AN APPRAISAL OF THE CONCEPT AND PRACTICE OF ECONOMIC INTEGRATION UNDER INTERNATIONAL LAW: A CASE STUDY OF ECOWAS

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MAY, 2015

DECLARATION

I declare that the work in this Thesis entitled ‘’**An Appraisal of the Concept and Practice of Economic Integration Under International Law: A Case Study of ECOWAS’’** has been carried out by me in the Department of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other Institution.

Bello Sani ADEJOH	_____	_____
Name of Student	Signature	Date

CERTIFICATION

This thesis entitled ***AN APPRAISAL OF THE CONCEPT AND PRACTICE OF ECONOMIC INTEGRATION UNDER INTERNATIONAL LAW: A CASE STUDY OF ECOWAS*** by BELLO SANI ADEJOH meets the regulations governing the award of degree of Master of Laws of Ahmadu Bello University, and is approved for its contributions to knowledge and literary presentation.

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Dr. A. R. Agom Head, Department of Commercial Law	Signature	Date
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DEDICATION

My late dear mother, Mama Lametu Sani (nee Adegbe) and my father Chief Sani Adejoh (Ebije).

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ABSTRACT

The partitioning and subsequent introduction of European colonial governance in West Africa with its policy of legitimate trade in one or two cash crops to serve Europe's industrial needs eroded indigenous industrial skills and the basis for development of sustainable interactive economic activities in West Africa. As a result, by the time most of the new nation states of West Africa gained independence in the 1960s, they were left with structurally fragile and highly disarticulated economies with inherent acute and devastating price distortions in the international commodity markets, as currently being suffered by Nigeria and Ghana in relation to crude oil exports, and Cote d'Ivoire in relation to its cocoa exports. These challenges were further exacerbated by issues such as bad governance, political instability, lack of adequate diversification, infrastructural deficit and lack of political will amongst others. It was this socio-economic disintegration that ECOWAS is designed to reverse, through the mechanism of economic cooperation and integration with a view to fostering sector development of member states concerned in wealth creation and enhanced standards of living for its citizens. In spite of this initiative, the hope of the sub-regional body remains largely unrealised owing to emerging challenges of poverty (which is made manifest in very low literacy levels, inadequate health care services most often reflected in very high maternal mortality, inadequate shelter, unaffordable goods and services amongst a host of other problems in member states), intra-state armed conflicts, bad governance, political instability and the global economic recession which are taking tolls on the development capacity of member states. This study answers to the problems of research. It aims at examining the ECOWAS Treaty and its application to the various imperatives of cooperation and integration of the economies of member states of ECOWAS. The study also focuses on examining the role of law and its implication on the concept and practice of economic integration, and to provide findings with relation to problems and prospects of economic integration. The study establishes these findings to include, low level of awareness of integration initiatives which has served to impede effective implementation of most of the initiatives primarily aimed at deflecting the negative effects of globalisation especially in the area of trade and commerce, particularly under the ECOWAS Trade Liberalisation Scheme (ETLS). The study also finds that poor governance and lack of political and institutional accountability is a common denominator of armed conflicts in most member states in the sub-region, and accounts in part for the failure of relevant agencies to perform substantially. An additional find, is the absence of a common supranational legal tool which constitutes a major impediment to cross border practice and accounts substantially for the slow pace of intra-regional trade across the sub-region. Flowing out of these findings, the study recommends the imperative of raising the level of awareness of national authorities, manufacturers and general public on the various integration initiatives of ECOWAS with a view to promoting inter-community trade, wealth creation and empowering community citizens, particularly when noted that ECOWAS has a large market that is vital for national and sub-regional development. It is also recommended that the Protocol on Democracy and Good Governance should be enforced with a view to sanctioning erring member states that violate the Protocol through the suspension of such erring members voting rights on all matters relating to the ECOWAS. The study additionally recommends the harmonisation of Business Laws with the aim of eliminating the existence of different legal systems in ECOWAS. This would assist in providing a more secure legal environment and provide for certainty of laws, thereby enhancing the pace of intra-regional trade in ECOWAS.

The scope of the study is determined by the statement of problem and objectives of research. Accordingly, the research focuses on issues that resolve its problems and advance its objectives, with a view to revitalising ECOWAS with realistic and relevant benefits to its peoples.

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LIST OF ABBREVIATIONS

ADB	-	African Development Bank
CEAO	-	Communaute Economique de L'Afrique de L'Ouest
CET	-	Common External Tariff
CPD	-	Community Development Programmes
DTCA	-	Directorate of Technical Cooperation in Africa
ECOMOG	-	ECOWAS Ceasefire Monitoring Group
ECOWAS	-	Economic Community of West African States
EU	-	European Union
FDI	-	Foreign Direct Investment
FTA	-	Free Trade Area
GDP	-	Gross Domestic Product
HIPC	-	Highly Indebted Poor Countries
ISRT	-	Interstate Road Transit
NEPAD	-	New Partnership for Africa's Development
NTCF	-	Nigeria Technical Cooperation Fund
OHADA	-	Organisation for the Harmonisation of Business Law in Africa
PMDA	-	Protocol on Mutual Defence Assistance
PNA	-	Protocol on Non-Aggression
STEP	-	Scientific and Technical Exchange Programme
TLS	-	Trade Liberalization Scheme
UEMOA	-	West African Economic and Monetary Union
UNO	-	United Nations Organisation
WAMA	-	West African Monetary Agency
WAMI	-	West African Monetary Institute
WAMZ	-	West African Monetary Zone

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The concept and practice of economic integration between or among states has an old history. By literature available to the researcher, it dates back long before the period of the Berlin Conference in 1884, when African nations thrived on cooperation and community life to resolve challenges and develop their communities[1]. Relative to the Economic Community of West African States (ECOWAS), it is as old as the community itself. Indeed, it is the raison d'être for the formation of the community. Article 3 of the ECOWAS treaty sets out the aims and objectives which among others are to promote cooperation and integration leading to the establishment of an economic union.

West Africa is the part of Africa that is bounded in the West and South by the Atlantic Ocean, the Sahara desert on the North, and on the East by the eastern boundaries of present day Nigeria. Practically, it is that area of Africa that is encircled in the North by a line running from the Senegal River to Lake Chad, in the East by a line running from Lake Chad Basin to the Cameroon Mountains, and in the south and west, by the Atlantic Ocean coastline.[2]

Traditionally, the peoples of West Africa have earned their living from the land which accounts for why agriculture remains the bedrock of all other indigenous economic activity in West Africa. Other occupations such as trade and craft manufacture were rather undertaken on a part time basis, while additional types of productive enterprises were often made possible by the financial surplus from agriculture. The arrival of the Europeans on the west coast of Africa between the 17th and 18th centuries drastically changed the nature of economic ac-

[1] Asante S. K. B. (1997) Regionalism and Africa's Development : Expectations, Reality and Challenges. Ipswich Book Company Ltd., Suffolk, England, p. 32.

[2] Onwubiko, K.B.C. [1973] History of West Africa: AD 1800 – Present Day [Book Two] Aba: Africana Educational Publishers Co [Nig.]

tivities in West Africa, resulting in a 'profitable trans-national commercial enterprise' which for centuries severely retarded socio-economic development throughout West Africa. Also, the resultant partitioning and subsequent introduction of European colonial governance in West Africa with its colonial policy of legitimate trade in one or two cash crops to serve the industrial needs of Europe further worsened the resultant erosion of indigenous industrial skills and the basis for the development of sustainable interactive economic activities throughout West Africa.

In consequence therefore, by the time most of the new nation states of West Africa gained their independence in the 1960's, they were left with structurally fragile and highly disarticulated economies with inherent acute and devastating price distortions in the international commodity market.

Efforts to co-ordinate economic cooperation on a sub-regional level in West Africa dates back to 1963, with a conference on industrial harmonization in the sub-region in Lagos, Nigeria, followed by the Niamey conference on economic cooperation in 1966. Similarly in 1967, another conference was held in Accra, Ghana where a tentative agreement on the Articles of Association of a proposed economic community in West Africa was signed.

An interim Council of ministers mandated to prepare a Draft Treaty for the proposed community recommended that the inaugural meeting of the proposed community be held at the level of Heads of State and Government. Though the Heads of State and Government actually met in Monrovia in 1968 and signed the protocol for a regional group, neither the Draft Treaty nor the Protocol on customs union submitted by the interim council was adopted.

In 1972, the process was revived by the Heads of State of Nigeria and Togo by mandating their officials to streamline a framework for community cooperation based on the following guiding principles:

a) That, the envisaged economic community should cut across linguistic and cultural differences.

b) Should pursue limited realizable objectives.

c) Approach adopted should be flexible and practical.

d) Necessary institutions are to be adopted allowing all countries to become members at their convenience.

The proposals of a joint Nigeria-Togolese delegation embodied in a Draft Treaty was reconsidered in yet another ministerial meeting in January 1975, and finally signed on 28 May, 1975, by the Heads of State and Government/ Representatives of the fifteen member states of West Africa, thus, marking the end of over a decade of strenuous effort to institutionalize a framework for coordinating sustainable development and collective self-reliance in West Africa.

ECOWAS was therefore established in 1975 to coordinate and promote trade, cooperation and sustainable development throughout West Africa. The signing of the ECOWAS Treaty of Lagos in May 28, 1975, was indeed a kind of radical response to the plague of poverty and underdevelopment bedevilling West Africa, and as a result, practically provided the much desired framework for the realization of rapid and sustainable socio-political and economic development throughout the sub-region, and has till date the following member states: Republic of Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and the Republic of Togo.

All these countries differ considerably in their colonial history, natural resource endowments and institutional and administrative systems. At the one end of the scale is Nigeria, rich in human and natural resources, and at the other end is Burkina Faso with poor human and natu-

ral resources. These remarkable differences significantly and constantly shape their regional relations and their ability to participate meaningfully in regional economic integration programmes.

The ECOWAS Treaty provided for a gradual establishment of a customs union, common external tariff and harmonization of economic and financial policies of member states within a period of 15 years. It also made provision for compensation for losses encountered by member states in the course of the implementation of the provisions of the treaty.

The original treaty was revised in 1993, to broaden economic integration and increase political participation and cooperation throughout the sub-region. The revised treaty sought to attain an integrated common market and a single monetary union with an institutionalized Parliament for stronger political cooperation and participation within the sub-region.

1.2 Literature Review

Because of its relative recentness, the topic of this research has not enjoyed much writing by scholars. Those who did, have tended to show the increasing interface between constitutionalism, rule of law and economic prosperity resulting from regional economic integration, which basically involves the harmonization of economic, social, political and legal objectives. Among the few works on the subject of research are the works reviewed below.

Adewoye, O.[3] states that constitutionalism or the rule of law, simply denotes a set of principles in the governance of a polity; effective restraints upon the powers of those who govern, the guarantee of individual fundamental rights (ranging from freedom of speech and expression to the right to privacy), the existence of an independent judiciary to enforce these rights, genuine periodic elections by universal suffrage, and the enthronement of the rule of law as

[3] Adewoye, O. (1997) "Constitutionalism and Economic Integration", in *Regional Integration and Co-operation in West Africa: A Multidimensional Perspective*, ed., by Real Lavergne (Ottawa: Africa World Press and IDRC, p.328.

reflected in the absence of arbitrariness, and the equality of all before the law. He said this is basic to regional integration, particularly as it constitutes an important reason for the success of the European Union. He states that West African states have barely begun instituting constitutionalism as a mode of governance, and it is therefore not surprising that their efforts at economic integration have met with little success. He contrasts the European experience with that of Africa with emphasis on the constraints to regional integration resulting from the very different pattern of law and politics observed in Africa. He posits that constitutionalism fundamentally explains the success of the European Union because it entrenched the notion of a limited state whose will could be subjected to that of a supranational authority in specific areas of activity. He further states that constitutionalism was so fundamental to the operation of the Union that Greece, Portugal, and Spain had to throw off the shackles of dictatorship in their domestic politics and rejoin the mainstream of Western European democracy, before they could be admitted to membership of the EU in the 1980s.

Furthermore, according to Adewoye[4], the problem begins with the political philosophy of nations, which he argues is fundamentally different in Africa from Europe where a long tradition of "constitutionalism" makes it easier to accept limits upon the exercise of power. This in turn has made it easier to engineer the sharing of sovereignty with regional levels of government and justice in Europe than in Africa. Supra-nationality in Africa is therefore unlikely to materialize in a significant way until constitutionalism itself becomes more strongly entrenched at the national level. Adewoye[5] advocates using the ECOWAS framework itself as a tool for promoting constitutionalism, through the operation of a tribunal, as foreseen in the revised ECOWAS Treaty, which might become increasingly capable of enforcing human rights and checking abuses of power by national governments.

[4] Ibid.
[5] Ibid.

Thoughtful and incisive as these postulations are, there is the need to lend cognisance to the fact that conditions in the sub-region are strikingly different from those that exist in a Europe which was already relatively industrialised, before it embarked on regional integration anchored on constitutionalism. It must be noted that there are problems that may be unique to countries and regions at various stages of development. Some of these challenges range from the presence of unsustainable states, near failing states, corruption, ethnic and religious intolerance, genocide and military rapaciousness, mostly exacerbated by poverty and weak institutions. It will therefore hold that constitutionalism, standing alone, would not address adequately, all problems or challenges to regional economic integration.

Additionally, considerable note was not taken of the fact that the objective of economic integration in developed regions such as the European Union differs from those of developing states. In the former, the objective is to maintain and enhance already existing economic growth, whereas, in the latter, such as ECOWAS, the ultimate purpose is either to achieve an acceleration of economic growth in member states given the scarce resources available or maintain the same rate of growth as before integration, but at a lower cost in term of use of scarce resources.

It is widely recognized that existing regional institutions will not succeed until the principle of supra-nationality is firmly established, as increasingly seems to be the intent with the signing of the Abuja Treaty, the revised ECOWAS Treaty, and the West African Economic and Monetary Union (UEMOA) Treaty. Each of these projects involves movement in the direction of increased supra-nationality through the creation of a regional parliament, the strengthening of a regional tribunal or court of justice, and some move away from rule by consensus, toward qualified majority rule.

Emelonye, U.[6] in a further reaffirmation of the role of constitutionalism in regional development, states that rule of law hinges relationship between state and citizens around an accepted set of political values and rules, and identifies a fair, impartial, and accessible justice system and a representative government as key elements of the rule of law. He opines that it has been applied to mean independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently and coherently to its entire people.

Emelonye[7], quoted Lord Ashdown, as stating that "… in hindsight, we should have put the establishment of the rule of law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, public confidence in the police and the courts." This view, though widely shared by many stakeholders is subject to multiplicity of interpretations and definitions.

There is the need to state or provide for how 'public confidence in … the courts' could be attained, particularly as it has come to be realised that loss of confidence in the justice system in the main, accounts for a resort to self-help or mass action leading to political and social instability. It is my submission that it is imperative for the judiciary to be sensitive to its environment, if the concept of the rule of law upon which all other things depend, is to be realised. It is not only the judiciary that should show sensitivity to the political environment. Every institution, including and especially the civilian political elite, should exhibit this sensitivity. The civilian political elite tend to emphasise their absolute right to rule. I believe that while it is right, it must take cognisance of the existence of a military institution that has tasted political blood. This means that the right to rule should be accompanied by an equal

[6] Emelonye, U. [2010] Nigeria at 50 – The Rule of Law, Human Rights and Development. Being a Paper Presented at the Annual General Conference of the Nigerian Bar Association, held between 22nd to 27th August, Kaduna, Nigeria.

[7] Ibid.

recognition of the fragility of the political system within which they are operating. For example, a settled and long established political system can withstand winter of discontent marked by crippling strikes or a shutdown of government because of conflict with the legislature over the budget. But in a developing political system, such tactics is tantamount to inviting a willing and eager military establishment to become politically active.

Constitutionalism therefore, must presuppose a democratic approach, an attitude of give-and-take in public affairs, sense of accountability, readiness to accept the limitation of power and to do justice. Progressive sharing of sovereignty is required to achieve the greater common good. Integration requires governments to forego some of their sovereign powers, in both the political and economic spheres, in order to achieve more prosperous, stable, democratic and powerful sub-regional collectiveness.

Ntumba[8] in his contribution, observes that at the Community level, constitutionalism manifests itself in various ways and degrees, through regulations (which are applied directly throughout the community), decisions (which are binding on the member states, companies, or individuals) which set down compulsory objectives but leave their implementation to the discretion of the member states, or recommendations and opinions (which are not binding except where they are equivalent to directive). It must however, be realised that leaving implementation of compulsory objectives to the discretion of member states which have leaders with diverse mindsets and varying levels of commitments to the sub-regional body would only lead to an unsatisfactory end. There is therefore the need for an enforcing mechanism for the implementation of compulsory objectives, particularly as the average African statesman is a personal ruler more than a constitutional and institutional one; and ruled by his abil-

[8] Ntumba, L. L. [1997] Institutional Similarities and Differences: ECOWAS, ECCAS and PTA. A Paper Presented at the Dakar Conference on Regional Integration in West Africa, and published by the International Development Centre (IDRC) p. 7.

ity and skill, personal power and legitimacy, and not solely by the title granted to him by the office he occupied and the constitution that defined it.

Nwabueze,[9] is of the view that the near-absence or infancy-state of constitutionalism in Sub-Saharan Africa constitutes a measure of challenge confronting West Africa in her efforts at economic integration. Further works by Nwabueze[10] and Ajayi[11] revealed that the difficulty of establishing constitutionalism as a mode of governance in black Africa has been compounded by three factors, namely;

i) African traditions and jurisprudence have little in them to reinforce constitutionalism, as African law was intertwined with socio-cultural and ethical norm. African perception of society was fundamentally different from the European one. Whereas European theories of society emphasis the role of the individual, African societies stress the role of close-knit social formations, and the supremacy of consensus (not law) as the measure of ordering public affairs.

ii) The colonial rulers did little to promote constitutionalism in West Africa. Colonial legislatures were devoid of any effective voice or responsibility until fairly late in the colonial period, therefore denying Africans the full opportunity of practicing parliamentary democracy. Nigeria for example, had less than a decade of apprenticeship in parliamentary democracy, after approximately 100 years of colonial rule. It was therefore not possible to develop adequately, the collective consciousness of political accountability essential for constitutional rule.

[9] Nwabueze, B. A.,[1973] Constitutionalism in Emergent States. C. Hurst, London, UK. p. 1

[10] Ibid p.21

[11] Ajayi, J. F. A. [1991] Tradition in the Process of Change (Unpublished lecture), University of Ibadan .

iii) Africa's feeling of urgency about the need for development, turned it into a continent in a hurry. Development became the political religion of the ruling elite and a handy excuse for throwing constitutionalism to the winds and stifling the voices of opposition and dissent.

It must be stated however that whatever the downside to colonisation, it enhanced development through the setting up of the armed services, building of public utilities and social infrastructures and gave a political system to pilot the ship of state. The judiciary, civil service, educational institutions, prison system, industrial estates, plantations, commodities boards, organised import and export trade, oil and manufacturing industries and transport systems such as the railways, aerodromes and road networks are legacies of the colonial system. Okotie, C.[12] states that the blame for the breakdown or failure of these legacies, rest squarely on West Africans themselves, who have been unable to build on these legacies and account in part, to the inability to achieve the economic integration objectives of the sub-regional body. Across the West African board, particularly in Nigeria, one cannot point to any single institution that is in a state of operational excellence, and what led to this state of decay lies in our attitudes to maintenance. Otherwise, West Africans are better placed in spite of our late arrival on the constitutional plain, to achieve regional economic integration using our innate 'close-knit social formations and supremacy of consensus approach', as highlighted by Nwabueze and Ajayi.[13]

West Africa's deficit of constitutionalism has no doubt, undermined the process of regional economic integration in more ways than one. Just as the habit of shared power has facilitated the transition to supranational forms of authority in Europe, so its absence in West Africa has undermined that process. A system of governance that is devoid of defined mechanisms and

[1212] Okotie, C. [2013] Before the Centenary Celebration. Thisday Newspaper, Friday 22 February, Backpage.
[13] Ibid

structures of drastically alleviating poverty and enhancing participatory representation and strengthening institutions of governance, undermines the kind of consistent political commitment and long term legitimacy that regional integration demands, because a change of ruler is sufficient to undermine agreements arrived at by his predecessor. Concentration of power also makes it difficult to promote healthy intergovernmental relations at levels other than the very top.

Unlike the European Union, the West African sub-region lacks the atmosphere of predictable laws and institutions necessary to the stability and independence of the private sector which explains the success of European Union's transnational enterprises. The absence of predictability and the difficulties associated with contract enforcement, in particular makes regional economic ventures risky. Ojo[14] argues that this accounts for why most indigenous economic institutions and enterprises remain locked within existing national boundaries, awaiting the day when the sub-regional atmosphere, in terms of constitutional practices, will be conducive to trans-border expansion.

1.3 Statement of the Problem

Arising from the literature review in 1.2 are the following problems of research.

First, is the challenge of political instability and bad governance which plagues many member states. The lack of political maturity manifested through unbridled personal political ambition on the part of the leaders of some member states accounts largely for the political instability which have been a characteristic feature of the region over the past two decades even in hitherto stable countries. In Cote d'Ivoire, the organisation of elections, which was to be a

[14] Ojo, O. [1993] The Role of Pressure Groups in the Growth and Development of ECOWAS. Presented at the International Conference on Regional Integration in West Africa, 11–15 January, Dakar. Economic Commission for Africa, Addis Ababa, Ethiopia. Document E/ECA/CM.17/2.

democratic process, exacerbated social tensions and provoked confrontations, which left many dead and many more wounded. The current tension along the borders between Guinea, Liberia and Sierra Leone is part of the fallout from the civil conflict in the Mano River Union area. When law and order breaks down in one State, the effect spills over into the adjoining states, bringing civil upheaval in its wake. These recent civil wars and other political unrest in some West African states have forcefully revealed the need for social and political stability in the development process. Political instability (sudden, unconstitutional or violent change in government) most often have a negative bearing on the integration process, and sanctions and retaliatory measures by a target country may and do usually have adverse consequences for the community's industrial production, trade liberalisation and factor movement in general.

Secondly, one of the most conspicuous characteristics of the trade linkage between ECOWAS member countries and with the rest of the world is the high dependence on primary commodity and its natural resource-based structure, which has turned these countries into primary producers of agricultural products, making them low-income countries with the consequent experience of being locked in an international poverty trap. The region has therefore, remained economically weak and politically unstable. For instance, Cote d'Ivoire and Nigeria's economy depend mainly on the exportation of cocoa and crude oil respectively. This weak economic base, has invariably resulted in structural economic incapacity, compounded by low purchasing power of the population which (barring Nigeria) in most cases, are small. This state of affairs led to a state of dependence on support/aids from external organisations with various attendant consequences of uneven development, economic stagnation, unemployment and deepening poverty.

The failure of ECOWAS member countries to diversify and undergo structural transformation, and hence to benefit from the technology-driven, highly dynamic aspects of the ongoing

globalization process, has led to major drawbacks in terms of low economic growth and persistent poverty.

While it has become almost universally accepted that sustained poverty reduction requires economic growth, the pattern of growth, significantly affect the rate of poverty reduction.

Thirdly, is the challenge of the absence of reliable infrastructure and the multiplicity of organizations for regional integration within the sub-region. Several ECOWAS member countries[15] are concurrently part of the West African Monetary Union (UEMOA), a regional economic and monetary union that shares a common currency (the CFA Franc).[16]

For these reasons, a synthesis for sustainable development, growth, and stability in the sub-region is needed now more than ever.

1.4 Objectives of the Research

The objective of this work is to find answers or solutions to the problems of research. This research highlights the imperatives of economic integration of the 15 economies of the sub-region as a necessary mechanism for enhancing competitive participation in global trade and the current policy environment for economic growth. The goal of this study also include:

- First, an outline of the impediments to trade within the sub-region such as lack of adequate infrastructure to support export-oriented activities.
- Second, to examine the ECOWAS Treaty.
- An examination of the application of the ECOWAS Treaty to the various imperatives of cooperation and integration of the economies of the member states.

[15] ECOWAS member states are Benin, Burkina Faso, Cape Verde, Côte D'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo.

[16] The Francophone-countries of Benin, Burkina Faso, Cote d'Ivoire, Mali, Niger, Senegal, and Togo, with Guinea Bissau comprise UEMOA

- Showing the negative impact of poverty and political instability on the development process in the West African sub-region.
- Stimulating policy makers and legislators in the sub-region, particularly ECOWAS Parliamentarians, to negotiate for the enactment of further legislation which will assist in the reduction of intra-regional trade barriers.
- To making relevant findings as to the problems and challenges militating against the full realisation of the various economic integration initiatives.
- Making appropriate recommendations, with a view to revitalising ECOWAS with realistic and relevant benefits to its peoples.

1.5 Scope of Study

The scope of this work is determined by the statement of the problem and the objectives of research. Accordingly, the research focussed on issues that resolve its problems and advance its objectives. Any issue that does not help the resolution of the problems of research or attainment of the objectives was not considered, and if considered, only incidentally.

1.6 Research Methodology

This study is conducted as a historical research, with limited degree of doctrinal. In the course of this work, the researcher consulted and analyzed available literature, and official ECOWAS documents and statistics at the ECOWAS Commission, Abuja, Nigeria.

Additionally, informal interviews were used to capture the views of Scholars, Customs and immigration officers and business peoples and travellers. The focus of the informal interviews hinged on the perception of the goals, benefits and problems of regional integration in West Africa, the attitudes of member states toward regional programmes, as well as political, economic and legal issues hindering the ECOWAS integration process.

Efforts are made to measure the actual achievements by these agencies against the mandates placed as objectives of the ECOWAS as a means of ground-truthing the success or otherwise of ECOWAS as a body for integration for the sub-region.

1.7 Justification

This research is primarily justified by the problems and objectives of research. It is secondarily justified by its relevance to law students and lecturers, to ECOWAS itself and the general reading public with interest in legal matters related to ECOWAS.

1.8 Organisational Layout

The first chapter of this work dwells on such introductory matters as, background to the study, review of literature, the research problem, objective of the research, scope of study as well as the organisational layout.

Chapter two analyses the origin and development of the concept of economic integration. It also sets out the various institutional foundations of the interstate approach to economic integration, and the legal aspects of the concept under the ECOWAS treaty.

Chapter three examines the concept and practice of economic integration under international law especially in relation to ECOWAS treaty and the impact of the law on the various ECOWAS integration initiatives and the challenges to the trade expansion programmes of member states.

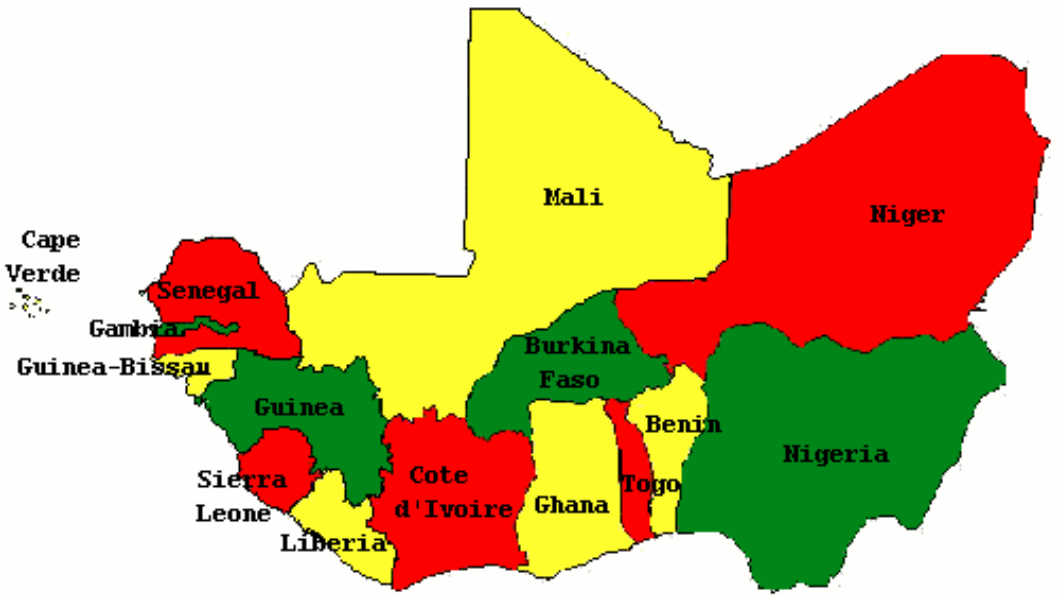
Chapter four is concerned with the discourse of problems and prospects of economic integration.

Chapter five is the concluding chapter of the research work. In this chapter, the entire work is summarised, the various findings highlighted and recommendations proffered.

Figure 1: Map of the ECOWAS Member states on the African Continent



Figure 2: Map of the Fifteen (15) ECOWAS Member States in West Africa



CHAPTER TWO

THE CONCEPT AND LEGAL FRAMEWORK FOR ECONOMIC INTEGRATION UNDER THE ECOWAS TREATY

2.1 The Concept of *Economic Integration*

Asante S.,[17] in his introductory remarks to defining economic integration, states that the term denotes a state of affairs or a process involving the combination of state economies into larger economic regions. As a process, it includes all measures aimed at eliminating discrimination between economic units from different countries. It can also be considered as a state of affairs characterised by the absence of various forms of discrimination between countries.

In further examining the meaning of economic integration within the West African context, Asante,[18] quoting Mutharika B.,[19] stated that the peculiarity of the characteristics of the African economies and the evolution of political and other institutions, makes it unrealistic to apply the term in the same sense as used in the developed regions of the world. He said the economic and political realities of the West African sub-region must be borne in mind, and in this respect, defined economic integration as a process whereby two or more countries in a particular area voluntarily join together to pursue common policies and objectives in matters of general economic development or in a particular economic field of common interest to the mutual advantage of all the participating states. The essence of the definition is that any scheme of economic integration must be voluntary and that each state must demonstrate its willingness to pursue certain policies in close consultation with the other states.

[17] Asante, S. K. B. Regionalism and Africa's Development: Expectations, Reality and Challenges. Ipswich Book Company Ltd., Suffolk, England, (1997) p. 18.

[18] Ibid

[19] Bingu Wa Mutharika, President of Malawi and immediate past Chairman of the African Union, who in his Acceptance Speech as AU Chair on 31 January 2010 reiterated that Africa is not a poor continent, but the African population are poor and called on Africans to develop Africa.

The expression "economic integration" can be used in different ways. As Bourenane N.,[20] points out, it can be used generically in reference to growing economic ties among countries which may or may not be geographically contiguous — linkages between Africa and Europe, for example. However, the term is most commonly used restrictively to refer to increased trade and factor flows between neighbouring countries, as a result of trade liberalization or the coordination of economic policies.

2.2 Legal Framework for Economic Integration Under the ECOWAS Treaty

Given the deepening globalization, and competition among nation states, cooperation has remained a sine qua non for development. This is reflected in the growing number of regional economic blocs, which seeks to foster cooperation and integration of their economies as a pathway to enhancing competitiveness and sustainable development.

For Africa, this realization is rooted in the fact that like other regional economic groupings such as the European Union, Africa's strength lies in Pan-African Cooperation. Formal attempt at cooperation however, dates back to 1949 with the establishment of the Southern Rhodesia Customs Union. Since then several other economic and political groupings have emerged including the Economic Community of West African States (ECOWAS), Southern African Development Community (SADC), the East African Community (EAC), the Arab Maghreb Union (UMA), the Common Market for Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS), the Central African Economic and Monetary Community of Great Lakes Countries (CEPGL), the Indian Ocean Commission (IOC), the Southern African Customs Union (SACU) and Community of Sahel-Saharan States (CENSAD).

[20] Bournane Naceur. Theoretical and Strategic Approaches to Regional Integration and Cooperation. Published by Africa World Press Inc. In conjunction with International Development Centre, Canada, (1997) at page 47.

The emergence of the regional groupings was mainly informed by the complexities and inter-relatedness of the challenges being faced by African states on such matters as the environment, population growth, poverty, trade and development which no single state standing alone can handle effectively. This made the initiative of promoting cooperation among African states highly relevant and pertinent.[21]

When most African countries achieved independence in the late 1950s-60s, their governments were confronted with a wide range of political, economic, social and cultural problems; with vital implications for the development of the new states.

Ladan T.,[22] in an overview of ECOWAS integration and harmonisation efforts, states that the sub-regional body was founded by Law, based on the agreement of member states who reaffirmed the establishment of the union and decided that it shall ultimately be the sole economic community in the region for the purpose of economic integration and the realisation of the objectives of the sub-region.

He further states that under Article 3 of the ECOWAS Revised Treaty of 1993, the aims of the Community are to promote cooperation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African Continent. In pursuit of these aims, Article 4 of the ECOWAS Revised Treaty provides for the declaration of the member states to adhere to the following fundamental principles;

a) Equality and inter-dependence of member states.

[21] Bassi S. Y. Director-General, Directorate of Technical Cooperation in Africa, Abuja Nigeria. At a Sensitisation Programme On Directorate of Technical Cooperation In Africa (DTCA): A Flagship Technical Cooperation Agency for Africa. Being a Paper Presented at the Federal University of Technology Akure, Nigeria, 8th July 2010.

[22] Ladan T. (2007) Materials and Cases on International Law. Published by Ahmadu Bello University Press Ltd, Zaria p. 384.

b) Solidarity and common defence.

c) Inter-state cooperation, harmonisation of policies and integration of programmes.

d) Non-aggression between member states.

e) Maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness.

f) Peaceful settlement of disputes among member states, active cooperation between neighbouring countries and promotion of a peaceful environment as a pre-requisite for economic development.

g) Recognition, promotion and protection of human and peoples' right in accordance with the provisions of the African Charter on Human and Peoples' Right.

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

i) Recognition and observance of the rules and principles of the community.

j) Promotion and consolidation of a democratic system of governance in each member state.

k) Equitable and just distribution of the costs and benefits of economic cooperation and integration.

These developments and concerns led to a new thinking on how best to fast track development within the deepening globalization of the world economy. In Africa, this led to the institutionalization of an Inter-African Convention Establishing an African Technical Cooperation Programme by the then Organization of African Unity (OAU), now African Union (AU) in 1975[23]. The Convention was aimed at ensuring the success of the various existing regional economic blocs, such as the newly created ECOWAS. It was also to provide a facilitating legal springboard for the establishment of new economic blocs and relevant agencies where need arises, such as the Directorate of Technical Cooperation in Africa with headquarters in

[23] Bassi S. Y. Op cit, p. 4

Abuja, Nigeria, in 2001 , and the Nigerian Technical Cooperation Fund (NTCF) domiciled in the African Development Bank, in 2004.

2.3 Interstate Approach to Economic Integration

West Africa is indeed endowed with abundance of human and natural resources, a coastal location coupled with an impressive and huge potential for economic growth. Yet, it has realised very little of its potential, as a result of the combined effects of political instability, infrastructural deficits and poverty. This necessitated the ECOWAS Commission to take a new dimension to development and integration of the sub-region by initiating the formulation of Community Development Programmes (CDP) which seeks to put greater emphasis on the participatory and inclusive approach to development through the active involvement of both states and non-state actors. With the formulation of the CDP, the Commission aims at transforming the current ECOWAS of States into an ECOWAS of Peoples, which is part of its Vision 2020 that was adopted by the Authority of Heads of State and Government in June 2007.

When the fifteen West African countries came together (1975) and signed the ECOWAS Treaty, the aim was to create the legal basis for strengthening regional economic integration through the progressively freer movement of goods, services, capital and people to consolidate peace and security among Member States. Concurrently, the adoption of the Protocol (1979) conferred on Community citizens the right to enter and reside in the territory of another member state provided that they possessed valid travel documents including international health certificate. The protocol would be implemented in three-phases; visa-free travel; right of residence; right of establishment, with each implementation phase lasting five (5) years.

The four supplementary protocols that were adopted between 1985 and 1990 committed member states to: provide valid documents to their citizens; grant Community Member States

the right of residence for the purpose of carrying out income earning employment; not to expel Community Members en-masse, and to ensure appropriate treatment of persons being expelled; limit the grounds for individual expulsion to reasons of national security; Although all the three phased stages are theoretically now complete; and the ECOWAS Protocols constitute the law of the region, in reality only visa-free travel [phase I] has been fully implemented; It is in the context of restricted entitlements set out in the ECOWAS free movement protocols that one can properly appreciate the obstacles and opportunities for extending the said protocols to protect refugees.

Studies[24] on the problem confirm that by 2007, there were no less than 270,000 refugees in the West African sub-region, with most of them fleeing civil wars in Liberia (120,000) and Sierra Leone (19,000). These were located in refugee camps or dispersed in local communities. Though all these individuals have been accorded the recognition by their host governments as ECOWAS citizens, toleration or acceptance of their residence is largely predicated on the legal fact of them being refugees. Fuller implementation of the ECOWAS Protocols covering issues of permanent residence [Phase II] will grant the citizens of all Member States, including refugees willing and able to work, the right to a secure residence and to appropriately engage in work for decent living.

Among the seven countries where refugees in the region are currently most concentrated (Cote d'Ivoire, The Gambia, Ghana, Sierra Leone, Guinea, Liberia, and Nigeria), there is the general understanding that although the ECOWAS Protocols are not refugee instruments, those protocols are not in conflict with the refugee instruments and so can be applied to serve the immediate and long term interests of those so affected. The ECOWAS has consistently made the same argument that along with other Community citizens, refugees are to be granted equal treatment and protection under the free movement protocols. Indeed, the

[24] www.westafricainsight.org/articles/PDF/53 Accessed on 5th March 2013

ECOWAS Treaty seeks to promote much more than economic integration. Its broader objectives include responsibilities for humanitarian intervention, maintenance of peace and security through good neighbourliness, and promotion of human and peoples rights. Thus conceived, the Treaty and the Protocols are in harmony with the refugee instruments as defined in the 1951 Convention relating to refugees, and the regional Organization of African Union (now African Union) Convention governing the specific aspects of refugee problems in Africa.

The process of ensuring local integration of refugees has been painfully slow. Many countries in the region express the fear (most times unfounded and bound by ethnic prejudices) that refugees are predisposed to be disproportionately involved in petty crimes, and that refugees pose immense national security threats since most have been inclined to support dissident factions in their countries of origin. The latter concern frequently provides powerful, but emotive political basis upon which refugees in West Africa have been declared in-admissible or denied the benefits of asylum. Given this, the idea of state responsibility is rendered progressively inoperable and weakened in many ECOWAS Member States.

Looking beyond characteristic problems and going forward, there is evidence of glacial change of attitude toward refugees in the region: First, the gradual consolidation of peace through post-conflict reconstruction efforts in Liberia and Sierra Leone, and improved economic performance in many ECOWAS countries are beginning to create a new receptivity among Member States to the integration of refugees in host countries.

Second, the growing desire for the benefits of integration and the reciprocal quality of entitlements under the free movement protocols are additional factors in favour of tolerance for refugees and the necessity of providing for their benefits.

Third, both the ECOWAS and the UNHCR have convinced Member States to find a fit in their national development plans for refugees such that now host countries are conducting an inventory of their domestic economic needs and tapping into available refugees skills and channel same toward advancing their national development strategies.

Fourth, there seems to be a growing interest among other regional organizations on the continent to examine what is currently going on in West Africa countries outside the region (in Southern Africa and in East Africa) are assessing the applicability of similar local integration initiatives to their own local labour mobility arrangements and requirements.

These developments were deeply reviewed and discussed by West African leaders during the 2008 Joint ECOWAS-UNHCR Convention in Dakar, Senegal, and recommendations included calls for ECOWAS Governments and local civil society to ensure that the momentum of gradual positive shift is maintained. In particular, recommendations revolve around basic issue areas such as:

(i) Study national legislation relating to admissibility, residence, and work entitlements with a view to identifying inconsistencies with regional free movement regime and propose appropriate remedial actions to ensure conformity with the provisions of the protocols;

(ii) Encourage harmonization in the approach toward the acquisition of legal status documents for integrating refugees;

(iii) Formalize cooperation with the ECOWAS Community Court of Justice and refer appropriate questions of interpretation of rights and entitlements to the Court;

(iv) Issues of naturalization also come under close scrutiny as there are indications that most refugees are reluctant to naturalize because many countries in the region frown

at the idea of dual citizenship. In this case, there is urgent need to conduct intensive information campaigns in the individual countries to promote awareness about how dual citizenship might deepen social cohesiveness across the region and enhance the benefits of ECOWAS free movement protocols.

2.3.1 *Institutional Foundations of the Interstate Approach*

In order to hasten the realization of the benefits of economic integration, the Authority of Heads of State and Government of ECOWAS in 1987 adopted some institutions and facilities with the specific objectives of improving and strengthening sub-regional initiatives. Some of the institutions established to facilitate these include:

2.3.2 *Authority of Heads of State and Government*

The highest governing authority of ECOWAS is the Conference of Heads of State and Government. The conference meets annually and a chairman is elected in turn from a member state. This is the political and supreme body of the zone, with the overall responsibility for the achievement of the objectives of the West African Monetary Zone (WAMZ).

2.3.3 *Convergence Council of Ministers and Central Bank Governors*

This Council is the supervisory authority of the WAMZ and its institutions. The Council of Ministers is responsible for community operations and meets twice a year. The Council of Ministers enacts Regulations and Directives and makes Decisions and Recommendations. Regulations have general application and all their provisions are enforceable and directly applicable in Member States. They are enforceable in the institutions of the Community. Directives and their objectives are binding on all Member States. The modalities for attaining such objectives are left to the discretion of States. It has the responsibility for making recommendations to the Authority of Heads of State and Government;

2.3.4 ECOWAS Parliament

The ECOWAS Parliament is a forum for dialogue, consultation and consensus for representatives of the peoples of West Africa in order to promote integration. Parliament was established in accordance with Articles 6 and 13 of the ECOWAS Treaty. The Protocol establishing the Parliament was signed in Abuja, in August 1994, and entered into force in March 2002.

i) Structure

The Parliament is the Assembly of Peoples of the Community. Its members represent all the peoples of the sub-region.

ii) Composition

Parliament consists of 115 seats. Each of the 15 member states has 5 seats at least. The remaining seats are shared in proportion to the population. As a result, Nigeria has 35 seats, Ghana 8, Cote d'Ivoire 7, while Burkina Faso, Guinea, Mali, Niger and Senegal have 6 seats each. Other countries made up of Benin, Cape Verde, Gambia, Guinea Bissau, Liberia, Sierra Leone and Togo have 5 seats each.

iii) Mandate

Each representative exercises his mandate independently, and is not bound by any instructions nor shall he receive a binding mandate. Furthermore, until elections can be organised by direct universal suffrage, the Representatives of the Community Parliament shall be elected by their National Parliaments, and the elected shall be the representatives of all peoples of the Community. The duration of the mandate shall be for a period of four (4) years, and must be in conformity with the Protocol.

Parliament submits to the Authority of Heads of State and Government, its recommendations on any matter concerning the Community for consideration and decision in accordance with the procedure laid down in Article 2 of Decision A/DEC/06 dated 12 January 2006 of the Au-

thority of Heads of State and Government. Similarly, the Speaker of Parliament shall have access to the Chairman of Authority and shall periodically brief the Chairman on the activities of Parliament.

2.3.5 ECOWAS Commission

The Heads of State and Government broke with the past by their decision to transform the ECOWAS Secretariat into a Commission with effect from January 2007, with its headquarters remaining in Abuja, Nigeria. The difference goes beyond a name change and an increase in the number of officers at the management level.

This initiative by the Heads of State and Government was to bring about institutional transformation covering all ECOWAS Institutions. The implementation of this transformation process was aimed at repositioning ECOWAS towards realizing the objectives of improving the living conditions of the citizenry, ensuring economic growth and creating an environment conducive to integration and development.

By becoming a Commission with enhanced powers and Commissioners in charge of smaller and clearly defined sectors, the intent was to bring about ECOWAS having more impact and visibility in Member States. The restructuring which was to enable the sub-regional body better adapt to the international environment and play a more effective role in the integration and development process also has the following features;

i) A President, who is head of the Commission, a Vice-President and 7 Commissioners.

ii) A smaller and more clearly defined sector for each Commissioner. The sectors are;

   a) Administration and Finance

   b) Agriculture, Environment and Water Resources

c) Human Development and Gender

d) Infrastructure

e) Macro-Economic Policy

f) Political Affairs, Peace and Security

g) Trade, Custom and Free Movement

iii) Support to Member States to build their capacities for programme implementation.

iv) A predictable rotation system based on equity, transparency and functionality.

In addition, the restructuring process had the effects of;

i) Consolidating the Community spirit.

ii) Enhancement of the powers of the Commission.

iii) Strengthening of supra-nationality.

iv) Adoption of a new legal regime (decisions directly applicable in Member States and by the institutions).

New Regime for Community Acts

The transformation of the Secretariat into a Commission was accompanied by a fundamental measure: the adoption of a new legal regime for Community Acts.

Before the transformation, obligations of member states were captured principally in Protocols and Conventions which are subject to lengthy Parliamentary ratification processes. These

processes delayed the entry into force of the legal texts thereby paralyzing the integration process. The new regime now ensured that decisions of the Authority are immediately applicable and binding on member states, whilst those emanating from the Council of Ministers were only applicable and binding on the community institutions.

Under the new legal regime, the supranational principle becomes more pre-eminent as there is a de-emphasis on the adoption of Conventions and Protocols.

Community Acts will be Supplementary Acts, Regulations, Directives, Decisions, Recommendations and Opinion. Thus, the Authority passes Supplementary Acts to complete the Treaty. Supplementary Acts are binding on member states and institutions of the Community.

The Commission adopts Rules for the implementation of Acts enacted by Council. These Rules have the same legal force as Acts enacted by Council. The Commission makes recommendations and gives advice, which are however not enforceable.

2.3.6 *ECOWAS Court of Justice*

Donli H.,[25] in a seminal presentation, stated that ECOWAS, in furtherance of the aims of its establishment under Article 4(g) of its Treaty, guarantees its peoples:

[25] Donli H. [2006] ***Practice and Procedure of the Community Court of Justice*** Being a Paper presented at the Workshop on Law, organised by the West African Human Rights Forum Held in Bamako, Mali between 7 – 9 December.

The recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People Rights.

The Community Court of Justice is one of the institutions of ECOWAS working towards the realization of the above objective. Established under Article 15(1) of the Revised Treaty as the principal legal organ of the Community, its mandate is defined by Article 76(2) of the Treaty and by the Protocol on the Community Court of Justice.

Though the Protocol of the Court was adopted in 1991, the Court only became operational in 2001 with the appointment and swearing-in of its members. The Authority of ECOWAS decided at its 2001 Summit in Dakar, Senegal that the Seat of the Court shall be in Abuja, Nigeria. The Court of Justice as the judicial institution of the Community, is saddled with the responsibility of ensuring that Community treaty is applied and interpreted in accordance with international law and equity. The Court is endowed with the following **features;**

a) Vision

With the approval of the Rules of Procedure by the Council of Ministers at its 6th extraordinary meeting held in Abuja on 22nd August 2002, the Court commenced preparation for its effective take off. The vision of the Court among others, includes;

1. Providing remedies for fundamental human rights breaches; fundamental human rights means the right of any individual recognized by the International Declaration of Human Rights adopted on 16th December, 1948 by the United Nations General Assembly. Where Treaties of the Community relate to these rights, same are enforceable.

2. Actions that are enforceable relate to the application and interpretation of the Treaties of the Community.

3. Breach of Treaties as stated in Article 3. To achieve this, the Court will undertake a process of creating awareness among citizens of member states on the existing treaties among the

member states and the fact that individuals could have access to the Court through alternative dispute resolution processes.

5. Harmonisation of relationships with relevant International Organisations such as the Court of Justice of the European Community at Luxembourg, International Court of Justice at the Hague, in the Netherlands, and other international institutions of similar status.[26]

b) Functions

The functions of the Court are as prescribed by Article 76 of the Revised Treaty which may be specified thus:

i) Any dispute regarding the interpretation or the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this Treaty and relevant Protocols.

ii) Failing this, either party or any other member state or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal.

c) Composition of the Community Court

Pursuant to Article 3 of the Protocol, the Community Court of Justice consists of seven (7) members who have been appointed from member states of the Community. After the inaugural meeting of members and consultations with the Chairman of the Authority, members elect the President and Vice - President of the Court in accordance with the provisions of the Protocol. The term of office for four (4) of the Judges shall be five years, while three (3) Judges shall have a three - year term pursuant to Article 4 of the Protocol. However, the President and Vice - President shall serve in those capacities for three years. The tenure of office commence from the date members are sworn in.

d) Community Law and Jurisdiction of ECOWAS Court

[26]Article 19 of the Protocol on the Community Court of Justice

Jurisdiction is the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means. The preamble to the ECOWAS Court's protocol provides:-

> The essential role of the Community Court of Justice is to ensure the observance of law and justice in the interpretation and application of the Treaty and Protocols and Conventions annexed thereto and to be seized with responsibility for settling such disputes as may be referred to it in accordance with the provisions of Article 56 of the Treaty and disputes between states and the institutions of the Community.

The Protocol of the Court makes provisions for the jurisdiction of the Court in Articles 9 and 10.

While Article 10 allows the Court to give advisory legal opinion on question of the Treaty and the Protocol, Article 9 deals with the Courts adjudicative competence and provides as follows:

1. The Court shall ensure the observance of law and of the principles of equity in the interpretation and application of the provisions of the Treaty.

2. The Court shall also be competent to deal with disputes referred to it, in accordance with the provisions of Article 56 of the Treaty, by member states or the Authority when such disputes arise between the member states or between one or more member states and the institutions of the Community on the interpretation or application of the provisions of the Treaty.

3. A member state may, on behalf of its national(s) institute proceedings against another member state or institution of the Community, relating to the interpretation and application of the provisions of the Treaty, after attempts to settle the dispute amicably have failed.

4. The Court shall have any powers conferred upon it, specifically by the provisions of this Protocol.

Other matters within the competence of the Court are:

i) Actions for Human Rights

Actions for violations of human rights by individuals are within the competence of the court except where the action fails to specify the name of the applicant. In **Hadijatou Mani v. Republic of Niger**,[27] the court was asked to rule on allegations of violations of a number of the applicant's human rights. It was asked to pronounce on the responsibility of the defendant state in relation to violations in respect of the prohibition on slavery, discrimination on the grounds of gender and social origin and arbitrary detention. The Court found the state legally responsible for its failure to protect the applicant (victim) from slavery, and had therefore failed through its judicial and administrative authorities to discharge its protective human rights function. Immediately following the judgement, the government of Niger committed to respecting the judgement which it acknowledged was binding on it. On 17th March 2009, the government paid the compensation due to the applicant in full.

Similarly, in **Djot Bayi and 14 Others v. Federal Republic of Nigeria and 4 others**,[28] the Court held that the decision by the defendant to take legal action against the applicants and maintain their detention till 30th November 2005, in spite of the order of release of the appli-

[27] ECW/CCJ/APP/0808 with Judgement No. ECW/CCJ/JUD/06/08 of 27th October 2008
[28] ECW/CCJ/JUD/01/09 of 28th January 2009

cants by the Federal High Court of Nigeria, constitutes a violation of their rights pursuant to Article 6 of the African Charter on Human and Peoples Rights as well as Chapter 35 of the Constitution of the Federal Republic of Nigeria.

In **Musa Saidy Khan v. Republic of Gambia,**[29] the Court declared the arrest and detention of the applicant for 22 days without trial, as illegal and unconstitutional as it contravenes the applicant's human rights to personal liberty and fair hearing as guaranteed by Article 6 and 7 of the African Charter on Human and Peoples Rights, and accordingly awarded $200,000 as damages in favour of the applicant. With the intervention of the Court, journalists and other persons are no longer detained without trial in the Gambia.

ii) Advisory Jurisdiction

The Court has jurisdiction to give advisory opinion in respect of legal questions sent to it. Article 10 in respect of Advisory Opinion provides as follows:

1. The Court may, at the request of the Authority, Council, one or more member states, or the President, and any other institution of the Community, express, in an advisory capacity, a legal opinion on questions of the Treaty.
2. Requests for advisory opinion as contained in paragraph 1 of this Article shall be made in writing and shall contain a statement of the questions upon which advisory opinion is required. They must be accompanied by all relevant documents likely to throw light upon the question.

The advisory opinion is given in public and in the exercise of its advisory function the Court shall be governed by the provisions of this Protocol which apply in contentious cases, where the Court recognizes them to be applicable. Advisory opinions are not binding, but must be taken into consideration.

[29] ECW/CCJ/APP/11/07 with Judgement No. ECW/CCJ/JUD/08/10 of 16th December 2010

iii) Arbitration

The Court also has jurisdiction in respect of Arbitration matters. Article 9 (5) of the Amended Protocol provides that the Court shall have power to act as arbitrator for the purposes of Article 16 of the Treaty of ECOWAS.

Article 16 of the Treaty provides that there shall be established an Arbitration Tribunal of the Community and the status, composition, powers, procedure and other issues concerning the Arbitration Tribunal shall be set out in its Protocol relating thereto.

iv) Article 38 of Statutes of International Court

In every legal system, the written sources of law do not provide the answer to every problem which appears before the Courts. For this reason, ARTICLE 19 (1) of PROTOCOL A/P1/7/91 thus provides that,

> *the Court shall examine the dispute before it in accordance with the provisions of the treaty and its rule of procedure. It shall also apply, as necessary, the body of laws as contained in Article 38 of the statutes of the international Court of Justice.*

Article 38 of the Statute of International Court of Justice states that the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply;

i) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

ii) international custom, as evidence of a general practice accepted as law;

iii) the general principles of law recognized by civilized nations;

iv) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified of publicists of the various nations, as subsidiary means for the determination of rules of law.

e) Interpretation and Application of Community Law

Article 9 (6) of the Amended Protocol of the Court provides for a reference to be made either by the national court, or a party to the ECOWAS Court for interpretation of a Community text. Hon. Justice Donli,[30] posited that the reason behind this may be the desire for a uniform interpretation of the various Community texts for an eventual emergence of a Community legal order, which will be of immense benefit to the lawyers and community citizens and at the same time allow for relationship between the ECOWAS Court and the national courts. Her Lordship further states that the ECOWAS Court's role here is to give preliminary ruling as to the interpretation or validity of the Treaty provision or community Act, while the National Courts shall apply the ruling to the facts of the case. In other words, the Court's role is to interpret, while the National Court's role is to apply.

Where the Court rules on a preliminary reference it is binding on the National Court which referred the question for consideration. If the same issue arises again in a latter case, then under the doctrine of ante clair,[31] there is no need to make a further reference and if the National court is unhappy with the previous ruling, it can make an additional reference, even if the matter is ante clair.

Finally, it is necessary to mention that there is no provision in the Protocols of the ECOWAS Court allowing appeals to lie in it from the national Courts. See ***Ugokwe v Federal Republic of Nigeria (2005) Unreported*** wherein the applicant instituted an action before the ECOWAS Court after the Court of Appeal in Nigeria, the highest Court given the power to hear appeals from the Election Tribunals and finalize on the matter had dismissed his appeal. His grounds in ECOWAS Court was based on the fundamental rights of fair hearing which he alleged was contravened under Article 9 of the Amended Protocol. The Court declined to delve into the

[30] Ibid

[31] Ante clair principle has its origin in French law, where the ordinary Courts were required to request a ruling from the Ministry of Foreign Affairs on a question of Treaty interpretation unless the point was regarded as clear.

realm of the jurisdiction of the national Court in respect of the impropriety of the decision on the election and dismissed it.

f) Practice and Procedure of ECOWAS Court

The Rules of Procedure of the Community Court of Justice have been formulated to regulate the proceedings of the Court. Article 32 of the Protocol of the Community Court of Justice empowers the Court to establish its own Rules of Procedure to be approved by Council. Pursuant to this provision, the Court formulated its Rules of Procedure, which was approved by Council vide Regulation C/REG/04/8/02 of 28th August 2002.

The procedure of the Community Court of Justice is governed by the Protocol and the Rules of Procedure of the Court as provided by Article 13 (1) - (3) of the Protocol and Articles 32-51 of the Rules of Procedure. Proceedings before the Court consist of two parts; written and oral. Written proceedings consist of the application entered in the Court, notification of the applicants, the defence, the reply or counter-statement, the rejoinder and any other briefs or documents in support. The oral proceeding consist of the hearing of parties, agents, witnesses, experts, advocates or counsel and is provided for in Articles 52 -58 of the Rules of Procedure.

Provisions have also been made in Articles 28, 29 and 30 of the Rules for agents, advisers and lawyers appearing before the Court to enjoy immunity in respect of words spoken or written by them concerning the case or the parties.

Pursuant to the provisions of Article 14 (2) of the Protocol, the Quorum of the Court consists of the President and at least two other Judges. The sitting of the Court shall comprise of an uneven number of its members i.e. 3, 5 or 7. The dates and times of the sessions of the Court shall be fixed by the President. The Court may however choose to hold one or more sessions outside its seat of Court. Where the Court has been convened and it is found that there is no

quorum, the President shall adjourn the sitting until there is a quorum. The sitting of the Court shall be public, but the Court may sit in camera at the request of one of the parties or for reasons, which only the Court may determine.[32]

Article 87 of the Revised Treaty makes provisions for the official and working languages of the Community. The Rules of Procedure of the Court provide that the official languages of the Court shall be English, French and Portuguese. The language of a case shall be chosen by the Applicant, except that where the Defendant is a member state, the language of the case shall be the official language of that state. The language of a case shall be used in the written and oral pleadings of the parties, the supporting documents, and in the minutes and decisions of the Court, as provided in Article 25 of the Rules.

g) Judgment of the Court

The Court's deliberations upon what its judgment shall be takes place in a closed session, and only those Judges who were present at the oral proceedings are entitled to take part in the deliberations. Every Judge taking part in the deliberations shall state his opinion and the reasons for it. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court. The Judgment of the Court shall be read in open Court and shall state the reasons on which it is based.[33]

Article 62 of the Rules provides that the Judgment shall be binding from the date of its delivery. Article 22 (3) of the Protocol enjoins all member states and institutions of the Community to immediately take all necessary measures to ensure the execution of the decisions of the Court.

[32]Articles 21 and 22 of the Rules;and Articles 26 (1) and 27 of the Protocol.
[33]Articles 23, 60, 61, and 62 of the Rules; and Article 19 of the Protocol

Hon. Justice Donli[34] states that owing to the inadequacy of the stipulated procedure for enforcement, the Court proposed for a more elaborate provision. Consequently, the amended Protocol inserted a new Article 24 which provides:

1. Judgments of the Court that have financial implications for nationals of member states or member states are binding.
2. Execution of any decision of the Court shall be in the form of a writ of execution, which shall be submitted by the Registrar of the Court to the relevant member state for execution according to the rules of civil procedure of that member state.
3. Upon the verification by the appointed authority of the recipient member state that the writ is from the Court, the writ shall be enforced.
4. All member states shall determine the competent national authority for the purpose of receipt and processing of execution and notify the Court accordingly.
5. The writ of execution issued by the Community Court may be suspended only by a decision of the Community Court of Justice.

Finally Article 15 (4) of the Revised Treaty provides that 'Judgments of the Court of Justice shall be binding on the member states, the institutions of the Community and on individuals and corporate bodies.''

[34]ibid

CHAPTER THREE

THE PRACTICE OF ECONOMIC INTEGRATION UNDER THE ECOWAS TREATY

3.1 Economic Cooperation

Economic cooperation, according to Ernst Hans[35] is concerned with the process of achieving economic integration. In other words, regional economic cooperation may help describe steps along the way to regional economic integration.

Bourenane N.,[36] states that the terms "regional economic integration" and "regional economic cooperation" have in common the involvement of neighbouring countries in collaborative ventures. However, regional economic cooperation implies that this is organized on an ad hoc

[35] Ibid

[36] Bournane Naceur. Op cit.

and temporary basis through contractual arrangements of some sort, around projects of mutual interest, while regional economic integration involves something more permanent.

The author[37] in conclusion states that the concept of regional integration can cover the full range of public-sector activity, including not only the coordination of economic policies, but also regional security, human rights, education, health, research and technology, and natural resource management. The concept of regional integration is thus a broader one than that of economic integration. Ernst B. Hans[38] a central figure in the neo-functionalist[39] school of regional integration theory, stated that regional integration, is concerned with explanations of how and why states cease to be wholly sovereign, how and why they voluntarily mingle, merge and mix with their neighbours so as to lose the factual attributes of sovereignty while acquiring new techniques for resolving conflicts between themselves.

The author[40] further stated that regional integration is characterized by the establishment of joint institutional mechanisms, and a degree of shared sovereignty whereby member states accept certain obligations, such as the payment of dues, the reduction of trade barriers, the reduction of barriers to the free movement of people.

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[37] Ibid

[38] http//www.arts.connel.edu Downloads of arjournal.annual reviews.org by Connell University, 6th September 2005 (Retrieved 27 January 2011).

21 Neo-functionalism describes and explains the process of regional integration with reference to how three causal factors interact with one another: (a) growing economic interdependence between nations,
(b) organizational capacity to resolve disputes and build international legal regimes, and
(c) supranational market rules that replace national regulatory regimes http//www.en.wikipedia.org/wiki (retrieved 27 January 2011).

22 Ernst Hans op cit.

Integration may therefore, be treated as the terminal or resulting condition, the end state, or consequences of regional cooperation activities. From the foregoing therefore, the author held that regional cooperation between countries in the sub-region in various fields of economic activity may lead to partial or complete economic integration.

3.2 *The ECOWAS Treaty*

The ECOWAS Treaty was signed in Lagos, Nigeria, by the member states on 28th May 1975, and a revised Treaty was signed in Cotonou, Republic of Benin, on 24th July, 1993. The aims and objectives of the revised treaty ('the Treaty') are clearly stated in the Preamble of the Treaty which states in part;

"We, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS) …

CONSCIOUS of the over-riding need to encourage, foster and accelerate the economic and social development of our States in order to improve the living standards of our peoples;

CONVINCED that the promotion of harmonious economic development of our States calls for effective economic co-operation and integration largely through a determined and concerted policy of self-reliance; ……

CONVINCED that the integration of the Member States into a viable regional Community may demand the partial and gradual pooling of national sovereignties to the Community within the context of a collective political will *……''*

Integration has many facets, including economic, political, social, geographical and legal, and any of these must be predicated on a legal framework. Economic integration in the two Treaties is also expressed to be achieved through the instrumentality of the law by the creation of a legal framework acceptable to the States which are signatories to either of the Treaties. The

legal framework is through harmonisation of various laws, and in this instance, Business Laws.

Article 3 of the ECOWAS Treaty sets out its aims and objectives, which inter alia, are to promote co-operation and integration leading to the establishment of an Economic Union. The relevant provisions of Article 3 are 3(2)(e-i), and in particular, Article 3(2)(h), which deals with the establishment of an ***enabling legal environment.***

Article 3(2)(e-i) provides as follows:-

e) the establishment of an economic union through the adoption of common policies in economic, financial social and cultural sectors, and the creation of monetary union.

f) the promotion of joint ventures by private sectors enterprises and other economic operators, in particular through the adoption of a regional agreement on ***cross-border investments.***

g) the adoption of measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises.

h) ***the establishment of an enabling legal environment;***

i) *the harmonization of national investment codes leading to the adoption of a single Community Investment Code.*

The goal of economic and social development of the ECOWAS States through economic co-operation and integration, though attainable, remains a far-flung dream due largely to the lack of 'political will' on the part of the Leaders/Rulers of the various States. They have failed and or neglected to create the enabling legal environment envisaged in Article 3(2)(h) of the Treaty.

3.3 ECOWAS Integration Initiatives

3.3.1 Common Market

A common market is an economic area in which free movement of goods, services, capital and persons is guaranteed. An economic union within the contemplation of ECOWAS is a Common Market with some degree of harmonization of national economic policies in order to remove discrimination due to disparities in these policies. The total economic integration in economic union therefore, means the unification of monetary, fiscal and social policies, and the setting up of a supranational authority where decisions are binding on the member states.

In line with Articles 3.2 (f) and 3.2 (i) of the revised ECOWAS Treaty therefore, a key and immediate concern is to develop a regional investment (one of the factors of production) code, compliant with West African macroeconomic convergence criteria that will make the countries in the community to improve their macroeconomic stability as well as to enhance credibility of the regional economic policy in a manner that will make the region a good investment destination. This will not only strengthen the development of the private sector as well as lead to long term economic growth of the Community, but also will reinforce the existing regional economic integration towards the goals of the founding fathers of ECOWAS.

A popular saying submits that individually we are weak but together we are stronger and are able to exploit more opportunities. These basics framed more technically lies at the heart of the ongoing ECOWAS Common Investment Market (ECIM) initiative.

In December 2008, the Authority of the Heads of States and Government adopted three Supplementary Acts which provides the basis for the commencing of work on the establishment and implementation of the ECIM plan, an instrument geared towards implementing measures aimed at enhancing the investment climate and attractiveness of the regional space as a single market on the platform of a simplified and harmonized regional investment code. Therefore, ECIM offers to provide a single economy by creating competitive investment areas which

allow free movement of capital, labour and goods across borders of member states bound by a customs union.

Though the process to attain this objective remains very slow, the creation of a larger market that can sustain production efficiency comparable to those of industrial nations is particularly useful as multinationals, fund managers and other investors now give preference to regional rather than national markets in making decisions to invest.

Building on commitments to better policies and regulations for investment, ECOWAS member states decided to use the impetus of preparations towards the Economic Partnership Agreements (EPAs) to harmonize the regulations on investment and work for the establishment of a common regional investment code to establish the common investment market.

Member countries are expected to unilaterally reduce or eliminate restrictive investment measures and review their investment regimes in line with the Supplementary Act towards ECOWAS Investment framework (IPF). In this context, member states would be expected to undertake liberalization actions on rules on investment, licensing conditions and access to domestic finance. For instance, countries like Liberia which has strict investment rules that prevent outsiders from investing or owning companies in certain sectors would have to accord unconditional access to investors and investments of any Member state.

Though the project is still on its infancy, it is faced with the challenge of some member states, particularly the relatively smaller economic powers which are hesitant to lay on the proverbial altar sizable fractions of their sovereignty in line with the dictates of the ECIM.

In order to realize the objective of the ECIM, its general obligation requires ECOWAS member states to among others open up all sectors for investment to ECOWAS investors by 2015 and to all investors by 2020 in accordance with the Supplementary Act.

The ECIM is the third stage in the integration thrust of ECOWAS which when established in 1975 was mandated to among others eliminate between member states, custom duties and other charges on imports and exports, quantitative and administrative restrictions on trade, obstacles restricting the free movement of persons, services and capital, while harmonizing agricultural, economic, monetary and industrial policies. All of these, remain largely unattained, existing only in theory with a perfect example being the continued discrimination and harassment of citizens of members states at border posts by national immigration officials who are either totally ignorant of the rules or seem not to care.

Despite these challenges, limitations and bottlenecks, there is the need to forge ahead on the regional integration initiative especially in the face of growing global competition when compared to the very low competitive indices of the sub-region. Recent global developments such as the on-going financial crisis have left developing and fragile economies in Africa with no choice than to synchronize efforts by pooling resources in a common quest to withstand exogenous shocks.

Harmonized national investment laws towards a regional best practice of investment code will strike a better balance between private interest and public goods which would logically be a lot more attractive to potential investors. Enlarged ECOWAS regional markets provide incentives for private cross border investments and foreign direct investments. The establishment of optimum size industrial and service projects, constrained by the limited size of individual country markets, could be facilitated by appropriate trade and macroeconomic policy regimes. For example, the economies of most individual ECOWAS countries are too small to support a viable steel industry, a sector pivotal to industrialization. The combination of a stable common regional investment climate, transport and communication infrastructure and sound regional economic policy could provide adequate incentives for large scale investment in manufacturing and service projects to economics of scale.

Bigger markets permit better exploitation of economies of scale, while factor mobility would facilitate faster economic growth and welfare. The productivity from the economies of scale and cost saving arrangements are also likely to strengthen internal as well as external competitiveness of ECOWAS products and firms. Liberalization of trade, free movement of people and capital are also expected to result in more efficient use of resources as well as in productivity and income gains. Economic gains in turn are likely to facilitate the process of political and social cohesion and unity.

Each ECOWAS member state is required to provide an enabling environment for private sector activity through policy harmonization, acting as an entrepreneurial state. Though the whole integration thrust especially in the Anglophone bloc of the sub region, continues to be greatly criticized in some quarters for being too pro European Union, over tailored to resemble the principles of the very successful European initiative instead of the peculiarities of West Africa, the region seems more than ever determined to succeed and join the rest of the world in the continued strive to survive and thrive as a civilization.

3.3.2 Monetary Union

The establishment of ECOWAS was aimed at accelerating economic growth and development through facilitating economic and monetary cooperation which would progress to a monetary union when all member states evolved and adopted a common currency under a unified exchange rate arrangement, and pursued a common monetary policy under a common authority. In order to achieve this objective, the Authority of Heads of State and Government of ECOWAS in 1987, adopted the ECOWAS Monetary Cooperation Programme (EMCP) with the specific objectives of improving and strengthening sub-regional payments systems, and set up agencies to assist in this regard.

a) West African Monetary Zone (WAMZ)

The WAMZ member states comprise the Gambia, Ghana, Guinea, Nigeria and Sierra Leone. Liberia attends WAMZ meetings as an observer as she has not yet signed the instruments of membership. These states account for about 60% of the population of the ECOWAS sub-region as well as its GDP.[41] A major objective of establishment of the WAMZ has been for its institutions, policies, political support, legal and administrative arrangements to serve as catalyst which would hasten the attainment of monetary integration in the zone and the evolution of a common monetary authority for the realisation of the benefits of integration. The ultimate objective of the WAMZ is to fast track the realisation of ECOWAS monetary integration project in the West African Sub-region through helping to create conditions which would make the process of unification of similar UEMOA and WAMZ monetary integration arrangements relatively easier and faster. Some institutions created under the WAMZ Agreement to facilitate arrangements for eventual introduction of a single currency in the zone are:

i) ***The West African Monetary Institute (WAMI)***

This is an interim institution established to carry out preparatory activities which would lead to the establishment of the West African Central Bank (WACB) and the introduction of a common single currency in the WAMZ. WAMI, which is located in Accra, Ghana, commenced operation in March 2001.

It has the mandate of articulating a policy framework and developing institutional structure for the WAMZ. Its major functions include:

a) Monitoring macroeconomic performance of and movement towards macro-economic convergence by member states and making appropriate observations and recommendations accordingly;

[41] Ukpong, G. E.; Wampah, H. A. K. [2001] **A Critical Appraisal of Economic Integration Process in the West African Sub-Region**, WAMI Journal of Monetary and Economic Integration, Vol. No.1, June, 2001 p.16

b) Facilitating the harmonization of financial and banking rules and regulations of the various member states within the Agreement and Statutes of the WAMZ. The harmonization would be useful in the conduct of monetary policy when a common central bank is established;

c) Working out the modalities and analyzing the technicalities of establishing a common central bank and introducing a common currency.

d) Articulating the monetary policy objectives and the appropriate monetary policy instruments for the envisaged common central bank as well as the transmission mechanism; and

e) Facilitating the sensitization of the citizenry of member states on the monetary integration process and eventual introduction of the single currency in the zone.

ii) ***The Technical Committee***

This is made up of technical officials from member states. The Committee works in collaboration with West African Monetary Institute (WAMI). It reviews and helps finalize policy and technical documents prepared by the Institute to facilitate the integration process. It has the responsibility of contributing to policy advice and recommendations to the Convergence Council;

iii) The West African Central Bank (WACB)

The Bank when established, would be the common Central Bank of the zone, while the existing National Central Banks will be national branches of the WACB;

iv) WAMZ Stabilization and Cooperation Fund (SCF)

This is a fund being set up to provide financial assistance to member states that may experience temporary disequilibria in their balance of payments. Its capital base of $100 million is being subscribed by member states in two instalments of $50 million.

The Council of Ministers and Central Bank Governors is the supervisory authority of the WAMZ and its institutions, and is responsible for its operations.

3.3.3 Joint Economic Ventures

The Economic Community of West African States (ECOWAS) was established through the 'Treaty of Lagos' in 1975. In 1976, Cape Verde, an island 500km off the coast of Senegal, joined the community while Mauritania withdrew in 2000. A revision was done to the treaty in Cotonou in 1993 to address the issues of improved movement of people, goods and collective development of the region. ECOWAS is, at times, challenged because of the difference in values and economic conditions of the Francophone and Anglophone countries in the region. The body has been successful in some initiatives like the Nigeria-led ECOMOG which contributed positively to the resolution of the crisis in Liberia and Sierra Leone. This achievement has not been surpassed by any other regional body in Africa.

ECOWAS is over three decades old and has very little to show for this collaboration. Economic integration is difficult because eight countries, mostly Francophone (except Guinea Bissau), have the same currency (CFA Francs) with the same value and have not been too willing to give up this currency. Though CFA used to be linked to the French francs, it has become increasingly obsolete with the introduction of the Euro. This notwithstanding, CFA is still controlled externally with a lot of influence from the French government. The Anglophone countries also have a plan to merge and have a common currency called Eco. The establishment of this common currency should make trade and economic integration convenient. In future, the Eco and CFA are expected to merge together to form a common currency

just like the Euro. The possibility of this dream coming to reality will depend on stronger currencies, efficient budget management and shift from consumer nation to producing economies.

The issues at the borders are complex and challenging. This prompted the ECOWAS commission initiative which converts all member states borders to become ECOWAS Zone resulting in 'Joint Borders', rather than Country A side of the border or Country B border. Though not the panacea to the various issues and challenges at the borders, it will go a long way in addressing the case of touts and the complacent officers at those borders.

3.3.4 Mobility of Labour and Capital

On 29th May 1979, the Protocol on the Free Movement of Persons, the Right of Residence and Establishment was adopted by ECOWAS member states, and Nigeria ratified this Protocol on 12th September 1979. This legal instrument confers on West African nationals the right to move freely and to establish for purposes of engaging in income earning activities. Without the free movement of persons, the achievement of regional economic integration would be illusory. The Protocol states in its preamble that:

> citizens of member states shall be regarded as community citizens and accordingly Member States undertake to abolish all obstacles to their freedom of movement and residence within the Community. That member states shall by agreement with each other exempt Community citizens from holding visitor's visas and residence permits and allow them work and undertake commercial and industrial activities within their territories.[42]

Free movement is a term that encompasses the five (5) rights granted to ECOWAS citizens. These are:

1. Right of Entry
2. Right of Stay

[42] Chapter IV, Article 27 of the Treaty of ECOWAS. Also Chapter VIII, Article 32 of the ECOWAS Revised Treaty On Freedom of Movement and Residence, ECOWAS Commission, Abuja, Nigeria.

3. Right of Residence
4. Right of Establishment
5. Right of Access to the Community Court of Justice

a) *Right of Entry*

A national of a member state, can cross a land border and travel by air between ECOWAS member states without visa. A citizen is only required to be in possession of one of the following valid document;

i. National Identity Card
ii. National Passport
iii. ECOWAS Travel Certificate

b) *Right of Stay*

A citizen of ECOWAS is free to stay up to 90 days in the territory of a member state without any formality. Where he stays beyond the time, all he needs do is to contact the Immigration Service of the host country for a residence permit.

c) *Right of Residence*

Any citizen of an ECOWAS member state admitted free of visa requirement into the territory of another member state may reside therein if he so wishes, on condition of applying for a Residence Permit.

d) *Right of Establishment*

Any citizen of an ECOWAS member state is free to establish in another member state and carry out any industrial, commercial, cottage-type or liberal activity. Such persons are entitled to the same treatment as is granted the nationals of the host country in the following areas:

i. Job security

ii. Possibility of participating in social and cultural activities

iii. Re-employment in cases of loss of employment for economic reasons

iv. Access to training and refresher courses

v. General educational establishment and professional training centres accessible to their children;

vi. Access to social, cultural and health centres.

A citizen can acquire and exploit landed property in another member state, and can also establish an agency or company. Such assets and investments in the host member state cannot be confiscated on a discriminatory basis. Where an individual is victim to such a practice, he could demand compensation, and the ECOWAS Court of Justice is there to enforce such rights.

e) ***Access to the Community Court of Justice***

Citizens of ECOWAS have avenues for seeking redress whenever wronged in the exercise of rights in matters relating to free movement of persons and goods. Such citizens may have direct recourse to the Community Court of Justice when they are maltreated by an individual or corporate persons at the borders. The role of the Court is to assist in removing the obstacles impeding the realisation of the objectives of ECOWAS.

In a decided case of ***Afolabi Olajide v. Federal Republic of Nigeria***,[43] which facts were that on 9th August 2003, the applicant, Mr. Afolabi Olajide, a national of the Federal Republic of Nigeria and a businessman, concluded arrangements with his customers in Benin Republic for him to purchase goods. In the course of his normal and legitimate business he set out on his journey and upon reaching the border between Nigeria and Benin at Seme, he realized

[43] ECW/CCJ/APP/01/03 JUDGMENT NUMBER: ECW/CCJ/JUD/01/04 delivered on 27 April 2004. It was the first case to come before the court in 2004.

that the border had been closed by the Federal Republic of Nigeria. Despite his pleas to the Nigerian authorities at the border, he was not allowed to cross the border. He returned home afterwards, whereupon he sued the Federal Republic of Nigeria for a declaration that the unilateral closure by the Federal Republic of Nigeria of her border with Benin Republic is unlawful, a breach of Article 4(g) of the ECOWAS Treaty and a violation of the Plaintiff's Right to freedom of movement of his person and goods as guaranteed by the Revised Treaty of ECOWAS. The applicant further averred that as a result of the closure of the border he incurred heavy financial losses.

The Community Court of Justice held that Article (3) of Protocol A/P1/7/91 under which the plaintiff instituted his action is unambiguous and does not grant direct access to individuals for breach of their fundamental human rights, and that the Court has to give effect to the plain words or terms of the Protocol, irrespective of its consequences. The Court ruled that under the Protocol only member states could institute cases.

The Court's ruling marked the commencement of discussions, headed by the Judges themselves, over the need to amend the Protocol to allow for legal and natural persons to have standing before the Court.

In January 2005, the Community adopted an additional provision to the Protocol to permit persons to sue member states. Beyond this monumental change, the Council took the opportunity to revise the jurisdiction of the Court to include review of violations of human rights in all member states. This language made clear that the sources of law to be applied by the Court under its original Protocol would include not only general principles of international law, but also those in relation to human rights.

ECOWAS set out to pursue an agenda for implementation of the Protocol on free movement of peoples and goods by seeking to eliminate all non-tariff barriers, simplification of customs

and transit procedures and drastic reduction in control posts on international roads. It sought to harmonize its Brown Card Scheme with the UEMOA CIMA Code Scheme, to take care of third-party liability and the introduction of the ECOWAS Passport. The successful completion of the scheme was envisaged to open up the door to greater economic gains for the member states of the community in terms of increased expansion in trade due to free mobility of factors of production, increased capital flows and direct investment due to attractiveness of the large integrated market, and balanced industrialization due to greater specialization and economies of scale.

So far, however, ECOWAS internal market programme remains largely incomplete due to the low commitment and lack of effective compliance on the part of member states in the implementation of regional decisions, some of which are manifest in inability of some member states to eliminate tariff irregularities and ambiguous import prohibition lists.[44] For instance, Nigeria's import prohibition does not clearly exclude ECOWAS countries owing to its fear that countries outside the region could seize the opportunity to bring their goods into the country through other ECOWAS countries. This in turn, stirred some of the prohibitive business policies implemented by the Ghanaian government. An example is the discriminatory demand on Nigerian film producers in Ghana to pay a fee of $5,000.00 for every movie produced in that country.

Furthermore, the region is yet to even successfully establish a Free Trade Area which is the first level of the integration process. The member states' attitude towards gain/loss as well as the time frame in which regionally distributed benefits are to accrue in relation to the protocol is reflected in the numerous check points existing along the community's highways contrary to the provisions of the protocol.

[44] Oluyinka A. [2010] The Slow Pace of ECOWAS Trade Liberalisation Scheme. www.bussinessdayonline.com (Retrieved 21 June 2011).

Table 1.0: Checkpoints along Intra-ECOWAS Highways

High Ways	Distance	Checkpoints	Checkpoints Posts per 100km
Lagos – Abidjan	992Km	69	7
Cotonou – Niamey	1036Km	34	3
Lome – Ouagadougou	989Km	34	4
Accra – Ouagadougou	972Km	15	2
Abidjan– Ouagadougou	1122Km	37	3
Niamey – Ouagadougou	529Km	20	4

Source: Anadi, Sunday K. [2005) Interviews and Observations along the highways and border posts running from Lagos, Nigeria through Benin Republic, Togo and Accra, Ghana.

Most ECOWAS member states derive the bulk of their revenue from indirect taxation which accounts for a relatively high percentage of all their budgetary income, and most of these taxes are actually import and export duties. This therefore, constitutes a major hindrance in the implementation of Articles 12, 13 and 14 of the Revised Treaty which concerns removal of customs duties. Thus, the existing tax structure poses the problem of how best to provide adequate and appropriate compensation for those member states drastically affected by the elimination or lowering of import duties through liberalization.

Literally, liberalization is expected to provide substantial benefits to member states in the long term from the envisaged elimination of tariff barriers and other trade restrictions. But a close look at West Africa indicate most of the member states are mainly producers of primary products, which compete with and not complement each other. This indeed makes it quite difficult to achieve the principal aims of Articles 12, 13 and 14 in relation to the attainment of a customs union. Due to the perceived negative effects of elimination of tariff barriers, member states remain strongly reluctant to implement fully community decisions on tariff reduction and elimination, thus leaving the liberalization programme substantially incomplete.

Resolving the controversies dogging the adoption of the Common External Tariff (CET) is a major step in the establishment of a customs union under the ECOWAS integration agenda, and without which, West Africa cannot move forward on the Economic Partnership Agreement (EPA) negotiations with the European Union. The negotiations which started in 2004 and were to have been concluded in 2007, have been stalled owing to disagreements in the ECOWAS-UEMOA Joint Committee on issues which include the scope of opening ECOWAS markets to products from the European Union. The ECOWAS CET is an instrument for tariff setting and liberalisation which ought to take care of a common market access within the ambits of regional trade and economic integration in the sub-region. For this reason, ECOWAS Heads of State and Government at their 2001 summit required member states to harmonise their import tariffs with the UEMOA CET adopted by 8 mainly francophone member states in 1998. Till date however, not much has been done in this regards owing to fears by Nigeria that the effect of the UEMOA CET will be devastating for its industries in various dimensions, as it will enable European, Chinese and Far Eastern exporters to open ports in neighbouring ECOWAS states and through them export to Nigeria taking advantage of ECOWAS Trade Liberalisation Scheme (ETLS) at near zero duty thereby beating even the CET[45].

There is therefore need for a common position to be reached as currently, the ECOWAS CET does not recognise waivers while the same are statutory instruments in Nigeria, which is a frontline and determinant member state player in the sub-region.

3.4 Custom Union

[45] Ken Ukaoha; Member of ECOWAS-Nigeria Negotiating Team on the EU-West Africa Economic Partnership Agreement. Thisday Newspaper Vol.16, 8 December 2011, p. 41.

Kuta I.,[46] states that the origin of the ECOWAS Trade Liberalisation Scheme (ETLS) dates back to November 1976 when the Summit of Heads of State and Government met in Lome, Togo to conceive the idea and adopt it. The Scheme took off in 1988 with the effective adoption of the Protocol.[47] However, Nigeria signed the Protocol on 29th May 1979 and ratified it on 12th September 1979.

Article 35 of the Revised ECOWAS Treaty established the Scheme (ETLS) with the following statement:

> There shall be progressively established in the course of a period of ten (10) years effective 1 January 1990 ... a custom union among the member states. Within this union, Custom duties or other charges with equivalent effect on community originating imports shall be eliminated. Quota, quantitative or like restrictions or prohibitions and administrative obstacles to trade among the member states shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the member states from these countries shall be established and maintained.

In the light of the above, the Authority of ECOWAS Heads of State and Government formally reaffirmed its commitment to the implementation of this Protocol by formally launching the Scheme (ETLS) on 1st January 1990. They established a schedule of gradual liberalisation of trade (removal of tariffs/non-tariff barriers, quotas, quantitative restrictions and prohibitions) over a period of ten (10) years. The relative development of member states was incorporated into this schedule whereby relatively developed member states like Cote d'Ivoire, Ghana, Nigeria and Senegal were to eliminate tariffs/restrictions on intra-community trade within six (6) years from 1990 – 1996, while others were to achieve same objectives within 8 – 10 years.

Based on the preamble of chapter 8, Articles 35, 36, 37 and 38 of the Revised ECOWAS Treaty, the objective of ECOWAS Trade Liberalization Scheme is aimed at;

[46] Kuta I. A. [2006] ECOWAS Regional Programmes: The MCIA and the Implementation of the ECOWAS Trade Liberalisation Scheme (ETLS). MCIA Occasional Paper, Series No. 1 Vol. 3 at p. 1

[47] A/PI/I/03

a) Removing all tariff barriers to trade.

b) Establishing a common customs union.

c) Establishing common external tariff structure aimed at protecting goods produced in member states, and

d) Abolishing all custom duties and taxes of similar effect.

The following are groups of goods covered under the Scheme:

1. **Unprocessed goods** - These are livestock, fish, plant or mineral products that have not under gone any industrial transformation.
2. **Traditional Handicraft Products** - These articles made by hand with or without the help of tools, instruments or devices that are activated directly by the Craftsman. Such include wooden cooking utensils, fancy goods, small cabinet work, mats, carpets, bed linen, footwear, headgear, prepared feathers, etc.
3. **Industrial products** of Community origin.

These goods are to be circulated freely, fully exempt from import duties and taxes and are not subject to any quantitative or qualitative restriction, and are also granted the following concessions:

i) Total exemption from import duties and taxes

ii) No quantitative restriction,

iii) Non-payment of compensation for loss of revenue for items (1) and (2) as a result of their importation.

A highlight of the conditions to be fulfilled by the importer is made to include;

i) Goods must originate in member states of the Community.

ii) Goods must appear on Iist of products annexed to the decisions Iiberalising trade in these products.

iii) Goods must be accompanied by a certificate of origin and an ECOWAS export declaration form.

iv) Such goods must be subjected to the import clearance procedure spelt out under the Import and Export Guidelines.

v) Exemption of goods whose value is not above $500 from documentation.

vi) The beneficiary of the Scheme must be Resident within the ECOWAS Sub-region.

The ***first stage*** of ECOWAS trade liberalization scheme entails the establishment of a Free Trade Area, the benefits of which are regionally distributed and long term in nature. Free trade area involves elimination of all customs duties and taxes of equivalent effect upon which most of the member states depend heavily for raising government revenue for the provision of social services to their people.[48] This process will gradually result into a customs union with the enthronement of a common tariff structure and other economic policies towards third countries with the ultimate aim of an economic union through the harmonization of economic, agricultural, industrial and monetary policies.

The ***second stage*** of ECOWAS trade liberalization process entails the establishment of a common market through a customs union. It was envisaged that the successful completion of the first stage [free trade area which so far has remained largely incomplete] would automatically lead to the attainment of a common market. The first problem confronting the community in this regard was the existence of a rival union, called the West African Economic and Monetary Union (UEMOA), comprising the francophone member states of the community with an already existing common external tariff and discriminatory trade preferences. Before now, the UEMOA countries consider the rest of ECOWAS

[48] Overview of ECOWAS Free Trade programme: Articles 35-38 of the ECOWAS Revised Treaty, ECOWAS Commission, Abuja, Nigeria.

countries as "third countries quite against the provisions of ECOWAS conventions and protocols…"[49]

In all cases, full liberalisation was to have been attained by January 2000 to enable the establishment of a Free Trade Area and the adoption of a Common External Tariff and a Customs Union in the ECOWAS sub-region. While the Francophone states of ECOWAS who belong to the West African Economic and Monetary Union (UEMOA) were able to attain this objective and establish a Customs Union effective 1st January 2001, the Anglophone and other countries of ECOWAS could not. Consequently, the dateline for all member states to liberalise intra-community trade had to be extended to December 2007, so that the Common External Tariff (CET) can be adopted by 1st January 2008 to usher in the Customs Union in ECOWAS as a regional bloc. Unfortunately, to date, this is yet to be achieved.

The main thrust of the liberalisation programme is on the free movement of unprocessed goods and traditional handicraft products, which should be exempt from import duties and taxes. The second aspect of the programme involves the gradual removal of customs duties and equivalent taxes on industrial products of community origin and, thereafter the lifting of non-tariff barriers to intra-community trade.

The list of unprocessed goods and traditional handicraft products as well as the nomenclature of non-tariff barriers to be lifted were approved as far back as 1979, which means that trade in these products has, to all intents and purposes, been liberalised.

3.4.1 Challenges to Trade Expansion Programme

a) ***Failure to Implement Provisions***

[49] Annual Report of the Executive Secretary [1998/1999]: Problems Confronting the ECOWAS Common External Tariff Programme, ECOWAS Commission, Abuja, Nigeria, p.108.

Despite the priority attention given to the promotion and development of intra community trade, the ECOWAS trade liberalisation scheme has been marked by the unwillingness of many countries to implement its provisions relating to elimination of tariff and non-tariff barriers to trade and the functioning of a compensation mechanism which is reflected by:

i. difficulties in standardising and harmonising customs documents and tariff schedules;
ii. failure to extend total exemption from duties and taxes for unprocessed goods and traditional handicraft products;
iii. failure to apply preferential tariffs to approved industrial products;
iv. continued existence of non-tariff barriers, especially in the case of food and textiles;
v. absence of certificates of origin for unprocessed goods and for industrial goods, and failure to produce both the certificates of origin and the export declaration;
vi. stringent rules of origin which often exclude the bulk of manufactured and agricultural products produced by member states from the Community's trade liberalisation programmes;
vii. problems in balancing the distribution of benefits and costs of economic integration;
viii. rigid border formalities and customs officials' intransigence;
ix. little awareness by the public of the scheme's potential benefits;
x. failure to pay up contributions to the compensation budget. An integral part of ECOWAS compensation mechanism is the Fund for Co-operation, Compensation and Development. It was set up to provide compensation to member states that have suffered economic losses as a direct result of ECOWAS policy. It obtains compensation funds from a variety of sources including contributions from member states based on their economic resources, income from ECOWAS enterprises, and funds from bilat-

eral and multilateral sources. The ECOWAS Fund for Cooperation, Compensation, and Development, has an authorized capital of $500 million.

b) ***Non-Integration of Production Structures***

Efforts towards co-operation in agricultural and industrial development have been constrained by the opposition of member countries to entitle ECOWAS with some form of control over the structure and content of their development plans. Delayed harmonisation of sectoral policies in agriculture, industry, transport, and energy, and absence of basic studies for the formulation of such policies, have also translated into very little progress in the integration of production structures.

c) ***Inadequate Infrastructure Development***

ECOWAS has completed 83 per cent of the Trans-Coastal highway, 88 percent of the Trans-Sahelian highway, paved 67 per cent[50] of the interconnecting roads, and established limited telecommunication links among member states. Nonetheless, there remains obstacles such as:

i) satisfying the demand for infrastructure services, particularly in the areas of electricity, water supply, transport, telecommunications, sea ports and airports;
ii) acquiring a certain minimum technical capacity to identify and promote specific infrastructure development projects, including the capacity to undertake feasibility studies;
iii) securing external financing for the implementation of large-scale infrastructure projects at the sub-regional level.

It may be noted that the success of the liberalisation scheme lies squarely in the ability of the member states to implement successfully, each stage of the integration process. Obviously, this is not the case, since prompt ratification of the Community's Protocols is neither assured

[50] ibid

nor is the institutionalization of required national legislations to enforce Community decisions and programmes.

Additionally, since many of the states depend heavily on custom duties for raising revenue, commitment to elimination of tariff barriers remain evidently low, the continued presence of multiplicity of check-points on intra-regional highways is a manifestation of the degree of shallow commitment to free movement of peoples and goods within the community. There is therefore an urgent need for advocacy towards ensuring deliberate action on the part of member states to deepen commitment towards complying with the letter and spirit of the relevant protocols if the dreams of the founding fathers of ECOWAS are to be realised.

3.5 *Challenges to Achievement of the Aims and Objectives of the ECOWAS Treaty*

The promotion of harmonious economic development, co-operation and integration of the ECOWAS States, as envisaged in the preamble of the ECOWAS Treaty, can only be achieved if predicated on a regime of harmonized laws adopted and applied as supranational laws by the ECOWAS States. The desire for harmonised Business Laws in ECOWAS States is in conformity with the overall aims and objectives of the ECOWAS Treaty in many regards, including the attainment of the status of an Economic and Monetary Union as provided for in Articles 54 and 55 of the Treaty.

Some of the major challenges to achieving the aims and objectives of the Treaty includes but not limited to:

i. *lack of or non-promulgation of a common supranational legal tool* adopted by ECOWAS States as binding. Article 3(h) of the Treaty is a ready tool in overcoming this challenge. This Article, by its character, is transnational and should serve as the root and legal vehicle for the promotion of, and the adoption of harmonised Business Laws in the region, including the OHADA laws. It provides for "**the establishment**

of an enabling legal environment". The economic and monetary union as set out in Articles 54 and 55 of the Treaty is unattainable, without first creating a secured legal environment with the attributes of certainty. This poses a strong challenge to the political will of the various ECOWAS States and brings to the fore, the issues of when and how an enabling legal environment will be created. If and when the legal environment is created the issue of suitable models of harmonised Business Laws will be ripe for consideration and adoption.

ii. Lack of political will in the implementation of the provisions of the Treaty. For example, the delay in the implementation of a common currency.
iii. Non-adherence to Protocols established pursuant to the ECOWAS Treaty.
iv. Subsisting trade barriers between member states.

The establishment of an enabling legal environment as provided for in Article 3(2)(h) is the most important legal prerequisite for Harmonisation of Business Laws in the region. The absence of an enabling legal environment and harmonized Business Laws constitutes a major obstacle to doing business in the region, including investments. Unfortunately, in over thirty-five years of the existence of the ECOWAS Treaty, the provision of Article 3(2)(h) has never been invoked to create the enabling legal environment. Unless and until this provision is invoked for the purpose of harmonisation of laws within the region, the goal of regional economic and social integration, and the dream of an Economic Union cannot be realised.

3.6 Harmonisation of Laws

The Economic Community of West African States (ECOWAS) was established by Treaty to promote economic integration in ".... all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters ...." The ECOWAS countries are Benin, Burkina Faso, Cape Verde, Cote D'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia,

Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo with a total population of over Two Hundred and Ninety Million people.[51]

Nigeria, an Anglophone country that operates the Anglo-Saxon legal system is surrounded by Francophone countries namely: Benin, Chad, Niger and Cameroun. Ghana, another Anglophone country that also operates the Anglo-Saxon legal system is also surrounded by Francophone countries, namely: Togo, Ivory Coast, and Burkina Faso. Liberia, Sierra-Leone and The Gambia, all Anglophone countries, are similarly surrounded by Francophone countries. In other words, all the Anglophone countries in ECOWAS, operating the Anglo-Saxon legal system, are effectively surrounded by Francophone countries operating the civil law system and OHADA (Organisation pour l' Harmonisation en Afrique du Droit des Affaires) Treaty and Laws. All but two, (Cameroon and Chad), of the OHADA countries surrounding the ECOWAS Anglophone countries, are members of ECOWAS.

Mbaye[52], stated that OHADA is a legal tool thought out and designed by and for Africa, to serve the purpose of regional integration and economic growth.

The state of Business Laws in the ECOWAS States and the need for harmonization in pursuance of the aims and objectives of the ECOWAS treaty, call for the examination of the relevant Articles of the ECOWAS Treaty and a consideration of how the provisions of the Articles can best be applied and put to use.

The subject matter is discussed within the context of the relevant Articles of the ECOWAS Treaty, which by its explicit provisions, render the treaty a tool for the adoption of the OHADA Treaty and Laws in the Anglophone ECOWAS States.

[51] http://www.aidfortrade.ecowas.int/countryprofiles

[52] Justice Keba Mbaye (deceased). A Judge and Member of International Court of Justice and International Olympic Committee was the former President, Association for Unified System of Business Laws (UNIDA) and the first President of OHADA.

In order to have a clearer understanding of the relevance and inevitability of the ECOWAS Treaty as a tool for the adoption of the OHADA Treaty and Laws in the region, the creation and functions of some of the legal structures and institutions established pursuant to the provisions of the Articles of the ECOWAS Treaty are also examined. Some ECOWAS legal structures and institutions relevant to this paper are also compared to those of OHADA.

In a presentation which harped on the inevitability of Harmonised Business Laws in the Region, Akinbote[53], citing the West Africa Gas Pipeline Project contract as a practical demonstration, stated that the project was conceived as a tool for economic integration and a boost to the economies of the ECOWAS States. The project is for the construction of gas pipeline from Nigeria, through the Republic of Benin and Togo and ending up in Ghana in the first phase. Crude and refined petroleum products are to be pumped through gas pipelines from Nigeria to the three countries. The project also involves the construction of metering stations in Alagbado in Nigeria, Cotonou in Benin, Lome in Togo and Tema and Takoradi in Ghana; independent power source, a warehouse, cork shop, control room, offices; the installation of related communications, data acquisition, and control systems and the provisions for onshore tie-ins with approach pipelines.

The execution of the major contract involves numerous cross-border commercial transactions, necessitating the negotiation and drafting of international or cross-border commercial contracts with in-built dispute resolution mechanism. The main contract and several sub-contracts involving third parties take cognisance of the two main legal systems in the Region – The Civil Law operated by the Francophone countries of Benin and Togo, and the Common Law operated by Ghana and Nigeria.

[53] Akinbote, A. (2008) The Ecowas Treaty As a Legal Tool for Adoption of Ohada Treaty and Laws by Anglophone Ecowas States. A Paper presented at the OHADA 2008 Conference held at *the Faculté de Droits, Université d'Orléans, France, 2nd – 4th July.*

The project apart from involving third parties, also raises many transnational legal issues. The absence of Harmonized Business Laws is evident in the negotiations and drafting of the main contract and sub-contracts. The Business Laws in Nigeria are not the same in Ghana in spite of the Common Law heritage.

OHADA Laws which operate in Benin and Togo and regulate business in these two countries create a more secure legal environment and certainty unlike what obtains in Nigeria and Ghana owing to lack of harmonised Business Laws. The application of OHADA Laws in Benin and Togo might simplify legal issues in the process of execution of the contract even though legal obstacles are not removed.

The ECOWAS Treaty offers an opportunity to evolve meaningful, pragmatic and effective strategies for the adoption of the OHADA Treaty and Laws in the Anglophone ECOWAS States. The aims and objectives of the two treaties are very similar and can be complementary. The common goal of the two treaties is the promotion and achievement of economic and social integration and development through the instrumentality of the Treaties and Laws. Harmonisation of Laws is the veritable means and the starting point of achieving the goals set out in the two treaties, particularly as the purpose of regional and economic growth in the sub-region has remained largely unrealised, and progress can only be achieved on a substantial and rapid scale through the instrumentality of law and marriage of legal systems, principally the civil law and common law systems.

At a sub-regional conference in Accra[54], on strategies for the adoption of OHADA treaty and laws, experts in regional development have posited that OHADA remains the only adoptable

[54] Conference On Strategies for the Adoption of Ohada Treaty and Laws in Anglophone ECOWAS States organised by the Ohada Clubs of Togo and Cote d'Ivoire between 27 – 29 March 2008.

model particularly as its focus is on harmonization of business law (which is the "raison d'etre" of OHADA).

At the first OHADA seminar in Lagos held in May 2004, the convener[55], remarked that globalization derives its full meaning within the context of regional integration, and since globalisation is the order of the day, the appropriate time has come when African countries must rise to the challenges of harmonizing its different laws to take the continent away from the stigma of a developing status to that of a developed one. He also remarked that African countries need better legal cooperation to bring about certainty in the business law among African nations and that cooperation does not necessarily create a loss of sovereignty or a situation where one of the contracting states becomes helpless.

Dr. Martha Tumnde (née Njikam) of the University of Buea, Cameroon also remarked at the conference that most African countries inherited laws from Europeans, which resulted in patchwork of different laws that created a state of legal uncertainty. This legal balkanization of the continent created a state of insecurity for foreign investments. The present movement therefore, tends towards the reconciliation of laws in the area of business law. The purpose of harmonization is basically to end this trend of balkanization.

One very important point and conclusion that can be drawn from the Lagos OHADA Conference is that Africa must end balkanization of its different laws and legal systems and embrace harmonization of business laws and legal systems in order to attract investments and ensure economic growth.

The process of harmonisation of business laws may be treaty based and the ECOWAS Treaty provides the fulcrum for this. There may therefore be no need to sign another treaty. The ECOWAS Treaty and the OHADA Treaty are coextensive and not mutually exclusive.

[55] Late Professor Ademola Yakubu, Faculty of Law, University of Ibadan, Nigeria

What therefore needs to be done is the collective adoption by the ECOWAS States of the OHADA Treaty as may be amended to accommodate both the civil law and common law legal systems with the aim of widening the scope of the Treaty and extending membership to the Anglophone States.

Alternatively, Harmonized Business Laws based on the OHADA model or any other model that is suitable for both legal systems can be adopted by incorporation in the ECOWAS Treaty in pursuance of its aims and objectives.

The advantages of harmonization of Business Laws cannot be over emphasised. It encourages free flow of investments, cross-border trade, certainty in business law, legally secured environment, political stability, economic growth and regional economic integration.

The political will of OHADA States to have a Uniform Business Law has been ably demonstrated at Port Louis (Mauritius) on 17th October, 1993. The continuous existence of OHADA as an entity with clearly set-out goals is an assurance that their political will has not diminished. The Anglophone States of ECOWAS with the common law heritage, must demonstrate the political will and espouse the ideals of harmonization. Akinbote said this may take time but the states can be inspired by the Chinese proverb – "a journey of a thousand miles starts with the first step". The first step must be taken in an organized manner in pursuance of the common goal of harmonized Business Laws.

The harmonisation of laws must not only be well planned and coordinated, it must also be put into effective cross-border use and practice, through evolution of acceptable strategies to achieve harmonization of laws beginning with Business Laws.

CHAPTER FOUR

PROBLEMS AND PROSPECTS OF ECONOMIC INTEGRATION

4.1 Problems of Economic Integration

ECOWAS has no doubt made considerable progress on certain fronts, particularly on monetary, security, business and judicial matters. This is especially reflected in the OHADA treaty which framework, in spite of the overbearing influence of member states, ensures through its institutions, the supranationality of its jurisdiction on matters relating to the harmonized business laws. This is a reflection of the beneficial nature of supranationalism and its potential in addressing some of the challenges of the sub-region.

In spite of these achievements, however, there is still need for improvement. As will be explained here-under, the worrying question relates to the glaring disconnect between commitment to supranationalism at public fora and the creation of an enabling environment for it to be operational. To put it simply, there has been a gross lack of political will on the part of West African states to translate goals and objectives into reality. Even though integration requires that each constituent party have clearly defined national plans and strategies to achieve economic development, most ECOWAS leaders have been unable to make the changes that will sustain growth and development while others are not prepared to subordinate immediate national plans or to cede essential elements of sovereignty to the regional body.

4.1.1 Institutional Challenges

One major impediment to the operation of supra-nationalism in West Africa is the fact that ECOWAS states are not politically and democratically stable enough to implement integration initiatives. The sub-regional body operates on the whims of leaders of member states, often run before now, by dictators whose actions most often than not, are influenced by personal considerations, rather than to fulfil the ambitious objectives of the organisations. It is thus not unlikely for integration initiatives to be derailed in the event of change of government in member states or personal differences among Heads of State or Government.

Since decision making powers are firmly placed in the hands of Heads of States, the institutional machinery of most West African states abhor the transfer of sovereignty to regional institutions.

There is a strong nexus between the effective implementation of integration initiatives and the autonomy of the regional body. The ability of the institution to act above member states, in respect of specific areas of common interests, ensures that integration is firmly placed in capable and neutral hands, insulated from the vagaries of national politics. It also guarantees that integration proceeds at a significant pace since decisions will not always be taken by

unanimity or consensus. In the case of the OHADA, it could be argued that the successful implementation of the harmonisation of business law is largely attributable to an independent and reliable Court of Justice.

Another factor hampering the smooth running of integration initiatives is the ***lack of funds***. The poor state of the economies of most member states coupled with their obligations to pay annual dues to other various regional and inter-continental organisations they belong to, largely contributes to the inability to discharge their financial obligations. There is no gain-saying the point that the availability of funds is crucial for the virility of any institution, most especially if charged with the responsibility of furthering a capital intensive project such as that of fostering regional integration and co-operation.

4.1.2 Legal Problems

In some Jurisdictions, business Law for the purpose of harmonization includes commercial law, labour and consumer laws, intellectual property and accounting laws. Of the fifteen ECOWAS member States, nine are State parties to the OHADA legal regime and the remaining six are Nigeria, Ghana, Sierra Leone, Gambia, Liberia and Cape Verde Island. Out of the six non-OHADA States, only four are Anglophone common Law oriented, namely, Ghana, Nigeria, Sierra Leone and Gambia. With Liberia, there are five Anglo-American Legal Jurisdictions in West Africa. The sources and functions of Commercial Law in the above mentioned common law countries of West Africa are similar or same due to their colonial history and legacy subject to reforms carried out in different countries since independence.

Integration cannot be achieved without some measure of supernationalism. The experience of the Economic Community of West African States (ECOWAS), though not perfect, confirms that unless States give up some part of their national sovereignty and empower regional institutions to make binding decisions, and to implement them, little progress can be made. Eco-

nomic integration is about member States adopting and implementing measures that would make doing business within the grouping cheaper by removing all constraints to intra-regional trade and investment and adopting measures which are conducive to trade and investment.

One of the non-tariff barriers to intra-regional trade and investment is the disparity in the national commercial or business laws. It is submitted that the elimination of legal obstacles is vital to the effective functioning of any economic integration scheme in Africa. Harmonization involves the convergence of various legal systems, laws or regulations, policies or practices which governments or organisations, agree in a friendly way to make them the same or similar, or to make them fit in well with each other. Harmonization brings about certainty in the law or practical and predictable rules for the determination of the appropriate law to apply in the realization of practical problems on uniform basis. It creates a culture of legal protection of community citizen's rights to move freely, engage in intra regional trade and investment activities without the fear of not getting accurate advice about the applicable rules, right of access to justice and legal remedies and enforcement of judgments of one country in another country within the regional group. It is worth noting that **Article 57 of the Revised Treaty** provides that ***Member States undertake to cooperate in judicial and legal matters with a view to harmonizing their judicial and legal systems. The modalities for the implementation of this arrangement shall be the subject matter of a Protocol.*** It is therefore regrettable that no concrete measures to date have yet, been taken to harmonize the legal systems of the sub-region, especially, the conflicting business legal regimes of diverse Anglophone and francophone jurisdictions in the region. It is the consensus of contemporary legal experts that no economic integration effort is achievable in a sustainable manner without a legal integration through harmonization or uniformity of business laws in the region. The rea-

son being that harmonization of business laws can only be catalyst in the development process and guarantees access to justice, security of transactions and investment in West Africa.

4.1.3 Failure of implementation of Integration Laws and Policy

A core feature of supranationalism is the binding nature of laws emanating from international institutions. In order for such laws to have teeth, it is necessary that they either enjoy equal legal status with domestic laws or in some cases, supercede them. This is where the doctrinal question of the relationship between international and domestic law comes into the picture. In international law, there are three theories governing such a relationship; monism, dualism and harmonisation. According to monists, law is hierarchical, with international law and domestic/national law being part of the same legal order. Therefore, international law applies in the domestic system without any need for its incorporation. Dualists view that both international law and domestic law are two distinct fields of law. Furthermore, in order for international law to be binding in the domestic system, there is a need for some process of incorporation or transformation. Lastly, the harmonists seek to arrive at some form of convergence by holding that where there is a conflict between the application of international law and domestic law, the court should apply the rules operating within its jurisdiction. The consequence of this is that the court may apply either of the two[56]. Placing these theories within the ECOWAS context, the issue is not so much the nature of the legal framework, be it monist or dualist, but rather the lack of political will to domestically implement international law in the form of integration programmes such as elimination of tariffs and free movement of persons. In spite of the agreement on free movement of persons and goods within ECOWAS, it has been observed that security agents continue to harass and intimidate citizens across ECOWAS fron-

[56] Umozurike U. [2005] Introduction to International Law. Ibadan, Spectrum pp. 47 – 48.

tiers[57]. Also, the proposed common currency, the Eco, for the West African sub-region which was expected to be launched in December 2009, could not be realised due to the non-implementation of convergence criteria by member states. The routine disregard or non-implementation of these policies decimates the relevance of institutional machinery.

Also related to the above, is the issue of the dichotomy of the legal tradition bequeathed to West Africa by colonisation. A principal effect of colonisation is the adoption of the legal system of the colonialists. As such, member states have divergent rules and regulations governing specific issues. Citing the example of the Mano River Union (MRU), Kufor K.,[58] shows how the income tax regimes in Sierra Leone, colonised by Britain, frustrate foreign investment while the tax regimes in Liberia, influenced by the United States of America, is more favourable. The consequence of such dissimilarities is the uneven implementation or outright disregard of policies by member states. This reality is more evident in the practise of some West African states to rather integrate around shared legal system [e.g. OHADA and WAEMU]. There is no doubt that a shared legal system makes integration, especially the harmonisation of laws easier.

It is important that in order to translate the vision of the regional integration into practise, member states must be prepared to embark on the reconciliation of laws in various areas. In this regard, more efforts should be geared towards identifying the common denominators in each of the legal systems and more importantly, devising laws which suit West African peculiarities. For example, lessons and ideas could be drawn from member states customary laws.

4.1.4 Fear of Economic Dominance

[57] ECOWAS, Media and Challenges of Integration. The Punch available at http./h2.punchng.com/Articl.aspx?theatic=Art200901022225112 (Retrieved 2 January 2009).

[58] Kufor K. [1996] **Securing Compliance with Judgements of the ECOWAS Court of Justice**. African Journal of International and Comparative Law Vol. 8 pp. 6 – 7.

One of the principal motivations behind a state's participation in regional integration initiatives is the expectations of immediate and long-term welfare gains. In a situation where a country loses out on the benefits accruing from integration schemes, there is a strong possibility of such a country either committing half-heartedly to integrating objectives or completely pulling out. As Molle[59] points out, two reasons underline the need for redistribution policies in a regional integration scheme. The first is the 'efficiency argument' which holds that uneven distribution of benefits such as production factors and economic activities prevents the economy from reaping full profits and attaining maximum potential. The second is the 'equity argument' which states that inequality is socially unacceptable and morally unfair.

The position with regional integration in West Africa is the likelihood that stronger economies may end up deriving maximum advantage to the detriment of other member states. For example, until 2010, Nigeria contributed 80% of the Experts required for sub-regional and continental development assistance under the Technical Cooperation Agreement (TCA) being funded in conjunction with the African Development Bank, due to its relatively developed human resource economy, and therefore benefited more than the other partner states. Currently however, measures are being put in place to address this imbalance. Some of these measures include the ongoing negotiations and agreement to untie the ratio, and grant equal access to all partnering states; the granting of scholarships to Sierra Leonean and Nigerien citizens to pursue Postgraduate Studies in Petroleum Engineering and Languages at the African University of Science and Technology, Abuja and Ahmadu Bello University Zaria, respectively. Nigeria plays a pivotal role in these through its Directorate of Technical Cooperation in Africa (DTCA) and the Nigeria Technical Cooperation Fund (NTCF) domiciled at the African Development Bank (AfDB) as focal points.

[59] Molle W. [1997] Economic Integration and Equal Distribution. Working Paper Series 216. Washington DC Inter-American Development Bank pp. 7 – 8.

These measures, in spite of their well intentioned aims, are still insufficient to redress imbalances which have their roots in the colonial administrative configuration. The low level of development of member states accentuates even the slightest trace of inequality. This situation exacerbates the tempo of rivalry in the community and thus contributes to the inability of the ECOWAS to achieve its integration objectives. In the Senegambia Confederation arrangement for example, Senegal, being the larger and stronger partner, viewed the confederation as an economic union, hence its insistence on a customs union which would eventually evolve into a political merger. Gambia had its reservations, and viewed it as an attempt to absorb their country into a larger Senegal. Although, no express statements were made to highlight Senegalese domination, the perception persisted. This could have been countered by allowing Gambia's proposition of rotational presidency of the Confederation. Furthermore, concerted efforts were not made towards coming up with a workable arrangement which would compensate Gambia in the event of any loss as a result of the customs union.

Where regional hegemonies solely dictate and determine the pace of integration, there is bound to be a drastic whittling down or outright decimation of the influence of regional organisations. In such a scenario, regional organisations become the mouth-piece of regional powers and thus lose legitimacy and support from smaller member states.

While the influence of regional hegemonies in any integration process cannot be completely wished away, the point being made is that it is essential that mechanisms which allows the indispensability of smaller member states in the decision-making process are put in place.

4.1.5 Political Instability

It is trite knowledge that the implementation of integration objectives demands some level of political stability in member states. Supranational organisations can only effectively assert their control and influence in a stable climate. The fact that integration programmes require

domestic and uniform implementation lends credence to this assertion. The instability in most African countries, as a result of election rigging, intimidation of the opposition and the citizenry clearly frustrates the attainment of uniformity of standards and objectives. Until recently, the near absence of the core principles of good governance and democracy spurred a litany of perennial conflicts which plagued and continues to plague the sub-region.

The negative impacts of armed conflicts on the West African economy cannot be overemphasized. According to the International Monetary Fund[60], the persistent crises (even until as recent as 2011) in Cote D'Ivoire, the largest country in the WAEMU zone, impacted negatively on the economic situation of the whole zone. Conflicts undermine the integration process by creating distrust among member states and more importantly, the diversion of funds that could have been used to promote and sustain integration initiatives. There is the need for commitments to include the devolution of monitoring and disciplinary powers to such regional institution which empowers same to be able to promptly intervene in potential conflict situations and also impose relevant sanctions on erring member states.

4.1.6 Dearth of Democracy

The centrality of democracy to the integration process cannot be understated. As previously stated, integration requires the uniform application of standards and objectives. In this regard, member states are expected to embrace and practise the principles of good governance and democracy. The need for adherence to democratic values is even more pertinent considering the fact that the onus of enforcing decisions is placed on member states. If integration is understood as a process which not only promotes the establishment of common institutions but also the uplifting of individuals, then it is crucial that these individuals enjoy the rights to ex-

[60] IMF (2003) West African Economic and Monetary Union. Recent Economic Development and Regional Policy Issues. Available at http//www.imf.org/external/pubs/ft/scr/2001/cr01193.pdf (Retrieved 1 March 2009).

ercise their democratic rights. As Habib[61] et al points out, "These norms are crucial to further deepen integration... Africa will unite faster if based on the logic of the self-empowerment of the people on the foundation of an effective and engaged state civil society nexus''.

One major problem with the integration process in West Africa is that the people are excluded from matters relating to integration. Decisions and policies emanating from regional integration are neither subjected to referendum nor wide consultation with the people concerned. The consequence is that the people know little about the integration process and thus attach little or no legitimacy to such. A major question therefore arises; if some West African leaders show obvious reluctance in allowing democratisation at the national sphere, what is the probability of encouraging it at a regional level? It is no doubt owing to such leaders' poor democratic credentials at the domestic level, that they have been unable to promote regional democracy, lending credence to conclusions in some quarters, that the regional organisation is merely an instrument for legitimising and maintaining regimes that are less than noble, in the sub-region.

As long as the commitment to democratic values remains within the realm of rhetoric, integration initiatives will continue to flounder and unable to attain their full potential. Therefore, it is of the essence that regional institutions are bequeathed with the necessary powers to monitor compliance with democratic standards in member states.

4.1.7 Poverty

The high incidence of poverty in West Africa has become a source of concern to policy makers and indeed all well-meaning citizens of the member states of ECOWAS because, as asserted by United Nations Development Programme (2001), poverty has not only increased from 27. 2% in 1980 to 54.4% in 2004, but it is estimated to be rising by 10% in every 3

[61] Habib A. M., Padayachee P. (2006) African Integration and Civil Society: The Case of the African Union. Working Paper No. 137 p. 16. Available at http//www.dir.ihis.aau.dk/?contentld=3426698&assetld=3427050 (Retrieved 20 March 2011)

years. In addition, despite several efforts by governments, non-governmental organizations and international donor agencies, indigenous factors such as weak supply capacity, poor infrastructure, a lack of incentives for domestic production, poor or uncompetitive technology, a lack of short, medium and long-term capital and the high cost of capital in general, weak macro-economic fundamentals and a lack of negotiating capacity on trade issues, have served to aggravate an already bad situation.

The sub-regional body has not been able to combat and eliminate poverty and its attendant effects. In a region where all but two (2) countries (Nigeria and Ghana) feature in the bottom 20% of the Human Development Index,[62] socio-economic support especially for livelihoods, is critical. This has in turn over the last 30 years (1980 to date) resulted in political instability manifested in internal and multi-national armed conflicts in the sub-region

4.2 PROSPECTS OF ECONOMIC INTEGRATION

4.2.1 Economic Prosperity

The Economic Community of West African States has had a major impact on global development. This impact has been evident through greater stability in the region, enforcement of the rule of law, economic growth and the encouragement of foreign direct investment, and the creation of an economic and political bloc.

The Economic Community of West African States has implemented a court of justice to ensure the rule of law within its member states and has shown that it will not tolerate illegal and unethical actions on the part of member states. Niger was suspended after the October 2009 elections that were seen as unfair and illegal.

[62] United Nations Organisation 2009 Human Development Index.
http//www.en.wikipedia.org/list of countries (retrieved 22 June 2010).

Another important aspect of ECOWAS is that it has coordinated precious resources in the region, such as water, bringing greater prosperity to the citizens of these nations. The social and humanitarian aspects of ECOWAS has improved the standard of living for the peoples of these nations.

Furthermore, ECOWAS has used its influence to enforce legitimate constitutional practices within its member states, bringing greater stability to the region. With increased stability and the prevalence of the rule of law the region has been able to promote itself as a viable trading bloc.

The move to create a common currency, the Eco, will provide these nations with a stable currency in which to trade good freely between nations. This will tear down another barrier to trade in the region, and provide a stable fiat currency for international trade.

As the barriers to trade begin to collapse it becomes easier for other nations to invest into nations within ECOWAS, bringing the much needed Foreign Direct Investment (FDI) into the region. Operating as an economic bloc, ECOWAS member states have greater collective bargaining influence and greater influence in multilateral dialogues particularly in the United Nations.

4.2.2 Regional Peace

The ECOWAS agenda at its inception, was to promote market integration through policy harmonization and coordination; and to speed up the development of physical infrastructure i.e. roads, telecoms and energy to facilitate market integration. At the time, only a passing thought was given to the nexus between security and development. Indeed, the attempts then to address the issues of peace and security were informed by the realities of Cold War politics. Three years after its birth, ECOWAS adopted the **Protocol on Non-Aggression**, fol-

lowed later in 1981 by the **Protocol on Mutual Assistance in Defence**. Both protocols were designed primarily to address external threats and aggression, the rationale being that in an era of cold war power politics, the dynamics and nature of conflicts were limited to external threats.

i. Shifting of Priorities

The easing of cold war tensions was accompanied by a dramatic spike in violent internal power struggles that threatened state implosion across Africa. It did not take long for ECOWAS to realise the changing nature of threats to the stability of the sub-region. It became obvious that a nexus existed between internal conflicts, sparked largely by bad governance, identity crises and poor resource management on the one hand, and collective developmental efforts on the other. Barely a decade and a half after the creation of ECOWAS, violent civil wars erupted in Liberia (1989) and Sierra Leone (1991) as a new phenomenon not confined to the borders of individual nation states, but with serious regional implications, both in their causes and effects.[63] Starting off as internal struggles for power and control over resources, these conflicts soon took on a regionalized nature, fuelled by the illegal exploitation of natural resources for the acquisition of small arms and light weapons and characterized by the proliferation of private armies composed of mercenaries, dispossessed youths and bandits.

It quickly became clear that the mechanisms that were put in place to safeguard national sovereignty and ward off external aggression were grossly inadequate to meet the challenges of an increasingly interdependent region in which the ripples of internal dynamics were instantly felt far beyond national borders, in the form of refugee flows, disrupted infrastructure, the proliferation of weapons and the export of violence.

ii. The ECOWAS Response

[63] Chambas, M. L., [2007] The Role of ECOWAS in Achieving Economic Integration in West Africa. Lecture Presentation at the Woodrow Wilson International Centre for Scholars, Washington DC, 19 October, p.4

By the end of the 1980's, ECOWAS was compelled to reposition itself to deal with conflicts which threatened to engulf the entire region. It became imperative to create initially, ad-hoc mechanisms and thereafter, more permanent structures to address the compelling dynamics and nature of conflicts, which were propelled by domestic or internal factors such as the unequal burden of poverty on different sections of the community, bad governance, denial of human rights and the rule of law, exclusion, lack of probity and above all, a population explosion that had created a major youth crisis.

The regionalised internal conflicts threatened to derail the original economic agenda of ECOWAS. Worse, the implosion of States in the sub-region coincided with the spread of global anarchy that followed the collapse of the former Soviet Union and most notably, the beginning of the First Gulf War. With the attention of the international community focused elsewhere, ECOWAS had to act locally to avert the looming disaster in Liberia and Sierra Leone. The new paradigm had to be based on a systemic search for conflict prevention and conflict management mechanisms. The military agenda, for a time, overshadowed the economic agenda. The creation of the ECOWAS Ceasefire Monitoring Group (ECOMOG) to intervene in Liberia and Sierra Leone was, therefore, an act of absolute necessity dictated by the unfolding realities.

However, the legal instruments and protocols in the possession of ECOWAS only anticipated inter-state and not intra-state conflicts. For example, the existing protocols were clearly designed to prevent conflicts between member states; nothing was in place for 'interference' in the internal affairs of member states. In the absence of an enabling legal framework for intervention there was division amongst its leadership, thus, complicating efforts to resolve the conflicts in the sub-region.

Militarily, there were few ECOWAS Member States that had the capability to undertake strategic force projection without external assistance. This was compounded by a lack of joint operational doctrine and a structure within ECOWAS to manage peacekeeping operations since ECOWAS was designed primarily to serve the purpose of economic integration.[64]

iii. Evolution of the ECOWAS Conflict Prevention and Resolution Mechanism

By the late 1970s, West African leaders had recognised that they needed to pool their resources to address the various internal security problems in their respective countries — problems that often overflowed to their neighbours. They realised early enough that the success of an insurgent or revolutionary movement in one country is bound to spread to others. Consequently, they signed a non-aggression pact in Lagos, Nigeria in 1978. However, this Non-Aggression Treaty only addressed the issue of the open support that the various ruling classes might give to the opponents of incumbent rulers. It failed to address the issue of the various insurgent movements that were threatening most of the regimes internally.

It was in recognition of the fact that the Non-Aggression Treaty did not provide mutual security against the very real threats of internal insurrection that the member states, prodded by Nigeria and Ghana, negotiated and signed the ***Protocol on Mutual Defence Assistance*** in Freetown, Sierra Leone, on 29 May 1989. The Protocol provided for a non-standing military force to be used to render mutual military aid and assistance to a member state that falls victim to external aggression. However, the actual purpose of the Protocol is evident in ***Article 4(b)*** which provides for a collective response where a member state is a victim of internal armed conflict that is engineered and supported actively from outside, and which is likely to endanger the peace and security of other member states.

[64] Ibid p.5

Under ***Article 18(2)*** of the Protocol, member states are not entitled to intervene militarily if the internal armed conflict poses no danger outside the borders of the afflicted state, and if it is not supported from outside. In order to secure the military assistance of the Community, the Head of State or Government of the state desiring assistance is required to ask for it in writing through the Chairperson of ECOWAS. Once received, such a letter serves as a signal for the military force of the Community to be placed on an emergency footing.

The nature and composition of the military force envisaged under the Protocol is defined in ***Chapter v, Articles 13*** and ***14***. It was to be known as the Allied Armed Forces of the Community (AAFC). Each member state was required to earmark units from its national armed forces that, in an emergency, would be placed at the service of the Community. The AAFC was to be under the command of a Force Commander who would be appointed by the Head of State who chaired the Community on recommendation of the Defence Council of the Community, which consists of the Ministers of Defence and Foreign Affairs of member states. The Force Commander is to act in concert with the Chief of Defence Staff of the particular member state that receives military assistance from the Community.

According to the Protocol, the AAFC would be used as follows:

i. Where two member states are in conflict, the Community will interpose the AAFC between them as a Peacekeeping Force.
ii. Where a member state is the victim of internal armed conflict supported from outside and its Head of State has requested military assistance from the Community in writing, the AAFC will be sent to it as an Intervention Force.

Although the Protocol was invoked with respect to the Liberian crisis of 1989/90, the AAFC never materialised. Rather, a smaller group of ECOWAS member states put together the intervention force known as ECOMOG.

iv. From Allied Armed Forces of the Community to ECOMOG

Since ECOMOG operations started with Liberia, it is necessary to discuss some of the events in the country that led to the creation of the regional force. On 12 April 1980, Master Sergeant Samuel Kanyon Doe took advantage of the absence of the senior officers who had planned the *coup* to terminate the government of President William Tolbert. When these officers saw that the marines had actually assassinated President Tolbert at the Executive Mansion in Monrovia, they took to their heels. Master Sergeant Doe, realising that he was now the most senior among the soldiers at the Executive Mansion, declared himself Head of State. Among his subordinates was Charles McArthur Ghankay Taylor, a member of the General Services Agency (GSA) at the time. [65]

In an attempt to legitimise his rule, Doe organised an election in 1985 and declared that he had won. Meanwhile, Charles Taylor had embezzled government funds and escaped to the United States of America. On 24 December 1989, Taylor spearheaded an insurgent movement, the National Patriotic Front of Liberia (NPFL) to overthrow the government of President Samuel Doe. Taylor was supported by the late President of Côte d'Ivoire, Dr. Felix Houphet-Boigny, who was an in-law and had been a close friend of Late President William Tolbert.

The NPFL made rapid military gains and, by the middle of June 1990, were fighting in the vicinity of the Liberian capital, Monrovia. The fighting was of a most savage nature. The combatants respected neither life nor property and killed Liberian nationals and foreigners indiscriminately. Civilians were particularly targeted in the conflict. They were murdered in their thousands and in the most brutal manner. The result was a massive refugee problem as thousands of civilians fled to neighbouring countries.

[65] Khobe M. M. [2000] Evolution and Conduct of ECOMOG Operations in West Africa. Published in Monogram No. 44, Boundaries of Peace Support Operations, February 2000 p.7

Khobe, M.,[66] states further that the internal security situation deteriorated when the commander of the advance unit of the NPFL that was operating in the vicinity of Monrovia, Prince Yormie Johnson, revolted against Charles Taylor and formed his own armed movement. Liberia gradually slided into anarchy as the government of President Doe was clearly losing the capacity to protect life and property, enforce law and order, or even to carry out the normal routine of administration. Thousands of foreign nationals were trapped in the fighting. Many of them fled for safety to their embassies, churches or with international relief agencies, but they were chased from these supposed places of refuge and massacred by Liberian combatants. Many countries that attempted to evacuate their nationals could not do so because of the state of anarchy.

It was under these terrible conditions that President Doe called on the Community to assist him to restore normalcy in his country. His request was a test case for the ***Protocol on Mutual Defence Assistance***. The government of President Doe was clearly unpopular at home and was on the verge of military defeat by the insurgents. In addition, Doe himself was not on good terms with his neighbours — particularly Côte d' lvoire, an influential country among Francophone members of the Community. On the other hand, President Doe was a friend of General Ibrahim Babangida, the then president of Nigeria and the most powerful country in the Community.

The request by Liberia for assistance therefore split the Community. The Anglophone countries, led by Nigeria, were prepared to assist, while the Francophone countries were opposed to military intervention. They preferred dialogue and negotiations, which suited Côte d'Ivoire, because their protegé, Charles Taylor, was on the verge of a military victory despite his problems with the breakaway faction of Prince Yormie Johnson.

[66] Ibid p.9

On 7 August 1990, with all semblance of government having disappeared in Liberia, the Anglophone countries under the auspices of the ECOWAS Standing Mediation Committee (which they dominated), met in Banjul, the capital of The Gambia and took a decision to send a military force to intervene in the conflict in Liberia. The Francophone members of the Community, with the exception of Guinea (the only Francophone member of the Standing Mediation Committee), were opposed to the military intervention.

The intervention force was designated ECOMOG and troops were contributed by Nigeria, Ghana, Guinea, Sierra Leone and The Gambia. The force was placed under the command of a Ghanaian, General Quainoo, while the bulk of the Land and Naval forces and the entire Air Force were contributed by Nigeria. The force was given the mandate to restore law and order in Liberia, to create an environment that will allow humanitarian operations, and to secure a peaceful atmosphere that will facilitate cease-fire negotiations. It is also important to note at this stage that the initial troop-contributing countries were all members of the ECOWAS Standing Mediation Committee. At a later stage, Senegal, as a result of Nigeria's persuasion, contributed troops. However, the Senegalese withdrew their contingent after it had suffered five casualties and constant harassment, including being taken hostage by NPFL combatants.

The ECOMOG troops under General Quainoo landed in Liberia on 24 August 1990. They quickly secured the Freeport in Monrovia with the co-operation of Prince Yormie Johnson and President Samuel Doe and his Armed Forces of Liberia. Charles Taylor and his NPFL opposed the force, accusing it from its inception of a lack of neutrality. Perhaps the political atmosphere under which ECOMOG entered Liberia and began its march to history is best illustrated by the nature of the factions which supported its arrival. Prince Yormie Johnson and President Doe were sworn enemies of both Charles Taylor and each other. Each welcomed ECOMOG with a view to use it to advance his own political objectives. Doe wanted the force

to restore his political authority, which would involve military action against Charles Taylor and Prince Yormie Johnson. Prince Yormie Johnson, on his part, wanted the force to relieve the military pressure on him from Taylor's forces, giving him the opportunity to reorganise and consolidate while waiting for an opportune moment to eliminate both President Doe and Charles Taylor.

By August 1990, there were 225,000 Liberian refugees in Guinea, 150,000 in Cote d'Ivoire, and 69,000 in Sierra Leone. Furthermore, 5,000 people had been killed and about 3,000 Nigerian, Ghanaian and Sierra Leonean citizens were being held hostage by the rebel National Patriotic Front of Liberia led by Charles Taylor.[67] The apparent global disinterest in the unfolding drama and the humanitarian imperative left ECOWAS with no other choice but to rely heavily on its own resources to stop the carnage. Under a shaky peace agreement, the ECOMOG Force that was put together in a rush was meant to supervise a cease-fire, while an interim government was to be established, which would organize elections after twelve months. ECOMOG had no mandate to enforce peace. When the troops arrived, they were stiffly resisted by the rebel group. It took a lot of courage, commitment and determination by a few Member States, particularly Nigeria, for ECOMOG to eventually emerge victorious.

v. From Ad-Hoc to Permanent Structures for Conflict Management

With subsequent missions, however, ECOWAS responses to crises became more rapid and an incremental projection of professionalism and capability was clearly visible, as ECOWAS undertook subsequent missions in Sierra Leone, Guinea Bissau, Liberia again in 2003 and more recently, in Cote d'Ivoire. Moreover, serious thought was now given to the development of robust institutional frameworks for conflict management.

[67] Ibid p.8

ECOWAS leaders were compelled to raise conflict prevention and resolution to the same status as the development agenda, and for good reason. Since 1990, wars and instability in Africa are estimated to have cost the continent about USD 300 Billion in lost revenue, the equivalent of international aid from major donors in the same period, according to the October 2007 report *Africa's Missing Billions* that was put together by the international humanitarian agencies Oxfam, IANSA and Safer-world.[68] ECOWAS accordingly enacted new statutes to reflect the new realities. The ECOWAS Treaty was revised in 1993 to confer supranationality to the regional body. In 1999, the institution adopted the ***Protocol on the Mechanism for Conflict Prevention Management, Resolution, Peacekeeping and Security,*** followed closely by the adoption of the ***Additional Protocol on Democracy and Good Governance*** in 2001. Together, these legal instruments constitute a comprehensive framework for confronting the new threats to peace and security on a more permanent basis and dealing with the entire conflict chain from pre-crisis tensions through to peace-building. ECOWAS is currently putting into operation the Mechanism by boosting its conflict prevention capabilities to pre-empt potential outbreak of violence, to intervene in a robust manner where conflicts have broken out, and to engage more effectively in post-conflict reconstruction in places, where peace has been restored. These efforts were truly 'landmark' decisions and efforts and the very first in Africa.[69]

Subsequently, when crisis erupted in Cote d'Ivoire in September 2002, even though the implementation of the Mechanism (1999) was still in its infancy, the political and military approach to the conflict was remarkably different. The Mechanism was activated. The Defence and Security Commission, the Mediation and Security Council and the Authority of Heads of State and Government played their roles as required by the Mechanism, which enabled ECOMOG to rapidly deploy to stabilize the situation in Cote d'Ivoire.

[68] Ibid p.8
[69] Ibid p.9

Experience has shown that ECOWAS has developed a comparative advantage in the area of conflict management and is a model for the continent. With every new threat to peace and security, ECOWAS has been perfecting its capacity for early response. Indeed, ECOMOG has always intervened in conflicts in West Africa to create the necessary conditions for the deployment of broader UN peacekeeping and international humanitarian missions. Thus, a new formula for crisis response based on the Mechanism is slowly evolving whereby, with the emergence of internal conflict or unrest, an immediate ECOWAS mediation and political solution is sought. Failing a resolution, a Vanguard Force is dispatched to contain the impact of the conflict. Based on the situation, the force is expanded and stabilization sought. Finally, as negotiated and based on need, the ECOWAS force is converted or recapped into UN mission. This "formula for success" has already taken place in Liberia, Sierra Leone, and Cote d'Ivoire.

In spite of this however, ECOWAS remains weak in the prevention phase of the conflict cycle and insufficient capacity continues to limit its post-conflict capacities in the region. Ensuring peace, security, human rights and democracy is a precondition for any form of economic integration and development. Peace and security in West Africa must therefore be a priority for the ECOWAS.

While peace and security promote the conditions for integration, the process of integration also reinforces peace and security. The involvement of stakeholders (youths and women), owing to their unique experiences, in peace and security initiatives is essential to their sustainability. The active participation of youths in promoting peace also needs to be developed, through encouraging their engagement in civil politics and civil society activities, particularly as there is a powerful symbiosis between good governance, respect for human rights, social inclusion, economic development, and peace and security.

ECOWAS places a high premium on good political governance, evolution of democratic institutions, respect for human rights, and the rule of law. In the past, weak governance had blighted the development of many West African countries. Manifestations of weak governance include bad government policies and an economic and political climate that discourage investment in the ECOWAS sub-region. They also include corruption and bureaucratic systems that were impervious to scrutiny and not answerable to the public, as well as the absence of strong mechanisms that ensure that peoples' voices are heard and their rights upheld, such as parliaments, the media and the justice system.

Over the last decade, however, West African leaders have demonstrated a firm commitment to sound democratic practices by creating the required peaceful and stable framework for sound political and economic governance. The ECOWAS/NEPAD agenda places a high premium on deepening democratic culture and achieving good governance in West Africa. ECOWAS Member States adopted the Protocol on Democracy and Good Governance in December 2001 as a supplementary protocol to the Mechanism on Conflict Prevention. Together, the two ECOWAS Protocols provide the supranational framework and authority for ECOWAS intervention in Member States on issues relating to governance, democratic culture and human rights, respect for constitutionalism and the rule of law, probity and accountability, peace and security.

Emanating from these protocols is ECOWAS adherence to the policy of 'zero tolerance' towards unconstitutional and violent usurpation of power, backed by a strong determination to ensure credible, transparent, and free and fair elections in the sub-region. This new policy was amply demonstrated by the proactive steps that ECOWAS took in Guinea-Bissau in 2003 to oppose the military coup d'état and also in 2005, when ECOWAS stepped in to ensure a succession that was in conformity with the constitution of Togo following the death of Presi-

dent Gnassingbe Eyadema, and in Niger Republic in 2009 when the military overthrew the constitutional President who became unwilling to transit power after exhausting the constitutionally approved term limit.

CHAPTER FIVE

CONCLUSION

5.1 Summary

West African states had to a great extent been tied to the international economic system, long before they came to be independent. In spite of this linkage however, they have not been able to derive, to any meaningful measure, the positive benefits of globalisation. They have therefore remained basic suppliers of agricultural raw materials to other industrialised economies, and unable to achieve a balanced and diversified development of their economies. So, contrary to the conditions obtainable in other regions, the conditions of economic contradictions, economic decline and in some cases decay became the order of the day in West Africa, and resulted in social changes that were characterized by underdevelopment, poverty and violent conflicts. This was quite contrary to the conditions obtainable in the industrialized countries

which had attained meaningful levels of economic and political stability before engaging in regional economic integration and had significantly eliminated possibility of recourse to physical force.[70]

Further, the severe and harsh conditions in the social, economic and political scenes of the West African States imposed grave repercussions on the growth and stability of the states themselves, the region and sometimes the wider world.[71] This is clearly evident in the incessant violent conflicts, occasional unwarranted wars and frequent uncalled for changes of government in most states of the region such as Liberia, Sierra-Leone, Guinea Bissau, Nigeria, and Cote d'Ivoire to mention but a few. However, as these states became increasingly confronted with the persistent need to contain pressures from surging urbanization, increasing population, disease, poverty invasion and possible disintegration, they jointly began to search for immediate and practical solutions to their needs, which gave rise to the idea of regional economic integration under the framework of ECOWAS.

With the robust and promising package of its regional economic integration programmes, ECOWAS had been at the forefront of the region's efforts towards sustainable development and stability in West Africa. However, not much has been achieved owing to its apparent lack of the requisite resources to accomplish such programmes, in addition to the fact that in its original treaty, its founding fathers codified a strong and wide-ranging role in both domestic and foreign economic relations for its institutions, without providing the enabling empowerment for the organization to carry out its agenda, nor adequate propagation campaign to enhance enlightenment of citizens of member states on the various integration initiatives. This

[70] Balassa, B. [1991] In Gambari, I. A. **Political and Comparative Dimensions of Regional Integration: The Case of ECOWAS.** Atlantic Highlands, NJ: Humanities Press International Inc.p.19

[71] ibid

accounts in part, to continuing harassment citizens at border entry points of member states even when a Protocol of Free Movement of Persons subsists.

At the same time, the kind of decision-making mechanism that developed in ECOWAS did not include the ability to enact laws and enforce them and therefore lacks the necessary tools to reconcile the ideals of the long-term prospects of its regional economic integration programmes with the realities of the urgent national needs of member states. Consequently, its capacity to achieve meaningful economic integration in West Africa was severely limited.

This work therefore, seeks to describe and explain ECOWAS limited success in its economic integration programmes as a logical consequence of the seemingly incongruous and obvious incompatibility between the long-term challenges of regional economic integration programmes and the urgent national challenges faced by member states.

Although, ECOWAS economic integration programmes of trade liberalization, harmonization of industrial and agricultural policies, as well as economic and financial policies had great potentials for offering long-term benefits on a region-wide basis, which otherwise member states could not achieve alone, the burden of the real adjustments in-terms of costs, risks and time-frame for accomplishing them, was too heavy for member states to shoulder, given their poor economic conditions which desperately seek urgent national attention, and the near- absence of political maturity.

Similarly, such regional economic integration programmes as harmonization of industrial and agricultural policies and economic and financial policies of member states equally require not

only high adjustment costs/risks and huge resources which are non-existent to achieve them, but also demands elaborate mechanism for sharing the gains/losses from harmonization.[72]

The need for greater coordination and harmonization appear to be even more urgent in the industrial and agricultural sectors because member states which are largely dependent on subsistence agriculture view their future socio-economic development and modernization of agriculture as closely interwoven with the capacity for quick and sustainable industrialization.[73] Therefore, the chances of any member state accommodating any integration arrangement that leaves it a loser are quite slim.

Thus, like the industrial sector intra-community agricultural harmonization is quite sensitive as member states' economies are basically dependent on agriculture. Therefore, a carefully structured and implemented harmonization programme that will ensure viability and narrow the ever widening gap in productivity between member states is a precondition for contemplating and implementing such a scheme.

Further, harmonization of economic and financial policies of ECOWAS member states entails measures to achieve macro-economic convergence. At present, apart from the complications arising from the existence of a rival union [UEMOA], the inelastic nature of West African economies which impose severe strains on member states ability to maintain both internal and external balance, demand urgent convergence of national economies. This process is compounded by the continued reluctance on the part of member states to transfer the powers to regulate financial policies to the regional body.

[72] Browm, L.M. [1994] Developing Countries and Regional Economic Cooperation. Praeger Publishers, 88, Post Road West: West Port, CT. 06881.

[73] Adedeji, A. and Shaw, T.M. Development and Regional Integration since 1980. Lynne Reinner Publishers Inc., pp. 79-99.

In addition, since most of the ECOWAS member states are basically weak in constructs, they lack strong socio-economic and political structures to absorb the shocks of adjustment in the process of integration per se. Thus, confronted with the problems of nation-building, member states policy preferences are wholly geared toward direct and immediate national gains, and the promotion of national unity.[74] This is further compounded by the seeming recurring question of legitimacy on the part of the governments of member states, unlike the developed countries which derive their legitimacy through such structures as democratic governance, balanced economic system and near absence of social instability.

As the discrepancies between long-term regional integration challenges and the urgent national exigencies of member states continue unabated, member states clearly demonstrated their lack of interest to simply delegate the powers of making binding decisions, monitoring and sanctions to the regional body resulting in the continuous inability to find solutions to the continued rivalry between ECOWAS long-term regional programmes and the immediate national preferences of member states by their sustained reluctance to submit to more supra-nationalism within the framework of ECOWAS.

Even the pendulum too could not swing in favour of inter-governmentalism as reasonable bargains and prompt ratifications of community decisions and protocols remain difficult and time-consuming, in the face of high adjustment costs and very low degree of economic inter-dependence between member states.

5.2 Findings

The journey to economic cooperation and integration in West Africa has been a long and tortuous one seriously retarded and frustrated by fiscal difficulties which tended to discourage

[74] Chafer, T. [2002]. "The End of Empire in French West Africa": France's Successful Decolonization? Oxford, New York: p.29-30.

cooperation and integration. The writer in the course of the research came to the conclusion that for ECOWAS to achieve any meaningful regional economic integration, the organisation's responsibilities, capacities and competences need to be reassessed and renegotiated. It must be assigned the powers to enact requisite laws, monitor and enforce them on regional priorities.

Some of the major impediments to the realisation of the objectives of ECOWAS includes but not limited to:

i. ***Low Level of Awareness***

There is a very low level of awareness of the legal framework of the various regional integration initiatives by not only citizens of member states but also by Governments and functionaries of ECOWAS member states. Even though visa requirement has been abolished, citizens of member states continue to suffer harassment and extortion at border posts owing to official collusion, prejudice, and corruption within relevant security agencies. These have discouraged inter-community business activities and severely limited trade in the sub-region. Till date, no member state has brought another member state before the Community Court for acts of violation of provision of any of the treaties or protocols related thereto. Therefore, no member state has ever been sanctioned for violations.

ii. Poor Governance

One common denominator of the conflicts in Liberia, Sierra Leone, Guinea Bissau, Niger, Guinea (Conakry) and Mali is the personalized autocracies of leadership that helped trigger the conflicts. Lack of democracy, insufficient respect for the rule of law, coupled with entrenched ethnicity, misplaced priorities and ruthlessness have led to impoverished populace and helped to give a semblance of credence to armed rebellion as the only means to confront dictatorship. This factor has severely handicapped and made it impossible for these countries

to attain the various convergence criteria towards achieving the required monetary union, thereby impacting negatively on the achievement of economic integration.

iii. ***Absence of Common Supranational Legal Tool***

Economic integration is primarily meant to be the engine for wealth creation. The absence of an enabling legal environment and harmonised business law constitutes a major obstacle to business growth and opportunity in the sub-region, making it impossible to realise the goal of regional economic and social integration.

5.3 Observations

One is often tempted to think that discussion or essays on issues of ECOWAS and its various imperatives are already over-flogged. But then, any dream that is considered noble but still remains substantially unrealised must continually renew itself if it is not to remain in the pipe. Therefore, matters relating to ECOWAS as a subject matter cannot as yet be over-emphasised. ECOWAS has not achieved much in its over 3 decades of existence, and the little achievement it has recorded over the years is on the verge of being wiped out owing to the resurgence of political instability, lack of political will and deepening poverty. It should be noted with seriousness, the resurgence of coups d état in West Africa, specifically in Mali and Guinea Bissau, where democracy has been truncated. Worse still, these unfortunate developments came on the fringes of presidential elections in those countries. These anti-democratic tendencies are highly condemnable, regrettable and unacceptable. They not only run counter to the provisions of ECOWAS Supplementary Protocol on Democracy and Good Governance as well as the African Charter on Democracy, Elections and Good Governance,

but constitute an outrageous assault on the sensibilities of the peoples of West Africa who have fought and enthroned democracy in the sub-region at great human and material costs.[75]

The ECOWAS Trade Liberation Scheme (ETLS) is an initiative aimed at promoting inter-community trade and empowering member states to deflect the adverse effects of globalisation especially in the area of investment and trade, particularly as ECOWAS is endowed with a large market which is vital for national and sub-regional development. It is however, appalling to observe that the Ghanaian Government enacted an obnoxious Ghana Trade Act [2012] deriving from the Foreign Investment Act of 1994, which specifically directs non-Ghanaians doing business in Ghana to register their businesses with a minimum fee of $300,000 (about N46 million) before they could commence business operations in Ghana. The law makes non-compliance an offence, for which offenders will not only have such businesses closed down but suffer repatriation. This law is clearly obnoxious and runs contrary to the spirit of economic integration, African brotherhood and mutual harmony. There is an urgent need for the ECOWAS to intervene, as it is a negation of the goals of ECOWAS which is predicated on the principles of regional integration.

5.4 Recommendations

For ECOWAS to effectively become the integration organization it is meant to be under the constituent treaty, and achieve its objective of wealth creation and its attendant benefits of economic growth and political stability, it is imperative to have an:

i. ***Enhanced Awareness of Legal Frameworks***

There is the need to urgently raise the level of awareness of the legal frameworks of the integration initiatives among citizens in general. This is of paramount importance for key agents

[75] Ike Ekweremadu, Speaker, ECOWAS Parliament, Welcome Address on ECOWAS and Quest for Stability 2012 Ordinary Session of 3rd Legislature Thisday Newspaper of Tuesday May 22 2012.

of states at various border points in particular. This will assist in minimising the level of personal breaches suffered by citizens at various entry points to member states.

For instance, Yusuf Aboki, an erudite scholar and renowned Professor of Law in Ahmadu Bello University Zaria, narrated to the researcher, his sour experience of being repeatedly stopped at several checkpoints in the course of his travel from Nigeria to Togo on an official trip by road, even when the protocol on free movement subsists. Though the primary mandate of the ECOWAS Court is the interpretation and application of ECOWAS Community texts, the Court has been recognised internationally for its human rights jurisprudence. Citizens and governments of member states must be sensitized and encouraged to access the court directly.

The various state agencies for information dissemination (Ministries of Information) could be used as veritable tools in this regard, through regular and periodic radio and television jingles, commentaries and documentaries. This measure will assist in raising the level of literacy in promoting trade in the sub-region, and eliminate the justification by a broad circle of the citizens that corruption, smuggling and other illegal activities are a veritable means of survival.

ii. Protocol on Democracy and Good Governance

The refusal to leave office after expiration of terms have been at the root of most political crises in the sub-region, particularly as occurred in Cote d'Ivoire and Niger. The objective of this Protocol could be more readily achieved where non-adhering member states are sanctioned for violations by having their voting rights suspended on all issues relating to the sub-regional body.

iii. Harmonisation of Business Laws

The provisions of Article 3(2h) of the Revised ECOWAS Treaty which provides for the establishment of an enabling legal environment, in the sub-region should be invoked by the re-

gional body for the purpose of harmonising business laws in the sub-region. This would assist in creating a more secure legal environment and provide for certainty in laws.

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