



West African Network on Security and Democratic Governance (WANSED)...

Workshop on the role and place of the ECOWAS Supplementary Protocol in Security Sector Governance in West Africa

The ECOWAS Supplementary Protocol and Defence and Security Forces relationships to political power

Workshop on "Processes for ending the crisis in West Africa: the place of political dialogue in reforming the security sector"

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Introduction

1 - What is the ECOWAS Supplementary Protocol?

In this document, the term "Supplementary Protocol" will refer to the PROTOCOL A/SP1//12/01 ON DEMOCRACY AND GOOD GOVERNANCE WHICH IS SUPPLEMENTARY TO THE PROTOCOL RELATING TO THE MECHANISM FOR CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION PEACEKEEPING AND SECURITY¹.

The Supplementary Protocol was signed in 2001 in Dakar by the Heads of State and Government of 14 of the 15 ECOWAS member States². Since July 2005, it has been ratified by 9 of the signatory States, the figure required for the Protocol to enter into force for all States.³

The Supplementary Protocol's main issue is the development of a constitutional State based on rule of law, strengthening of democracy and adopting common principles of good governance within ECOWAS' 15-member States.

The Protocol marks a turning point in ECOWAS' political construction. This regional institution saw itself mainly in economic terms when it was founded in 1975. It complements a chapter specifically devoted to governance - the 1999 protocol which created an ECOWAS-level mechanism along with bodies responsible for dealing with issues of conflict prevention, maintaining and building peace and developing a regional security system. The Supplementary Protocol represents both a defining point and an important dimension in the regional process of building a democratic political governance framework for supporting economic and social development in West Africa.

2 - How does the Protocol tackle the issue of defence and security forces? How does it view and govern their relationships to political power?

3 - What are the implications and the impact of these positions in the political development of West Africa?

¹ This ECOWAS mechanism was established by member States in December 1999 and is made up of various bodies and institutions, including: the Mediation and Security Council, the Defence and Security Commission and the Council of Elders; the annual ECOWAS Heads of State Summit which took place in Accra in January 2005 reviewed the implementation of the mechanism, which is fundamental to building peace and security in West Africa. For more on this subject, see the *Memorandum by the Executive Secretary, Abuja, January 2005*.

² Cape Verde was not a signatory. It would appear that the country has recently indicated to ECOWAS authorities that it would be ready to sign the Supplementary Protocol.

³ In July 2005 the latest two countries (Niger and Togo) to ratify the Protocol had still not sent their instruments of ratification to ECOWAS.

The 5 countries which have not yet ratified the Protocol are Côte d'Ivoire, The Gambia, Guinea Bissau, Liberia and Nigeria.

I. Context

The Supplementary Protocol was developed in 2001 as an expression of a new, collective political resolve of ECOWAS member States to take the process of preventing and resolving crises and violent conflicts forward, and to achieve peace and security through the development of democracy and good governance. The Protocol marks an important stage in the sub-region's political development, which was characterised for long periods by the armed forces' deep involvement in political decision-making. As of 2001, it provides an emphatic statement of the incompatibility of democracy and good governance with military-run government and the military's involvement in politics. To what extent does this represent a break? What were the previous military-political relationships in West Africa?

1.1 Background: the legacy of pre-colonial and anti-colonial political dynamics

Pre-colonial political power and the status of warriors

In the pre-colonial period, both the convention and forms of military-political relations in the States and other political entities in the sub-region were highly diverse.

A thorough and specific study of this question is necessary.⁴ Based on historiographical information, we can already distinguish at least three recurring types of relationships between government and the armed forces:

- *Social and political subordination of warriors to the monarch* as the sole holder of power. Military ability has no political power attached to it.
- *Being an accepted constituent of political power.* With warriors having dual military and supernatural powers in some societies.

The political systems that Pathé Diagne⁵ has described as oligarchic monarchies were ones where military heads participated in government, specifically through the election of the sovereign by a college of grand electors.

- *Warrior monarchies, where power is dominated by the military.* Some forms of political power, mainly military in nature, were determined by situations and contexts of crises and external upheavals, such as the transatlantic slave trade. These were structured and monopolised by a warrior caste or class where an illegitimate (i.e. unconstitutional) form of government may or may not have been imposed⁶.

⁴ Even though it is indirectly addressed by various studies concerned with the history of pre-colonial institutions and forms of government.

⁵ Specifically, his book *Pouvoirs politiques traditionnels en Afrique noire* (Traditional political power in Black Africa), Paris, Présence africaine 1969.

In Diagne's view, the Mossi Kingdom is a perfect illustration of this political model, where political power is made up of various socio-cultural constituents whose representatives have an important place in the executive functions of government.

⁶ The Segou Kingdom (17th – 19th century) is a good illustration of the type of autocratic military system relying on an appointed social group with a warrior role and which was not part of any system of subordination to a higher class. Power was built around warlords who had been successful in the liberation struggle against the tutelage of the Moroccan Pachas in the sub-region.

Anti-colonial armed liberation struggle and political power

For some countries, the politicisation of armies and their involvement in the running of government has its roots in the existence of an anti-colonial armed liberation movement. The achievement of independence by the countries concerned resulted in an armed political force shaping and/or contributing to State power.

In the revolutionary ideology of armed national liberation movements, it is indeed a case that "political power grows out of the barrel of a gun", but there is also the maxim of "politics at the command post", which was supposed to counterbalance "militaristic diversions".

However, in the final analysis, there is no doctrine of separation between the army and political power.

Thus, the anti-colonial struggle partly determined the post-colonial politicisation of some armed forces, the militarisation of political power and the involvement of the military in politics as actors.

In his funeral address for Kwame NKRUMAH, Amilcar Cabral set out a widely-held doctrinal notion: "As long as imperialism exists", he said, "an independent State in Africa will always be a liberation movement in power, or it will be nothing."

The armed forces' importance in the battle for power in the former Portuguese colonies had a major impact on the post-colonial State in the countries concerned. Among other problems, it largely determined the need for the security system to be reformed in those countries which faced having to demobilise large numbers of former combatants.

1.2 Evolution of civil-military relations in the region between 1960 and 2005

Apart from the anti-colonial struggle, organised armed violence to seize political power has affected West Africa, even in many countries where the democratic functioning of the political system was absent or severely lacking; this made it difficult in principle for democratic changeovers to take place and gave an *a priori* legitimacy (or provided justification after the event for some actors) to the notion that "political power grows out of the barrel of a gun".

This was illustrated by the fact that:

- Over a 35-year period, coups d'état became widespread as a means of seizing political power;
- Violent conflicts developed where the issue at stake was often political power.

This period was sustained by the growth and illegal circulation of arms in the region. Armed power developed in a context where it was not just democracy that was deficient but, even more seriously, the workings of the State.

Indeed, the crumbling away of the State and the bankruptcy of governance mechanisms led to the growth and dispersal of armed participants, with soldiers,

dissidents, militias, rebels and/or mercenaries fighting with legal armed forces for political power.

The Supplementary Protocol sets out the relationship between the properly constituted defence and security forces and government.

It aims to face the challenge of democratisation, whose importance can be measured in the light of several key points:

- Of the 15 countries which joined (and remain in) ECOWAS as from 1975, only **2 never experienced a coup d'état and a military regime** between 1960 and 2005 (Cape Verde and Senegal).
- Two periods were marked by the absence of a coup d'état and the direct military control of political power:
 - Shortly after independence, from 1960 to 1964;
 - From 2000 to 2005.
- In this new period, where military governments are absent in the ECOWAS zone, 7 of the 15 current Heads of State are military personnel who made the transition to civilian life before or after coming to power or participating in government.
- Between 1983 and 1989, 13 West African countries were dominated by military regimes.
- The turn of the 1990s was marked by a sharp rise in the democratisation process concomitant with the development in many countries of national conferences, and the sharp fall in the number of military-controlled regimes.
- In 1999, only one country within ECOWAS still had a government which was the result of a military coup.

This shows that over a 35-year period, West Africa was marked by the presence of military-dominated governments and political regimes. The army established itself as a key political actor, and generally had poor relations with political actors, who constituted the political parties.

The military's coming to power was sometimes justified by the need for strong government and for the involvement of society's best organised and/or most disciplined force to take up the reins of power in order to lead the development process.

But, in reality, military governments did not produce economic miracles; they paralysed or hindered any political system founded on pluralism, freedom and democracy. Depending on the country and/or the circumstances, they were often synonymous with indiscriminate or selective political repression. They created (or exacerbated) an acute crisis in political governance.

Military regimes, or governments dominated by members of the armed and security forces, sometimes sought to justify themselves through a stated desire to restore law and order and to get the population back to work. In reality, the reasons put forward served as nothing more than a "fig leaf" for political power that was

ineffective in terms of governance and at odds with a constitutional State based on the rule of law⁷.

The militarisation of political governance generally went hand in hand with inhibiting or repressing democracy.

It is true that, in certain national contexts, the seizure of power by the military could be seen and/or experienced by public opinion and observers as a release mechanism for post-autocratic liberalisation.

But the number of political leaders with military backgrounds who made the transition to civilian life and who created or joined a political party or movement clearly illustrated the inevitable civil character of democracy.⁸

II. Relations between Political power and the Armed forces in a democratic context: the approach of the Supplementary Protocol.

As the information concerning political developments has shown, and despite the acknowledged breaks from the democratisation process in some countries, the years from 2000 onward seem to mark a new turning point in terms of the disappearance of military regimes.

But there seems to have been a transformation of the problem afflicting the region since, through rebellions, civil wars and armed conflicts, a **militarisation of politics** put obstacles in the way of democracy, hindered true governance and destabilised society⁹.

This calls for a twofold approach to, on the one hand, controlling the prevention, management and resolution of conflicts and, on the other hand, facing the challenge of democratisation and good governance.

⁷ In a paper entitled "Armée et politique" (Army and Politics) given during the GERDDEES-AFRIQUE-CIRD workshop at Cotonou in 1996, Colonels Bio-Kpo Lafia and Zinzou presented a critical and balanced approach to the relationships between the armed forces and governments. They listed the various forms of the military's impact and involvement and highlighted the negative repercussions it can have on the armed forces; among the harmful effects they mentioned were "the gagging of the people and the violation of human rights" (p.7, Doc GERDDES workshop).

⁸ But multi-party systems and national conferences did not lead to the same level of democratisation everywhere. In the 1990s, obstacles remained or emerged in countries such as Togo, where the coming to power of a new government with a parliamentary majority was short-lived and did not lead to a democratic change in power. The armed forces played an important role at the political level in maintaining the *status quo ante*. Regarding themselves as being excluded from the political process set off by the national conference, they were, according to some analysts and observers, at the root of counter actions which destabilised the government of Mr. J. Koffigoh, who was the transitional Prime Minister at the time. The case of this country is highly illustrative of the simultaneous relation that can exist between parties as acknowledged actors within the political system and the army as a background actor involved in political and public governance and emerging as the protagonist for other forces.

⁹ Furthermore, the case of Côte d'Ivoire in 2002 shows how a putsch can provoke rebellions and lead to the risks of armed conflict.

The ECOWAS Protocol dealing with the prevention mechanism and the Supplementary Protocol are, respectively, the instruments designed to respond to these dual requirements for action for peace, security, democracy and good governance.

- Does the Supplementary Protocol deal with the relationship between the armed forces and governments in a democratic context?
- What are the prescribed principles and what is their scope?
- Where do these principles fall within the process of strengthening democracy in West Africa?

The Supplementary Protocol illustrates the importance that member States give to the issue of taking democratic control of the armed forces within the framework of security sector governance and the strengthening of the rule of law. The Protocol establishes the recognition by the 14 signatory States of the major constitutional convergences that are the basis for the legality and legitimacy of the principles prescribed in the document.

Among other things, these constitutional convergences are concerned with:

- 1 - The principle of the army's subordination to the civil, legal government.**
- 2 - A depoliticisation and "neutralising" of the army without harming the acknowledged civic rights of members of the defence and security forces.**
- 3 - Democratic governance for the security sector promoting and respecting human and personal rights.**

Among the constitutional principles listed as being subject to convergence between Member States are the concepts of the depoliticisation of the army and its exclusion from the exercise of power.

Indeed, the Protocol prescribes that:

- *"The armed forces must be apolitical and under the command of a legally constituted political authority;*
- *No serving member of the armed forces may seek to run for elective political office.*"¹⁰

In terms of legitimacy, the centre of gravity has moved to the people, and elections are proposed as the sole legitimate and legal means of coming to power. At the same time, there is an underlying condemnation of Coups d'Etat:

- *"Every accession to power must be made through free, fair and transparent elections.*
- *Zero tolerance for power obtained or maintained by unconstitutional means".*

¹⁰ See Article 1 of Chapter 1 of the Protocol which covers the *CONSTITUTIONAL CONVERGENCE PRINCIPLES* in Section 1.

- *"Popular participation in decision-making, strict adherence to democratic principles and decentralisation of power at all levels of governance"* make up the alternative political approach to the setting up of a political power centre through the use of military force.

An important part of the Protocol (particularly Section IV) is specifically devoted to the "Role of the Armed Forces, the Police and the Security Forces in democracy".

The armed forces' activities are part of a framework which is non-partisan, republican and apolitical. The "defence of democratic institutions" and the army's role in development are highlighted; this equally applies to its participation in peace missions involving ECOWAS, the African Union and the international community.

Article 19 of the Protocol stipulates that:

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

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

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

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

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

The Supplementary Protocol addresses logically with the issue of the relationship of the armed forces to politics by developing a balanced and consistent approach to, on the one hand, prescribing that military forces are subordinate to the properly constituted civil authority and, on the other hand, for the necessity of the latter to respect the "apolitical nature of the armed forces and police".¹¹

At the level of the Supplementary Protocol, the military's relation to politics is conceived from the outset as one where the military is excluded from exercising governmental powers. It is also banned from "all political or trade union activities and propaganda... in the barracks and within the armed forces".

These restrictions are prescribed without prejudice to their civic rights.

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

- What are the nature and limits of these rights?
- With regard to matters concerning citizenship, could not ECOWAS Member Countries specify convergences or work out harmonised positions regarding the restrictions and rights granted to military personnel?

¹¹ Supplementary Protocol, Section IV, Article 20.

- For example, how should the issue of the right to vote be handled within this framework?
- What is the relevance of exercising this right in a context of an apolitical body and the ineligibility of its members to hold political office?
- How should political information and civic training be developed without politicising the defence and security forces?

Within the framework of its aim of strengthening democracy through a respect for rights and freedoms, Article 22 of the Supplementary Protocol bans "the use of arms to disperse non-violent meetings or demonstrations".

The need to continue to maintain order, while keeping it within a legal framework and exercising it in moderation, leads to the following clarifications in the Supplementary Protocol: "Whenever a demonstration becomes violent, only the use of minimal and/or proportionate force shall be authorised."

These indications and directives are very important for the effective exercise of democratic freedoms by citizens, political organisations and civil society. They help to alleviate the lack of tolerance towards peaceful public demonstrations which, in terms of democratic effectiveness, are vital as a context and means of expression.

The banning of "all cruel, inhuman and degrading treatment", the prescribed requirement for the scrupulous respect for human rights and humanitarian law constitute important directions concerning the choice of, and desire for, democracy and good governance that the Supplementary Protocol seeks to promote.

III. The implications of the Supplementary Protocol – What perspectives for action?

The Supplementary Protocol distinctly sets out the principles and rules that should govern the relationship of the armed and security forces with government and their relationship to politics.

Today, the legal and political conditions for its full implementation and enforcement have now come together, as it has been ratified by at least 9 of the 14 signatory States. In 2003 these fourteen States formally renewed their undertakings to:¹²

- "Promote and strengthen good governance and a constitutional State in the sub-region;
- Refuse to recognise any coming to power which involves force;
- Respect the constitutional legality of the State and human rights along with ECOWAS protocols on the free movement of people, goods and services."

The implementation process concerns all political and societal actors, individuals and institutions; parliamentarians, political parties, the media and civil society in all

¹² In particular in the "*Déclaration sur une approche sous-régionale pour la paix et la sécurité*" (Declaration on a sub-regional approach to Peace and Security) made in Abuja on 28 May 2003 during an extraordinary session of the Conference of Heads of State and Government; see pages 4 and 5.

its forms. All governments face the same requirement to implement and spread the principles and rules prescribed by the Supplementary Protocol.

There is subsequently nothing to be gained from contributing towards strengthening this instrument's analytical framework. For example by updating the underlying analysis for classifying the sub-region's armed forces; in particular for gaining a greater awareness of the complexity arising from the disintegration of some States, where reference points are blurred by the multiplication of armed groups (legal, semi-legal and illegal).

There are also other issues to be examined. For example:

- How can the Supplementary Protocol strengthen durably its deterrence of Coups d'Etat in West Africa?
- How, within the process of strengthening democracy at the regional level, can the Protocol deepen its approach by taking into account the tendency of actors responsible for military coups d'état to cross over into civilian life in order to stand for election and so, in all legality, possibly remain in power?
- Is there a threshold for and/or limits to matters like these?
- Should the entry of military personnel into politics be tolerated only if their transition to civil life precedes the exercise of political power and their candidature at presidential elections?

It goes without saying that addressing these issues cannot be any sort of prerequisite for the Supplementary Protocol's implementation.

What is the Protocol's contribution to the area of security sector governance?

In the area of security sector governance, ECOWAS can make a tangible contribution to the achievement of Supplementary Protocol's aims through activities such as:

- **The development of a dialogue between civilians and military personnel** who are actually directly or indirectly involved in running the government in a number of countries which are in a transition process; in particular those which seem to be moving towards building a democratic State within a post-conflict dynamic and those who are in the process of devolving power to democratically-elected civilians.
- **An awareness of the Protocol's principles and advocating** for its adoption by all actors.
- **A contribution to civic training for defence and security forces and teaching them about their country's constitution and ECOWAS's principles and rules.**

The Protocol highlights fairly clearly the direction to take in terms of the indicative content of training at this level:

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

*Joint training sessions shall also be arranged for members of the armed forces from different ECOWAS countries, university dons and members of the civil society.*¹³

In fact, it means:

- A contribution to the dissemination of democratic values and principles, the respect for humanitarian law and personal rights among defence and security bodies.
- An awareness among civil authorities of the need to confine defence and security forces to legal, constitutional and non-partisan activities.
- A strengthening of the democratic governance capabilities of the security sector in a way which embodies parliamentary control, involves civil society and which prevents defence and security forces from lapsing into illegal, secret and repressive practices.

WANSED and other actors who are in a position to support the Supplementary Protocol's implementation should actively contribute to the reduction of these practices by working in synergy with ECOWAS, its Member States and those directly involved in breaking them up.

¹³ Art. 23, paragraphs 1 and 2 of the ECOWAS Supplementary Protocol.