

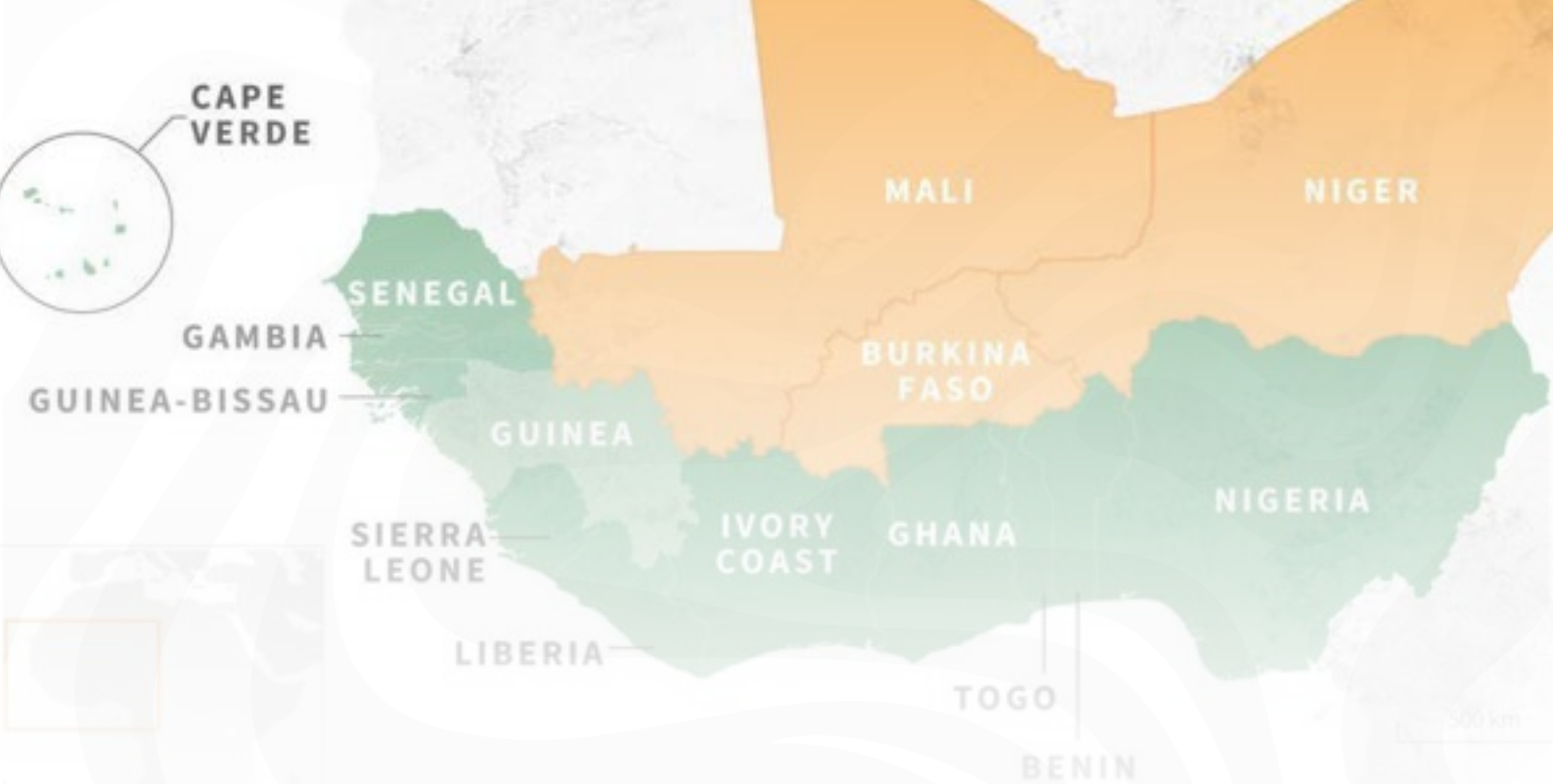
TOWARDS A POST-EXIT
TRANSITIONAL FRAMEWORK FOR

ECOWAS-AES RELATIONS

ANALYTICAL REPORT

2025





TOWARDS A POST-EXIT TRANSITIONAL FRAMEWORK FOR ECOWAS-AES RELATIONS

WADEMOS
West Africa Democracy Solidarity Network



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The West Africa Democracy Solidarity Network (WADEMOS)

WADEMOS is a non-partisan, independent, civil society-led transnational network of over 46 organizations across 15 countries in West Africa. It works to advance, defend, and reinvigorate democracy by mobilizing and coordinating pro-democracy actors, strengthening regional solidarity, and promoting democratic norms and reforms. WADEMOS engages national, regional, and continental institutions, including ECOWAS, the African Union (AU), and the African Peer Review Mechanism (APRM), through advocacy, research, and citizen-driven initiatives.

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AGI is a pan-African organization headquartered in Dakar, Senegal, dedicated to advancing effective and accountable governance across the continent. Established in 2003, AGI serves as a platform for policy dialogue, research, and capacity development, working with governments, regional institutions, and civil society. Its work focuses on strengthening public institutions, supporting governance reforms, and promoting inclusive and sustainable development in Africa.

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CDD-Ghana is an independent, non-profit think-and-do tank founded in 1998 and headquartered in Accra, Ghana. It works through research, policy engagement, and civic dialogue to promote democracy, good governance, and inclusive development in Ghana and across Africa. The International Desk leads the Center's work on regional and global governance issues, including tracking and analyzing foreign influence and geopolitical dynamics in West Africa and their impacts on democratization and inclusive growth.

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List of Acronyms

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Commission on Human and Peoples' Rights
AES	Alliance des états du Sahel (Alliance of Sahel States)
AGA	African Governance Architecture
AMU	Arab Maghreb Union
AU	African Union
DTP	Declaration of Transition Principles
EAC	East African Community
EACSO	East African Common Services Organisation
EBID	ECOWAS Bank for Investment and Development
ECOWAS	Economic Community of West African States
ICJ	International Court of Justice
LGA	Liptako-Gourma Authority
MRU	Mano River Union
MSC	Mediation and Security Council (ECOWAS)
NBA	Niger Basin Authority
OAU	Organization of African Unity
PSC	AU Peace and Security Council
REC	Regional Economic Community
UCG	Unconstitutional Change of Government
UN	United Nations
UNGA	United Nations General Assembly
WAEMU	West African Economic and Monetary Union

Executive Summary

On 29 January 2025, the year-long notice by Burkina Faso, Mali, and Niger of their denunciation of the Revised ECOWAS Treaty took effect, formally marking their exit from the Economic Community of West African States (ECOWAS).

At the time of their departure, these three states collectively accounted for 54.35% of ECOWAS's landmass, 17.4% of its population, 10% of its GDP, and 20% of its membership. As landlocked Sahelian states forming the northern frontier of the Community, their withdrawal represents a profound geopolitical and institutional shift for regional integration in West Africa.

Although formally completed in 2025, the exit process effectively began in September 2023 with the adoption of the Liptako-Gourma Charter establishing the Alliance of Sahel States (AES) as a collective security arrangement among the three countries. This development introduced an institutional configuration that overlapped with ECOWAS, which itself functions both as an economic integration body and a collective security mechanism. The emergence of a parallel security framework within the same regional space created increasing tensions and ultimately rendered coexistence within the same institutional order untenable.

The immediate trigger for these developments was the military coup in Niger on 26 July 2023. In response, ECOWAS adopted an unprecedented position four days later, recognising the ousted government of President Mohamed Bazoum and signalling the possibility of using force to restore constitutional order. This marked a significant departure from prior practice, notably the 2017 intervention in The Gambia, where an initially force-based posture evolved into a diplomatically mediated settlement supported by the United Nations Security Council.

In the Niger crisis, ECOWAS's call for backing from the African Union and the United Nations did not receive the anticipated support, resulting in diplomatic isolation. In this context, the AES emerged as a counter-regional security arrangement. ECOWAS's decision to contemplate the use of force engaged two foundational principles of contemporary international law: respect for domestic jurisdiction and the prohibition on the use of force. Given that the situation did not involve genocide, crimes against humanity, or self-defence, and lacked explicit authorisation from the African Union or United Nations, questions persist regarding the legal basis of the decision.

The formation of the AES also raises broader questions about institutional coordination within Africa's governance architecture and its alignment with global norms. It highlights weaknesses in crisis management, regional mediation, and dispute resolution mechanisms. The transition process further reveals missed opportunities, including limited engagement with the ECOWAS Court of Justice during a critical period of institutional transformation.

The exit of member states from a regional economic community into a distinct collective security arrangement is unprecedented in Africa. While there are few direct precedents, the dissolution of the East African Community in 1977 offers useful comparative insights for managing institutional breakdown and rebuilding cooperation. Against this backdrop, the report argues for a structured approach to managing the transition between ECOWAS and the AES, with a view to stabilising relations and creating conditions for eventual reintegration under appropriate political conditions.

The report concludes that the current rupture, while unprecedented, presents an opportunity for institutional learning and recalibration. It calls for a coordinated transitional framework to manage legal, political, and operational issues arising from the exit, strengthen regional governance mechanisms, and rebuild functional cooperation between ECOWAS and AES states on the basis of shared regional interests.



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Introduction

Introduction

The Economic Community of West African States (ECOWAS) is the oldest Regional Economic Community (REC) in Africa. It has existed for over 50 years since 1975 as a regional arrangement or agency within the meaning of Article 52(1) of the Charter of the United Nations.¹ The geographical reach of the community extended from the Atlantic littoral in the south and west to the heart of the Sahel in the north and the east. Adopted in May 1975, the treaty establishing ECOWAS was originally agreed by 15 states.² In 1977, Cape Verde acceded to the treaty, increasing the number of members of the Community to 16. A Protocol on Non-Aggression adopted the following year extended the substantive scope of the Community beyond the traditional concerns of regional economic integrations to cover mutual defence and collective security.³ At the conclusion of a review of the original treaty, in July 1993, the Community adopted a revised treaty extending its scope further to cover issues of governance.⁴

As the Revised ECOWAS Treaty entered into force in 1995, 20 years after the original establishment of the ECOWAS as an institution for regional integration in West Africa, the Community had evolved from its initial preoccupation with economic integration, into an infinitely more ambitious regional

arrangement effectively embodying a triple compact that covered economic integration, collective security, and the co-ordination and enforcement of shared values on governance. In the Revised ECOWAS Treaty, they established a legal framework to govern what was hoped to be a harmonious coexistence of all three. It does not appear to have been foreseen that the contemporaneous pursuit of all three preoccupations in one institutional arrangement could be fraught with contradictions that were not easily resolved. The crisis culminating in the exit in January 2025 of Burkina Faso, Mali, and Niger from ECOWAS illustrates the depth of epistemic contradiction between the various preoccupations of the Community and the need to re-examine and realign the norms, institutions, and organs of the Community for effectiveness in pursuit of its agreed goals.

For a quarter of a century after its foundation, the membership of the Community was stable at 16. On the approach to the new Millennium, it could be said that ECOWAS embodied the most diverse and ambitious normative and institutional arrangement for regional integration in Africa. At the beginning of the Millennium, however, Mauritania denounced its obligations within the Community in preference for accession to

1. See, Treaty of the Economic Community of West African States, adopted in Lagos, Nigeria, 28 May 1975, entered into force 20 June, 1975; Vol. 1010, I-14843 UNTS, 17 (1976).
2. The original members of ECOWAS at its inception were, in accordance with article 62 (1): Benin, Burkina Faso (Upper Volta), Côte d'Ivoire (Ivory Coast), Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Sierra Leone, Senegal, and Togo. See Vol. 1010, I-14843 UNTS, Id., 18-19
3. Protocol on Non-Aggression, adopted in Lagos, 22 April 1978; entered into force provisionally, 22 April 1978; entered into force definitively on 13 May 1982, Vol. 1690 UNTS, I-29135-29149, 29 (1992)
4. See, Revised ECOWAS Treaty, adopted in Cotonou, Benin Republic, 24 July, 1993; entered into force 23 Aug., 1995, UNTS, Vol. 2373, Nos. I-42801-42835, 233 (2006)

the mechanisms of the Arab Maghreb Union,⁵ thereby reducing the number of member States to 15. The membership of the Community was to remain stable for the next quarter century until 28 January 2024, when the military leaders of the central Sahelian States of Burkina Faso, Mali, and Niger issued a joint communique announcing their decision to withdraw their respective countries from the ECOWAS “without delay.”⁶ In accordance with Article 91 of the Revised ECOWAS Treaty, the treaty denunciation and withdrawal of the members took effect on 28 January 2025.⁷

With that occurrence, the community lost 20% of its membership in one swoop.

In preparation for their exit and ahead of it, the three states had adopted the Liptako-Gourma Charter in September 2023 as a treaty establishing a mutual defence pact under the name of Alliance of Sahel States

(known by its French acronym 'AES', derived from “Alliance des états du Sahel”).⁸ The usage subsequently in this report, “AES States”, is a reference to the three States of Burkina Faso, Mali, and Niger Republic as a unit.

These developments coincided with the inflection point of the 50th anniversary of the ECOWAS. More importantly, they also unscramble quite fundamentally, the assumptions that have underpinned the project of regional integration in West Africa and compel a re-examination, therefore, of the contours and challenges of regionalism in West Africa. Following the departure of the AES States, at the beginning of 2025, the president of Ghana, John Mahama, described the AES as an “irreversible reality.”⁹ Whether this was an act of diplomacy or a more fundamental appeal for a recalibration of the ambitions of the project of regional integration in West Africa was unclear. It, however, points to the challenges confronted by the Community in the aftermath of the establishment of the AES.

5. “Mauritania Pulls out of ECOWAS”, New Humanitarian, 28 Dec., 2000, available at [https://www.thenewhumanitarian.org/news/2000/12/28/mauritania-pulls-out-ecowas#:~:text=%E2%80%9CThey%20\(Mauritanians\)%20gave%20a regional%20economic%20grouping%20old%20IRIN](https://www.thenewhumanitarian.org/news/2000/12/28/mauritania-pulls-out-ecowas#:~:text=%E2%80%9CThey%20(Mauritanians)%20gave%20a regional%20economic%20grouping%20old%20IRIN), accessed 29 Jul., 2025.

6. “Joint Statement by Burkina Faso, the Republic of Mali, and the Republic of Niger” Signed in Ouagadougou, Bamako and Niamey on January 28, 2024, available at <https://maliembassy.us/wp-content/uploads/2024/01/JOINT-STATEMENT-BY-Mali-Burkina-Niger.pdf>, accessed 29 Jul., 2025.

7. Frederick Cowell, “ECOWAS Withdrawal and the Law of Treaty Withdrawal”, EJIL:Talk!, March 8, 2024, available at <https://www.ejiltalk.org/ecowas-withdrawal-and-the-law-of-treaty-withdrawal/>, accessed 29 Jul., 2025.

8. Charter of Liptako-Gourma Establishing the Alliance of Sahel States between Burkina Faso, The Republic of Mali and the Niger Republic, adopted 16 September, 2023, available at <https://maliembassy.us/wp-content/uploads/2023/09/LIPTAKO-GOURMA-Engl-2.pdf>, accessed 05 May, 2025.

9. Djiby Sow, “Can Realpolitik Drive Renewed Regional Co-operation in West Africa”, ISS Today, 20 May, 2025, available at <https://issafrika.org/iss-today/can-realpolitik-drive-renewed-regional-cooperation-in-west-africa>, accessed 29 Jul., 2025.

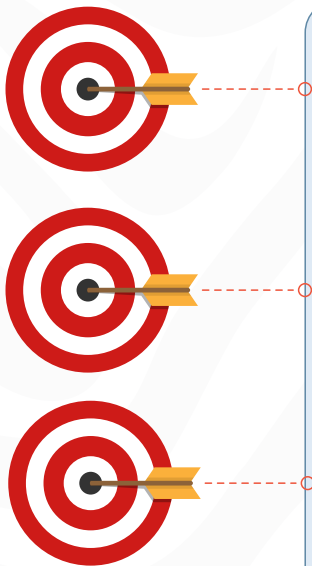


Objectives

Objectives

Against this background, this report examines the circumstances leading to the exit from the Economic Community of West African States (ECOWAS) at the end of January 2025 of Burkina Faso, Mali and Niger Republic with a view to distilling the lessons that may be learnt from the experience. Against this background, this report examines the legal, diplomatic and geostrategic context and consequences of the withdrawal of Burkina Faso, Mali, and Niger from the ECOWAS as well as any lost opportunities in the process. In the light of these considerations, the report will attempt to posit a post-exit framework for policy consideration. Additionally, it analyses that event with recommendations and possible models for how to manage the transition and relationships between the Community and the withdrawing members and for enabling the Community ultimately to evolve a framework for continuing engagement with those three states.

In particular, this report seeks to develop a framework that can:



- (a) facilitate continuing engagement between ECOWAS and AES with a view to mitigating the foreseeable impacts – social, economic, security, political among others – of the exit of Burkina Faso, Mali, and Niger from the Community;
- (b) prevent polarization between ECOWAS Member States and the three exiting states and while simultaneously laying the groundwork for future cooperation before the conclusion of the transition period in July 2025; and
- (c) Inform the establishment of a phased roadmap for the resumption of confidence building and future reintegration of the three exiting states back into the Community, including mechanisms for bringing about favourable conditions for gradual re-engagement.

With the aid of its analyses, this report will seek ultimately to distill a set of beacons which will aid the development of an action plan to manage the re-establishment of liaison and relationships between the Community and the AES States.

In this context, it is noteworthy that while the normative scope of the obligations evinced in the Liptako-Gourma Charter may have evolved, the existence of Liptako-Gourma Integrated Development Authority (LGA) as a regional institution in West Africa comprising Burkina Faso, Mali and Niger, goes back to December 1970, well before the foundation of the ECOWAS.¹⁰ Its original focus was the promotion of “a regional framework to enhance and develop mining, energy, hydraulic, agricultural, pastoral, and fisheries resources” in the Liptako-Gourma area.¹¹ What the AES has added to this is an explicit dimension of collective security. In this connection, it is noteworthy that the United Nations Secretary-General's Special Envoy for West Africa and the Sahel called in February 2025 for the establishment of a co-operation framework between ECOWAS and

the AES (States).¹² ECOWAS and the West African Economic and Monetary Union (UEMOA/WAEMU) already have similar co-operation frameworks embodied in mutually agreed treaties and protocols.¹³

It is, therefore, essential to underscore the point that in institutional and geo-spatial terms, the Liptako-Gourma area is not new. The institutions of the LGA have coexisted in actuality within and with those of ECOWAS for the past 50 years. What has changed in the present context is not the normative or institutional form but the political optics of relationships between the member States of the Liptako-Gourma Authority in the AES and the ECOWAS.

This should engage the strategic and diplomatic asset streams of the Community at its highest levels and it is essential to keep this in special focus.

10. See, Fredrik Söderbaum, *Handbook of Regional Organizations in Africa*, (Uppsala, Nordic Africa Institute, 1996), 113-114; Klaus Grütjen, *Current Developments in West Africa's Regional Integration – Challenges for the Future Design of Foreign and Development Policy*, IDOS Policy Brief, 6/2024, available at https://www.idos-research.de/fileadmin/migratedNewsAssets/Files/PB_6_2024.pdf, accessed 29 July 2025

11. See, European Council for Foreign Relations, “Mapping African Regional Integration”, available at <https://ecfr.eu/special/african-cooperation/liptako-gourma-authority/>, accessed 17 May 2025

12. “UN envoy calls for AES-ECOWAS cooperation framework in Bamako”, Xinhua News Agency, 22 Feb., 2025, available at <https://en.people.cn/n3/2025/0222/c90000-20280183.html>, accessed 17 May 2025

13. Bruce Byiers and Cheikh T. Dièye, *Regional Integration in West Africa: Necessary Overlaps or Wasteful Options*, ECPDM Discussion Paper No. 322, 7 (May 2022) available at <https://ecdpm.org/application/files/4516/5779/1517/Regional-Integration-West-Africa-Wasteful-Overlaps-Necessary-Options-ECDPM-Discussion-Paper-322-2022.pdf>, accessed 17 May 2025.



03

Methodology And **Constraints**

Methodology And Constraints

This report is essentially based on an analytical review of primary sources and documentation as well as institutional and state practice generated from or connected with the decision making by the organs of relevant institutions of regional integration and governance in (West) Africa. The focus is on the circumstances leading to the exit of the three AES States from the ECOWAS and extends to all matters necessarily connected or incidental therewith.

For the purpose of this report, attention has also been paid to the normative instruments of the African Union, ECOWAS and other organs of regional integration and governance in Africa, including, to the extent necessary or relevant, similar instruments of their predecessors, such as the Organization of African Unity (OAU). This report also explores sources of comparative practice arising from transitions in the composition of regional institutions in Africa. In this connection, the experience of the retrenchment of the East African Community in 1977 and its reconstitution two decades later has been considered as particularly instructive.

In some cases, the report has been supplemented by unstructured interviews with officials of some of these institutions. Constraints of tight deadlines within which this report has been prepared made it impossible to secure official authorization for interviews with these officials. As a result, the interviews have been used as pointers to supplementary or essential information in the preparation of this report. Every effort has been made to verify independently the information provided from such interviews and material in this report is not necessarily sourced back to the interviews for primary authentication.



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**The Political And Diplomatic Aftermath:
Framing The Issues**

The Political And Diplomatic Aftermath: Framing The Issues

This report is framed by the above and also by the political and diplomatic aftermath that ensued following the announcement of the withdrawal from ECOWAS of the AES States in January 2024. At its Summit meeting in December 2024, the Authority of Heads of State and Government decided “to set the period from 29th January 2025 to 29th July 2025 as a transitional period and keep ECOWAS doors open to the three countries” of Burkina Faso, Mali, and Niger which had signaled their intention to exit the Community.¹⁵ The Authority also designated the presidents of Senegal and Togo “to continue their mediation role up to the end of the transition period to bring back the three countries.” In this way, the Community communicated a desire for continuing dialogue with the three exiting states as well as an ultimate hope for their return and re-integration with the rest of their sovereign peers.

In addition to representing 20% of the membership of the Community at the time of the announcement of their exit, the three central Sahelian States of Burkina Faso, Mali, and Niger also constituted 54.35% of the land-

mass; 17.4% of the population and 10% of the GDP.¹⁶ These numbers do not necessarily fully account for the exposures for the Community that arise from the exit of these three states. Among these exposures, five deserve attention for present purposes.

First, Burkina Faso, Mali and Niger were founding members of ECOWAS. They are by no means the only states to have left the Community. At the turn of the millennium on 1 January 2000, ECOWAS comprised 16 member States. Mauritania, another founding member, exited the Community on 28 December 2000.¹⁷ With the departure of these three states, ECOWAS effectively lost all of its Sahelian frontier states or 25% of its membership in the first 25 years since the onset of the new millennium. This could have existential implications for the strategic relevance and institutional authority of the Community. As such, it must be seen as a learning moment.

Second, the circumstances of the exit of these states from ECOWAS occurred in the context of what appeared to be dissonance instead of complementarity between essen-

14. ECOWAS, Final Communiqué of the 66th Ordinary Session of the Authority of Heads of State and Government, Abuja, Nigeria, 15 December 2024, para 44. Available at https://www.ecowas.int/wp-content/uploads/2024/12/FINAL-Communiqué_ENG-1_241216_173334.pdf accessed 15 May 2025

15. Id.

16. ECOWAS, Final Communiqué of the Extraordinary Summit of the Authority of Heads of State and Government on the Political, Peace and Security Situation in the Region, Abuja, 24 February, 2024, para 19, available at https://www.ecowas.int/wp-content/uploads/2024/02/EXT-ORD-SUMMIT-FINAL-COMMUNIQUÉ-ENGLISH_240225_160529.pdf, accessed 15 May 2025. Other sources estimate that they constitute 16.5% of the population; and 7% of the regional Gross Domestic Product (GDP). See, Danielle Resnick, “The ECOWAS Breakup: Implications for West African Food Security and Regional Co-operation”, IFPRI Blog, 28 January, 2025, available at <https://www.ifpri.org/blog/the-ecowas-breakup-implications-for-west-african-food-security-and-regional-cooperation/>, accessed 15 May 2025; Chidi Anselm Odinkalu, “Before We Call it ECO-WAS”, Premium Times, 2 February 2025, available at <https://www.premiumtimesng.com/opinion/771245-before-we-call-it-eco-was-by-chidi-anselm-odinkalu.html>, accessed 15 May 2025.

17. “Mauritania Pulls out of ECOWAS”, New Humanitarian, 28 Dec., 2000, available at [https://www.thenewhumanitarian.org/news/2000/12/28/mauritania-pulls-out-ecowas#:~:text=%F2%80%9CThey%20\(Mauritians\)%20gave%20a,regional%20economic%20grouping%20to%20IRIN](https://www.thenewhumanitarian.org/news/2000/12/28/mauritania-pulls-out-ecowas#:~:text=%F2%80%9CThey%20(Mauritians)%20gave%20a,regional%20economic%20grouping%20to%20IRIN).

tial components of the African Governance Architecture (AGA), including the African Union, the ECOWAS, and the Economic and Monetary Union of West Africa (UEMOA).¹⁸ It suggests a need to re-examine synergies and the mutual coexistence of regional institutions in Africa with a view to ensuring both effective dialogue and necessary complementarity between them in the implementation of foundational continental and regional standards. The failure of this was a critical component of the factors that ultimately militated in favour of the exit in this case. The Authority of Heads of State and Government of the ECOWAS has acknowledged as much in underscoring the need for “an enhanced cooperation and collaboration between the ECOWAS Mediation and Security Council (MSC) and the AU Peace and Security Council (PSC) to ensure synergy on decisions taken at the regional and continental levels”,¹⁹ as well as “consistency in the application of the provisions of the ECOWAS Supplementary Protocol on Democracy and Good Governance and the African Charter on Democracy, Elections and Governance.”²⁰

Third, until their departure, Burkina Faso, Mali and Niger were the three land-locked member States within the ECOWAS. Their exit does not diminish their need for maritime and port facilities or the concomitant necessity for port and supply-chain transit rights. Instead, it could signal a competition among their neighbours within the Community and beyond for that service, potentially creating a crisis of confidence which could ripple into

further challenges that could potentially undermine the coherence and effectiveness of the Community in managing a difficult and fraught transition.

Fourth, Burkina Faso, Mali and Niger together effectively defined the Sahelian frontiers of the Community, constituting a buffer against new patterns of insurgent and Islamist violence. With the loss of this buffer, the Community could confront new security challenges on an undefined scale. Their exit from the Community effectively reduces ECOWAS to a community of Atlantic states, an occurrence that potentially re-defines the strategic identity of the community and presents the remaining countries of the community with a new set of security exposures for which common planning is needed.

Fifth, the co-existence of the states in the ECOWAS was always characterized by porous borders, transboundary communities and nationalities and shared resources. The exit of these three States from the Community will not make these challenges to vanish. If anything, it deepens the difficulties in managing them. The three exiting states, for instance, are all members - alongside four other Community states - in the Niger Basin Authority (NBA), the treaty system that regulates the use and management of the waters of the River Niger.²¹ This creates an imperative that militates in favour of harmonious relationships between the exiting states and the member states of the Community well beyond any period of transition that is

18. See George Mukundi Wachira, Consolidating the Africa Governance Architecture, South African Institute for International Affairs, SAIIA, Policy briefing 96, June 2014 available at <https://saiia.org.za/wp-content/uploads/2014/07/Policy-Briefing-96.pdf>

19. ECOWAS, Final Communiqué of the 65th Ordinary Session of the Authority of Heads of State and Government, Abuja, 7 July 2024, para 42, available at <https://www.ecowas.int/sixty-fifth-65th-ordinary-session-of-the-authority-of-heads-of-state-and-government/>

20. Id.

21. Convention Creating the Niger Basin Authority, adopted 21 November, 1980. The member states of the Niger Basin Authority are: Benin Republic, Burkina Faso (formerly Upper Volta), Cameroon, Chad, Côte d'Ivoire, Guinea, Mali, Niger, and Nigeria. See Tiyanjana Maluwa, “Legal Aspects of the Niger River Under the Niamey Treaties”, 28:4 *Natural Resources Journal*, 671 (1988)

likely to be agreed. The implication must be that the inter-temporal spectacles of what follows must look beyond any convenient transitional duration.

Each of the above factors is sufficiently significant to warrant an examination of the exit of these three states from the Community for lessons. Together, they necessitate a particularly close scrutiny of the circumstances of the exit with a view to ensuring the preservation of the Community

and, ultimately, advancing the cause of their reintegration back into the Community. Addressing this goal will require both internal lesson-learning by ECOWAS as well as attention to a careful design of mechanisms of transition management that will ensure the gradual restoration of mutual confidence going forward.



05

Background And **Context**

Background And Context

When they issued their joint announcement of the denunciation of the Revised ECOWAS Treaty on 28 January 2024, the leaders of Burkina Faso, Mali, and Niger expressed “great regret, bitterness and disappointment” with ECOWAS.²² Among the reasons adduced in the statement for their withdrawal from the Community, the three states accused ECOWAS of:



(a) Having moved away from the ideals of its founding fathers and Pan-Africanism;

(b) Acting under the influence of foreign powers to betray its founding principles and becoming a threat to its member states “and their populations whose happiness it is supposed to promote”;

(c) Failing to provide assistance to these three states in their “existential struggle against terrorism and insecurity”; and

(d) In response to the military coups in the three countries, adopting “an irrational and unacceptable posture by imposing illegal, illegitimate, inhumane and irresponsible sanctions in violation of its own regulations; all of which have further weakened the populations already devastated by years of violence imposed by instrumentalized and remote-controlled terrorist hordes.”²³

22. Joint Statement by Burkina Faso, The Republic of Mali, and The Republic of Niger of 28 January 2024, available at <https://maliembassy.us/wp-content/uploads/2024/01/JOINT-STATEMENT-BY-Mali-Burkina-Niger.pdf>

23. Id.



On 29 January 2025, the three states consummated their formal exit from the ECOWAS. This is now widely referred to as “Sahel Exit”.

Article 91(1) of the Revised ECOWAS Treaty entitles any member state desiring to exit to give a year-long notice of their intention to do so. If the notice is not withdrawn at the expiration of the one year, the member state “shall cease to be a member of the Community.”

It is important to highlight and distinguish the three major issues encompassed in the dispute and the major landmarks in the journey to this eventuality. This is important not merely for normative clarity but also because the developments are characterised by both overlaps and missed opportunities.

24. “Burkina Faso, Mali, and Niger’s Withdrawal from ECOWAS is now a reality”, ECOWAS Press Release, 30 January 2025, available at <https://www.ecowas.int/burkina-faso-mali-and-niger-withdrawal-from-ecowas-is-now-a-reality/>

25. Revised Treaty of the Economic Community of West African States (ECOWAS), adopted in Cotonou, Benin Republic, 24 July, 1993, available at <https://ecowas.int/wp-content/uploads/2022/08/RevisedTreaty-1.pdf>



(A) The Coup d'état of 26 July 2023 in Niger Republic Breached the Norm against Unconstitutional Change of Government (UCG) in Africa

The trigger for the cascade of events that eventuated in the exit of the AES States from ECOWAS began with the UCG in Niger Republic on 26 July 2023. On that day, the military in Niger Republic overthrew an elected civilian administration. The institutions of the African regional system had established by 2020 that “AU Member States have adopted democracy as their political system” based on the principle of one person one vote.²⁶ Among its elements, this norm embodies a prohibition against UCGs.²⁷

By the turn of the millennium, the Organization of African Unity had determined that “the phenomenon of coup d'état has resulted in flagrant violations of the basic principles of our continental organization and of the United Nations.”²⁸ In accordance with this principle, the continent had evolved a norm which viewed military coups or UCGs as causes of regional instability requiring action to preserve regional peace and security. In 1997, for instance, a military coup overthrew the elected civilian government of Burundi. To bring pressure on the usurper regime, the neighbouring states of East and Central Africa decided to impose a regional blockade on Burundi, a land-locked country. In a case

against the blockading neighbours, claiming violations of the African Charter on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights affirmed the need for regional action against coups in Africa and upheld the legality of the regional blockade implemented by Burundi's neighbours against the usurper regime as “legitimate interventions in international law.”²⁹ The Commission explained further that “the military coup which deposed the democratically elected government constituted a threat to, indeed a breach of the peace in Burundi and the region.”³⁰ It is notable that in that case, enforcement action by the neighbours of Burundi stopped at its borders, with no deployment into its territory.

It is important, however, to distinguish here between the existence of the norm against UCGs in Africa on the one hand, (which was violated by the military coup in Niger Republic), and the scope of lawful processes for ensuring enforcement of any breach of that norm on the other. It should not be disputed that the military coup in Niger Republic breached the continental and regional norm against UCG. As will be shown shortly, there were also continental norms

26. Advisory Opinion 001/2020 on the Right to Participate in the Government of one's Country in the Context of an Election held During a Pandemic such as the COVID-19 Crisis, Advisory Opinion, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 52 (July 16, 2021); *Open Society Justice Initiative v. Republic of Côte d'Ivoire*, Communication 318/06, Afr. Comm'n H.P.R., ¶164 (May 27, 2016).

27. See, Chidi Anselm Odinkalu, “A Ruler's Shield? Re-Evaluating the Norm against Unconstitutional Change of Government in Africa,” 25:1 African Human Rights Law Journal, 1 (2025).

28. Declaration on the Framework for an OAU Response to Unconstitutional Changes in Government, Assembly of Heads of State and Government, Thirty-Sixth Ordinary Session, OAU Doc. AHG/Decl.5 (XXXVI), preamble (July 10-12, 2000).

29. Association pour la Sauvegarde de la Paix au Burundi v Kenya, Rwanda, Tanzania, Uganda, Zaire and Zambia (2003) AHRLR 111 (ACHPR 2003) para 70.

30. Id., Para 74

which established both an obligation on the part of the institutions of ECOWAS and the African Union to act in response to the UCG in Niger and also created mechanisms for doing so.

The question that remains to be determined, therefore, is the scope of lawful mechanisms to be deployed against such situations. More Specifically, the question would be whether there existed lawful authorisation to deploy the threat or use of force in response to the UCG in Niger Republic, if so, in what circumstances that could lawfully be deployed.



(B) The Legality of the Threat of Use of Force by ECOWAS

Burkina Faso, Mali and Niger Republic were founding members of ECOWAS,³¹ and of the African Union.³² Although both institutions condemned the July 2023 coup in Niger in strong terms and had suspended all three states from their organs in response to military coups at different times since 2020,³³ the outbreak of antipathy from these states was directed at ECOWAS and not the African Union. It appears that the immediate impetus for the establishment of the AES was the decision of the Extraordinary Session of the Authority of Heads of State and Government of the ECOWAS in July 2023 in response to the military coup in Niger Republic of 26 July 2023, to “take all measures necessary to restore constitutional order...” including “the use of force.”³⁴ For this purpose, the extraordinary summit ordered a meeting of the Chiefs of Defence Staff of the Community with a view to mobilizing the military assets that may be required.³⁵ The summit also enunciated a comprehensive set of sanctions against Niger, and requested the UEMOA (all of whose members also belonged to the ECOWAS) to endorse and implement same.³⁶

The following day, a joint statement by the military regimes of Burkina Faso and Mali declared that “any military intervention

against Niger would be tantamount to a declaration of war against Burkina Faso and Mali.”³⁷ This response hewed close to the requirement in Article 51 of the UN Charter of an armed attack as a precondition for the assertion of a right of individual or collective self-defence in international law to the extent that a “military intervention” would be considered to fulfill the definition of an armed attack. It also enunciated for the first time the doctrine of collective security that was to be later expanded upon in Article 6 of the Liptako-Gourma Charter. Burkina Faso followed this with the adoption of legislation authorizing it to deploy troops across its borders for the defence of Niger Republic “for a three-month renewable period.”³⁸

From Niamey, capital of Niger Republic, the new military leadership in Niger denounced the decision by ECOWAS to deploy the use of (military) force as an act of “aggression or attempted aggression.”³⁹ The United Nations General Assembly defined aggression as a term of art in international law in Resolution 3314 (XXIX) in terms requiring and equating it with the use of armed force.⁴⁰ The ICJ has pointed out that this resolution “may be taken to reflect customary international law.”⁴¹

35. Id.

36. Id., para 10(k)1-9

37. “Burkina Faso, Mali say military intervention in Niger would be ‘declaration of war’”, France24, 1 Aug. 2023, available at <https://www.france24.com/en/africa/20230801-burkina-faso-and-mali-say-intervention-in-niger-would-be-declaration-of-war>; “Burkina Faso, Mali warn against military intervention in Niger”, Aljazeera, 1 Aug., 2023, available at <https://www.aljazeera.com/news/2023/8/1/burkina-faso-and-mali-warn-against-foreign-intervention-after-niger-coup>, accessed 29 Jul., 2025

38. “Burkina Approves Law for Sending Troops to Post-Coup Niger”, The Defence Post, 20 Sept., 2023

39. “Niger: Junta threatens immediate response to any aggression”, Le Monde (with AFP), 4 Aug., 2023, available at https://www.lemonde.fr/international/article/2023/08/04/niger-junta-threatens-immediate-response-to-any-aggression_6079637_4.html, accessed 29 Jul., 2025

40. UNGA Res 3314 XXIX (1974), “Definition of Aggression”, available at [https://docs.un.org/en/A/RES/3314%20\(XXIX\)](https://docs.un.org/en/A/RES/3314%20(XXIX)), accessed 19 Jul., 2025.

41. Nicaragua Case, para 195.

The decision committing the ECOWAS to the use of force to restore the elected government in Niger preceded a statement published on 3 August 2023 by the usurped president, Mohammed Bazoum, in which he issued a “call on the U.S. government and the entire international community to help us restore our constitutional order.”⁴²

A subsequent extraordinary summit of the Authority of Heads of State and Government of ECOWAS in Abuja, Nigeria, on 10 August 2023 reinforced the decisions reached by the earlier extraordinary summit of 30 July, and called on the African Union and the United Nations to endorse them.⁴³ The extraordinary summit of 10 August 2024 also directed the Chiefs of Defence Staff of the Community “to immediately activate the ECOWAS Standby Force with all its elements”,⁴⁴ and more particularly ordered “the deployment of the ECOWAS Standby Force to restore constitutional order in the Republic of Niger.”⁴⁵

At the conclusion of their two-day meeting in Accra, Ghana, on 17 August 2023, the Chiefs of Defence Staff of ECOWAS announced that they had agreed an undisclosed “‘D-Day’ for possible military intervention to restore democracy in Niger.”⁴⁶ In the view of many, this came as close as possible to a declaration of war and the Chairperson of the

Both within the Community and beyond, the reaction to the decision of the organs of ECOWAS threatening the use of force in Niger Republic was far from adulatory or unanimous. In response to the decisions adopted by ECOWAS following the extraordinary summit of 10 August, Cape Verde announced its explicit opposition to the use of force, declaring that it favoured a diplomatic resolution of the crisis over Niger.⁴⁸

Guinea (Conakry), a suspended member state of the Community, similarly voiced its opposition.⁴⁹ Niger's Maghrebine neighbour, Algeria, expressed disquiet about an intervention as did permanent member of the United Nations Security Council, Russia.⁵⁰ Another permanent member, the United States of America, expressed a preference for diplomatic options.⁵¹ A third permanent member, France, expressed support for possible use of force by the ECOWAS to restore the elected government in Niger.⁵² This confetti of contradictory positions all but guaranteed that the United Nations Security Council would be unable to find common ground on the issue.

The following day, the Chairperson of the Commission of the African Union, Moussa Faki Mahamat, issued a statement expressing “strong support for the decisions adopted

42. Mohammed Bazoum, “President of Niger: My country is under attack and I have been taken hostage”, Washington Post, 3 Aug., 2023, available at <https://www.washingtonpost.com/opinions/2023/08/03/mohamed-bazoum-coup-niger-democracy/>, accessed 29 Jul., 2025.

43. ECOWAS, Final Communiqué of the Second Extraordinary Session of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Abuja, 10 August 2023, available at https://ecowas.int/wp-content/uploads/2023/08/ENG_Final-Communiqué-1_230810_225639-1.pdf, accessed 20 May, 2025.

44. Id., para 10(j).

45. Id., para 10(k).

46. Niamh Kennedy, “ECOWAS sets ‘D-Day’ for possible military intervention in Niger”, CNN, 18 Aug. 2023, available at <https://edition.cnn.com/2023/08/18/africa/niger-ecowas-d-day-military-intervention-intl-hnk/index.html>; Daniel Larison, “ECOWAS sets ‘D-Day’ for intervention in Niger”, Responsible Statecraft, 21 Aug., 2023, available at <https://responsiblerstatecraft.org/2023/08/21/ecowas-establishes-d-day-for-intervention-in-niger/>, accessed 20 May 2025.

47. ECOWAS, “ECOWAS to fully explore diplomatic channel in resolving political crisis in Niger”, Press Release, 26 Aug., 2023, available at <https://www.ecowas.int/ecowas-to-fully-explore-diplomatic-channel-in-resolving-political-crisis-in-niger/>, accessed 20 May 2025.

48. “Niger : le Cap-Vert, membre de la Cédéao, est opposé à une intervention militaire”, Franceinfo (with AFP), 11 Aug., 2023, available at https://www.franceinfo.fr/monde/afrique/niger/niger-le-cap-vert-membre-de-la-cedeao-est-oppose-a-une-intervention-militaire_6002027.html, accessed 20 May 2025.

49. See, Omar Hammady, “Assessing the Legality of ECOWAS’ Planned Military Intervention in Niger”, EJIL:Talk!, 6 Sept., 2023, available at <https://www.ejiltalk.org/assessing-the-legality-of-ecowas-planned-military-intervention-in-niger/>, accessed 20 May 2025.

50. Id.

51. Id.

52. “France supports ECOWAS intervention in Niger, foreign minister says”, France24, 05 Aug., 2023, available at <https://www.france24.com/en/france/20230805-france-supports-ecowas-intervention-in-niger-foreign-minister-says>, accessed 20 May 2025.

by the Economic Community of West African States (ECOWAS) on anti-constitutional change in Niger.”⁵³ The meeting of the Peace and Security Council (PSC) of the African Union which occurred three days later, however, appeared to signal a tone of caution from the African Union. Although it broadly welcomed the outcome of the ECOWAS extraordinary summits on the political crisis in Niger, the PSC merely “took note” of the decision by ECOWAS to deploy a Standby Force in Niger and, in particular, requested “the AU Commission to undertake an assessment of the economic, social and security implications of deploying a Standby Force in Niger and report back to Council.”⁵⁴ Notably, this decision by the PSC stopped short of indicating a timeline within which this study was to be undertaken or completed.

In effect, the African Union appeared to distance itself from the commitment of ECOWAS to the use of force, and effectively declined to afford the Community the full endorsement it sought for the measures that it had announced in response to the crisis in Niger Republic. For its part, the United Nations Security Council broadly “expressed support for the efforts of ECOWAS, the African Union as well as the United Nations”, underlining a preference for a co-ordinated international response to the situation in Niger.⁵⁵ The absence of a congruence between ECOWAS, the UEMOA, the African Union, and the United Nations on this critical issue of use of force was notable, and ultimately ensured the political and diplomatic

isolation of ECOWAS on the use of force. It also raised evident questions as to the legality of the threat or use of force in the circumstance.

In the aftermath of the reluctance communicated by the African Union's Peace and Security Council on the question of use of force on 14 August 2023, the Commission of ECOWAS appeared somewhat to clarify the position of the Community thereafter, indicating that it “will continue to pursue diplomatic initiatives towards the restoration of constitutional order in the Republic of Niger without compromising the option of the deployment of the regional standby force,” and describing reports of having declared war on Niger as a “misrepresentation”.⁵⁷ The Chairperson of the ECOWAS Commission appeared to suggest instead that what the Authority of ECOWAS had done was an element in a spectrum of sanctions, arguing that what the Authority of Heads of State and Government had authorized was “full-scale application of sanctions which includes the use of legitimate force to restore constitutional order.”⁵⁸

This statement by the Chairperson of the ECOWAS Commission, however, appeared to contradict itself when it also said that the Authority authorized the use of force in Niger only “after due consideration of how political dialogue alone has unfortunately failed to deter coup plotters in the region.”⁵⁹ This appeared to be an admission that while political and diplomatic channels had been

56. ECOWAS, “ECOWAS to fully explore diplomatic channel in resolving political crisis in Niger”, Press Release, 26 Aug., 2023, available at <https://www.ecowas.int/ecowas-to-fully-explore-diplomatic-channel-in-resolving-political-crisis-in-niger/>, accessed 20 May, 2025

57. Id.

58. Id.

59. Id.

deployed in other situations of military coups or UCG in the region, the assumption in the case of Niger was to exclude or preclude them. The logical question as to why the options in the case of Niger had to be determined on the basis of what had not worked in other countries was not addressed.

Moreover, the threat or the use of force by ECOWAS as a default was not merely new in the practice of both the Community and other regional institutions in Africa confronted with similar situations of a UCG, it also raised serious questions concerning the lawfulness of such a threat in the circumstance of the situation in Niger at the time of

compliance as well as of with the relevant normative order in general international law. This question was eminently one suitable for the attention of mechanisms of international judicial resolution, including but not limited to the Court of Justice of the ECOWAS, the African Court on Human and Peoples' Rights, and the International Court of Justice (ICJ).

The dispute could have been framed by the affected state (Niger Republic), by members of the Community or by Community institutions. The failure to do so was an opportunity missed for a possible de-escalation and for the facilitation of more pacific solutions to the situation.



(c) The Liptako-Gourma Charter and Incompatible Assertion of Right of Collective Self-defence by AES States

The preamble to the Liptako-Gourma Charter reaffirms the commitment of the AES States “to international and regional legality, as enshrined in particular in the Charter of the United Nations, the Constitutive Act of the African Union and the Revised ECOWAS Treaty.”⁶⁰ Under Article 6 of the Liptako-Gourma Charter:

Any violation of the sovereignty and territorial integrity of one or more Contracting Parties shall be considered as an aggression against the other Parties and shall give rise to a duty of assistance and relief by all the Parties, individually or collectively, including the use of armed force, to restore and ensure security within the area covered by the Alliance.⁶¹

The reference to the Revised ECOWAS Treaty in the preamble to the Liptako-Gourma Charter gives room for hope that the pre-existing relationships of the AES States with and within the Community will remain an important factor in shaping and adapting the institutions and mechanisms of the AES. More specifically, Article 6 of the Liptako-

Gourma Charter seeks to appropriate the right of collective self-defence in international law as the basis for a collective security agreement extending to the use of force,⁶² but expands it in a manner outside the contemplation of the UN Charter. The trigger for its claim to an assertion to use of force is “any violation of the sovereignty and territorial integrity” of any of the three AES States. As the International Court of Justice (ICJ) has made clear, Article 51 of the UN Charter only permits an assertion of the right of individual or collective self-defence “if an armed attack occurs”, and it is only the state attacked which can affirm that such an attack has taken place. It is essential to recapitulate the standard affirmed by the court in its own words:

In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this. There appears now to be general agreement on the nature of the acts which can be treated as constituting armed attacks. In particular, it may be considered to be agreed that an

60. *Id.*, Preamble, para 1

61. *Italics added.*

62. See, United Nations Charter, Article 51.

armed attack must be understood as including not merely action by regular armed forces across an international border, but also 'the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to' (inter alia) an actual armed attack conducted by regular forces, 'or its substantial involvement therein' ...the Court does not believe that the concept of 'armed attack' includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force, or amount to intervention in the internal or external affairs of other States. It is also clear that it is the State which is the victim of an armed attack which must form and declare the view that it has been so attacked. There is no rule in customary international law permitting another State to exercise the right of collective self-defence on the basis of its own assessment of the situation. Where collective self-defence is invoked, it is to be expected that the State for whose benefit this right is used will have declared itself to be the victim of an armed attack.⁶⁴

Article 6 of the Liptako-Gourma Charter manifestly lowered the threshold for an assertion or threat of use of force by the AES States in three ways. First, it dispensed with the requirement of prior armed attack as a trigger for the exercise of the right of self-defence. Second, it replaced the requirement for an armed attack with the more nebulous and subjective requirement of "violation of sovereignty or territorial integrity" of one or more of the AES States. Third, it arguably enables a state other than the state supposedly attacked or violated, to declare a trigger violation.

The LGA notionally fulfills the criteria for regional agencies under Article 52 of the UN Charter which, however, requires action by such agencies in advancing international peace and security to be "consistent with the Purposes and Principles of the United Nations."⁶⁵ It seems quite clear that Article 6 of the Liptako-Gourma Charter contradicts and is inconsistent with both the letter and the spirit of the prohibition of the threat or use of force in the UN Charter. With respect to such provisions in treaty law, Article 103 of the UN Charter provides explicitly that "[I]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." There was good reason to challenge the legality in international law of Article 6 of the Liptako-Gourma Charter. ECOWAS clearly missed an opportunity to promptly protest this or, indeed, seek judicial resolution of the question of its legality before a mechanism of international dispute resolution.

63. Case Concerning Military and Paramilitary Activities in and Against Nicaragua, *Nicaragua v. USA*, (Merits), ICJ Rep., 1986, 14, (hereafter referred to as "Nicaragua Case").

64. *Id.*, para 195

65. *Id.*, Art. 52(1)



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Normative And Institutional **Frameworks**

Normative And Institutional Frameworks

The exit from ECOWAS of the AES states was a political act that ultimately reflected a failure of regional diplomacy and dialogue. The underlying trigger was a dispute over the legal and institutional scope of measures that may be authorized by the ECOWAS in response to a UCG within the complex web of obligations and institutional arrangements in the AGA. Rising from its extraordinary summit of 10 August 2023, the Authority of Heads of State and Government of ECOWAS appealed respectively to the African Union for endorsement and to the United Nations to “support ECOWAS in its efforts to ensure a quick restoration of constitutional order, in conformity with its normative instruments.”

This shows that the organs of the Community recognized the need for compliance with normative commitments that should govern their decision-making under general interna-

tional law. The scope of applicable norms appears, however, to have been constructed too narrowly as only implicating the instruments of the ECOWAS. In reality, the landscape of applicable standards even more fundamentally implicated the norms, instruments and institutions of at least five different international institutions. Four of these have already been mentioned above. Those are the treaties of the African Union; ECOWAS; the UEMOA; and the AES/Liptako-Gourma Authority. The fifth, is the Charter of the United Nations. It is essential for present purposes to untangle the relevant issues and standards.

66. ECOWAS, Final Communiqué of the Second Extraordinary Session of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Abuja, 10 August 2023, para 10(h)



(a) Exceptions to the Prohibition against the Use of Force in International Law

The decision by ECOWAS to deploy the use of force in order to restore the elected government in Niger Republic engaged the two principles that anchor contemporary international law and relations: respect for domestic jurisdiction and the prohibition of the use of force. The Charter of the United Nations (UN) is the underlying legal instrument that underwrites contemporary international relations and the obligations under the Charter have primacy over all other treaty obligations in international law.⁶⁷ All member states of ECOWAS and the African Union also belong to the United Nations. In turn, all member states of the ECOWAS similarly belong to the African Union and all member States of the UEMOA belong to ECOWAS. Article 2(4) of the UN Charter prohibits “the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”

International law recognizes only two exceptions to this rule. One is in relation to states participating in enforcement action authorized by the UN Security Council under articles 43 and 45 of the UN Charter. The other is the assertion of “the inherent right of individual or collective self-defence” under Article 51

of the same Charter. Article 52(1) of the UN Charter, which authorizes regional arrangements and agencies in the realm of peace and security (such as the African Union or ECOWAS), makes the existence and activities of such entities contingent on their being “consistent with the Purposes and Principles of the United Nations”,⁶⁸ and also requires that member states of regional arrangements “shall make every effort to achieve pacific settlement.”⁶⁹ Article 76 of the Revised ECOWAS Treaty commits member States of the Community equally to pacific settlement of disputes and stipulates that in the absence of an amicable settlement of such disputes, “either party or any other Member States or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal.”⁷⁰

Thus, ECOWAS had in its institutional tool-kit mechanisms for judicial settlement in the Court of Justice of ECOWAS as well as mechanisms of diplomatic de-escalation in the ECOWAS Protocol relating to Conflict Prevention, Management, Resolution, Peace-Keeping and Security, such as the good offices of the ECOWAS Mediation and Security Council and of the Council of Elders.⁷¹ Each of these would ordinarily have

67. United Nations Charter, Art. 103

68. *Id.*, Art. 52(1)

69. *Id.*, Art. 52(2)

70. Revised ECOWAS Treaty, Article 76(2)

71. See Protocol relating to Conflict Prevention, Management, Resolution, Peace-Keeping and Security, Art. 20, available at <https://amaniafrica-et.org/wp-content/uploads/2021/04/Protocol-Relating-to-the-Mechanism-for-Conflict-Prevention-Management-Resolution-Peace-Keeping-and-Security-1999.pdf>, accessed 29 July, 2025.

Article 4(f) of the Constitutive Act of the African Union equally prohibits the threat or use of force among Member States of the Union. This prohibition extended also to the institutional organs of the Community. While the Constitutive Act (of the African Union) mandates non-interference in the internal affairs of member states,⁷⁴ it allows for exceptions in favour of intervention “pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.” The Constitutive Act also recognizes the right of member states to request intervention from the union in order to restore peace and security. This right was already well established in international law.

It seems evident that in relation to the decision by ECOWAS on the use of force in Niger, there was no claim that this was a case involving the suppression of war crimes, crimes against humanity or genocide; and there was no decision of either or both of the Security Council of the United Nations or the Assembly of Heads of State and Government of the African Union authorizing such. Even

more, the circumstances of the ECOWAS decision to threaten, authorize or deploy the use of force in Niger could not have been justified on the basis of self-defence as an exception to the general prohibition on the use of force in international law as the predicate conditions for an assertion of self-defence could not possibly have been met. A legitimate question therefore arises as to the legal bases of the decision. It is necessary to highlight the other issues that arise from the complex legal environment which triggered the exit of the AES member states from ECOWAS.

72. Constitutive Act of the African Union, Art. 4(g).

73. *Id.*, Art. 4(h)

74. *Id.*, Art. 4(j)

75. See Nicaragua Case para 246.



(b) Intervention by Invitation

The ECOWAS Protocol relating to Mutual Assistance in Defence governs the circumstances in which the Community may intervene in the territory of another by invitation.⁷⁶ According to this protocol, intervention by invitation shall be applicable to cases of “external armed threat or aggression” directed against a member state of the Community; and shall be communicated through “a written request for assistance to the current Chairman of the Authority of ECOWAS, with copies to other Members”, transmitted by the Head of State of the affected member state.⁷⁷ No such invitation preceded the decision by ECOWAS on 30 July 2023 threatening the use of force. At that extraordinary summit, ECOWAS decided to recognize the usurped administration of President Bazoum as the legitimate government of Niger. Neither the African Union nor the United Nations necessarily followed this example.

Even assuming that the recognition by ECOWAS alone could suffice for purposes of legitimizing any invitation by the usurped administration, the question still remains whether the conditions for a lawful invitation in Article 16 of the ECOWAS Protocol relating to Mutual Assistance in Defence were met. A

matter of chronology, the appeal by usurped President, Mohammed Bazoum, to the “U.S. government and the entire international community to help us restore our constitutional order” was issued on 3 August, four days after ECOWAS had already issued the threat of use of force. Even if it were to be treated for purposes of argument as a lawful invitation, the appeal by President Bazoum could not possibly have triggered the threat which was antecedent to it. Moreover, far from being transmitted to the Chair of the Authority of Heads of State and Government of the Community and other sovereign peers therein, this appeal - generic as it was - went primarily to the United States of America, a non-member of the Community.

The overthrow of a government by its armed forces also does not meet the standard of “external armed threat or aggression” in the ECOWAS Protocol relating to Mutual Assistance in Defence nor does it meet the standard of “armed attack”, which is a predicate for lawful exercise of individual or collective self-defence under the UN Charter.

At worst, there was at the material time of the decision by ECOWAS to deploy the use of force, a dispute as to who was the recognized

⁷⁶ Protocol, A/SP3/5/81, adopted 29 May, 1981.

⁷⁷ Id., Art. 16

or effective government in Niger. In such a situation and consistent with the commitment in Article 52(2) of the UN Charter to pacific settlement of disputes within regional systems, it may have been prudent to refer the question for judicial resolution by the Court of Justice of ECOWAS. It does not seem that this was adverted to. Even if such a step did not or could not effectively resolve the issue dispositively, it may nevertheless have afforded the Community and its member states a cooling off period within which to allow diplomacy a chance. There is no record or evidence that this was in fact or at all contemplated. In the absence of clarity on this issue, it is difficult to see how the requirements of Article 16 of the Protocol relating to Mutual Assistance in Defence could have been met.

Any lingering questions as to the existence of such a dispute, however, came to an end when the Peace and Security Council of the African Union adopted the decision on 14

August 2023 to suspend Niger Republic from participation in the organs of the Union indefinitely. This decision implied that the continental organization recognized that the administration of President Mohammed Bazoum no longer had any effective control of the territory or institutions of the affected member State and that its authority had in reality been usurped by the putschist military authorities. In these circumstances, therefore, President Bazoum would hardly have had any authority subsequent to that decision to originate a lawful invitation to ECOWAS or any other entity for military intervention into his country.



(C.) Applicable Sanctions

The ECOWAS Protocol on Democracy and Good Governance empowers the Community to deploy sanctions “in increasing order of severity” in any case in which “democracy is brought to an end by any means.”⁷⁸ The range of sanctions authorized by the Protocol include:



(a) Refusal to support the candidates presented by the Member State concerned for elective posts in international organisations;



(b) Refusal to organise ECOWAS meetings in the Member State concerned;



(c) Suspension of the Member State concerned from all ECOWAS decision making bodies.

Similarly, the African Charter on Democracy, Elections and Governance (ACDEG) permits the African Union to impose sanctions in cases of UCG, defined therein to include military coups. These measures may include the suspension of the affected state from the organs of the AU, and extend to “punitive economic measures.”⁸⁰ However, the ACDEG obliges the AU to maintain diplomatic contacts with the affected state in order to enable it to deploy “any initiatives to restore democracy in that state party.”⁸¹ Niger Republic acceded to the ACDEG on 4 October, 2011.⁸²

Two things seemed clear. First, the event in Niger Republic on 26 July 2023 was a military coup which fulfilled the criteria for a UCG within the normative frameworks of both the ECOWAS and the African Union. Both the ACDEG and the ECOWAS Protocol on Democracy and Good Governance contained ample provisions governing the response of organs and member States to such a situation. Second, it seems evident on the face of the relevant treaty texts that neither the ECOWAS Protocol on Democracy and Good Governance nor the ACDEG contained any provisions which contemplated the deployment or use of force as part of the range of sanctions envisaged in situations of coups or UCG.

78. Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security, Art 45(1)(2)

79. African Charter on Democracy, Elections and Governance, Article 23(1).

80. ACDEG, Id., Art. 25(7)

81. Id., Art. 25(3)

82. See African Union, List of Countries Which Have Signed, Ratified/Acceded to the ACDEG, available at https://au.int/sites/default/files/treaties/36384-sl-AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf, accessed 29 July 2025.

In response to the coup of 26 July 2023 in Niger, the extraordinary summit of the Authority of Heads of State and Government of ECOWAS instituted a comprehensive package of sanctions four days later on 30 July, including a blockade of the borders; asset, transaction, and credit freezes, as well as the establishment of a “no-fly zone” on all civil aviation into and out of Niger. The Community equally called on “WAEMU [UEMOA] and all other regional bodies to implement this decision.”⁸⁴

The legality of this kind of regime of sanctions had previously been tested in relation to the blockade of Burundi by the neighbouring States of East and Central Africa in 1997 following a military overthrow of an elected civilian government. In response to a case challenging the blockade, the African Commission on Human and Peoples' Rights determined that such a measure was compatible with and lawful under the treaty regime of the African continental system.⁸⁵

Similarly, the capacity of ECOWAS to bind the UEMOA and other regional bodies through its sanctions regime in such circumstances had been tested the previous year in a case arising from sanctions imposed by the ECOWAS following the military coups in Mali in August 2020 and May 2021. In January 2022, a summit meeting in Accra, Ghana, of the Conference of Heads of State and Government of the UEMOA adopted the totality of a similar sanctions regime instituted by ECOWAS against Mali following the coup of 24 May 2021. Mali subsequently sued to challenge the

legality of the decision. In its suit before the Court of Justice of the UEMOA, Mali claimed that it was unlawful and incompatible with the legal standards of the UEMOA Treaty for the Summit to have met in or taken the decision it did in Ghana, a state that is not party to the UEMOA Treaty. The State of Mali, therefore, sought a “stay of execution” of the sanctions adopted by the UEMOA.

In a decision on 14 March 2022, the Court of Justice of UEMOA issued an order restraining the adoption of the ECOWAS sanctions against Mali.⁸⁶ This effectively sounded the death knell of that sanctions regime imposed against Mali. In absence of normative hierarchy between regional institutions, the decision by the UEMOA Court of Justice in the Mali sanctions case achieved at least five consequences. First, it created considerable uncertainty as to complementarity between ECOWAS on the one hand and other regional institutions in West Africa on the other over the question of adoption of ECOWAS sanctions. Second, it gave legal cover to member States of the UEMOA within ECOWAS to escape compliance with the sanctions against Mali or with similar sanctions in future, such as the sanctions regime on Niger. Third, it proved conducive to fostering mutual suspicion among ECOWAS member states as to their fidelity to regional sanctions regimes as enforcement mechanisms for Community norms. Fourth, instead of encouraging complementarity between ECOWAS and the UEMOA, this decision discouraged it at best or actively encouraged competition. Fifth, in consequence, the presumed diplomatic and institutional pri-

83. ECOWAS, Final Communiqué of the Extraordinary Session of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Abuja, 30 July 2023, para 10(k), available at <https://www.ecowas.int/final-communique-fifty-first-extraordinary-summit-of-the-ecowas-authority-of-heads-of-state-and-government-on-the-political-situation-in-niger/>, accessed 30 July 2025

84. Id

85. Association pour la Sauvegarde de la Paix au Burundi v Kenya, Rwanda, Tanzania, Uganda, Zaire and Zambia (2003) AHRLR 111 (ACHPR 2003) para-70.

86. The State of Mali v. Conference of Heads of State and Government of UEMOA, Order N-06/2022/CJ of 24 March 2022 (UEMOA Court of Justice), available at https://courdejusticeuemoa.org/wp-content/uploads/2024/11/Ordonnance-n%C2%B006_2022_CJ-du-24-mars-2022-relative-a-laffaire-Etat-du-Mali-contre-Conference-des-Chefs-dEtat-et-de-Gouvernement-en.pdf, accessed 30 July 2025

macy in the institutional landscape of regional integration in West Africa lay in ruins.

This decision by the UEMOA Court of Justice effectively lifting the ECOWAS sanctions against Mali in 2022 may have created a landscape favorable to the exit from ECOWAS of the AES States and their subsequent decision to exit the Community soon thereafter must be assessed in the light of these developments. It is particularly notable that the AES States are also member States of ECOWAS and continue to maintain their membership of the UEMOA even after they have denounced the ECOWAS Treaty.



(D) “Shall Make Every Effort to Achieve Pacific Settlement”

In response to the UCG crisis, ECOWAS reached the decision to threaten the use of force in Niger Republic four days after the coup. Thereafter (but not before), in the period between the first extraordinary summit on 30 July and the second on 10 August 2023, the Chairman of the Authority of Heads of State and Government dispatched personal envoys to the new regime in Niamey as well as to Niger's two Mediterranean neighbours, Algeria and Libya. In the formulation of Article 52(2) of the UN Charter, regional arrangements such as ECOWAS, have an obligation to prioritise diplomatic and pacific efforts for the settlement of regional crises. It is, therefore, a legitimate question in this case whether ECOWAS in fact complied with this obligation before settling for the threat or use of force in the Niger UCG crisis.

The final communiqué of the extraordinary summit of 10 August 2023 acknowledged the deployment of envoys to the States mentioned above (Algeria, Libya, and Niger Republic), but stopped short of indicating whether or not their missions were successful. At the time, ECOWAS also had in place long term envoys engaged with the transitions in suspended member states including Nigeria's former president, Goodluck

Jonathan, as mediator for Mali; the former president of Niger Republic, Mahamadou Issoufou, as mediator for Burkina Faso; and the former president of Benin Republic, Yayi Boni, as mediator for Guinea.⁸⁷ By contrast, at the extraordinary summit of 30 July, the Authority approved the appointment of an envoy “immediately to deliver the demands of the Authority” to the new military rulers in Niamey.⁸⁸ It does not appear that there was any commitment to explore diplomatic de-escalation or assistance. Compared with the diplomatic investment in these other countries, it is inconceivable to expect that the personal envoys of the Chairman of the Authority of Heads of State and Government could have made progress in the period of not more than ten days between the two extraordinary summits of 30 July and 10 August 2023. Whatever evidence there is of any more serious investment in diplomatic capital to meet the threshold of Article 52(2) of the UN Charter preceding the decision to trigger the threat of use of force is scant at best.

87. See, Communiqué of the 1106th Meeting of the Peace and Security Council held on 19 September 2022, on the Update on Political Transition in Burkina Faso, Chad, Guinea, and Mali, available at <https://www.peaceau.org/en/article/communiqué-of-the-1106th-meeting-of-the-peace-and-security-council-held-on-19-september-2022-on-the-update-on-political-transition-in-burkina-faso-chad-guinea-and-mali>, accessed 30 July 2025.

88. ECOWAS, Final Communiqué of the Extraordinary Session of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Abuja, 30 July 2023, para 10(j), available at <https://www.ecowas.int/final-communiqué-fifty-first-extraordinary-summit-of-the-ecowas-authority-of-heads-of-state-and-government-on-the-political-situation-in-niger/>, accessed 20 July 2025.



(E) Lack of Authorisation for Threat or Use of Force

The asserted basis for the decision by the ECOWAS Authority of Heads of State and Government is found in Article 25 of the ECOWAS Protocol relating to Conflict Prevention, Management, Resolution, Peace-Keeping and Security, which authorizes the deployment of the mechanisms of the Protocol “in event of serious and massive violation of human rights and the rule of law”, or “in the event of an overthrow or attempted overthrow of a democratically elected government.”⁸⁹ The mechanisms in the pacific tool-kit of the protocol include good offices, and extend to “preventive deployment”.⁹¹ It is difficult to find basis in the instruments for an invocation of the threat or use of force by the Community.

In any event, the mechanisms of the Protocol exist within the ecosystem of both the complex of legal instruments of the ECOWAS as well as the instruments of other treaty systems binding on state parties of ECOWAS, including the Constitutive Act of the African Union and the UN Charter. The International Court of Justice has clarified in this context that:

The notions of “threat” and “use” of force under Article 2, paragraph 4, of the Charter stand together in the sense that if the use of force itself in a given case is illegal – for whatever reason – the threat to use such force will likewise be illegal. In short, if it is to be lawful, the declared readiness of a State to use force must be a use of force that is in conformity with the Charter.⁹²

Absent an invitation from the recognized leadership of the affected state or a justification in self-defence, neither of which was available in relation to the decision concerning use of force in Niger, the deployment of the use of force required the support of the African Union and the authorization of the United Nations Security Council. The Authority of Heads of State and Government itself recognized this reality and specifically asked the African Union and the UN respectively to endorse and support the measures it had decided upon, which included the use of force.⁹³ In relation to the latter, the Peace and Security Council meeting of 14 August 2023 clearly distanced itself from the use of force. As to the former, there was no question of any such decision from the Security Council.

89. ECOWAS Protocol relating to Conflict Prevention, Management, Resolution, Peace-Keeping and Security, Art. 25

90. *Id.*, Art. 20

91. *Id.*, Art. 22

92. Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ Reports, (1996), 226, para 47.

93. ECOWAS, Final Communiqué of the Second Extraordinary Session of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Abuja, 10 August 2023, paras 10(g)-(h); available at https://ecowas.int/wp-content/uploads/2023/08/ENG_Final-Communiqué-1_230810_225639-1.pdf, accessed, 29 July 2025

While it recognises that military coups could thus provide justification for action by regional agencies within the meaning of Article 52 of the UN Charter, the United Nations Security Council has stopped short of supporting or authorising use of force in such circumstances or as a first resort. In the case of the Gambia where ECOWAS with the endorsement of the African Union initially authorised the use of force in January 2017 to enforce the outcome of an election, the Security Council affirmed support for the inviolability of the mandate of the newly elected government but only conveyed “its full support to the ECOWAS in its commitment to ensure, by political means first, the respect of the will of the people of The Gambia as expressed in the results of 1st December elections.”⁹⁴ In response, “the military operation in The Gambia was halted, in order to give negotiations a final chance – with success.”⁹⁵

It is now well recognized that “a right to pro-democratic intervention” in international law without host country invitation or UN Security Council authorisation “is overwhelmingly rejected.”⁹⁶ The reluctance of both United Nations and the African Union to endorse a default to the use of force in relation to the military coup in Niger Republic in July 2023 is consistent with this principle.

The ECOWAS Protocol on Conflict Prevention does not create a unique or discrete right of pro-democracy intervention in international law where none previously existed. In the absence of such authorization, ECOWAS

lacked the necessary legal authority and diplomatic support for the use of force in Niger. This left the Community short of diplomatic and political capital, a situation which the new authorities in Niger together with the other military regimes the neighbouring Sahelian states of Burkina Faso and Mali – themselves also under continental and regional sanctions by reason of prior UCG – exploited in launching the AES. The Authority of Heads of State and Government of ECOWAS recognised this implicitly when it called in July 2024 for “an enhanced cooperation and collaboration between the ECOWAS Mediation and Security Council (MSC) and the AU Peace and Security Council (PSC) to ensure synergy on decisions taken at the regional and continental levels” as well as “consistency in the application of the provisions of the ECOWAS Supplementary Protocol on Democracy and Good Governance and the African Charter on Democracy, Elections and Governance.”⁹⁷

94. UNSC Res 2337/2017, para 6; available at <http://unscr.com/files/2017/02337.pdf> (italics supplied), accessed 29 July 2025.

95. C. Kreb & B. Nubberger, “Pro-Democratic Intervention in Current International Law: The Case of The Gambia in 2017”, 4:2 *Journal on the Use of Force & International Law*, 239 at 241 (2017)

96. *Id.*, 242

97. ECOWAS, Final Communiqué of the 65th Ordinary Session of the Authority of Heads of State and Government, Abuja, 7 July 2024, para 42, available at <https://www.ecowas.int/sixty-fifth-65th-ordinary-session-of-the-authority-of-heads-of-state-and-government/>, accessed 29 July 2025



07

**ECOWAS and the AES as a Competing
Collective Security Arrangement in West Africa**

ECOWAS And The AES As A Competing Collective Security Arrangement In West Africa

The emergence of the AES has to be understood against the above context and in three dimensions: geo-political; institutional; and normative. Although inter-related, these three dimensions deserve to be treated differently because the ramifications of each may be different.

For example, as a geo-political space, the territory defined by the Liptako-Gourma Charter is the same as that of the pre-existing Liptako-Gourma Integrated Development Authority (LGA). Comprising Burkina Faso, Mali, and Niger Republic, the LGA has been in existence since 1970 when it was established “at the request of the then River Niger Commission, present Niger Basin Authority (NBA).”⁹⁸ The geo-spatial affinity between these three states is reinforced by their shared histories as part of the colonial empire of France.

Institutionally, until 2023, the focus of the LGA since inception has been the promotion of integrated development and resource utilization in natural resources (such as solid minerals, energy, water, agriculture, grazing, fisheries, transportation and telecommunications)

within the Liptako-Gourma area in the Sahel. The LGA is an international institution with its own organs including a Conference of Heads of State, Council of Ministers; and an Executive Secretariat located in Ouagadougou, Burkina Faso.

The LGA was not the only such institution that existed within and coexisted with the ECOWAS. In this connection, ECOWAS has previously proved to be capacious in harbouring coexistence with other regional institutions in West Africa. In addition to the aforementioned UEMOA, for example, another prominent such institution was the Mano River Union (MRU). On 3 October 1973, the Heads of State of Liberia and Sierra Leone adopted a joint declaration establishing the MRU to foster closer economic integration between them with a view ultimately to eliminating mutual barriers in trade between them.⁹⁹ Guinea (Conakry) acceded to this arrangement in seven years later in October 1970, becoming the third member state of the MRU. Like the LGA and the UEMOA (founded in 1994), the MRU has coexisted harmoniously within the ECOWAS.

98. Fredrik Söderbaum, *Handbook of Regional Organizations in Africa*, 113

99. Mano River Declaration establishing the Mano River Union between Liberia and Sierra Leone. Concluded at Malema on 3 October 1973, Registered by the Secretary-General of the Mano River Union, acting on behalf of the Parties, on 1 November 1974, UNTS Vol.952,1-13608, 265.

98. Protocol Relating to Mutual Assistance on Defence, Art. 2
101. Id., Art. 3

In the aftermath of the events that followed the 26 July 2023 military coup in Niger, the Liptako-Gourma Charter effectively expanded the normative scope of the LGA to include a collective security obligation in Article 6 thereof, and the member states of the LGA subsequently exited from the ECOWAS in January 2025.

Three issues, emerge to be addressed from this development. One is the escalation to a proclamation ostensibly in want of clear legal authority, of the use of force against a member state. This has already been dealt with above. The second is the exit of the three AES States from the Community, which represents a first instance of failure of coexistence between the ECOWAS and other international institutions of member states of the Community. Again, this has already been addressed above. The third and defining issue is the establishment of the collective security arrangement by the AES States. This is the focus of this section.

Having initially begun as a regional economic integration arrangement for the harmonisation of trade and factor mobility among member States, ECOWAS swiftly evolved from 1978 towards a collective security arrangement. Under the Protocol Relating to Mutual Assistance on Defence, member states of the Community “declare and accept that any armed threat or aggression directed against any Member State shall constitute a threat or aggression against the entire Community.” This undertaking obliged all member states to “give mutual aid and assis-

tance for defence against any armed threat or aggression.”

The assumption implicit in this provision appeared to be that “the armed threat or aggression” would come from a third country or source from outside the Community. It was not envisaged that there would be occasion for a threat or use of force by the Community against one of its members. On this, it is notable that on 30 July, 2023, when the Authority of Heads of State and Government of ECOWAS decided to invoke the threat or use of force to restore the ousted civilian administration in Niger Republic, they had not formally suspended the country from the Community. This was consistent with their decision to continue to afford recognition to the government of President Bazoum as suspension would have implied conceding that the administration had lost effective control of the levers of power in the country.

The adversarial threat of use of force by the Community against a member state and without the appearance of lawful authority under general international law altered this assumption. In response, the three AES States established a competing collective security arrangement in September 2023, in effect treating ECOWAS (to which all three belonged) as a military threat or a source of aggression. This became a new and unique situation for both ECOWAS and the concerned State parties.

Unlike arrangements for economic integration or livelihood advancement which can

coexist in mutual complementarity within shared geo-political space, collective security arrangements are “designed to increase a state's security automatically and inadvertently decrease the security of others.”¹⁰² Intrinsically, therefore, it is not possible to have concentric circles of collective security arrangements or a collective security arrangement within another. When they adopted the Liptako-Gourma Charter in September 2023 with the collective security clause in Article 6 thereof, the AES States were still members of ECOWAS. The coexistence of the AES as a collective security arrangement within ECOWAS was unprecedented and set up dynamic of military escalation and competition that was mutually irreconcilable.

With the adoption of the collective security clause in the Liptako-Gourma Charter, therefore, the AES states eventuated a constructive dissolution of their legal obligations under the Protocol Relating to Mutual Assistance on Defence. Since membership of that Protocol is one of the main planks of the Community, it seems clear that their design at that point was to also put the underlying relationship into question. The steps that occurred thereafter leading to their formal exit from the Community in January 2025 were largely formalities. It should be noted that, however, that it took four months after the adoption of the Liptako-Gourma Charter before the AES States served notice of their intention to exit the Community and another one year before the notice took full effect under Article 91 of the Revised ECOWAS Treaty.

In other words, there was a period of 16 months between adoption by the AES States of the Liptako-Gourma Charter and their final exit from the Community. It seems clear that with the adoption of the Liptako-Gourma Charter, the AES States declared the existence of a far-reaching dispute or of irreconcilable differences with the Community. There arose as a result a dispute within the competence of the Community Court of Justice. Under the terms of the Protocol on the Community Court of Justice, the jurisdiction of the Court extends to all matters which may be referred to it “by Member States or the Authority, when such disputes arise between the Member States or between one or more Member States and the Institutions of the Community on the interpretation or application of the provisions of the Treaty.”¹⁰³

At any time during the 16-month period, the Community through its appropriate organs, could have invoked the judicial dispute resolution mechanism of the ECOWAS Court of Justice either for the principled function of presenting the issues to the court for resolution or as a tactical step of keeping the AES States under the forum of the Community while diplomatic mechanisms of de-escalation were deployed. The failure of the Community to pursue with urgency options for saving the relationship seems difficult to understand or rationalize.

In the event, the Authority of Heads of State and Government only directed the Commission of ECOWAS to prepare “a contingency plan for its consideration regard-

102. Robert Jarvis, “Security Regimes”, 36:2 *International Organization*, 357 at 358 (1982)

103. Protocol (A/P.1/7/91) on the Community Court of Justice, Art. 9(2), available at https://www.courtecowas.org/wp-content/uploads/2018/11/Protocol_AP1791_ENG.pdf, accessed 29 July 2025.

ing all eventualities in relations with the AES countries, taking into account the exigencies of Article 91 of the 1993 Revised ECOWAS Treaty” one year after the coup in Niger, and ten months after the adoption of the Liptako-Gourma Charter in July 2024.¹⁰⁴ It was also at that Summit that the Authority designated the president of Senegal as “Facilitator” of its engagement with the AES States in collaboration with the president of Togo.¹⁰⁵ However, this designation was not accompanied by any

clarity as to the mission or terms of reference of the Facilitator, the duration of his mission or as to what deliverables to expect from the process. From the African Union, the engagement of the Peace and Security Council with the AES States was said to be “informal” and designed “to maintain a channel of communication.”¹⁰⁶

104. ECOWAS, Final Communiqué of the 65th Ordinary Session of the Authority of Heads of State and Government, Abuja, 7 July 2024, para 38, available at <https://www.ecowas.int/sixty-fifth-65th-ordinary-session-of-the-authority-of-heads-of-state-and-government/>, accessed 29 July 2025.

105. *Id.*, para 39.

106. United Nations Security Council, Report of the Secretary General on Strengthening the Partnership between the United Nations and the African Union on Issues of Peace and Security in Africa, including the Work of the United Nations Office to the African Union, S/2024/629, p. 5, para 21 (26 Aug., 2024).



NR

Transitional Arrangements: **Counting The Costs**

Transitional Arrangements: Counting The Costs

At the point of their exit from the Community, the AES States had been members of the ECOWAS for nearly 50 years. Over this period, a body of relational assets and investments had been built up on both sides. The termination of their membership of the Community does not end these relationships. Instead, it presents an opportunity to inventorise the relationship with a view to determining how to apportion or distribute responsibility for the identified elements and exposures and for how to manage them.

At its extraordinary summit in Abuja, Nigeria, on 24 February 2024, the Authority of Heads of State and Government of the Community summarised the highlights of these exposures. For instance, although they contribute \$33,135,445.38 to the capital of the ECOWAS Bank for Investment and Development (EBID), the bank had a cumulative exposure of \$321,634,253 in a total of 47 projects in the three AES states, comprising 27 public sector and 20 private sector projects.¹⁰⁷ According to the Authority, the exit of the three States would bring to a halt, ECOWAS-financed projects with a combined value of over \$500 million.¹⁰⁸ Other investments affected by their exit include:¹⁰⁹

(A) The Regional Food Security Reserve (the three countries host stocks from the Regional Reserve for a quantity of nearly 17,000 tons or 52% of the regional stock).

(B) The Regional Support Program for Pastoralism in the Sahel (PRAPS – Financed by the World Bank) in the amount of USD 215 million for the three States.

(C.) The Sahel Regional Irrigation Support Program (PARIS – Financed by the World Bank) in the amount of USD 103.43 million for the three States.

107. ECOWAS, Final Communiqué of the Extraordinary Summit of the Authority of Heads of State and Government on the Political, Peace and Security Situation in the Region, Abuja, 24 February, 2024, para 23.

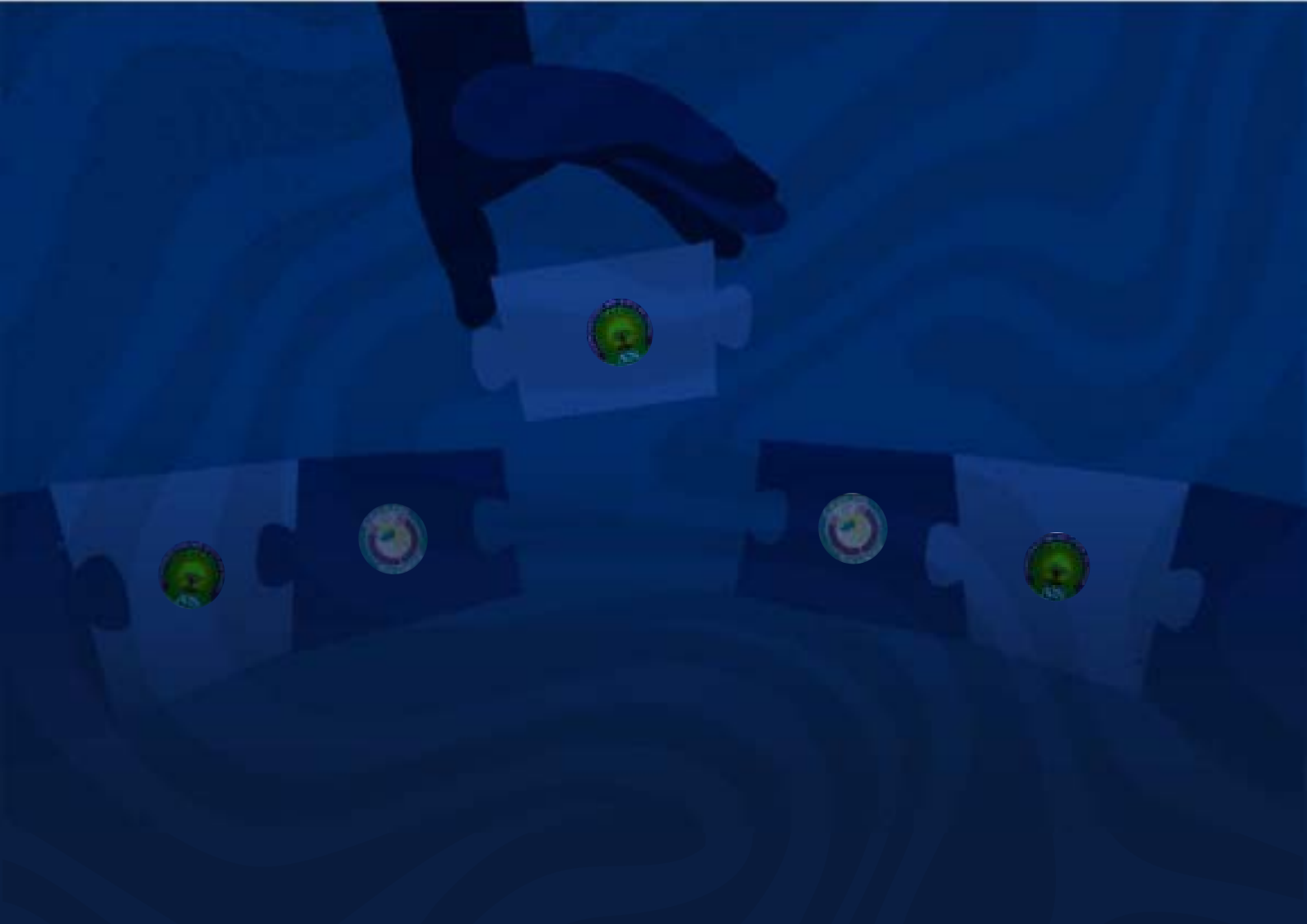
108. Id., para 22

109. Id., para 21

(D) The Regional Food System Resilience Support Program (FSRP funded by the World Bank) in the amount of USD 230 million for the three states.

(E) West Africa Single Identity and Regional Integration and Inclusion (WURI) project.

(F) The ECOWAS Regional Electricity Market (West Africa Power Pool) project that links all member states to a regional electricity grid for improved access to electricity involves the three member states.



NO

Minding The Gap And Managing The **Transition**

Minding The Gap And Managing The Transition

It may be ambitious in the light of the above to expect re-integration of the AES State to occur in the immediate or short term. There are three strategic options. One is to undertake the process of transition within the framework of the triple compact of economic integration, collective security, and governance norms which have defined ECOWAS. The second is to contemplate a multi-speed or a la carte ECOWAS in which States can have the option to sign up to one or more of the three elements of the ECOWAS compact but not necessarily to all at the same time. A third would be to fall back on a less ambitious framework regional co-operation and give up on the ambitions of regional integration. This report proceeds on the assumption that the first option is or will be the governing framework. This is supported by the conclusions of the Summit in June 2025 of the Authority of Heads of State and Government of the ECOWAS where it welcomed “the outcome of the engagement by the President of the (ECOWAS) Commission with the Foreign Ministers of the three (AES) countries on modalities for ensuring a smooth separation while safeguarding the gains of regional integration in the interest of the people of the region.”¹¹⁰

Upon their exit from the Community, the AES States, in the language of the Revised ECOWAS Treaty, became third countries. Institutionally, the AES became another REC. Article 79(1) of the Revised ECOWAS Treaty empowers the Community to enter into co-operation agreements with such other RECs. However, strictly speaking, it is arguable that this is a unique situation which reveals gaps in the scope of the Revised ECOWAS Treaty. Although Article 91 of the Revised ECOWAS Treaty provides for the possibility of withdrawal or denunciation by a State party, it omits any provisions as to transitional arrangements in the management of the relationship between a departing State and the Community. The situation of a split in the Community resulting in the creation of a rival or another regional institution by the departing members is not at all provided for in the Revised Treaty. In the 50-year history of the Community, therefore, it has not had to deal with any situation quite like the present one with the AES States and there is not exactly a manual to fall back on.

In the short term, establishing meaningful and sustainable dialogue with the AES States is called for. In the medium-to-long term, the goal of the Community should be a healing of the underlying rift with the AES States, lead-

110. ECOWAS, 67th Ordinary Session of the Authority of Heads of State and Government of the ECOWAS, Final Communiqué, Abuja, Nigeria, 22 June 2025, para 29, available at https://www.emansion.gov.lr/sites/default/files/documents/Final%20Communique_Summit_ENG%20%281%29.pdf, accessed 28 Aug., 2025.

ing to their reintegration back into the Community. As a legal or treaty proposition, re-integration would essentially entail an abrogation of the collective security clause in Article 6 of the Liptako-Gourma Charter. Technically, given the fact that this treaty provision clearly purports to lower the threshold for invoking the threat or use of force in international law, it is possible for the Community or its member States to declare a dispute and submit the matter to a mechanism of international settlement, which may or may not be judicial in nature. In practice, this is unlikely to occur because of the reluctance of African States to resort to mechanisms of judicial dispute resolution (except mostly in boundary disputes). It seems more practical to explore mechanisms through which both the AES States and ECOWAS can re-establish mutual confidence and re-open respectful dialogue and continuing dialogue on issues of mutual interest. These steps may be essential to and should precede substantive negotiations on re-integration or an amendment of the Liptako-Gourma Charter to excise Article 6 thereof.

One lingering issue in the transition is the fate of staff of the ECOWAS from the AES States. Consistent with International Administrative Law, the Revised ECOWAS Treaty, recognises that staff of the ECOWAS Commission are international civil servants,¹¹¹ and affirms the

“international character” of their role.¹¹² Once employed, the staff become international civil servants. Their actions are no longer attributable to their states of origin and the Revised ECOWAS Treaty precludes them from seeking or taking instructions from any government or external institution or authority.¹¹³ Generally, international law recognizes that “the independence of international civil servants is an essential guarantee, not only for the civil servants themselves, but also for the proper functioning of international organizations.”¹¹⁴

In February 2025, the Commission of ECOWAS dismissed 135 staff from Burkina Faso, Mali, and Niger Republic, a situation which appears to have caused staffing shortages. In July 2025, the Commission of ECOWAS issued a circular retaining permanent staff from the AES States below the rank of P5, while those above that were disengaged. The legality of this measure is now under challenge before the Court of Justice of ECOWAS in a pending case.

111. Revised ECOWAS Treaty, Art. 20(1)

112. *Id.*, Art. 20(2)

113. *Id.*, Art. 20(3)

114. *Bustani v Organisation for the Prohibition of Chemical Weapons*, Judgment No 2232, OXIO 190, 16 July 2003, United Nations (UN); International Labour Organization (ILO); International Labour Organization Administrative Tribunal (ILOAT), para 16, available at



10

**Modelling Transition: The Dissolution And
Re-birth Of The East African Community**

MODELLING TRANSITION: THE DISSOLUTION AND RE-BIRTH OF THE EAST AFRICAN COMMUNITY

The situation with the onset of the AES under the Liptako-Gourma Charter is somewhat unique in the history and experience of regional institutions in Africa. The closest approximation to this is the experience with the dissolution of the post-colonial East African Community (EAC) of Kenya, Tanzania, and Uganda in 1977. More than two decades after its dissolution, the EAC was reconstituted with the adoption of a revitalized Treaty of the East African. It is worth noting that the EAC was never a collective security arrangement and its dissolution did not give birth to nor was it caused by any collective security arrangement. For the reasons given below, however, it is relevant to recall that experience of the EAC briefly here as an example which may hold some lessons for ECOWAS in the present context.

Integration arrangements in East Africa evolved rapidly during and after colonialism. Following the independence of Uganda in 1962 and Kenya in 1963, an attempt to form a post-independence East African Federation failed in 1964.¹¹⁹ The subsequent introduction by Tanzania of its own currency in 1965 led to the collapse of the pre-existing common mone-

tary system of the East Africa States, as Tanzania's example was followed by both Uganda and Kenya in succession. These developments triggered a review of the East African Common Services Organisation (EACSO) under the leadership of Danish economist, Kjeld Phillip, at the request of the newly independent states of the former East African Federation. The result was the adoption of the Treaty for East African Co-operation in June 1967, also known as the Kampala Agreement.¹²⁰

The Kampala Agreement established the East African Community and the East African Common Market comprising Kenya, Tanzania and Uganda.¹²¹ The main objective of the treaty was to “accelerate harmonious and balanced development and sustained expansion of economic activities, the benefit whereof shall be equitably shared” among the partner States. The Treaty created nine organs, including the East African Authority (of the Presidents of the partner States), the East African Legislative Assembly, a Ministerial Council, a Common Market Tribunal for dispute resolution, and a Secretariat in Arusha, Tanzania.¹²³ It also

119. Sam Tulya-Muhika. (ed.), *Lessons From the Rise and Fall of the East African Community: A Summary*, (Kampala, East African Cooperation Forum, Friedrich Ebert Foundation, 1995), 35. 120. Treaty for East African Co-operation, adopted in Kampala, Uganda, 6 June 1967, entered into force, 1 December 1967, (hereafter called “the Kampala Agreement”).

121. *Id.*, Art. 1(1)

122. *Id.*, Art. 2(1)

123. *Id.*, Art. 3(1)

provided for the East African Court of Appeal as the apex Court of the partner States,¹²⁴ and for an East African Industrial Court for the application of the labour laws of the partner States.¹²⁵

In one important respect, the current crisis in the ECOWAS bears some similarities with aspects of the crisis that ultimately triggered the collapse of the Kampala Agreement because it all began with the 1971 coup which overthrew the government of Apollo Milton Obote and installed Idi Amin as military ruler in Uganda. The partnership of the governments in the EAC was originally founded on democratic legitimacy. This changed when Idi Amin, a soldier, overthrew the administration of Apollo Milton Obote in Uganda in 1971. President Julius Nyerere, whose country, Tanzania, hosted the secretariat, declined to allow the unelected Idi Amin access into his country, thereby frustrating meetings of the highest organ of the Community. The resulting exclusion of representatives of the new Ugandan government from meetings of the organs of the Community at its headquarters in Arusha, Tanzania, finally triggered the collapse of the Community in July 1977.¹²⁶

Unlike the current situation in the ECOWAS, however, where the split in the Community was preceded or even triggered by a threat of use of force against another member of the Community, the collapse of the EAC itself

was followed by the use of force by one of the former Partner States against another. One year after the collapse of the Kampala Agreement, in 1978, the mutual antipathy between the then leaders of Tanzania and Uganda degenerated into war because of Amin's claim over a slice of Tanzanian territory in the Kagera Salient. In retaliation, Nyerere executed a regime change agenda in Uganda through a military invasion, ultimately paving the way for the return to power of Milton Obote.¹²⁷

Following the collapse of the Kampala Agreement, the Partner States in the EAC went into a mediation process resulting in the signing of a Mediation Agreement embodying an asset (and liabilities) sharing and distribution formula for the defunct EAC in 1984.¹²⁸ The Mediation Agreement formally abrogated the Kampala Agreement of 1967,¹²⁹ but created a mechanism for continuing and future co-operation among the Partners in the East Africa Co-operation.¹³⁰ Acting under this provision, the Partner States established a Permanent Tripartite Commission for Co-operation between them in November 1993. In November 1994,¹³¹ they constituted the Secretariat of the Permanent Tripartite Commission into an inter-governmental organization with international legal personality.¹³² In 1999, following the adoption of the treaty establishing the East African Community, the Permanent Tripartite Commission became the EAC.

126. Other factors contributed to collapse of the Community, including complaints about huge income transfers in favour of Kenya, leaving Tanzania and Uganda with the perception of an unfair distribution of the gains from the community, the exclusion of private sector and citizen participation in the Community and the over-reliance on the relationship between the Heads of State and Government to guarantee its functioning. See Nehemiah Ng'eno et al, Regional Integration Study of East Africa: The Case of Kenya, KIPPRA (Nairobi: Kenya Institute for Public Policy Research and Analysis (KIPPRA) Working Paper No. 9, 102 (2003)

127. See, Tony Arvigan and Martha Honey, War in Uganda: The Legacy of Idi Amin, (London, Zed Press, 1982); Buzz Lanthier-Rogers, "Abnormal: Why the Tanzanian Invasion of Uganda was and was not a Humanitarian Intervention", Yale Review of Int'l Studies, (2018), available at <https://yris.yira.org/comments/2626>, accessed 5 Apr, 2025

128. The East African Community Mediation Agreement, adopted, signed and entered into force on 14 May 1984.

129. Id., Art. 15

130. Id., Art. 14(02). This provides a basis for arguing that the East African Community did not as a matter of law die since there was a continuing mechanism for its reconfiguration and continuity

131. Agreement for the Establishment of a Permanent Tripartite Commission for Co-operation between the Republic of Kenya, the United Republic of Tanzania, and the Republic of Uganda, adopted, signed and entered into force, Arusha, Tanzania, 30 November 1993.

132. Protocol on the Establishment of a Secretariat of the Permanent Tripartite Commission for Cooperation between the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda, signed, adopted and entered into force, Arusha, Tanzania, 26 November 1994, Art. 3(1).



11

**TOWARDS AN EXIT
FRAMEWORK**

TOWARDS AN EXIT FRAMEWORK

ECOWAS has been accused of having cost itself essential institutional authority and legitimacy through a mis-management of the crisis of UCGs in West Africa.¹³⁴ One point evident from this report is that the management of the crisis leading up to the exit of the AES from the Community was characterised by avoidable escalation and missed opportunities by all sides and the Commission of ECOWAS appears to have been ineffectual through much of the crisis. Through this

crisis, it appears that scant regard was paid to the governing instruments of the Community. The identification and resolution of consequential issues arising from the exit will require and take time. It is necessary for the moment to highlight eight major areas or issues to which attention will be needed:

134. Aïssatou Kanté, Fahiraman Rodrigue, et al, Rethinking Responses to Unconstitutional Changes of Government in West Africa, Institute of Security Studies (2024), 7, available at <https://issafrica.s3.amazonaws.com/uploads/pages/1738672290719-Eng-WAR-50-updated.pdf>, accessed 28 Aug., 2025.



(A) SHORT TERM: ADMINISTRATIVE MEASURES REQUIRED TO MANAGE THE TRANSITION

It is proposed that in the short term, the transition process will focus on a set of deliverables designed to shore up mutual confidence on all sides, clarify the basic principles that will govern the transition and ensure adequate administrative support for both the process and for the resolution of any disputes arising from or connected with it. Accordingly, the following are identified as necessary areas of action:

(1) Declaration of Transition Principles (DoTP): It would help the process of transition for both sides – the AES States and ECOWAS – to designate a mutually agreed set of principles on the basis of which the transition process will be conducted. The DoTP will identify at an early stage all the issues identified for attention and negotiation during the transition. Through it, the parties may also set up an initial timetable for the negotiations as well as mechanisms for joint monitoring. An agreement on such principles should also indicate mutual good faith on all sides towards an amicable resolution of all issues in the transition.

(2) Identification and Inventorisation of Assets, Liabilities and Exposures: The inventorisation of assets and liability exposures would presumably be undertaken jointly by ECOWAS, the AES States, and any other co-financiers of the project. This will include personnel issues affecting staff of ECOWAS from these former member states.

(3) Staffing Transitions and International Administrative Law: The institutional instinct of the transition on the side of ECOWAS has evolved in the direction of significantly reducing staffing at the ECOWAS Commission, especially those from the AES States. Yet, it seems more likely that far from reducing their burdens, the transition imposed by their exit will increase work-related pressures on the Commission and on its personnel. With a case pending before the ECOWAS Court of Justice on the legality of the staffing measures so far implemented, the judgment of the court will hopefully provide guidance to the Community to govern this important issue. Pending that outcome, it may be prudent to stipulate and agree that any changes to staffing policy should await the outcome of the court case and that any staff changes going forward should only arise from natural attrition.

(4) Dispute Resolution/Mediation Process:

Where on-going projects or investments are governed by discrete contracts or agreements, it may be possible to address any disputes or transitional arrangements through the terms governing those agreements or contracts, to the extent that those have been envisaged thereunder. Absent such clauses or with consent of the parties, however, a dispute resolution clause could be part of a global transitional protocol between ECOWAS and the AES. Alternatively, AES and ECOWAS could jointly identify trusted mediators who would help to manage disputes in the process of sharing assets and liabilities. Indeed, it may be possible to have both a transitional protocol and (a) trusted mediator(s).

(5) Joint Transition Secretariat:

As an act of mutual confidence-building, it may be necessary to consider the establishment of a joint transition secretariat to be staffed by personnel jointly provided by both the AES and ECOWAS. A formula for constituting the budget for such a secretariat as well as its terms of reference can be agreed between both institutions. Among other things, the secretariat will be responsible for ensuring monitoring and compliance with identified deliverables as well as reporting to the Heads of State and Government through the Commission or Secretariat of the respective institutions.

(6) Independent Monitoring of the Transition:

The processes of the transition may benefit from independent monitoring and verification from relevant bodies of both experts and civil society in both the AES and ECOWAS. Quite apart from assisting both entities, such a capability would also have the additional advantage of sustaining people-to-people in dialogue West Africa between the peoples of the AES and of the ECOWAS states.

134. Aïssatou Kanté, Fahiraman Rodrigue, et al, Rethinking Responses to Unconstitutional Changes of Government in West Africa, Institute of Security Studies (2024), 7, available at <https://issafrika.s3.amazonaws.com/uploads/pages/1738672290719-Eng-WAR-50-updated.pdf>, accessed 28 Aug., 2025.

SHORT TERM: ADMINISTRATIVE MEASURES REQUIRED TO MANAGE THE TRANSITION



(1) Declaration of Transition Principles (DoTP):



(2) Identification and Inventorisation of Assets, Liabilities and Exposures:



(3) Staffing Transitions and International Administrative Law



(4) Dispute Resolution/ Mediation Process:



(5) Joint Transition Secretariat:



(6) Independent Monitoring of the Transition:





(B) MEDIUM TERM: REVIEW OF THE NORMATIVE FRAMEWORKS OF ECOWAS

Once the governing principles of the transition and the administrative mechanisms have been clarified, it should be necessary for attentions to turn to addressing the underlying tensions that gave rise to the exit in the first place. The following have been identified as falling within this basket.

(1) Regional Corridors & Public Goods:

Separate from and in addition to assets and liabilities, there is also a need to map the scope of transitional issues relating areas of regional peace and security and guaranteeing public goods which by their nature are transboundary in their consequences and which need to be managed through collaborative arrangements between the ECOWAS and the AES. These include management of transboundary communities, the future of factor mobility and management of regional corridors, coastal transit rights, security interests, including climate consequences, public health, agriculture, and livestock among other issues.

(2) ECOWAS/AES Transitional Protocol:

Being entities established by treaty, both ECOWAS and the AES are international institutions. An agreement between both institutions would be a treaty under interna-

tional law. The institution and governance of a transitional process should be governed by protocol or Memorandum of Understanding between ECOWAS and the AES as would the outcome of the process. The Authority of Heads of State and Government will have to authorize the Commission of ECOWAS to negotiate such a protocol on behalf of the Community.

(3) Lesson Learning and Review of Niger Coup Crisis Management:

It seems quite clear that the cascade of events leading to the exit of the AES States began with the coup of 26 July 2023 in Niger Republic and how the Community responded to or handled it. Ultimately this was a crisis over how to strike the balance between the obligations under the ECOWAS Good Governance Protocol on the one hand and the Mutual Defence Protocol on the other in the context of the challenges confronting the Community. The Authority of Heads of State and Government has also flagged within this the question of synergies between the institutions of the Community and other international institutions with whom it must coexist and share competences, including the United Nations and the African Union. For ECOWAS, it will be important to undertake an internal review of

the decision making in connection with that crisis in order to learn the right lessons, and to adapt its decision institutional design accordingly.

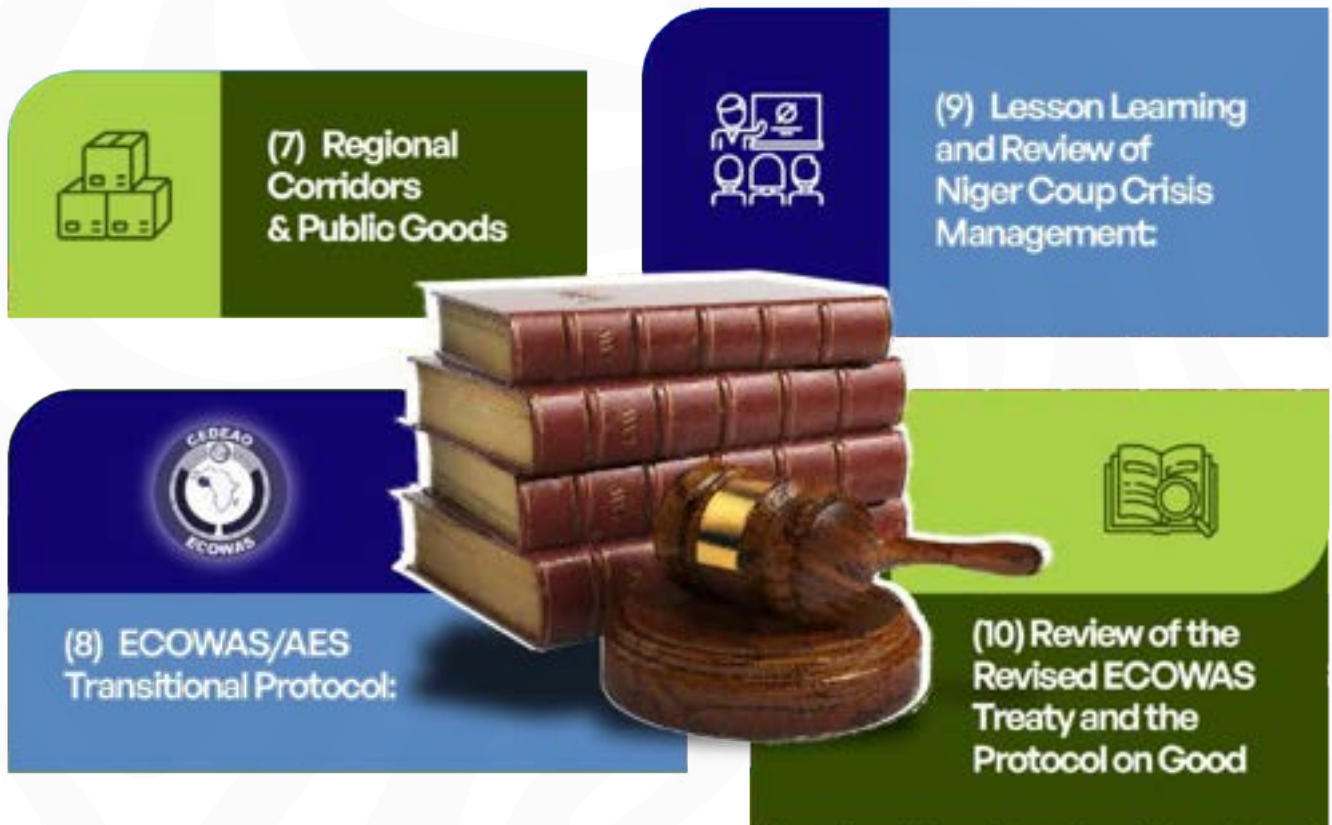
(4) Review of the Revised ECOWAS Treaty and the Protocol on Good Governance:

The crisis leading to the exit of the AES States highlights the limits and constraints of the existing normative and institutional frameworks under the Revised ECOWAS Treaty. This raises urgent questions as to the alignment of the composite project of economic integration, collective security, and regional governance oversight encompassed in the treaty. It is too early to suggest that this framework be abandoned, but attention may be given reviewing and refining the mechanisms for governing their alignment. It has also revealed obvious gaps, such as the absence of any provisions governing transition after denunciation of the treaty, as well as misalignments between the treaty and other instruments thereunder, such as with the Staff Regulations. Within this framework, an updating of the instruments and mechanisms for managing the regional oversight of governance standards. In this respect, it has been said that ECOWAS was damaged by “its struggle to address governance crises faced by its member states in recent years”,¹³⁵ and by the perception of double standards

depending on whether it's a military coup or an 'constitutional coup' perpetrated by elected governments.”¹³⁶ To address this, it will be important to update the applicable norms with a view to ensuring consistency in the deployment of responses to UCGs and other governance crises in the sub-region. This will require urgent attention through a review of the Good Governance Protocol.

The logic of these measures imports a sequencing, with the short term measures generally coming before the medium term. However, it is also acknowledged that many of these measures are inter-connected and inter-dependent. The proposed transitional protocol will ideally capture the agreements and understandings reached on the sharing of assets and liabilities. A package of measures for the management of the transition can ultimately only be agreed with the approval and consent of the Heads of State and Government. A protocol is the best way to signal that consent. Such a protocol may additionally identify other areas or issues for partnership or mutual interest. Considerable time has already been lost in the interregnum since the launch of the Liptako-Gourma Charter and there is no further time to lose.

Fig2: MEDIUM TERM: REVIEW OF THE NORMATIVE FRAMEWORKS OF ECOWAS



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