is also relevant. In this article, Member States affirm and adhere to a certain number of principles, several of which were, as noted above, already adopted as part of the 1978 and the 1981 Protocols:

a. Equality and inter-dependence of Member States;
b. Solidarity and self-reliance;
c. Inter-State cooperation, harmonization of policies and integration programmes;
d. Non-aggression between Member States;
e. Maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness;

f. Peaceful settlement of disputes among Member States, active Co-operation between neighbouring countries and promotion of a peaceful environment as a prerequisite for economic development;

g. Recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;

h. Accountability, economic and social justice and popular participation in development;

i. Recognition and observance of the rules and principles of the Community;

j. 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;

k. Equitable and just distribution of the costs and benefits of economic co-operation and integration.

Article 58(2) of the 1993 ECOWAS Revised Treaty:

In pursuit of these objectives, Member States undertake to co-operate with the Community in establishing and strengthening appropriate mechanisms for the prevention and resolution of intra-State and inter-State conflicts, paying particular regard to the need to:

a. Maintain periodic and regular consultations between national border administration authorities;
b. Establish local or national joint commissions to examine any problems encountered in relations between neighboring states;
c. Encourage exchanges and cooperation between communities, townships and administrative regions;
d. Organize meetings between relevant ministries on various aspects of inter-State relations:
e. Employ where appropriate, good offices, conciliation, mediation and other methods of peaceful settlement of disputes;
f. Establish a regional peace and security observation system and peace-keeping forces where appropriate;
g. Provide, where necessary and at the request of Member States, assistance to Member States for the observation of democratic elections.

Moreover, Chapter X of the Revised Treaty is specifically dedicated to "Co-operation in political, judicial and legal affairs, regional security and immigration" and explicitly contains a recommitment to the Protocol on Non-Aggression and the Protocol on Mutual Assistance on Defence. Most importantly, Chapter X of the Revised Treaty contains the pivotal Article 58(2) on Regional Security, which for the first time in the organisation's history clearly addresses the prevention and resolution of intra-state conflicts.

As can be seen in paragraphs (e) and (f) in particular, member states stipulate, for the first time, the use of mediation, conciliation and good offices (among others) in the peaceful settlement of disputes. The creation of an observation system to monitor peace and security issues and the establishment of peace-keeping forces are also agreed to. In order to equip the institution with the means to embark on these, several technical commissions were established within the Executive Secretariat, today's ECOWAS Commission.

The 1999 Protocol on the Mechanism

While the 1993 Revised ECOWAS Treaty provided the organisation with a set of initial provisions for the prevention, management and resolution of intra-state and inter-state conflicts, ECOWAS continued to pursue a more comprehensive legal and normative instrument that could inform the organisation's efforts in addressing the various cases of civil war, political conflicts and instability that affected the region in the 1990s.

These efforts culminated in the adoption in December 1999 of the "Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security" in Lomé, Togo (henceforth Protocol on the Mechanism).[6] **The Protocol on the Mechanism remains the most important legal and normative instrument for ECOWAS in all matters relating to peace and security.**

In the Preamble, the Protocol on the Mechanism makes explicit recognition that good governance, the rule of law and sustainable development are essential for peace and conflict prevention. The Preamble also emphasises the Mechanism's grounding on the United Nations (UN) and Organisation of African Unity (OAU) Charters, the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

Key Principles of the Mechanism

Article 2 of the Protocol on the Mechanism defines its key principles. These are, inter alia:

- the recognition that economic and social development and the security of peoples and States are inextricably linked;
- the promotion and reinforcement of the free movement of persons, the right of residence and establishment;
- the promotion and consolidation of a democratic government as well as democratic institutions in each member State;
- the protection of fundamental human rights and freedoms and the rule of international humanitarian laws;
- the equality of sovereign states and territorial integrity and political independence of Member States.

With significant implications for the organisation's preventive diplomacy and mediation activities, the Protocol on the Mechanism establishes a regional peace and security architecture composed of new institutions, with new powers and responsibilities given to existing ones.

The main objectives of the Mechanism include, among others:

i) Prevention, management and resolution of internal and inter-State conflicts (Article 3(a);

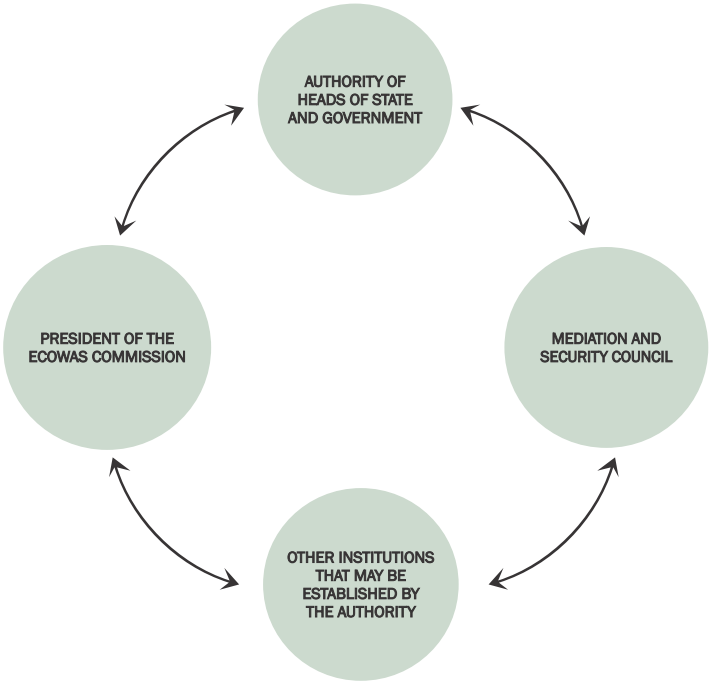
ii) Strengthening cooperation in the areas of conflict prevention, early-warning, peace-keeping operations, the control of cross-border crime, international terrorism and proliferation of small arms and anti-personnel mines (Article 3(d);

(iii) Promotion of close cooperation between Member States in the areas of preventive diplomacy and peace-keeping (Article 3(g).

Specifically, Article 4 of the Protocol on the Mechanism enumerates the **key institutions of the Mechanism.** These are:

- the Authority of Heads of State and Government (henceforth the Authority);
- the Mediation and Security Council;
- the Executive Secretariat (henceforth the Commission);
- and any other institution as may be established by the Authority.

The ECOWAS Mechanism: Key Institutions



The **Authority** is the highest decision-making body of the Mechanism. Article 6(2) of the Protocol on the Mechanism gives it the powers to act on all matters concerning conflict prevention, management and resolution, peace-keeping, security, peace-building among others. Yet, the Authority delegates its powers to the **Mediation and Security Council** as per Article 7 of the Protocol on the Mechanism.

The functions of the **Mediation and Security Council** are defined in Article 10(2) of the Protocol on the Mechanism:

a. Decide on all matters relating to peace and security;
b. Decide and implement all policies for conflict prevention, management and resolution, peace-keeping and security;
c. Authorise all forms of intervention and decide particularly on the deployment of political and military missions;

d. Approve mandates and terms of reference for such missions;
e. Review the mandates and terms of reference periodically, on the basis of evolving situations;
f. On the recommendation of the Executive Secretary (henceforth President of the Commission), appoint the Special Representative of the President of the Commission and the Force Commander.

The Mediation and Security Council is supported by a Council of the Elders (henceforth the **Council of the Wise**), the Defence and Security Commission and the ECOWAS Standby Force (ESF).

The **President of the Commission** is also given an important role and functions in this Mechanism. Article 15(1) and (2) stipulate that "the President of the Commission shall have the power to initiate actions for conflict prevention, management, resolution, peace-keeping and security in the region. *Such actions may include fact-finding, mediation, facilitation, negotiation and reconciliation of parties in conflict*".

With reference to preventive diplomacy and mediation, the Council of the Wise is an important Organ in support of the Mediation and Security Council. This Council is composed of eminent personalities of various segments of society, including women, political, traditional and religious leaders who on behalf of ECOWAS, "can use their good offices and experience to play the role of mediators, conciliators and facilitators". Although in the past the Council was constituted only on an ad-hoc basis for the purposes of specific missions to be carried out, the new Statutes of the Council of the Wise have strengthened it with members being now appointed for a renewable one year term, and a minimum of two statutory meetings per year. According to Article 2(2) and 2(3) of the new Statutes "the President of the Commission shall compile on an annual basis, a list of eminent persons who, on behalf of ECOWAS, may offer their good offices and experience on mediation, conciliation and facilitation" and "the President of the ECOWAS Commission shall nominate eminent personalities from the approved list who shall constitute the Council of the Wise."

In addition, the Early Warning System (Chapter IV, Articles 23 and 24) and ESF (Chapter III, Articles 21 and 22) are also defined as part of the Mechanism.

The 2001 Protocol on Democracy and Good Governance

The 2001 Protocol on Democracy and Good Governance[7] is also important for

the guidelines. Indeed, it is meant to complement and clarify the principles of the Mechanism set out in the Protocol on the Mechanism discussed above. It details constitutional convergence principles, which are based on the principles of good governance, respect for the rule of law, separation of powers, independence of the judiciary, promotion of non-partisan and responsible press and democratic control of the armed forces, elections, election monitoring and assistance, the role of the armed forces, police and security forces in a democracy, poverty alleviation and promotion of social dialogue, rule of law, human rights and good governance among others.

Furthermore, this protocol stipulates that every accession to power in the region must be made through democratic elections, emphasizes zero tolerance for power obtained or maintained through unconstitutional means, and maintains the supremacy of democratically elected governments' control over Member States armed forces. In recognition of the importance of mediation, the Protocol in its article 36 encourages Member States to 'institutionalise a national mediation system'.

The 2008 ECOWAS Conflict Prevention Framework

The most recent legal and normative instrument informing ECOWAS conduct of preventive diplomacy and mediation is the ECOWAS Conflict Prevention Framework (henceforth ECPF) adopted by the Mediation and Security Council in January 2008.[8]

Members of the Mediation and Security Council considered that, because the region continued to be afflicted by "conflicts and socio-political crises whose causes are multiple and were not detected or identified at the appropriate time for prevention", the ECPF should serve as a reference for the ECOWAS system and Member States in "their efforts to strengthen human security in the region". In the ECPF, human security is defined as "the creation of conditions to eliminate pervasive threats to people's and individual rights, livelihoods, safety and life; the protection of human and democratic rights and the promotion of human development to ensure freedom from fear and freedom from want".

Several provisions of the ECPF are relevant for our purposes as the ECPF is designed to support the organs of the Mechanism, including the Council of the Wise and Special Mediators. Indeed, the priority given in the ECPF to preventive diplomacy marked the commencement of efforts towards improving ECOWAS mediation architecture.

Operational and Structural Prevention in the ECPF

The ECPF aims at being a comprehensive operational conflict prevention and peace-building strategy and a guide for enhancing cohesion and synergy between relevant ECOWAS departments on conflict prevention initiatives. Following international best practice, an important distinction is made between operational (direct) prevention and structural prevention:

- Operational prevention is defined in the ECPF as measures applicable in the face of imminent crisis (early warning, mediation, conciliation, preventive disarmament and preventive deployment).
- Structural prevention is defined in the ECPF as measures to ensure that crises do not arise in the first place (peace-building initiatives).

In terms of preventive diplomacy, the ECPF aims at "operationalizing the relevant provisions of Article 58 of the Revised Treaty; Articles 3, 8-27, 31-32 of the Mechanism; and Article 36 of the Supplementary Protocol on Democracy and Good Governance".

The ECPF defines, in Article 48, the objective of preventive diplomacy as: "to defuse tensions and ensure the peaceful resolution of disputes within and between Member States by means of good offices, media-tion, conciliation and facilitation based on dialogue, negotiation and arbitration".

The ECPF goes further by stating that "usually applied in the face of imminent crisis, preventive diplomacy shall also be applicable in the management, resolution and peace-building phases of conflict".

Substantially expanding on Article 15(2) of the Protocol on the Mechanism, Paragraph 49(g) of the ECPF states that "ECOWAS and Member States, taking into account of gender equity, shall facilitate the active involvement of former Heads of State, Eminent and high-profile personalities in mediation, conciliation and facilitation as ECOWAS Special Envoys and Ambassadors".

Echoing the provisions of the Protocol on the Mechanism with regard to the involvement of national and sub-national actors, the ECPF also calls for the involvement of relevant institutions within member States (Paragraph 49(j) and 49(l)). Paragraph 29(l) in particular states that "Member States shall work closely with the Zonal Bureaux, the Council of the Wise and the Office of the Special Representative through the ECOWAS

Article 49 of the ECPF

Paragraph 49 of the ECPF is important for these guidelines, in particular:

- Paragraph 49(c) : "the Mediation and Security Council may appoint one or more of its members or eminent personalities for high-level mediation and arbitration within and between States"; and
- Paragraph 49(e) the President of the Commission, in consultation with the Chairperson, shall deploy a Special Mediator, Special Envoy or Member(s) of the Council of the Wise to any Member State in a situation of potential crisis on a fact finding mission for the purposes of studying the situation on the ground and advising the President on options for defusing any tensions.

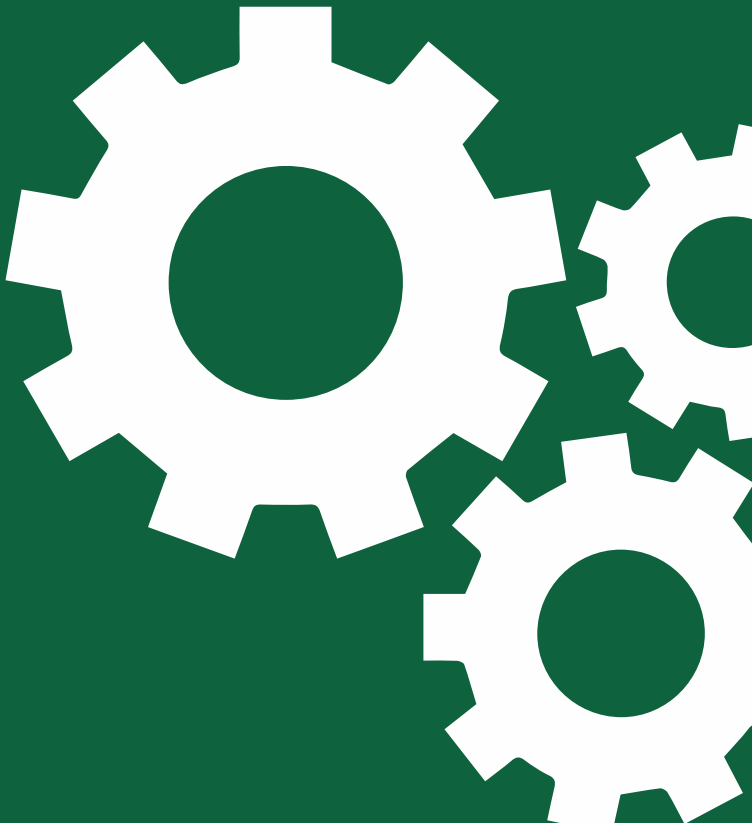
National Units to mobilise local resources, including eminent persons, traditional rulers, religious leaders, community groups, women's organisations, other civil society organisations, the private sector and any such actors as may be necessary".

The ECPF also pays quite some attention to capacity building at all levels (Article 51) and to measuring progress in preventive diplomacy (Article 50) with the ultimate aim of peaceful resolution of disputes becoming a norm in the region.

Of relevance to the development of the guidelines are Article 49(I): "ECOWAS may either establish or shall facilitate capacity enhancement of relevant institutions of the Community to undertake mediation and arbitration activities within and between Member States" and (j) "ECOWAS shall facilitate the enhancement of the competence and skills of the appropriate state institutions and civil society institutions within Member States to undertake mediation, conciliation and arbitration activities". Finally, Article 49(h) calls for ECOWAS to "build a mediation facilitation capacity within the Commission to promote preventive diplomacy interventions in the region through competence and skills enhancement of mediators, information sharing and logistical support".

II

ECOWAS Decision - Making for Preventive Diplomacy and Mediation Interventions



II

ECOWAS Decision-Making for Preventive Diplomacy and mediation interventions

Grounded on the fundamental principles defined in the 1993 Revised ECOWAS Treaty, decision-making processes with regard to preventive diplomacy and mediation are clearly stipulated in the 1999 Protocol on the Mechanism as noted above, with additional guidance given in the 2008 ECPF. In addition, over the last three decades, ECOWAS has developed, through practice, a specific culture of decision-making in cases of preventive diplomacy and mediation. This section aims at stipulating and clarifying the decision-making processes involving all relevant institutions and organs at ECOWAS with regard to preventive diplomacy and mediation interventions, including processes of selection and appointment of mediators, special envoys and representatives.

Decision-Making: Institutions and Processes

The Protocol on the Mechanism defines a new peace and security architecture for the West Africa region. At the centre of this architecture is the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security. This Mechanism is composed of key ECOWAS institutions, namely the Authority of Heads of State and Government, the Mediation and Security Council, the ECOWAS Commission and any other institution as may be established by the Authority.

The 2001 Protocol on Democracy and Good Governance further clarifies the conditions for the triggering of the Mechanism, in particular with relevance to rule of

Application of the Mechanism

In terms of decision-making procedures, it is important to recall the ***conditions that must be present for the application of the Mechanism***. These conditions, which trigger the Mechanism into action, are clearly defined in Article 25 of the Protocol on the Mechanism as follows:

a. In cases of aggression or conflict in any Member State or threat thereof;
b. In cases of conflict between two or several Member States;
c. In case of internal conflict:
d. that threatens to trigger a humanitarian disaster, or
e. that poses a serious threat to peace and security in the region;
f. In the event of serious and massive violation of human rights and the rule of law;
g. In the event of an overthrow or attempted overthrow of a democratically elected government;
h. Any other situation as may be decided by the Mediation and Security Council.

law and overthrow or attempted overthrow of a democratically elected government. Indeed, this protocol stipulates that every accession to power in the region must be made through democratic elections, emphasizes zero tolerance for power obtained or maintained through unconstitutional means, and maintains the supremacy of democratically elected governments' control over Member States armed forces.

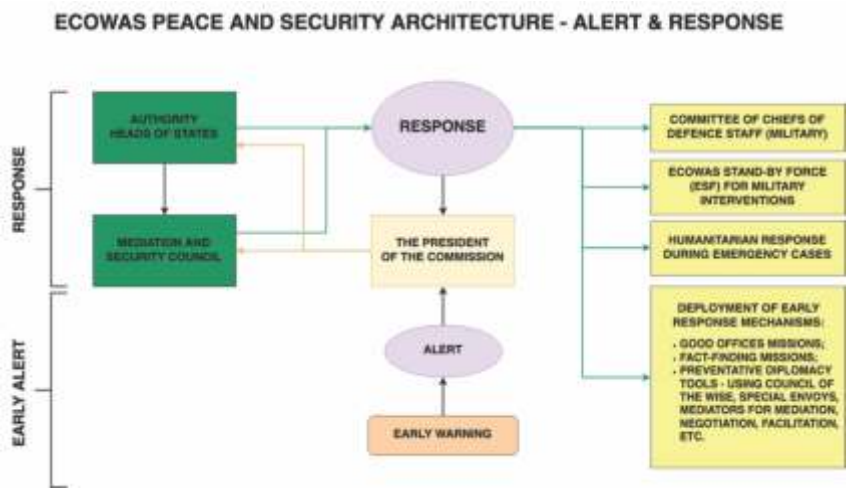
The Authority is the primary decision-making body of the Mechanism as it has the power to act on all matters concerning conflict prevention, management and resolution, peace-keeping, security and peacebuilding among others. In addition, because the Authority may delegate its powers in this regard to the Mediation and Security Council, the Mechanism may be put into effect also by a decision of the Mediation and Security Council. Crucially, the Mechanism may also be triggered at the request of a Member State, on the initiative of the President of the Commission, at the request of the AU or the UN.

With reference to preventive diplomacy and in particular mediation (key objectives

of the Mechanism), the Authority via its Chairperson will normally reach agreement and decide on the appointment of a mediator, facilitator or special envoy for a particular situation. This decision is based on consensus rather than vote.

In cases where the Authority has delegated power to the Mediation and Security Council, it is up to this institution to consider several options and decide on the most appropriate course of action to take in terms of intervention. Such options may include recourse to the Council of the Wise, the dispatch of fact-finding missions, political and mediation missions or intervention by ECOWAS Standby Force (ESF).

As noted in the section above, the Mediation and Security Council has a number of key functions, including deciding and implementing conflict prevention, management and resolution policies and importantly, authorising all forms of intervention, including approving mandates and terms of reference for political and military missions and on the recommendation of the President of the Commission, appoint a Special Representative or a Force Commander. Nevertheless, the Mediation and Security Council may issue a mandate authorizing the President of the Commission to set up a specific mission and define its terms of reference.



The President of the Commission is also tasked with an important role and functions in this Mechanism as per its Protocol, making it a key decision-maker, and in fact a

key actor, in processes of preventive diplomacy and mediation interventions. First and foremost, the President of the Commission has the power to initiate actions for conflict prevention, management, resolution, peace-keeping and security. These actions may include fact-finding, mediation, facilitation, negotiation and reconciliation of parties in conflict. It is important to note that these actions may be undertaken by the President of the Commission in his or her institutional capacity, making this a key institutional actor with regards to preventive diplomacy and mediation.

In addition, as per Article 15(2) of the Protocol on the Mechanism, the role of the President of the Commission may include, inter alia:

a. Recommend the appointment of the Special Representative and the Force Commander for approval to the Mediation and Security Council;
b. Appoint Members of the Council of the Wise;
c. Have the responsibility for political, administrative and operational activities and provide logistical support for the mission;
d. Prepare periodic reports on activities of the Mechanism for the Mediation and Security Council and Member States;
e. Deploy fact-finding and mediation missions, on the basis of his/her assessment of the existing situation;
f. Convene, in consultation with the Chairman of the Authority all meetings of the Mediation and Security Council, the Council of Elders, and the Defence and Security Commission.

There are therefore three levels of decision-making with regards to the appointment of special representatives, special envoys, facilitators and mediators, at ECOWAS: the Authority/Chairman, the Mediation and Security Council and the President of the Commission.

Indeed, ECOWAS practice has shown that normally, in cases where the urgency of the situation requires prompt action, the Authority delegates the authority to the Mediation and Security Council, which will take the decision by consensus.

Over the years, Presidents of the Commission have had different approaches to their involvement in preventive diplomacy and mediation. Nevertheless, as will be further discussed below, it is expected that the President of the Commission initiate most actions in this regard in consultation with the Chair of the Authority and with the support and recommendations of the Commissioner for Political Affairs, Peace and Security.

Within the ECOWAS Commission, the Office of the Commissioner for Political Affairs, Peace and Security (PAPS) is responsible for peace and security issues and also oversees the Directorate for Early Warning, the Directorate Political Affairs (which comprises the Mediation and Facilitation Division (MFD) and the Directorate of PeaceKeeping and Regional Security (DPKRS). PAPS is the starting point of mediation efforts providing an analysis of the situation at hand with recommendations, which is presented by the Commissioner to the President of the Commission as well as the Mediation and Security Council. The MFD is created with the mandate to backstop the mediation efforts of the Commission, its appointed mediators, facilitators and special envoys and as well as joint preventive diplomacy and mediation interventions with other actors.

Involving National and Sub-National Actors

Echoing the provisions of the 1999 Mechanism with regard to the involvement of national and sub-national actors, the ECPF also calls for the involvement of relevant institutions within member States. Article 49(l) in particular states that "Member States shall work closely with the Zonal Bureaux, the Council of the Wise and the Office of the Special Representative through the ECOWAS National Units to mobilise local resources, including eminent persons, traditional rulers, religious leaders, community groups, women's organisations, other civil society organisations, the private sector and any such actors as may be necessary, ***for the purposes of mediation, conciliation and facilitation to resolve local disputes.***".

Special Representatives, Permanent Representatives and Mediators/Special Envoys

Special Representatives

The role and function of Special Representatives of the President of the Commission were first defined in Article 32 of the Protocol on the Mechanism. As per the Protocol, the role of Special Representative was linked to each operation undertaken by ESF. Appointed by the Mediation and Security Council on the recommendation of the President of the Commission, the Special Representative is the Chief

of Mission, reporting directly to the President of the Commission. In this role, the principal functions of the Special Representative include: political orientation of the mission, directing peace-keeping activities, brief troop contributing states and other states on the situation and operations of the mission, coordinate the activities of the sub-regional and international organisations, including NGOs involved in humanitarian relief and peace-building activities, among others. Crucially, the Special Representative **can initiate political and diplomatic negotiations with the parties, neighbouring States and other governments involved in conflict resolution.**

Indeed, the Special Representative has an eminently political mandate, normally requiring involvement in good offices, facilitation, negotiation, and mediation. Here it should be recalled that in his or her role, Special Representatives represent the President of the Commission. ECOWAS practice over time has shown that the role of the Special Representatives has, on an operational level, also included: diplomatic representation of ECOWAS in the Member State; coordination of ECOWAS projects in the country; mobilisation of resources; among others.

In the practice of ECOWAS, Special Representatives are therefore deployed in very specific conflict and crisis situations, which normally require an ECOWAS conflict management/peace-keeping mission. Once the crisis or conflict is overcome, and the ECOWAS mission is over, the Special Representative is also withdrawn. This is a key dimension of the role of Special Representative and differentiates this role from the Permanent Representative role.

Permanent Representatives

The role and functions of ECOWAS Permanent Representatives is defined in a Decision of the Authority (A/DEC.9/03/14). In this decision, Heads of State and Government acknowledge the need for a presence of ECOWAS in all Member States with the objective of promoting the involvement of Member States in the pursuit of the aims and objectives of the regional organisation. They decided therefore to gradually deploy Permanent Representatives in all Member States.

As per Article 2 of the decision, the mandate of Permanent Representatives includes: strengthening the presence and visibility of ECOWAS in the Member State; promoting relations between ECOWAS and the Member State; acting as the interface between the different national actors and the institutions and agencies of ECOWAS to enable the promotion and ownership of the regional agenda; enhance and facili-

tate the coordination and undertaking of regional programmes; support Member States in their efforts towards the attainment of ECOWAS objectives. Permanent Representatives have a key role in support of ECOWAS mandated Mediators.

Mediators/Special Envoys: Article 49 of the ECPF, dedicated to Preventive Diplomacy notes in (c) that the Mediation and Security Council may appoint one or more of its members or eminent personalities for high-level mediation and arbitration within and between States. In addition, Article 49 (e) considers that "the President of the Commission, in consultation with the Chairperson shall deploy a Mediator, Special Envoy or Member(s) of the Council of the Wise to any Member State in a situation of potential crisis on a fact finding mission for the purposes of studying the situation on the ground and advising the President on options for defusing any tensions".

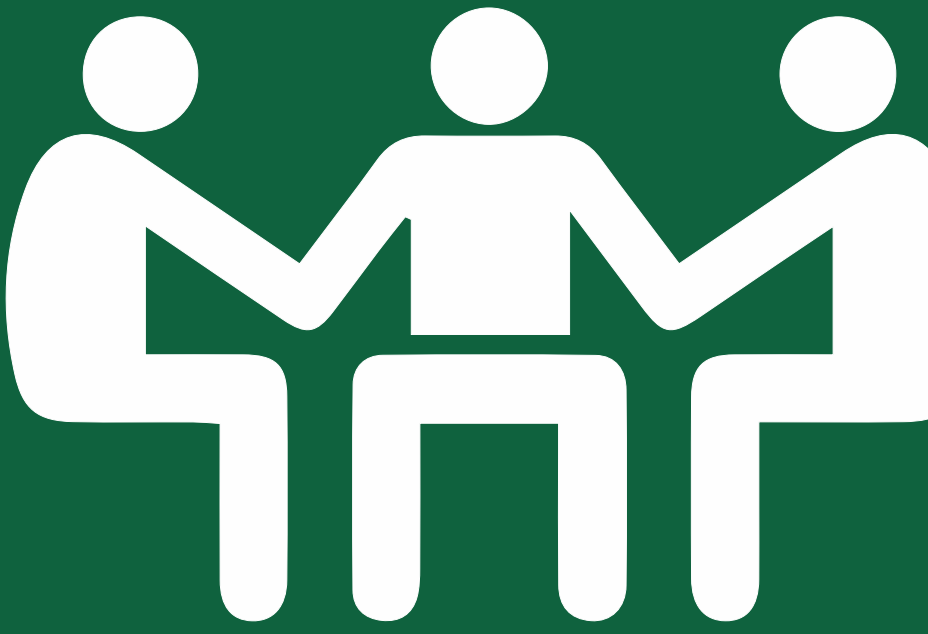
In terms of the profile of ECOWAS Mediators/Special Envoys, the ECPF requires ECOWAS and Member States to take into account gender equity and facilitate the active involvement of former Heads of State, eminent and high-profile personalities in mediation, conciliation and facilitation (Article 49 (g). It also requires ECOWAS to facilitate the enhancement of the competence and skills of appropriate state institutions and civil society organisations to undertake mediation, conciliation and arbitration activities (j), calling on Member States to cooperate with and facilitate the work of fact-finding missions, special envoys, mediators and any such entities as may be deployed in their territory for the purposes of mediation, conciliation and facilitation (k).

Crucially, the ECPF emphasises the need to include women in the leadership of peace missions and negotiations, and mainstream gender in all aspects of the ECOWAS peace and security architecture (Article 82 (a). Furthermore, ECOWAS shall facilitate the development and implementation of targeted programmes to enhance the leadership, negotiation and dispute resolution skills within women organisations" (article 82 (b).

An ECOWAS Mediator is therefore appointed for a period of time to help parties devise solutions to their dispute or conflict. ECOWAS experience over the years demonstrates that its Mediators/Special Envoys undertake all the key activities that constitute mediation, including fact-finding, good offices, negotiations, conciliation; ECOWAS mediators have assisted parties in working towards a negotiated settlement on substantive issues, at times assisting the parties in crafting agreements they find satisfactory and are willing to implement. These guidelines will discuss these issues further in the section below.

III

ECOWAS Guiding Principles for Mediation



III

ECOWAS Guiding Principles for Mediation

What does mediation entail?

At a basic level, mediation is about bringing two or more parties together with the goal of preventing, managing or resolving conflict through negotiations. Indeed, mediation has been defined as "a process whereby a third party assists two or more parties with their consent to prevent, manage and resolve a conflict by helping them to develop mutually acceptable agreements".[9] Mediation is therefore a form of peaceful intervention by an intermediary in a conflict situation, contingent on the acceptance by conflict parties, with "the stated purpose of contributing towards its abatement or resolution".[10]

It is important to note that mediation is a structured undertaking rather than a series of ad-hoc engagements.[11] It is true that in their day-to-day practice and relations with Member States, the Chairperson of the Authority, the Mediation and Security Council, the President of the Commission, Permanent Representatives or staff of the Commission use one form or another of 'mediation' in their efforts at preventing, managing and resolving conflicts and disputes.

Yet, it is vital to reflect further on mediation as concept, as structured and professionalised practice. First, following international best practice, it is crucial to note that mediation is a structured undertaking, understood as an extension and elaboration of the negotiation process. Indeed, mediation can be seen, at least structurally, as the continuation of negotiation by other means.[12]

In this sense, mediation involves the intervention by credible and competent intermediaries who assist the parties in working towards a negotiated settlement on substantive issues through persuasion, the control of information, the suggestion

of alternatives and in some cases the application of leverage.[13] Mediation therefore aims at enabling "parties in conflict to reach agreements they find satisfactory and are willing to implement".[14]

Firstly, mediation exhibits a number of unique characteristics that distinguish it from other modes of peacemaking. Mediation involves the involvement of a third party to the conflict or dispute. Indeed, ECOWAS recognises that mediation depends on prior agreement by parties to a dispute, whether the proposal to mediate comes from the organisation (potential mediator), from the parties themselves or from a third party. Indeed, in addition to securing a formal mandate from its decision-making structures, ECOWAS acknowledges that acceptance by the parties to a dispute or conflict is key to its mediation intervention. Understanding therefore the factors and conditions that determine successful mediation entry are key to the success of ECOWAS Mediators.

Secondly, although there is the intervention of a third party, the decision-making power ultimately remains in the hands of the disputants. This aspect more than any other grounds the ultimate decision in some form of negotiation between disputants, partially explaining why mediation is an extension of and a complement to the negotiation process. Indeed, even though a mediator might exert pressure on conflict actors to agree on particular aspects (at times referred to as 'mediation with muscle'), its role should ultimately be to "assist disputants in making their own decisions" and "reaching a mutually acceptable outcome".[15]

Thirdly, in marked contrast to adjudication and arbitration, a mediation process – and at times its outcome – is not binding on the disputants because at all stages they remain in control of the mediation and may withdraw. It should be noted that the very nature of the process is that a decision cannot be imposed on the parties as the mediator is not a decision-maker.

These three initial characteristics of mediation point to mediation as essentially a non-coercive, nonviolent and, ultimately, nonbinding form of intervention. Finally, in order to facilitate the interaction between parties in conflict, "mediators bring with them, consciously or otherwise, ideas, knowledge, resources and interests of their own" because "mediators have their own assumptions and agendas about the conflict in question".[16]

ECOWAS acknowledges that while a primary goal of mediation may be that of pre-

venting or ending violence through cessation of hostilities or ceasefire agreements, it follows international best practice in recognising that mediation should, as appropriate, address the structural/root causes of conflict as this will ensure peace and stability in the long-term.

It is also important to note that the effectiveness of the mediator depends on the specificity of the conflict; takes into account causes and dynamics, positions, interests and coherence of parties; as well as the needs of the broader society; and, finally the regional and international environments.[17] Furthermore, the mediator's approach could also be influenced by the nature of the relationship with the parties.

Following international best practice, ECOWAS considers mediation appropriate at all stages of inter- and intra-state conflicts: before they escalate into armed conflict, after the outbreak of violence, and during the implementation of peace agreements.[18] Mediation may therefore be used to prevent or limit a conflict and its destruction plus curb and alleviate problems related to refugees and human suffering.

Mediation is versatile and although it requires a deeper level of engagement by the third party, it also incorporates other modes of intermediary activity such as good offices, facilitation, conciliation and fact-finding. ECOWAS' mediations have included all these modes in the organisation's efforts at addressing conflicts that may be at different stages.

The mediator's functions may include the facilitation of communication between the parties, influencing parties towards changing their positions in order to make agreement possible, facilitate concessions from the parties by clarifying the issues in conflict, by helping the parties withdraw from commitments and by reducing the cost of concessions, that is, generally providing incentives for concession-making. The mediator may offer compromise formulae and substantive proposals.

ECOWAS as an Actor in Mediation

During the last four decades, and although established with the primary aim of creating an integrated and self-reliant regional economic community, ECOWAS has become a key actor in conflict prevention, management, resolution and peacekeeping in the West Africa region as well as a pivotal pillar of the APSA. Indeed, over the years, ECOWAS has become an indispensable actor in the maintenance of peace and stability in the region, with critical interventions in several high inten-

sity conflicts and civil wars, political disputes and coups d'état, as well as combatting violent extremism and terrorism. At every stage, these experiences have been central to the organisation's learning and pivotal to the gradual development of its capacity to better address threats to peace and security in the region. Indeed, the lessons learned with these experiences are central to the development by ECOWAS of the mediation guiding principles contained herein.

Preventive diplomacy and mediation have been at the heart of ECOWAS' burgeoning peace and security architecture for the West Africa region – core tools in the organisation's arsenal of strategies to prevent, manage and resolve conflict and combat human insecurity. Indeed, ECOWAS peace-making experience begins in the late 1980s, early 1990s with interventions in Liberia (1990), Sierra Leone (1991) and Guinea Bissau (1998). The experience in Liberia and Sierra Leone in particular would inform the organisation's initial efforts at developing its mediation capacities – an initial interventionist period that is considered largely reactive and, as the organisation did not possess the required structures and legal and normative basis for this type of intervention, largely ad-hoc.[19]

When the war erupted in Liberia in 1989, ECOWAS became actively immersed in peace-making and peacekeeping efforts in the country, taking the important decision to create the ECOWAS Ceasefire Monitoring Group (ECOMOG). ECOMOG peacekeeping would later be extended to the intervention in Sierra Leone (1997), Guinea-Bissau (1998) and Côte d'Ivoire (2002).[20] These were not however classic mediation interventions, but "military operations designed to stop wars or monitor cease-fires, thus creating space for peace negotiations and humanitarian operations".[21] The same approach would inform later deployments in Liberia ECOMIL (2003).

At the time of the first intervention in Liberia, ECOWAS did not have the legal and institutional framework for intervention. Indeed, as noted above, at the time of the first Liberia intervention, only two legal instruments guided the organization in matters of peace and security: the 1978 Protocol on Non-Aggression and the 1981 Protocol on Mutual Assistance on Defence.

Liberia and Sierra Leone

The first intervention in Liberia would inform ECOWAS' revision of its foundational treaty, particularly with regard to the introduction of Article 58 (and its emphasis on the importance of good offices, conciliation, mediation and other methods of peaceful settlement of disputes). Moreover, these initial interventions demonstrated that with the necessary political will, ECOWAS can intervene and make a substantial difference.

Perhaps more importantly, both the Liberia and Sierra Leone interventions would inform the process by which the organisation developed the 1999 Mechanism, with specific provisions on preventive diplomacy and mediation. Indeed, in these first two interventions, ECOWAS learned substantially from the template provided by the peace plan developed for Liberia by the Interfaith Mediation Committee (IFMC) (a coalition of the Liberia Council of Churches (LCC) and the National Muslim Council of Liberia (NMCL). This same approach was developed in Sierra Leone by partnering with the Inter-Religious Council (IRCSL)".

Furthermore, it is partly from the Liberia experience that ECOWAS began involving sitting Heads of State as mediators and facilitators – as the Liberia process involved talks in various countries of the region with each round facilitated by the head of state of the country in question. By 2003, ECOWAS began also using former Heads of State, with H.E. Abdusalami Abubakar, appointed to mediate the Accra peace talks, which culminated into the Accra Comprehensive Peace Agreement of 2003. This approach would later be used in variety of different situations as it became clear to the organisation that in power struggles between political elites (incumbents reluctant to vacate political office; military coup d'états), "the leverage, experience and empathy of those who are either in or have been at the helm of affairs of a state and can therefore emphatise with key political actors" are crucial.[22]

As noted above, the adoption of the 1999 Mechanism would provide the organisation with the necessary legal and normative basis for the operationalisation of a regional peace and security architecture, where preventive diplomacy and mediation are given substantial attention. Indeed, the adoption of the 1999 Mechanism would move the organisation to a more structured approach to mediation.[23]

Importantly, following the adoption of the 1999 Mechanism, stronger linkages were established on preventive diplomacy and mediation with both the United Nations (UN) as well as the Organisation of African Unity (OAU) itself undergoing a profound transformation into the African Union (AU).

Côte d'Ivoire

In 2010-2011, ECOWAS intervened in the political crisis in Côte d'Ivoire and it is acknowledged that ECOWAS acted swiftly and coherently at the beginning of the electoral crisis. Indeed, ECOWAS validated the electoral victory of the opposition (candidate Alassane Ouattara) despite claims to the contrary by the incumbent (Laurent Gbabgo) and threated to deploy military force to enforce this position should diplomatic efforts fail. In this ECOWAS followed the certification of the Independent Electoral Commission of Côte d'Ivoire as well as that of the UN Secretary-General's Special Representative in Côte d'Ivoire. At the time, ECOWAS position was criticised by the AU appointed mediator, former South African President Thabo Mbeki. Indeed, the AU was fractured in its approach to events in Côte d'Ivoire, with a group of countries in favour of direct intervention and a group of countries that did not support intervention. Eventually, the AU would align its position with that of ECOWAS and the UN.[24]

More recently, ECOWAS became deeply involved in mediation, planning and contributing to the peace support operations in Mali, following the eruption of conflict in 2012. ECOWAS experience alongside the AU and the UN, as well as several others actors such as the EU, has contributed to a number of important lessons learned, leading to a renewed importance being placed in the strengthening of mediation capacity at the ECOWAS Commission.

Burkina Faso

Resulting from a wave of political and social contests that had started during 2011, the political situation in Burkina Faso escalated on 30 October 2014. On that day, members of parliament were due to vote on the amendment of article 37 of the Constitution, which would have allowed President Blaise Campaoré to contest for the 2015 elections. A popular uprising prevented the parliamentarians to vote and the ensuing escalation of the situation forced the long-term President to resign and flee the country.

A period of initial confusion was followed with Army Chief General Honoré Traoré, declaring himself head of state, but soon thereafter – amidst strong contestation by a group of junior officers – supported the choice of Lieutenant Colonel Isaac Zida to lead the transition period in an interim capacity until the 2015 presidential elections.

An interim government, led by Michel Kafando, a civilian, was soon thereafter put in place with Kafando appointing Zida as Prime Minister of Burkina Faso on 19 November 2014, a position Zida held in conjunction with the defense portfolio. The transitional government adopted a Transitional Charter which stipulated a transitional period to last for one year (ending with the holding of elections in October 2015).

To support the on-going Transition in Burkina Faso, the African Union (AU) Peace and Security Council (PSC) at its 468th meeting, 18 November 2014, decided to create an International Follow up and Support Group for the Transition in Burkina Faso (GISAT-BF). This mechanism, co-chaired by the African Union (AU), ECOWAS and the UN, provided a platform for the monitoring of the evolution of the situation in Burkina Faso by the international community and Burkinabe stakeholders. It also facilitated the mobilisation of the necessary international support to ensure that the objectives of the Transitional government were attained.

During the transitional period, several key issues were discussed and some decisions were made. For instance, the Constitutional Council decided that over 40 people belonging to the party of former President Blaise Compaoré and/or those who supported the attempted unconstitutional change of government would not be eligible to run for the elections. In reaction, the Régiment de Sécurité Présidentielle (RSP), led by Général Gilbert Diendéré, organized a coup d'état on 16 September 2015. This coup was short-lived as the population, with the support of ECOWAS and the international community, stood against it.

On 22nd September 2015, an extraordinary session of ECOWAS' Authority of Heads of State and Government on the political crisis in Burkina Faso, built on the mediation efforts undertaken from 18 to 20 September 2015 in Ouagadougou by Presidents Macky Sall of the Republic of Senegal and Thomas Boni Yayi of the Republic of Benin, was held in order to find a solution to the crisis.

These mediation efforts were largely successful, resulting in agreement by Burkinabé stakeholders on, inter alia:

- the unconditional release of all persons detained;
- the return to a civilian-led transition;
- the reinstatement of the transition institutions; and
- the reinstatement of Michel Kafando as Transition President

In addition, and in order to strengthen the momentum created by the mediation of Presidents Sall and Boni Yayi, the ECOWAS Authority decided to dispatch to Ouagadougou a High-Level Mission of Heads of State and Government comprising Benin, Ghana, Niger, Nigeria and Togo, under the chairmanship of the Chair of the Authority on 23 September 2015. The mission ensured the reinstatement of the Transition President, and contributed to defusing lingering tensions and initiating the indispensable inclusive national dialogue. This mission also included Chiefs of Defence Staff of the aforementioned Member States, in order to facilitate constructive dialogue among the different components of the defence and security forces.

The Gambia

The presidential election held in The Gambia on 1 December 2016 was won by the opposition candidate, Adama Barrow, against the incumbent President Yahya Jammeh who came to power in 1994 through a military coup d'état. Even though Mr. Jammeh had conceded defeat, he changed his position and rejected the final results as declared by the IEC Chairman. The volte-face of President Jammeh was heavily condemned by the international community.

Subsequently, a series of extensive diplomatic efforts and initiatives were deployed and led by ECOWAS. The mediation efforts involved H.E. Mrs. Ellen Johnson-Sirleaf, President of the Republic of Liberia and the Chairperson of the ECOWAS Authority of Heads of State and Government, H.E. Muhammadu Buhari, President of the Federal Republic of Nigeria (appointed as ECOWAS Mediator to The Gambia); H.E. John Dramani Mahama, former President of the Republic of Ghana (co-Mediator); and H.E. Ernest Bai Koroma, President of the Republic of Sierra Leone. At various times, the Presidents met with President Jammeh and other stakeholders on the dispute over the election results, with the aim of peacefully resolving the issue and also to ensure that the will of the people prevailed.

In support of ECOWAS' initiatives, the African Union, through a Communiqué of the 647th meeting of the Peace and Security Council (PSC), reiterated its support to the decisions of the ECOWAS Authority of Heads of State on The Gambia and stated its non-recognition of former President Jammeh as President of The Gambia from 19 January 2017. In a similar manner, the UN Security Council passed resolution 2337 (2017) on 19 January, 2017, to back an ECOWAS intervention in The Gambia.

Following former President Jammeh's continuous refusal to leave power peacefully despite ECOWAS numerous mediation efforts, President Barrow requested for an ECOWAS' military intervention. At this stage, a last attempt at mediation was led by President Alpha Condé of the Republic of Guinea and President Mohamed Ould Abdelaziz of the Islamic Republic of Mauritania. On 20 January 2017, this mediation effort resulted in agreement by President Yahya Jammeh to step down and leave the country for exile the next day. The success of this mediation effort was due, in part, to the imminent threat of the use of force by the ECOWAS-led intervention force, whose military jets kept circling the Presidential Palace, where the mediation effort was ongoing. The subsequent departure of the former President to Equatorial Guinea and the eventual return of the newly elected President to the country paved the way for the return of normalcy in The Gambia.

Mali

Following the military coup that took place in Mali during March 2012, ECOWAS engaged on two fronts: it appointed as Mediator H.E. Blaise Compaoré, President of Burkina Faso, with the aim of starting a process that would return the country to constitutional order; and started planning for the deployment of the ECOWAS standby force in the country, under the acronym (MICEMA – ECOWAS Mission in Mali). The stature of the mediator which had a long track record in mediation in francophone West Africa, his intimate knowledge of the region and of all actors, his ability to persuade and exert pressure, a clear interest by Burkina Faso in restoring stability to neighbouring Mali, were among the reasons for the appointment of the mediator.

Yet, the Commission's reduced oversight on the mediation process, a function of the mediator's limited transparency in conducting the process led to strong criticism in Mali, particularly with regard to the way the political arrangements for the transition had been agreed. Other countries were also critical, including Algeria and France. Nevertheless, the mediator is largely credited with playing a key role in the transition towards a civil interim administration and the return to constitutional order (for which ECOWAS' sanction on Mali were also key).

Lessons learned from the intervention in Mali brought to the fore the need for ECOWAS to establish a mediation support structure within the ECOWAS Commission. Indeed, at the 43rd Ordinary Session of the Authority, which took place in Abuja on 16-17 July 2013, ECOWAS Heads of State and Government instructed the Com-

mission to expedite a review of the ECOWAS Peace and Security Architecture with regard to preventive diplomacy and rapid military response capability, against the background of the lessons learned in Mali.[25]

Several constraints were noted by the Mali After Action Review that ran from November 2013 to February 2014: absence of resourced mediation support facility at the ECOWAS Commission; weak link between the ECOWAS Mediators and the Commission; and the marginalization of the ECOWAS Commission in the mediation process leading to inconsistencies with ECOWAS normative frameworks. The Commission was requested to expedite the establishment of the MFD without further delay.[26]

The Mediation Facilitation Division (MFD)

The experiences briefly described above as well as the ECOWAS mediation needs assessment undertaken in 2012 identified a broad scope of tasks for a future Mediation Facilitation Division (MFD) at ECOWAS:

- operational support (backstopping of mediation and shuttle diplomacy activities, the provision of guidance, background information, and analysis, monitoring and evaluation, as well as the facilitation of the Mainstreaming of Track III mediation efforts into the ECOWAS mediation architecture);
- establishment of a mediation resource centre (which entails the creation and management of a database of resource persons and issues in mediation and a library of mediation resources); and,
- capacity building in mediation (which entails facilitating the development of modules for mediation training, the organization of workshops, seminars and conferences for mediation resources, and facilitating exchange programmes for mediation resources).[27]

Following the creation of the Mediation Facilitation Division in 2015, ECOWAS is making concerted efforts towards attaining a fully structured approach to mediation. Indeed, three strategic areas have occupied the work of the division: harnessing mediation and dialogue expertise, establishing a functional mediation resource centre, which would disseminate and generate knowledge, and enhancement of capacities of relevant actors.[28]

The recruitment of professional staff trained and experienced in preventive diplomacy and mediation, the development of these guidelines as well as clear opera-

tional guidelines for its mediation organs and actors, as well as efforts to ensure permanent mediation presence in its Member States through the Offices of ECOWAS' Permanent Representatives are evidence of this. Furthermore, ECOWAS efforts to strengthen the Council of the Wise, as well as Track II and III processes by involving key national and sub-national actors are worth mentioning.

ECOWAS Mediation Guiding Principles

Stemming from the series of legal and normative instruments as well as lessons learned over the years, the ECOWAS Mediation Guidelines aim at a normative framework underpinning current and future mediation interventions by the organisation.

The aim of the guidelines is therefore to strengthen the organisation's capacity for mediation, by clarifying some of the most important institutional dimensions of mediation (decision-making, conditions for intervention, among others) and setting out a number of principles to which the organisation and its mediators commit themselves. These principles will serve as guidance to mediators' activities, containing the basic elements of a code of conduct for ECOWAS mediators.

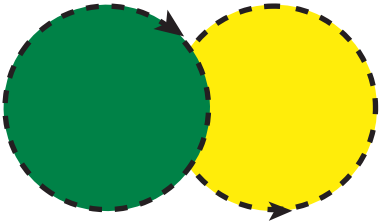
The guidelines should therefore contribute to the increasing professionalization of mediation and, in particular, to a more systematic design and conduct of mediation processes in order to increase the chances of success. It should be recalled that the Guidelines are complemented by a set of ECOWAS specific Standard Operating Procedures (SOPs) for Mediation, which describe in more detail the different processes, actors and how the institution's different directorates are involved in mediation.

PRINCIPLE 1:

EARLY AND TIMELY INTERVENTIONS (PRIORITISING PREVENTIVE ACTION)

Priority must be placed on early preventive interventions, particularly preventive diplomacy. The costs of managing conflict once it has erupted (whether in fielding peacekeeping operations or providing humanitarian relief), or engaging in lengthy resolution and peace-making efforts, as well as the very high costs of recovery (rebuilding economic and socio-political systems) and the incalculable costs in human suffering and loss of human capital require a serious commitment to conflict prevention, both operational and structural.

It is critically important to realize that, although the conditions for triggering the Mechanism are defined, decision-makers, particularly the Authority/Chairperson, the Mediation and Security Council and the President of the Commission have substantial latitude in deciding when and how to intervene. The objective of preventive action must first and foremost be to prevent disputes from turning violent and then to defuse tensions and ensure the peaceful resolution of disputes within and between Member States. Fact-finding, good offices, conciliation and facilitation based on dialogue, negotiation, mediation or arbitration are critical tools at the disposal of ECOWAS.



PRINCIPLE 2:

COMPREHENSIVE AND INTEGRATED INTERVENTIONS: AN ECOWAS PREVENTIVE DIPLOMACY AND MEDIATION SYSTEM

A comprehensive and integrated mediation system at ECOWAS is predicated upon a systematic, structured and continuum-based approach to preventive diplomacy and mediation engagements. Such an approach begins with preventive diplomacy interventions such as good offices, fact finding, conciliation to mediation entry, mediation start-up, mediation processes, agreement and post-agreement phases.

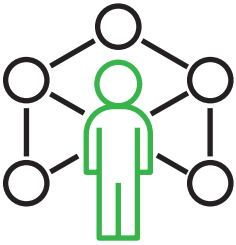
ECOWAS preventive diplomacy and mediation interventions must be based on a systematised approach with regards to the engagement of different organs (the Authority/Chairperson, the Mediation and Security Council, the President of the Commission, the Council of the Wise), Commission Directorates, and Permanent and Special Representatives at all stages of a mediation process, from the selection of a mediator to the process itself.

Vertical and horizontal coordination is critical to strengthen mediation interventions. In particular, the connections between the Mediation and Security Council, the President of the Commission, relevant PAPS Directorates, and ECOWAS Permanent Representatives, Special Representatives, Mediators and the Members of the Council of the Wise are critical. Within PAPS, the Directorate of Political Affairs, the Early Warning Directorate and the Directorate of Peacekeeping and Regional Security play key roles in this system. Facilitating connections between them is the task of the Mediation Facilitation Division.

Permanent and Special Representatives are also key as they assure, on a daily basis, ECOWAS' proximity to Member States (whether in crisis or post-conflict), undertaking on behalf of the organisation diplomatic, administrative, and political roles and reporting to the Commission. A system that enables close contact between an ECOWAS Mediator (appointed for a period of time by ECOWAS to help parties devise solutions) and these officials will strengthen the potential for integrated interventions.

In addition, as noted in the section on the ECPF above, the involvement of relevant institutions within member States is key. Permanent Representatives and ECOWAS National Units are critical in the mobilisation of local resources, including eminent persons, traditional rulers, religious leaders, community groups, women's organisations, other civil society organisations, the private sector and any such actors as may be necessary.

This system strengthens the possibility that conflict prevention and in particular preventive diplomacy and mediation are truly mainstreamed across ECOWAS, with the required internalization of conflict prevention as a norm and priority in the work of the organisation.



PRINCIPLE 3:
THE PROFILE OF THE MEDIATOR: PROFESSIONALISM AND SKILLS

ECOWAS regards the professionalism and skills of its Mediators as critical components of credible, responsible and principled mediation. Usually sitting or former Heads of State, ECOWAS mediators possess the right profile for the task at hand: their gravitas and credibility, personality and background, knowledge and experience, as well as the resources they bring to bear being key characteristics.

In addition, seniority, vast knowledge of the specific political terrain including local languages, understanding of the issues, flexibility, ability to promote consensus, neutrality and impartiality are fundamental traits of the ECOWAS Mediator. Discretion, morality, a high degree of integrity in his/her community, patience, the ability to listen, and qualifications are also emphasised here.

In his or her work, the ECOWAS Mediator must always prioritise the parties, facilitate communication, generate ideas for discussion, must be courageous, resilient and able to allow others to speak and not dominate.

In the appointment of an ECOWAS Mediator, the profile of the mediator must be related closely to the nature of the conflict itself and the perceptions of the parties vis-à-vis a potential mediator. Indeed, the ECOWAS Mediator must have the trust of the parties, a good level of communication with the parties, agreement on his/her role, and the ability to generate proposals and solutions, as well as to convince the parties to accept them. While ECOWAS will continue to benefit from the support of current and former Heads of State as mediators, broadening the scope to other eminent personalities is important.

PRINCIPLE 4:
PREPAREDNESS AT ALL STAGES OF MEDIATION: PROFESSIONAL MEDIATION SUPPORT, EXPERTISE AND CAPACITY

To be effective, a mediation process requires more than the appointment of a high-profile individual. The Mediator will require, at all stages of the process – from pre-mediation, to negotiations, to the crafting of an agreement – appropriate support politically, technically and financially, It is crucial that ECOWAS owns the effort by equipping the mediator with a support team and the resources that will enable him/her to do their job.

Firstly, the mandate and the terms of reference of the intervention, are key components of the mediator's profile. In this regard, ECOWAS recognises the need to adequately introduce and induct ECOWAS Mediators to ECOWAS legal and normative instruments, ECOWAS principles, administrative and financial procedures, among others

Mediation support involves a variety of different tasks at different stages of the process. Following the appointment of the mediator, basic preparatory support includes conflict analysis, the formulation of strategic and operational mediation plans and process design, including logistics and finance.

The Commission and relevant Directorates and Divisions, in particular the Mediation Facilitation Division, are the first line of support for the Mediator as they perform back office support functions to the mediation efforts. This is particularly the case with logistical, technical, analytical but also, crucially, coordination support with partners. In addition, the Mediation Facilitation Division provides background information to the mediator, may accompany the mediator in field visits (including fact-finding missions), supports the mediator with ECOWAS legal frameworks, and provides other analysis and reports as appropriate.

Critically, preparatory support also includes forming a technical team that will sup-

port the ECOWAS Mediator. It is critical that ECOWAS' appointed Mediators be supported by a team with the appropriate level of experience and training as it is often this team that supports the mediation process. This team must be carefully chosen to include all relevant capacities and knowledge such as cessation of hostilities and ceasefire negotiations, constitutional matters, elections and electoral processes, transitional justice, power-sharing, natural resource management, gender expertise among many others which are required for the specific process.

Possible mediation support team's profiles include political and military/security analysis, local knowledge, logistics, finance and administration expertise, mediation process expertise, among others. Language expertise is also fundamental including availability of interpreters and translators, when necessary, as part of the mediation team. Legal expertise is also critical for the provision of advice such as support to the drafting of legal documents, advice on constitutional issues, electoral codes, electoral commissions, media relations, legal frameworks of the country, and, importantly, ECOWAS' own legal and normative instruments.

Adaptability and flexibility are also a key part of preparedness. It is absolutely key that mediation actors continually adapt their approaches and capacities to meet the changing nature of conflict.

Finance, procurement and logistics' expertise is particularly important – in the case of mediation processes these are critical dimensions as these processes can be very expensive, requiring guidelines and rules to support an efficient management of these resources and relationships with contractors. In cases where the budget for mediation passes a certain threshold, a finance officer should be sent with the mediation mission.

Although mediation is one of the most cost-effective methods of preventing, managing and resolving conflicts, it requires substantial resources on a sustainable and predictable basis. Indeed, the costing of a mediation process is to some extent difficult to determine a priori, a function of the level of unpredictability in terms of duration, levels of participation and other associated costs, based on prior experience and lessons learned from previous processes.

This is the case for both mediation support costs at the Commission as well as the on-going costs of mediation interventions. Regarding mediation support costs at the Commission, it is critical that levels of secure, predictable and adequate funding are provided so that its relevant Directorates and Divisions retain the capacity to adequately support the institution in its mediation efforts.

PRINCIPLE 5:
CONSENT

ECOWAS recognises that mediation depends on prior agreement by parties to a dispute, whether the proposal to mediate comes from the organisation (potential mediator), from the parties themselves or from a third party. In addition, ECOWAS regards a formal mandate from its mandating structures as key to its mediation interventions. The importance of consent by the parties should not be underestimated as it normally is a key ingredient of mediation success.

Here, ECOWAS follows international best practice in considering that without consent it is unlikely that parties will negotiate in good faith or be committed to the mediation process. In order to cultivate consent, ECOWAS endeavours to assure parties of the integrity of the mediation process, the security of participants, the confidentiality of the process and the acceptability of the mediator. ECOWAS also acknowledges that consent may sometimes be gained incrementally, limited at first to the discussion of specific issues before accepting a more comprehensive mediation process.

PRINCIPLE 6:
CULTURALLY GROUNDED MEDIATION

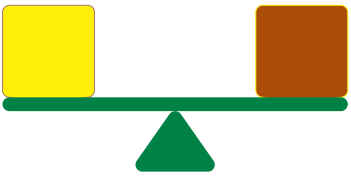
One important but often forgotten dimension of mediation guidelines relates to its cultural dimension. There is an assumption that because mediation is a universal process – an intermediary or third party assisting parties to a dispute or conflict to come to an agreement through negotiation – it may be employed through the use of universal, off-the-shelf templates. ECOWAS considers that this is a reductionist perspective on mediation, as it is blind to cultural and identity-based elements and historical experiences of societies and communities.

In many important ways, West Africans share a similar historical experience, proximity and significant cultural similarities. Indeed, these elements have given ECOWAS a unique role in nurturing the sense of community and collectivity, particularly as it relates to collective security in the West Africa region.

Although culture can be seen from a variety of different angles, ECOWAS believes that West Africans evidence sui generis elements in their understanding of mediation. Mediation is considered first and foremost a 'family affair' where consultation and consensus building are paramount – the spirit of togetherness and communalism binding people together because of a shared history. The need for consensus and continuous dialogue to resolve crises is enshrined in the cultural practices of the region. The uniqueness of the terrain in West Africa, customary law and tradition, the importance of familiarity, solidarity are important characteristics.

This cultural dimension may in part be related to the choice of mediator/type of mediator. The region's respect for former Presidents and eminent personalities demonstrate that in West Africa, mediators must be first and foremost individuals respected in their own communities. Having a current or former "constituency" – the typical situation of a former/sitting Head of State – gives would-be mediators an ability to adapt to others, to understand their peers.

ECOWAS therefore supports a culturally grounded as well as culturally sensitive approach to mediation, one in which the mediator must pay attention first and foremost to what is already the practice on the ground, and where decisions on procedural dimensions of mediation are based on the context in which they occur. In this, the ECOWAS Mediator should see his/her role as being part of the 'family affair or discussion', and not as a traditional, external third party intermediary.

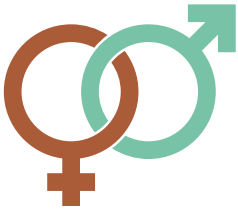


PRINCIPLE 7:
IMPARTIALITY AND NEUTRALITY

For ECOWAS, impartiality is a key principle of mediation. ECOWAS Mediators must at all times abide by the principle of impartiality – they must act and be seen to act as 'honest brokers'.

Following international best practice, ECOWAS differentiates between impartiality and neutrality. Impartiality means that an ECOWAS Mediator must not be biased towards any of the parties and be able to run a balanced process that treats all actors fairly. ECOWAS follows international best practice in considering that impartiality is a cornerstone of mediation. ECOWAS Mediators must always act, and be seen to act, with impartiality towards the parties and be committed to serve all parties equally in the mediation process.

However, an ECOWAS Mediator is mandated to uphold ECOWAS norms and principles and may need to make them explicitly known to the parties. As discussed at length in section 1 above devoted to the legal and normative background, these norms and principles include among others, human and people's rights, political pluralism and democracy, non-aggression, peaceful settlement of disputes, solidarity, equality and inter-dependence, accountability, economic and social justice and popular participation in development. During mediation, an ECOWAS Mediator must at all times uphold these normative principles and call parties to account whenever there is a violation of these principles. An ECOWAS Mediator shall not be neutral to any of the parties in situations where the fundamental norms and principles of ECOWAS are violated.

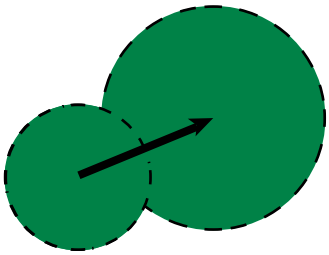


PRINCIPLE 8:
GENDER SENSITIVITY AND ENGENDERED MEDIATION

ECOWAS is committed to creating both more opportunities for women to be involved in Track 1, 2 and 3 mediation and to mainstream gender in all preventive diplomacy and mediation interventions. ECOWAS Mediators should recall that the ECPF contains an important component dedicated to Women, Peace and Security (WPS). The objective of this component is to promote and consolidate women's role and contribution to the design, elaboration, implementation and evaluation of conflict prevention, resolution, peace-building and humanitarian initiatives while strengthening regional and national mechanisms for the protection and advancement of women.

ECOWAS considers that West Africa should capitalise on the fact that women are highly respected, their presence helping to prevent and diffuse conflicts – as women are seen as natural leaders and mediators, good interlocutors and listeners, excellent mobilisers. ECOWAS is therefore committed to involving women at all stages of peace processes, including Track I processes.

Another important dimension here relates to engendering the mediation process – or how the mediator carries out the process. The integration of gender considerations and the development of a gender sensitivity and mainstreaming strategy in mediation selection, processes and outcomes, including a focus on skills, are important for ECOWAS.



PRINCIPLE 9:
INCLUSIVITY AND PARTICIPATION

It is extremely important that all relevant stakeholders and parties to a conflict are involved in a mediation process. Engagement by all relevant stakeholders (and not only the belligerents or political elites) is an important consideration for the ECOWAS Mediator. ECOWAS past mediations have demonstrated how, in some circumstances, identifying parties from civil society in support of the process, including political parties, religious groups, women's groups may prove decisive.

However, deciding which actors should participate in a peace process is highly context-specific, and often linked to the objective of the mediation process. In general, besides the primary conflicting parties, all armed groups as well as other political and social actors relevant in a given context should be considered for inclusion in the peace process. This is true for groups that are either supporting or against a peace process. Therefore, participating actors could be all armed groups, political parties, civil society groups including faith-based organisations, special interest groups such as trade unions, professional associations, minority or women's organisations, human rights, relief, development or peace NGOs, researchers and research institutions, traditional and indigenous groups, or representatives of social and political movements. In some other cases, business actors may also be included.

The ECOWAS Mediator must remember that participation strengthens the effectiveness of the negotiation process as it may assure the buy-in of important groups; may assist in pressuring the parties; may increase public buy-in; may enrich the negotiation agenda by bringing in knowledge and expertise. However, who should participate is ultimately linked to the phase and objective of the mediation process in question.

Participation is also a key dimension of the quality and sustainability of agreements reached. Agreements that have benefitted from widened participation tend to have enhanced legitimacy; a broader scope and diversity, among others.

ECOWAS Mediators should consider the following approaches to widening inclusivity through participation: (i) direct representation at the negotiation table; (ii) observer status, direct presence during the negotiations; (iii) official consultative forums; (iv) consultations or less formal consultations without official endorsement parallel to or after official negotiations; (v) inclusive post-agreement mechanisms (participation of societal and political actors in implementation institutions and mechanisms); (vi) high-level civil society initiatives (or Track 1.5 facilitation initiatives); (vii) public participation, involving the broader population via public hearings, opinion polls, town hall meetings; (viii) public decision-making, referenda and other elective forms.

The ECOWAS Mediator must also consider under which circumstances exclusion is a valid option. This may be the case in pre-negotiations, for example. Another example regards mediation or facilitation initiatives that run parallel to official negotiations – as they have a particular purpose and reach.

PRINCIPLE 10:
COHERENCE WITH ECOWAS AND INTERNATIONAL NORMS

Integral to ECOWAS' Peace and Security Architecture and in particular the Mechanism, the role of the ECOWAS Mediator is grounded on the principles and norms defined in the United Nations (UN) and the African Union (AU) Charters, the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

In addition, an ECOWAS Mediator must abide and promote the series of norms and principles defined in the legal instruments specific to ECOWAS and described in section I above. Indeed, in conducting mediation, the ECOWAS Mediator must pay close attention to ECOWAS' fundamental principles, including equality and inter-dependence, solidarity and self-reliance, non-aggression, the promotion of peace, stability and security and good neighborliness, promotion of a peaceful environment, recognition, promotion and protection of human and people's rights, accountability, economic and social justice, popular participation in development (Revised Treaty of ECOWAS). Furthermore, the ECOWAS Mediator must contribute to the promotion and consolidation of democratic governments and institutions, good governance and the rule of law, the protection of fundamental human rights and freedoms and the rule of international humanitarian law; and sustainable development (Protocol on the Mechanism).

The ECOWAS Mediator must furthermore abide and promote the principles of the separation of powers, independence of the judiciary, promotion of non-partisan and responsible press and democratic control of the armed forces, elections, election monitoring and assistance, the role of the armed forces, police and security forces in a democracy, poverty alleviation and promotion of social dialogue, rule of law, human rights and good governance among others. Moreover, the ECOWAS Mediator

must abide and promote the accession to power in the region through democratic elections, demonstrate zero tolerance for power obtained or maintained through unconstitutional means, and support the supremacy of democratically elected governments' control over Member States armed forces (Protocol on Democracy and Good Governance).

Following the ECPF, the ECOWAS Mediator must also uphold certain specific moral obligations, with regard to: (i) ECOWAS responsibility to prevent (actions taken to address the direct and root causes of intra and inter-state conflicts that put populations at risk); (ii) ECOWAS responsibility to react (actions taken in response to grave and compelling humanitarian disasters); and, (iii) ECOWAS responsibility to rebuild (actions taken to ensure recovery, reconstruction, rehabilitation and reconciliation in the aftermath of violent conflicts, humanitarian or natural disasters).

PRINCIPLE 11:
SUBSIDIARITY, COLLABORATION, COMPLEMENTARITY AND COMPARATIVE ADVANTAGE

As emphasised in the ECPF, a firm legal basis underpins the relationship between ECOWAS, the African Union and the United Nations on issues of peace and security. Indeed, the three bodies normally cooperate on the issues of peace and security on the principles of subsidiarity and complementarity in accordance with the provisions of Chapter VIII of the UN Charter as well as the 2000 African Union Constitutive Act and the 2002 Protocol on the Establishment of the Peace and Security Council of the African Union (henceforth PSC Protocol). It should be noted that key ECOWAS normative standards on conflict prevention, resolution and peace-building broadly radiate from the Constitutive Act of the AU, the PSC Protocol and the UN Charter.

The African Union is a Regional Organisation recognised by the United Nations, under Chapter VIII of the UN Charter with the primary responsibility of the maintenance and promotion of peace, security and stability in Africa with ECOWAS constituting one of the pillars of the African Peace and Security Architecture (APSA). Indeed, APSA is imbued with a true continental nature as far as its rationale and components are concerned. It should be recalled that Article 16 of the PSC Protocol states that "the Regional Mechanisms are part of the overall security architecture of the Union". It is here that, subsidiarity, collaboration and comparative advantage, cushioned in an approach of "effective partnership," are first defined.

The 2008 "Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern and Southern Africa" (henceforth 2008 MoU) gives additional guidance in terms of these dimensions as they pertain to the focus of these guidelines. Indeed, the MoU acknowledges the increased cooperation and collaboration between all Parties and

calls on the strengthening and deepening of relations and enhancing their capacity to collectively address the scourge of conflicts.

The MoU emphasises adherence to the principles of subsidiarity, complementarity and comparative advantage in order to optimise the partnership between the African Union, the RECs and the Coordinating Mechanisms, acknowledging the role and responsibilities of the RECs in their areas of jurisdiction.

In terms of the focus of these guidelines, the MoU specifically calls on Parties to "intensify their efforts towards the prevention of conflicts" and "cooperate to enhance their capacity to anticipate and prevent conflicts and actions that may lead to genocide and crimes against humanity"; "work together and draw on each other's expertise to contribute to the implementation of regional and continental instruments relevant to the promotion of peace, security and stability in Africa", and, "cooperate in peace-making and peace-building activities to resolve these conflicts and prevent their recurrence, including through good offices, mediation, conciliation, enquiry and deployment of peace support missions".

Moreover, Parties to the MoU agree that arrangements for cooperation must include: (i) exchange of information (including analysis and assessments, desk-to-desk contacts), (ii) meetings and other mechanisms for enhancing cooperation (including at highest decision-making and political levels); (iii) institutional presence (including establishment of Liaison Offices at AU); and, (iv) joint activities and field coordination.

Finally, Parties to the MoU agreed on the need to work together to mobilise the support of the United Nations, other relevant actors and the international community.

SELECTED ECOWAS LEGAL AND NORMATIVE INSTRUMENTS

ECOWAS Authority, Treaty of ECOWAS, Revised, Cotonou, Benin, 24 July 1993

ECOWAS Authority, Protocol on Non-Aggression, Lagos, Nigeria, 22 April 1978.

ECOWAS Authority, Protocol Relating to Mutual Assistance on Defence, A/SP3/5/81, Freetown, Liberia, 29 May 1981.

ECOWAS Authority, Declaration of Political Principles of the Economic Community of West African States, A/DCL.1/7/91, Abuja, Nigeria, 6 July 1991.

ECOWAS Authority, Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, Lomé, Togo, 10 December 1999.

ECOWAS Authority, Protocol on Democracy and Good Governance, A/SP1/12/01, Dakar, 21 December 2001.

ECOWAS Mediation and Security Council, ECOWAS Conflict Prevention Framework, Regulation MSC/REG.1/01/08, Ouagadougou, Burkina Faso, 16 January 2008.

ENDNOTES

1. The ECOWAS Revised Treaty (1993); Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999); the Supplementary Protocol on Democracy and Good Governance (2001)

2. See in this regard "The Monrovia Declaration", Report of the ECOWAS International Conference on "Two Decades of Peace Processes in West Africa: Achievements, Failures and Lessons", March 2010.

3. Protocol on Non-Aggression, ECOWAS Authority, Lagos, Nigeria, 22 April 1978.

4. Protocol Relating to Mutual Assistance on Defence, ECOWAS Authority, A/SP3/5/81, Freetown, Liberia, 29 May 1981.

5. ECOWAS Authority, Treaty of ECOWAS, Revised, Cotonou, Benin, 24 July 1993, Preamble.

6. Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, ECOWAS Authority, Lomé, Togo, 10 December 1999. The Protocol on the Mechanism followed the Authority's Decision A/DEC.11/10/98 adopted in Abuja on 31 October 1998.

7. See Protocol on Democracy and Good Governance, A/SP1/12/01, ECOWAS Authority, Dakar, 21 December 2001. Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, ECOWAS Authority, Lomé, Togo, 10 December 1999.

8. ECOWAS Mediation and Security Council, ECOWAS Conflict Prevention Framework, Regulation MSC/REG.1/01/08, Ouagadougou, Burkina Faso, 16 January 2008.

9. United Nations Secretary General, United Nations Guidance for Effective Mediation, Annex to United Nations Secretary General, Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution, A/66/811, 25 June 2012.

10. Saadia Touval, The Peace Brokers: Mediators in the Arab-Israeli Conflict 1948–1979, Princeton NJ: Princeton University Press, 1982, p. 4.

11. United Nations Secretary General, Op. cit.

12. Jacob Bercovitch, "Mediation in International Conflict: an Overview of Theory, a Review of Practice", in: I.W. Zartman/J. Rasmussen (eds.), Peacemaking in International Conflict. Methods and Techniques, Washington DC: United States Institute of Peace Press, 1997, p. 127.

13. Ronald Fisher and Loraleigh Keashly, "The Potential Complementarity of Mediation and Consultation within a Contingency Model of Third Party Intervention", in: Journal of Peace Research, 28, 1991, 1, p. 28–42.

14. Council of the European Union, Concept on Strengthening EU Mediation and Dialogue Capacities", Brussels, 10 November 2009.

15. Marieke Kleiboer, The Multiple Realities of International Mediation, London, Boulder CO: Lynne Rienner, p. 7. See also, by the same author, Understanding Success and Failure of International Mediation, Journal of Conflict Resolution 40 (1996) 2, pp. 360–389.

16. Jacob Bercovitch, Op. cit, 1997, p. 128.

17. United Nations Secretary General, Op. cit.

18. Council of the European Union, Concept on Strengthening EU Mediation and Dialogue Capacities" , Brussels, 10 November 2009.

19. Afolabi, Babatunde, Peace Mediation: The ECOWAS Experience, unpublished, January 2017, p. 3.

20. Afolabi. Op. cit. p. 3.

21. See Articles 24 and 25 of the ECOWAS Conflict Prevention Framework, Regulation MSC/REG.1/01/08, ECOWAS Mediation and Security Council, Ouagadougou, Burkina Faso, 16 January 2008.

22. Afolabi, Op. cit. p.14.

23. Ibid.

24. See for example Jean Bossuyt, “The Political Economy of Regional Integration in Africa: The Economic Community of West African States (ECOWAS) Report”, ECDPM, January 2016.

25. See in this regard Odigie, Brown, The Institutionalisation of Mediation Support within the ECOWAS Commission, Policy and Practice Brief, ACCORD, Durban, June 2016, p. 4.

26. Report of the Needs Assessment Workshop for the Establishment of the ECOWAS Mediation Facilitation Division, Lagos, Federal Republic of Nigeria, 30 October to 1 November 2012, p. 6. See Odigie, Brown, The Institutionalisation of Mediation Support within the ECOWAS Commission, Policy and Practice Brief, ACCORD, Durban, June 2016., p. 4.

27. Ibid. p. 5.

28. Afolabi, Babatunde, Op. cit. p. 12.

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Economic Community of the West African States
Communauté Économique des États de l'Afrique de l'Ouest
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