DOI: https://doi.org/10.68193/jilj.2026.w5v2b9rg

LEGAL LIMITS AND ENFORCEMENT CHALLENGES OF ECOWAS IN ADDRESSING MILITARY COUPS IN WEST AFRICA

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ABSTRACT

Military coups d'état occurring repeatedly in West Africa are a great setback to the regional efforts to consolidate democracy and good governance. This paper examines the legal and political dimensions of the recent military seizures of power in member states of the Economic Community of West African States (ECOWAS). It evaluates the interaction between internal governance failures and regional security crises that have created a fertile ground for the erosion of constitutional order. Although ECOWAS has established a strong normative framework through the Protocol on Democracy and Good Governance, reliance on punitive enforcement mechanisms and economic sanctions has revealed significant legal and practical constraints. The paper shows that the ECOWAS Authority's enforcement mandate is limited by the principle of state sovereignty, ambiguities in Community law on the use of force, and a legitimacy crisis stemming from its inability to address so-called constitutional coups by civilian elites. A comparative analysis of the African Union's zero tolerance policy and the European Union's Article 7 Treaty of European Union (TEU) procedure underscores the need for ECOWAS to adopt clearer legal tools, apply targeted sanctions, and strengthen institutional and judicial capacity. The paper concludes that restoring civilian rule over the long term requires not only condemning military interventions but also proactively promoting democratic accountability, judicial independence, and effective governance at the national level.

Keywords: *Democratic Governance, ECOWAS, Military Coups, Regional Enforcement, Sanctions.*

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1. INTRODUCTION

Recent years have witnessed a disturbing rise in military seizures of state power in the West African sub-region, a painful reversal of the progress made in consolidating civilian administrations in the late 1990s and 2000s.[1] In 2020, the military suddenly interrupted the constitutional arrangements of Mali, Guinea, Burkina Faso, and Niger.[2] This alarming trend casts a long shadow over decades of democratic and legal advancements, creating an atmosphere of political insecurity and regional instability.[3] The frequency and proximity of these coups emphasise deep structural weaknesses in the region's political systems, which require timely, coordinated action by regional and international organisations. Strengthening democratic institutions, reinforcing constitutional safeguards, and promoting inclusive governance are important steps toward preventing further reversals of democracy and restoring confidence in civilian-led regimes.

The incremental development of ECOWAS as an economic bloc represents a significant shift towards a regional organisation with responsibilities for governance and security functions in the community.[4] The Economic Community of West African States (ECOWAS), established in 1975, was originally designed to promote economic integration through a common market and a customs union.[5] After the crises of the 1990s, especially the devastating civil wars in Liberia and Sierra Leone, ECOWAS gradually broadened its agenda beyond economic integration to issues of regional peace, security, and democratic governance.[6] This expanded role was formally consolidated in the Revised Treaty of ECOWAS 1993 and the Protocol on Democracy and Good Governance 2001, which provide a legal framework for the Community to engage with the internal political structures of its member states.[7]

This discussion has a two-fold aim. Firstly, it seeks to systematically identify the underlying causes of the recent resurgence of military regimes in West Africa. Secondly, it critically examines the limitations and scope of ECOWAS' enforcement capacity in addressing such unconstitutional alterations of government. This requires a careful consideration of the

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[1] ADF, "A Region Grippled by Coups" (January 2025), <https://adf-magazine.com/2025/01/a-region-grippled-by-coups/> accessed 2 December 2025.
[2] Inia TF & Eze C, "Political Instability and Military Coups in the Sahel Region" (2025) 11 Journal of Political Science and Law Review *42*. DOI, 10.56201/jpslr.vol.11.no10.2025.
[3] Democracy's Discontent and the Resurgence of Coups in West Africa, Implications for Africa" (2024) African Journal of Law, Political Research and Administration. DOI, 10.52589/AJLPRA UNWJTJEN.
[4] Yahaya JU, "Two Decades of ECOWAS: Assessing Regional Economic Integration and Security Efforts (2000-2024)" University of Jos Journal of Political Science, 2 (1) (2025) 295.
[5] See Article 2, Treaty of the Economic Community of West African States (ECOWAS), signed in Lagos on 28th May 1975.
[6] Revised Treaty of the Economic Community of West African States, July 24, 1993.
[7] Okere LI, "Analysis of Legal Framework of ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security in West Africa," Ajayi Crowther University (ACU) Law Journal (2020).

Community's legal instruments, the balance between sovereignty and intervention, and the practical tools available to ECOWAS for imposing sanctions or deploying force.

Having examined the resurgence of military regimes and ECOWAS's enforcement capacity, it is essential to consider the constitutional and regional legal obligations that underpin democratic governance in West Africa. These obligations, enshrined in national constitutions and reinforced by ECOWAS and African Union instruments, provide the normative basis for regional responses to unconstitutional changes of government.

2. REGIONAL AND NATIONAL DEMOCRATIC OBLIGATIONS

2.1 Democracy in the Constitutions of West African States

Most West African States have formally adopted democratic principles in their constitutions.[8] These include popular participation, legitimate succession, and the supremacy of civilian government. Most constitutions clearly affirm the sovereignty of the people and require regular, free, and fair elections as the only legitimate means of changing government.[9] Moreover, organic laws further criminalise any attempt to seize power outside constitutional provisions, often defining such acts as high treason.[10] Civilian authority is constitutionally placed above the armed forces, which must remain subordinate to elected political leadership.[11] These national arrangements establish a binding legal duty on domestic actors to uphold constitutional governance, a duty that becomes subject to regional oversight when violated.[12]

2.2 ECOWAS Normative Framework on Governance and Elections

2.2.1 *Revised Treaty of ECOWAS 1993*

The Revised Treaty of the Economic Community of West African States 1993 marked a turning point in the organization's transition from a purely economic bloc to one with political and security functions. Article 4 of the Treaty sets out guiding principles, including respect for human rights and accountability in governance.[13]

Article 4 of the Treaty provides the main anchor for these principles.[14] In terms of Article 4, the Member States are obliged to adhere to fundamental values of governance such as the recognition, promotion and protection of human and peoples' rights in compliance with the African Charter on Human and Peoples' Rights (Article 4(g)), accountability, economic and

[8] Akande JO, Introduction to the Nigerian Constitution (Lagos: Sweet & Maxwell, 2000), 45.
[9] Articles 1(1) and 42 Constitution of the Republic of Ghana 1992; Section 14 (2) (a) 1999 Constitution of Nigeria; Title 1, Article 1 Senegal Constitution 2001 (Revised 2016); and Chapter II, section 5 (2) (a) Sierra Leone 2013 Constitution (as amended).
[10] Constitution of the Federal Republic of Nigeria, 1999 (as amended), S. 1(2).
[11] Akande (n 10) 48.
[12] Article (1) (c) Protocol A/SP1/12/01 on Democracy and Good Governance 2001 that condemns unconstitutional methods of acquiring and retaining power.
[13] Revised Treaty of the Economic Community of West African States (1993), art. 4(g) and (i).
[14] Ibid, article 4.

social justice and participation in development processes (Article 4(h)), and promotion and consolidation of a democratic governance system in each Member State in accordance with the Abuja Declaration of Political Principles adopted in 1991 (Article 4(j)).[15]

Beyond these fundamental principles, Article 5 makes Member States responsible for passing national laws and taking all necessary constitutional actions to ensure the protocols of the Community are implemented.[16] Also, under Article 58, Member States agree to work together to establish mechanisms for conflict prevention and resolution, setting up the institutional framework for future regional action against unconstitutional changes of government.[17] Although the 1993 Revised Treaty failed to establish any enforcement or sanctioning mechanism for democratic infringements, it laid the legal and philosophical foundation for future instruments.

2.2.2 *Protocol on Democracy and Good Governance*

Protocol A/SP1/12/01 on Democracy and Good Governance 2001,[18] which complements the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security 1999,[19] constitutes the legal foundation for ECOWAS' jurisprudence against coups d'état. Article 1 (c) of the 2001 Protocol provides that the Member States consider that 'zero tolerance for power obtained or maintained through unconstitutional means' is a core constitutional principle of the Community.[20]

Notably, the 2001 Protocol seeks to move from a statement of norms to their enforcement through specific procedures outlined in Chapter II. Under Article 45, the Authority of Heads of State and Government of ECOWAS can impose selected sanctions where democracy is interrupted and/or there are massive human rights violations in any Member State.[21] Such sanctions include refusing to support candidates for election to international elective offices, ending technical cooperation, preventing participation in the Community's decision-making bodies, and even total isolation.[22] Despite this mechanism, the conflict

[15] Declaration of Political Principles of the Economic Community of West African States (adopted 6 July 1991) A/DCL.1/7/91.
[16] Ibid, article 58.
[17] Ademola Abass, Regional Security and the Commonwealth: Policy and Legal Implications (2nd edn, Routledge 2010) 142.
[18] 2001 Protocol on Democracy (n 4).
[19] ECOWAS Protocol A/P1/12/99 Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (adopted 10 December 1999, entered into force 10 December 1999) (1999 Mechanism Protocol).
[20] 2001 Protocol on Democracy (n 4) art 1(c).
[21] ibid article 45.
[22] ibid.

between ECOWAS powers under Article 45 and national sovereignty and non-interference remains a major legal problem in Community law.[23]

2.2.3 *African Charter on Democracy, Elections and Governance 2007*

However, the African Charter on Democracy, Elections and Governance 2007 enhances ECOWAS pledges at the continent-wide level.[24] The Charter obliges State Parties to advance constitutionalism, the rule of law, and consolidation of democracy.[25] In particular, Article 23 of the Charter expands upon the definition of unconstitutional change of government to include military coups, mercenary intervention, and failure by the incumbent government to cede power following defeat in a free and fair election.[26]

Moreover, Articles 24 and 25 of the Charter provide for immediate suspension and targeted sanctions by the AU Peace and Security Council against countries that commit an act of unconstitutional change of government, while banning coup leaders from taking part in any future elections and occupying any governmental positions in newly reinstated constitutional regimes.[27] The Charter offers a continental institutional framework that works alongside regional economic communities like ECOWAS in the context of public international law in Africa.[28]

2.2.4 *The African Union Constitutive Act 2000*

The Constitutive Act of the African Union 2000 also enshrines the rejection of unconstitutional changes of government. Article 4 (p) outlines this as a core principle of the Union, while Article 30 authorises the suspension of member states that experience unconstitutional changes. These suspensions are not just theoretical principles but actively enforced.[29] They demonstrate the African Union's attempt to uphold continental norms of democracy and constitutional governance. However, critics have noted that enforcement has been uneven[30] and that suspensions alone often fail to restore constitutional order or deter future coups.[31] Article 4(h) gives the Union the power to intervene in a member state in extraordinary circumstances, mainly humanitarian crises and war crimes.[32]

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[23] Babatunde Fagbayibo, 'Rethinking the Enforcement Mechanism of ECOWAS in Staging Democratic Governance' (2021) 29 African Journal of International and Comparative Law 345, 350.
[24] African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012) (ACDEG).
[25] ibid article 2.
[26] ibid article 23.
[27] ibid articles 24, 25.
[28] Solomon Ebobrah, 'The Future of Regional Integration in West Africa: A Human Rights Perspective' (2018) 62 Journal of African Law 115, 120.
[29] ibid articles 4(p), 30.
[30] Horace Adjolohoun, 'The African Union and Unconstitutional Changes of Government: Re-evaluating Continental Responses' (2022) 16 African Journal of Legal Studies 89, 95.
[31] AU Constitutive Act (n 26) art 4(h).
[32] ibid.

3. RESURGENCE OF MILITARY RULE IN WEST AFRICA

3.1 Earlier Cycles of Coups

The political history of post-independence West Africa is characterised by frequent military interventions in civilian rule. Between 1960 and 1980, coups were common, often triggered by internal conflicts, political disputes, and economic collapse.[33] A more noticeable improvement occurred in the 1990s, when pro-democratic movements and external pressures ushered in multiparty politics and relative civilian supremacy. Although civil wars in Liberia and Sierra Leone disrupted this trajectory, [34] the early 2000s saw consolidation of civilian authority, with ECOWAS adopting a more assertive stance against military coups by transitioning from passive condemnation to active political intervention, economic sanctions, and military enforcement mechanisms.[35] For a time, it appeared that the era of coups in the sub-region had ended.

3.2 The Motivations Behind the New Round of Coups

3.2.1 *Governance failures and poor institutions of the people*

One key reason for the recent military takeovers of state authority is the population's loss of trust in the civilian government because of its persistent inefficiency.[36] Endemic corruption, lack of accountability, and inefficiency in delivering essential services have eroded the ethical authority of constitutional structures, creating openings for military actors to justify intervention.[37]

3.2.2 *Manipulation of Constitutional Term Limits*

Civilian leaders have often sought to extend their tenure through controversial constitutional amendments or referenda, suppressing opposition, controlling the media, and criminalising dissent.[38] Such manoeuvres are widely seen as unconstitutional extensions of power that give the military a pretext to intervene under the guise of restoring constitutional order.[39] President Alpha Condé of Guinea amended the constitution in 2020 to reset his term

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[33] Clapham C, "African Military Coups d'État, 1956-2001: Frequency, Trends and Distribution" *The Journal of Modern African Studies* 41(3) (2003), available at <https://resolve.cambridge.org/core/services/aop-cambridge-core/content/view/C7E923CE86B78DD099FDEFAF89F1F88E/S0022278X0300435Xa.pdf> accessed 1 November 2025

[34] Van de Walle N, "Democracy and Multi-Party Politics in Africa" (working paper, 2001), available at <https://www.files.ethz.ch/isn/27814/2001_01_full.pdf> accessed 1 November 2025.

[35] Clapham C (n 27).

[36]Onapajo H, "Weak Institutions and Democratic Backsliding in Africa: Reflections on the New Wave of Military Coups in West Africa" (October 2025), available at <https://kujenga-amani.ssrc.org/2025/10/08/weak-institutions-and-democratic-backsliding-in-africa-reflections-on-the-new-wave-of-military-coups-in-west-africa/> accessed 28 November 2025.

[37] Ibid.

[38] Janette Y, "The Struggle Over Term Limits in Africa: The Power of Protest" Journal of Democracy 27(3) 2016, available at <https://www.journalofdemocracy.org/articles/the-struggle-over-term-limits-in-africa-the-power-of-protest/> accessed 28th of November 2025.

[39] Ibid.

count, enabling him to run for a controversial third term. This move was widely condemned and directly preceded the September 2021 coup that ousted him.[40]

3.2.3 *Harsh economic conditions*

Poverty, unemployment among the younger population, and the rising cost of living across the region are among the main drivers of dissatisfaction and instability.[41] Economic misery, coupled with a sense of perceived profligacy among political elites, breeds grievance that undermines the existing political system. This economic misery often leads a segment of the population to view extra-constitutional change as a viable, though dangerous, way to change the *status quo*.[42] Mali's coups were also driven by insecurity, frustration with governance failures and attempts to extend tenure.[43]

3.2.4 *Deteriorating Security Environments*

The growing threat of armed non-state groups in the Sahel, including jihadist movements, Islamic State West Africa Province (ISWAP), and Boko Haram, has further undermined civilian governments. [44] In Mali, Burkina Faso, and Niger, militaries already exercised significant operational control over large territories. Civilian failures to adequately resource or strategise against these threats enabled military leaders to justify coups as necessary for restoring security.[45]

3.2.5 *Public Approval of Military Takeovers*

A striking feature of recent coups has been visible, sometimes frenzied, public approval at the moment of takeover. [46] This does not necessarily reflect genuine support for military rule, but rather a reaction to deep frustration with ineffective civilian leadership. [47] For economically desperate, insecure, and disenfranchised citizens, military intervention is perceived, although temporarily, as a corrective shock capable of removing unpopular incumbents.[48] This dynamic complicates ECOWAS's enforcement efforts, as military regimes present themselves as popular providers rather than usurpers.

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[40] Maram M, "Constitutional Manipulations Often Precede African Coups" (May 2024), available at <https://www.cigionline.org/articles/constitutional-manipulations-often-precede-african-coups/> accessed 4 November 2025.
[41] Noutchie CO, "Constitutional Coups and Military Interventions: Reassessing Extended Presidential Tenure and its Impact on Governance in Africa" available at <https://ideas.repec.org/a/rbs/ijbrss/v14y2025i4p519-518.html> accessed 28 November 2025.
[42] Ibid.
[43] Maram M (n 34).
[44] OECD, "Military Coups, Jihadism and Insecurity in the Central Sahel" (West African Papers No. 43, 2024), available at <https://doi.org/10.1787/522f69f1-en> accessed 1 December 2025.
[45] Ibid.
[46] OECD (n 38).
[47] Onapajo H (n 30).
[48] Bamidele AA, "Constitutional Coups and the Crisis of Legitimacy in West Africa," African Journal of Legal Studies, (8) (1) (2020) 55.

4. REGIONAL CONSEQUENCES OF MILITARY INCURSIONS IN WEST AFRICA

Repeated military takeovers pose serious threats to regional stability, economic integration, and collective security in West Africa.[49] Political instability in one country often creates problems for its neighbours, leading to the proliferation of weapons across porous borders, displacement of civilians, and organised criminal activities, which have been seen across the wider Lake Chad Basin and Sahelian regions.[50]

Most importantly, the creation of a "belt of coups" across the Atlantic coast region to the Sahel fragmented ECOWAS institutions. The establishment of the Alliance of Sahel States (Alliance des États du Sahel - AES) by the military governments in Mali, Burkina Faso, and Niger in September 2023, followed by the announcement of their decision to withdraw from ECOWAS in January 2024, poses a threat to all the achievements of fifty years of regional integration.[51] The rift between these countries poses a serious challenge to the security architecture created by the Revised Treaty of 1993 and the Mechanism Protocol of 1999.[52] This has resulted in majorly weakening democracy, political instability, insecurity and armed conflicts, among others.

5. ECOWAS ENFORCEMENT POWERS AND MECHANISMS

5.1 Legal Foundations of Intervention

ECOWAS's authority to respond to unconstitutional changes of government rests on two key instruments: the Revised Treaty of ECOWAS 1993 and the Protocol on Democracy and Good Governance 2001.[53] Article 4 (j) of the Revised Treaty commits member states to promoting and consolidating democratic governance founded on elections and the rule of law.[54] This commitment is operationalised in Article 45 of the 2001 Protocol, which empowers ECOWAS to impose sanctions and other enforcement measures against states that violate its principles, including the prohibition of unconstitutional seizures of power.[55] Together, these arrangements and instruments represent a voluntary limitation of member states' sovereignty in pursuit of regional stability and democratic standards.

[49] Aning and Siegel (n 36) 120.
[50] SIPRI (n 40) 25.
[51] Alliance des États du Sahel (AES), Charte du Liptako-Gourma instituant l'Alliance des États du Sahel (signed 16 September 2023).
[52] Fagbayibo (n 20) 355.
[53] ECOWAS, Protocol A/SP1/12/01 on Democracy and Good Governance (2001), Art. 45.
[54] ECOWAS, Revised Treaty of the Economic Community of West African States (1993), Art. 4(j).
[55] ECOWAS, Protocol A/SP1/12/01 on Democracy and Good Governance (2001), Art. 45.

5.1.1 *The Authority of Heads of State and Government*

The Authority of Heads of State and Government is ECOWAS's supreme decision-making body and holds final responsibility for enforcement.[56] Such sanctions or suspensions are typically initiated following reports from the Council of Ministers or the ECOWAS Commission President, and decisions are taken by consensus or qualified majority. [57]

Interestingly, extraordinary sessions are often convened rapidly after coups d'etat to decide on punitive measures. Although the protocols do not provide explicit rules for authorising military intervention, any step that implies deploying regional forces remains a highly political decision requiring the Authority's express approval.[58]

5.2 Enforcement Mechanisms

5.2.1 *Economic Sanctions*

ECOWAS often imposes economic and financial sanctions, including closing land and air borders, freezing assets linked to coup leaders, and suspending financial transactions with the regional central bank.[59] These measures aim to isolate military regimes, impose high financial costs, and incentivise a swift return to constitutional rule.[60]

5.2.2 *Suspension from ECOWAS Institutions*

Suspension from ECOWAS decision-making bodies is a near-automatic process under Article 45 of the 2001 Protocol on Democracy and Good Governance in cases of unconstitutional change in government.[61] Such an act excludes states from participation in diplomatic and lawmaking procedures in the region, thus stripping military regimes of legitimacy at the regional level. Suspension cannot be understood in isolation but should be understood in the broader sense, as ECOWAS Authorities imposed the suspension on all four countries affected by recent military coups: Mali (August 2020, May 2021), Guinea (September 2021), Burkina Faso (January 2022), and Niger (July 2023).[62]

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[56] ECOWAS, Revised Treaty of the Economic Community of West African States (1993), Art. 7(1).
[57] Ibid, article 9(2) which states that decisions are generally taken by consensus or a two-thirds majority.
[58] Articles 45-46 Protocol A/SP1/12/01/ on Democracy and Good Governance, Dakar, 21 December 2001.
[59]ECOWAS *Imposes Sanctions on Niger Junta*, (30 July 2023), available at <https://prnigeria.com/2023/07/30/ecowas-niger-military-junta-bazoum/> accessed 4 November, 2025.
[60] See ECOWAS Commission, Communique on Sanctions against Mali (20 August 2020); ECOWAS Authority of Heads of State, Extraordinary Summit Communique on Guinea (16 September 2021); ECOWAS Authority of Heads of State, Extraordinary Summit Communique on Niger (30 July 2023).
[61] ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementing the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (adopted 21 December 2001, entered into force 21 December 2001) art 45.
[62] Economic Community of West African States (ECOWAS), Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Guinea, Burkina Faso and Niger: Final Communiqués (ECOWAS Press 2020–2023).

5.2.3 *Border restrictions*

Border closures and restrictions on the movement of people and goods are direct, observable sanctions aimed at influencing the national economy and limiting the coup leaders' physical freedom.[63]

5.2.4 *Deployment of Regional Forces*

The most controversial in terms of legal and political enforcement is the deployment of the ECOWAS Standby Force (ESF).[64] Under the 1999 Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, force may be authorised in cases of massive human rights violations or the overthrow of constitutional government.[65] While military intervention has been threatened in several recent crises, actual deployments remain rare due to legal, political, and operational risks.[66]

5.2.5 *Mediation and Negotiation*

In addition to punitive measures, ECOWAS consistently employs mediation and negotiation as complementary enforcement mechanisms. The 1999 Mechanism Protocol mandates them, and ECOWAS typically deploys them alongside punitive measures to secure transitional agreements and restore constitutional order.[67] High-level envoys and mediators are appointed to engage coup leaders, secure the release of detained political figures, and lay out roadmaps for constitutional transition.[68] These diplomatic efforts often run parallel to sanctions, reflecting ECOWAS's dual strategy of pressure and dialogue.

6. LEGAL LIMITS OF ECOWAS ENFORCEMENT

6.1 Sovereignty and Non-Intervention

The doctrine of state sovereignty and its corollary, non-intervention in domestic matters, constitutes the most formidable legal impediment to implementing the ECOWAS mandate. This is stated in Article 2(1) and Article 2(7) of the UN Charter, according to which "states are endowed with full and exclusive sovereignty over their territory and internal affairs."[69] While

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[63] ECOWAS Authority of Heads of State and Government, Communiqué, Extraordinary Summit on the Political Situation in the Republic of Niger Abuja, 30 July 2023.
[64] 1999 Mechanism Protocol (n 16) art 25.
[65] Articles 25 and 27, ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security 1999.
[66] See ECOWAS Authority of Heads of State and Government, Extraordinary Summit Communique on Niger (30 July 2023); ECOWAS Authority of Heads of State and Government, Extraordinary Summit Communique on Gabon (31 August 2023).
[67] See Articles 17 and 18, Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, Lome, 10 December 1999. This mandates mediation, conciliation, and dialogue as instruments of crisis management.
[68] Premium Times, "Mali's Interim President Praises ECOWAS, Jonathan for Mediation" (26 September 2020), <https://www.premiumtimesng.com/news/top-news/417006-malis-interim-president-praises-ecowas-jonathan-for-mediation.html?tztc=1> accessed 4 December 2025.
[69] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, arts 2(1), 2(7).

ECOWAS documents, especially the 2001 Protocol on Democracy and Good Governance, express a consensual limitation on sovereignty, the extent of that limitation is highly disputed. Member states, by accepting the 2001 Protocol, give up certain elements of their sovereign power in the following three ways:

1. Renunciation of Exclusive Electoral and Constitutional Autonomy: In Article 1, states agree to abide by regional constitutional rules, such as tenure limits, an independent judiciary, and fair elections, thus turning the internal constitutional order into an external regional issue.
2. Pre-Approval for Supranational Sanctions: Article 45 allows members to authorise the Heads of State and Government Authority in advance to sanction a state economically, financially, and politically, without the need for the consent of the targeted state.
3. Endorsement of Mandatory Regional Interventions: Members accept the mandatory ECOWAS election supervision and early warning assessment, although indirectly endorsing the 1999 Mechanism Protocol on regional security issues in cases of severe democratic crisis.

The conflict is most intense when the enforcement procedures include sanctions that have humanitarian repercussions and even military action, because military dictatorships claim that these forms of coercion go beyond the consensual surrender of sovereignty in the original treaties.

6.2 Loopholes in the ECOWAS Treaty and Protocols.

ECOWAS statutes are ambiguous about the measures taken to enforce these protocols. The protocols do not provide precise, objective standards to determine whether the measures used are proportional to the violations committed. Moreover, the targeted countries have no due process, and there is no mechanism to appeal the decisions.[70]

Additionally, the legal structure has a major weakness regarding what are called "constitutional coups." Under Article 45 of the 2001 Protocol, any military takeover automatically leads to sanctions and suspensions. However, the text does not include provisions for sanctions against civilian incumbents who abuse electoral laws, judicial independence, and constitutional term limits to remain in power.[71]

6.3 Lack of Compliance and Open Defiance.

A major challenge arises when coup beneficiaries openly defy ECOWAS decisions. The military governments in Mali and Niger in 2020 and 2023 resisted sanctions and diplomatic isolation, contesting ECOWAS authority to dictate internal political timelines. Such open

[70] Ebobrah (n 25) 132.
[71] Aning and Siegel (n 36) 125.

defiance exposes the limits of coercive authority, particularly when member states fail to enforce sanctions uniformly. In these cases, the only remaining option, which is armed intervention, becomes the most contentious and legally fraught measure.[72]

6.4 Problems of Public Trust and Legitimacy

ECOWAS enforcement actions face legitimacy challenges. Populations in affected states often perceive ECOWAS as harsher toward military coups than toward "constitutional coups," where civilian leaders manipulate constitutions to extend tenures unlawfully.[73] This apparent inconsistency undermines the moral authority of ECOWAS intervention, framing such interventions as excessive foreign pressure aimed at reinstating unpopular civilian governments.

6.5 Role of the ECOWAS Court of Justice

The ECOWAS Court of Justice provides a legal check but has limited corrective powers. The Court's jurisdiction includes interpreting the Revised Treaty and Protocols and adjudicating human rights violations.[74] However, its authority over political decisions of the Heads of State, such as sanctions or military intervention, remains a grey zone.[75] The Court may issue declaratory judgments or award compensation, but it lacks enforcement capacity against defiant military regimes or the Authority itself. [76] Ultimately, political enforcement remains vested in the Heads of State and Government.

7. COMPARATIVE REGIONAL MODELS FOR ADDRESSING UNCONSTITUTIONAL RULE

7.1 African Union Approach

The African Union (AU) has developed a comprehensive, though unevenly enforced, framework for responding to unconstitutional changes of government (UCG). This framework originates in the Lome Declaration of 2000 and is reinforced by Article 30 of the Constitutive Act of the African Union, which mandates suspending any government that comes to power through unconstitutional means from participating in the Union's activities. The African Charter on Democracy, Elections and Governance 2007 further strengthens this regime by

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[72] ECOWAS gives Niger junta a week to cede power, threatens force, sanctions (The Africa Report 30 July 2023), available at <https://www.theafricareport.com/317346/ecowas-gives-niger-junta-week-to-cede-power-threatens-force-sanctions/> accessed 28 November 2025.

[73] Ntwali VI, "The African Union and its Regional Economic Communities Confronted with Coups d'état: between Condemning and Condoning," Frontiers in Political Science (2025), available at <https://www.frontiersin.org/articles/10.3389/fpos.2025.1404205/full> accessed 30 November 2025.

[74] Ebobrah ST, "Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice" Journal of African Law, 54 (1) 2010), available at <https://hdl.handle.net/2263/15725>, accessed 1 November 2025.

[75] Akinkugbe OD, "Towards an Analyses of the Mega-Political Jurisprudence of the ECOWAS Community Court of Justice" in The Performance of Africa's International Courts (Oxford University Press 2020), available at <https://doi.org/10.1093/oso/9780198868477.003.0005>, accessed 1 November 2025.

[76] Ibid.

introducing penalties against perpetrators of UCG, including disqualification from future elections, exclusion from holding public office, economic sanctions, and potential prosecution before a competent AU tribunal.[77] A distinctive feature of the AU model is its emphasis on individual accountability, extending responsibility beyond the state to the actors directly involved in unconstitutional seizures of power. This personal dimension provides normative depth often absent in the ECOWAS framework.

7.2 European Union Approach

The European Union (EU) addresses democratic backsliding primarily in civilian governments rather than military regimes, yet its legal mechanisms offer instructive lessons. Article 2 of the Treaty on European Union (TEU) enshrines foundational values such as democracy, rule of law, and respect for human rights. Article 7 of the TEU, in particular, provides both preventive and sanctioning procedures. Preventive measures require a four-fifths majority in the Council, while sanctions, such as suspension of voting rights, require unanimity among member states.[78] In addition, the EU uses infringement proceedings through the European Commission and the Court of Justice of the EU, as well as the Rule of Law Conditionality Mechanism (Regulation 2020/2092), which authorises suspension of EU funds in cases of systemic violations.[79] This model demonstrates the effectiveness of embedding financial conditionality within supranational law, enforced by judicial institutions.

7.3 Organisation of American States (OAS) Approach

The Organisation of American States provides another comparative model through the Inter-American Democratic Charter of 2001. This instrument authorises the suspension of a member state where the democratic order has been disrupted, typically following negotiation and fact-finding missions. The OAS framework emphasises procedural safeguards, with the Permanent Council playing an advisory role before the General Assembly makes final determinations, offering transparency and review that could inform ECOWAS practice.[80]

8. RECOMMENDATIONS AND CONCLUSION

8.1 Recommendations

To address the legal, institutional, and political limitations identified in its enforcement framework, ECOWAS and its member states should undertake the following reforms:

1. There is a need for the ECOWAS Authority to revise the 2001 Protocol on Democracy and Good Governance in order to introduce non-discretionary criteria for imposition of

[77] African Charter on Democracy, Elections and Governance (2007) Article 23–25.
[78] European Union, Treaty on European Union, Article 2 and Article 7.
[79] Tacny Justyna, "The Rule of Law Conditionality Under Regulation NO. 2092/2020-Is it all about the Money?" Hague Journal on the Rule of Law, 13 (2021) 79-105.
[80] OAS, Inter-American Democratic Charter (2001), Article 12–14 & 20–22.

sanctions, a clear legal definition of constitutional coups, and financial and travel restrictions on violators.

2. It is essential for regional organisations to encourage member states to provide guarantees in their constitutions regarding strict term limits for the president and a ban on the cancellation of basic human rights through executive and military decrees.
3. It is important for the ECOWAS Commission to improve its early warning mechanisms by incorporating ECOWARN with the help of civil societies within communities.
4. The enhancement of ECOWAS Court's jurisdiction: The ECOWAS Court of Justice should have express jurisdiction to review the legality of the Authority's decisions concerning sanctions and suspensions within a reasonable period of time and put in place means of implementing its decisions on matters related to human rights and governance among member states.
5. Strengthening Public Confidence: Put in place mechanisms for involving ECOWAS, civil society organisations, and national parliaments directly in the process.

8.2 Conclusion

The resurgence of unconstitutional rule in West Africa represents a profound threat to decades of progress toward civilian and constitutional governance. This crisis stems from both international governance failures and military actors' exploitation of regional security vulnerabilities.

Although ECOWAS possesses a legal mandate under the Revised Treaty 1993 and the Protocol on Democracy and Good Governance 2001, its enforcement capacity remains constrained by sovereignty concerns, textual ambiguities, and the practical difficulty of compelling compliance from entrenched military regimes. The Authority of Heads of State, as the ultimate decision-making body, has exercised its powers inconsistently, further weakening enforcement credibility.

The path forward requires ECOWAS to move beyond reactive sanctions to proactive political conditionality, embedding democratic standards into the Community's economic and institutional fabric. A reformed, transparent, and more empowered ECOWAS, working in partnership with accountable civilian governments, offers the best prospect for building a resilient political order in West Africa that is less vulnerable to instability and public dissatisfaction.