



COMMUNAUTE ECONOMIQUE
DES ETATS DE L'AFRIQUE DE
L'OUEST

ECONOMIC COMMUNITY OF
WEST AFRICAN STATES

NINTH EXTRAORDINARY SESSION OF THE COUNCIL OF MINISTERS

Santa Maria, Sal Island (Cape Verde) 30 June – 1st July 2010

FINAL REPORT

JUNE 2010

ECONOMIC COMMUNITY OF WEST AFRICAN STATES
COMUNIDADE DOS ESTADOS DA AFRICA DO OESTE
COMMUNAUTE ECONOMIQUE DES ETATS DE L'AFRIQUE DE L'OUEST

I. INTRODUCTION

1. The Ninth extraordinary session of the Council of Ministers was held in Santa Maria, Sal Island (Republic of Cape Verde) on 30 June and 1st July 2010 with the purpose of considering the proposals of the Ad-hoc Ministerial Committee on:
 - modalities for the allocation of statutory positions to Member States;
 - allocation to Member States of the positions of President, Vice President, Commissioners and Financial Controller of Community Institutions;
 - allocation to Member States of four (4) positions of Judge soon to become vacant at the Community Court of Justice;
 - allocation to a Member State of the post of Speaker of the ECOWAS Parliament;
 - modalities relating to the rotation of the post of Chairman of the Authority of Heads of State and Government.
2. During its sixty-fourth ordinary session which was held in Abuja from 31 May to 2 June 2010, Council had requested that an Ad-hoc Ministerial Committee present to it proposals which will guide its recommendations to the Authority of Heads of State and Government on the aforementioned issues. The Committee was made up of Cape Verde and Cote d'Ivoire and chaired by Nigeria,
3. The following Member States were represented at the meeting:
 1. Benin Republic
 2. Burkina Faso
 3. Republic of Cape Verde
 4. Republic of Cote d'Ivoire
 5. Republic of Gambia
 6. Republic of Ghana
 7. Republic of Guinea Bissau
 8. Republic of Liberia
 9. Republic of Mali
 10. Republic of Nigeria
 11. Republic of Senegal
 12. Republic of Sierra Leone
 13. Republic of Togo

4. The following specialised agencies and Institutions of ECOWAS were also represented at the meeting:

- ECOWAS Commission;
- ECOWAS Parliament;
- Community Court of Justice;
- West Africa Health Organisation;
- ECOWAS Bank for Investment and Development (EBID).
- ECOWAS Regional Electricity Regulatory Agency (ERERA)
- ECOWAS Gender Centre

5. The list of participants at the meeting is attached as an Annex to this report.

II. OPENING SESSION

6. The Minister of Foreign Affairs of the Republic of Cape Verde, His Excellency José Brito, speaking on behalf of his Government, welcomed all participants. After having recalled the context and programme of sessions of the Council of Ministers and the Authority of Heads of State and Government, he presented the existing institutional framework of ECOWAS, appealed for Community solidarity and continuity and wished Council successful deliberations.

7. Speaking in turn, His Excellency James Victor Gbeho, President of the ECOWAS Commission welcomed participants to the meeting and thanked the Cape Verdean authorities for the excellent facilities put at the disposal of the Council of Ministers to ensure the success of the meeting. He recalled the mandate given to the Ad-hoc Ministerial Committee by the Sixty fourth Ordinary Session of the Council of Ministers and urged the meeting to work in a spirit of solidarity, unity and consensus.

8. On behalf of the Minister of State for Foreign Affairs of the Federal Republic of Nigeria, Her Excellency Minata Samate Cessouma, Minister of State for Regional Cooperation of Burkina Faso also welcomed members of the Council. She then urged her peers to present consensual proposals to the

Authority of Heads of State and Government after considering the report of the Ad-hoc Ministerial Committee.

III. ELECTION OF BUREAU

9. In the absence of the Minister of State for Foreign Affairs of Nigeria, Chairman of Council, the meeting was chaired by Her Excellency Minata Samate Cessouma, Minister of State for Regional Cooperation of Burkina Faso.

10. The Council elected The Gambia and Mali as rapporteurs.

IV. ADOPTION OF AGENDA AND WORK PROGRAMME

11. The following Agenda was adopted:

1) Opening ceremony

- Opening address by the host Minister
- Address by the President of the ECOWAS Commission
- Opening address by the Chairman of Council

2) Election of Bureau;

- Adoption of the Draft Agenda and Work Programme

3) Consideration of Report of the Ad-hoc Ministerial Committee on Allocation of Statutory Positions

4. Any other Business

5. Adoption of Report

6. Closing session

V. OUTCOME OF DELIBERATIONS

Item iv (1) Presentation and consideration of Report of the Ad-hoc Ministerial Committee

12. While presenting the report of the Ad-hoc Ministerial Committee, the Chairman of the Committee explained that certain principles and guidelines on the allocation of statutory positions were taken into consideration. These principles and guidelines are contained in Community texts in force, are recognised as conventional and consistent with "Best Practices" and also take into account the various interests of Member States in a fair, equitable and transparent manner and would indeed facilitate the allocation in a predictable manner.

13. Council considered the report of the Ad Hoc Ministerial Committee paragraph by paragraph.

14. The recommendations contained in this report are as follows:

Guidelines for the allocation and rotation of Statutory Positions

15. The following are some of the guidelines from Community legal texts as well as best practices and Conventions to be applied as criteria.:

- a. An equitable, transparent and predictable system of rotation for allocation of statutory positions in all Community Institutions based on the alphabetical order of Member States (Article 3 (4) Decision A/DEC.1/6/06);
- b. Exceptionally, the Federal Republic of Nigeria shall have a permanent position in the Commission and shall not hold a particular position permanently (Article 3 paragraph 2 of Decision A/DEC.1/6/06);
- c. No Member State shall occupy the same position for two (2) successive terms (Article 3 paragraph 3 of Decision A/DEC.1/06/06);
- d. Representation of Member States within the management cadre of Community Institutions shall be based on a transparent, equitable and predictable system of rotation adopted by the Authority (Article 18 paragraph 4 of new Supplementary Protocol A/SP.1/06/06 amending the Revised Treaty);

- e. In the case of arbitration between several countries in the allocation of a given position, countries whose nationals have in the past occupied top statutory positions, frequently and/or in several Community institutions shall not receive priority;
- f. Priority shall be given in the allocation of positions to countries whose nationals have never or rarely occupied statutory positions, or have for a long time not done so;
- g. Implementation of texts governing the Community Levy;
- h. Language alternation for allocation of statutory positions to ensure rotation of positions among Member States of the three language zones of the Community.
- i. For the allocation of the position of the President of the Commission and Heads of other Institutions in a transparent, equitable and predictable manner.
 - i) no member State shall concurrently hold the position of Head of more than one Community Institution;
 - ii) a member State shall not be allocated the position of Head of Institution where the headquarters of the given Institution is hosted by the said Member State;
 - iii) with regard to the ECOWAS Commission, the country hosting the Commission, shall not be eligible to Head that Institution;
- j. for allocation of all statutory positions:
 - i) A Member State shall not be allocated any statutory position if at the time of allocation, it fails to comply with the relevant provisions of the 2001 Supplementary Protocol A/SP1/12/01 on Democracy and Good Governance. These provisions relate to the following cases:
 - a) a coup d'état occurs in the country;
 - b) power is obtained through unconstitutional means;
 - c) the country fails to comply with the Convergence criteria on democracy;

ii) In addition, no statutory position shall be allocated to a Country where it fails to apply the texts governing the Community levy (Article 2 (1) Decision A/DEC.1/06/06).

k. For the positions of Vice President and Commissioners:

In proposing countries for these positions, other statutory positions occupied by Member States shall be taken into account.

l. For the position of Vice President of the Commission

The Vice President shall not be from the same linguistic group as the President of the Commission.

17. The Federal Republic of Nigeria expressed reservation at the principle whereby the country which hosts the headquarters of an institution is ineligible to head the Institution. Alternatively, Nigeria proposed that a principle be added by which a country which hosts the headquarters of more than one Institution, be considered eligible to head one of the given institutions.

18. Moreover, the issue on allocation to one Member State of the position of Head of an Institution and Deputy Head of the same Institution and vice versa for two successive terms was raised. No consensus was reached after discussions on the issue.

19. The main guidelines for allocation and rotation of statutory positions mentioned above are contained in Annex 1 to this report.

For allocation of the positions of President, Vice-President and Commissioners of the ECOWAS Commission and Financial Controller of Community Institutions

20. Council considered the proposal of the Ad Hoc Ministerial Committee to use the alphabetical order and system of elimination as basic criteria for allocation of statutory positions. The application of this guideline will lead to the following:

A. For the position of President

i) No English speaking Member State shall be allocated this position considering that this position has been occupied by Ghana for the last eight years;

ii) The 1st country by alphabetical order and language consideration, Benin, is ineligible because it presently heads the EBID with a tenure that expires in June 2011.

iii) Consequently Burkina Faso is proposed for the position of President of the Commission.

21. The Republic of Senegal expressed reservation at implementation of the system of rotation based on alphabetical order for allocation of the position of President. Some Member States were of the different view that rotation by alphabetical order does not exclude efficiency because it behoves the country being allocated the position to nominate the best candidates capable of fulfilling the role with competence and efficiency. Other Member States indicated that the allocation of the position of President of the Commission based on rotation by alphabetical order is a key guideline which should not, however, be considered as the only criterion.

22. In view of the foregoing, Council did not reach a consensus on using the guidelines proposed by the Ad Hoc Ministerial Committee for allocation of the position of President. It was therefore agreed to refer the decision on allocation of the position of President of the Commission, to the discretion of the Heads of State and Government.

B. For the position of Vice-President

i) English and Portuguese speaking countries were considered eligible for this position for linguistic reasons, which eliminate all French speaking countries;

23. Based on the alphabetical order of non-French speaking countries, Council proposed to allocate the position of Vice-President of the Commission to the Republic of Cape Verde.

24. However, Liberia expressed reservation at this proposal by Council, laying claim to the position in conformity with the initial proposal made at the 64th Sixty-Fourth Ordinary Session of the Council of Ministers based on which Cape Verde was proposed for the position of President of the ECOWAS Parliament. This country has a running term of Judge.

C. For the positions of Commissioners

25. Council considered the following proposals of the Ad-hoc Ministerial Committee:

i) application of the adopted criteria contained in the legal texts of the Community;

ii) consideration of Member States which do not presently occupy any Commissioner position;

iii) alphabetical order and;

iv) arbitration process

26. Justification for Countries considered ineligible:

Burkina Faso and Cape Verde

- i) Burkina Faso and Cape Verde have already been proposed for the positions of President and Vice-President respectively;

Guinea-Bissau

- ii) Guinea-Bissau does not apply the Community Levy requirements as prescribed;

Guinea and Niger

- iii) Guinea and Niger are countries in transition and are thus not eligible.

27. Council considered that, given its inability to agree on the allocation of the position of President of the Commission to Burkina Faso following the reservations expressed by Senegal, it was no longer able to give an opinion on Burkina Faso's eligibility for the position of Commissioner.

28. Moreover, Council was informed at the meeting that Guinea Bissau has started paying its Community Levy contributions although the country has yet to agree with the Commission on a schedule for the settlement of arrears due to Community Institutions.

29. Council noted that in reality, it is difficult to assess how correctly Member States apply texts governing the Community Levy. It is only after assessment of the trend that it may be said that Member States more or less apply these texts.

30. Countries considered eligible

Benin, Gambia, Guinea Bissau and Liberia

- i) Benin, The Gambia, Guinea Bissau and Liberia, having never previously occupied Commissioner positions within the Commission, were proposed.
- ii) Cote d'Ivoire, Ghana and Mali were considered eligible based on alphabetical order.

- iii) One (1) of the Commissioner positions was proposed following an arbitration procedure between Ghana and Mali. The arbitration was done in favour of Mali considering that Ghana has occupied the position of President for eight consecutive years.

Nigeria and Senegal

- iv) Nigeria and Senegal are eligible by virtue of Nigeria's permanent representation within the Commission and Senegal's running mandate which will end in 2012.

31. The following countries were thus proposed for the positions of Commissioners: Benin, Cote d'Ivoire, The Gambia, Liberia, Mali, Nigeria and Senegal which has a running term until 2012.

32. Considering that the eligibility of some Member States to positions of Commissioner is based on the hypothesis which qualifies Burkina Faso for the position of President of the Commission and that reservation was expressed about the proposal, Council decided that it was unable to propose any Member States for the position of Commissioner. Moreover, Council was unable to arbitrate between Guinea Bissau, Mali and Sierra Leone with respect to recommending one of these three countries for the position of Commissioner.

33. Cote d'Ivoire reminded Council of a 2008 Directive of the Authority of Heads of State and Government, by which the Commission was requested to undertake a study on better allocation of technical areas to Commissioners, considering that at least two Departments of the Commission in charge of technical areas were considered too broad for their holders.

34. Cote d'Ivoire seized the opportunity to propose allocation of one (1) position to each Member State in the Commission.

35. Other members of Council considered that it was inopportune to recommend to the Authority of Heads of State and Government, any enlargement of the Commission to fifteen members, considering that the mandate given to Council by the Thirty-Seventh Ordinary Session of the Authority of Heads of State and Government on 16th February 2010 did not concern this issue. It concerned rather, the modalities for allocation of the positions of President, Vice-President and Commissioners of the ECOWAS Commission based on the current circumstances. After having noted that the African Union Commission does not have fifty-three Commissioners, they stated that Council could not make such a recommendation except after preliminary evaluation of the current operations of the Commission and a financial analysis which would determine all ramifications, including on the decision of the Commission to set the expenditure quotas at forty percent for operations and sixty percent for programmes.

36. At the request of Council, the President of the Commission explained that the study conducted on the restructuring was in the process of being finalised.

37. Consequently, Council directed the President of the Commission to, on the one hand, ask the Consultant to promptly finish the study and on the other hand, submit the study for the attention of Council through the Administration and Finance Committee.

38. Council recommended that in any case, the Consultant's study would not in any way lead to the extension of the tenures of office of appointees at the Commission.

39. Council agreed to refer the allocation of the positions of Commissioners, to the discretion of the Authority.

For the allocation of the position of Financial Controller of Community Institutions

40. Ghana was proposed for the post of Financial Controller on the basis of alphabetical order.

41. Ghana declined this offer on the grounds that the arbitration process leading to its elimination for the position of Commissioner was flawed considering that Mali also held statutory positions at the Commission for the same number of years. Consequently, Council decided to refer the issue of the allocation to a Member State of the position of Financial Controller of Community Institutions, to the discretion of the Heads of State and Government.

For the allocation of four (4) positions of Judge at the Community Court of Justice

42. Council made the following observations:

- i) Member States currently occupying posts of Judge are as follows: Benin, Cape Verde, Cote d'Ivoire, Ghana, Niger, Nigeria and Togo;
- ii) Member States whose mandate end in 2011 are Ghana, Niger, Nigeria and Togo;
- iii) Member States which have never held any Judge position are The Gambia, Guinea, Guinea Bissau, Liberia and Sierra Leone;
- iv) Some countries mentioned in paragraph 26 above are ineligible based on the criteria adopted. They are Guinea and Guinea Bissau Guinea due to non-compliance with the Protocol on Democracy and

Good Governance and Guinea Bissau for non-compliance with provisions of the Community Levy; however, Guinea Bissau made some reservations against the stated decision for the following reasons:

- during the opening ceremony of the session of the Council, the President of ECOWAS Commission informed the Council that the said member State has paid its part of the Community Levy and has sent a letter undertaking to pay the arrears;
- Guinea Bissau has never occupied any position within the Commission;
- Guinea Bissau is not the only country which does not comply with the texts governing the Community Levy;
- the principle of alphabetical order should be observed.

In view of the above, Guinea Bissau indicated that it is eligible, in particular for the positions of Commissioner and Judge.

- v) Liberia was considered ineligible because it had been proposed for a Commissioner position and because it currently occupies the position of Deputy Director General of the West African Health Organisation (WAHO);
- vi) The Gambia and Sierra Leone were proposed to occupy the positions of Judge.

43. In order to allocate the remaining two (2) posts at the Court, Council identified countries that have in recent years, occupied positions of Judge. They are Burkina Faso, Ghana, Mali, Nigeria, Senegal and Togo. Consequently, the allocations were proposed as follows:

- i) Togo was considered eligible because it has not been proposed for any statutory position; however, Togo recalled that it has been holding the position for eight (8) years and that its term will end in January 2011.
- ii) Burkina Faso and Ghana were considered ineligible because Council has proposed to allocate to them the positions of President of the Commission and Financial Controller of Community Institutions.

44. For the last position of Judge, Council proposed arbitration between Mali and Nigeria. The Committee was however unable to reach an agreement on the arbitration and resolved to submit the matter to the discretion of the Heads of State and Government Council for final decision.

45. Sierra Leone expressed reservation on the fact that it was not allocated the position of Commissioner in conformity with the initial recommendations made by the ECOWAS Commission to Council based on provisions of existing legal texts and for the sake of impartiality and equity in allocating the statutory positions. Based on this, Sierra Leone did not take a final decision on the position of Judge allocated to it pending conclusion of the arbitration concerning Mali, Ghana and Guinea Bissau on the remaining position. Recalling the countries that occupied statutory positions in the Executive Secretariat and those holding now similar positions in the Commission, Sierra Leone was of the view that it should be allocated one of the positions of Commissioner by virtue of the principles of equity, impartiality and transparency.

46. The Gambian delegation for its part, accepted the proposal for the allocation of the position of Judge to its country. Council was unable to find common ground in the arbitration between Nigeria and Mali. It was thus decided to refer the allocation of four (4) positions of Judge which will become vacant in February 2011, to the discretion of the Heads of State and Government.

47. In line with the adopted criteria, no Member State heading a Community Institution shall be President of the Court.

For the allocation of the position of Speaker of the ECOWAS Parliament

48. Council recalled that the last time the position of Speaker was allocated in 2006, the Authority had applied the alphabetical order principle, using Mali as the starting point of reference, being the first country which occupied the position.

49. Based on this formula, Nigeria was recommended as the next prospective candidate for the position of Speaker of Parliament. Mali was of the view that recommending Nigeria for this position is contrary to the principle which states that the country in which the headquarters of an institution is located cannot head the same institution. Thus, Nigeria cannot be selected for the position of Speaker of the ECOWAS Parliament.

50. Members of Council then raised questions on the alphabetical order. They sought to know from what point in the cycle it started, that is, whether it was from the letter A or from another point of reference decided by the Authority. Council was unable to reach a consensus on the proposal of the Ad hoc Ministerial Committee to allocate this position to Nigeria.

Modalities for rotation of the position of Chairman of the Authority of Heads of State and Government

51. Council proposed five (5) major principles as criteria guiding the selection of a country to the position of Chairman of the Authority. They are:

- i) Alphabetical order;
- ii) Compliance with relevant provisions and convergence principles contained in the Supplementary Protocol on Democracy and Good Governance of 2001;
- iii) Compliance with Community Levy requirements;
- iv) Non-exposure of Member States to risks or situations that may hamper effective chairmanship, such as political instability, and a security situation that poses threat to stability and holding of major elections like Presidential elections during the year in question.
- v) The country occupying the position of the Presidency of the Commission shall not be eligible to the office of the Chairperson of the Authority.

52. Council also recommended adoption of other principles relating to the right of a Member State to relinquish its turn for reasons to be communicated to the President of the Commission and the right of the Member State that relinquished its turn to re-enter the rotation cycle after a given period. The modalities relating to this principle are contained in Annex 4 of this report

53. Council recommended adoption of a procedure for election of Chairman of the Authority. This procedure envisages the submission by the President of the Commission to the mid-year session Council, of a report on the status of the rotational cycle and other relevant information relating to the criteria adopted that may help Council make recommendations to the next Summit of the Authority for its adoption. The procedure is also contained in Annex 3 to this report.

54. Considering the political nature of the organisation and the responsibilities attached to the position of Chairman as spokesperson and representative of the entire region, Council considered that despite the rotation principles, the Authority should have the liberty to decide on its main Representative, who can, at each given period or tenure, achieve progress in the specific or identified interests for the region for that period.

55. Council was of view that in order to allow for the exercise of discretionary power on this issue by the Authority, the latter may invite Council to routinely submit a rotation table to be prepared after consideration of the afore-stated principles.

56. Council agreed to submit to the high attention of the Authority, Annex 3 of this report which indicates the situation of each Member States in relation to the proposed criteria. This document indicates that the following countries are eligible to the position of Chairman of the Authority: Ghana, Mali, Senegal, Sierra Leone and Togo.

Item vi - 2 Any Other Business

57. The Minister of Foreign Affairs for Cape Verde informed Council of the imminent signing of agreements between his country, Norway and five (5) neighbouring States including Mauritania. The agreements are intended to produce information which will be jointly submitted to the United Nations in the framework of extending the outer limits of the continental shelf beyond 200 nautical miles. Council was also informed of the signing of another agreement between the said countries and the Kingdom of Norway, in order to benefit from the competence of the latter which is willing to offer assistance within this context, to the country which so desires.

Item V Adoption of the report

58. The report was adopted after amendments.

Item VI Closing session

59. In his statement, the Minister of Foreign Affairs of Cape Verde expressed regret that Council in its deliberations, did not arrive at satisfactory conclusions. Thus, the extraordinary session of the Council of Ministers was unable to present to the Heads of State and Government, proposals on the allocation of some statutory positions.

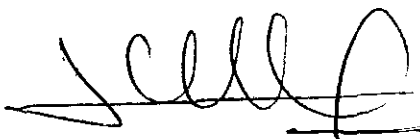
60. However, he wished all participants at the meeting of Council, a nice stay for the remainder of their time in Sal.

61. In her closing statement, the Chairperson of Council thanked all participants for the quality of their contributions and the spirit of fraternity they demonstrated, which, she said, helped Council to arrive at recommendations that

will be submitted to the thirty-eight Ordinary Session of the Authority of Heads of State and Government.

62. Lastly, she wished all Members of Council and their delegations safe return to their respective countries and declared closed the extraordinary session of the Council of Ministers.

DONE AT SANTA MARIA, SAL ISLAND, THIS 1ST DAY OF JULY 2010



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H.E. Mrs. Minata Samate CESSOUMA
Minister of State in charge of Regional Cooperation of
Burkina Faso

For: Dr. Aliyu Idi HONG
Chairman of the Council of Ministers