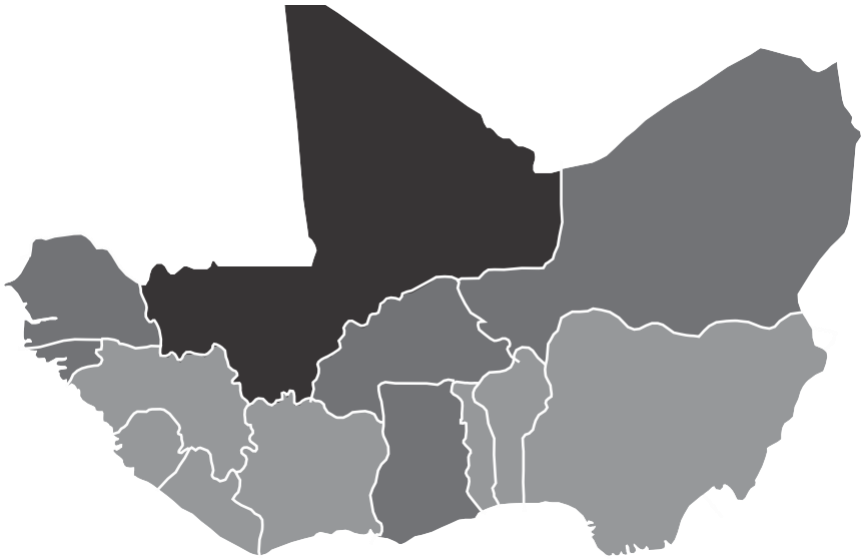

COMPENDIUM
OF SEMINAR PAPERS PRESENTED
AT THE INTERNATIONAL CONFERENCE

ORGANISED BY THE
ECOWAS COMMUNITY COURT OF
JUSTICE AT ACCRA, GHANA

21ST - 24TH OCTOBER, 2019

THEME

ECONOMIC INTEGRATION OF WEST AFRICA:
CHALLENGES & PROSPECTS

TABLE OF CONTENTS

FOREWORD

I have the distinct pleasure as the President of the Community Court of Justice, ECOWAS, to write the foreword to this compilation of the papers presented at the seventh international conference organized by the Court in Accra, Ghana, from 21st to 24th October, 2019 under the theme **Economic Integration of West Africa: Challenges and Prospects.** These biennial conferences enable the Court to provide a forum for the discussion of an important legal theme with a bearing on the region's integration.

The Economic Community of West African States was established through the Lagos Treaty of 28th May, 1975, revised in 1993, as West Africa's Regional Economic Community. Its objective was captured under Article 3 (1) of the Treaty as "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 people among others."

Article 3 (2e) requires that this objective will be realized through common policies in the economic, financial, social and cultural sectors and the creation of a monetary union. The ECOWAS Court of Justice was established under Article 15 of the Revised Treaty and listed under Article 6 of the Treaty as one of the institutions of the Community with the primary responsibility of interpreting and applying the Revised Treaty, Protocols, Conventions and other legal texts of the Community. As the principal legal organ of the Community, the Court has a critical role in facilitating the integration process and constitutes an important regional judicial forum for the resolution of disputes relating to the integration process.

The 2005 amendment of the initial 1991 Protocol through the Supplementary Protocol of 19th January, 2005 expanded the Court's mandate, investing it with a human rights jurisdiction that has become its defining mandate. In the exercise of this mandate, the Court has evolved into an exemplar among Regional Courts for its enviable jurisprudence, thereby becoming an important tool for the protection of the human rights of the citizens as well as the promotion of good governance, peace and stability in the region. These ingredients remain critical to the realization of the objectives of the Community because of their correlation.

Undeniably, the Community has made significant strides in its efforts at realizing the vision behind its establishment including the liberalization of trade, the implementation of its flagship Protocol on the free movement of persons, the development of common infrastructure and the creation of a Common External Tariff (CET). Notwithstanding these laudable achievements which have made it Africa's preeminent Regional Economic Community, challenges remain mainly with the emergence of the single currency and in the areas of peace and security following recent political upheavals in some of the Member States.

With this as the backdrop and on the threshold of the end of the ECOWAS ten-year vision of the transformation into a citizen driven Community, the Court appropriately focused the theme of its 2019 conference on the economic agenda of the Community and it legal aspects. Through the theme and the sub-themes, the Court sought to explore strategic issues in West Africa's integration with particular emphasis on those cross cutting areas that impact on its mandate.

I have no doubt that the conference and those who will subsequently be exposed to this compendium will find them enriching in understanding the various dimensions of the

ECOWAS integration project.

Undoubtedly, the conference was a resounding success due mainly to the support of the participants and the other stakeholders. I will therefore wish to use this opportunity to commend our valued partners, mainly the government of the Republic of Ghana, the ECOWAS Bank for Investment and Development (EBID) and others who contributed immeasurably to the unqualified success recorded by the conference. I also wish to express the profound appreciation of the Court to the Organizing Committee, as well as the judges and staff who contributed in various ways to its success.

Honourable Justice Edward Amoako Asante,
President,
Community Court of Justice, ECOWAS
Abuja-Nigeria

WELCOME ADDRESS
OF THE PRESIDENT
ECOWAS COURT OF JUSTICE

Protocol

INTRODUCTION

1. Your Excellencies, it is my rare privilege, to warmly welcome His Excellency, the President of the Republic of Ghana, Dr. Nana Addo Dankwa Akufo-Addo, on behalf of the ECOWAS Court of Justice, to the opening ceremony of this International Conference being hosted by the Court in this bustling city of Accra, Ghana. We are indeed delighted, that despite the very busy schedule of His Excellency, he agreed to personally attend this opening ceremony and to declare open this very important conference.

2. May I also seize the opportunity, to welcome to this event, the Chief Justices of Member States here present, Hon. Ministers and high government officials of the Republic of Ghana here present, His Excellency, the President of ECOWAS Commission, Presidents of Regional Courts, Heads of other ECOWAS Institutions, Heads of ECOWAS National Offices in the Member States, Special Representatives of the President of ECOWAS Commission, Members of the Diplomatic Corps, our Resource Persons and indeed all participants at this conference.

ECOWAS Integration Agenda

3. Your Excellencies and distinguished guests, the Economic Community of West African States, ECOWAS was established by the Lagos Treaty of 28th May, 1975. The ECOWAS Revised Treaty, which replaced the initial Treaty, was adopted in 1993. This Revised Treaty, is the fundamental charter of ECOWAS and the roadmap for the economic integration of the Community. Article 3 of the Treaty provides that the main "aims of the community are to promote co-operation 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". These are indeed laudable objectives. We are proud to note that ECOWAS has recorded a lot of achievements as the leading Regional Economic Community (REC) in Africa.

4. Since the establishment of the Economic Community of West African States (ECOWAS) in 1975, we have achieved great milestones but a lot still remains to be done. This conference therefore offers us a great opportunity to interrogate the challenges and prospects of our integration process. Over the years, ECOWAS has adopted a large body of laws, ranging from Protocols, Conventions, Supplementary Acts and Regulations to subsidiary legal instruments on various subjects geared towards the realization of our integration objectives.

5. The formation of a Regional Economic Community is Treaty based. It is therefore of utmost importance to provide the enabling legal environment for the attainment of the Community objectives. However, it takes more than the normative framework. The importance of a strong and independent Regional Court to facilitate the integration process cannot be over emphasized. The ECOWAS Court of Justice was established as the principal legal organ of the Community with the primary mandate of interpreting and applying the Revised Treaty and the annexed Protocols and Conventions.

Theme of the Conference

6. Your Excellencies and distinguished participants, it is with this in mind, that we chose the theme of this conference, which is **Economic Integration of West Africa: Challenges and Prospects.** The intention of the Court in choosing this theme, is to focus attention on the economic agenda of ECOWAS and the enabling legal environment for its attainment, the legal aspects of economic integration and the role of the Court in facilitating the economic integration objectives of the Community. We, therefore, cannot over emphasize the importance of this conference because the theme and sub themes are linked to the economic integration objectives of the Community and to the mandates of the various ECOWAS Institutions.

7. The 1991 Initial Protocol on the Court (A/Pl/7/91) was amended in 2005 by Supplementary Protocol (A/SP.1/01/05) which granted the Court jurisdiction to determine cases of violation of human rights that occur in any Member State. It is noteworthy that the human rights mandate of the Court has become its most prominent mandate. Although we are proud of the far reaching decisions the Court has made in protecting the human rights of ECOWAS Community citizens and in holding Member States accountable of their Treaty obligations under various international human rights standards, we must not lose sight of our primary mandate of being a Community court tasked with the responsibility of facilitating the integration process.

Normative Framework

8. Therefore, the essence of this conference is to re-focus attention on our primary mandate, on the economic integration objectives of the Community and the role of the ECOWAS Court of Justice in facilitating the attainment of the economic and integration objectives of the Community as laid out in the ECOWAS Revised Treaty. I believe that this conference could not have come at a better time than now, when the Community is working assiduously to adopt a single currency, having earlier adopted the Protocol on Free Movement, the ECOWAS Trade Liberalization Scheme and the recent Supplementary Acts on Investment, Competition and Common External Tariffs.

9. We note that in addition to the jurisdiction expressly granted to the Court by the provisions of the Revised Treaty and the Protocol on the Court as amended, the Court is also vested with jurisdiction in the Dispute Settlement Mechanism of some ECOWAS Legal texts. These include the ECOWAS Convention on Small Arms and Light Weapons, the ECOWAS Mediation and Security Council; The Supplementary Act on Community Rules on Investment, the Supplementary Act on the Regional Competition Authority, the Supplementary on the Legal Regime Applicable to Network Operators and Service Providers in Telecommunications and the ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector. All these Conventions, Protocols and Supplementary Acts, grant access to the Court by Member States, stakeholders, individuals and corporate bodies that are aggrieved in the operations of the various laws.

10. Your Excellencies, it is noteworthy that these Legal texts are geared towards the economic integration agenda of the Community. I expect that those that have access to the ECOWAS Court of Justice under these legal texts should exercise the right of access by approaching the Court whenever necessary in order to drive the development of ECOWAS Community law.

Member States as Critical Stakeholders.

11. We recognize that the Member States are the most important stakeholders in the integration process. We also recognize that the political will of Member States is a necessary factor for the achievement of our Community objectives. It is equally not in doubt that all Member States are sovereign states. However, we cannot disregard the legal implications of the supranationality of ECOWAS, especially in the context of the powers given to ECOWAS to act in the common interests of the fifteen Member States in certain spheres. We have therefore invited all Member States to participate in this international conference because the integration process revolves around them.

Constraints.

12. Your Excellencies, I wish to re-assure you that the ECOWAS Court of Justice will continue to rigorously play its role as the principal legal organ of the Community. However, the Court is constrained by several factors in the discharge of its mandate. Permit me Your Excellencies to mention just a few. The reduction of the number of the judges of the Court from seven, as provided for under the initial Protocol on the Court, to five, at a time of increasing workload is of grave concern to us. So also is the change of the tenure of the Judges from five years renewable to four years non-renewable. This is compounded by the complete renewal of the Membership of the Court in 2014 and 2018 as opposed to the staggered tenure of the judges as envisaged under the initial protocol.

13. Another major concern of the Court, is the unsatisfactory enforcement of the judgments of the Court. This erodes public confidence in the Court. Under the Treaty, the judgments of the Court are binding on Member States, institutions of the Community, individuals and corporate bodies. Furthermore, the Protocol on the Court, as amended, provides that Member States have the responsibility for the enforcement of the judgments of the Court in accordance with their Rules of Civil Procedure. They are equally required to appoint the competent national authority for the enforcement of the judgments of the Court. We are concerned that only five Member States (Guinea, Nigeria, Burkina Faso, Mali and Togo) have so far appointed the competent national authority. We will continue to appeal to the remaining ten Member States to comply with this Treaty obligation.

14. I also cannot fail to mention the clamour for the setting up of an Appellate chamber within the Court. This should be taken seriously because the right of appeal is indeed a fundamental human right. There is also the challenge of inadequate capacity in Language Services. The Services of Interpreters, Revisors and Translators are crucial in the judicial functions of the Court as the Court works in English, French and Portuguese. Delay in the translation of Court processes is causing inordinate delay in the hearing of cases. We must therefore continue to appeal that these issues be addressed urgently. The Court continues to work under

very difficult circumstances because of acute office accommodation crisis. We will continue to engage the Government of the Federal Republic of Nigeria for the provision of a conducive work environment for the Court, as it is obligated under the Headquarters Agreement to provide this facility for the court; being the Host Nation.

15. Conclusion

Your Excellencies and distinguished participants, in conclusion, may I once more express the profound appreciation of the ECOWAS Court of Justice, to His Excellency, the President of the Republic of Ghana for graciously honouring us with his presence at this opening ceremony. May I also express our gratitude to your Excellencies and all our distinguished participants at this conference for accepting our invitation. By the quality of the participants and having had the privilege of having a preview of the high quality of the presentations to be made here in the next three days, I am confident that this conference will be very fruitful and that the outcome of the conference will be useful in charting the course of the ECOWAS economic integration agenda in the years ahead. I wish you all intellectually stimulating and fruitful deliberations.

I thank you for your attention.

Hon. Justice Edward Amoako Asante
President,
ECOWAS Community Court of Justice
Abuja-Nigeria.

SPEECH DELIVERED

BY

HON. SHIRLEY AYORKOR BOTCHWEY MP

Minister for Foreign Affairs and Regional Integration

It is both an honour and a pleasure to welcome you to Accra for this year's International Conference of the ECOWAS Court of Justice. The periodic conferences of the Court of Justice have over the years proven to be an ideal forum for interaction among legal practitioners, technocrats, scholars and activists from Member States on pertinent legal, social and economic issues with respect to our Community.

It is therefore not surprising that the organisers of this year's conference have chosen Economic Integration in the region, as the focus of the deliberations, given its transformational impact on the expansion of economic opportunities in Africa. The determination of our leaders to make economic integration work, is aimed at ensuring Africa's effective participation in the global economic and trading system for the benefit of our people. In spite of some of the pains that it could cause, regional economic integration is the most direct, fastest and broad-based approach for the development of the Community. It is also an effective way to overcome the limitations of small internal markets and reduce the high rates of poverty and unemployment plaguing the continent.

Distinguished Ladies and Gentlemen,

The adoption of the Supplementary Protocol in 2005, which granted human rights jurisdiction to the Community Court of Justice, was a turning point in the history of the Court, and the citizens of the ECOWAS Community. Under Article 9 (4) of the 2005 Supplementary Protocol, the Court was for the first time given Jurisdiction to determine cases of human rights violations that occur in Member States. Article 10 (d) gave individuals access to the Court, on applications for relief for violation of their human rights. For the progressive realization of the aims and objectives of the regional economic integration agenda for West Africa, the Community Court is also mandated, inter alia, to adjudicate on any dispute relating to the interpretation, application and legality of the ECOWAS Community Law, and the failure by Member States to honour their obligations thereunder. These roles of the ECOWAS Court of Justice seek to guarantee a human rights approach to sustainable economic integration of the region.

We are witnesses to the significant strides made in the course of the four decades of the existence of ECOWAS. Citizens of our community now enjoy many rights conferred by legal institutional frameworks and structures of the Community. Among our Community's achievements are the introduction of the Common External Tariff (CET), ECOWAS Trade Liberalisation Scheme (ETLS) and the Protocol on free movement of persons, goods and services as well as the rights of peoples to residence and establishment. The establishment of the ECOWAS Parliament and the Community Court of Justice also rank as significant achievements that entrench democracy, promote human rights and justice, as well as foster public trust in the Community.

Our regional organization, nevertheless continues to grapple with a number of challenges in the effort to integrate Member States economically, including the delayed adoption of a single currency for the region, the lack of political will and commitment by Member States to implement Community protocols. Furthermore, the ECOWAS Trade Liberalisation Scheme (ETLS) is experiencing several challenges and occasional non-compliance by Member States which have hampered its successful implementation.

A host of other factors continue to limit trade within ECOWAS and other Regional Economic Communities across the continent. These include the low level of development of African economies and their excessive dependence on commodity production and

imports, protectionist trade policies engaged by Member States, weak transport infrastructure, poor trade logistics and increasing insecurity in the region. Others include cumbersome import and export procedures, border crossing problems as well as ineffective cross-border trade settlement systems among Member States.

It is therefore imperative that all Member States and Community institutions, including the ECOWAS Court of Justice, play their respective roles to facilitate the process of integration towards the establishment of an Economic Union in West Africa. As the Community's principal legal organ, the ECOWAS Court of Justice, has a critical role to play in driving the ECOWAS agenda by providing an enabling legal environment that promotes economic integration. The Court must effectively discharge its mandate consistent with the Revised ECOWAS Treaty and Supplementary Protocol of 2005. There is the need for a strong regional mechanism to resolve disputes relating to the integration process, including, matters relating to the ECOWAS Trade Liberalization Scheme.

I consider the theme and sub-themes to be discussed at this year's conference to be very important and timely. It will, no doubt, offer experts from our region the opportunity to critically examine the challenges and prospects for the realisation of the ECOWAS objectives. It will also create the platform for participants to discuss the role of democracy, rule of law, good governance and the promotion and protection of human rights, as necessary conditions for effective economic development.

May I conclude by reiterating Ghana's continued commitment towards strengthening the ECOWAS Community to ensure economic cooperation and integration among Member States and their peoples towards regional and Continental development.

I wish you fruitful and successful outcomes in your deliberations.

I thank you for your attention

STATEMENT DELIVERED BY HER LADYSHIP THE CHIEF JUSTICE OF GHANA

JUSTICE SOPHIA A. B. AKUFFO

AT THE INTERNATIONAL CONFERENCE HOSTED BY THE ECOWAS COURT OF JUSTICE

THEME:
ECONOMIC INTEGRATION OF WEST AFRICA: CHALLENGES AND PROSPECTS

VENUE: ACCRA, GHANA

23RD AND 24TH OCTOBER, 2019

Your Excellency the President of the Republic of Ghana, Nana Addo Dankwa Akufo-Addo;
The Attorney-General and Minister for Justice of the Republic of Ghana;
Ministers of States;
The President, ECOWAS Commission;
Distinguished Invited Guests;
Ladies and Gentlemen;

I am grateful to be called upon to give a statement at this year's conference, themed ***"Economic Integration of West Africa: Challenges and Prospects"*** which is organized by the Community Court of Justice, ECOWAS (CCJE), in order to address the legal aspects of economic integration, rule of law, good governance, peace and security among Member States of the ECOWAS.

I must commend the ECOWAS Court of Justice for its decision to host this year's conference in Accra, Ghana. And to all participants who travelled from near and far, it is my pleasure to extend to you a warm welcome.

Ghana is a key member of the ECOWAS and it is worthy of note that over the years, Ghana has entered into joint-venture projects with other Member States, made contributions of human resources as well as financial contributions. In the same vein, Ghana will continue to play an active role in the realization of the Community's objectives. I also wish to commend the ECOWAS Court of Justice for its wisdom in choosing such an important theme and the various sub-themes for this conference.

Economic Integration is the cardinal objective of the Community, and indeed its issues cannot be over emphasized, because it is a strategy for providing collective economic survival for nations around the world. The theme of the Conference is central to the economic integration objectives of the Community.

Economic Integration has economic and legal dimensions. The law is an imperative dimension to the attainment of the Economic Integration objectives of the Community - it requires a solid legal normative framework and a strong regional judicial forum.

Economic Integration raises issues of cross-border enforcement of laws, judgments and orders, particularly in criminal and commercial matters. Since the emergence of democratic rule, Sovereign States have been in the practice of creating their own laws, adjudicating on them and giving enforcement to judgments and orders. It has become essential, however, to evolve systems where the laws, judgments and orders of one country may be enforced in another. While international trade and commercial activities have rapidly evolved as a result of globalization, mechanisms put in place for the enforcement of cross-border laws, orders and judgments among Member States of the ECOWAS, have not developed at the same speed. In fact, legal arrangements that are currently in place fail to meet the expectation that judgments from one State may easily be enforced among Member States. The enforcement regimes that exist in Ghana will be used to illustrate the point being made.

Enforcement of Civil Foreign Judgments and Orders

The recognition and enforcement of foreign judgments in Ghana is regulated by Common Law and statutory regimes. The regimes co-exist in parallel. The regime that applies to any particular foreign judgment is dependent on the country and Court from which the judgment emanates. These regimes share some substantive law content, but they are very

different and should not be confused with each other.

A judgment creditor seeking to enforce foreign judgment in Ghana cannot do so without recourse to certain laid down procedures. The procedure in Ghana for enforcing foreign judgments, using the Common Law regime for instance, requires the judgment creditor to issue a Writ and, in the Statement of Claim, plead that the judgment debt is due and owing. The foreign judgment is thus used as evidence for that pleading. The judgment creditor may also apply for Summary Judgment on the grounds that the defendant has no real prospect of successfully defending the claim.

Cross-border judgments are enforceable in Ghana, only under its domestic laws. In contrast, some legal systems recognize foreign judgments more or less to the same degree as their domestic judgments due to the fact that they are bound to a Bilateral or Multilateral Treaty.

Enforcement of Foreign Arbitral Awards

In Ghana, a foreign arbitral award may be enforced subject to the following conditions:

a. the award must have been made by a competent authority under the laws of the country in which the award was made;
b. a reciprocal arrangement must exist between the Republic of Ghana and the country in which the award was made; or
c. the award must have been made under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral awards, 1958 (New York Convention) or under any other international convention on arbitration ratified by the Parliament of Ghana; and
d. the party that seeks to enforce the award must have produced:
    i. the original award or a copy of the award authenticated in the manner prescribed by the law of the country in which it was made;
    ii. the agreement pursuant to which the award was made or a copy of it duly authenticated in the manner prescribed by the law of the country in which it was made or in any other manner as may be sufficient according to the laws of the Republic of Ghana (where any document relied on is not in English, a certified true translation of it shall be produced to the Court);
e. there must be no appeal pending against the award in any Court under the law applicable to the arbitration;
f. the award must not have been annulled in the country in which it was made;
g. the party against whom the award is invoked must have been given sufficient notice to enable that party to present his or her case;
h. a party who lacks legal capacity must have proper representation;
1. the award must deal with the issues submitted to arbitration; and
j. the award must not contain a decision beyond the scope of the matters submitted for arbitration.

Enforcement of Cross-border Criminal laws, Judgments and Orders

Section 8 of the Criminal Offences Act, 1960 (Act 29) of Ghana states that, no person shall be liable to punishment by the common law for any Act. That is to say that, there can be no common law orders, laws or judgments in relation to criminal acts from other jurisdictions that may be enforced by the Ghanaian Courts, save those in respect of contempt of Court.

Criminal accountability is of fundamental importance with regard to respect for the rule of law, deterrence of future violations and the provision of redress and delivery of justice to the victimized. However, accountability for criminal offences is mostly dependent on the place where the crime was committed and the nationality of the offender. Unfortunately, in West Africa, there is no statutory legislation that directly binds all Member States of the ECOWAS to enforce criminal laws, judgments and orders that have been passed by other Member States. Notwithstanding the absence of statutory legislation which binds Member States to enforce criminal laws, sentencing orders may be enforced among Member States based on reciprocity and mutual agreements, national implementing legislation or international conventions.

Furthermore, there is no community-wide institution in place yet to deal with crimes, whether by way of investigation or prosecution, which occur in multiple States. The ECOWAS Court does not have jurisdiction in criminal matters.

This position was re-affirmed by the Court in the case of:
Alhaji Ahmani Tidjani v 1. Federal Republic of Nigeria 2. Republic of Mali 3. Republic of Benin 4. Attorney-General of Lagos State 5. Attorney-General of Ogun State, decided on 28 June, 2007. That was a case which involved crime hatched by a citizen of the Republic of Niger, nurtured in the Republic of Benin, where he was ordinarily resident, and consummated in the Federal Republic of Nigeria. He was arrested by the authorities in the Republic of Mali where he had travelled to do business. The Republic of Mali handed him over to the Republic of Benin which in tum handed him over to the Federal Republic of Nigeria. The domestic Courts in Benin Republic and Nigeria had assumed jurisdiction over the same matter. He was exonerated by a Court in Benin Republic. Again a High Court in Lagos, Nigeria, set him free due to want of jurisdiction. These notwithstanding, prosecutors in Nigeria hauled him before different Courts in Lagos, ljebu and Abeokuta all in Nigeria, in respect of the same offence. It was as a result of this apparent harassment that he brought an action before the CCJE to assume jurisdiction.

There was no ECOWAS Protocol in place to deal with a situation like this, and the Court does not have jurisdiction, in matters of crime. Thus the Court had to dismiss the action, to allow the criminal prosecution to proceed in the various domestic Courts. This is not an isolated case, such cross border offences occur very frequently. There is no gainsaying the fact that with the adoption of the ECOWAS Revised Treaty in July 1993, and the Protocol on Free Movement of Persons, Right of Residence and Establishment in 1979, and related Conventions, a lot of cross border crimes must be anticipated. The Community has been slow in dealing with problems associated with free movement of persons and goods in the zone. The establishment of the Inter-Governmental Action Group against Money Laundering (GIABA), for instance, was in recognition of the effect of cross border crimes on Member States. GIABA's efforts have largely been focused on sensitization of Member States and institutions against the harmful effects of money laundering. There is no mechanism in place to investigate and prosecute offenders, except when an individual Member State decides to act on their own, with or without cooperation of other Member States, wherein part of the process of committing the crime might have taken place. The fight against money laundering has thus not yielded the desired results.

Besides money laundering, there are other equally serious cross border crimes going on in the ECOWAS area which have dire consequences on the social fabric of society, as well as security implications. Some of these crimes are human trafficking, smuggling and the trafficking of arms. Thus, we have nationals from one Member State entering another to commit crimes like robbery, because of easy access to arms and ammunitions. The easy access to arms enables criminal gangs to thrive.

The institutional framework is simply not present across the various States to tackle such serious criminal issues which are devastating the socio-economic life of the peoples of West Africa, and as a result, the scarce resources intended to improve the daily lives of the people, are diverted to tackle security issues.

In order to enforce judgments, laws and orders among Member States there is the need to have an in-depth knowledge of several local statutes and case law available in the enforcing State, so as to understand the legal framework involved in the registration and enforcement of foreign judgments among Member States.

It is a fundamental principle of territorial sovereignty that a judgment obtained in a particular jurisdiction shall be recognised and enforced in that jurisdiction and cannot, in the absence of international agreement, be recognised by the Courts of a foreign jurisdiction.

Over the centuries, Private International Law has developed rules to deal with the problem of the absconding debtor and in the absence of a treaty commitment, countries are under no obligation to recognize and/or enforce foreign judgments. Consequently, States are largely unconstrained in their treatment of cross- border judgments, at least outside of treaties.

A judgment creditor, who seeks to enforce a foreign judgment is required, in most Member States of the ECOWAS, to first consider whether the foreign judgment is enforceable under any of the laws of that country.

Recommendations

In the light of the foregoing, the following recommendations are made:

1 The West African Community must provide the enabling legal environment for the attainment of the Economic Integration objectives of the Community.

2 Judgment creditors must closely monitor the enforcement processes in the enforcing States, so as to avoid undue delay.

3 Member States should enter into reciprocity agreements with each other in order to enforce their judgments and orders.

4 As the principal legal organ of the Community, the ECOWAS Court of Justice must be empowered to play the expected role in the integration process of the Community. Hence, it is necessary to restore the membership of the Court back to seven Judges and to extend the tenure of the Judges to seven years as pertains in other regional Courts.

5 The necessary institutional framework must be established within the West African Region to ensure the achievement of speedy investigation across borders into

alleged crimes, promotion of expeditious trials to inspire confidence in the people. Ad hoc solutions should be a thing of the past. When Member States have a harmonized judicial and legal system, fighting crime becomes a shared responsibility and it becomes easier to achieve results than when it is left to individual Member States. Whilst the crimes such as money laundering, human trafficking and trafficking in arms may not, by themselves, qualify as crimes of genocide, war crimes, crimes against humanity or crimes of aggression. as to bring them within the jurisdiction of the International Criminal Court (ICC), their effects are devastating enough as to engage the attention of the international community. In line with this, there is a need for the establishment of an international tribunal or a revision to enhance the jurisdiction of the ECOWAS Court.

6 Pending the establishment of an international tribunal or revision in the jurisdiction of the ECOWAS Court, we should consider granting domestic Courts extra-territorial jurisdiction over nationals of other States whose criminal activities cut across borders;

7 The ECOWAS Court of Justice must consider the reality that society evolves and thus, the rules regulating societal conduct cannot remain static. As much as possible, the Court should hold continued interactions amongst relevant stakeholders to enable the Court live up to the speed of the ever-evolving society.

Conclusion

It would appear that the option to economic integration of West Africa is almost non-existent. It is even more worrisome considering the fact that the other international integration experiments are not only relying on their internal markets created through integration, but are also taking comparative advantage of the large and abundant markets in West Africa to the detriment of Member States of West Africa.

The ECOWAS Court of Justice is a great achievement in the economic integration agenda. It has become the framework for ensuring compliance to all decisions made by Member States.

Hope is not lost in the pursuit of Economic Integration in West Africa as the benefits that come Economic Integration are a beacon of hope for member States. Therefore, it follows logically that, the ground is fertile and the prospects are unlimited for the urgent change of approach and attitude by the people, governments and countries of West Africa in adopting the strategy of Economic Integration as the panacea to the myriad of development and socio-economic challenges that have long bedeviled the region.

I wish all the participants fruitful deliberations, and I am looking forward to a beneficial outcome of the conference.

I thank you for your attention.

OPENING REMARKS

BY

HIS EXCELLENCY
JEAN-CLAUDE KASSI BROU

President, ECOWAS Commission

Delivered by **Dr Kofi Apraku**
Commissioner of Macroeconomic Policy and Economic Research ECOWAS Commission

It is my pleasure and honor to be here today to address you on behalf of His Excellency Dr. Jean-Claude Kassi BROU, President of the ECOWAS Commission who would have liked to be with you at this opening ceremony, but unfortunately could not do so, because of unavoidable circumstances. He has asked me to convey to you his fraternal greetings at this important conference and to deliver this Statement on his behalf today. Against this backdrop, please permit me to read the statement on his behalf. I read as thus:

On behalf of the entire ECOWAS Community, I wish to express my sincere thanks to the ECOWAS Court of Justice leadership and the entire management and staff of the Court for the invitation extended to me to be part of this conference. Permit me to take this opportunity to also express our deep gratitude to the President of the Republic of Ghana His Excellency, Nana Akufo-Addo, and the good people of the Republic of Ghana for accepting to host this important meeting and for the excellent facilities put at the disposal of all delegates. In addition, I wish to extend my sincere thanks and appreciation to all of you distinguished delegates present for sparing time out of your busy schedules to participate in the conference, which is a demonstration of your strong commitment to the regional integration programme. I also wish to take this opportunity to reiterate our satisfaction with the level of collaboration existing between the ECOWAS Commission and the ECOWAS Court of Justice in the implementation of the regional integration programme. I must therefore commend the ECOWAS Court of Justice for this timely initiative of organizing this important conference considering the importance of the legal aspects ofregional economic integration.

Your Excellency, Nana Addo Dankwah Akuffo Addo, President of the Republic of Ghana
Honourable Chairman
Distinguished Delegates

I am delighted that this conference is coming at a very auspicious time when the region is accelerating progress towards regional economic integration. The Community is proud to say that in spite of the numerous challenges confronting our regional integration programme, ECOWAS remains the most dynamic Regional Economic Community (REC) in Africa. In order to make the regional integration more relevant to the needs and aspirations of the Community, ECOWAS Commission adopted the ECOWAS Vision 2020 in June 2007 with the basic objective of transforming the region from an "ECOWAS of States" to an "ECOWAS of People" in which the citizens will be actively involved in the regional integration process and become its ultimate beneficiaries. While ECOWAS Leaders agree that regional economic integration presents the most cost-effective way for broad-based economic development, it is also an effective way to overcome the limitations of small internal markets, increase bargaining power, reduce negotiation costs and ultimately reduce the high rates of poverty and unemployment plaguing our region.

Over the years, the Region has recorded a lot of achievements in the areas of peace and security and economic integration and development. Indeed, significant progress has been made to sustain peace and security in the region through initiatives such as: Preventive Diplomacy, Early Warning, Capacity Building and Peace-keeping and Regional Security, within the framework of the Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. Through these initiatives the ECOWAS region has become relatively stable, with occasional conflicts arising from terrorism.

In the area of democracy and good governance, the initiatives of ECOWAS have yielded tangible results. The adoption of the Supplementary Protocol on Democracy and good Governance has contributed to the promotion of Democratic Governance and consolidation of democratic institutions in the region. ECOWAS has thus been monitoring the conduct of elections in various Member States.

Considerable progress is also being made in consolidating the customs union status of the Community with focus on strengthening the Free Trade Area using the ECOWAS Trade Liberalisation Scheme (ETLS) as a promotional tool, ensuring the effective implementation of the Common External Tariff (CET) and adopting a regional customs code for the harmonisation of customs procedures. ECOWAS Commission is strengthening the effective implementation of the Protocol on free movement of goods and people, right of residence and establishment in our region. In this regard, I wish to implore all our Member States to commit themselves to respect the Protocols on Free movement of goods and persons, right of residence and establishment as well as the implementation of the ECOWAS Biometric Identity Card, which aims at facilitating mobility and promoting security in the region. I wish therefore to commend His Excellency, The President of Ghana for introducing the ECOWAS Biometric Identity Card.

With respect to private sector development, the Commission is implementing several programmes including the development of the Common Investment Policy and Code, the establishment of ECOWAS Payments and Settlement System and the implementation of the West African Capital Markets Integration Programme, led by the West African Capital Markets Integration Council (WACMIC).

Recognising the need to ensure food security and food self-sufficiency to meet the nutritional needs of the population, the Commission has also adopted the ECOWAS Agricultural Policy (ECOWAP), with focus on the development of National Agricultural Investment Plans (NAIP); Regional Agricultural Investment Plans (PRIA); Regional Food Bank; and Regional Support Programme for the sustainable development of rice farming in West Africa.

On infrastructure, notable achievements have been made in the development and implementation of sustainable programmes, including road, energy, telecommunications and Information and Communications Technology (ICT) in the region. To increase trade and investment, ECOWAS is implementing transit and transport facilitation programmes as well as constructing regional corridors to link Member States. In this regard, joint border posts have been constructed in Noepe (Ghana/Togo) and Seme/Krake (Nigeria/Benin), while the Lagos-Abidjan and Abidjan-Dakar corridors are being developed with the support of the African Development Bank and other international donors. In order to address the significant energy challenges of the region, ECOWAS has adopted a regional policy on energy and created a Centre for Renewable Energy and Energy Efficiency, (ECREEE), a Regional Regulatory Authority (ERERA), the West African Power Pool (WAPP), as well as the West Africa Gas Pipeline.

Concerning monetary integration, significant efforts are being made to sustain progress towards macroeconomic convergence and preparing the region towards the launching of the ECOWAS Monetary Union in 2020. In order to accelerate the pace of implementation of the monetary integration programme and ensure robust monitoring of the process, the Presidential Task Force on the ECOWAS Single Currency Programme adopted a revised

Roadmap on the Single Currency Programme in February 2018 in Accra, Ghana followed by the establishment of a Special Fund to finance roadmap activities.

In the domain of social and human development, the ECOWAS Commission, in 2018 accelerated its programs in the areas of education, gender, children, youth, sports, employment and the fight against drug trafficking and terrorism. Concerning humanitarian matters, the Commission has worked to manage risks and emergencies, and provided support to victims of violence, conflicts and natural disasters.

Your Excellency, Nana Addo Dankwah Akuffo Addo, President of the Republic of Ghana
Honourable Chairman
Distinguished Delegates

The theme of this year's conference is quite appropriate, considering the various challenges that face our region today. Political and social instability remain a major concern, threatening peace and security in the region. The threat posed by extremist and armed groups in parts of the region continues to raise uncertainty over the already fragile stability in the Sahel-Saharan region, and by extension, the entire region.

On the economic front, even though the region continues to experience relatively good macroeconomic performance, the twin issues of unemployment, especially youth unemployment, and poverty remain a challenge for our Member States. Therefore, our focus should shift from examining not only the growth figures but also to ensure inclusiveness and sustainable growth that is gender sensitive, and how can we ensure that that growth is broad-based and impacts positively on poverty among our people.

The issue of food security remains a major challenge that regional authorities are paying close attention to. Furthermore, there are still significant obstacles to the free movement of persons, resulting in the selective implementation of the Protocol on free movement and related relevant texts. The high level of infrastructural deficit also remains a crucial hindrance to socio-economic development in our region.

Your Excellency, Nana Addo Dankwah Akuffo Addo, President of the Republic of Ghana
Honourable Chairman
Distinguished Delegates

ECOWAS is undertaking several Community initiatives that have good prospects for the enhancement of regional integration and overall socio-economic development of the region. The Community Development Programme (CDP), which was adopted in 2014, is a long-term development programme that aims to deepen regional integration and open up the region for trade and investment flows and thus build a competitive economy. This vision continues to make the ECOWAS space more economically viable within the context of a globalized economy.

As I conclude, let me state that I have a firm conviction that the outcome of this Forum will spur our region towards designing robust legal policies that would support the integration process. I wish to reassure the Court that ECOWAS Commission will continue to support your work and provide clarity on your activities as well as provide the required leadership and space for you to accelerate your work in maintaining the pace of implementation of the

Treaty and Laws of the Community. In particular, I wish to implore Distinguished Delegates to note in your deliberations the following significant concerns:

i. Ineffective implementation of the Community protocols and conventions, especially protocol on free movement of goods and persons and rights of residence and establishment
ii. Non-compliance by some Member States with the provisions of the Community Levy Scheme;
iii. Negative impacts of exogenous shocks on the national economies; and
iv. Fragile political and security situation existing in some Member States, which is inimical to inclusive economic growth and sustainable development.

I urge you all to discuss openly all the issues you deem necessary with a view to reaching consensus that will lead to the emergence of practical recommendations for implementation. I look forward to receiving the recommendations emanating from this Conference

On this note, it is my honor and privilege to declare open the International Conference on Economic Integration: Challenges and Prospects.

Thank you for your kind attention.

ECONOMIC INTEGRATION OF WEST AFRICA: CHALLENGES AND PROSPECTS

BY

CHIDI ANSELM ODINKALU, Ph.D

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It is a privilege to be asked to join this conference by Africa's most effective and oldest regional court or tribunal. For this, I acknowledge with gratitude the uncommon generosity and kindness of the Judge President and Honorable Judges of the Court. The Court deserves our collective appreciation and encouragement, not merely for this auspicious convening, but more significantly for the incredible burden of growing the judicial organ of the Community which it continues to discharge admirably under quite challenging circumstances.

This conference takes place in Accra, the capital of Ghana, whose founding President, Kwame Nkrumah, argued the most coherent and ambitious case for Africa's unity and should arguably be credited with the inspiration for the regimes of integration that exist on the continent today. It bears recalling that it was Nkrumah who argued at the onset of Africa's decade of decolonization, 56 years ago, that integration was "an indispensable precondition for the speediest and fullest development, not only of the totality of the continent, but of the individual countries."[1] His debate with President (Julius) Nyerere helped to shape the evolution of regional institutions for co-operation and integration.

In 1966, the Organisation of African Unity (OAU) adopted the Resolution on Social and Economic Co-operation, which acknowledged that regional and sub-regional institutions contributed constructively to continental integration and expressed full support for "multi-national experiments in economic and social co-operation such as those that are now being carried out in some geographical areas in the framework of waterway agreements and others."[2] This laid the foundation for the emergence in the following decade of what have come to be known as the Regional Economic Communities (RECs) in Africa. Today, it is accepted that the RECs have become the building blocks for a regional governance and integration system.

Regional Integration: A Project in Crises

This conference also occurs at a time of multi-faceted crises for regional integration within and beyond West Africa, evident in different trends and incidents. Among the most notable of these, first, since the end of August, Nigeria, undisputedly the hegemon in West Africa, launched what it terms a "joint border security exercise ordered by the government and aimed at securing (its) land and maritime borders."[3] In essence, Nigeria closed its land borders, imposing a blockade on neighbours, especially, Benin Republic. This closure appears to have been done with little regard for the niceties of the legal obligations of Nigeria under the regional integration regimes of the ECOWAS, including, in particular, the Protocol on Free Movement of Persons. Neither Nigeria nor regional institutions appear to be in a haste to bring this measure into compliance with the laws and procedures of ECOWAS, suggesting either that everyone is too afraid of Nigeria or that the laws and institutions of ECOWAS are considered irrelevant to this situation. Whatever may be the case, it is not a great advertisement for the project of regional integration in a region in which mass expulsion of Community nationals still takes place.

1 Kwame Nkrum., *Africa Must Unite,* 164 (1963)

2 Resolution on Social and Economic Co-operation, AHG/Res.46, III (1966)

3 "Buhari Explains Why Nigeria-Benin Border was Closed", *The Pulse,* 28 Aug, 2019, available at https://www.pulse.ng/news/local/buhari-explains-why-nigeria-benin-border-was-closed/38hv5n8

Second, beyond West Africa, regional integration is under pressure from accusations of profound democratic deficit and democratic legitimacy.[4] This is the issue implicated in the current crisis unfolding within the European Union with the implementation of the outcome of the Brexit referendum. While ECOWAS has not yet faced anything of the sort, it seems quite clear that questions of territorial scope of the Community and the reach of its legal obligations will continue to engage the Community well into the foreseeable future. Mauritania denounced the ECOWAS Treaty in 2000 and sought associate membership in 2017, the same year in which Morocco, a country in the Maghreb, lodged an application for membership.

Founded in 1975, ECOWAS last admitted a full member in 1976 when Cape Verde joined. With Morocco's application, the Community confronts new dilemmas having far reaching implications for Africa's largest regional bloc. The requirement in the founding treaty limiting membership to "such other West African States as may accede to it" was removed when the ECOWAS Treaty was revised in 1992. Without regional contiguity as the defining requirement for membership of the Community, there is a need for clarity on the strategic values to define the territorial scope of the Community. The Community Court of Justice will be critical in determining these.

Third, the Court of Justice is itself in transition with a rising burden of case dockets occurring, ironically at a time of downsizing of its personnel. The Bench of the Court has been downsized by nearly 30 per cent from seven to five judges. The tenure of the judges has also been reduced to a single term of four years with no stagger, where, in the past, judges were eligible for renewal of their five-year mandates. This means that the court must lose invaluable experience every four years, with a total turnover of all its judges. Notwithstanding an impressive clear up rate of cases, the court, which has received 425 cases since it began sitting in 2001 and delivered 220 judgments during the period, currently has 115 pending cases, representing 27.05 per cent of the proportion of cases received since inception.[5] This is a back-breaking docket for a bench with a very short shelf life.

Besides these, the region is also beset with challenges of political instability, organized crime, rising violence, including the crisis of Boko Haram, affecting Nigeria and Niger Republics; Islamist violence in the Sahel stretching as far as Burkina Faso and Mali and the challenge of maritime insecurity in the Gulf of Guinea, all of which affect the process and incidents of integration. Climate Change is impacting on human and food security in the region, affecting survival and defining free movement of goods, services and skills.

These then are some of the challenges that must shape the prospects of regional integration in West Africa at this time and with which this conference must grapple. Unlike before, many of the traditional powers whom we were in the habit of running to for answers to these challenges are themselves bedraggled and preoccupied with existential distractions which preclude them from finding any bandwidth for our African problems.

4 "Buhari Explains Why Nigeria-Benin Border was Closed", *The Pulse*, 28 Aug, 2019, available at https://www.pulse.ng/news/local/buhari-explains-why-nigeria-benin-border-was-closed/38hv5n8

5 E. Stein, "International Integration and Democracy: No Love at First Sight", 95 *AJIL* 489, 494 (2001)

For the first time, perhaps since Independence, arguably, the solutions to these challenges must be found from within ourselves. Far from seeking to prescribe answers to them, this paper merely sets out to highlight normative and practical aspects of West Africa's regional integration challenges in a rapidly changing world. Over the course of this conference, hopefully, some of them will receive the attention they deserve in a collective search for answers.

Some Legal Aspects of Regional Integration

Regions are not facts of nature; they are constructed by leadership and human agency and are subject to both re-design and re-construction.[6] In West Africa, the project of regional economic integration has benefited from contiguity, affinity and historical connections founded on both among the peoples of the region. Thus, although Senegal is supposedly "Francophone" and The Gambia is "Anglophone", both countries share transboundary links going back centuries and are bound by shared cultural identities and shared languages, including Wolof. The Yoruba of Nigeria stretch through Benin to Togo. Hausa communities exist in Ghana, Niger and Nigeria. The Fulbe are in all countries of the region. Just as the identities and territories across which integration takes place are constructed, they can also be re-constructed.

The "region" has, therefore, been described as at best ambiguous.[7] Integration, it has been said, "denotes the bringing together of parts of a whole.[118] To the extent that it is legally significant, this implies at least four things: the existence of separate or autonomous participants (usually states), an objective (goal or utility), their coming together in closer relationship through a process (legal instrument) and an outcome with some permanence (institutionalisation). SKB Asante explains:

The word 'integration' taken from the Latin, is, of course, very old. In Latin, *integration* was mostly used in the sense of 'renovation'. The *Oxford English Dictionary* gives 1620 as the date for the first use in print of integration in the sense of 'combining parts into a whole', which leaves open a wide range of ambiguity.[9]

The idea of regional integration presumes coexistence and co-operation among states. In a pioneering study on regional co-operation in Africa, Bingu wa Mutharika, who would much later go on to become Malawi's third President argued:

There cannot be integration without co-operation: they are two sides of the same coin. Therefore, if one proceeds from the premise that both economic integration and economic co-operation are means to an end and not ends in themselves, this distinction becomes merely academic. In practice, there is no clear line of demarcation between them. [10]

Regional integration is a hugely complex and specialized area of international law involving aspects of international economic and trade laws as well as human rights, institutional law and, increasingly, peace and security. Regional economic integration is

6 New Judges of ECOWAS Court Set Record in Number of Decisions", available at http://prod.courtecowas.org/2019/09/30/new-judges-of-ecowas-court-set-record-in-the-number-of-decisions/

7 A. Hurrell, "Regionalism in Theoretical Perspective", in L. Fawcett & A. Hurrell (eds.), *Regionalism in World Politics: Regional Organisation and International Order,* 38 (1994)

8 *Ibid.,* 39

9 Bella Balassa, *The Theory of Economic Integration,* 1 (1961)

10 S.K.B. Asante, *Regionalism and Africa's Development* 18 (1997). Italics original

perhaps the most widely studied form of regionalism. According to Bella Balassa, regional economic integration is:

> A process and a state of affairs. Regarded as a process, it encompasses measures designed to abolish discrimination between economic units belonging to different national states; viewed as a state of affairs, it can be represented by the absence of various forms of discrimination between national economies. [11]

It has additionally been said that economic integration denotes "a state of affairs or a process which involves the amalgamation of separate economies into larger free trading regions."[12] This amalgamation has consequences for the scope and traditional prerogatives of statehood. It produces institutions, constrains sovereignty as we know it and creates new obligations. Regional integration also helps in the construction of communities and identities.

The essential attributes of economic integration are defined with reference to mobility of goods, services, factors of production and variable capacities for shared or supra-national decision-making and implementation. Supra-nationality in this context "refers to a situation where an international institution is endowed with powers to take decisions binding on sovereign states either generally or in specific areas of state activity."[13] It has two dimensions: in relation to its foundations, it refers to a normative and institutional system established through the combined will of entities not necessarily created by the domestic constitutional arrangements of the participating states; and in relation to its implementation or monitoring function, supra-nationality refers to the acceptance of the supervisory competence of a regional institution over a sovereign state. It is in this sense that the ECOWAS Court ruled that the relationship between countries and the Community is "not of a vertical nature between the Community and the member states but demands an integrated Community legal order."[14]

Certain essential characteristics define this legal order. First, it is worth pointing out that regional arrangements have an international framework defined by both the United Nations Charter and the global regime of economic laws under the General Agreement on Tariffs and Trade (GATT). Article 1 of the UN Charter establishes universality as the central foundational principle of the organization. The objectives of the UN include the development of friendly relations among nations "based on respect for the principle of equal rights and self-determination and to take other appropriate measures to strengthen universal peace" as well as international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and promotion and encouragement of respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion. [15] As a qualification to these universal principles, Article 52(1) of the UN Charter provides:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace

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11 Bingu Mutharika, *Multinational Economic Cooperation in Africa,* 14 (1972)
12 Bella Balassa, *The Theory of Economic Integration,* 1 (1961)
13 A., El-Agraa, *Regional Integration: Experience, Theory, and Measurement,* 1 (1989)
14 ECOWAS, *Review of the Treaty: Final Report by the Committee of Eminent Persons,* 16, para 42 (1992)
15 Case No. ECW/CCJ/APP/02/05, *Hon. Dr. Jerry Ugo/ewe v. Federal Republic of Nigeria & Hon. Dr. Christian Okeke & Others Intervening,* Judgment of7 October 2005., para. 32

and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

The Charter stops short of defining regional arrangements or agencies and subsequent practice of the UN has not entirely filled this gap.[16] However, as a general rule, regional arrangements, including those for integration, take place under an implicit requirement of coexistence and compatibility with the United Nations Charter and where an irreconcilable difference exists between a regional regime and the UN Charter, the latter has primacy.[17]

Second, regional integration is necessarily institutionalized, with governance mechanisms and consequential regimes of legal obligations and rights. In the *Case Concerning Land and Maritime Boundary between Cameroon and Nigeria*,[18] for instance, Nigeria objected to the jurisdiction of the International Court of Justice (ICJ) arguing that its dispute with Cameroon was subject to the exclusive jurisdiction of regional mechanism of settlement constituted under the Chad Basin Commission annexed to an Agreement of 22 May, 1964.[19] This Agreement for the development of the Lake Chad Basin was designed "to formulate principles of *(sic)* the utilization of the resources of the Basin for economic purposes, including the harnessing of the water".[20] Dismissing Nigeria's argument that the Lake Chad Basin Commission was a regional arrangement under Article 52 of the UN Charter, the ICJ held that:

From the treaty texts and the practice analyzed, it emerges that the Lake Chad Basin Commission is an international organization exercising its powers within a specific geographical area; that it does not, however, have as its purpose the settlement at a regional level of matters relating to the maintenance of international peace and security and thus does not fall under Chapter VIII of the Charter.[21]

Third, regional economic integration arrangements are permitted under Article XXIV of the General Agreement on Tariffs and Trade (GATT) to the Most Favoured Nation (MFN) principle in Article 1 thereof. Article XXIV provides, inter alia:

> 4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.
>
> 5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade

16 UN Charter, Article I (2)-(3)
17 Bruno Simma, *et al.* eds., *The Charter of the United Nations: A Commentary*, 687 *et seq.* (1995); Christine Gray, *International Law and the UseofForce,204-206* (2000).
18 See, *Case Concerning Military and Para-Military Activities In and Against Nicaragua, Jurisdiction and Admissibility*, (1984) *!CJ Reps.,s.*, 392, para 107
19 *Case Concerning Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria, Equatorial Guinea intervening)*, ICJ General List No. 94, Preliminary Objections, Judgment of 11 June 1998.
20 *ibid.*, paras 63-64.
21 *ibid.*

area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area... ;

Quite clearly, voluntariness is a constitutive criterion for regional economic arrangements under Article XXIV(4) of the GATT. The more specific references to customs unions and free trade areas in Article XXIV illustrate the kinds of voluntary agreements for "closer integration between the economies" permitted under this provision but is arguably not exhaustive ofthem.[22] Additionally, such arrangements must have some permanence, and be compatible with or advance the aims and objects of the UN.

Notionally, at least, the project of regional integration in ECOWAS evinces very far reaching diminutions of national sovereignty and domestic jurisdiction, and extends to regionalization of defence and security, regionalization of factor mobility and economic freedoms, including free movement of capital, skills, labour, goods and services, judicial institutions, and with the possibility even of political union not excluded. [23]

Regional Integration, Human Well-being and Human Rights

The declared objectives of integration in Africa include the advancement of development, human well-being and dignity.[24] This embodies objectives that go beyond mere economic integration as traditionally understood to include guarantees of human well-being as an underlying value of integration.

The advancement of human well-being in a territorialized world requires both regional integration and regional human rights regimes. Integration expands the territorial frontiers for the pursuit of development and economic activity; human rights guarantee the rights of the participants in this process and insures against state arbitrariness. Processes of integration and protection of human rights are accompanied by institutional and procedural guarantees recognizing individuals and human communities as bearers of rights as well as participants in, and beneficiaries, of integration.

There is, therefore, a relationship between human rights and regional integration that is both intrinsic and instrumental. Intrinsically, both integration and the regional protection of human rights involve varying degrees of diminution of sovereignty. States in regional integration arrangements agree to pool sovereignty. In political integration, the pooling evolves into a fusion of sovereignty across independent territories. Similarly, a regional human rights regime institutes supra-national values as limits on State conduct and establishes mechanisms for monitoring compliance within these limits.

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22 *Ibid.*, para 67

23 Examples of such arrangements include the European Community, the North Atlantic Free Trade Area (NAFTA), and the ECOWAS. By 2000, for instance, the WTO had "inventoried well over I 00" of such arrangements globally. See J.H. Jackson, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations,* 56 (2000)

24 See, Maurice Kamto, "Les cours de justice des communautes et des organisations d'integration economiques Africaines", 6 *AYJL* 107 (1998).

Thirdly, the judicial institutions of regional integration in Africa, such as the ECOWAS Court of Justice, have been conferred explicitly by regional treaty law with jurisdiction over human rights protection.

Fourthly, within varying contexts and with variable consequences, both human rights and regional integration are intrinsically anti-majoritarian. Human rights norms and institutions provide protections against the potential for governmental or majoritarian arbitrariness. The anti-majoritarianism of integration occurs in the context of inter-state relations and is reflected in the principle of variable geometry which recognizes that different states within an integration arrangement will attain integration standards at different speeds. The anti-majoritarian logic of variable geometry necessitates common political values founded on shared commitment to human rights standards.

Fifthly, therefore, and implicit in the foregoing, human rights define the common political values in the absence of which integration is both unattainable and unsustainable.[26]

However, human rights are not the *alter ego* of integration nor absolute in their rationale or application. In the context of integration, human rights "must be considered in relation to their social function. Human rights guarantees in regional integration arrangements may be understood and operationalised in terms of their functional contribution to the processes and outcomes of integration. At face value, this could run counter to the popular philosophical characterization of human rights as inherent in human beings without reference to any calculus of their social utility.[28] However, in practice, it provides alternative and complementary frameworks for administering effective integration. For instance, the closure of a media house by the government of, say, Yahya Jammeh's Gambia was usually framed as a straightforward case of protection of freedom of expression within the African Charter on Human and Peoples' Rights as a fundamental value of the ECOWAS system. However, it was also possible to frame and pursue this as a case of interference with rights of investment and economic activity within the community.[29]

This interdependence between regional integration and human rights and well-being is essential because while integration assures economic outcomes, human rights regimes underscore the value system without which integration is not sustainable. Regional integration thus involves a pooling of values across different sovereign territories in

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25 Treaty Establishing the African Economic Community, Article 4(l)(a) & (c); Constitutive Act of the African Union, Article 3(c),(e),(g), (h),&(j)

26 The European Court of Justice has recognised "the principles of free movement of goods and freedom of competition, together with freedom of trade as a fundamental right", Case 240/83, *Procureur de la Republique v. Association de defense des bruleurs d'huiles usagees* [1985] ECR., 531,548.

27 Said Djinnit., "Building an Effective African Union", Presentation to the 3rd African Development Forum (ADF), Addis Ababa, March 2002; Martti Koskenniemi, "The Effect of Rights on Political Culture", in Philip Alston *et al*, ed., *The EU and Human Rights*, 99, 100(1999)

28 Case 5/88, *Wachaufv. Germany*, (1989] E.C.R. 2609, 2639. As an illustration of the consequences of the absence of such values, a fundamental clash of political values between the government of Julius Nyerere in Tanzania and Uganda's Idi Amin led to the collapse of the first East African Community in 1977.

29 See, Ronald Dworkin, *Taking Rights Seriously*, 92 (1977)

which both norms and institutions for their protection have evolved unevenly.[30] Human rights guarantees in regional integration assure uniformity and consistency of protection standards, underpinning the exercise of factor mobility and economic freedoms across national boundaries based on shared normative commitments and to effective mechanisms for their enforcement. In turn, regional protection of human rights is impossible unless the participating states agree to accept supra-national oversight and values, which necessitates regional integration.

Quite clearly, therefore, regional integration and human rights do not co-exist in a contingent relationship in which the realization of one is postponed pending the attainment of the other. Nor is the relationship between both concepts uni-linear and uni-directional. Regional integration in Africa requires the protection of human rights. Simultaneously, the effective protection of human rights requires and benefits from integration. Christof Heyns reaches the self-evident conclusion that:

Trade and other links must exist between state parties before a regional human rights system can be enforced effectively. Without trade, diplomatic communication, travel and other links between State Parties, the conditions to impose sanctions to affect the behaviour of states do not exist.[31]

In sum, regional protection of human rights and regional integration are mutually inter-dependent. This conclusion is supported by major landmarks in inter-African State Practice. For instance, when the major partner states in the first old East African Community disagreed fundamentally on human rights, the result was the suspension and eventual dissolution of the Community in 1977, followed in 1978 by the war between Uganda and Tanzania, which led to the overthrow of Idi Amin. Similarly, the evolution of the contemporary architecture of regional human rights and regional integration regimes in Africa goes back to common origins in which African states explicitly acknowledge the organic inter-dependence of regional integration, human rights, and development.[32]

Flowing from this inter-dependence is recognition of the importance of a more accountable State system with more capable regional institutions.[33] Regional integration constructs an inter-State framework of functional accountability in which individuals were originally only beneficially interested. Initially inaccessible to individuals and non-State entities, various regional integration arrangements in Africa, since the formation of the ECOWAS, have now evolved systems for active participation by individuals, civil society, and the private sector. Regional human rights mechanisms pioneered in Africa the creation of legal regimes giving direct rights to individuals against the State. Thus, ECOWAS Court of Justice grants both beneficial and direct rights also to individuals. It is useful to illustrate how ECOWAS has operationalized this interdependence of values, institutions and functional benefits in economic integration in West Africa.

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30 See, for instance, Ref. No. 3/2001 *Republic of Kenya & The Commissioner for Lands v. Coastasl Aquaculture*, Judgment of the COMESA Court of Justice of 26 April 2002

31 S. O'Leary S., "Accession by the European Union to the European Convention on Human Rights -The Opinion of the ECJ", [1996] EHRLR 362,374; Joseph Weiler, "Fundamental Rights and Fundamental Boundaries: On Standards and Values in Protection of Human Rights", in Nanette Neuwahl & Allan Rosas, eds., *The European Union and Human Rights*, 51 (1995)

32 Christof Heyns., "The African Regional Human Rights System: The African Charter",", 108, *Penn St. L. Rev.*, 679, at p. 701. (2004)

33 The Monrovia Declaration on Guidelines and Measures for National Collective Self-Reliance in Social and Economic Development for the Establishment of a New International Economic Order, AHG/ST.3 (XVT) Rev.! (1979), Preamble, para 6.

Economic Integration in ECOWAS

ECOWAS was founded on 28 May, 1975 to advance regional economic integration among fifteen West African States.[34] At its creation, it was mostly, if not exclusively, seen as a regional zone of preference allowed under Article XXIV of the General Agreement on Tariffs and Trade (GATT). The 1975 Treaty contained no reference to human rights. It was subsequently supplemented by a Protocol on Non-Aggression[35] and another Protocol Relating to Mutual Assistance in Defence.[36] Both protocols elevated regional defence and security in the priorities of ECOWAS but articulated a rather narrow concept of peace and security that failed to define social justice, human rights and democratic governance into its vision of regional security. The Protocol on Mutual Assistance appeared merely to envisage the deployment at the request of a host government of regional forces. At this time, ECOWAS appeared to be a mutual support mechanism for authoritarian government in the region.

The onset of conflicts in Liberia in 1989 and in Sierra Leone in 1991 compelled a re-examination of the strategic values of the Community and its role in guaranteeing regional stability and security in ECOWAS as a pre-condition for integration. [37] By the end of the next decade in 2001, ECOWAS Member States could agree that "good governance and press freedom are essential for preserving justice, preventing conflict, guaranteeing political stability and peace and for strengthening democracy."[38] The institutional processes that led to the evolution of this treaty-based consensus began in July 1991, when ECOWAS Heads of State adopted a Declaration of Political Principles, the preamble of which reaffirmed the need for the creation of a stable and secure region in which peoples of West Africa can live in freedom under law and for concerted regional action to promote democracy "on the basis of political pluralism and respect for fundamental rights as embodied in universally recognized international instruments on human rights and in the African Charter on Human and Peoples' Rights."[39] In the Declaration, the ECOWAS states undertook as follows:

We will respect human rights and fundamental freedoms in all their plenitude, including in particular, freedom of thought, conscience, association, religion or belief for all our peoples without distinction as to race, sex, language or creed. We will promote and encourage the full enjoyment by all our peoples of their fundamental human rights, especially their political, economic, social, cultural, and other rights inherent in the dignity of the human person and essential to his free and progressive development.[40]

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34 Kwame Nkrumah., *Africa Must Unite,* 164

35 Treaty Establishing the Economic Community of West African States (ECOWAS), May 28, 1975; West African States of Benin Republic, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

36 ECOWAS Protocol on Non-Aggression, adopted in Lagos, Nigeria, 22 April 1978, reprinted in ECOWAS, Protocols Annexed to the Treaty of ECOWAS, 85 (1990)

37 NSP3/S/81, adopted in Freetown, Sierra Leone, 29 May 1981.

38 On 25 August 1990, at the invitation of the then government of Liberia, ECOWAS deployed a plurinational cease-fire Monitoring Group (ECOMOG), comprising military contingents contributed by respective member States of ECOWAS, to restore peace in Liberia. At the request of the government of SierraLeone, ECOMOG's remit was later extended that country. It would appear that the legal bases of the ECOMOG intervention in Liberia were the Community Protocol on Non-Aggression (April 22, 1978) and the Protocol Relating to Mutual Assistance on Defence (May 29, 1981). See, Bruno Simma *et al.,* The Charter of the United Nations, A Commentary, 707 (I 995).

39 Protocol A/SPl/12/01 on Democracy and Governance, Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, adopted 21 December 200I,Article 32.

40 ECOWAS Declaration of Political Principles, Declaration A/DCL. l/7 /91, adopted by the 14th Session of the Authority of Heads of State and Government,Abuja, 4-6 July 1991,preamble, para 4.

Prior to the adoption of this declaration, ECOWAS convened in 1990 a Committee of Eminent Persons to review the 1975 Treaty.[41] Among its conclusions and recommendations, the committee urged ECOWAS, through a revised treaty, to 'shift from its exclusive focus on government to government to involving the people, NGOs and private sector'[42] and adopt "provisions establishing organs such as the Parliament of the Community composed of representatives elected by the peoples of the member states, and an Economic and Social Council (ECOSOC) comprising socio-professional groups drawn from all sections and categories of the population of the member states."[43] The committee suggested that effective protection of human rights in West Africa was the principal rationale for regional integration in West Africa, arguing that:

Efforts towards the establishment of an economic community embracing all the states of the West African region were initiated in the early 1960s, not long after most of them had emerged from colonial domination into independence and statehood. In this formative state, the natural inclination of the countries was in the direction of consolidating their independence and preserving and enhancing national sovereignty. Additionally, inter-state relations in the region were generally plagued by deep suspicions and political and ideological differences..... Perceptions about national sovereignty and the principle of non-interference in the internal affairs of other states are now undergoing gradual transformation as the world shrinks more and more into a 'global village' Gross abuse of human rights in a state, for example, now elicits prompt international reaction, often in the form of coercive and other measures. More and more countries are now opening their internal political processes, including the subjection of general elections to international observation in order to earn legitimacy for their governments.[44]

The committee proposed a new draft treaty with significant new amendments to the 1975 treaty.[45] In the Revised ECOWAS Treaty, including its accompanying protocols, human rights are recognized as fundamental principles of the Community, rights in factor mobility, substantive state obligations, and as obligations enforceable by the ECOWAS Court of Justice.

Regional Integration in ECOWAS and Factor Mobility

One major objective of the Community is the liberalization of cross-border trade and movement among its members involving, *inter alia,* the removal of obstacles to the free movement of persons, goods, services and capital, and to the rights of residence and establishment.[46] Factor mobility is an entitlement of citizens of the ECOWAS Member States. The scope of this entitlement extends to freedom to travel to or move to another Member State for employment purposes, pursue economic activities or establish in other Member States a trade or profession under the same conditions as citizens of such states,

41 *Ibid.* , Paras, 4-5

42 Decision A/Dec. 10/5/90 of the Authority of Heads of States and Government of 30 May, 1990. The review was supported by the United Nations Economic Commission for Africa (UNECA), United Nations Conference on Trade and Development (UNCTAD), and the African Development Bank (ADB) and was mostly funded by the Ford Foundation, UNECA and the government of Nigeria. See Economic Community of West African States (ECOWAS), *Review of the ECOWAS Treaty: Final Report by the Committee of Eminent Persons*, 4-5, paras 19-24 (1992)

43 *Ibid..*, para 25(ii)(a)

44 Jbid..,para27(b)(vii)

45 *Ibid..*, paras 57-58 (1992).

46 Economic Community of West African States (ECOWAS), *Review of the ECOWAS Treaty: Final Report by the Committee of Eminent Persons*, June 1992. The revised Treaty was adopted in Cotonou, Benin Republic, in July 1993, See, Revised Treaty of the Economic Community of West African States (ECOWAS), adopted July 1993, entered into force in 1993. Reprinted in 8 *RADIC* 189 (1996).

and freedom to provide or receive services on an equal footing with citizens of the host member states, without discrimination on the basis of nationality.[47]

The ECOWAS Authority of Heads of State and Government has adopted a variety of protocols and decisions to implement factor mobility incrementally in three phases over a period of fifteen years, beginning with the establishment of right of entry and abolition of visas.[48] To facilitate the right of free movement of persons in the Community, ECOWAS established an ECOWAS Travel Certificate, which is obtainable from the governments of Member States.[49] The second phase establishes the right of residence within the Community which is also presently operational. Community citizens resident in a country other than their country of nationality are entitled to a special ECOWAS residence card.[50] The relevant protocols extend the rights of residence and establishment to natural and legal persons.

ECOWAS citizens enjoy rights of free movement within the sub-region, including rights of residence and establishment in Member States.[51] For this purpose, the Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, places States within the Community under an obligation to accord Community Citizens national treatment on a non-discriminatory basis in the establishment of businesses and services. It defines the right of establishment as:

> the right granted to a citizen who is a national of the Member State to settle in or establish in another Member State other than his State of Origin, and to have access to economic activities as well as to set up and manage enterprises and, in particular, companies, under the same conditions as defined by the legislation of the host Member State for its own citizens."[52]

Among the protections contained in the protocols, citizens of ECOWAS Member States "shall have in the territories of other Member States, under the same conditions as their citizens, freedom to prosecute and defend their rights under any jurisdiction."[53] Discriminatory expropriation of property on grounds of nationality is prohibited.[54] A code of conduct regulates the rights of migrants in the Community. This code of conduct enjoys treaty status having been adopted as one of the implementing protocols to the revised treaty.[55] It obliges Member States to respect the "fundamental human rights" of Community migrants in respect of illegal migration, expulsion, and the treatment of intra- community migrants, including migration caused by forced displacement. Fundamental human rights are defined to mean "the right of any individual recognized by the International *(sic)* Declaration of Human Rights adopted on 10 December, 1948 by the United Nations General Assembly",[56] extending, under the third phase, to all the rights

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47 Revised ECOWAS Treaty Article 3 (d)(iii).

48 See, F. Weiss & F.*Wooldridge Free Movement of Persons within the European Community*, 11 (2002)

49 Protocol A/P 1/5/79 Protocol Relating to Free Movement of Persons, Residence and Establishment, 1 Official Journal of the Economic Community of West African States (ECOWAS), 3 (1979), Article 2(I)-(3)

50 Decision A/Dec.2/7/85 of the Authority of Heads of State and Government of the Economic Community of West African States Relating to the Establishment of ECOWAS Travel Certificate for Member States, 6 July, 1985.

51 Decision A/Dec. 2/5/90 of the Authority of Heads of State and Government Establishing a Residence Card in ECOWAS Member States, 30 May, 1990.

53 Supplementary Protocol A/SP2/5/90, on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, reprinted in 17 *Official Journal ECOWAS*, 17 (1990),Article I.

54 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Rights of Residence and Establishment, reprinted in 7 Official Journal of the Economic Community of West African States, ECOWAS (1985),Article 7(5)

55 Jbid..,Article7(1)-(3)

56 *Ibid*..

granted to migrant workers under the relevant Conventions of the International Labour Organization relating to the protection of migrant workers.[57] The existence of this Code of Conduct in itself is evidence of a pattern of reluctance among states parties to fully respect the rights of Community Citizens as the prime factors in regional integration.

There are three main features of the rights attached to factor mobility in the Revised Treaty and its implementing protocols. First, they reinforce and supplement the prohibition in the African Charter on Human and Peoples' Rights against discrimination in the ECOWAS countries. Second, the Revised ECOWAS Treaty transforms the Universal Declaration of Human Rights and the ILO migrant workers' conventions into treaty law obligations binding on the Member States. Thirdly, the protocols also guarantee access to national remedies on a non-discriminatory basis. Non-availability of accessible, effective, and non-discriminatory recourse is, therefore, recognized as a violation of Community obligations. In practice, of course, ECOWAS Member States have not always kept faith with these ambitious standards and collective expulsions have taken place among and between Member States. It is also useful at this point to briefly underscore the trade integration experience in ECOWAS (or lack of it).

The Trade Integration Experience in ECOWAS

The trajectory of evolution of the norms and institutions in ECOWAS suggest an ambitious project of regional economic integration. The experience has been anything but the actualization of the goal. In a 2013 study, Karen Alter, Laurence Helfer and Jacqueline McAllister concluded that:

By all accounts, ECOWAS has made little progress toward its professed goal of regional economic integration. Trade flows among West African nations remain extremely low; tariffs, customs regulations, nontariff barriers, and roadblocks hinder cross-border economic transactions; and Member States have yet to challenge barriers to intraregional trade before the ECOWAS Court.[58]

The 15 member states of ECOWAS make up about one third of Africa's population; 12 of the 15 Member States are coastal states but Burkina Faso, Mali and Niger are land-locked. Nigeria alone accounts for about 65.2 per cent of the region's GDP (2003-2012 average), 57 per cent of the region's 349 million people, 54 per cent of agricultural imports, 52 per cent of total imports and 51 per cent of total food imports.[59] This gives Nigeria an outsized influence in the political economy of ECOWAS, making it, undisputedly, a regional hegemon.

Regional trade is characterized by lack of diversity, dominated as it is by primary products. Regional transportation infrastructure is poor, the optimization of the major trade corridors in the region is precluded by major constraints, including diverse forms of violence, while piracy is a major source of insecurity in the regional maritime sector.

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57 *lbid..,Article* 1.

58 Supplementary Protocol A/SP2/5/90, on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, reprinted in 17 *Official Journal ECOWAS,* 17 (1990), Article I.

59 Karen Alter, Laurence Helfer and Jacqueline McAllister, "A New International Human Rights Court for West Africa", I07, AJIL, 737 at 738(2013)

Documented trade is poor and much of the intra-regional trade is informal and, therefore, not easily quantified. Border crossings can be difficult too.[60]

By 2016, it was said that "intra-regional trade in ECOWAS represents 8 per cent to 11 per cent of total ECOWAS trade", a figure that had "not significantly changed in the past 10 years. However, many experts indicate that official data underestimate intra-regional trade volumes as it does not include informal trade, which accounts for the major share of trade between ECOWAS countries."[61] Some estimates put the volume of informal trade as a proportion of total Community trade as high as 75 per cent.[62] This could be a function both of the strong bonds of shared cross-border communities in the region but also of the role of the mechanisms of ECOWAS in facilitating cross-border communities and exchange. Much of the informal trade comprises perishable food and agricultural products and livestock. Energy poverty limits refrigeration and storage possibilities, making this trade very high risk.

The European Union (EU) remains a significant influence in trade with the region as the destination of export of nearly one-third of Community exports, mostly in primary products, while they in tum send processed goods back to the region.[63] The biggest export of the Community is petroleum, which accounts for the biggest export of the Community representing 61 per cent of exports, 38 per cent of intra-regional imports and 35 per cent of intra-regional exports.[64] The biggest agricultural export is cocoa, at 44 per cent of total agricultural exports and 55 per cent of food exports.[65] The top three imports are crude and refined petroleum and cars, representing 20 per cent of total imports.[66] The overall picture of trade integration is stark. According to a 2016 study of the European Centre for Development Policy Management (ECDPM):

The overall ECOWAS trade balance (average 2010-2014) shows a surplus of 40.61 billion USD, which is mainly due to Nigeria's petroleum exports. By excluding petroleum's exports, the balance shows a deficit of approximately 50 billion USD. Huge disparities exist amongst ECOWAS countries, and only two countries present a positive average trade balance for the period 2010-2014: Nigeria and Cote d'Ivoire.[67]

This suggests that regional trade, to the extent that it is documented or can be estimated, is poorly integrated. Some patterns are evident. To begin with, colonial metropoles remain among the biggest trading partners of the countries of the region. Thus France is one of the top five trade destinations of its former West African territories while the United Kingdom enjoys a similar position with Ghana and Nigeria. Second, regional trade among the Francophone countries, namely: Senegal, Cote d'Ivoire, Mali, Burkina Faso, Niger and Togo, is more fully integrated, facilitated as it is by a common currency with the UEMOA countries, notwithstanding these externalities. Thirdly, "the strongest economies in the region, Nigeria (the economic hegemon in the region), Ghana, Cote d'Ivoire and Senegal, are important trade partners (to one another)."[68] In addition to the

60 Carmen Torres & Jeske van Seters, *Overview of Trade and Barriers to Trade in West Africa: insights in Political Economy Dynamics with Particular Focus on Agricultural and Food Trade,* ECPDM Discussion Paper, No. 195 of 2016, p. 4
61 See generally *ibid.*
62 *ibid.*, p.17
63 *ibid.* p. 21
64 *ibid.*, p. I
65 *Ibid.p.18*
66 *Ibid.*, p. I
67 *Ibid.*, p.2
68 *Ibid.*, p. 10

role of productivity, one major explanation for this is historical cultural links and shared communities among these countries. Nigeria and Senegal, for instance share strong affinity between Tijaniyya communities that had long standing faith and trade links long before the onset of colonialism. Ghana, Nigeria and Cote d'Ivoire for their part share cross-border communities.

It is possible to suggest that regional economic integration may have fostered greater social and cultural connections across the region, promoting trade along the way. However, this has done little to address the underlying incapacities of the states of the region, a fact that accounts for the constant paucity of regional trade and the stubborn dependence of the countries of the region on their colonial metropoles. It is also the case that while regional integration in West Africa can be given some credit for what appears to be growth in informal trade, it also appears to have catalyzed a rise in regional organized crime, fueling illicit traffic in hard drugs, arms and persons. A 2013 threat assessment undertaken by the UNODC warned of "the possibility that trafficking through the region could provide income to non-state armed groups, especially the various rebel forces in the Sahel and the terrorist group Al Qaeda in the Islamic Maghreb (AQIM)."[69] Today, in many countries of the region, this appears to have become a self-fulfilling prophecy.

Challenges and Prospects for Regional Integration in West Africa

The Revised Treaty creates a Community Court of Justice as one of the principal organs of the Community. In 1991, the Community adopted a Protocol on the Establishment of a Community Court of Justice. [70] The ECOWAS Court of Justice is four courts in one: it is the judicial organ of the Community with composite treaty supervision and oversight functions; the administrative tribunal court of the ECOWAS; pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Revised Treaty, it is a court of arbitration;[71] and it is also the human rights court for the West African sub-region. Over the past 18 years, the Court has mostly developed its human rights jurisdiction and functioned also as the administrative tribunal of the Community. Its role in supervising regional integration has hardly been fully asserted while its arbitration jurisdiction is yet to be triggered.

If regional integration in ECOWAS is to fully realize its ambitions, the region will need to address several challenges. One is the mutually contradictory challenge of state incapacity and predation, which has precluded the full realization of the benefits of integration and continues to expose the region to instability. Although the era of military authoritarianism has been diminished in the region, the state remains at best a menace to be avoided and citizens continue to fear encounters with it and its agents. This largely explains the high informalisation of economic integration in the Community. Addressing this will require greater assistance from the institutions of the Community in tackling national level incapacities and showing how they can be relevant to national problems. At a time when its docket is also crippling, the Court may yet need to take on more enlightenment and advocacy roles with national authorities too.

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69 *Ibid.*
70 UNODC, *Transnational Organized Crime in West Africa: A Threat Assessment,* p.4(2013)
71 Protocol A/P.I/7/91 Relating to the Community Court of Justice, adopted 6 July 1991.

An upshot of this is the reliance by states and citizens on diplomatic exchanges and good offices while diminishing the judicial and institutional organs of the Community. In 18 years, the Court of Justice has yet to be presented with an inter-state case of any significance, not to mention one touching upon the enterprise of regional integration in the region and real threats to integration in the region would rather go unchallenged. Thus, for instance, the on-going blockade of regional trade by the regional hegemon, Nigeria, has gone unchallenged where one would have expected the affected states and organs of the region to fully take advantage of the existence of the judicial organ of the Community to test the legality of the measures by Nigeria in terms of its compliance with treaty obligations and also in terms of its proportionality to any possible justification.

Demands will be made to expand the territorial scope and membership of the Community. Morocco's application is unlikely to be the last of such requests for membership of ECOWAS. Morocco's application is a major test because of the likelihood that granting it could bifurcate the legal regimes of the Community, creating a two-track ECOWAS in which some members will subscribe to some but not all of the Community standard. Such a step would imperil the Community. The current practice of categories of membership, including Associate and Observer membership of ECOWAS, is well-suited for addressing such challenges. However, consideration could also be given to involving the judicial organ of the community in decisions on membership by getting the Court to verify whether in fact putative members fulfil the threshold criteria and values for membership of the Community.

In the interim, one consequence of state incapacity in the region is the overwhelming informalisation of regional integration in West Africa. Many of the constraints that are associated with integration hardly ever rise to the point where they are presented for the attention of regional institutions or for judicial resolution by the Court of Justice. Instead, citizens would rather negotiate convenient walk-arounds wherever possible, making them often liable to abuse and exploitation by national authorities without legal recourse.

Meanwhile, growing fields of criminal violence from organized syndicates trafficking in psychotropics, arms, humans and more continue to threaten even informal economic integration in the region, rendering the major economic corridors of the region precarious to ordinary users. Proposals for a common regional currency sound far-fetched in the face of chronic constraints to convergence as well as concentric regional communities in both ECOWAS and UEMOA.

The experience of regional integration in ECOWAS is therefore mixed. Institutionally, ECOWAS is substantially evolved. It has also propelled dynamic processes of informal trade and movement of factors of production across the Community. Doctrinally, however, there is considerable dissonance between the institutions on the one hand and sovereign support for integration on the other. National immigration authorities by and large respect ECOWAS travel documents, for instance. But national courts and judicial authorities will think nothing of relying on specious doctrinal distinctions to defy or subvert decisions of the regional Court of Justice. The challenge in the near term is close the gap between the promise of economic integration and the lived experience of the region's peoples. Progress in this project will be marked at least in part by how much the governments and citizens of the Community not only feel free to utilise the Court of Justice as an aid in protecting and enforcing the legal obligations in the Community but also in how they collaborate in building habits of compliance with these obligations.

STATEMENT BY

HIS EXCELLENCY
NANA ADDO DANKWA
AKUFO-ADDO

President, Republic of Ghana

I am honoured by the invitation to address this event on a theme of such importance as the **"Economic Integration of West Africa: Challenges and Prospects".** In 2008, the first time I declared my intention to run for the high office of President of the Republic of Ghana, one of the four thematic goals of my campaign was the full engagement of our nation in the process of regional and continental integration. I remained committed to this goal in the years after 2008, and now, more so than ever, as President. So, it was not difficult to accept to address this Conference, especially as the invitation came from Hon. Justice Edward Asante, the President of the Court, a Ghanaian. You are all welcome amongst a people famed for their sense of hospitality. Akwaaba is our word of welcome.

Ladies and Gentlemen, nearly seven decades ago, on 9th May, 1950, a few nations of Europe, in response to a proposal from French Foreign Minister, Robert Schuman, embarked on a new journey. When he made the proposal that has, today, led to the European Union, the European continent was just five years removed from the Second World War; a war that had broken the back of Europe and spilled the blood of so many, including some of our own. Monsieur Schuman knew that the European continent, that had taken the world to war twice in a generation, needed to tum its back on war and embrace peace and development. Aided by the highly innovative Marshall Plan that was launched by America, Europe was gradually rebuilding herself, but the fear remained that, unless something extra was put in place, Europe would drift into war again.

Today, the European Union has a market of 508 million people or 7.3% of the world population, the earth's third largest population after Asia and Africa, one currency, and the free movement of goods, services and people across twenty-seven countries, albeit with the United Kingdom BREXITING soon. The EU in 2018 generated a nominal gross domestic product (GDP) of 18.8 trillion US dollars, constituting approximately 22% of global nominal GDP, which is the second largest economy by GDP in the world. The single currency, the Euro, has increased efficiency, lowered the cost of doing business and improved transparency in pricing. The overall effect has been to make Europe a much stronger economic and political player on the global stage.

Here in West Africa, since 1975, we have had the Economic Community of West African States, ECOWAS to us Anglophones, CEDEAO to the Francophones. The principal reason for its creation was to enhance intra-regional commerce and co-operation. There was a clear recognition that the countries of West Africa would be a more effective economic bloc and have a stronger political voice, if they came together. Subsequently, provision was also made for solving inter-state conflicts, as well as grave intra-state ones too. Today, however, while the EU is central to the lives of Europeans, ECOWAS is, still, somewhat peripheral to the lives of most West Africans. And it is not for the lack of plans or even rules and regulations. It is simply that the political will to make integration real has been less evident than in Europe.

Our problem over the years, I suggest, has been leadership. The implementation of plans to bring progress and prosperity to the 350 million citizens of ECOWAS has been left to well-meaning technocrats and bureaucrats. However well-meaning they may be, our region cannot make the bold transforming changes it needs to make without visionary political leadership. We need leadership that is focused on the region, and not on individual countries. The European Union took off because the political leadership of France and Germany decided to make it work. Once the political will is evident, we can then work together to make ECOWAS a true regional Community.

Indeed, ECOWAS has realised some of its aims and objectives, and has consolidated its institutional framework. Our peoples are enjoying the gains of the ECOWAS Protocol on Free Movement and, with the adoption of the Protocol on the ECOWAS Trade Liberalization Scheme (ETLS) and the Decision on the Common External Tariff, we have a Customs Union in place, even though it is imperfectly respected. ECOWAS remains a pace setter amongst the Regional Economic Communities (REC) in Africa, and we are hopeful of having a common currency by next year, or as soon as possible. Undoubtedly, we have made significant progress in ECOWAS, but we still have a long way to go.

Ladies and gentlemen, this Conference should enable participants to evaluate the progress made so far, the challenges and prospects of the ECOWAS integration project, and to come up with recommendations to expedite the process. It must, however, be emphasized that, in order to be successful in this endeavor, we must mainstream the rule of law, democracy and good governance in the development of the project. We must provide the enabling legal environment for the integration of the Community. This involves the provision of the necessary normative framework, and a regional dispute resolution mechanism.

That is why the ECOWAS Court of Justice must be empowered to play this role as the principal legal organ of the Community. Since the Court has exclusive responsibility for the interpretation and application of the ECOWAS Revised Treaty, Courts of Member States must be encouraged to refer questions of interpretation of the ECOWAS Revised Treaty and other community texts, in cases before them involving questions of the Treaty and Community texts, to the ECOWAS Court of Justice, in order to ensure uniformity in the interpretation of the Treaty and the texts.

It is also of utmost importance that judgments of the Court are complied with by all Member States. The ECOWAS Revised Treaty provides that judgments of the Court are binding on all Member States, institutions, corporate bodies and individuals. The Protocol on the Court, as amended, gives Member States the sole responsibility for the enforcement of the judgments of the Court, in accordance with their Rules of Civil Procedure. It also requires each Member State to appoint a competent national authority for the enforcement of the judgments of the Court. It is unfortunate that only five (5) Member States have so far done so. In the case of Ghana, I am happy to inform you that I have designated the Office of the Attorney General as the competent national authority for the enforcement, in Ghana, of the judgments of the ECOWAS Court of Justice. All other Member States must quickly do the same. The necessary amendments to our municipal laws will be made to enable the designation to be effective. Towards this end, I support wholeheartedly the far-reaching statements of our Chief Justice on this matter.

With this Conference assembling a large number of persons, including Chief Justices of some Member States, the President of the ECOWAS Commission, heads of ECOWAS institutions, Presidents of Regional Courts, judges, jurists, economic professionals, ECOWAS permanent representatives, heads of ECOWAS national offices, and friends of the Community, I am confident that the presentations and discussions at this Conference will be very robust and intellectually stimulating. I look forward to the outcome of this conference with great expectation.

Before I conclude, let me re-state for the record that, for my part, I am willing to do whatever I can to strengthen the ECOWAS Community. It is extremely important for the welfare of the 350 million people of the Community that we, its leaders, demonstrate

strong political will to make the Community an economic and political success, and make the project of integration real, especially at the dawn of the coming into force of the African Continental Free Trade Area.

What makes ECOWAS better will make each of our individual countries better and more prosperous. The example of Europe is, once again, on point. Whilst intra-regional trade amongst ECOWAS Member States is at 11% of its combined GDP, that of the European Union Member States is at 70% of its combined GDP. In that fact alone lies one of the fundamental reasons for the divergent levels of prosperity of the two (2) Communities. It is time for those who believe in regional integration to give enthusiastic support to Community decisions, and inspire confidence and integrity in the structural organs of ECOWAS, such as the ECOWAS Court of Justice. Our people deserve no less, and the dream of prosperity will be within our grasp.

Accordingly, I declare the Annual International Conference of the ECOWAS Court of Justice open, and I wish you successful deliberations.

I bid you a very warm welcome to Accra, and I very much hope that your deliberations will benefit the process of regional integration, which is key to the prosperity of our peoples. Have a pleasant. Thank you and akwaaba

May God bless the peoples of ECOWAS, and us all.

I thank you for your attention.

CONCEPT NOTE

INTERNATIONAL CONFERENCE ORGANISED BY THE ECOWAS COURT OF JUSTICE

THEME:
ECONOMIC INTEGRATION OF WEST AFRICA: CHALLENGES AND PROSPECTS

VENUE: ACCRA, GHANA

BETWEEN:
21st AND 24th OCTOBER, 2019

INTRODUCTION

1. The Economic Community of West African States (ECOWAS) was established by the Lagos Treaty of 28th May, 1975 as a Regional Economic Community (REC) in the West African Sub-Region. The ECOWAS Court of Justice is one of the key institutions of ECOWAS and was established under Article 15 of the Revised Treaty and designated in its initial Protocol as the principal legal organ of the Community. The primary mandate of the Court is the interpretation and application of the Revised Treaty and the annexed Protocols, Conventions, Supplementary Acts and other subsidiary legal instruments of the Community. It has contentious and non-contentious jurisdiction. The 1991 initial Protocol on the Court was amended by Supplementary Protocol SP. 1/01/05 of 19th January, 2005 which expanded the mandate of the Court, following which the Court now has four distinct mandates:
   - Mandate as a Community Court
   - Mandate as an ECOWAS Public Service Tribunal
   - Mandate as a Human Rights Court
   - Mandate as an Arbitration Tribunal

2. As the principal legal organ of the Community, the Court has an important role to play in facilitating the integration process. It is therefore an important regional judicial forum for the resolution of disputes relating to the integration process. The ECOWAS Revised Treaty which was adopted in 1993, is an important roadmap and the constitutional charter for the economic integration of the Community.

3. The primary aim of ECOWAS is 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. It should however be noted, that these integration and developmental objectives cannot be achieved without the enabling legal environment, rule of law, good governance, peace and stability. The Revised Treaty specifically provides that in order to achieve the aims of the Community, the Community shall establish an enabling legal environment.

4. Periodically, the Court organizes international conferences on important legal themes in order to develop ECOWAS Community law, review the exercise of its judicial mandate and keep abreast with international best practices. The conferences will avail the Court the opportunity to present for discussion, important legal themes and sub-themes on topical issues bordering on its judicial mandate, ECOWAS Community law and international law in general. It therefore provides a forum for the Court to interact and exchange ideas with selected stakeholders, judicial officers from Member States and other regional courts, scholars and jurists of international repute and the civil society. In the past, the Court successfully organized such international conferences in Dakar, Abuja, Cotonou, Accra, Bissau and Bamako.

5. The themes that have been discussed in these past International Conferences

organized by the Court are as follows: Protecting the Rights of ECOWAS Citizens through the ECOWAS Court of Justice, 18th -20th October, 2004, Dakar, Senegal. An Appraisal of the Implementation of ECOWAS Community Law and Future Perspectives; Free Movement of Persons and Goods within the ECOWAS Landscape. 25th -26th November, 2004, Abuja, Nigeria. The Law in the Process of Integration in West Africa, 13th- 14th November, 2007, Rockview Hotels, Abuja, Nigeria. Strategies for Strengthening the Effectiveness of ECOWAS Court of Justice: 18th- 22nd January, 2011, Accra, Ghana. Human Rights as a Fundamental Value of ECOWAS: An Analysis of the Jurisprudence of the ECOWAS Court of Justice, 17th-21st March, 2015 Azalai Hotel Guinea Bissau. Protection of Human Rights: A Factor for Peacebuilding in West Africa, 18th-21st April, 2018, Bamako, Mali.

6. We note that the Economic Community of West African States (ECOWAS) was established 44 years ago. In the course of its existence, ECOWAS has made some giant strides and met some of its Community objectives, especially in the area of free movement of persons, Common External Tariff (CET) etc, while the realization of some other objectives have been delayed or repeatedly postponed, like the adoption of a single currency. It has also encountered some challenges, especially in the area of peace and security and shocks to the economies of Member States which impacted on the receipts of the Community levy required to finance the developmental objectives of the Community and poor infrastructure. The needed political will has sometimes not been assured. This notwithstanding, ECOWAS remains a pacesetter amongst Regional Economic Communities (RECs) in Africa and with very good prospects. Therefore, the ECOWAS Court of Justice is focusing on the economic agenda of the Community and the legal aspects of the integration process in the 2019 International Conference to be held in Accra, Ghana.

THEME

7. The proposed theme for the 2019 International Conference is ***Economic Integration of West Africa: Challenges and Prospects.*** This theme is cross cutting and impacts on the mandates of the ECOWAS Court of Justice, the ECOWAS Commission and the ECOWAS Parliament. It also involves the Fifteen (15) Member States as the principal stakeholders in ECOWAS economic integration process.

SUB THEMES

8. The following are the Seven (7) sub themes and the issues for consideration under each sub-theme:

SUB-THEME 1: FREEMOVEMENTOFPERSONS, GOODS & SERVICES AS AN IMPORTANT FACTOR FOR INTEGRATION

Issues for consideration

a. The role of the ECOWAS Protocol on Free Movement in the integration process
b. Right of Residence & Establishment
c. Youth migration - The push & pull factors

d. ECOWAS Common Passport

SUB-THEME 2: INTEGRATION THROUGH THE LAW

Issues for consideration

a. Supranationality of ECOWAS and the Community Legal Order.
b. Member States Community Obligations: Consequences for Non-fulfillment
c. Legal Education on ECOWAS Law in Member States.
d. Enforcement of Judgments of National Courts and the ECOWAS Court of Justice
e. The role of the ECOWAS Commission

SUB-THEME 3: THE ROLE OF ECOWAS COURT OF JUSTICE IN THE INTEGRATION PROCESS

Issues for consideration

a. Interpretation and Application of the Revised Treaty and Community legal texts
b. Protection of Social & Economic Rights as a factor for economic development
c. Referrals (Preliminary Ruling): Article 10 (f) of the Protocol on the Court as amended and the absence of referrals by Member States National Courts
d. Access to Court for failure by Member States to fulfill their Community Obligations.
e. The role of ECOWAS Commission

SUB-THEME 4: LEGAL ASPECTS OF ECONOMIC INTEGRATION

Issues for consideration

a. Legal Framework for Economic Integration:
    1. Free Trade Areas
    11. Customs Union
    m. Common Market
    iv. Monetary & Economic Union
b. Implementation of Treaties and ECOWAS Laws in Member States.
c. Harmonization of Laws
d. West African Common Currency: Challenges & Prospects
e. ECOWAS Regional Competition Authority (ERCA)

SUB-THEME 5: RULE OF LAW & GOOD GOVERNANCE AS PRIME FACTORS IN ECONOMIC DEVELOPMENT

Issues for consideration

a. Building Strong Institutions
b. Democratic Culture for Integration
c. ECOWAS Constitutional Convergence Principles
d. Combatting Corruption
e. The role of the ECOWAS Parliament

SUB-THEME 6: ECOWAS INTEGRATION & SUB - REGIONAL STABILITY

Issues for consideration.

a. Effect of conflicts & insurgences on the integration process
b. ECOWAS Early Warning System
c. Peace & Security for Economic Development
d. Proliferation of small arms and light weapons in West Africa

SUB-THEME 7: BASIC INFRASTRUCTURE FOR ECONOMIC INTEGRATION

Issues for consideration

a. Basic Infrastructure
b. Innovative Modes of Financing Infrastructure
c. The role of ECOWAS Bank for Investment and Development (EBID)
d. The role of Development Partners
e. Cooperation Agreements

GENERAL OBJECTIVES OF THE CONFERENCE

9. The general objective of the International Conference is to critically appraise the legal aspects of the economic integration agenda of ECOWAS, the enabling legal environment, the Community legal order, the challenges and prospects for the realization of the Community objectives and the role of the ECOWAS Court of Justice in the integration process. It will also highlight the role and primacy of Member States as the primary stakeholders in the integration process, the need for Member States to demonstrate the necessary political will and fulfill their Community obligations in order to drive the integration process. The conference will address the need for the rule of law, promotion and protection of human rights, democracy and good governance and measures for conflict prevention and management in order to provide the enabling peaceful environment for economic development.

NUMBER OF PARTICIPANTS

10. The maximum number of participants expected at the conference is **One Hundred and Thirty-Five (135).**

VENUE

11. The conference will be held in Accra, Ghana. The venue of the conference will be communicated to the participants in due course.

METHODOLOGY

12. The proposed international conference will be a **three (3) day** conference plus two travelling days to hold between **21st and 23rd of October, 2019.** It will hold in plenary sessions and there will be two sessions in the morning and one in the afternoon per day. Each session will be moderated by one of the Honourable Judges of the Court, Presidents of Regional Courts or any other Jurist. Each panel of discussants will collectively have between One hour Twenty minutes and One hour Forty minutes, for their discussions or presentations depending on the number of discussants and the complexity of the issues. This will be followed by

general discussions by the participants under the moderation of the chair of session or the moderator. The recommendations from each session will be drawn up from the panel discussions and contributions by the other participants. The resource persons will consist of Honourable Judges from Member States, key staff of ECOWAS Institutions, Professors of Law and reputable Scholars and Jurists, Senior Lawyers from Bar Associations and Development Partners. In order to allow the Translators and Rapporteurs to do their jobs on time, and to facilitate the compilation and publication of the proceedings of the conference, it is recommended that each resource person should send to the Court, and via e-mail, a copy of his/her presentation, not later than 9th August, 2019, to the following email addresses:

a. **Tony Anene-Maidoh, Chief Registrar:**
tamaidoh@yahoo.com; tanenemaidoh@courtecowas.org

b. **Mrs. Felicitas Amaka Nwaojei,**
citasnwaojei@yahoo.com; fnwaojei@courtecowas.org

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d. **Nwoko Uche Daniel:**
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Tony Anene-Maidoh
Chief Registrar,
Community Court of Justice, ECOWAS
Abuja-Nigeria

SUB THEME 1

FREE MOVEMENT OF PERSONS GOODS & SERVICES AS AN IMPORTANT FACTOR FOR INTEGRATION

PROTOCOL ON FREE MOVEMENT AS AN IMPORTANT FACTOR FOR REGIONAL INTEGRATION

BY

DR. TONY LUKA ELUMELU
Principal Programme Officer, Border Management & Migration, ECOWAS

PROTOCOL ON FREE MOVEMENT

The Economic Community of West African States (ECOWAS) was established by a Treaty on 28th of May, 1975 in Lagos, Nigeria. Under Article 2 Paragraph 2 and Article 27 of the Treaty, the aims are:

"To promote cooperation and development in all fields of economic activity, particularly in the fields of industry, transport, telecommunication, energy, agriculture, natural resources, commerce, monetary and financial questions and in social and cultural matters for the purpose and of contributing to the progress and development of the African continent, of raising the standard of living of its peoples, of increasing and maintaining economic stability, of fostering closer relations among its members."+

The commitment of the founding fathers of ECOWAS as laconically captured in Article 2 of the Treaty of Lagos reiterates the political will and the passion to re-enact the cordial relations that existed between the States before the partitioning and scramble for Africa by the colonialists. To achieve these valiant goals, paragraph (d) of the same Article encouraged Member States to remove all obstacles to the free movement of persons, services and capital. Member States' commitment to these core values are enshrined in the ECOWAS flagship three-phased Protocol of Free Movement of Persons, Goods, Services and Capital adopted in 1979, 1986 and 1990 respectively.

The Protocol A/P.15/79, relating to Free Movement of Persons, Residence and Establishment along with its Supplementary Protocols A/SP.1/7/86 on Right of Residence and A/SP.2/5/90 on Right of Establishment were envisioned as the fulcrum of the integration process in the ECOWAS region. In line with the ECOWAS vision, the Protocol seeks to foster the free mobility of persons, promote relations among Member States for the improvement of the living standards of Community citizens and contribute to the overall economic growth, stability and development of the region.

The consolidation of regional economic integration through the movement of persons, goods, services and capital, was identified as a critical element in the integration agenda of the region. The vision to transit from an ECOWAS of States to an ECOWAS of people was an ambition that has further reinvigorated the need to implement the tenets of the Protocol.

The protocol on free movement stressed the right of Community citizens to enter, reside and establish economic activities in territories of Member States which was projected to span for fifteen years in three phases stratified in five-year implementation periods per phase. The free movement regime required the abolition of visa requirements for migrants of ECOWAS extraction.

In line with this, Article 27 of the ECOWAS protocol confirmed its long-term objective as to establish a Community citizenship that could be acquired automatically by all citizens of ECOWAS Member States. Hence, this supports the introductory statement of the Treaty, which emphasized the objective of removing obstacles to the free movement of persons, goods and capital in the West African sub-region.

The first Phase of the Protocol on the Free Movement of Persons guaranteed free entry into Member States without visa for ninety days. The rights of entry, residence and establishment were to be progressively established within fifteen years from the

definitive date of entry into force of the protocol. The implementation of the first phase over the first five years abolished requirements for visas and entry permit. Community citizens in possession of valid travel documents and international health certificates could enter However, Member States without visa for up to ninety days. Member States can refuse admission into their territories of those classified as inadmissible immigrants under its laws. On the other hand, in a situation of the expulsion of a citizen, the Member State would guarantee the security of the citizen, his property and family. However, various activities took place in the 1980s and early 1990s and recently that can be characterized as the selective implementation of the ECOWAS text on free movement. The ECOWAS Treaty was revised after several decades of its adoption and following this, there was subsequently, the adoption of a revised ECOWAS Treaty in 1992. The revised ECOWAS Treaty affirmed in Article 59 devoted to immigration, and clearly accentuated the right of citizens of the Community to enter, reside and establish in the Community and enjoined Member States to recognize these rights in their respective territories. The revised Treaty also called the attention of Member States to take all necessary steps at the national level to ensure that these rights are duly granted to Community citizens. Subsequently, ECOWAS ministers met on the 12th of May 2000 and agreed to introduce a new passport in three categories for its citizens - red for the diplomatic, blue for the service and green for the ordinary group (ECOWAS, 2000). The travelling document has helped in facilitating the free movement of persons and goods in the West African region.

Major features of the Protocol and four Supplementary Protocols

1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment.

- Sets out the rights of Community citizens to enter, reside and establish in territories of Member States (Art. 2(1)).
- Establishes a three-phased approach over 15 years to implement (I) right of entry and abolition of visas, (II) residence and (III) establishment (Article 2).
- Conditions the entitlement to enter the territory of a Member State on the possession of a valid travel document and international health certificate (Article 3(1).
- Reserved the right of Member States to refuse admission into their territory by Community citizens deemed inadmissible under domestic law (Article 4).
- Establishes some requirements for expulsion (Article 11).
- Confirms that the Protocol does not operate to the detriment of more favourable provisions in other agreements concluded by Member States (Article 12).

1985 Supplementary Protocol A/SP.1/7185 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment.

- Obliges Member States to provide valid travel documents to their citizens (Article 2(1) Establishes additional (to Article 11 of Protocol) requirements for treatment of persons being expelled (Article 4).
- Enumerates protections for illegal immigrants (Articles 5 and 7).

1986 Supplementary Protocol A/SP.1/7186 on the Second Phase (Right of Residence).

- Requires States to grant to Community citizens, who are nationals of other Member States, "the right of residence in its territory for the purpose of seeking and carrying out income earning employment" (Article 2).
- Conditions entitlement to residence (and thus seeking and carrying out of income earning employment) on the possession of an ECOWAS card.

Residence Card or Permit (Article 5) and harmonization by Member States of rules pertaining to the issuance of such cards/permits (Article 9).

- Prohibits expulsion en masse (Article 13) and limits grounds for individual expulsion to national security, public order or morality, public health, non-fulfillment of essential conditions of residence (Article 14).
- Stipulates equal treatment with nationals for migrant workers complying with the rules and regulations governing their residence in areas such as security of employment, participation in social and cultural activities, re-employment in certain cases of job loss and training (Article 23) *1989*

Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment.

- Amends provisions of Article 7 of the Protocol to confirm obligation on signatories to resolve amicably disputes regarding the interpretation and application of the Protocol (Article2)

1990 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment).

- Defines the right of establishment, emphasizing the non-discriminatory treatment of nationals and companies of other Member States, except as justified by the exigencies of public order, security or health (Articles 2-4).
- Forbids the confiscation or expropriation of assets or capital on a discriminatory basis and requires fair and equitable compensation where such confiscation or expropriation was made (Article 7).

THE PROTOCOL AND ITS IMPLEMENTATION

There is no gainsaying the fact that ECOWAS' modest achievements in its integration agenda was principally in the implementation of the free movement regime. The enactment of the ECOWAS Protocols on Free Movement of Persons and Goods have had a major impact in the sub-region: the Treaty and Revised Treaty, Protocols A/Pl/5/79, A/SP2/7/85, A/SPl/7/86, A/SPl/6/88, A/SP2/5/90, relating to Free Movement of Persons, the Right of Residence and Establishment; Protocol A/P.5/5/82 on Interstate Road Transit of Goods; Convention A/P2/5/82 on Interstate Road Transportation between ECOWAS Member States; Supplementary Protocol A/SP.l/7 /85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; and Supplementary Convention A/SP.1/5/90 on a Community Guarantee Mechanism for Interstate Road Transit of Goods (ECOWAS, 1999; Ibeanu, 2007). Thus, the free movement of persons, without visa within the West Africa region, has been one of the achievements made by the sub-regional organisation. This has been significant in the development of other policies that will lead to monetary policy, communication, and trade. Arguably, the ECOWAS free movement protocol inspired the development of the continental free movement regime and created a pedestal for the emulation of other Regional Economic Communities in the continent.

The United Nations Economic Commission for Africa (UNECA) has also documented some successes in regional integration in Africa. These are largely in trade, transport, communication, energy, knowledge sharing, free movement of people and, peace and security (ECA, 2006a). The introduction of the ECOWAS passport in respect of free

movement of people is included in this catalogue of successes, as it has contributed towards eliminating barriers to the cross-border movement of ECOWAS citizens, and the promotion of a common identity for them.

In furtherance of the facilitation of travels, ECOWAS Heads of Government adopted the use of the ECOWAS National Biometric Identity Card (ENBIC) as a travel document within the ECOWAS space. This ambitious initiative was intended to facilitate safe and orderly intra Community mobility. The ENBIC presently deployed by five Member States namely; Senegal. Guinea Bissau, Ghana, Benin and The Gambia, will address identity concerns and enhance the security architecture as it is designed and coordinated with harmonised security features embedded in the travel document essentially for interoperability.

ECOWAS MIGRATION INITIATIVES TO CONSOLIDATE THE INTEGRATION AIMS OF THIS INITIATIVE

The governance of migration for the ECOWAS Community has a much broader scope as the only management of human mobility within the sub-region. The free movement of persons is the pinnacle element for the regional integration and development process. Enhancing the benefits of migration, while combating its negative impacts, is therefore crucial for the future development of West Africa and the achievement of the ECOWAS Vision 2020.

The ECOWAS Regional Migration Policy is envisioned as a regional response to the complexity of migration issues enshrined in various texts and instituted in a number of treaties, frameworks, and regional consultative processes to provide Member States with guidelines for improving migration governance and opportunities for enhancing cooperation, dialogue and capacity building on migration related activities.

This initiative, therefore, aims at taking the ECOWAS Community to the next level of migration governance through a regional migration policy. This coherent, comprehensive and action-oriented paper would reflect the ECOWAS Vision 2020 - in particular the migration-relevant building-blocks - as well as substantiate the ECOWAS Common Approach on Migration, thereby addressing the various shortcomings of this existing policy-framework.

More specifically the formulation, adoption and implementation of a joint ECOWAS Migration Policy would achieve the following objectives:

- Provide regional and national stakeholders with a common and coherent policy framework on migration;
- Enhance the regional integration and development process in ECOWAS as well as the achievement of the ECOWAS Vision 2020;
- Enhance the possibilities for coherent policy development at the national level by agreeing on a joint regional framework;
- Allow the ECOWAS Commission and other stakeholders to strategically enhance their capacities based on the objectives formulated in the policy framework;
- Clarify the specific roles of regional and national stakeholders - both governmental and non-governmental;
- Facilitate the identification of synergies, common objectives and avoid duplication

at the ECOWAS Commission and Member States;

- Facilitate dialogue with and coordination of donors through the presence of clearly formulated objectives in the framework;
- Enhance exchange with other Regional Economic Communities, as well as directly with the African Union and partners beyond the African continent;
- Foster closer coordination and linkages to ensure realization of the continental free movement agenda; and
- Allow the ECOWAS Migration Policy to achieve all its objectives and become a guiding instrument in the region for years to come. This will need the full political endorsement of the ECOWAS Community and adoption by the Heads of State and Government.

CONCLUSION

The above-listed key migration areas reflect the priorities identified in the Regional Policy on Migration with the addition of an Early Warning Mechanism to play a critical role in migration governance at the national and regional levels.

Furthermore, the idea is to bring to bear a strategy paper in each of the above-mentioned key Policy Pillars, which facilitated the formulation of action-oriented goals, outputs and activities; the clear attribution of roles and responsibilities to individual stakeholders; allowing for the necessary: flexibility to advance, at different "speed" in various sectors, based on the work already done and the available resources; as well as facilitate the coordination, with the international donor community of a broad range of activities to be supported, according to their interests.

The operational plan of the policy is aimed at facilitating an intra - regional mobility estimated at over 80 percent, combat irregular migration and institutionalize good governance.

The disadvantage of such a sector-approach, primarily is the risk of duplication and overlaps, as well as problems of inter-sector coordination, which will be mitigated by strong coordination mechanisms as well as regular joint evaluations of all the activities.

To this end, it is critical for ECOWAS to prioritise its needs as enshrined in the strategic pillars, taking cognisance of relevant strategies that will form the mid-term plan for costing, funding and operationalization.

The draft policy has been recommended by Experts from Member States for validation by sectoral ministers and for subsequent adoption by the ECOWAS Council of Ministers.

RECOMMENDATIONS

1. ECOWAS Member States are encouraged to review their current travel documents and key into the ECOWAS National Biometric Identity Card regime

2. Member States to reduce the cost of procuring travel documents. Study analysis has shown that ECOWAS governments lose an incalculable amount of revenue to unscrupulous border security operatives and miscreants, because of the rigorous process and high cost of travel documents. A vast majority of migrants across ECOWAS borders do not own travel documents, leaving migrants to traverse the

borders without travel documents anyway. This implies substantial security implications and loss of revenue to governments. It is, therefore, recommended that Member States should focus on optimizing the cost control mechanisms in the production of these documents, as this will in tum reduce the fees passed on to migrants.

3. ECOWAS Commission and institutions to establish Migrant Complaint Centers in all Member States, where migrants can report cases of extortion, harassment, unnecessary delays and other incongruities at the borders. These centers must be backed by enabling legislations and should be accessible to all ECOWAS citizens regardless of age, nationality, educational background, occupational or marital status, religious beliefs or social affiliation. Experts in the trade, media, legal, agricultural, transportation, hospitality, healthcare sectors and other relevant stake holders should be constituted to man these centers. These centers will have as their primary aim, the protection of migrant's rights and the education of migrants on their rights and obligations, as enshrined in the Free Movement Protocol. For this to achieve the desired result, migrants must be made aware of the existence of these centers and encouraged to use them. The centers must operate in a transparent manner and must have a website where complaints can also be channeled to it remotely without delay. The Migrant Complaint Center must be able to make its reports to an ECOWAS constituted Monitoring Unit, with dotted reporting lines to an Advisory Committee, made up of eminent personalities across the sub- region. This center must be adequately funded and sufficiently staffed and equipped with properly trained staff.

4. ECOWAS is encouraged to enact a sanction regime that will check violations of Community laws by States, migrants and organizations.

5. ECOWAS is encouraged to set up high-powered Monitoring Units in every Member State, with direct reporting lines to the Presidents. Article 7 of Regulation: C/reg. 28/12/06, of the 57th ordinary session of the ECOWAS Council of Ministers, held in Ouagadougou from 18 -19 December, 2006, mandates the ECOWAS Commission to establish pilot Monitoring Units on Free Movement Protocol along Member States' Borders. The Monitoring Units must work in concert with the Migrant Complaint Centers, which will refer cases of violation of Community migration laws to it for further investigation and prosecution of erring operatives and/or migrants. This unit should also be empowered to conduct regular patrols along ECOWAS frontiers, apprehend and prosecute offenders. The intelligence gathering capabilities of this unit must be enhanced for optimal results.

6. Member States should set up mobile courts under the supervision of the ECOWAS Court along ECOWAS routes to prosecute erring migrants and border officials alike.

7. ECOWAS to conduct massive re-orientation of the mindset across the Community. It is apparent from research that the Community spirit is almost non-existent while the awareness level is abysmally poor. Therefore, ECOWAS should advise Member States to conduct wholesale sensitization campaigns which must segment the different genders, age, marital, educational and occupational categories and

design clear messages to target each of these segments. Any campaign must be sustained and must educate the citizens on their rights and obligations as enshrined in the ECOWAS Free Movement Protocol. The message should be clear- that giving financial inducements to anyone in exchange for assistance to go through the border is not necessary. The economic benefits of a borderless ECOWAS must be explained in such sensitization campaigns. ECOWAS must employ all available media (print, electronic, social network sites, bulk SMS, bill boards etc.) to reach out to Community citizens in a sustained manner.

8. Member States should integrate ECOWAS awareness programs into the School curriculum so as to stimulate Community spirit from the formative Stages of Community citizenship.

9. ECOWAS Heads of Immigration, Police and Customs should embark upon extensive re-training of Border security operatives on the essence of the Free Movement Protocol and its role in enhancing regional integration and development. The trainings must be sustained and should focus on the economic benefits of the Protocol and how corrupt actions, unnecessary delays and activities of miscreants impede Free Movement within the sub- region.

10. ECOWAS Member States should encourage exchange programs for border security operatives to enable them better understand the dynamics of migration.

11. ECOWAS is encouraged to constitute an advisory committee, made up of eminent personalities across the sub-region that will have an oversight responsibility for the overall implementation and monitoring of Free Movement in the sub- region.

12. ECOWAS encourage cross-border cooperation, by putting in place facilities, such as schools, markets, health centers etc., at all ECOWAS border area communities, which must be accessible to ECOWAS citizens.

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REGIONAL CONFERENCE ON ECONOMIC INTEGRATION OF WEST AFRICA: CHALLENGES AND PROSPECTS

BY

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BACKGROUND

The Economic Community of West African States (ECOWAS) was primarily established in 1975 by the Treaty of Lagos, with the expressed purpose of promoting economic cooperation in order to raise the basic living standards of Community Citizens. ECOWAS agenda for regional integration was pushed forward significantly after the Treaty of Abuja which created the African Economic Community. The Organization did comprise 16 states at inception through 1977, but presently has 15 Members because Mauritania 'reasonably' withdrew in 2000 after the expiration of a year's notice to withdraw from the Organization. The Member States are: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

Regional integration is significant to Africa's development; therefore, ECOWAS has thus been recognized as a successful and the most active regional body in the continent. Consequently, the Organization has attracted the attention of other countries outside West Africa who at some point have unofficially requested joining the Organization considering its value for trade, non-visa restrictions and its commitment in facilitating the tenets of economic integration in the region.

In the current trend for sustainable development, economic integration has over the years caught the attention of regional and continental organizations, including private international agencies. Also, in the context of globalization, integration has been a strong recourse for economies in developing countries to grow faster, stronger and more sustainably.

The movement of people across national borders has become a significant and topical agenda of integration efforts not only at sub-regional or regional levels, but throughout the African continent. As a result of the significance of people's movement and the consequences attached, ECOWAS had and continue to initiate a number of processes, ways and means to ensure that such movement becomes less rigorous and hassle free. Among these are the issues under consideration at this conference (Protocols on ***Free Movement, Goods, Right of Residence and Establishment,*** its Supplementary Protocols and free movement initiatives.

In 2000, the West African Community, through ECOWAS, introduced a common passport; established and adopted as one of the numerous initiatives formulated under the organization for the purpose of facilitating easy movement of people within the sub-region. Although the ECOWAS common passport has been celebrated for being the first fully functional travel document in Africa, its contribution towards the realization of the free movement of people was seen to be challenging, considering the slow rate of implementation when it was adopted in 2000 as against the 2005 time line given to Member States.

WHY ECONOMIC INTEGRATION?

It is a coalition of countries situated in a common geographical space specifically to *remove existing barriers in whatever forms to the free movement of persons, goods and services* and the factors of production among countries. Economic integration further represents an arrangement which involves the *coordination of trade activities, visa processes, fiscal and monetary policies* among consenting countries which aim to

improve the standards of living of citizens. In summary, economic integration in the opinion of some scholars is both a *process* and a *state of affair*. As a process it may include measures aiming to abolish discriminatory rules between economic units of different nations. As a state of affairs, it represents the absence of various forms of discrimination between nations. In the light of the above, the process of economic integration takes different forms of agreements among nations. Primarily, there has to be a trade system which gives preference to members by reducing tariffs on goods imported from Member States. Also, there has to be free trade area wherein member countries remove tariffs and other trade barriers for country products other than those from outside the agreed zone. It's a system that breeds economic intra-area trade. Moreover, there has to be a custom union where the participating countries adopt a common external tariff and commercial policy on imports from outside the economic zone (global level). It's a situation that re- emphasizes members' efforts as one unit with reference to trade activities towards non- members. Conclusively, there has to be a common market which represents a unified single economic area among the nations. This essentially leads to free movement of goods, services and factors of production during the regional integration processes.

In all of these, there has to be greater amount of *coordination and cooperation* displayed among Member States which is a significant tool for regional economic integration within the sub-region.

The various topics under consideration to some extent determine the progress made by ECOWAS and also shows significant indications for regional integration. For over four decades, ECOWAS has built solid institutional architecture which makes it a recognized organization globally.

FREE MOVEMENT OF PERSONS, GOODS AND SERVICES AS AN IMPORTANT FACTOR FOR INTEGRATION

Primarily, the goals of ECOWAS includes, the promotion of cooperation and integration into economic, social and cultural activities, with the ultimate aim of establishing an economic and monetary union by fully integrating the economies of Member States, raising the living standards of its people, maintaining and increasing economic stability, strengthening relations among Member States and contributing to the progress and development of the African continent. To achieve these goals, ECOWAS has over the years, adopted and implemented several protocols as indicated by the table below:

Protocol	*Commitment By Member States Since 1975*	*Policy Frameworks And Initiatives*	*Adoption Dates*	*What has changed/gains*	*challenges*
Free movement of persons	Elimination of obstacles to free movement and respect of the right of residence and establishment.	Protocol on the Free Movement of Persons, Right of Residence and Establishment	Dakar 29 , May 1979	Creation of special posts by **M.S.** at official entry points for entry formalities. Freedom of movement and of residence. Existence of an ECOWAS Passport Adoption of the biometric identity card. Suppression of the Residence Card. Access to employment in the Member States. Reduction... of non-tariff barriers. Free movement of local goods and handicrafts	Selective implementation of the protocols on free movement and of the relevant provisions. Proliferation of unauthorized roadblocks. Harassment at border crossings. Inadequate knowledge among ECOWAS citizens/border operatives on the rights enshrined in the Protocol on free movement. Red tape at borders
		Resolution on the implementation of the first stage of the protocol on Free Movement of Persons, Right of Residence and Establishment	23 November, 1984 July 1985 June 1989		
		Additional Protocols on the right of residence and establishment	May 1990		
Free movement of goods	Trade liberalization by the elimination of customs duties on imports and exports (MS) with a view to creating a FTA at the Community level	Decision May, 2000the establishment of the ECOWAS passport Establishment of Free Trade Area. Establishment of a Common External Tariff	January 2000 January 2006		

One of the most compelling justifications for regional integration in West Africa is the key desire for greater economic independence and sustained development. Therefore, regional economic integration becomes stronger as restrictions on movement, trade and investment diminishes.

With numerous efforts already placed at the forefront of Member States agendas and counting, the policy reforms towards the removal of obstacles to cross-border economic activities relating to people, trade, labor and services, West Africa is destined to be more viable in the global context in terms of integration processes. Consequently, consumers are

now benefiting from a wider variety of goods and services at lower prices as a result of intra-Community trade. The Protocol has also enabled Community Citizens to access employment in Member States without much hindrance.

In Sierra Leone for instance, some Community citizens are self-employed or working in various sectors of the economy without harassment and intimidation as a result of the implementation and monitoring of the Free Movement Protocol. There is also evidence that opportunities for employment in Member States are now based on competence and qualification rather than nationality. Before 1979, there were laws that discriminated against West African nationals seeking employment or opening businesses in Member States. Some of these laws were mostly aimed at protecting the domestic economies and citizens of Member States. The flow of population from the region constitutes a relatively large proportion of all immigrants in most Member States.

The regional body has adopted measures (Common Approach) to ensure the harmonization of national laws pertaining to migration which has strengthened the efficacy of these Protocols.

The Free Movement Protocol has helped to reduce the difficulties that people encountered in the past based on the fact that Community citizens no longer need visa as a condition of entry within the region. The Protocol abolished all visa requirements that were hitherto required for intra-Community movement and for employment.

The Free Movement Protocol has enabled businesses to expand into other domains within the sub-region due to the large market within the ECOWAS sub-region. The ECOWAS region has an estimated population of over 400 million which makes trade activities very important. The large size of the ECOWAS market means that a lot of commodities are available for people, leading to a situation in which they readily have options.

The size of the region, therefore, provides business opportunities for people to take advantage of its enlarged demography. It is now very common for products manufactured in one country to be exported to other countries within the sub-region for sale. Some products and food items from Guinea, Liberia, Ghana and Nigeria are commonly seen in our markets. It is not uncommon for one to see ECOWAS products on sale in our markets. Products such as food stuffs, body wears and now the musical and film industries have significantly impacted on our daily lives and activities within the region. In Sierra Leone, our market women fancy more of Guinean, Liberian, Ghanaian, Nigerian, Malian and Senegalese products, which they travel to buy for sale due to their quality and cost. All of these are due to the significance attached to the protocols on free movement, goods and services.

Furthermore, cross-border exchanges, which are more visible in the informal sector, illustrate economic integration at the lower levels of the integration process. There are ongoing weekly markets that draw traders from both sides of our borders as a clear evidence of free movement (people, goods and services) being an important factor for economic integration. These markets occurring along our borders on weekly basis bring together traders from Sierra Leone and Liberia and Guinea and many more to a closer point of economic activities. Therefore, with the substantial increase in trade and a reduction in price due to goods availability, regional integration becomes an effective means for economic viability within the region. The objectives of cross-border awareness programs

through Community radio stations are also vital in strengthening cultural and economic activities of citizens so as to promote cross-border trade exchanges and solidarity between and amongst border communities.

The ECOWAS Treaty as amended and its relevant protocols envisioned and will continue to muster support from Member States towards the free movement of Persons, goods, services and capital in sustaining regional, economic and political integration in West Africa.

THE ROLE OF THE PROTOCOL ON FREE MOVEMENT, RIGHT OF RESIDENCE AND ESTABLISHMENT

After the establishment of ECOWAS in May 1975, it's a coincidence also that in May 1979, the Protocols relating to the Free Movement of Persons, Residence and Establishment was adopted as a sublime indication of ECOWAS' integration goals. The Protocol is centered on the aspiration of the West African region to achieve genuine coordination and cooperation among its Member States through the free movement of people within our regional borders.

In the light of achieving practical results and judging by the facts that there were complications involved, the implementation of the protocol was structured in three phases with each phase to be implemented across a period of five years with specific goals and framework.

The first Phase of the Protocol provides for the **Right of Entry** by abolishing visas as a requirement for Community Citizens at entry points. The justification for such visa abolition as a precondition for entry was to facilitate increased intra-Community movement of people so as to better coordinate trade activities in the region thereby raising the standard of living of citizens.

The second and third phases of the Protocol focused on the **Right of Residence and Establishment.** It was in July, 1986 that the Supplementary Protocol on the Second Phase, Right of Residence, was adopted. The second phase provides for Community Citizens, who possess the required residency according to domestic immigration laws, procedures and regulations, to seek employment and carry out employment related activities within Member States. Moreover, it was also indicative of the determination of the States' to ensure that migrant workers, who are legally employed, receive comparable treatment with local workers.

Consequently, the third phase focused on the **Right of Establishment** of business enterprises and creates a conducive trading environment for Community citizens in Member States. It also provides that citizens of ECOWAS should have access to the right to reside and establish business enterprises and trade for economic purposes in Member States. The Right of Establishment Protocol was ratified in 1990, which accorded Community Citizens the right to set up or have access to enterprises in other Member States without undue formalities.

As mentioned, other Supplementary Protocols introduced between 1985 and 1990 were to provide guidelines for the realization of the protocol on free movement and the broader goal of regional economic integration in West Africa. These were the Protocols of July

1985 in Lorne, June 1989 in Ouagadougou and May, 1990 in Banjul, on the Right of Residence and Establishment. In 1988, two years after the Supplementary Protocol on the Right of Residence, ECOWAS decided on the introduction of a harmonized immigration and emigration form to be used only in exceptional cases. In principle, ECOWAS nationals travelling with their national passports or ECOWAS Travel Certificate may have them endorsed at the exit or entry points without filling out any forms.

Since inception, ECOWAS Member States have continued to make significant progress in the process of regional integration, albeit with some challenges leading to some margin of underdevelopment and unsustainability. Since the revision of the Treaty in 1993, all regional integration policies and programmes have been geared towards political and economic coordination, sustained mostly on the free circulation of people, goods, common market, infrastructure development, the adoption of common essential policies and advancements on peace, democracy and good governance.

ECOWAS has been characterized by undue weaknesses, particularly the untimely domestication and application of adopted policies and protocols by Member States to insert regional policies into their national agendas or aligning them with regional programmes. However, the coordination and implementation mechanisms put forward by the Free Movement Directorate has been the keystone upon which an essential part of the regional integration process and its different realities are to be sustained through the participation of Community citizens and the private sector. More importantly, the vision of ECOWAS, as re-emphasized in 2007, envisioned a Community that is, "borderless, peaceful, prosperous and cohesive, that is built on good governance, and where people have the capacity to access and harness its enormous resources, through the creation of opportunities for sustainable development and environmental preservation". The objective also is to transform the West African region from an "ECOWAS of States" to an "ECOWAS of People" (vision 2020) in which the people will be involved in the regional integration process in order to own it and be at the center of regional policy concerns while being the ultimate beneficiaries.

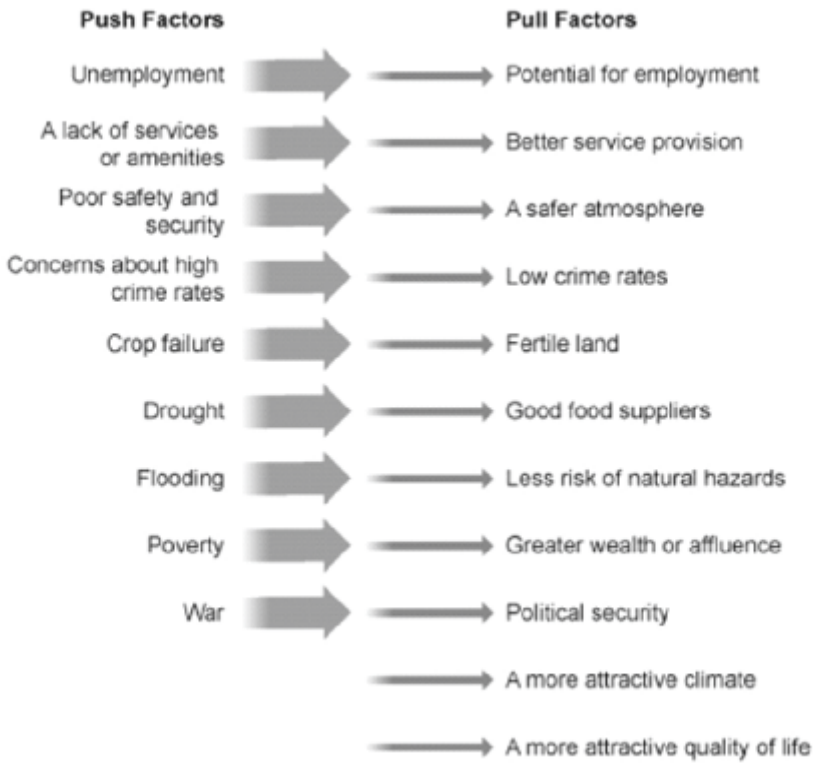
YOUTH MIGRATION-THE PUSH AND PULL FACTORS

Over the years, discussions on migration have become ever more topical, but interestingly such discussion merely focused on how to diffuse African migration towards the West and beyond. Especially in the heated media debates on boat refugees, the discussion basically focuses on the so-called massive exodus from Africa to Europe. There is little concern for gaining perspective, for instance, by paying attention to the (rather mundane and reasonable) reasons why people are migrating or recognizing that a significant portion of migration is more evidenced between and among African countries.

The category of people on the move is diverse, including refugees fleeing wars and disaster, skilled and unskilled labor migrants, students, traders, and irregulars. In view of the fact that about half of sub-Saharan Africa's population is under 25 years of age, it may not come as a surprise that a substantial number of international migrants are young people. Many youth in West Africa consider migration as a 'promising way' to improve their lives. Many factors influence (young) people's decisions to move, from economic fluctuations and instability, high unemployment and underemployment rates (particularly among the youth) to the search for higher education, and insecurity, the spread of mass media, and advances in communication technologies and remittance mechanisms that promise easier travel while enabling migrants to retain strong economic, social, and

political ties with home.

As indicated below and placed into context, some of the reasons while most young people perceived the region as a place with no vision for the future are still a challenge within West Africa. As such they risk their lives to trek the desert, uncharted terrains and the Mediterranean dubbed the "unfilled graveyard" of the millennium.



The ECOWAS Common Approach on Migration

The principles

1) Free movement of persons within ECOWAS zone is a fundamental priority.
2) Legal migration towards other regions of the world contributes to Member States development.
3) Harmonizing policies.
4) Protection of the rights of migrants, asylum seekers and refugees.

MIGRATION AND DEVELOPMENT ACTION PLANS

1) Operationalizing cross-border cooperation: sporting and cultural activities
2) Actions to promote the management of regular migration:
   Awareness raising/sensitization, border trainings.
3) Measures regarding students: Young professional exchange agreements in order to improve their linguistic and professional knowledge and acquire experience in other countries.
4) Measures to ensure safe stay and dignified return.
5) Develop partnerships between West African technical institutions.

HOW DO MEMBER STATES KEEP CHANGING THE NARRATIVES?

Good governance and Youth inclusivity:

These are bedrocks for not only managing the push and pull factors of migration, but they are imperative for regional security and development. Generally, the issues surrounding youths risking their lives in the name of "brighter future" in Europe and elsewhere, revolve around how countries have been grappling with youth issues. To what extent has the youth been integrated into policy making and implementation and what has been the implication for regional security and development?

We are aware that the level of corruption, nepotism, governance deficit and inefficiencies, uneven state resource distribution and management, lack of adequate social services, unemployment and the lack of enabling environment are some of the factors that continue to pave the way for youth exclusion and disillusionment. Furthermore, our political leaders need to revisit those barriers to youth participation in good governance, the lack of access to quality education, vocational training and economic opportunities.

Of equal importance is the need to continue to create openings for civic participation by encouraging youths to be fully represented in civic organizations and total engagement in policy and planning dialogue. To underscore this, West African leaders must create or unarguably muster viable fora for dialogue with youths at all levels of the governance process, promote unfettered access to quality education and skills trainings to gain new inroads to livelihood.

"Building the capacity of young people is not an option; it is at the heart of good governance and sustainable development. It fosters healthier, more educated, more peaceful and more prosperous nations", **President JULIUS MAADA BIO (Sierra Leone).**

ECOWAS COMMON PASSPORT

The Authority of Heads of State and Government adopted the ECOWAS common passport

during the 23rd summit in Abuja in 2000. The ECOWAS passport is a common travel document for citizens of West Africa, introduced to facilitate intra-regional movement of people for a maximum of90 days' period. The introduction of the common passport was predicated on earlier decisions exemplified by the Protocols on Free movement, Right of Residence and Establishment in1979, 1980, 1985 and 1990; and the revised Treaty in1993.

Prior to the introduction of the common passport, a travel certificate was issued to Community Citizens which grants them access to Member States for intra-Community trading. The certificate was earlier introduced with the aim of facilitating cross border movement and improve the ease of travelling for Community Citizens. The ECOWAS passport was, therefore, introduced in continuation of the above goal and a desire of eventually replacing the travel certificate.

By the May 2005 deadline set five years earlier by West African Heads of State and Government for phasing out the existing national passports, only four Member States- Benin, Senegal, Mali and Guinea- met the deadline and had fully issued the ECOWAS passport meant to facilitate travel, international trade and commerce. In 1988, two years after the Supplementary Protocol on the Right of Residence, ECOWAS decided to introduce the harmonized immigration and emigration form to be used only in exceptional cases. In principle, ECOWAS nationals travelling with their national passports may have them endorsed at the exit or entry points without filling out any forms.

It is important to note that, ECOWAS as an organization does not issue passports, but however set the legal framework for its production in a bid to better integrate the sub-region within a hassle free environment.

The common passport itself is issued by Member States and therefore has specific states names and specifications with ECOWAS symbol on the cover page. The most significant indication of the passport is that, it is internationally acclaimed and can be used within the sub-region and globally.

RECOMMENDATIONS

In continuation of an effective regional integration effort and as a follow up to the adherence of the adopted protocols, the undermentioned would help to further strengthen cooperation and development across ECOWAS:

1. There has to be sustained political will and additional efforts to ensure that, policies and actions geared towards economic integration are in the best interest of the development priorities of Community citizens.

2. Most importantly, is the adherence to good Governance with respect to transparency in public administration, the efficient use of public funds, accountability to the people, desisting from discrimination based on ethnic origin, political and religious affiliation. It is also essentially important for West African leaders to ensure that all structures of injustices are eliminated in governmental institutions.

3. There is also a need for both ECOWAS and other sub-regional bodies at both governmental and local levels, to take stock of national laws that militate against legal migration such as employment and investment codes that are at variance with

trade and movement protocols.

4. It is also vital for our Immigration officials at the borders to have relevant and sustainable trainings to see themselves as Community citizens, rather than positioning ourselves as doing a favor to those crossing the borders. Therefore, joint training and awareness raising exercises among ECOWAS countries should be an operational priority. It is also absolutely necessary for national authorities to be fully committed to curtail corrupt practices that go on along our immigration and customs posts. The practice of officers and authorities stopping vehicles anywhere on each other's routes and posing unnecessary questions particularly to other nation's drivers has to stop. Member States must re-examine the codes of practice and standard operating procedures of their immigration, customs, port health, phytosanitary and other border agents to aid the protocols.

5. National authorities and governments within the region should desist from political corruption that thwarts socio-economic development and breeds economic chaos, poverty and unemployment, which inevitably lead to the risky movement of youths using dangerous routes.

6. Our leaders should continue to demonstrate a sense of pride, commitment to pursue sound economic policies, adopting the right priorities for the exploration and distribution of often scarce national resources in such a way as to provide for people's basic needs, and to ensure an honest and equitable sharing of resource benefits.

7. With respect to youths across the region, it is very obvious that there are fundamental rights to travel, but such rights have obligations like obtaining genuine documents, visas etc... It's also unsafe and unwarranted to use unlawful and dangerous trends such as stow-away and the use of clandestine routes like the Sahara Desert.

8. Our leaders should continue to drive development priorities to border communities. Those communities should not be left to local and external actors alone. They should also be included in border community engagements as key players in border management.

9. The sustainability and strengthening of complaint mechanisms.

THE FREE MOVEMENT OF PERSONS, GOODS AND SERVICES, AS AN IMPORTANT FACTOR OF SUB-REGIONAL INTEGRATION

BY

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INTRODUCTION

The Economic Community of West African States (ECOWAS), established on 28 May 1975, is an African sub-region spanning an area of 6 million km^2 and comprising 15 countries (Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo), all of which endow the sub-region with a vast human and economic potential, particularly with its estimated population of 250 million inhabitants.

Historically, the ECOWAS sub-region has been characterised by the extreme mobility of its peoples. The greater part of its migratory flow has been overland, across the more than 15,000 kilometres of border separating its Member States, and the 8,500 kilometres between its Member States and neighbouring Mauritania, North Africa, Chad and Cameroon.

The mission assigned to ECOWAS is the promotion of sub-regional integration by the creation of an economic union, achieved through the phased establishment of a common market among its Member States.

However, the achievement of this objective is necessarily conditional upon the liberalisation of trade, establishment of a Common External Tariff (CET), adoption of a common trade policy toward third countries, elimination of all obstacles to the free movement of persons, goods, services and capital between the Member States, as well as the obstacles to entrenchment of the right of residence and establishment, with a view to boosting inter-regional trade.

This is the framework within which the Member States of the Community set up multiple legal instruments, and took the necessary political measures to kick start that joint stride towards the creation of an integrated region within which the free movement of persons, goods and services would be enshrined as a sine qua non underwritten by each Member State.

This presentation seeks to demonstrate that free movement of persons, goods and services constitutes an important factor for the sub-regional integration designed to tum ECOWAS into a region of emergent economic strength and social progress, based on increased solidarity in relations between the different Member States.

In view, on the one hand, of its indisputable importance for the achievement of the final objectives of ECOWAS, and on the other hand, of its origins and consequences, the free movement of persons, goods and services should, in our opinion, be perceived as a cardinal principle and vector of sub-regional integration (I), and its effective implementation, as an indispensable factor of the sub-regional integration process (II).

I. FREE MOVEMENT OF PERSONS, GOODS AND SERVICES - A CARDINAL PRINCIPLE OF SUB-REGIONAL INTEGRATION

In so far as it is enshrined in various Community legal instruments, and provisions made for legal sanction of its violation, the free movement of persons, goods and services may be deemed a legally consecrated (A) and legally protected principle.

A. A LEGALLY CONSECRATED PRINCIPLE

From inception, ECOWAS, which currently comprises 15 countries, established the free movement of persons, goods and services, as one of the major objectives to be attained in its pursuit of sub-regional integration.

For each Member State, this involves the promotion through the use of normative texts, of an integration policy within its borders, which, for the one part, grants each Community citizen the right to settle and freely pursue an occupation and, for the other part, allows products or goods originating from the Member States, to cross each other's borders, exempt of customs and other duties and taxes levied at border points, exclusively on foreign products.

To this end, ECOWAS adopted a number of legal instruments which constitute the respective sources from which the principle of free movement of persons, goods and services directly or indirectly flows.

1. The Founding Treaty Adopted at Lagos on 28 May 1975 and Revised at Cotonou on 24 July 1993, as the Indirect Source of the Principle of Free Movement of Persons, Goods and Services

The principle of free movement of persons, goods and services was originally enshrined and affirmed by the founding text of ECOWAS, which is its initial Treaty, adopted at Lagos on 28 May 1975, and specifically, by the provisions of Articles 2 and 27, which identify this principle as an objective to be achieved « in stages », thus making the Treaty an indirect source of the principle.

In pursuit of the common objectives of sub-regional integration, as laid down in Article 2, paragraph 1 of the Treaty, the ECOWAS Member States, numbering 16 at the time, undertook to ensure, in stages, and in addition to the elimination of obstacles to free movement of persons, services and capital, the adoption of various measures in favour of Community citizens, with a view to facilitating economic activities within the sub-region *(Article 2 paragraph 2 of the Treaty).*

With this objective in view, the Treaty conferred the status of Community citizen on nationals of Member States *(Article 27, paragraph 1 of the Treaty),* having made it a requirement that the States successfully eliminate all obstacles to free movement and right of residence within the Community, thereby exempting Community citizens from visa and residence permit requirements, and granting them the right to work and undertake commercial and industrial activities within their respective territories *(Article 27, paragraph 2 of the Treaty).*

Furthermore, Articles 35, 36, 37, 38 and 45 of the Organisation's founding Treaty, provide for the establishment of a system of cooperation between the Member States, in the areas of trade, customs, taxation, statistics, money and payments. These provisions cover the introduction of a Common External Tariff (CET), a common Community tariff regime, re-exportation of goods, and transit facilities.

In order to mitigate, or avoid possible difficulties in its implementation, particularly within the context of a Community in constant flux, and of a region in which new forms of bilateral and multilateral economic and commercial cooperation were constantly emerging, in response to new political, economic and socio-cultural

challenges, there was a need to review the initial Treaty of 28 May 1975, which was accomplished at Cotonou on 24 July 1993.

The provisions of Articles 59 and 92 of the revised Treaty, specifically reaffirm the commitment of the Community to the principle of free movement of persons, goods and services, as a condition sine qua non to the attainment of the sub-regional integration objective.

2. The Direct Legal Sources of the Principle of Free Movement of Persons, Goods and Services

In addition to the ECOWAS Treaty by which it is established as a principle, the Organisation has adopted various normative texts, with a view to ensuring the effective implementation of free movement of persons, goods and services.

These texts, which are viewed, with justification, as the direct sources from which this principle emanates, are the normative texts formulated in accordance with the Treaty, in order to guarantee free movement, not only of persons and services, but also of goods, including unprocessed goods, traditional artefacts and industrial products originating from the ECOWAS Member States, fully exempt from duties and taxes of similar effect. Thus:

a. The Free Movement of Persons

There are a number of normative ECOWAS texts relating to the free movement of persons. These include:

Protocol A/P1/5/79 dated 25 May 1979, relating to the Free Movement of Persons, Right of Residence and Establishment

The Protocol was adopted in Dakar, on 25 May 1979, and although it refers exclusively to free movement of persons, right of residence and establishment, it nonetheless remains a major legal source of the principle of free movement of persons, goods and services.

The Protocol on Free Movement of Persons and Right of Residence was added to it by important Supplementary Protocols, namely:

- *Protocol A/SP dated 1 June 1989, supplementary to, amending and adding to the provisions of Article 7 of the Protocol on Free Movement of Persons and Right of Residence and Establishment;*
- *Supplementary Protocol A/SP dated 1 July 1982, establishing a Code of Conduct for Implementation of the Protocol on Free Movement of Persons, Right of Residence and Establishment;*
- *Supplementary Protocol A/SP dated 1 July 1986, on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment;*
- *Supplementary Protocol A/SP dated 29 May 1990, on the Third Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment;*
- *Protocol A/P dated 5 May 1982, relating to the Definition of Community Citizen,* which enshrines the concept of Community citizen, and determines the conditions governing its acquisition and loss, is indisputably an important source of the principle of free movement of persons within the ECOWAS sub-region;
- *Decision CIDEC dated 3 December 1992, on the Introduction of a Harmonised*

Immigration and Emigration Form in ECOWAS Member States, aimed at taking effective account of migration policies in West Africa, and urging the Member States to adhere thereby to the Global Campaign to End Statelessness;

- *Decision A/DEC dated 10 May 1982, relating to the Application of the Protocol on Free Movement and the Public Enlightenment Programme;*
  Decision A/DEC dated 6 June 1985, establishing an ECOWAS Travel Certificate for ECOWAS Member States;
- *Decision A/DEC dated 2 May 1990, establishing a Residence Card in ECOWAS Member States which permits any national of a Member State to apply for a residence permit from the appropriate authorities of the host Member State;*
- *Resolution AIRE of the Authority of Heads of State and Government, dated 2 November 1984, relating to the Application of Phase 1 of the Protocol on Free Movement of Persons, Right of Residence and Establishment.*

b. Free Movement of Goods

A number of texts, including Protocols, Decisions, Conventions and Regulations have been adopted with a view to creating enabling conditions for the conduct of trade within the Community. They include:

- ***Decision CIDEC.8/11/79 of the ECOWAS Council of Ministers*** establishing total exemption of goods from import duties and taxes, their free movement with no quota restriction, as well as non-payment of compensation for loss of revenue incurred as a result of their importation. This decision marks the beginning of the trade liberalisation process in the ECOWAS sub-region.

- ***Convention AIP4/5/82 dated 29 May 1982, establishing inter-State Road Transit of Goods (ISRT)*** which is a customs regime permitting the transportation of goods by road between ECOWAS Member States without payment of customs duties, from the customs post at the point of departure of the goods, to the customs post at the country of destination.

- ***Regulation C/REG.4/4/02 adopting a Certificate of Origin for Products of Community Origin,*** which concerns products manufactured in ECOWAS Member States, but not labelled as products of Community origin.

- ***Protocol A/P.1/1/03 dated 31 January 2003, defining the Concept of Products Originating from ECOWAS Member States.*** Under the terms of the protocol, recognition of Community origin presupposes that the product is labelled to so indicate, and that the products so identified are of an animal species, and have undergone no form of processing; handcrafted items; items wholly obtained from a Member State; goods manufactured from raw materials of Community origin, of a value higher than, or equal to 40% of the total cost of the inputs used in the manufacturing process; etc.

- ***DecisionAIDEC.17101/06 introducing an ECOWAS Common External Tariff (CET),*** adopted on 12 January 2006, within the framework of the creation of a Customs Union in the ECOWAS sub-region, and with a view to creating a common mechanism for the taxation of goods originating from third countries imported by the different States of the Community.

B. FREE MOVEMENT OF PERSONS, GOODS AND SERVICES - A LEGALLY PROTECTED PRINCIPLE

In addition to establishing this principle by way of various normative texts relating thereto, ECOWAS went further to create a legal institution, as a protection for this principle, and to sanction for its violation: the institution in question is the ECOWAS Court of Justice.

The ECOWAS Community Court of Justice, originally designed as the « Tribunal of the Community» in the 1975 Treaty, was established in compliance with the provisions of Articles 6 and 15 of the ECOWAS revised Treaty, and further to the 1991 Protocol adopted by the ECOWAS Heads of State and Government.

Further to the amendments to its original Protocol, contained in the 2005 Supplementary Protocol of the Court, the jurisdiction of the Court was extended to include cases of human rights violations in ECOWAS Member States.

The Supplementary Protocol makes no provision for the exhaustion of domestic remedies as a precondition for the start of legal proceedings in cases of human rights violations which are brought before the Court.

The Court initially comprised of seven independent Judges, who are persons of high moral character, appointed by the Authority of Heads of State and Government from a list drawn up from two proposals by each Member State, to fulfil a four-year tenure, on the recommendation of the Community Judicial Council.

The mandate of the Court is to ensure compliance with the principles of equity in the interpretation and application of the provisions of the revised Treaty and all other subsidiary legal instruments adopted by the Community, in addition to the general principles of Law enshrined in Article 38 of the Statute of the International Court of Justice.

In this regard, the Court has jurisdiction, in all matters of litigation or arbitration, to hear cases against any ECOWAS Member State having defaulted in its obligations under the revised Treaty and any other subsidiary legal instrument adopted by the Community, including those relating to violations of the right to the principle of free movement of persons, goods and services.

The Court also acts in a consultative capacity in all legal matters necessitating the interpretation of Community texts.

Decisions of the Court are binding and final, except where there is an application for a review of judgement, but may however, be subject to objection from a third party.

The Court may be consulted by any Member State; the Authority of Heads of State and Government; other ECOWAS institutions; and natural and legal persons, on any Community Act violating their rights; as well as the staff of any ECOWAS institution, or victims of human rights violations committed in a Member State.

In the domain of human rights protection, the Court applies, among others, the

international human rights instruments ratified by the State or States-parties to the case.

II. EFFECTIVE IMPLEMENTATION OF THE PRINCIPLE OF FREE MOVEMENT OF PERSONS, GOODS AND SERVICES, AS A FACTOR SINE QUA NON OF SUB-REIGONAL INTEGRATION

The free movement of persons, goods and services represents, in practice, the various rights accorded the citizens of State-parties to the ECOWAS Treaty, in respect of their persons, their goods, and their activities.

A. FREE MOVEMENT OF PERSONS

The principle of free movement of persons is enshrined in Article 2 paragraph 1of Protocol A/Pl/5/79 dated 25 May 1979, which provides« Community citizens enjoy right of entry, to work and establish in the territory of Member States».

This provision grants to every citizen of an ECOWAS Member State, the rights, respectively of free entry, residence, establishment and free provision of services.

In other words, every national of an ECOWAS Member State enjoys the right to move freely from one State to another, without hindrance.

The provision equally grants right of residence, right of establishment, and freedom of services provision in each Member State. The conditions governing the application of these different rights are less onerous, depending on whether or not the person is a national of an ECOWAS Member State.

1. Right of Entry and Freedom of Residence

Every Community citizen has the right to freely enter, move around, reside in and leave every ECOWAS Member State, without the prior requirement of producing any documentation whatsoever (visa or entry permit), exception being made of valid international vaccination papers and certificates *(Article 3 paragraph 1 of the Protocol).*

However, the exercise of this right for a period beyond 90 consecutive days remains conditional on the requirement of authorisation from the appropriate authorities of the State concerned *(Article 3 paragraph 2 of the Protocol).*

This right, which implies that Community citizens enjoy the same rights and freedoms as nationals of the host Member State, exception being made of political rights, entails:

- ✓ Elimination, between nationals of Member States, of all nationality-based discrimination as pertains to the search for and pursuit of employment, with the exception of employment in the Civil Service;
- ✓ The right to move about and reside freely within the territories of all Member States;
- ✓ The right to continue to reside in a Member State after having obtained employment there.

It is an undeniable fact that despite the difficulties arising in connection with observed harassment, substantial progress has been made by ECOWAS, as evidenced by the following examples:

- There is no visa requirement for nationals of Member States travelling within the ECOWAS sub-region;
- An ECOWAS passport has been in circulation since December 2000, and is expected to

replace all-national passports;

- Introduction of the Brown Card automobile insurance regime;
- The official launch of the West African Monetary Agency (WAMA)-administered ECOWAS traveller's cheque on 30 October 1998, during the 21st Summit of Heads of State and Government, in order to facilitate trade and payments of intra-regional transactions ;
- Installation and operationalisation of pilot monitoring units by the ECOWAS Commission, at the borders of Nigeria, Benin, Togo, Ghana, Burkina Faso, Mali and Guinea;
- Elimination by ECOWAS of the residence card or permit, the projected elimination of the international vaccination certificate, and adoption of a draft biometric Identity Card.

2. Right of Establishment

This provision confers on Community citizens the right to pursue economic activities, to set up and run companies or enterprises under the same conditions as nationals of the host country.

3. Freedom of Services Provision

Nationals of a Member State may provide services in another State under the same conditions as those imposed by the State on its own nationals.

B. FREE MOVEMENT OF GOODS

The principle of free movement of goods is one of the pillars for the construction of a common market, which is the real engine of regional integration. The principle covers both goods and capital.

1. Free Movement of Goods

The principle of free movement of goods confers on traders, who are nationals of ECOWAS Member States, the right to import into their country, any product from another country of the Union, on the condition that the product was manufactured and marketed legally, and that there is no overriding reason, such as protection of public health, or the environment, militating against its importation into the consumer country.

2. Free Movement of Capital

This principle, which is a logical consequence stemming from the right of establishment and freedom of services provision, confers on citizens of ECOWAS Member States the right to conduct financial transactions, including the placement or investment of their capital, under the requisite conditions of safety, without fear of discrimination, based on their nationality.

CONCLUSION

At the conclusion of this analysis, it is clear that since free movement of persons, goods and services is a cardinal principle and essential vector for regional integration, only by its implementation can the successful conclusion of the integration process and of its corollaries, which include economic emergence and social progress based on increased solidarity between ECOWAS Member States, be effectively ensured.

However, nearly forty years after the creation of the ECOWAS Community, it must be acknowledged that its accomplishments are far below expectations, as borne out by the intransigence of so many of the obstacles to the free movement of persons, goods and services.

This stark reality obviously accounts for the weak growth in trade between the ECOWAS Member States, estimated at a mere 15%, compared to observed trends in regions such as North America, Europe, Southern Asia and Latin America, which record trade estimate figures of 65%, 70%, 40%, and close to 35% respectively.

This observation calls for more reflection on our parts, in order to not only refine our economic policy orientations, but also to identify priority objectives for the Community's Member States, based on appropriate Community measures. There is a need to re-examine our protocols in the light of certain realities, and carry out the necessary adjustments which will ensure the effective, as opposed to the selective, implementation of all the provisions relating to free movement of persons, goods and services.

In this regard, it would be desirable to take note of the relevant recommendations contained in the January 2014 Report of the International Centre for Trade and Sustainable Development **(ICTSD),** headed by Dr. Cheikh Tidiane DIEYE, which contains an evaluation of the 1979 Protocol on Free Movement of Persons and Goods, and of the ECOWAS Trade Liberalisation Scheme.

All evidence predicts a promising future for the free movement of persons, goods and services within the ECOWAS sub-region, provided that this mission to build and consolidate integration is not left to the sole responsibility of the States; citizens need to be more effectively enlightened as to the stakes, in order to enable them to seize the opportunity offered them by the powers vested in the ECOWAS Court of Justice, to sanction any violation of the rights granted to them under this legally enshrined and protected principle.

FREE MOVEMENT OF PERSONS, GOODS AND SERVICES AS AN IMPORTANT FACTOR FOR INTEGRATION.

BY

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INTRODUCTION

I am highly honoured to be amidst this very distinguished August gathering today for the presentation of an all-important paper titled - "Free Movement of Persons, Goods and Services as an Important Factor for Integration".

This presentation is coming at a time the West African sub-region, the African Continent and the entire World Community are severely fraught with varying degrees of bloody squabbles, conflicts and inter-state distorted diplomatic relations, arising from the scourge of irregular migration.

We would all recall that from creation, movement and traveling from one place to another has been a central and circumstantial character of humanity. Historically, this movement was nomadic often causing significant conflicts with the indigenous population because of their fear of displacement, cultural assimilation and domination.

Movement of persons, goods and services therefore, as a process, deals with practical mobility of people and goods from one geographical location to another. This could be in the form of immigration (inward bound) or emigration (outward bound), on temporary basis which involves mere visitations, tourism, normal trade and business trips; and or permanent basis which entails full rights of residence and establishment (Ifeadi, 2013:1).

The above narrative, unearths a strong nexus between the old time or medieval patterns and the modem day movement of persons, goods and services across national borders around the world community.

It is in a strategic bid to transform this decrepit and analog human movement patterns across borders of nation states, and thus, make it more ordered, systemic, seamless and socio-economically integrative for its legitimate Community citizens, that the Economic Community of West African States (ECOWAS) was established on 28th May, 1975 (Ifeadi, 2001:7). It thereafter, signed three major protocols on Free Movement of Persons, Goods And Services, Right Of Residence And Establishment. These binding protocols were signed four (4) years after its formation on 29th May, 1979 by its original sixteen (16) West African Heads of State and Governments (Ifeadi, 2001:7-9).

Therefore, the imperatives of this special paper presentation is indeed timely; and thus, is predicated on five (5) essential fundamentals, which include:

First, the involvement of massive mobility of foreign elements from different nation states that make up the ECOWAS Community.

Second, the easy movement of goods and services between and within these ECOWAS Member States.

Third, the existence or provision of an ECOWAS Common Passport, which expectedly should make the emerging free human movement seamless and legitimate.

Fourth, the emerging scenario of an upsurge in youth migration and its consequent push and pull factors.

Fifth, the honourable place of ECOWAS and all its operational elements, protocols and

agencies, as a veritable sub-regional Institution for an all-round socio-economic and political integration; and development of the impoverished peoples of its Member States, in spite of the emerging enormous challenges the ECOWAS establishment perennially encounter in its robust drive for genuine sub-regional integration.

2. DEFINITION OF TERMS AND CLARIFICATION OF CONCEPTS

For the purpose of this presentation, a few of the terms and concepts utilized would be defined and clarified from the following perspectives:

a. Free Movement

This term is used in this paper to describe a basic or structural aspect of the ECOWAS protocol which empowers any Community citizen the freedom, liberty, unrestrained and unrestricted capacity to physically and legitimately oscillate from any location of ones choice to another within ECOWAS Member States. In this connection, the Community citizen must have in his or her possession, his or her valid travel documents (Standard Passports); and must have no criminal possessions or intentions for entry into any nation state within the ECOWAS Community.

b. Community Citizen

The term Community Citizen is used in this paper to define and classify the diverse peoples who are bona fide nationals of the fifteen Member States that constitute the ECOWAS Community after the withdrawal of Mauritania.

c. Migration

Migration is defined by the Oxford Advanced Learners Dictionary (2000:743), as the movement of a large number of people, birds or animals from one place to another. Historical facts show that mankind has usually been instigated by adverse or favourable circumstances, such as wars, famine, diseases, epidemic, quest for freedom, search for employment opportunities, better life and general survival to intentionally or forcibly migrate or move from one location to another. In this paper, migration is defined from the perspective of the normal human movement from one location to another, which could be illegally and irregularly executed or regularly and legitimately accomplished.

d. Passport

This term as severally used in this paper, refers to the valid travel document required by an ECOWAS Community Citizen to legitimately travel or migrate from his or her native Member State to another country. It is on this special travel document that valid visas are enshrined; and with which persons desiring to enter another country other than their native country, are officially allowed entry.

e. Integration

Integration is strictly used in this paper as a binding and developmental strategy, which ECOWAS Heads of State and Government evolved out of their joint aspirations to pool the resources of their Member States together through shared trade interactions for collective economic growth and development of each Member State.

f. Goods and Services

These interrelated and intertwined terms are defined and used in this paper as relating to general economic products, commodities, possessions or freight merchandise; and provision of maintenance activities and repairs through human labour, overhaul and employment of varying degrees across trans-border frontiers of ECOWAS Member States.

g. Residence and Establishment

Similarly, these terms are interrelated. They are used in this presentation as structural indices of the rights conferred on ECOWAS Community citizens by its second and third protocols to authentically live or domicile and thereafter freely set up their individual business and enterprises respectively, within the geographical space of their host nation states.

h. Protocol

This term although fundamentally a relative word, is strictly referred to in this paper as the set of rules, operational objectives and guidelines which are expected to bind all ECOWAS Member States in their collective quest to achieve full sub-regional socio-economic integration.

i. Borders

In this paper, a border is seen as an international separating line or zone between sovereign States. A border could thus, be categorised into sea, air and land borders. At times, rivers, valleys, oceans and district geographical elements or physical structures form the separating lines between territories of sovereign States (Ubochi, 2003:1).

Similarly, Oxford Advanced Learners English Dictionary (2000:123), defined a border as a line separating two political or geographical areas, especially countries or nation states. In the same vein, Ikome (2012:12), from the legal perspective, remarked that borders are sharp edge divides of territories within which states exercise their jurisdiction.

In addition, there are also borders that are artificially created. Most borders of African States were carved out by European imperialists, arising from their imperial colonial escapades in Africa. Generally speaking, therefore, the geographical, human and socio-economic features of borders, remarkably shape the nature of cross border security threats, developmental and integration challenges along them, exactly as it is with the ECOWAS experience so far.

j. The Concept of "Borderless" Borders

This rather new concept, was initiated by the Heads of State and Government of ECOWAS Member States. It was aimed at fast-tracking the protocols of free movement of persons, goods and services, right of residence and establishment.

It was also designed to encourage trade liberalisation, socio-economic and political integration; and the developmental dreams of ECOWAS' founding fathers. It took root during the mini summit of ECOWAS Heads of State and Government, held in Abuja on 27th March, 2000 (Ifeadi, 2006:5).

3. THEORETICAL STANDPOINT

In my quest to adequately examine and analyse the potentials of ECOWAS Protocols, which the presence and commitment of each Head of State and Government represents, the collective and binding elements of the Integration Theory would be generally employed. Typically, most development economists have argued that developing countries should orient their trade more towards one another (Todaro and Smith, 2004:578).

Puchala, (1990:422), also defined integration as "a set of processes that produce and sustain a Concordance System at the International level"; that is, "an international system wherein actors find it possible, consistently to harmonise their interests, compromise their differences and reap mutual rewards from their interactions."
Going down memory lane, Maiyaki (2017:1) pointed out that "the age-long practice of the individual survival of nations have long given way to the emergent Concept of lntegration and Cooperation among States as an option to meeting the collective developmental needs of the cooperating States."

Flowing from the above theoretical statements, Goldstein (1996:324), argued that when the well-being of a state depends on the co-operation of a second state, the first state is dependent on the second. But when two or more states are simultaneously dependent on each other, they are interdependent; a multiplicity of which, would transmute into a union or integration of states largely for mutual economic gains.

He rightly noted that most successful trade strategies are those such as the integration model, that would achieve mutual gains from co-operation with other States without being taken advantage of by those States and that a global or sub-regional system of free trade through integration is usually that of collective good (Goldstein, 1996:356).

The foregoing binding integrative arguments and factors are extremely instructive, as they lucidly describe the predicaments of very impoverished sub-regional collection of nation states essentially dependent on developed and dominant western colonialists, who are desperately wishing to be economically emancipated.

Consequently, Todaro, and Smith, (2004:124), postulated in their analysis of Neo-Colonial Dependence Model, that the persistence of pervasive under-development in the Third World nation states is fundamentally hinged on the infamous historical colonial pedigree of a largely unequal global capitalist system of rich country-poor country economic dichotomized interaction.

As a result, they cautioned that one strong variant of the South-South trade hypothesis is that, less developed countries should go beyond mere trading with one another, and urgently move in the direction of strong economic integration.

In addition, they positively posited that economic integration occurs whenever a group of nations in the same region join together to form an economic union or regional trading bloc by raising a common tariff wall against the products of non-member countries, while freeing internal trade amongst its members (Todaro and Smith, 2004:579).

The truisms in the foregoing theoretical arguments, are thus, a central tenet and

fundamental hallmark of the beautiful dreams and aspirations of ECOWAS Heads of State and Government to assiduously engender genuine growth and development through strong economic integration of the Member States of the region.

4. THE ROLE OF ECOWAS PROTOCOL ON FREE MOVEMENT OF PERSONS, GOODS AND SERVICES IN THE INTEGRATION PROCESS

The Economic Community of West African States (ECOWAS) has been prominently identified as one of the major pillars of Africa's Regional Integration; and ECOWAS is its acronym (UN Economic Commission for Africa, 2019:1). ECOWAS began its trip as a sub-regional socio-economic integration based institution right from the dawn of its creation on 28th May, 1975.

The Heads of State and Government of ECOWAS Member States from the outset, recognised the enormous advantages when nations in the same region join together to form an economic union or regional trading bloc, and thus, created a conducive socio-economic environment for collective development through regional integration and trade liberalisation amongst its members. They hoped that this strategy will enable them pool their resources together in a desperately synergised integration model to jointly ameliorate the sufferings and economic backwardness of their people.

It is heartwarming to note that amongst several failed attempts at creating effective regional integrative arrangement, the United Nations Economic Commission for Africa (2019), included ECOWAS as one of the several pan-African Organisations that have successfully been working hard towards deepening economic, social and political cooperation and integration in Africa.

In order to seamlessly accomplish its role and objective of sub-regional socio-economic and political integration, ECOWAS Heads of State and Government on 29th May, 1979 promulgated far reaching protocols on free movement of persons, goods and services, rights of residence and establishment (ECOWAS Protocol, 1979). These protocols lucidly outlined the express rights of ECOWAS citizens to enter, reside and establish business or economic activities in the territory of other Member States (Akande: 1998). It further offered three strategic roadmaps of five (5) years each to achieve freedom of movement of persons, goods, services and capital, rights of residence and establishment, expectedly, after fifteen (15) years of execution. For clarity purposes, the contents of the Article of the Treaty in addition, stated that the right of entry and abolition of Visa should be accomplished between (1980-1985); right of residence (1986-1990); and right of establishment (Nwaucha, 1994:74) & (Ubi, 2005:35-40).

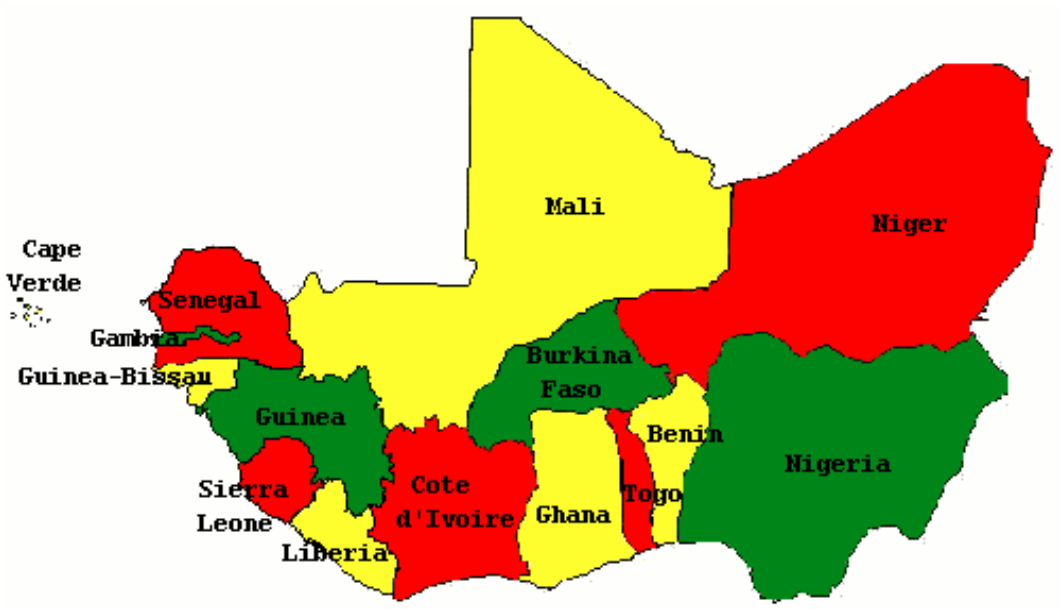
As a follow-up to the provisions of the Treaty and in order for ECOWAS authorities to solidify its role and commitment towards economic integration via the windows of the protocols of free movement of persons, goods and services, residence and establishment, as earlier indicated, got them authenticated and signed by the Heads of State and Government of ECOWAS in Dakar on 29th May, 1979. These protocols, which gave legitimacy to the pivotal role of the Organisation, became effective on 5th June, 1980 when it became ratified by at least seven Members State of the Community. Available records indicate that by 15th September, 1982 all the Member States had ratified the protocols (Nwaucha, 1994:74).

As at today, to assiduously continue its role towards the full economic integration of the

West African sub-region specifically through free movement of persons, goods and services, the Economic Community of West African States is made up of fifteen (15) countries. These nation states include: Republic of Benin, Burkina Faso, Cape Verde Islands, Ghana, Gambia, Guinea-Bissau, Cote d'Ivoire, Liberia, Mali, Nigeria, Senegal, Sierra-Leone and Togo. Mauritania's voluntary extinct membership status became official from 27th December, 2000 (Ubi, 2005:12-13).

The remaining fifteen (15) Member States are depicted in fig. (i) overleaf:

Fig. (1): Fifteen (15) Member Countries of ECOWAS.



Source: ecowas.int

4(b). Creation of ECOWAS "Borderless" Borders

The ECOWAS Community and its Heads of State and Government robustly expanded its functional role and the tempo of its sub-regional economic integration drive with its introduction of the concept of "Borderless" Borders into its operational paradigm. This wonderful concept was first highlighted at the mini summit of ECOWAS Heads of State and Government, which was held in Abuja between 26th and 27th March, 2000.

This mini summit was at the instance and invitation of the then President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo; and it was essentially convened within the context of drastically accelerating on a fast-track podium, the sub-regional economic integration process of West Africa. Declaring the summit open, the former ECOWAS President and the President of the Republic of Mali, His Excellency Alpha Oumar Konare, thanked the Heads of State and Government for their unshakable commitment to ECOWAS' ideals and their manifest determination to intensify the pace of sub-regional integration in West Africa. He urged Member States to ensure greater cohesion and synergy

in their collective actions, which should be in conformity with the decisions taken during the December 1999 summit and at the Ministerial Meeting in Bamako in January, 2000. President Konare further expressed the hope that the "Union of WestAfrican States" would soon become a reality which would in tum, play a significant role in fostering African Unity (ECOWAS Final Communique on "Borderless" Borders, 2000:2).

In response, President Olusegun Obasanjo underlined the crucial elements of the Ghana/Nigeria fast-track integration initiative against the backdrop of the decision to adopt a new pragmatic approach to the establishment of a "Borderless" sub-regional territory, which would drastically improve all ethics and extant rules that govern the free movement of persons, goods and services across national frontiers.

In this regard, President Olusegun Obasanjo announced the immediate removal of all checkpoints by Security Agencies on International roads linking the Nigerian state with its neighbours.

4(c). Harmonisation of ECOWAS and UEMOA Programmes

The Heads of State and Government in furtherance of the "Borderless" Borders paradigm, mandated ECOWAS and the UEMOA Commissions (Francophone Economic and Monetary Union of West Africa), to implement the conclusions of the Bamako meeting, which encouraged the two Organisations to harmonise their trade liberalisation schemes as well as the macro convergence criteria of the ECO (the common currency of Anglophone West Africa) and the institutional arrangements for the multilateral fiscal surveillance mechanisms of both institutions (ECOWAS Final Communique on "Borderless" Borders, pp. 3 & 13). One of the primary convergence criteria is the attainment of a single digit inflation rate (Amaefule and lboma, 2004:20). Whereas, the second convergence criteria for the introduction of ECO Common Currency is that each Member State's fiscal deficit figure must be below 5 percent (Aina, 2004:14). They stressed that this will align the programmes of ECOWAS and UEMOA in order to avoid duplication of efforts and thus, enhance a quicker pace to the economic integration of the West African sub-region.

4(d). Free Movement of Persons Bye Laws

In order to solidify the gains of a "Borderless" Border, the Heads of State and Government reasoned that free movement of persons should be encouraged to the fullest, with the proviso that nationals of ECOWAS Member States must have their valid travel documents, including their Health Certificates.

In addition, the regulatory machinery recognized the fact that if a Community citizen has to stay for a period exceeding 90 days, he must have to apply for the extension of stay from the appropriate authorities of the host country.

Moreover, a Member State reserves the right to refuse admission or entry into her territory, any Community citizen who is found to be within the category of a Prohibited Immigrant (Pl) under her extant laws, the provisions of article (3) on free movement of the ECOWAS protocol notwithstanding (Nwaucha, 1994:76).

4(e). Other Far Reaching Decisions Reached Within The Context of West African "Borderless" Borders at the Ministerial Meeting of 27th March, 2000

(i) Elimination of rigid Border formalities and modernisation of border

procedures through the use of passport scanning machines;

(ii) Immigration officials to be instructed to accord the maximum 90 days period of stay to ECOWAS citizens at entry points from 15th April, 2000;

(iii) Limiting the personnel at the Border Control Posts to essential staff, such as, the Customs and Immigration;

(iv) Member States yet to ratify convention A/PI/8/94 on extradition signed in Abuja on the 6th of August, 1994 to do so without delay;

(v) Removal of numerous road blocks and security check points on International highways to reduce delays, harassment and extortion;

(vi) Abolition of the residence permit requirement for each other's citizens in the spirit of equal treatment of Community citizens;

(vii) Joint Border Patrols by neighbouring States, in this particular instance: Niger, Nigeria, Benin, Togo, Ghana, Burkina Faso and Mali are to monitor and police national borders;

(viii) Closer collaboration between the Police and Internal Security Agencies with regard to exchange of information, staff exchange programmes, and the organisation of frequent co-ordination meetings, training courses etc;

(ix) Mounting of sensitisation and enlightenment campaigns for Immigration officials;

(x) Issuance and effective use of the ECOWAS Travel Certificate;

(xi) Adoption and introduction of a single ECOWAS Passport;

(xii) Adoption and introduction of a multi-country, Schengen type visa as is done currently in Europe (EU); and,

(xiii) Immigration officers to meet to discuss implementation of the Fast Track Programme (ECOWAS Final Communique on "Borderless" Borders, 2000:5).

4 (f). Free Trade Zone

The Heads of State and Government also decided on the following measures, which will enhance the effective establishment of a Free Trade Zone:

(i) A list of industrial products to be published and made available at all Customs at entry points;

(ii) Directive to be issued by the Ministry of Finance to the Customs Service to apply the 0% rate of duty on approved industrial products as well as unprocessed goods and traditional handicrafts;

(iii) Exemption from the Certificate of Origin requirements for raw agricultural products directly from the Community, such as roots and tubers, cereals, vegetables and livestock;

(iv) Exemption from documentation requirements of goods valued at $500 or below.

(v) Customs officials are to meet by 20th April, 2000, to agree on harmonisation of any minimum documentation requirements;

(vi) Ministry of Finance to issue directives by 15th April, 2000 to the Customs Service to apply the Community levy of0.5% and to remit the proceeds to the ECOWAS Secretariat account with the Central Bank;

(vii) Immediate application of the Inter-State Road Transit (I.S.R.T)

Convention;

(viii) Conduct an intensive awareness programme on the Free Trade Zone to educate exporters, importers, Customs officials and other relevant agencies; and

(viii) ECOWAS Common External Tariff to be adopted for entry, to take effect from 1st January, 2001 (ECOWAS Final Communique on "Borderless" Borders, 2000:6).

Other crucial areas of co-operation, the Heads of State and Government indicated, which needed urgent attention and application include:

(I) The setting up of a reliable compensation mechanism for loss of Customs revenue in order to facilitate intra-Community trade liberalisation;

(ii) The lowering ofimport duties and Customs tariffs without delay, to the lowest level applied in the Member States; and

(iii) Construction, Development and Maintenance of all regional facilities, which include, all dimensions of transportation, like the Lagos-Cotonou-Lome-Accra, and Lagos-Niamey-Quagadougou rail links, Maritime transportation linkages and general co-operation in the areas of energy and aviation (ECOWAS Final Communique on "Borderless" Borders, 2000:6).

4(g). Promotion of the Private Sector

It was recognised by the Heads of State and Government that the private sector must not be neglected, if genuine integration and grassroots inter-state growth and development are to be achieved. In order to accomplish good results, they agreed that the following steps must betaken:

(i) Harmonisation of investment laws and incentives;

(ii) Provision of investment guarantees and ratification of investment promotion and protection agreements;

(iii) Liberalisation of agricultural and mining sectors;

(iv) Promotion of joint projects and cross-border investments;

(v) Enhancing the regional capital markets and the strengthening of stock exchanges;

(vi) Restructuring of development Banks and the establishment of a single ECOWAS currency in future;

(vii) Development of Export Processing Zones;

(viii) Privatisation of public utilities;

(ix) Strengthening of the Federation of West African Chambers of Commerce and promotion of private sector dialogue; and

(x) Establishment of West African centers (ECOWAS Final Communique on Borderless Borders, 2000:10).

4(h). Available data from the Nigeria Immigration Service at the Seme Border Control Post, Lagos State, revealed a steady incremental ratio of passengers who arrive and depart to and from Nigeria. This has given some credence to the postulation that the "Borderless" Border's regime will lead to increased movement of people and integration across trans-border divides of ECOWAS Member States. The two tables below, which are tagged tables

"A" and "B", indicate the statistical returns of passengers who officially came into and departed from Nigeria from January to December 2004 and January to December 2005, respectively, through this very strategic entry point.

TABLE"A"

STATISTICAL RETURNS OF PASSENGERS ARRIVED AND DEPARTED FROM NIGERIA BETWEEN JANUARY AND DECEMBER, 2004.

MONTH	**ARRIVAL**	**DEPARTURE**
January 2004	16,817	16,007
February "	14,541	14,227
March "	13,356	13,393
April "	12,525	12,691
May "	12,118	12,527
June "	12,176	13,230
July "	13,559	12,422
August "	12,541	13,243
September "	12,366	13,747
October "	13,541	11,468
November "	15,525	14,937
December "	17,941	16,677
TOTAL	**167,006**	**164,569**

Source: Office of the Comptroller of Immigration Service (2005), Seme Border Control Post, Seme- Badagry, Lagos. Nigeria.

TABLE"B"

STATISTICAL RETURNS OF PASSENGERS ARRIVED AND DEPARTED FROM NIGERIA BETWEEN JANUARY AND DECEMBER, 2005.

MONTH	**ARRIVAL**	**DEPARTURE**
January 2005	17,892	17,625
February "	16,206	15,600
March "	15,375	15,103
April "	16,425	16,325
May "	13,273	13,535
June "	12,712	11,235
July "	20,919	23,630
August "	11,043	10,123
September "	13,369	13,203
October "	20,137	20,639
November "	19,754	18,707
December "	21,248	19,856
TOTAL	**198,353**	**195,581**

Source: Office of the Comptroller of lmmigration Service (2006), Seme Border Control Post, Seme- Badagry, Lagos. Nigeria.

On the other hand, movement of goods and services across borders in line with the ECOWAS protocol have been on the increase with the passage of every new fiscal year, which gives some degree of credibility to the efforts by Heads of State and Government of ECOWAS Member States to improve on the business traffic, trade liberalisation and integration between the Members State of our fast developing and integrating sub-regional Community.

Below are tables "C", "D" and "E", which summarises the revenue from imports the Federal Government of Nigeria generated through the Nigeria Customs Service, Seme Border Command Control Post between January 2004 to November 2005; and revenues from exports within the same time frame.

TABLE"C"

SUMMARY OF MONTH BY MONTH/HEAD BY HEAD REVENUE COLLECTIONS
(IMPORTS)
JANUARY - DECEMBER 2004, SEME AREA COMMAND

MONTH	IMPORT DUTY (N)	FEES (N)	5%VAT (N)	7% *SIC* (N)	2%NAC (N)	1% CISS (N)	0.5% ETLS (N)	TOTAL (N)
JANUARY	198,373,157.52	757,400.00	31,843,133.44	13,777,188.49	268,311.00	5,368,698.42	2,182,665.00	252,570,553.87
FEBRUARY	203,683,741.37	529,200.00	36,199,501.35	14,397,640.60	277,434.00	6,363,932.59	2,314,855.48	263,766,305.39
MARCH	252,249,555.60	48,000.00	42,225,073.62	17,811,752,25	311,824.00	6,954,529.04	2,447,477.40	322,048,211.92
APRIL	154,917,354.42	91,800.00	28,112,890.82	10,844,197.83	213,535.00	6,145,138.61	1,977,337.68	202,302,254.36
MAY	251,530,229.00	268,200.00	42,047,399.05	17,606,938.92	762,741.00	6,732,575.07	2,725,274.80	321,673,357.84
JUNE	211,857,418.33	78,000.00	35,392,451.00	14,840,521.62	759,783.40	7,282,976.63	2,373,246.90	272,584,397.88
JULY	182,036,087.00	281,400.00	28,574,076.00	12,789,122.00	692,749.00	6,040,125.52	1,855,436.00	232,268,995.52
AUGUST	148,540,741.00	436,800.00	23,538,358.00	10,397,896.00	1,028,590.00	3,865,489,78	1,567,184.00	189,375,058.78
SEPTEMBER	176,952,994.00	392,400.00	30,514,724.35	12,386,740.00	582,596.00	4,147,944.84	2,215,745.00	227,193,144.19
OCTOBER	125,034,972.00	61,800.00	17,412,310.60	8,752,456.00	556,676.00	3,681,229.07	1,072,150.00	156,571,593.67
NOVEMBER	105,922,163.72	822,400.00	7,735,749.22	16,885,469.09	562,864.20	3,570,824.18	1,096,822.86	136,596,293.27
DECEMBER	79,815,564.00	913,700.00	13,507,767.38	5,537,633.80	784,822.00	2,868,595.99	794,677.00	104,222,760.17
TOTAL	**2,090,913,977.96**	**4,681,100.00**	**337,103,434.84**	**156,027,556.50**	**6,801,925.60**	**63,022,059.84**	**22,622,872.12**	**2,681,172,926.86**

Source: Office of the Area Comptroller of Customs (2005), Seme Border Control Post, Seme - Badagry, Lagos. Nigeria.

TABLE"D"

SUMMARY OF MONTH BY MONTH/HEAD BY HEAD REVENUE COLLECTIONS (IMPORTS) JANUARY - NOVEMBER 2005, SEME AREA COMMAND

MONTH	IMPORT DUTY (N)	FEES (N)	5%VAT (N)	7% S/C (N)	2%NAC (N)	1% CISS (N)	0.5% ETLS (N)	5% SUGAR LEVY(N)	AUC. SALES (N)	TOTAL (N)
JANUARY	90,981,590.50	4,819,200.00	15,752,454.79	6,198,591.18	303,281.00	2,217,529.90	1,098,717.83			121,308,365.20
FEBRUARY	109,750,769.16	1,515,200.00	19,786,255.62	7,682,536.94	787,914.31	2,535,371.16	1,386,784.17			143,444,831.36
MARCH	98,181,359.72	1,216,200.00	8,440,633.11	6,872,704.81	628,000.34	2,956,784.92	1,311,175.15			129,606,858.05
APRIL	95,286,402.02	521,200.00	16,254,090.68	6,670,193.23	1,098,168.21	2,699,088.72	l,ll8,228.03			123,647,370.89
MAY	103,923,368.87	1,260,200.00	18,163,167.88	7,274,682.62	1,037,577.51	3,066,483.35	1,236,790.69			135,962,270.92
JUNE	121,646,838.75	1,165,800.00	24,684,630.60	8,510,636.59	862,311.27	4,774,451.80	1,870,276.01			163,514,945.02
JULY	119,090,679.35	177,200.00	22,105,868.78	8,336,324.01	1,533,577.92	4,018,739.62	1,725,331.98			156,987,721.66
AUGUST	135,784,870.60	2,192,800.00	27,240,163.52	9,504,981.17	1,838,775.94	5,714,791.52	1,974,410.05			184,250,792.80
SEPTEMBER	148,255,373.60	232,400.00	25,192,843.85	10,377,819.78	1,422,576.70	4,714,ll3.50	1,909,215.84	54,377.42	155,000.00	192,273,680.69
OCTOBER	134,147,446.21	16,200.00	25,272,523.11	9,389,299.30	921,023.42	5,ll 4,854.70	1,785,277.62		1,795,000.00	178,471,624.36
NOVEMBER	158,593,437.69	32,4000.00	26,596,449.11	ll,ll6,554.91	1,559,101.52	4,220,946.84	2,196,954.91	104,320.12	1,485,000.00	205,905,074.10
DECEMBER										
TOTAL	**1,315,579,136.47**	**13,148,800.00**	**239,489,081.05**	**91,934,324.54**	**11,992,217.14**	**42,063,156.03**	**17,613,162.28**	**158,657.54**	**3,395,000.00**	**1,735,373,535.04**

Source: Office of the Area Comptroller of Customs (2006), Seme Border Control Post, Seme - Badagry, Lagos. Nigeria.

TABLE"E"

NIGERIA CUSTOMS SERVICE, SEME AREA COMMAND VALUE OF ALL EXPORTS JANUARY-DECEMBER, 2004 AND JANUARY-NOVEMBER. 2005

SINO	MONTH	2004 (N)	2005 (N)	TOTAL (N)
1	JANUARY	227,700,350.00	41,833,297.44	269,533,647.44
2	FEBRUARY	254,276,536.25	38,844,054.10	293,120,590.35
3	MARCH	151,736,577.92	117,728,991.60	296,465,569.52
4	APRIL	140,843,066.58	36,191,986.47	177,035,053.05
5	MAY	109,989,053.00	83,647,479.89	387,273,065.78
6	JUNE	148,834,301.43	852,528,713.64	1,001,363,015.07
7	JULY	142,911,30 3.47	91,975,048.32	234,886,351.79
8	AUGUST	238,566,815.34	105,798,674.52	344,365,489.86
9	SEPTEMBER	96,908,824.66	135,645,952.81	232,554,777.47
10	OCTOBER	405,132,140.43	93,366,921.68	498,469,062.11
11	NOVEMBER	18,990,965.85	64,520,111.68	83,511,077.53
12	DECEMBER	89,563,455.13		
	TOTAL	**2,025,453,390.06**	**1,662,051,232.15**	**3,687,504,622.21**

Source: Office of the Area Comptroller of Customs (2006), Seme Border Control Post, Seme- Badagry, Lagos. Nigeria.

Thus, flowing from the foregoing charts and statistical tables provided, it is obvious that there is a strong nexus between the Integration Theoretical approach and the detailed contents of the Concept of "Borderless" Borders that was employed by the Heads of State and Government of ECOWAS. Deploying the Integration Theoretical Strategy in its widest methodology, significantly helped the Heads of State and Government of ECOWAS Member States to reasonably explore how collective trade liberalisation in its various advantageous manifestations, would be developmentally relevant to the West African sub-region in their struggle to achieve financial self-sufficiency.

A further critical look and analysis of these figures show an appreciable increase in the number and volume of human and material traffic in and out of Nigeria; and it is expected that other Member States would have had the same positive effect and experience.

However, to some extent, one could posit that there is still room for improvement when compared with the maximum projections, fundamentally expected from the massive impact of a "Borderless" Border. This slight shortcoming is as a result of a lot of adverse developments happenings and circumstances that had been severally experienced along these transnational borders, which inadvertently hampered the free movement of persons, goods and services. These negative factors and challenges include: the upsurge in trans-

border crimes, such as human trafficking, child labour, prostitution, advance fee fraud, drug and currency trafficking, massive trans-border smuggling of goods, trans-border armed robbery, banditry and movement of terrorist elements across border and problems of war and conflicts (Mbachi and Ikeanyibe, 2017:785-789).

But suffice it to state categorically, that the ECOWAS Community has done appreciably well in its execution of the first phase of its protocol on free movement of persons, goods and services; and that of the right of visa-free entry by all her legitimate Community citizens, has also been fully implemented.

(5) ECOWAS PROTOCOL ON RIGHT OF RESIDENCE AND ESTABLISHMENT ISSUES, CHALLENGES AND THE WAY FORWARD

A lot has been said directly or indirectly, about the ECOWAS Protocol on Right of Residence and Establishment in the foregoing parts of this paper. However, Part II, Article 2 of the ECOWAS Protocol A/P.1/5/79 relating to free movement of persons, residence and establishment lucidly states as follows:

a. The Community citizens have the right to enter, reside and establish in the territory of Member States.
b. The right of entry, residence and establishment referred to above shall be progressively established in the course of a maximum transitional period of fifteen (15) years from the definitive entry into force of this Protocol by abolishing all other obstacles to free movement of persons and to the right of residence and establishment.
c. The right of entry, residence and establishment which shall be established in the course of a transitional period shall be accomplished in three phases, namely:

Phase (i) - Right of Entry and Abolition ofVisa. Phase (ii) - Right of Residence. Phase (iii)-Right of Establishment (Compendium of ECOWAS Protocol [2019]; Akande [1998] and [UNHCR, 2006:31]).

The above protocols encapsulate the visionary road map for a 15-year plan on economic integration among West Africa States and it is aimed at engendering inclusive economic growth and development among Member States. The 15 years plan is grouped into three (3) phases of implementation; wherein, each phase is expected to be fully executed within a 5-yearperiod.

Van-Ginkel (2003), noted that the implementation of Phase (i) which has been concluded, achieved seamless entry of Community citizens into the territories of Member States, thereby abolishing Visa regimes among Member States. He however, lamented that implementation of Phase (ii) and (iii) of the protocol on rights of residence according Community citizens the right to work and earn a living in Member States; and the right of establishment, which would guarantee Community citizens the right to establish businesses, manage enterprises and perform economic management functions within the territories of Member States, suffered tremendous setbacks.

These setbacks, which have heralded the inability of ECOWAS to actualize its set objectives as envisaged in the planned implementation of the Protocols on rights of residence and establishment, may, according to Adepoju (2005), be partly attributed to the decline in positive economic performance of Member States in the 1980s, as well as the devastating wars in Liberia and Sierra Leone in the 1990s. In addition, Adepoju also attributed these setbacks to the era of terrorism across the borders of Member States which has now been thoroughly exacerbated by the activities of the dreaded Boko Haram sect and more recently, the Islamic State in West Africa (ISWA) and the conflicts in Mali and the Sahel.

Again, Abbas (2005) noted that there is also the obstacle posed by obvious variances in the environmental and societal pace of infrastructural, economic and political development of Member States. He further argued that the huge differences in the level of social, economic and infrastructural development across Member States significantly contributed to the refusal or the lethargic approach of Member States towards the protocol on rights of residence and establishment. It is also arguable that the lack of enthusiasm by some Member States on economic integration through rights of residence and establishment could be a function of fear of giving away their supreme sovereignty and independence as full nation states. Abbas thus, noted that while Nigeria, Ghana, Ivory Coast and Senegal can be considered as heavyweights within the West African sub-region with relatively stable democracies and economies, the other eleven (11) Member States are not as endowed, which could negatively breed undue lethargic responses.

On his part, Maiyaki (2017:4) similarly admitted that the above factors, coupled with massive infrastructural deficits within the sub-region, especially in the crucial spheres of power, roads, railways, telecommunication and most importantly, bad governance and poor leadership, which have plagued most sub-regional governments over the past decades, threw up huge challenges to the attainment of economic integration within the West African sub-region. He emphatically posited that this may have had adverse consequences on the protocols on right of residence and establishment and thus, could not be fully and wholly implemented.

Furthermore, in addition to language barriers and non-harmonization of legislation, there is no defined role for financial institutions in the scheme of policies of the ECOWAS regional body. As Nnanna (2010) succinctly puts it, "An evaluation of the ECOWAS Treaty reveals a clear dearth of the provisions necessary to define and accord the respective financial institutions specific roles and parameters enough to accord them the formal intervention edge needed to facilitate the indispensable provision of funds and policy to finance and control the ambits of the integration scheme to its desired destination".

It is important to observe that until the above and other identified loopholes are cemented, Member States such as Nigeria, Ivory Coast, Senegal and Ghana, may lean towards adopting a protectionist approach to their economic and citizens' affairs and thus, may not be favourably disposed to ensuring a full implementation of the protocols on rights of residence and establishment. Regrettably, most governments within the sub-region have continued to view one another with utmost suspicion and as a result have increasingly paid lip service to implementing the protocols on the right of residence and establishment due to self-protectionist reasons by these States.

Member States should, therefore, be encouraged to jettison the prevalent attitudinal and psychological state of reasoning, which leans towards undue cleavages of national sovereignty. Such attachments to national sovereignty over and above the objectives of the ECOWAS Treaty has, according to Maiyaki (2017:24), led to the creation and thorough attachments to national currencies, national central banks, national airways, national shipping lines, national stock exchanges to mention a few, which ECOWAS Member States now hold so tenaciously, and thereby eliciting royalties that could not go beyond national boundaries.

In spite of the foregoing discouraging factors, the UNHCR (2006) positively estimates that with the apparent positive economic outlook in some Member States, there is the optimism that ECOWAS will ultimately achieve its set objectives of integration and full implementation of its protocols on right of residence, in which, Community citizens can reside and take up paid employments; and right of establishment, wherein, Community citizens can fully establish enterprises and perform economic functions within the territories of Member States without let or hindrance.

It is heartwarming to note that a study of economic integration among other sub-regional groups in Africa as cited by the International Labour Organisation (ILO) Report (2004), revealed that Freedom of Movement of persons in the ECOWAS sub-region is significantly more advanced than in any other regional grouping in Africa. But up till date, only the first of the three phases that are enshrined in its Protocols, which is visa-free entry for up to 90 days, has been completely implemented by all ECOWAS Member States.

Fundamentally, the ECOWAS protocols on residence and establishment are strategically designed to promote, accelerate and actualize economic integration and development of Member States; and since it is also established for the improvement of the standard of living of its Community citizens, its principles should be profusely promoted and implemented as it will not only benefit ECOWAS Member States, but will make the sub region a formidable economic force to be reckoned with.

Heads of State and Government of Member States should be encouraged to put in more efforts in allaying the ill-conceived fear that implementing the protocol on rights of residence and establishment will lead to unexpected domination by bigger countries, such as, Nigeria, over smaller ones, such as, the Gambia. This unspoken fear and inferiority complex, certainly presents a maliciously false ideological mindset that bigger and more endowed Member States with huge population, more sophisticated infrastructural development, higher and more improved Gross Domestic Product (GDP), enviable State status within the global circle and abundant natural resources with relatively stable economies, would overshadow smaller and less endowed Member States, if its citizens are freely allowed to reside and establish.

6. YOUTH MIGRATION: THE PUSH AND PULL FACTORS

Migration is widely referred to as movement of people from one geographical location to another. It has become a tough, problematic and widespread global phenomenon from time immemorial. Over the years, people have migrated for various reasons and, according to Boulton (2010), these reasons are mainly propelled by economic, social and political factors. It could equally be propelled by adverse environmental factors. Migration can also be internally driven, which explains the movement of people from one place to another

within the same country; or internationally propelled, which refers to movement of people across national boundaries.

In the words of Ban Ki Moon, the former Secretary-General of the United Nations Organisation (2007-2016), at the 2013 High-Level Dialogue on International Migration and Development, "Migration is an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric and part of our very make-up as a human family".

Among the Youths, migration has been on an alarming upward trend in the past decade. According to the UN Youth Report (2013), there are 75 million international migrants below the age of 29. This youthful population, who are constantly and pervasively on the move, the report affirmed, are drawn from various backgrounds with diverse values and "their social, economic and educational backgrounds, the means and forms of migration, and their motivation for leaving, influence the scope, scale and type of migration". Young people in this category and context, refer to people who are growing and transitioning in life. They are thus, usually below the age of29 and are learning to make choices and take responsibilities that will guarantee their deserved place in the societal sphere.

Other authors such as Keteku (2007), through intensive research, have explored to find out the factors that push students to migrate from their native countries to study in other countries such as the United States of America. She noted that- "over the past decade, the number of sub-Saharan students in the United States has more than doubled to 32,800 between 2005-2006, which constitutes 6 percent of the world's total and rising faster than any other region".

One may ask, what then are these push and pull factors which propel this staggering number of our youthful populace to migrate to new territories? Kaint (2009:6), argued that youth migration presents an ample and enviable opportunity for these youths to seek greener economic pastures in foreign climes, pursue personal development, satisfy their educational aspirations in their new countries of destination and in the process, evade the scourges of insecurity, lack of decent employment, non-existent health care, drought, famine or hostile atmosphere in their home or native countries. Bizarre empirical experiences have painfully revealed that modem migration by our Youths could also be a direct function of individual greed and avarice. This has repeatedly made them to risk their lives unnecessarily through the Sahara Desert, perilous death traps in Libya's morbid camps and the massively dreaded Mediterranean Sea.

The above indices, which are far broader than already enumerated, are legitimately classified as push and pull factors of migration. Studies have shown that although youth migration may be forced or voluntary, ILO Report on Youth Migration (2017), postulated that some young migrants favour a temporal relocation with the intent to return at some point in life, while others migrate on permanent basis. But one underlying truism is that whichever way the pendulum of migration swings for intending desperate young migrants, the underlying thrust and basis for movement across geographical locations largely remains or make up the push and pull factors.

In addition to the indices and reasons for migration, which are enumerated in the foregoing paragraphs, Crow (2010) posited that push factors are those conditions, such as,

unemployment, political instability, socio-economic insecurity and acute scarcity of life essentials that force people to leave their homes to other locations. This migration inducing factor, is mainly triggered by the promise of a better life elsewhere. On the other hand, Crow further explained that pull factors are those factors which attract people to migrate to certain foreign locations. These include, access to quality and affordable healthcare, education, security and improved standard of living. A study on related pull elements, which was published by the UN Youth Report (2013) identified employment and education as major reasons for youth migration; closely followed by marriages and family reunion.

Other reasons include access to basic public and social amenities, environmental changes, perceived injustices, corruption, human rights violations and to a lesser percentage, in search of adventure especially amongst Africa Youths who are not necessarily as adventurous as youths of the Western hemisphere. While conceding that youths have an inalienable right to migrate, there should however, be genuine therapeutic actions to halt its surge and possibly reverse the dangerously growing trend of youth migration arising from these factors.

To this end, regional and international cooperation should be intensified to ensure that minimum developmental standards are maintained across boundaries. ECOWAS Member States should drastically fight corruption and most especially, the enormously unprogressive syndromes of bad governance.

They should urgently prioritize infrastructural development, deliver access to basic public and social amenities; and also encourage regular migration by our youths in order to stop their high death rate along the dangerous routes through the Sahara Desert, Libyan human death traps and the Mediterranean death sea beds.

Finally, ECOWAS Heads of States and Government should as a matter of urgency, provide a safe, secure and conducive environment for all its citizens across all locations within the ECOWAS sub-region through good governance and exemplary leadership.

7. ECOWAS COMMON PASSPORT (HARMONISED ECOWAS e-PASSPORT).

Although the ECOWAS Protocol on Free Movement seeks to eliminate barriers to trade and to engender easy mobility of Community Citizens across borders, the right to enter and reside in the territory of any Member State is strictly subject to the possession of a valid travel document. Consequently, the four (4) Supplementary Protocols adopted between 1985 and 1990, respectively committed Member States among others, to provide valid travel documents to their citizens.

Operational experiences of Law Enforcement Agencies within the sub-region have corroborated the views of many authors that South-South Migration, which is understood as migration between developing countries, is larger than migration from the South to the developed or high-income countries. Besides, the high volume of migration within the ECOWAS sub-region, even though the aim of the Free Movement Protocol is to enhance economic activities, it is sad to note that criminal elements have availed themselves of this initiative to perpetrate their nefarious activities. The multiplier effects of this situation

include: many borders being poles of attraction for massive irregular and undocumented immigration; hostile disposition to border control officers as well as neglect in terms of absence of infrastructure, a situation that tend to render the border communities as safe havens for trans-border criminals, over the years.

Against the backdrop of global security concerns, occasioned by massive identity theft, which facilitated unprecedented cross-border criminality in an unprecedented manner as well as the recommendation by the International Civil Aviation Organisation (ICAO) that all States should adopt Biometric Passports, the ECOWAS Heads of State and Government met in Bamako, Mali in 2002 and adopted the Bamako Declaration recommending the issuance of a Harmonized ECOWAS Passport in order to accelerate socio-economic integration of the sub-region. In furtherance of the Declaration, ECOWAS Member States began to issue the ECOWAS e-Passport, bearing the ECOWAS logo on the front cover, to their respective legitimate nationals.

In the case of Nigeria, sequel to the myriad of problems and challenges identified with Machine Readable Passport (MRP) hitherto in use in Nigeria, among which was the weakness of massive forgery or fakery, easy procurement of multiple passports due to lack of inter-connectivity to a central data base, the electronic version (e-Passport) was launched in July, 2007. In a nutshell, against the backdrop of the deteriorating international image caused by the MRP regime, the Nigeria Immigration Service, as a matter of priority and urgency identified the need to quickly embrace the International Civil Aviation Organisation (ICAO) recommendation that countries should introduce the electronic passports, which strategically contains the biometric details of holders, as a veritable means of improving national and global security, especially in the face of increased threats of terrorism and other trans-national crimes.

Consequently, Nigeria became the first African country to introduce thee-Passport and as a result became a member of the Board of ICAO-PKD (Public Key Directory), which is the body that regulates standardization of travel documents.

In July, 2014, the Federal Government of Nigeria also approved certain reforms to further strengthen the e-Passport architecture against possible abuse. In the same vein, in furtherance of the overarching objective of making the e-Passport regime more relevant in the country's Internal Security calculus, the NIS had in collaboration with its technical partners, commenced the verification of the addresses provided by passport applicants and their guarantors. This initiative drastically made it easier for the Service to share credible information on such applicants with other security agencies. This is in addition to the establishment of an e-Archiving system for storing the soft copies of all breeder documents submitted by passport applicants to forestall subsequent frivolous requests for change of data on sundry grounds, especially by passport holders with criminal proclivities and records. It is worth noting that on 15th January, 2019, Nigeria adopted the polycarbonate data page technology as well as ten (10) year validity in its passport administration.

There is no gainsaying that the ECOWAS Harmonised e-Passport has immensely enhanced integration within the sub-region as contemplated by the founding fathers of ECOWAS. However, one major challenge that has apparently undermined the use of the ECOWAS Harmonised Passport is the lack of the requisite technology for the verification

of the identities of the holders of e-Passports, especially at the land borders, which are the most popular routes for majority of ECOWAS Community Citizens. This gap needs to be addressed, while we anticipate the full implementation of the ECOWAS Biometric Identity Card Project.

7 (b). ECOWAS Biometric Identity Card

At the 46th Ordinary Session of the Authority of Heads of State and Government held in Abuja on 15th December, 2014, decisions were taken to further facilitate Free Movement of Persons, Right of Residence and Establishment through the adoption of the ECOWAS Biometric National Identity Card with electronic chip, in compliance with ICAO specifications (DOC 9303 TD1), as a valid Travel Document within the territories of ECOWAS Member States.

On 16th April, 2019, the Federal Government of Nigeria signed a Memorandum of Understanding with Messrs Euphoria Press Limited to produce 13m ECOWAS Biometric ID Cards at the cost of N14.7b on a Public Private Partnership basis for a period of 10 years. This will eventually replace the current ECOWAS Travel Certificate, as a valid document for intra-Comunity travel.

While commending the adoption of various measures and initiatives aimed at consolidating the efforts at regional socio-economic integration and development as a major tenet of the ECOWAS Protocol on Free Movement of Persons, Goods and Services, it may be expedient to draw the kind attention of stakeholders to the following fundamental issues:-

i. The need for relevant authorities of Member States responsible for the issuance of breeder documents to be more circumspect in ascertaining nationality. This informed the robust support the Nigeria Immigration Service (NIS) has been providing for the National Identity Management Commission (NIMC) as many National ID Cards have been seized from many nationals of other countries, illegally and criminally holding same, in the course of internal security monitoring and control operations.

ii. The need for the deployment of massive Mobile Equipment, such as, Hand Held Devices for confirmation of the authenticity of the Biometric ID Cards, especially at the land border Control Posts.

iii. The unintended consequences of having many non-ECOWAS Community Citizens and nationals faking the ECOWAS Biometric ID Cards. This worry is founded on operational experiences over the years during which the NIS had apprehended some nationals of countries outside the sub-region who were in possession of Passports and other Travel Documents of some ECOWAS countries, in their desperation to benefit from the privileges available only to Community Citizens.

iv. The ECOWAS Commission also needs to massively facilitate the sensitization drive of Member States and relevant stakeholders on the shared regional opportunities and challenges presented by the removal of Residence Cards for ECOWAS citizens and the deployment of ECOWAS ID Biometric Cards, which is

intended to replace the ECOWAS Travel Certificates (ETCs).

v. The transition also needs to be gradual and the implementation requires adequate monitoring by experts and professionals with superlative field experience.

8. CONCLUSIONS

In conclusion, this paper examined the ECOWAS protocols on Free Movement of Persons, Goods and Services, Residence and Establishment as important Factors for socio-economic integration of the West African sub-region. The paper also critically looked at the ramifications of Youth Migration - the Push and Pull factors, the Harmonised ECOWAS e-Passport otherwise, referred to as the ECOWAS Common Passport and the ECOWAS Biometric Identity Card as essential components for the actualization of the economic integration objectives of the Heads of State and Government of the ECOWAS Community.

It was observed that there is a unique nexus between the collective integration theory and the "Borderless" Borders concept with its enshrined fast tracking strategy that was deployed by the ECOWAS Heads of State and Government, which to a large extent, earnestly helped in its full implementation and the successful accomplishment of the first phase of the protocol on free movement of persons, goods and services within the West African space.

It is important to note that the successful introduction of the Visa free mechanisms and traveling procedure, the Harmonised ECOWAS e-Passport or the ECOWAS Common Passport and the emerging initiative of the ECOWAS Biometric Identity Card, which would further graciously improve the mobility and traveling potentials of ECOWAS Community citizens in and around the West African business arena did not go unnoticed. Their advantageous texture to the traveling public within the sub-region was immense.

The paper further unearthed the sad reality of a failed attempt by the Heads of State and Government of ECOWAS to match its successes in their execution of the first phase on free movement of persons, goods and services, with their efforts on the second and third phases of the protocols on Residence and Establishment.

Myriad obstacles and challenges, which also partially affected the first phase of the protocol on free movement of Community citizens, were found to be central to the awful factors which rendered significantly epileptic, the efforts of ECOWAS authorities to positively actualize the benefits of the protocols on residence and establishment.

These challenges painfully emerged amidst the upsurge of violent trans-border crimes, such as, trans-border armed robbery, banditry, gangsterism, movement of terrorist elements across borders and the problems of war and conflicts, which brought to the fore very dangerous threats to the national security of some ECOWAS Member States. From the Boko Haram insurgency and terrorist attacks to other religious fundamentalist groups, such as, the Islamic State in West Africa (ISWA), and the pervasive crises in Mali and the Sahel area, which has a direct connection with (ISIS), proliferation of small arms and light weapons inadvertently made Member States to tighten their borders and reinforce their security apparatuses in order to enhance adequate protection of the lives and properties of their citizens. Others, employed more restrictive strategies and monitoring structures to

beef up their security at expected locations of terrorist attacks, which heavily affected the free movement of persons, residence and establishment potentials of citizens of ECOWAS Member States.

Other acts of criminality and obstacles with socio-economic and political undertones, which negatively affected the execution of these protocols on residence and establishment, included: the heinous crimes of human trafficking, child labour, prostitution, advance fee fraud, drug and currency trafficking, massive trans-border smuggling activities of goods, language barriers, cultural and currency (monetary) differences which inhibited trade to some degree, different foreign policy postures and, most importantly bad governance and extremely decadent leadership structures, which awfully pervaded the socio-economic and political space of West Africa.

Therefore, even though the ECOWAS governing authorities made appreciable progress with the execution of the first phase of the protocol on free movement of persons, the establishment of formidable check points, the formation of ECOMOG and Joint Task Forces as formidable Military and Paramilitary forces to curb the alarming trend of insecurity which inhibited the success of these protocols, the establishment of ECOWAS Parliament and Court of Justice, the proposed establishment of ECOWAS Common Currency; and the establishment of WAFU with the hope of engendering collective integration through sporting engagement of our exceedingly restive Youth, quite a lot still needs to be done in order for ECOWAS to take its FULL rightful status in the socio-economic and political integration calculus of the West African sub-region.

1. The urgent need for a thorough institutionalization of the golden attributes of sincerity of purpose, good governance and robust leadership structures within the entire political landscape of ECOWAS Member States.

This is essentially predicated on the truism that good leadership begets good followership of the citizenry of any given nation state. This will miraculously engender massive socio-economic and political growth and development of ECOWAS Member States.

2. It is earnestly recommended that the Heads of State and Government of ECOWAS should drastically synergize their efforts and energy towards eradicating all security threats to their collective existence and the national security of Member States since massive incidents of terrorist attacks and bloody criminal activities along transnational borders have been unequivocally identified as one of the strong factors which propelled the failure of most ECOWAS Member States from fully implementing the protocols on free movement of persons, goods and services and most importantly, that of residence and establishment.

3. With the expected significant reduction in the present criminal and terrorist activities along the border lines, community stakeholders and governments of Member States should be encouraged to open up their borders more freely and reduce or eliminate completely their administrative restrictions on the free movement of persons, goods and services, residence and establishment to authentic citizens of the ECOWAS Member States.

4. Heads of State and Government of Member States should be urged to officially put in

more efforts in drastically allaying the ill-conceived fear that completely implementing the protocol on rights of residence and establishment will lead to undue domination of their existing business space by citizens of more affluent Member States; or by the bigger countries directly on grounds of their abundant natural resources and being more economically and political endowed. This maliciously fallacious ideological mindset must be totally eradicated in order to put to rest the type of squabbles that inexplicably propped up recently between some Nigerian and Ghanaian brothers; and worse still, the shameful and unbelievable deadly xenophobic attacks on Nigerian business men by their South African brothers.

5. It is highly suggested that in order to proactively increase the tempo of the integration process by increasing the information and knowledge of Community citizens, the ECOWAS Commission needs to massively facilitate sensitization drives and campaigns in Member States and to other relevant stakeholders, on the shared regional opportunities and challenges presented by the removal of Residence Card for ECOWAS citizens and the deployment of the ECOWAS ID Biometric Cards, designed to replace the ECOWAS Travel Certificates (ETCs).

6. As a matter of urgency, the awfully negative perspective of the push and pull factors as they morbidly affect our Youth's migration appetite should be fervidly addressed. In this connection, the various Heads of State and Government of the ECOWAS Community must make genuine efforts to meet their Social Contract with their citizenry within their territories. The scenarios, where a great majority of our Youths would favourably graduate from our West African Universities and then painfully remain unemployed and ill-motivated for years, should be comprehensively addressed.

7. This paper solemnly recommends that the various governments of ECOWAS Member States should create employment opportunities (jobs) for their teeming Youths, provide modem living infrastructure and enabling environment by way of good roads, pipe borne water, electrification of all communities and localities, good and affordable education and an acceptable minimum wage standards for our peoples, whether poor or affluent. This will certainly make our Member States more attractive and thus, stop and discourage our Youths from wasting their precious lives along the dangerous Sahara Desert routes, the Libyan terrible death camps and in the dreaded Mediterranean morbid seabeds.

8. From the perspective of good followership, Community citizens, especially the Youths, should endeavor to vehemently resist the temptation of being persuaded to become radicalized by terrorists and religious fundamentalists. This will certainly prevent them from becoming dangerous instruments of mass destruction of their innocent brethren, which is one of the major obstacles that have stood against the general integration efforts of ECOWAS.

9. Arising from the foregoing suggestions and considering the very high number of deaths of our beloved Youths, this paper posits that all norms, ethics and precepts of Regular Migration should be tenaciously upheld by our Youths as the most peaceful, valid and legitimate route to survival if they must choose to migrate in search of greener pastures within our exceedingly beautiful West African land space or elsewhere in the World.

10. I wish to put it on record that as a pathfinder of genuine sub-regional growth and a socio-economic integration machine, the ECOWAS Commission is immensely on the right pendulum of structural progress and development. This is as a result of its huge efforts aimed at the effective integration of the West African sub-region; the daunting challenges, they are confronted with, not-withstanding.

Consequently, I herein urge the ECOWAS Heads of State and Government to go a step further by positively influencing the instrumentalities of the African Union (AU) to strategically bring to the door steps of all African Community Citizens, the same precepts of socio-economic and political integration through free movement of persons, goods and services.

I am aware that negotiations are already on going on this integration formula for Africa and I am sure it will legislatively restore the feelings of brotherhood and camaraderie between our various peoples in Africa; and most especially put a stop to the deadly xenophobic attacks on fellow African brothers as the Nigerian business community recently experienced from their South African brothers.

I will conclude, by stating that several therapies and suggestions have been proffered with which it is hoped that the socio-economic and political integration task of the Heads of State and Government of ECOWAS Member States would solidify the huge gains of the protocol of free movement of persons, goods and services. I earnestly equally hope that these positive recommendations would provide life and a well-coordinated impetus to their synergy of purpose and efforts towards eliminating the numerous stubborn obstacles, which have prevented them from tackling headlong the challenges militating against the crucial protocols of residence and establishment.

I am confident that with the humble input of this paper and several others proffered at this unique conference, graced by very experienced technocrats, jurists and professionals, the Heads of State and Government of the Community will be further armed with well informed and robust strategies with which they would adequately propel the socio-economic and political integration dreams and aspirations of our ECOWAS founding fathers to its adorable zenith.

Thank you very much for listening.

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FREE MOVEMENT OF PEOPLE, GOODS AND SERVICE AS AN INTEGRATION FACTOR

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CONTENT

INTRODUCTION

Free movement of people, goods and services is the cornerstone of any integration process into a Community zone.

Integration is to allow every citizen to move and settle from one country to another without hindrance.

Free movement is the basis and main objective of ECOWAS.

Therefore, on 29 May 1979 the Protocol on Free Movement of Persons and Goods, Right of Residence and Establishment was signed, complemented a few years later by Supplementary Protocols.

Adoption of this Protocol enshrined the lifting of all barriers and borders, as a condition for an integrated and prosperous ECOWAS.

Adoption of this Protocol enshrined the lifting of all barriers and borders, a condition for an integrated and prosperous ECOWAS.

Burkina Faso, a hinterland country surrounded by six Member States, has made free movement of people and goods a development goal and a political commitment.

Also, this Panel has the opportunity to discuss several aspects of integration including «the free movement of persons, goods and services, as an important factor of integration».

I. THE PRINCIPLE OF FREE MOVEMENT OF PEOPLE, GOODS AND SERVICES

1. Legal instruments of free movement

The Protocol of 29 May 1979 on free movement of persons and goods, right of residence and establishment;

The Directive of 29 May 1979 of the Authority of Heads of State and Government on the creation of special counters at each official border for entry formalities into their national territories by citizens of the Community;

Protocol A/P/3/5/82 of 29 May 1982 on the Community Citizenship Code;

Resolution A/RES/2/II/84 of 23 November 1984 on the application of the first stage of the Protocol on free movement of persons and goods, right of residence and establishment, (3 successive stages were adopted);

Strong and concrete Decisions within the framework of the application of this Protocol were also taken by the Authority of Heads of State and Government. These are:

- theECOWASTravelCardinJuly1985;
- the ECOWAS Passport in May 2000;
- the ECOWAS Biometric identity card in December 2014.

1. Policies and institutional arrangements

Since the adoption in 1979 of the Protocol on free movement of persons and goods and its Supplementary Protocols, significant progress has been made both at Community level and in Burkina Faso specifically.

Progress made include:

- Effective abolition of entry visas;
- Removal of residence card or permit with the immediate consequence of removal of the 90-day period granted to foreign nationals;
- Effectiveness of the right of residence and right of establishment;
- elimination of the 15- day waiting period previously granted to commercial vehicles;
- Automatic and progressive use of ECOWAS travel documents (Travel Booklet, ECOWAS Passport, ECOWAS Brown Card;
- Adoption of the Biometric identity card;
- Establishment of a Task Force on the Trade Liberalization Scheme;
- Establishment, in 2007, of pilot units for monitoring the free movement of people at borders (8 Member States have been designated for the experimentation: Benin, Burkina Faso, Cote d'Ivoire, Ghana, Guinea Bissau, Mali, Nigeria, Togo.

2. Free movement and the integration process

The Protocol on Free Movement of Persons and Goods and its Supplementary Protocols are the basis of any integration process.

In fact, since their adoption, movements of the populations have been facilitated.

The abolition of entry visas, liberalization of trade and entry into force of the Common External Tariff have helped speed up the process of integration.

The construction of joint border posts, energy interconnection, inter-state trade and construction of infrastructure have forged a sense of Community among the people.

Free movement within the ECOWAS sub region is an essential component of regional integration, which itself is one of the conditions for a better integration of the West African economy into the global economy.

II. CONTENT OF FREE MOVEMENT

1. Right of residence

It has two meanings:

The right to reside in a State other than the one of which one is a national in order to seek employment and carry out such job.

The right to receive labour wages for non-nationals under the same conditions as nationals.

The right of residence implies assimilation of the foreign and national workers both in the search for job and exercise of an employment.

Assimilation means equal treatment with nationals for wages, dismissal, professional training etc.

Example: assimilation in the search for a job means that a Burkinabe seeking a job in Ghana or in another ECOWAS country cannot be refused on the ground that it is reserved for Ghanaians and similarly, a Malian seeking a job in Burkina Faso cannot be denied the

opportunity on the ground that it is a job reserved for a Burkinabe.

2. Right of residence and establishment

Right of establishment means:

Access and exercise of self-employed activities;

Example: A Burkinabe who would like to reside and become a trader in Cote d'Ivoire or reciprocally, an Ivorian who would like to open a garage in Ouagadougou.

Establishment and management of companies by non-nationals:

Example: An Ivorian who wants to form a commercial company in Burkina Faso to manufacture or sell industrial products.

By virtue of the right of establishment, nationals of Burkina Faso wishing to become traders in Cote d'Ivoire must not be subjected to any form of discrimination with regard to access and exercise of their lawful commercial activities.

III. YOUTH MIGRATION: INCENTIVE AND FACTORS OF ATTRACTION

ECOWAS common approach to migration

It is rooted in the revised ECOWAS Treaty and more specifically Article 59 which provides that:

"Citizens of the Community have the right of entry, residence and establishment and the Member States shall undertake to recognize these rights by citizens of the Community in their territories in accordance with the relevant Protocol.

Incentives and factors of attraction

Weak economic (monetary and fiscal) policies of countries;
High rate of unemployment;
Weak jobs;
Poverty and job insecurity;
Uncertain future...

These are some of the main causes of migration.

IV. THE ECOWAS COMMON PASSPORT

At Community level (ECOWAS), travel documents have been introduced to promote free movement of nationals of the fifteen (15) Member States.

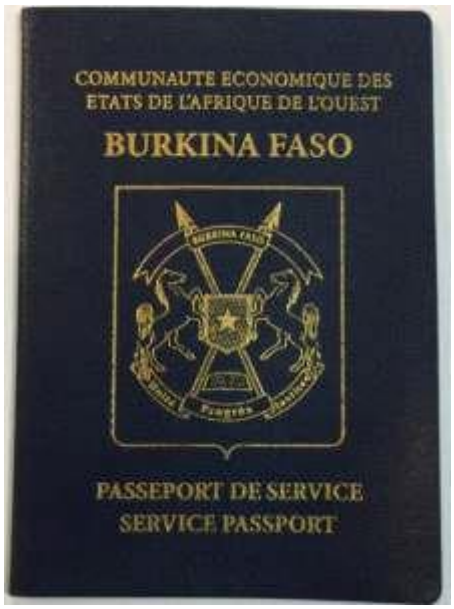
The following are some of the travel documents:

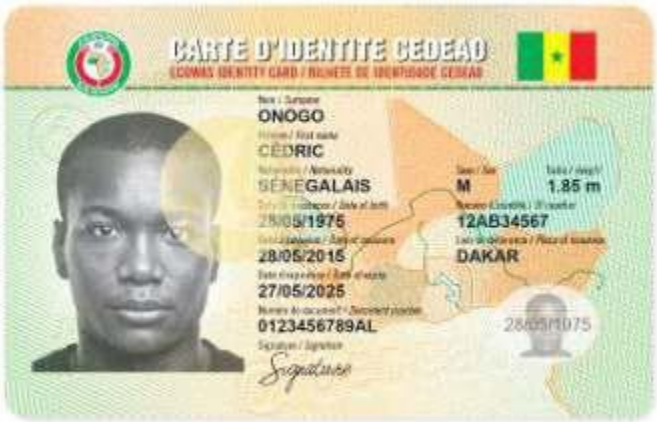
- The ECOWAS Travel Card (see Decision A/DEC.2/7/85 on the Protocol establishing a travel booklet for ECOWAS Member States).
- The ECOWAS Passport
- The ECOWAS Biometric Identity Card

The Passport is issued to nationals of each Member State in accordance with the national legislation in force. The characteristics of the ECOWAS Passport relating to security features, format, coverage, number and colour of pages among others must be uniform for all Member States.

Almost all Member States are issuing the ECOWAS Passport to their nationals.

SPECIMENS OF PASSPORT AND BIOMETRIC INDENTITY CARD





V. CHALLENGES AND PROSPECTS

The free movement of persons, goods and services is not effectively implemented as it should be in all ECOWAS Member States.

Several factors are responsible for this situation:

Difficulties in the exercise of certain liberal professions or cases of discrimination have been noted;

Low level of internalization by the Member States of the texts governing freedom of movement;

Ignorance of Community texts and issues of regional integration by enforcement officers;

Citizens' ignorance of their rights and duties regarding free movement within the Community;

Persistent border and Customs harassment;

Low intra-Community trade rate which stands at 15%, while for example, North America and Europe are trading at a rate of more than 70%.

In view of this situation, the following actions should be taken, among others, to ensure the effectiveness of free movement:

Increase the awareness of both the population and the enforcement officers and administrative Agencies responsible for implementing the Protocols;

Strengthen the skills and operational capabilities of the Task Force to enable it increase unannounced patrols;

Compile and annually disclose a list of States considered as "defaulters" in the implementation of the Protocols;

Offer "Certificates of Recognition" in the implementation of the Protocols to exemplary States;

Initiate a review of Protocols to adapt to new requirements and realities.

Conclusion

Based on this elaborate overview, ECOWAS, since the 2007 reforms, has been firmly committed to regional integration in the West African sub region, through major projects such as the free movement of people, goods and services.

However, this cannot be done without the active participation of people at the grassroots through civil society, Non-governmental organizations, the private sector, intellectuals, researchers, travelers, etc.

Total commitment of the Heads of State and Government in the internalization of the texts is also essential.

The example of the European Union template must challenge and guide us.

Free movement of people, goods and services is an essential and priority component of regional integration in our Community zone.

True integration will become a reality if only the Protocols provided for this purpose are fully understood and applied by each Member State.

SUB-THEME 2

INTEGRATION THROUGH THE LAW

SUPRANATIONALITY OF ECOWAS AND THE COMMUNITY LEGAL ORDER:

EXAMINING OBLIGATIONS AND CONSEQUENCES OF NON-COMPLIANCE THEREOF

BY

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I. Introduction

Despite its many challenges, some of which are highlighted in this paper, it is felicitous to celebrate the fact that the Economic Community of West African States (ECOWAS) has weathered the storm of internal armed conflicts, political instability, economic crises, and poverty in and across Member States for the last 44 years. This is not to mention the antithetical exercise of the sovereignty of Member States to frustrate rather than promote the aims of ECOWAS and the obvious persistent failure of Member States to fulfil their obligations to ECOWAS. I am pleased to announce to you that ECOWAS has come to stay and would hopefully grow from strength to strength until it becomes, in practice, the model it is envisaged to be in theory.

For this to be achieved, however, Member States must be seen to be traveling on the same path in practice with their theoretical Treaty commitments in all the areas that competence has been ceded to ECOWAS through the pooling together of the sovereignties of Member States. Indeed, this collectivity of sovereignty and the concomitant agreement to give direct effect to the decisions of certain ECOWAS institutions, have engendered the consensus that ECOWAS is a supranational organisation, albeit in theory, as it remains a work in progress in practice. Given the consensus that the supranational framework of ECOWAS has been laid out in its Revised Treaty, it goes without saying that the gap between the paper ECOWAS and ECOWAS in practice is the result of a failure to actualise the provisions of the Treaty.

This paper examines the relevant provisions of the Revised Treaty (without neglecting the 1975 foundation Treaty) with a view to highlighting the integrative cum supranational provisions of the Treaty. To determine the extent of integration and the possible solution to any problem identified, the paper referenced the constitutions of Member States and argues that integration and indeed the supranational objective of ECOWAS will remain a pipe dream unless Member States create the enabling legal environment for ECOWAS laws to operate within their legal systems. It further argues that the failure to create the enabling laws is a violation of the Treaty commitment of the Member States, which they cannot excuse by pleading the negative posture of their municipal law towards ECOWAS law.

To put the lecture into proper perspective, it is important that two key concepts - sovereignty and supranationality - are understood and these are the basis upon which the ECOWAS Treaties and Protocols discussed here, on the one hand, and the response of Member States to the obligations created in those instruments, on the other hand, will be interrogated.

This seminar thus proceeds in four parts: parts II and III discuss sovereignty and supranationality, respectively; part IV discusses ECOWAS from the standpoints of the 1975 and 1993 Treaties; part IV discusses challenges and prospects; the seminar concludes inpart V.

II. Supranationality

Supranationality is a term that is emblematic of the progressive development of international law since the present era of international law was enthroned in 1945, from an absolute sovereignty posture to an era of limited sovereignty, such that could not have been envisaged under the Treaty of Versailles, 1919. Progressively, following the incidences of

the cession by States of some of their competences to international organisations, first in the area of economic (the Coal and Steel Community, [1] European Economic Community[2]), followed by human rights protection (the Council of Europe's protection of human rights by way of the European Court of Human Rights) and, ultimately, political competences (the European Union[3]), supranationality has become a term that describes a sort of an international quasi-federation of sovereign States.[4]

Such international quasi-federalism is distinguished from traditional international organisations or intergovernmental organisations (like the United Nations Organisation) by the fact that they ultimately aim to exercise, through their organs, a combination of the competences - human rights protection, economic and political - that have been ceded to it by Member States in direct attenuation of the powers of the States respecting the ceded competences.

It is essential to bear in mind that the fact that it is provided in a treaty that its provisions are directly applicable in States is not definitive of the supranationality of the institution under which the treaty was negotiated. Supranationality rests on the capacity of organs of institutions of an international organisation to act directly on municipal subjects rather than through state parties.

In its full form, beyond the normal restraints placed by treaties on consenting States under international law, supranationality usually expresses itself in two important respects: the first is the direct application of the foundation treaties of the organisation (and its subsequent will expressed in protocols) within the legal systems of Member States; the second is the direct effect of rules adopted by certain organs of the organisation within their spheres of competence. These are invariably accompanied by the concomitant supremacy of such norms over the legislative will and municipal law of Member States. Supranationalism, according to Fagbayibo:

> is therefore, a politico-legal concept which embodies but is not limited to the following core elements: decisional autonomy (in particular, the rule of voting majority as opposed to consensus), the binding effect of the laws of international organisations (where member states are precluded from enacting contradictory laws), the institutional autonomy of an organisation from its member states, and the direct binding effect of laws emanating from regional organisations on natural and legal persons in member states. Essentially, supranationalism implies the existence of an organisation capable of exercising authoritative powers over its member states. This is the point where supranational organisations differ from intergovernmental institutions, since the latter are merely forums for inter-state cooperation.[5]

There are several examples of supranational organisations in existence in contemporary times, but while not allowing the salient supranational features of such organisations to delay us, it is appropriate to mention some of them for completeness. These are: The

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[1]Treaty establishing the European Coal and Steel Community, 1951

[2]Treaty of Rome, 1957

[3]Treaty on European Union as signed in Maastricht on 7 February 1992; Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community of2007

[4] Joseph L. Kunz, "Supranational Organs", 46(4) Am. J. of Int. Law, 690, 697 (1952) (arguing that "'Supra-national' organs stand, therefore midway between 'international' and federal organs")

[5]B.Fagbayibo,"Common Problems Affecting Supranational Attempts in Africa: Analytical Overview", 16 Potchefstroom Elec. L.J. 31, 33(2013)

Conference of Southern Common Market *(MERCOSU*[6]*)*, *Andean Pact*[7], Organization for the Harmonization of Business Law in Africa (OHADA),[8] and East African community[9], among others. All of these organisations seek to achieve integration in their areas of competence, so that supranationality is a tool for integration.

Though States usually integrate for economic purposes, but underlying any successful integration scheme, is legal integration.[10] Accordingly, integration through law involves the integration of legal systems and the use of law to integrate societies by eliminating divergences that would stand as a permanent obstacle to the achieving integration in the areas ceded to the relevant international organisation. Legal integration, it has been argued, "is a legal technique aimed at eliminating differences between national provisions by replacing them with a unique and identical text for all states involved"[11] It is therefore safe to assert that legal integration is not just a means to an end but an end in itself and supranationality is its by-product given that it is through legal integration that the unity of legal systems is created with the concomitant deference of laws of Member States to the unitary authority of the supranational organisation in the ceded areas.

III. Sovereignty

Sovereignty, as I understand it, is the most fundamental attribute of statehood; its presence defines the existence of a State and its absence thereof signifies the inexistence, or the obliteration, of the State and (in consequence) its powers, rights and obligations. Sovereignty is one of the fundamental concepts in international law. It is a term that defines the State itself, in that, sovereignty over a defined land territory and its appurtenances (airspace and territorial sea) is the evidence of the physical and social manifestations of a State.[12] In other words, as States have no soul to be damned nor body to be kicked around,[13] the constitution of a state (written or unwritten) is it's the express image of its sovereignty. As far as international law is concerned, the life of a state is in sovereignty. Sovereignty is the attribute that allows an entity to express itself as a State in the international sphere (political independence, which includes the right to enter into international agreements) and gives it exclusive dominance over an area of the globe (territorial integrity, which acknowledges the absolute[14] right of the sovereign to affect persons and events over an area of the globe). Little wonder why article 2(4) of the United Nations Charter "protects the territorial integrity and political independence of states".

'Argentina, Brazil, Paraguay and Uruguay; (Argentina, Brazil, Uruguay and Paraguay)

[7] Andean Community members Bolivia, Colombia, Ecuador and Peru

[8] This is open to all African States but currently has as its members: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Cote d'Iviore, Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea and Guinea Bissau, Mali, Niger, Republic of the Congo, Senegal and Togo

[9] Burundi, Uganda, Kenya, Rwanda, South Sudan and Tanzania

[.O] E. G. Potapenko, "Methods and Means of lnter-State Legal Integration", 10 J. COMP. L. 143, 145 (2015) (arguing that the role of law in inter-State integration processes in its general features, is that law represents the modem form of inter-State integration)

" Mancuse S "Creating mixed jurisdictions: Legal Integration in the SADC" 2011 J' Comp L cited in Diana Eunice Kawenda, "Legal 12 lntegration as a Means to Regional Economic lntegration: A Southern African Perspective", 13 Indonesian J. Int'l. 188, 194(2016)

[12] Georg Schwarzenberger,"Title to Territory: Response to AChallenge", 51Am. J. Int'!L 308,308, (1957)

[13] John C Coffee, "No Soul to Damn: No Body to Kick' An Unscandalized lnquiry into the Problem of Corporate Punishment" 79 Mich L Rev 386,386 (1981) (quoting First Baron Edward Thurlow, Lord Chancellor of England, as he expressed frustration: 'Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?')

[14] The absolute nature of this right lies in the fact that only the sovereign over the territory can make laws over the territory in the absence of an international agreement to the contrary.

"Sovereignty", it has been rightly argued, "means a nation-state's autonomy over its internal and external affairs and the measure of its independence from both 'legal and factual control by any authorities or persons outside [its] borders".[15] It thus protects the rights of a State over persons and events within its territory; the executive, legislative and judicial powers of a State are all a function of State sovereignty. The right of a State to conduct its external affairs (which involves the right to enter into treaties) is also a function of sovereignty.

Traditionally, and this is the essence of the rule of consent under international law, the internal adjudicatory, executive and legislative competences of a State over its citizens, aliens and territory were exclusively reserved to the State and into this area international law cannot encroach, except with the consent of the State. The sovereign power of a State can thus be exercised to reserve to the State, certain domain of competences. This has long been recognised under general international law as was amply expressed in article 8(15) of the Covenant of the League of Nations and retained in article 2(7) of the United Nations Charter.[16]

To the extent that Supranationality does not just involve cession of competences but also the power to regulate those competences through directly applicable rules made outside the municipal legal framework of law making, "it implies restraint of powers upon the sovereign"[17] and creates an exception to the attributes of sovereignty in operation but not in formation[18] and duration.[19] Indeed:

> a supranational organization represents a legal entity in which the member states surrender their sovereignty in certain areas, but retain it fully in others. There is thus created a form of organization which stands between the rather loose conception of traditional international organization and the broad surrender of sovereignty implied in a federation.[20]

Theoretically, supranational provisions in treaties "provide for the most extensive delegation of sovereign powers and competencies to international or supranational organs".[21] It sets a limit on the traditional notion that "sovereignty is a will, it has one characteristic peculiar to itself and only to itself: that of never making decisions other than by itself'.[22] Therefore, any concept that stands in opposition to sovereignty must be positioned to endure the centrifugal pull of the force of sovereignty.

Antithetically, and regrettably, in practice, however, these ceded powers may remain hostage to sovereign unitarianism and nationalism. This is because no matter how highly centralized a supranational order may be, sovereign States do not become integral parts of the organisations; though restricted "sovereignties" do not disappear nor are they transferred or merged except in the areas conceded to the international organisation.

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[15] Horacio A. Grigera Naon, "Sovereignty and Regionalism", 27 Law & Pol'y Int'! Bus. 1073, 1079 (1995-1996)

[16] *The case between Great Britain and France as to the Tunis and Morocco Nationality Decrees Advisory Opinion*, PCIJ Series A. No. 4, 1923; Amos Enabulele, "The Reserved Domain: Brierly's 'Shortcomings of lntemational Law Revisited" 13(l), University of Benin Law Journal, 25(2010-2012)

"Francis Rosenstiel, "Reflections on the Notion of Supranationality", 2 J. Common Mkt. Stud. 127, 129 (1963)

[18] In that it is a product of the voluntary will of the State to consent to treaties containing supranational provisions.

[19] A State may decide to terminate the treaty obligation and withdraw from the supranational arrangement - article 91 of the Revised Treaty, for instance.

[20] Reuben Efron; Allan S. "Nanes, Emerging Concept of Supranationality in Recent lntemational Agreements", 44 KY. L.J. 201, 202-203 (1956)

[21] Naon,(n.15)p.1084

[22] Rosenstiel,(n.l 7),p.129

It is thus essential, and very much so, to bear in mind that supranational organisations are set up by treaties, which rest on the consent of State parties, and which remain the fulcrum of their existence.[23] In other words, such organisations remain "rooted in traditional public international law treaties and agreements, whose adoption and 'reception' in each member state are exclusively defined by the national sovereign according to its constitutional and public municipal law system".[24] The constitutional angle cannot always be ignored without consequences. This is more so as sovereignty may be more or less restricted but never transferred by national constitutions nor arrogated by the constitutional documents of supranational organisations.[25]

This is particularly so in relation to those supranational organisations in which decisions (legislative acts) of their supreme organs are adopted by a unanimous or quasi-unanimous affirmative vote of member country representatives. Supranational organisations are therefore not immune from the congenital maladies of general treaties. In short, "[i]t is always the sovereign member states which have the last word."[26]

In consequence, supranational organisations succeed only to the extent that State parties are committed to their success. This is particularly so in the case of ECOWAS where the Supplementary Acts of AHSG - which is the supreme and highest decision making Institution of ECOWAS - is basically by unanimity or consensus of members. Such unanimity quickly takes us back to the model of international law recognised by the Permanent Court of lnternational Justice (PCIJ) in PCIJ in S.S. *Lotus*[27] that:

> [t]he rules of law binding upon states therefore emanate from their free will as expressed in conventions or by usages generally accepted as expressing principles of law... and established in order to regulate the relations between those co-existing independent communities or with a view to the achievement of common aims.[28]

It is, therefore, not just enough to "pull together sovereignties ..." such exercise must be accompanied by the desire to entrust the organisation with the will to exercise the ceded competences and direct them towards the actualisation of the common goals for which the sovereigns have "pulled sovereignties together". In other words, the States must exercise *"self-limitation* for the sake of the values embodied in a community of states is part of the common good of their *citizens"*.[29]

Indeed, the description of sovereignty, if held to be sacred and non-derogable, must be such that makes impossible the existence of any other power or authority above a State and thus antithetical to the concept of supranationality.[30]

IV. ECOWAS: From Economic Integration to Supranationality

Established in the Lagos Treaty of May, 1975, ECOWAS consists of 15 Member States- Benin, Burkina Faso, Cape Verde, Cote d' Ivoire, the Gambia, Ghana, Guinea, Guinea

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[23] Kawenda, (n.11), p. 193 (arguing that "(t]he [EU] community legal system was created by a set of treaties. It depends for their validity on intemational law. Ultimately therefore community law is a subsystem of international law")
"Naon (n.15),p.1085
[25] See Efron etal (n.20), p. 202
[26] Kunz, (n.4) p. 696
[27] Series A, No. 10, Judgment of September 7, 1927
"*ibid,* 18
[29] Alexander Somek,"On Supranationality" 3 Fla Coastal L.J, 23, 32,(2001)
[10] See James Hanlon "Factortame: Does Britannia Still Rule the Waves?", S(l)The Denning Law Journal, p. 61, 61, (1993) for how supranationality defined sovereignty in the United Kingdom.

Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo. Its 1975 Treaty provisions were essentially intergovernmental organisation until 1993, when the Treaty was revised by the Revised Treaty of that year.

It is safe, going by the treaty development of ECOWAS, to discuss ECOWAS under two eras - that of 1975 and that of 1993.

(a) The 1975 Order

At its inception in 1975, ECOWAS was aimed at promoting cooperation in all fields of economic activities in order to increase and maintain economic stability, fostering closer relations among its Members, and contributing to the progress and development of the African Continent. [31] The ultimate aim was the gradual creation of a free trade area and a customs union between the Member States within ten and 15 years, respectively, through integration in ten thematic areas[32] that was to be achieved by stages, further to the aim set out in article 2(1).

To achieve its goals, the 1975 Treaty set up four main institutions - (i) the Authority of Heads of State and Government (AHSG or Authority); (ii) the Council of Ministers (CoM); (iii) the Executive Secretariat; (iv) the Tribunal of the Community- and several Technical and Specialised Commissions.[33]

It is obvious that the 1975 Treaty, despite its economic integration provisions, made no express provisions for supranationality. During this era, "ECOWAS was intended to be an intergovernmental organization that would enable the governments of West Africa to pool resources and capacities together for the development of their component states simultaneously with the region".[34] The most it did was in articles 3 and 21. Article 3 directed Member States to make every effort to plan and direct their policies with a view to creating favourable conditions for the achievement of the aims of the Community; it mandated all Member States to take all necessary steps to secure the enactment of such legislation as is necessary to give effect to the Treaty. Article 21 mandated Member States to refrain from enacting legislation which directly or indirectly discriminates against the same or against a like product from another Member State.

The Treaty had several shortcomings, one of which was in the fact that neither the Treaty itself nor Decisions made thereunder by any of its Institutions were intended to have municipal effect. Importantly, under the 1975 Treaty, the AHSG and the CoM were empowered to make legal instruments in the form of decisions and directions with those of the CoM subordinated to those of the AHSG but neither of them was to have effect within the municipal realm of Member States. By article 5(3) of the Treaty, the decisions and directions of the AHSG were binding only on the institutions of the Community. Accordingly, only the CoM, the Executive Secretariat, the Tribunal and the Specialized Commissions were bound by the "Decisions" or "Directions" of the AHSG.

" Article 2(1)

[32] Article 2(2)

)] Article 4. By Supplementary Protocol A/SP.2/5/81 Amending article 4 of the Treaty of the Economic Community of West African States relating to the Institutions of the Community, another organ, the Defence Council was included; there was a further amendment: Supplementary Protocol A/SP.1/6/88 Amending Articles 4 and 9 of the Treaty Establishing the Economic Community of West African States relating to the Institutions of the Community and its Technical and Specialised Commission respectively

[34] Sotonye Godwin-A Hart, "Integrating Trade and Human Rights in West Africa: An Analysis of the ECOWAS Experience", 32(57) Windsor Rev. Legal & Soc. Issues, 57,66 (20J 2)

Furthermore, the Treaty failed to actualise the Tribunal it promised in its article 11 and to which Member States were to have recourse for the settlement of disputes in article 56. It was clear, from the provisions of the Treaty, that though the aim of the Treaty was to benefit individuals within the Community, individuals were completely cut off from the integrative processes, as individuals had no forum in which they could ventilate infringement on their rights by Member States and the protection of human rights was not adopted as part of the Treaty aim.

As the aims intended to be achieved by the Treaty were essentially municipal in nature, it goes without saying that harmonisation or integration was never going to be achieved in the midst of unilateral actions by Member States. Some level of coordination by ECOWAS was required to tame unilateralism and drive the integrative provisions by binding norms. Thus, the absence of a court to which citizens could have recourse and the, disconnect between Community legal texts and institutions and laws of Member States were major failures.

Nevertheless, the point must be made that the responsibility to abide by the provisions of the Treaty was on Member States. Having entered into the Treaty voluntarily, it was incumbent on them to avoid taking any action by way of hostile municipal law and policy that undermines the Treaty. This is a fundamental principle of international law that accompanies every treaty commitment. On a preliminary note, therefore, it is important to state that, the shortcomings of the 1975 Treaty, notwithstanding, the blame for its failure to achieve its purpose lies with the Member States, which failed to abide by their obligations in many respect.

(b) The 1993 Era

The Revised Treaty evinces a more robust Community order that is capable of achieving a quasi-federal state with occasions of superintending over the affairs of Member States in its areas of competence, so much so that there is no disputing the fact that ECOWAS emerged with a supranational structure in its Revised Treaty, albeit in theory.[35] It is obvious from its preamble (when compared with that of 1975), that the Revised Treaty was crafted to move ECOWAS to the status of a supranational organisation.

The 1993 Treaty maintained the thematic areas of the 1975 but transformed them by additional provisions while also creating stronger institutional mechanisms with a clearer vision of the relationship of the Community laws and decisions with the legal systems of Member States.[36]

Making a bold statement on supranationality, Member States declared in the preamble that they are "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"; they accepted "the need to establish Community Institutions vested with relevant and adequate powers." The underlined phrase speaks to the realisation of Member States that the 1975 Institutions were weak and bore no relevance to the domestic policies of Member States. It remains to

[35] Andreas von Staden, "Subsidiarity in Regional Integration Regimes in Latin America and Africa", 79 Law & Contemp. Probs. 27, 52 (2016) (arguing that "most of the supranational potential of these reforms continue to exist more in theory than in practice, and decision making remains centered in the Authority")

[36] Articles 3 and 6

be seen that the current efforts have materialised. Furthermore, by article 88(2)(a) Member States bestowed on the Community, "the legal powers required for the performance of the functions assigned to it under this Treaty."

To give effect to the integrative aims and objectives in article 3, the Revised Treaty included a new article, titled "fundamental principles" by which Member States declared their adherence to, *inter alia*,"harmonisation of policies and integration of programmes";[37] and "the recognition, promotion and protection of human and peoples' rights "[38] Also, it added two new provisions to the general undertaking provisions.[39] Thus, in addition to the undertaking by Member States to create favourable conditions for the attainment of the objectives of the Community, and "particularly to take all necessary measures to harmonise their strategies and policies, and to refrain from any action that may hinder the attainment of the said objectives", in the old treaty; Member States were further obligated to "take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty"[40] in accordance with their constitutional procedures. The States also undertook to honour their "obligations under this Treaty and to abide by the decisions and regulations of the Community".[41]

In addition to the following institutions created in 1975 - the AHSG; the CoM; the Executive Secretariat - the Revised Treaty created, *inter alia*, the Community Parliament; the Economic and Social Council; and the Fund for Cooperation Compensation and Development. It transformed the ECOWAS Secretariat to ECOWAS Commission[42] and replaced the Tribunal of the Community with the Community Court of Justice (CCJ).[43] Furthermore, the new Treaty improved on the powers and authority of these bodies.

Authority of Heads of States and Government

As against the 1975 provisions that made "Decisions" of the AHSG binding only on Community Institutions,[44] the 1993 Treaty initially empowered the AHSG to act by way of binding Decisions[45] on Member States and Institutions of the Community.[46] The Decisions were to be published by the Executive Secretary within thirty (30) days after the date of their signature by the Chairman of AHSG[47] and to automatically enter into force sixty (60) days after the date of their publication in the Official Journal of the Community.[48]Decisions were also to be published in the National Gazette of each Member State within the period of 60 days.[49] Article 7(3)(f) of the Treaty empowered the AHSG to delegate powers to the CoM to make Decisions and issue Directions that were binding on the Community institutions and Member States on the approval of the Authority. Also, as against its status

[37] 4(c)
[38] 4(g)
[39] Cf. Article 3 of 1975 and article 5 ofl 993
[40] Article 5(2)
[41] Article 5(3)
[42] By Supplementary Protocol A/SP.1/06/06 Amending the Revised ECOWAS Treaty, substituting new Article 17 and clarifying its mandate.
[43] Article4 of 1975 and article 6 of 1993.
[44] Article 5(3) of 1975
[45] article 9 (1)
[46] Article 9(4)
[47] Article 9(5)
[48] Article 9(6)
[49] Article 9(7)

as "the principal governing institution of the Community" in 1975,[50] the AHSG became the "supreme institution" of the Community in 1993[51]. The real difference this makes remains to be seen, anyway.

Council of Ministers

By article 10 of the Revised Treaty, the CoM was established. Contrary to article 8 of the 1975 Treaty, the 1993 Treaty gave teeth to the powers of the Council. Thus, article 12(1) empowered the CoM to act by "Regulations", with the potential of binding Members States upon the approval of the AHSG while those made on the delegation of the AHSG were binding forthwith- articles 7(3)(f) and 12(3). By 12(4) "Regulations" of the CoM entered into force in the manner and timescales of Decisions in article 9(5)-(7).

ECOWAS Parliament

Article 13 established a Community Parliament to be fulfilled by a Protocol, which was to, *inter alia*, define its composition, functions, powers and organisation. Accordingly, Protocol A/P.2/8/94 Relating to the Community Parliament as amended by Supplementary Protocol[52] was made. These legislative activities did advance the Parliament beyond the status of an advisory body to the Institutions and Organs of the Community as there remained that "[t]he powers of the ECOWAS Parliament shall be from advisory to co-decision making and subsequently to a law making role in areas to be defined by the Authority."[53]

The rule making powers of Parliament was enhanced to co-decision making in some areas by Supplementary Act A/SA.1/12/16 Relating to the Enhancement of the Powers of the ECOWAS Parliament. This Act empowered the Parliament to make two types of Resolutions: Mandatory Assent (which are binding) and Opinions (which are non-binding). Article 4 defined the objectives of Parliament and Article 7 defined its competence and scope of its participation in the process of enacting Community Acts, which it shall do by way of Opinion and Mandatory Assent.[54] Article 11 specifies the areas where Opinions of Parliament are required and article 12 specifies when its Mandatory Assent is required. Importantly, with the exception of the CCJ, all other organs or institutions of the Community shall make no decision in respect to the revision of the Treaty or its Annexes, human rights etc., without the assent of parliament.[55] However, parliament still lacks the power to make rules to bind the institutions of ECOWAS or Members States *suo moto*. Nevertheless, as envisaged in the article 4(2) of Protocol A/SP.3/06/06, parliament seems to be on a steady course towards becoming a truly legislative assembly with law making powers.[56]

The Court of Justice

Article 15 of the Revised Treaty established the CCJ to carry out adjudicatory functions

[50] Article 5(I) of 1975
[51] Article 7 (I)
[52] A/SP.3/06/06 Amending Protocol A/P.2/8/94 Relating to the Community Parliament
[53] *Ibid*, Article 4(2), amending article 6 of the Revised Treaty
[54] Article 8 of the Act
[55] Article 12 and 14 (1) of the Act
[56] Cf. Article 9(1) with article 249 of the Treaty establishing the European Community (Nice consolidated version) which provides "[i] In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament, acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force".

assigned to it independent of the Member States and the Institutions of the Community. The judgment of the Court is binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.

Furthermore, article 7(g) empowered the AHSG to refer, where it deems necessary, any matter to the Court of Justice when it confirms, that a Member State or an Institution of the Community has failed to honour any of its obligations or an Institution of the Community has acted beyond the limits of its authority or has abused the powers conferred on it by the provisions of this Treaty, by a decision of the AHSG or a regulation of the Council". By article 76 Member States or the AHSG may refer a dispute between Member States to the Court and its decision shall be final and shall not be subject to appeal.

The court was set into operation by way of the Protocol of the CCJ,[57] but the court could not function in the absence of cases, as individuals and NGOs did not have access to the court and the court lacked jurisdiction to entertain such claims. The watershed for the court came in 2005, when the 1991 Protocol was amended to enlarge the jurisdiction and access provisions of the court to allow the court to enforce human rights at the suit of individuals and corporate bodies.[58]

Unfortunately, the court, which is actually a court of justice, is grossly underutilised. While its human rights mandate is very active, the failure of Member States to resort to the court and to create fertile grounds for municipal courts to refer cases to the CCJ for the interpretation of key Community instruments have so far diminished the impact of the court. While the importance of the development of human rights norms cannot be underestimated, it is of utmost importance for the court to be equally fully engaged in developing jurisprudence around the treaties and other legislative instruments of the Community. For the avoidance of doubt, under Article 9 of Supplementary Protocol A/SP.1/01/05, the CCJ has competence to adjudicate on any dispute relating, *inter alia*, to: (a) the interpretation and application of the Treaty, Conventions and Protocols of the Community; (b) the interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS; (c) the legality of regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS; (d) the failure by Member States to honour their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS; (e) the provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States.

Nevertheless, ECOWAS should be congratulated not only for g1vmg effect to the establishment of the CCJ but also for transforming it, and relatively quickly too, from a state-centric court to a truly Community court by giving direct access to individuals. Also, worthy of note is the fact that, despite the CCJ's firm stance on the rule of law and non-

[57] (Protocol A/P1/7/9 I) was signed on July 6, 1991, and entered into force on November 5, 1996

[58] Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles I, 2, 9, 22 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and article 4 paragraph I of the English Version of the said Protocol

exhaustion of domestic remedies, it has operated uninterrupted. The actualisation of a permanent and functional court is indeed one of the most remarkable achievements of the 1993 regime.[59]

Human Rights

An important addition to the 1993 Treaty is the recognition that integration was impossible without a strong protection of human rights. Since, in the ultimate, the integration is intended to favour citizens, the need for citizens to have the right to redress their rights when violated by Member States cannot be gainsaid. As one of the fundamental objectives of the Community, Article 4(g) declared the "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights". This commitment to the enforcement of human rights was fulfilled in the Supplementary Protocol of the CCJ by reason of which individuals are now able to enforce their rights before the CCJ by direct action.

By their sheer volume, human rights cases give the court the opportunity to develop the jurisprudence of integration as well as to consolidate the provisions of the Treaty. As *Olajide Afolabi* v *Federal Republic of Nigeria*[60] teaches us, the right of Citizens of the Community to entry, residence and establishment in the territories of Member States guaranteed in Article 59 of the revised Treaty and relevant Protocols of ECOWAS was perpetually under threat in that without human rights guarantee through an international court that is independent of Member States, there was no way the right of free movement, residence and establishment, for instance, was fully realisable. Cases, such as *Chude Mba v The Republic of Ghana*,[61] are testamentary to the role the CCJ is playing in ensuring that Community citizens are free to move into, reside, and do business, in another Member State of the Community. For such individuals, the existence of CCJ is the greatest guarantee of freedom of movement and establishment.

The CCJ already had this role carved out for it by the framers of the Treaty, who were "conscious of the role the Court of Justice can play in eliminating obstacles to the realisation of Community objectives and accelerating the integration process" and for this purpose, expressed their desire "to take all necessary measures to ensure smooth operations of the Court and guarantee effective implementation of its decisions".

To consolidate its supranational objectives, the revised Treaty parades provisions that show a clear understanding that economic integration is impossible in a chaotic legal arena, wherein each of the Member States maintain divergent laws as it desires. Accordingly, the Member States made the following important undertaking in Article 5:

- Member States undertake to create favourable conditions for the attainment of the objectives of the Community, and particularly to take all necessary measures[67] to harmonise their strategies and policies, and to refrain from any action that may hinder the attainment of the said objectives.
- Each Member State shall, in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of

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[59] Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles I, 2, 9, 22 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 Paragraph I of the English Version of the Said Protocol

[60] ECW/CCJ/JUD/01/04 of Apri127, 2004

[61] NO. ECW/CCJ/JUD/30/18

this Treaty.

- Each Member State undertakes to honour its obligations under this Treaty and to abide by the decisions and regulations of the Community.

They further undertook not to enact legislation and/or make regulations which directly or indirectly discriminate against the same or like products of another Member State[62] and to co-operate in judicial and legal matters with a view to harmonising their judicial and legal systems by way of a Protocol to that effect.

Supplementary Protocol A/SP.1/06/06 Amending the Revised ECOWAS Treaty

As is already obvious from above, there have been a lot of legislative activities around the Revised Treaty, of which the most far-reaching, in my view, is Supplementary Protocol A/SP.1/06/06.

Among other provisions, this protocol created a new Article 9, titled the "Legal Regime of the Community". Going by the Article, the legal instruments of the Community are Supplementary Acts, Regulations, Directives, Decisions, Recommendations, and Opinions. The AHSG was empowered to make Supplementary Acts which shall be annexed to the Revised Treaty[63] and shall bind Community Institutions and Member States, in which they shall be directly applicable.[64] It is the province of the CoM to enact Regulations, issue Directives, take Decisions or formulate Recommendations and Opinions.[65] By Article 9(4), "Regulations" shall have general application and shall be binding and directly applicable in Member States. They shall equally be binding on Community Institutions. Under Article 9(5), "Directives" shall be binding on all the Member States in terms of the objectives to be realized. By Article 9(2) (c), the Commission may adopt Rules relating to the execution of Acts enacted by the CoM. The Rules so adopted by the Commission shall have the same legal force as Acts adopted by CoM for the execution of which the Rules are adopted. The Commission shall formulate Recommendations and Opinions.[66] But Member States shall be free to adopt modalities they deem appropriate for the realization of such objectives. Decisions shall be binding on all those designated therein and Recommendations and Opinions are not enforceable.[67]

It is provided in the Supplementary Protocol that Community Acts shall be adopted by unanimity, consensus or by a two-thirds majority of the Member States, but failed to define the classes of decisions to which the different modes applies. By a new Article 12 Community Acts shall be published by the Commission and by each Member State in its National Gazette within the same time-frame of "within 30 days"[68] and enter into force on the specified entry into force date.[69] Accordingly, the AHSG have exercised its powers to make various Supplementary Acts, which are annexed to, and are, integral parts of the Revised Treaty and are "directly applicable" in Member States.[70]

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[62] Article44
[63] Article 9(2)(a)
[64] Article 9(3)
"Article 9(2)(b)
[66] Article 9(2)(d)
[61] Article 9(6) and (7)
[68] Article 12(1)
[69] Article 12(2) and (3)
[70] Examples are: Supplementary Act AISA.lfDlfl0 on Personal Data Protection within ECOWAS and Supplementary Act A/SA.5/07/13 relating to the General Convention on Social Security of Member States of ECOWAS

V. Challenges

It is self-evident that States (we see this all around us) are quick to create supranational organisations with some level of exclusivity in the areas of their competence only for the States to become antagonistic when the organisations begin to exercise the powers bestowed on them by the same States in their Treaty commitments.[71] This has largely accounted for the gaps between the theoretical status of international organisations, generally, and their status in practice.

It is sad to note that, despite the transnational provisions of the 1993 Treaty (as amended), ECOWAS continues to operate as an intergovernmental, rather than a supranational organization.[72] ECOWAS has not been insulated from the maladies- "suspicion," political instability, and an unwillingness to renege on some elements of state sovereignty in practice - that have been speculated to plague regional economic integration in Africa[73] and which, in fact, suffocated the 1975 Treaty. With regards to the implementation of the supranational provisions of the 1993 Treaty, it is arguable that the Treaty occupies no better place than the 1975 Treaty in the municipal realm of States. What is obvious is that the supranational provisions are best yet aspirational and inchoate. To buttress this, we shall examine two aspects of the problems.

(a) ECOWAS in the Municipal Law of Member States

In 2010, bothered that ECOWAS cannot achieve its aim without the right synergy with the legal systems of Member States, I examined the constitutions of Members States *vis a vis* their obligations to ECOWAS and came to the conclusion that there was the urgent need for Member States to deliberately and genuinely reconsider their constitutional posture towards ECOWAS laws.[74]Unfortunately, the situation remains unchanged.

It is axiomatic that the fact that non-compliance with the Treaty, its Protocols and Acts negatively impacts on the object and purpose of the Community and invariably places Member States in the position of violating their obligations. Going by the consistent jurisprudence of the African Commission on Human and Peoples' Right on article **1** of the African Charter on Human and Peoples' Rights, it can safely be said that the supranational provisions of the Treaty and Acts made thereunder impose an obligation of result.[75]

Therefore, the supranational provisions impose on ECOWAS Member States, the need to put in place, within their territories, all measures conducive to producing the result of the direct application of ECOWAS Treaties and Acts within their respective municipal legal systems. The fulfilment of this obligation by any Member State is to be measured by the effectiveness of ECOWAS laws within the realm of that Member State. If, for instance, a Member State adopts or retains a law or policy that hinders the free movement of persons, residence or establishment within the municipal law, such a State has failed to produce the result required of ECOWAS Treaties and so is in violation.

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[71] Kenneth Kiplagat, "An Institutional and Structural Model for Successful Economic Integration in Developing Countries", 29 Tex. Int'I L.J. 39 (1994) (discussing the difficult balance between supranationalism and sovereignty in developing countries as a result of political and sociological aspects of those countries).

[72] Solomon Ebobrah, Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice, 54 J.AFR. L. I, 9 (20 I0).

[73] Godwin-A Hart, (n.34) p. 59

[74] See A.O. Enabulele, "Reflections on the ECOWAS Community Court Protocol and the Constitutions of Member States" 12 International Community Law Review 11l (20 I0)

[75] See *Association of Victims of Post Electoral Violence & Jnterights v. Cameroon,* Communication 272/03, para 119

To make this point clearer, it is my view that, by reason of its aims, the 1975 and now the 1993 ECOWAS Treaty belongs to the class of treaties that do not even require express provision mandating the Member States to give it municipal effect, as the obligation is intrinsic to the Treaty. This is due to the fact that the municipal application of the Treaty is essential to the achievement of its aims, which, in the ultimate, is to "create individual rights and obligations and enforceable by the national [and ECOWAS] courts".[76] This follows the fundamental principle of international law that it is incumbent on a State that has entered into an international obligation to adopt necessary legislation in its internal law to fulfill the obligation.[77] Accordingly, Member States that fail to do this whether expressly provided for or not in the Treaty or Acts of ECOWAS are already in breach. This is, in fact, the very essence of good faith in international relations. Member States need not be reminded that "one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith, [and that] trust and confidence are inherent in international co-operation ... ".[78] Accordingly, having consented to the ECOWAS Treaty regime Member States are bound by all obligations arising therefrom and these "must be observed by them in good faith".[79] Good faith entails acting in line with the *Van Gend en Loos,*[80] legal proposition that:

> The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. <u>These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community</u>.[81] (Emphasis mine)

The fact that the Treaty is crafted to benefit individuals is definitive of the intention of the crafters to make it applicable in the municipal law of Member States. On this basis, one can even argue that the failure of the 1975 Treaty to expressly oblige Member States to make the Treaty applicable within their legal systems was not responsible for the failure of Member States to fulfil that outcome. It was sufficient that the 1975 Treaty provided in articles 3 and 21 that Member States should create favourable conditions for the achievement of the aims of the Community by legislation and to refrain from frustrating the integration process by legislation that discriminates against products from another Member State. The question that may be asked is what is the effect of the failure of States to make the Treaty internally applicable in their municipal realm on the right of free movement, for instance? Especially as there was no ECOWAS court to resort to at the time.

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[76] *Ibid,*
[77] *Questions Relating to the Obligation to Prosecute or Extradite, (Belgium v. Senegal)* ICJ Rep 2012, 422, 452, para 76-77; 460 para 113
[78] *Nuclear Tests Case (New Zealand* v *France),* ICJ 1974, 457 *(New Zealand* v *France)* above, note 21, p. 473, para 49; *(Australia* v *France),* above, note 21, p. 268, para 46; *Cameroon v. Nigeria,* p. 296-297, para 38-39
[79] *Pulp Mills on the River Uruguay,* p. 62, para 128
[80] Case 26/62 *NV Algemene Transporten Expeditie Onderneming van Gend en Loos* v. *Nederlandse Administratie der Belastingen* [1963], ECR 1
[81] *ibid,* at 184

Would the individuals have been able to enforce their Community rights in a Member State wherein the Treaty and the Free Movement Protocol have no application? This also goes to explain why the express provision obliging States to implement the Treaty in their municipal law in the 1993 Treaty has remained a pipe dream, both in the dualists and monist States of ECOWAS. If anyone assumed that the bare provisions for direct effect in ECOWAS Treaty would achieve that result, the *status quo* is quite telling of the error of such assumption.

It is therefore a wrong approach to focus on the absence of supranational provisions in the 1975 Treaty as the reason for the ineffectiveness of that order, or to focus on the robust supranational provisions of the 1993 Treaty as an end in themselves, rather, we should focus on the attitude of Member States. Otherwise, with the ample supranational provisions of the present Treaty one would expect ECOWAS Treaties and its directly applicable Acts to be domestically enforceable as domestic laws across the States, but this, unfortunately is not the case. On this score, I beg to disagree with the view that "[t]he reason for this can be traced to the different systems of treaty assimilation in the region. The Anglophone ECOWAS states apply the dualist system of treaty assimilation while the Francophone and Lusophone states apply a monist system".[82] For the avoidance of doubts, France, Portugal and England are all in Europe wherein EU laws are directly applicable.

Regarding the Acts of Institutions of ECOWAS, it is essential to bear in mind that only Supplementary Acts are treaties, while "Regulations", "Directives" and "Decisions" are not treaties and should not be equated with treaties. Going by article 38(1)(a) of the Statute of the International Court of Justice (ICJ) and article 2(1)(a) of the Vienna Convention on the Law of Treaties, 1969, "treaties" irrespective of designation are agreements between States, but "Regulations", "Directives" and "Decisions" are not. Accordingly, they do not fall within the purview of the constitutional rules regulating the application of treaties. For instance, section 12(1) of the Constitution of the Federal Republic of Nigeria speaks of a "treaty" not having the force of law except it has been enacted into law by the National Assembly; article 75(2) of the Constitution of Ghana speaks of"[a] treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification ... " Article 11(2) of the Cape Verde's Constitution of 1980,[83] speaks of "International Treaties and Agreements, validly approved and ratified". Article 144 of the Constitution of the People's Republic of Benin 1990, speaks of "[t]he President of the Republic shall negotiate and ratify treaties and international agreements".

The difficulty here is that though "Regulations", "Directives" and "Decisions" are not treaties, insofar as they are capable of modifying municipal law and creating rights and obligations for individuals, they infringe upon the legislative competence of municipal legislature, which in itself prevents their direct effect even in States that direct effect would have been arguable. On this score, article 95 of Senegal's Constitution, 2001[84] expressly provides that treaties "which modify the provisions of a legislative nature, those which are relative to the status of persons... may only be ratified or approved by virtue of a law". This is replicated in all the other monist (for want of a better description) Member States. This is not to mention the dualist States, such as Nigeria and Liberia, which apart from their

[82] Godwin-A Hart, (n.34) p. 77
[83] As amended
[84] Asamended

dualist postures also maintain supremacy clauses that render any law contrary to the constitution null and void, given that the constitution renders the competence to make laws to the legislature.

The requirement for "Regulations", "Directives" and "Decisions", to be gazetted by Member States places the CoM, and to some extent the ECOWAS Commission, in the position of legislative Assembly for Member States in the Community's areas of competence. "Regulations", "Directives" and "Decisions", are thus capable of becoming part of the laws of Member States once gazetted, arguably by incorporation, just as customary international law (in common law jurisdictions).[85] They however take precedence over national laws, except that Member States may not gazette any Act that is inconsistent with the constitution. This, in my view, marks a major difference between Supplementary Acts (on one part) and "Regulations", "Directives" and "Decisions" (on the other) and gives credence to some level of accurate speculation that the AHSG is intended to act as a treaty-making body only and not actually as a supranational organ, properly so called. This is because Supplementary Acts are (in theory and practice) treaties and so follows the constitutional treaty route into municipal law. In my view, it is difficult to argue that Supplementary Acts should be incorporated into national law. This is due to their (community) constitutional nature by reason of annexation to the Revised Treaty. I am sure we are all in agreement that, states do not, by signing supranational treaties surrender their sovereignty so that the fact that the constitutional treaties may further constrict States' constitution and enlarge community competences.

Be it the monist or the dualist Member States, there is a general deference to the constitution of the States in the application of international law municipally and my preliminary view is that there is potentially only one ECOWAS State (Cape Verde) wherein the Treaties and Decisions of ECOWAS are directly applicable insofar as they do not modify municipal law. With regards to the dualist States of Nigeria, Ghana, Liberia and the Gambia, this point is doubtlessly settled. Concerning the monist States- article 149 of the Constitution of Guinea; article 171 of the Constitution of Niger 2010, article 138 of Togo's Constitution of 1992; Article 115 of the constitution of Mali, 1992; Article 149 of the Burkina Faso's Constitution, 1991 (as amended); article 96 of Senegal 2001, (as amended); article 85(h) of Guinea-Bissau's Constitution of, 1984 (as amended); article 145 of Constitution of Benin, 1990; article 122 of the Constitution of Cote Ivoire, 2016- all require that certain category of Treaties be ratified by law and most of them require reciprocity. To use article 149 of the Constitution of Guinea as an example:

> The peace treaties, the treaties of commerce, the treaties or agreements relative to the international organization, those that engage the finance of the State, those that modify the provisions of a legislative nature, those that are relative to the status of persons, those that include cession, exchange or adjunction of territory, may only be ratified or approved by a law.

The only constitution that lacks such a provision among the monist States is that of Cape Verde. Article 11 of the Constitution makes international law an integral part of the Cape Verdian judicial system, as long as it is in force in the international legal system. There is no

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85. Trendtex Trading Corporation v. Central Bank of Nigeria [1977] 1 QB 529

provision requiring certain forms of treaties to be ratified by law. However, it is admitted that articles 300-302, may produce that effect. By these provisions, legislative action is required for a treaty that is inconsistent with the constitution to be ratified.

Closely associated with the above is the issue of supremacy. The importance of this becomes obvious when viewed through the lens of constitutional laws of Member States. One is bound to find that the constitutions draw a difference between applicability and supremacy across both the dualist and monist constitutions of Member States. Section 12(1) of the Nigerian Constitution makes it mandatory that international law be domesticated to have effect but it did not clarify the hierarchy of such domesticated law. This was clarified by the Supreme Court *in Abacha v. Fawehinmi,*[86] wherein, in deference to the supremacy of provisions in section 1(3) of the Constitution, the Court held, and rightly too, that incorporated international law is inferior to the Constitution. Article 75(2) of the Constitution of the Republic of Ghana, 1992, only talks about domestication through ratification, it does not provide for its hierarchy. Nevertheless, it is unlikely that domesticated international law will be held to trump the Constitution of Ghana given the supremacy clause in article 1(2) of the Constitution[87]. Article 2(1) and (2) of the Liberian Constitution 1986 effectively nullifies any law, including treaties, found to be inconsistent with the Constitution.[88] The monist states generally follow the dualist Member States on this one. Thus, article 11(4) of the Constitution of Cape Verde provides that "[r]ules, principles of International Law, validly approved and ratified internationally and internally, and in force, shall take precedence over all laws and regulations below the constitutional level". In any event, all the other monist constitutions have provisions to the effect that, a treaty contrary to the constitution, cannot be ratified until after the revision of the constitution, thus demonstrating deference to the constitution.[89]

The alternative for ECOWAS may be to go the way of the Treaty for the Establishment of the East African Community 2000 (as amended), which expressly provides for supremacy of Community laws over municipal law. Article 8(4) of the Treaty provides that "Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty". Furthermore, by article 8(5), the Partner States undertook to make the necessary legal instruments to confer precedence of Community organs, institutions and laws over similar national ones. In addition to this, the Treaty obligates partner States to, within twelve months from the date of signing the Treaty, secure the enactment and the effective implementation of such legislation as is necessary to give effect to this Treaty, and in particular - (a) to confer upon the Community the legal capacity and personality required for the performance of its functions; and (b) to confer upon the legislation, regulations and directives of the Community and its institutions as provided for in this Treaty, the force of law within its territory.[90] It is also provided that "Decisions of the Court on the interpretation and application of this Treaty shall have precedence over decisions of national courts on a similar matter".[91]

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[86]The Ghanaian Constitution's article 40 may lead a hasty observer to assume that it incorporated ECOWAS treaty into its domestic sphere, but on a closer look one is bound to find that article 40 only speaks to the dealings of Ghana with other countries and not with its citizens and therefore, nothing more than an affirmation of inter-state obligations

[87]Also see section 4 of the Constitution of the Gambia, 1997

[88]Also see article 40 of the Constitution of Sierra Leone, 1991

[89]Articles 96- 98 of the Senegal's Constitution of200l(as amended); 140 of Togo's Constitution of 1992 as Amended; Articles 146 and 147 of the Constitution of the People's Republic of Benin 1990; Articles 169 and 171 of the Constitution of Niger; Article 123 Cote d'lvoire's Constitution of 2016

[90]Article 8(2)

"Article 33(2)

However, as the European Union experience teaches us in respect of the supremacy of EU laws in the municipal law of member States, the lack of an express supremacy provision in the Treaty does not foreclose that effect. Though the original Treaty of the EU did not provide for supremacy of EU laws, supremacy was enthroned by the Court of Justice of the European Union (CJEU) in a number of cases, principally, the notorious case of *Costa v. ENEL,*[92] and several other cases[93] in which it promoted the integration process by ruling against barriers to the free movement. In *Costa v. Enel,* the CJEU declared that the executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty and that the obligations undertaken under the Treaty establishing the Community would not be unconditional, but merely contingent, if they could be called into question by subsequent legislative acts of the signatories.[94]

Interestingly, the CJEU based its supremacy doctrine on article 189 of the EEC Treaty, that proclaims that a regulation "shall be binding" and "directly applicable in all Member States." The CJEU declared that these provisions:

> which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over community law [and that].... It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.[95]

The CCJ has demonstrated the right independence and pedigree to replicate the feat achieved by the CJEU. Though, I am not a fan of the court's stance on exhaustion of domestic remedies,[96] the fact that it has resolutely maintained that position and continues to amass jurisprudence in that direction in the face of strong opposition by Member States is indicative of its ability to play its role in the integration process. The decision of the court in *SERAP* v *Federal Republic of Nigeria and Universal Basic Education Commission,* is also telling in this regard. In the case, the court refused to accede to the desire of Nigeria to have the case struck out on the basis of the Nigerian Constitution.[97]

The problem however is that the relegation of the court to basically human rights court deprives the court the nature of cases it needs to drive the jurisprudence of integration. The general failure of States to abide by the decision of the court however raises the fear as to whether they would defer to the integrative jurisprudence of the court as EU States did.

"*Case6/64Flaminio Costa v. ENEL,* 257; [1964] ECR585, 593

"Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr-und Vorratsstelle fur Getreide und Futtermittel* 26 l; [1970] ECR 1125 ("The validity of such measures can only be judged in the light of Community law); Case 14/83 *Von Colson and Kamann v. Land Nordrhein-Westfalen* [1984] ECR 1891; de Waele, H "The Role of the European Court of Justice in the Integration Process: A Contemporary and Nonnative Assessment", 6(l) Hanse Law Review, 5 3, 5 (20l 0). (Nothing that"... the judgments on supremacy and direct effect carry an indelibly activist mark, as the doctrines... not enshrined in the Treaties themselves, are products of judge-made law, created purely for the benefit of. .. European law. Thence, the subsequent case-law expanding the scope and gist of these notions further, carries an activist stamp as well")

[94] (n.90) p. 257

"*Ibid*

"Amos 0. Enabulele "Sailing against the Tides: Exhaustion of Domestic Remedies and the ECOWAS Community Court of Justice", 56 (2) Journal of African Law, 268 (2012)

"ECW/CCJ/APP/08/08, para 19

This speaks to the level of respect for the rule of law that prevails in the municipal laws of Member States relative to those of State parties to the EU. There is no gainsaying the fact that a supranational court-driven integration is impossible in a Community where municipal actors habitually refuse to enforce judgments of their municipal courts, let alone a supranational court judgment.

The question that may now be asked is, what is the effect of the continuous use of supremacy of constitutions of Member States to object to Community Treaties and Acts in their legal systems? At the international level, it bears no effect at all, for it is well established that"... a state cannot adduce as against another state its own Constitution with a view to evading obligations incumbent upon it under International Law or treaties in force".[98] This rule is also contained in article 27 of the Vienna Convention on the Law of Treaties, 1969. The CCJ embraces this position as well.[99] However, on the practical side, it fractionalises the Community laws and distorts integration.

On the municipal side of things, it creates both legal and practical problems. Apart from the fractionalisation of Community laws, allowing municipal laws to trump Community law creates its most disastrous effect of robbing municipal courts the opportunity to play their role in the integration process and given legal credence to the refusal of municipal actors to flagrantly ignore both the treaties and secondary Acts of the Community. To be absolutely clear, except a municipal law empowers municipal courts to apply an international instrument, the judge is obliged to refuse to apply such an instrument. Otherwise, the judge will be violating the law of the land. The same applies to other agents of municipal law. Accordingly, the decision of a Ghanaian High Court in the sequel to *Mba v. Ghana,*[100] is unassailable from the viewpoint of municipal law. In the case, the Ghanaian Court dismissed Mba's application seeking the enforcement of the CCJ judgment by the court on the grounds that the decision of the CCJ cannot be enforced by the Court in Ghana because the Republic of Ghana has not domesticated the Protocols of the CCJ. The CCJ was also right in refusing to get involved in the enforcement process, since that power rightly sits with the AHSG.

This situation is not peculiar to the CCJ. The ICJ found itself in similar position in the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals,*[101] which resulted from the refusal of a United States' court to recognise the decision earlier given by the ICJ in the case.[102] In its response, the ICJ stated that its earlier judgment

> ... nowhere lays down or implies that the courts in the United States are required to give direct effect to paragraph 153(9) [of the judgment]. The obligation laid down in that paragraph is indeed an obligation of result which clearly must be performed unconditionally; non-performance of it

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[98] *Treatment of Polish Nationals or other Persons of Polish Origin or Speech in Danziq,* (1931), PCIJ, Ser. A/B No.44, p. 24
"See Amos 0. Enabulele & Anthony Osaro Ewere, "Can the Economic Community of West African States Community Court of Justice Enforce the African Charter Replicas of the Non-Justiciable Chapter II Human Rights Provisions of the Nigerian Constitution against Nigeria?" I International Human Rights Law Review, 312 (2012)
[00] (n60)
[O] (Mexico v. United States of America) (Mexico v. United States of America), !CJ Rep 2009, 3, 17 para44
[02] *Avena and Other Mexican Nationals (Mexico v. United States a/America),* ICJ Rep (2004), 12, 70-73 para 153

> constitutes internationally wrongful conduct. However, the Judgment leaves it to the United States to choose the means of implementation, not excluding the introduction within a reasonable time of appropriate legislation, if deemed necessary under domestic constitutional law. Nor moreover does the ... Judgment prevent direct enforceability of the obligation in question, if such an effect is permitted by domestic law."

Though regrettably helpless, the court did not fail to warn and this is also applicable to ECOWAS Member States that the "Judgment remains binding and that the United States continues to be under an obligation fully to implement it".[103]

The very fact that CCJ finds itself in the same position as the ICJ (which deals on an inter-governmental level) shows that much more work needs to be done to realise the Community desire of ECOWAS. National courts must be enabled to play their roles as critical actors in the integration process and this is not possible except Community laws are made part of the national legal systems of Member States[104] and accorded superior status.

The alternative to supremacy of ECOWAS is the result of what we see today where each State appears to be left to unilateral actions in the areas of competence of ECOWAS. May I clarify that the supremacy advocated here is not over the Constitutions of Member States (I do not think ECOWAS is ripe for this). Member States may retain constitutional supremacy but relax it in respect to the competences ceded to ECOWAS by obliterating all potentially inconsistent provisions from the Constitution.

(b) Decisional Autonomy

The other aspect I would like to touch is in article 9(8) of the Treaty amending the Revised Treaty provides that "unless otherwise provided in this Supplementary Protocol or in any other Protocol, Community Acts ... shall be adopted by unanimity, consensus or by a two-thirds majority of the Member States. In theory, this is an improvement onArticle3 of the Revised Treaty, which provided for the AHSG to adopt its decision by consensus until a certain protocol was adopted. However, the fact that Article 9(8) did not clarify the decisions that could be reached by unanimity, consensus or by a two-thirds majority, means that the situation has not actually advanced beyond the 1993 position.

The unanimity or consensus rule may effectively make it impossible for the AHSG to take measures against an erring Member State since a State can veto the decision of the AHSG by rejecting same. That can only tell how far the AHSG can go in its power to enforce compliance with the obligations of the Treaty. Above all, the unanimity or consensus rule effectively subjugates the organs of the Community to the sovereignty of each of the States insofar as the aim of the rule is actually to provide the States the opportunity for all of them to consent to Supplementary Acts of ECOWAS, whereas the States had actually given prior consent to the Acts in the Revised Treaty.

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[103] *Ibid*, *p.*20, para60

[104] Naon, (n.15) p. 1085; E. S. Nwauche, Enforcing ECOWAS Law in West African National Courts, 55 J. AFR. L. 181, 202 (2011), (arguing that "[t]he importance of national courts in the integration process cannot be overstated and is directly related to the ability of their citizens to be able to invoke community law before them") Andreas von Staden, (n.35) p. 42; Iwa Akinrinsola, "Legal and Institutional Requirements for West African Economic Integration", IO Law & Bus. Rev. AM. 493,508 (2004) 508 (noting "[t]he need for adequate institutional and legal infrastructures at the domestic level is vital")

It appears from the Revised Treaty (as amended) that as Supplementary Acts are Treaties they have to be consented to by all the states (unanimity) or, if we follow the entry into force provisions of such Acts - requiring 9 ratifications - it would be just around 2/3 majority. The problem with that is that, while such majority is sufficient to bring about the entry into force of the Act, it is not sufficient to make the Act applicable to the States that did not ratify. That creates a problem in itself.

The point must however be made that decisional autonomy through majority voting is a rare occurrence in regional supranational organisation and signifies the apogee of development of such an organisation.

VI. Prospects

Having highlighted some of the problems preventing legal integration in all anticipated spheres, the question that remains to be asked is whether there are prospects of integration taking place ultimately. Happily, the fact that ECOWAS has survived so many trials over the last 44 years gives me hope that it will attain its desired goals. I see prospects on both the judicial and constitutional fronts.

On the judicial front, there is huge prospect in the ability of the CCJ to etch the principles and rules of the Community into the integration process through its jurisprudence,[105] though this is currently limited to human rights cases in practice. It may take time but there certainly will come a time when the jurisprudence of the CCJ would gain ascendency as binding authority. I am optimistic that national judiciaries will be able to play a similar role as that carved out for national courts within the EU system by the CJEU in *Simmenthal II* [106] if given the right legal space. Here, the CJEU affirmed the power of national courts to set aside any provision of national law which may conflict with prior or subsequent to the Community rule.[107] In the firm view of the CJEU, "it is not necessary for the [national] court to request or await the prior setting aside of such provision by legislative or other constitutional means". [108]

Until then, it is hoped that the jurisprudence would gradually permeate the jurisprudence of national courts as interpretative aid or persuasive authority. There are many more judges in our national judiciaries, who like Archer J, in *New Patriotic Party v Inspector General of Police*, will be prepared to rely on an ECOWAS laws or a judgment of CCJ as Archer J did with African Charter in this case, irrespective of want of domestication.[109] No doubt, "The readiness of the West African national judiciaries to regard the Revised Treaty as of persuasive authority in the absence of domestication will greatly enhance the status of the Revised Treaty". [110]

Regrettably, as the tools - such as reference from national courts and subsidiarity - that foster healthy interaction between national courts and supranational courts to occur are yet lacking, it is incumbent on the CCJ to deliberately continue to forge healthy engagements

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[10] Naon, (n.15) p. 1081 (observing that "however limited the possibility of obtaining compulsory enforcement might be, decisions from supranational dispute settlement bodies significantly contribute to the creation of a framework of legality for economic integration or cooperation processes that transcend the day-to-day political manoeuvring of member states, local bureaucracies, and interest groups")

[106] Case 106/77 *Amministrazione de/le Finanze de/lo Stato v Simmenthal SpA*, p. 263; [1978] ECR 629

[10] *1bid*, p. 263

[10] *lbid*

[109] (1993) 1 NLPR 73, 82 cited in E. S. Nwauche, Enforcing ECOWAS Law in West African National Courts, 55 J. AFR. L. 181, 187 (2011)

[110] Nwauche, *ibid*, p. 188

with national judiciaries. In the interim, also, the CCJ should be prepared to seize any moment, such as that provided by *Omar Jallow v Republic of The Gambia*[111] to build jurisprudence (albeit obiter) around Community legal texts, rather than focusing only on its jurisdiction. I would have expected the CCJ to make a comment on the normative status of ECOWAS Protocol on Democracy and Good Governance in the electoral law of Member States.

As for the power of reference, despite the provision of Article 22 of the Protocol of the CCJ[112] which gives it the ultimate power to interpret ECOWAS laws, the fact that municipal courts yet lack the authority to interpret ECOWAS laws makes reference impossible. Also, subsidiarity cannot work due to the stance of the court on the exhaustion of domestic remedies. It has thus been asserted that the ECOWAS Court's

> human rights jurisdiction comes without the most common subsidiarity criterion which is the requirement to exhaust domestic remedies before a case becomes admissible in an international tribunal. .. On the other hand, in a practice that protects domestic judicial authority, the Court refuses to adjudicate cases that have already been decided by domestic courts in the Member States, reasoning that it is not an appellate court. This approach to overlapping levels of competence thus yields mixed results, denying deference in one respect and granting it in another.[113]

The subsidiarity rule and the power of reference are undoubtedly part of the success story of the CJEU. It is hoped that by the time the CCJ and municipal courts are well engaged with a unity of jurisprudence that the court would relax the in exhaustion rule to allow municipal court play their roles. There is just no way, in the years to come, should ECOWAS achieve full integration that the CCJ can handle the multitude of cases that will come to it. Besides, it is essential to integration for concepts of human rights to be uniformly applied by both the CCJ and national courts.[114]

On the constitutional front, it is felicitous that the People of Guinea, proclaim their adhesion to the ideals and principles, rights and duties established in the revised Treaty of the Economic Community of West African States (ECOWAS) and its protocols on democracy and good governance;[115] though it remains to be seen how this works in practice, it is hoped that other Member States would follow suit.

VII. Conclusion

It is essential to reaffirm, at the risk of repetition, that no international instrument is capable of guaranteeing direct application or direct effect; that is purely a function of municipal law. It is a fantasy to be satisfied with Treaty provisions ascribing direct effects to the treaty in the municipal laws of Member States to the Treaty. While such provisions are welcome,

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[111] ECW/CCJ/JUD/06/17

[112] As for the CJEU, article 267 of the TFEU to refer to the Court of Justice of the EU (CJEU) for a preliminary ruling. This procedure is used in cases where the interpretation or validity of an EU law is in question, and where a decision is necessary for a national court to give judgment; or where there is no judicial remedy under national law.

[113] Staden, (n.35), p. 43-44

[114] JochenAbr. Frowein, "European Integration through Fundamental Rights, 18 U. MICH. J.L. REFORM", 5, 12 (l 984)

[115] Preamble to the Constitution of Guinea

much energy should be deployed to the legal frameworks for the implementation of the 1reaty provisions within Member States. Member States should not just consent to supranational provisions; they must show good faith by ensuring that all constitutional obstacles are removed by enacting, amending or repealing legislation. As ECOWAS continues to operate on individuals and events through Member States, it shall continue to suffer paralysis from actions or inactions of Member States.

Dualism or monism is merely a constitutional term they do not define the constitution of a country and so can also give way to reflect the international obligations of any particular State. What is needed therefore is a willingness by Member States to enhance the effectiveness of the CCJ by giving the Treaty and its Acts domestic power. Recently, the Nigerian dualist constitution was amended to create a monist corridor for labour related treaties (only) while maintaining its general dualist character.[116] This gives me hope that with the right persuasion, same corridor is possible for ECOWAS Treaties and Acts in all Member States.

The ultimate drive, in my view, should be to have a bit of the same aspect of ECOWAS in the legal systems of all Member States and not to have a bit of the States in ECOWAS; the former gears towards harmonisation and integration while the latter is the exact definition of fractionalisation of the Community in all spheres of integration. The term "a bit" is used advisedly, given the fact that the intention is not to cede all sovereign competences of the Member States to ECOWAS but to give ECOWAS intrusive or supranational competences in the areas that have been ceded to it. This is in deference to the doctrine of the reserved domain of States; even in the EU which is the most advanced supranational community, certain competences, such as nationality, are left exclusively to the State parties.

Permit me to add that awareness is a key part of the integration project. You will be amazed how many key municipal actors (even judges) there are that do not have a clear understanding of what ECOWAS is about. It is thus important to make deliberate efforts towards creating the needed awareness. ECOWAS may seek to start something like a summer academy (which may be a two-week course) for judges and other key municipal functionaries.

In addition to this, ECOWAS should seek to commission a committee of legal experts to create yardsticks for measuring the compliance of each Member States with the supranational provisions of ECOWAS. It is not helpful to continue to theorise the problem; I strongly believe the time has come to, on a periodic basis, publish the compliance level of Member States with the supranational provisions of the Treaty.

It is essential that ECOWAS gets it right, particularly as it has set itself up in its Article 2 of the Revised Treaty that it aims at becoming the sole economic Community in the region for the purpose of economic integration and the realization of the African Economic Community, but this it cannot do without the full commitment of Member States.

[116] 254(c)(2) of the Constitution of the Federal Republic of Nigeria (as amended)

CHALLENGES OF TEACHING ECOWAS LAW IN MEMBER STATES: THE CASE OF CAPE VERDE

BY

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The theme that brings us here is about the ***"Challenges of Teaching ECOWAS Law in Member States"*** and it aims at sharing the Cape Verdean experience on the subject. To this end, this presentation has been organized in 3 parts: 1) a description of the emergence of *ECOWAS Law* study in Cape Verde, in particular, at Instituto Superior de Ciencias Juridicas e Sociais (ISCJS) *(Higher Institute of Legal and Social Sciences);* and in sequence explains two challenges associated with the theme: 2) related with the study of *ECOWAS Law per se;* and 3) a study of *Cape Verdean law*, specifically how the provisions of domestic law establish the connections with the Community law in the region.

1) Description of the emergence of ECOWAS Law study in Cape Verde, specifically at the ISCJS

That said, first, regarding the emergence of the *ECOWAS Law* study in Cape Verde, it is interesting to go back a little in time and underline that access to higher education in the Archipelago itself is recent, the *Instituto Superior de Ciencias Juridicas e Sociais (Higher Institute of Legal and Social Sciences),* created in 2006, in Praia, being the first institution to offer a Law degree in the country. Later, in 2010, it also came to include, in addition to other areas, the first *International Relations and Diplomacy* degree. After this first phase of laying down the structural foundations of higher education in these two areas, it has always been the desire of the institution to go further and to contribute to scientific development and research on topics of interest to the African reality and current affairs. Consequently, the first *master's degree in International Relations with emphasis on African Regional Integration* was launched in 2017 with the aim of building knowledge and assisting in the effort to deepen the legal knowledge in conjunction with international politics.

Just to share our experience, the *Master's degree course* was organized, like any other course of a similar level, in two parts: the first part comprises of the courses, while the other covers the dissertation. The first is composed of six subjects, namely two propaedeutic (i.e. (i) *Theory of the African Justice and Political Philosophy;* and (ii) *Scientific Research Methodology)* and the remaining four are devoted to four areas considered central to African integration processes, *i.e.*, they reflect topics related to major areas such as Law, Economics, International Relations and Cooperation (the four remaining subjects are: (i) *African Political Institutions and Regional Law;* (ii) *Economic Integration in Africa and West Africa;* (iii) Cooperation for *Development in Africa;* and (iv) *African Regional Security).* Currently, the part that comprises the course subjects has been completed and we are now in the dissertation preparation stage.

So, what were the reasons that motivated the creation of a master's degree devoted to the theme under consideration? On a general sense, there is great interest from Cape Verdeans in Africa-related issues and how to position Cape Verde in the African political, economic and legal context. Moreover, it cannot be ignored that African countries have long chosen economic integration as one of the priority themes in the governance of the continent and which have been conducted on two fronts, one at the continental level and the other at the sub-regional level. In the first, the strategy was recently reinvigorated with the launch in 2018 of the ***African Continental Free Trade Area (ZCLCA* or *AfCFTA),*** and its entry into force on May 30, 2019, gave clear indications that the pan-Africanist objective is

still being pursued.[1] However, the articulation of the will of 55 countries is not easy and faces obvious practical and operational difficulties. So, the continental strategy has been linked to the various sub-regional initiatives, and sub-regional economic integration processes have been chosen as the *building blocks* of the continental project (commonly referred to in English as *Regional Economic Communities (RECs)* - as it was already clearly possible to extract from the *Treaty establishing the African Economic Community* or *Abuja Treaty* (1991),[2] the *Constitutive Act of the African Union* (2000)[3] and the current *Agreement establishing the AfCFTA* (2018).[4] As you are aware, a total of 14 integration initiatives have been mentioned, out of which 8 have been recognized by the African Union and 6 yet to be recognized ..[5]

All these efforts, strongly driven by political backgrounds, could not remain ignored by the academic world and scientific analysis. These scenarios provide a rich laboratory of research opportunities with great social, economic, political, legal, or practical relevance. In this sense, the academic area, as an integral part of civil society, can also contribute by presenting its critical views and appreciations on themes and concerns of the African reality. Just to name a few, there are numerous questions in need of clarification in the African integration processes, including those mostly related to law, questions about multiple legal obligations derived from a State belonging to more than one African regional integration process; questions about the difficulty of the operationalization of the integration processes, with ambitious projections, but with results often falling short, and how the legal framework can be better delineated so that objectives can be achieved, among many other issues.

On this point, our proposal is that scientific analysis, based on research, properly substantiated, can help to disentangle neuralgic aspects that affect and sometimes hinder the integration processes in Africa. In due course, it is also underlined the importance of this process being built from within, despite all the endogenous difficulties of doing science in Africa. The contribution of external evaluations and foreign consultants is always welcome, but it cannot be overlooked that it is sometimes based on maladjusted parameters and criteria, so it is up to the African academic institutions to contribute to the building of their own parameters. And it was with this spirit that we began to study *ECOWAS Law* in Cape Verde.

' The Agreement establishing the African Continental Free Trade Area (ZCLCA or AfCFTA), signed in Kigali on 21 March 2018, has 54 signatory states and 27 ratifications, available at "https://au.int/sites/default/files/treaties/34248-sl- agreement establishing the african continental free trade area.pdf', accessed September 2019.

[2] *Cf* Article 4 (l), *Treaty establishing the Africa;;Eco7,omic-Community,"l. The Community's objectives shall be: (…) (d) to coordinate and harmonize policies between existing and future economic communities with a view to foster the gradual establishment of the Community."*

[3] *Cf* Article 3, (!), *Constitutive Act of the African Union,"The Union's objectives shall be:(...) (1) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union; (…)"*

[4] *Cf* Art. 5, *Agreement establishing AJCFTA, "The AjCFTA shall be governed by the following principles: (. ..) b) RECs' Free Trade Areas (FTAs) as building blocks for the AJCFTA"*

'Among the 8 recognized by the African Union are: *Community of Sahel-Saharan States* (CEN-SAD); B) *Common Market for Eastern and Southern Africa* (COMESA); \:) *East african community* (EAC); d) *Economic Community of Central African States* (ECCAS); and) *Economic Community of West African States* (ECOWAS); and) *Intergovernmental Authoriry on Development* or *The Intergovernmental Authorization for Development* (IGAD); f) *Southern African Development Community* (SADC); g) *Union du Maghreb Arabic* (AN) *(cf* African Union, available at <<au.int/en/organs/recs>>, consulted September 2019). There are also six integration processes not yet recognized by the African Union: Economic and Monetary Community of Central Africa (CEMAC); B) West African Economic and Monetary Union (WAEMU); \:) Economic Community of the Great Lakes Countries (ECGLC); d) Mano River Union (MRU); and) Indian Ocean Commission (!OC); f) Southern African Customs Union (SACU)

However, in this still very recent academic career, we have already faced some challenges that we would like to share during this important debate forum. The first major challenge concerning *ECOWAS Law* that can be pointed out refers to the legal uncertainty in the face of the lack of publicity and transparency of its law, which we will address below.

2) Challenge of Legal Insecurity due to Absence of Publicity and Transparency

Considering the theme ***economic integration through ECOWAS law,*** in very simplified terms, it must first be stated that by *ECOWAS Law, it* is understood to be the whole body of legislation that has been structured since the Community's launch in 1975,[6] passing through its strengthening with the 1993 ECOWAS Revised Treaty (ECOWAS-RT).[7] Along the way, the Community has been strengthened in legal terms with a set of protocols and conventions, [8] along with numerous normative acts issued by their institutions on various themes of the Community life (such as peace and security, tax issues, institutional aspects, free movement, citizenship, energy, health, trade, education, etc.), which are of our interest, particularly those relating to economic affairs.

'The Treaty establishing the ECOWAS in 1975, as set out in Article 62 (1), was provisionally in force for the signatory States. The definitive entry into force took place on June 20th, 1975, with the ratification of seven signatory States: Liberia (ratification on 30/05/1975 and deposit on 4/06/1975); Nigeria (ratification on 6/2/1975 and deposit on 3/06/1975); Guinea (ratification on 06/06/1975 and deposit on 16/08/1975); Ghana (ratification on 06/06/1975 and deposit on 06/17/1975); The Gambia (ratification on 06/06/l 975 and deposit on 06/17/l 975); Cote d'lvoire (ratification on 12/06/1975 and deposit on 17/06/1975); Upper Volta (ratification on 20/06/1975 and deposit on 8/12/1975). Later, the treaty entered into force respectively by ratification of the following states: Benin (ratification on 06/24/1975 and deposit on 08/07/1975); Sierra Leone (ratification on 26/06/1975 and deposit on 21/07/1975); Togo (ratification on 06/27/1975 and deposit on 07/17/1975); Niger (ratification on 7/02/1975 and deposit on 7/07/1975); Guinea-Bissau (ratification on 15/03/1975 and deposit on 19/04/1976); Mauritania (ratification on 15/03/1975 and deposit on 19/04/1976) *(See: United Nations - Treaty Series,* no. 14843, 1976, pp. 17-41). In the case of Cape Verde, although the official ECOWAS website indicates that the Archipelago joined the ECOWAS in 1976 (as well as Gomes, Joaquim, "Tntegra,;ao Regional: Cabo Verde na CEDEAO", Delgado, J.; Varela, O.; Costa, S. (Orgs.), *As Relar;oes Externas de Caba Verde: ((Re)leituras Contempordneas,* Praia, TSCJS, 2014, pp. 363-384 (380), some authors state that binding was not made until 1977, the approval by Parliament in 1981, as can be seen below, and deposit of ratification in 1984 *(cfr.* Reis, Jose Antonio, "As politicas publicas de Cabo Verde, no ambito da integra,;ao na CEDEAO e da estrategia global de desenvolvimento", in Cabral, Iva & Furtado, Claudio, *Os Estados-nar;oes e o desafio de integrar;iio regional da Africa do Oeste: 0 caso de Caba Verde,* Praia, s.n., 2008, pp. 83-95 (84); Rocha, Jose Luis, "Dimensao econ6mica da integra,;ao regional: CEDEAO e o caso de Cabo Verde", in Cabral, Iva & Furtado, Claudio, *Os Estados-nar;oes e o desafio de integrar;iio regional da Africa do Oeste: Ocaso de Caba Verde,* Praia, s.n., 2008, pp. 113-126). lntemally, it was only in 1981 that was published the Binding Decision No 2/81of! Ith February, which received the ECOWAS Treaty into the internal legal order of the Republic of Cape Verde.

[7] According to *ECOWAS Annual Report 2016* - the most recent available on the subject - the first nine States to ratify the ECOWAS Revised Treaty were: I) Liberia (12/29/1993); 2) Sierra Leone (May 10, 1994); 3) Burkina Faso (06/14/1994); 4) Senegal (06/14/1994); 5) Nigeria (7/1/1994); 6) Mali (7/14/1994); 7) Togo (10/27/1995); 8) Benin (12/14/1995); 9) Ghana (6/29/1995); and 10) Niger (8/23/1995). Even though the 9th deposit of the ratification instrument took place on 29/06/1995, the entry into force of the treaty date waited for the deposit of the tenth instrument, which took place on 23/08/1995. Other deposits took place on the following dates: Cape Verde (July 15, 1996); Cote d'Ivoire (11/11/1996); The Gambia (8/26/1997) and Guinea Bissau (11/21/2014) (Cf. ECOWAS 2016 Annual Report and Annexes, available at «https://www.ecowas.int/wp-content/uploads/2017/11/Annexes_ 2016-Annual-Report.pdf»). Considering that the ECOWAS-RT is silent as regards the entry into force of the other deposits of the instruments of ratification, is taken into consideration the supplementary rule therein established (Art. 92 (I) ECOWAS-RT) that makes use of the Vienna Convention on the Law of the Treaties (VCLT) of 1969 which, in tum, establishes that in such cases the entry into force occurs on the date of the respective consent (Art. 24 (3), VCLT).

'According to a survey presented by the *ECOWAS 2005 Annual Report-the* most recent one available on the subject- it was realized that since the advent of ECOWAS in 1975, 54 protocols and conventions have been signed, including the ECOWAS-RT. As indicated, of this total, 38 have already entered into force as they have met the required ratifications, 12 have provisionally entered into force (still in need of ratifications for definitive entry into force) and 4 are still pending entry into force. This overall view is not the same as stating that the applicable documents at the present time (either definitively or provisionally) involve all the 15 Member States (Cf. *ECOWAS 2015 Annual Report and its Annexes,* available at: «https://www.ecowas.int/wp-content/uploads/2017/11/Annexes_2015-Annual-Report_English.pdf»).

As you all know, until 2006, the normative acts were issued under the ECOWAS-RT,[9] and after that, based on the *Supplementary Protocol A/SP.1/06/06*, which inaugurated the *ECOWAS new Community acts regime* (although it is still provisionally in force, Cape Verde being the only country that has not signed it). In any case, this allowed the ECOWAS legal framework to be consolidated with *complementary acts, decisions, regulations, directives* and *executive acts* - not to mention the Judgments of the ECOWAS Court of Justice (EOWAS-CJ) and the other non-legal instruments, which are also relevant as substantiating a kind of *soft law*.[11]

As we look into the study of *ECOWAS Law*, the first major challenge concerns precisely the difficulty of access to its legal regime set. Many of the acts that make up the *ECOWAS Law* are not easily accessible for consultation, a few can be found through the Community official website and others can be accessed through the official newspaper (in the case of Cape Verde). There is therefore a lot of information gap about an aspect that is central to the operationalization of cooperation and integration in the region.

In view of this, it goes without saying, from the academic perspective, that this very much hinders any more serious and thorough investigation of the subject and, from a general perspective, it affects negatively the spread of *juridical insecurity*, insofar as one cannot pretend to impose a legal regime set which is, *de facto* and *de Jure*, unknown. In other words, it cannot be assumed that norms of which the actual existence is not known, are fulfilled. This is a fundamental condition for the functioning of any legal order based on the *principle of law.*

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[9]The ECOWAS-RT/1993 established the *decisions* and the *regulations* as legal acts, besides others that can also be inferred. The Authority of Heads of State and Government of the ECOWAS Member States, which is responsible for adopting the necessary measures for the progressive development of the Community and for the achievement of its objectives, namely to determine the general policy and main orientations, to direct, harmonize and coordinate the economic, scientific, technical, cultural and social policies of the Member States, and to ensure the functioning of the Community institutions and other acts relevant to the life of the Community concerning their operation and appointment of officials (Article 7 (2 and 3), ECOWAS-RT). ln formal terms, *"the acts of the Conference are called decisions."* (Art. 9 (1), ECOWAS-RT). On the other hand, the Council of Ministers is composed at ministerial level, generally responsible for ECOWAS affairs or any other minister responsible for ensuring the proper functioning and development of the Community. It may (save as otherwise provided in the Treaty and a Protocol) provide directives (by delegation of power to the Authority) on harmonization and coordination of economic integration policies (in addition to conference recommendation functions, appointment of officials, and other functions relevant to the life of the Community) (Art. I0, ECOWAS-RT). Meeting twice a year in ordinary sessions, one of which precedes the ordinary session of the Authority and may also meet extraordinarily (Art. 12 (I), ECOWAS-RT).

[10]It should be noted that although in concrete terms, after 2006, the *new regime of the Community acts of the Supplementary Protocol A/SP 1106/06* replaced the *former regime of the 1993 ECOWAS-RT acts*, if the truth be told, such a substitution is not yet definitive. In the light of various protocols and conventions aimed at accelerating the production of their effects within the Community, this Protocol is also among those that opted for the use of the provisional term technique which requires merely the signature of the Heads of State and Government. So it is under this *new regime* (provisional) that the acts have been approved from 2006, pending their ratification *(cf ECOWAS 2015 Annual Report and its Annexes*, available at «https://www.ecowas.int/wp-content/uploads/2017/11/Annexes_2015-Annual-Report_English.pdf» - latest available with referrence to the ratification *status* of the ECOWAS Protocols and Conventions).

[11] It can be noted that in the case of *Council recommendations* the designation *soft law* is quite appropriate, insofar as they give rise to counseling acts from which there is no direct legal effect, it is from them that legal acts emanate from the Authority of Heads of State and Government - these are binding. The recommendations are numerous and aim at presenting, to the *Authority*. proposals on acts that should be taken to achieve the Community's objectives, consequently, *recommendations* are instruments, that although not binding, attach *decision drafts* to be submitted and adopted by the supreme institution.

Perhaps at the root of this problem is the mechanism provided by the ECOWAS-RT[12] for publishing its acts which, despite its inoperability, was eventually reproduced within the framework of the *Protocol A/SP. I /06/06.*[13] In accordance with the aforementioned documents, the acts emanating from the Community institutions, after being approved and signed, are expected to be published in the Official journal of the Community and within the same period in the official journal of each Member State. It follows that the aforementioned expectations appear to have been based on the presumption that the mechanism would guarantee the publication of legal documents, because it would be safeguarded at two fronts (at Community headquarters and in the Member States themselves). However, in the present context, it cannot be denied that the Community's official journal is still not accessible electronically, nor is it easy to access the official publications of the respective Member States, which may not have actually participated in the approval of the Community Act.

Against this backdrop, the lack of publicity and transparency of *ECOWAS Law,* seems to us to be one of its main weaknesses and should deserve due attention from the Community institutions.

Similarly, as regards the ECOWAS-CJ, it can be noted that there has been a clear effort to disseminate its work, with the availability, especially in the English versions, of the cases adjudicated between 2015-2019, as well as gradual dissemination in the other official languages (French and Portuguese) - which is a meritorious effort and facilitates the access to the documents. But it is equally important that its entire trajectory be made available, from the beginning of the work of this judicial body, so that its memory may be made known. Not to mention the works and academic studies already produced in the Anglophone and Francophone world devoted to the study of ECOWAS, many of which are by authors who shewd light on this event, but which are equally difficult to acquire.. [14]

[12] In the case of *the Authority of Heads of State and Government decisions,* the Art. 9 (5 and 7), ECOWAS-RT stated that *"The Executive Secretary shall publish the decisions thirty (30) days after the date of their signature by the Chairman of Authority."; "Decisions shall be published in the National Gazette of each Member State within the period stipulated in paragraph 6 of this Article."* In the case of *the Council* a/Ministers *Regulations it was* established the same rule in Art. 12 (4), ECOWAS-RT, *"Regulations shall be published and shall enter into force within the same period and under the same conditions stipulated in Paragraphs 5,6 and 7of Article 9 of this Treaty"*

[13] *Cf* The new Art. 12, *"Supplementary Protocol A I SP] I 06/06 Amending the ECOWAS Revised Treaty", "l. Supplementary Acts, Regulations, Directives and Decisions shall be published by the Commission in the Official Journal of the Community within thirty (30) days after signature. They shall also be published by each Member State in its National Gazette within the same time frame. 2. Supplementary Acts, Regulations, and Directives shall enter into force after publication by the Commission on a specified date therein. 3 Decisions shall be communicated to the persons designated therein and shall enter into effect on the date of the notification."*

Given the above, in addition to the lack of access to legal, judicial and academic production material, the result is that everyone loses. With such a fragmented and atomized knowledge, it is difficult to promote discussions that contribute to mutual enrichment and, consequently, the maturing of critical reflections on the legal system of West Africa and its Member States, which needs to be addressed.

3) Cape Verdean internal law and its connection with Community law in the region

Finally, it is also important to share that there are also research challenges from the perspective of the State's domestic law. The issue is especially relevant to Cape Verde in view of the fact that, on the one hand, the country was bound by the 1993 ECOWAS-RT, but, on the other hand, the way in which Cape Verdean domestic law will relate to the ECOWAS legal order is still questionable. There is a lack of knowledge about the consequences that such a process will have, not only in legal terms, but also because it is a small insular economy, and the political impact that the process will have on the country's sovereignty is also quite obscure.

By way of sharing the Cape Verdean experience, the 1992 Constitution of the Republic of Cape Verde (which has already undergone some amendments[15]) foresaw the possibility for the country to integrate itself into community initiatives and in its Article 12 (3)16 stipulated that since Cape Verde is part of supranational organizations, the law that emerges from them is *automatically* part of Cape Verdean law. Despite the importance of this standard that facilitates and authorizes the application of *Community law* at the *internal legal system*, there are other issues that need to be deepened. Firstly, in addition to

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[14] *See, eg,* Adedej i, Adebayo, Prospects of Regional Economic Cooperation in WestAfrica", *The Journal of Modern African Studies,* v. 8, no. 2, Jul. 1970, pp. 213-231; Adi, Hakim (2000-01-01). Pan-Africanism and West African Nationalism in Britain. *African Studies Review, African Studies Review,* Vol. 14, No. 2 (Sep., 1971), pp. 205-218; Asante, SKB, *The Political Economy of Regionalism: A Decade of the Economic Community of West African States (ECOWAS),* New York, Praeger, 1986; Adedeji, Adebayo, "ECOWAS: A Retrospective Journey", in Adebajo, Adekeye & Rashid, Ismail (eds.), *West Africa's Security Challenges: Building Peace in a troubled region,* London, Lynne Rienner Publishers, 2004, pp. 21-49; Ladan, Muhammed Tawfiq, *Introduction to ECOWAS Community Law and Practive: Integration, Migration, Human Rights, Access to Justice, Peace and Security,* Nigeria, The Ahmadu Bello University Press Limited, 2009; Ukaigwe, Jerry, *ECOWAS Law,* Switzerland, Springer, 2016. There are also some studies on ECOWAS from the Cape Verdean perspective, *eg,* Fernandes, Gabriel, "Caba Verde e CEDEAO - uma questao identitaria", in Cabral, lva & Furtado, Claudio, *Os Estados-nar;oes e o desafio de integrar;iio regional da Africa do Oeste: 0 caso de Caba Verde,* Praia, s.n., 2008, pp. 53-67; Gomes, Joaquim, "lntegra9ao Regional: Caba Verde na CEDEAO", in Delgado, J.; Varela, O.; Costa, S. (Orgs.),As *Relar;oes Externas de Caba Verde: (Re)Leituras Contempordneas,* Praia, lSCJS, 2014, pp. 363-384; Reis, Jose Antonio, "As politicas publicas de Caba Verde, no iimbito da integra9ao na CEDEAO e da estrategia global de desenvolvimento", in Cabral, Iva & Furtado, Claudio, *Os Estados-nar;oes e o desafio de integrar;iio regional da Africa do Oeste: 0 caso de Caba Verde,* Praia, s.n., 2008, pp. 83-95; Rocha, Jose Luis, "Dimensiio econ6mica da integra9iio regional: CEDEAO e o caso de Caba Verde", in Cabral, Iva & Furtado, Claudio, *Os Estados-nar;oes e o desafio de integrar;iio regional da Africa do Oeste: 0 caso de Caba Verde,* Praia, s.n., 2008, pp. 113-126; Semedo, Gervasio, "Crise Systemique et Financiere et ObjectifD'Integration Monetaire des Pays de la CEDEAO: Evidences pour l'Economie du Cap-Vert", in Delgado, J.; Varela, O.; Costa, S. (Orgs.), *As Relar;oes Externas de Caba Verde: (Re)Leituras Contempordneas,*Praia, ISCJS, 2014, pp. 385-424 - apenas para citar alguns exemplos.

"The Constitution of the Republic of Cape Verde (CRCV) 1992 (approved by Constitutional Law No. l/VI/92, 25th September, Official Bulletin No. 12, Series I, Supplement) has already been amended by the extraordinary revision promoted by the Constitutional Law No. l/IV/95 of 13th November, Official Bulletin No. 39, Series I; by the ordinary revision made by Constitutional Law No. l/V/99 of 23rd November, Official Bulletin No. 43, I Series, and by Constitutional Law No. 1/VII/ 2010 of May 3, Bulletin Official No. 17, I Series.

"Art. 12 (3), CRCV, *"Legal acts emanating/ram the competent bodies of supranational organizations to which Cape Verde is a party shall apply directly to the domestic legal system, provided that this is provided for in the respective constitutive conventions."*

political decisions, questions about the legal status of the Community Law in domestic law need to be clarified. In principle, under Cape Verdean law, the Constitution's supremacy can be upheld over any other international norm, but what about the ECOWAS Community law?

Therefore, it seems to us that the legal strengthening of the region cannot be limited to a unilateral effort to structure the *West African Community law* with a view to its more efficient and effective enforcement *"against the Member States"*, but it should also, with respect to plurality, deepen the debate around the *domestic law of the* participating countries, in particular, their respective constitutional and political-institutional realities, as well as the way in which the *Community law* can impact on their legal systems in order to know how *ECOWAS Law* can be effectively bound up with domestic law and not run the risk of just hovering as a foreign legal regime set.

Final considerations

In view of what has been presented, there are still many questions to be investigated, deepened and debated about *ECOWAS Law.* We have devoted some time to analyze the *Economy Law,* at different levels of normativeness, both regarding internal regulation and Community regulation. And in this regard, we can conclude this brief presentation with two considerations that can be furthered later on. On the one hand, although the *Law* plays an important role in the process of economic integration, it in fact, has intrinsic limitations by itself and there are political, social and economic factors that cannot simply be forged through law.

On the other hand, it is necessary to clarify that the academic contribution based on the serious gathering of evidence and with a critical look at reality may sometimes not be in full conformity with certain political views, but it cannot be forgotten that different perspectives are intrinsic to any integrationist project and, contrary to popular belief, they contribute to the enrichment and maturing of the community system. All legal construction processes, especially in the economic field, are subject to errors and successes. Hence, the indispensability of legal research in order to propose the necessary adjustments so that the applicable law is more aligned with the concrete reality.

Thank you!

ECONOMIC INTEGRATION OF WEST AFRICA THROUGH THE LAW: CHALLENGES AND PROSPECTS

BY

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INTRODUCTION:

'No man is above the Law, and No man is below it; nor do we ask any man's permission when we ask him to obey it. Obedience to the Law is demanded as a right, not asked as a favour' **Theodore Roosevelt.**

Sociologists and jurists of the sociological school of Law have always acknowledged the role of Law in shaping human societies. Through the ages, the instrumentality of Law has been a veritable tool in determining the course of human history and the evolution and development of societies, modem and ancient. It is in keeping faith with the above that this paper seeks to espouse the credibility of the use of law in achieving the much touted and laudable economic integration that West Africa craves.

ECOWAS was established on May 28 1975 via the1reaty of Lagos. ECOWAS is a 15 member regional group with a mandate of promoting economic integration in all fields of activity of the constituting countries. Member countries making up ECOWAS are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo. Considered one of the pillars of the African Economic Community, ECOWAS was set up to foster the ideal of collective self-sufficiency for its Member States. As a trading union, it is also meant to create a single, large trading bloc through economic cooperation.

With a Revised Treaty in 1993, the vision of ECOWAS revolves round a borderless region where the population has access to its abundant resources and is able to exploit same through immense opportunities under a sustainable environment. What ECOWAS has created is an integrated region where the population enjoys free movement, have access to efficient education and health systems and engage in economic and commercial activities while living in dignity in an atmosphere of peace and security. ECOWAS is meant to be a region governed in accordance with the principles of democracy, rule of law, and good governance.

This Work divided into six parts interrogates the phenomena of economic integration of West Africa through the following spectra: Supranationality of ECOWAS and the Community Legal Order, Obligations of Member States: Consequences of non-fulfilment, Legal Education in West Africa States, Enforcement of Judgments of National Courts and the ECOWAS Courts, and the Role of the ECOWAS Commission. The final part examines the challenges of this laudable Community, and proffers workable solutions through the eyes of the Law and social engineering.

SUPRANATIONALITY OF ECOWAS[2] AND THE COMMUNITY LEGAL ORDER

The formation and functionality of any regional (supranational), body requires the surrender of a measure of sovereignty[3] of the constituting nations for the purpose of making the body effective.

[2] Economic Community of West African States.
[3]Sovereignty in simple terms is the power ofa State to make laws and maintain effective control of its territory.

The ECOWAS Community legal system is a product of limiting the sovereignty of Member States. This is well encapsulated in the preamble of the ECOWAS Revised Treaty viz: *'the integration of 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'*

Notwithstanding the above, Jurisprudential opinion is divided as to whether the ECOWAS is truly a supranational[4] organisation for all intents and purposes, citing the EU as a perfect model of Supranationality.

According to the Proponents of the ECOWAS-not-a-Supranational-model, *although ECOWAS Law might have been modelled on European Union Law, yet both do not enjoy the same legal force within their respective communities. While it is appropriate to describe European Union Law as part of 'corpus Juris' or body of Laws of England, for example, it would amount to a misnomer to describe ECOWAS Law as part of Nigerian or Senegalese legal system. The difference between ECOWAS law and European Law leans on the effect of Supranationality within these disparate integration arrangements. Because the former is not supranational, it cannot transverse the jurisdictions of the Member States; since the latter is, it permeates the membrane of sovereignty unto the body of laws of all the countries that constitute the European Union*[5].

Matter-of-fact, the above statement may not be lightly dismissed as babbling. Inspite of the lofty visionary postulation of the Treaty, ECOWAS is still a far cry from what the founding fathers envisioned. Almost annually, African thought leaders gather and rehash the same notions of integration, they vow to actualize old notions and set new landmarks, yet the reality on ground is totally an antithesis to the anthem.

However, a lucid consideration of the Treaty and relevant international law principles would clearly posit that The Economic Community of West African States *was birthed as a supranational entity* of 15 Nation; on May 28th 1975 in Lagos, Nigeria. This position was even more reinforced by the signing of the ECOWAS Revised Treaty of 1993. I am of the considered opinion that the ECOWAS *is a supranational entity that should be made to work.*

What then is being 'supranational', and how can one understand Supranationality? Why has Supranationality not worked for ECOWAS? Has ECOWAS laws *permeated* the lives of the citizens of West Africa at the national level of Member States, and

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[4] In addition to being a supranational organisation, the ECOWAS also has a legal personality. **Article 88** of the ECOW AS Revised Treaty declares that the community shall have an international legal personality. Asides the explicit provision of the Treaty, the popular Reparation for Injuries case also formulates the principles and solidifies the legal personality of such organizations as ECOWAS.

[5] See Enforcing ECOWAS Law in West African National Courts, ES Nwauche, in Journal of African Law, Vol. 55, No2 (2011) Pages I 81-202, Published by School of Oriental and African Studies; available online at http://www.jstor.org/stable41709860 ; accessed 20th July and 2nd August 2019. It is also trite that though the ECOWAS Treaty creates a new legal regime in the sub region, this however does not replace the separate legal systems, since the aims of the organization falls short of a pure political union. Also, some other writers in the same school have argued that notwithstanding some characteristics of a federal system exhibited by ECOWAS, the organization is not really a 'supra-state'. At best, it approximates to a confederation. See LATEEF ADEGBITE; THE NEED FOR INTEGRATION OF LEGAL SYSTEMS AMONG ECOWAS STATES In a Book of ECOWAS Reading, Nigeria Institute oflntemational Affairs, 1979

indeed the *fabric* of life of the Member States? If No, why? Answers to these questions will be provided in this discourse.

A supra-national entity has been described *simpliciter* as a "super -State or authority with commensurate powers, able to enforce conformity on its members". When used in an economic integration context, Supranationality depicts 'a particular type of international organization empowered to exercise, directly, some of the functions otherwise reserved for a state[6]. Supranational organisations or entities enjoy a special status in International Law. They have considerable powers vis the states that establish them and they are an exception to the general International Law principle that an international organization cannot be more powerful than the states that establish it.

The distinct elements that delineate such supranational organisations from other international organisations have been the pooling of sovereignty in favour of the quasi-state organisation and the ensuing limitation to the sovereignty of every member of the organisation. Matter-of-fact, the European Union cast a perfect (model of a supranational entity) image of pooling and limiting sovereignty in an organization - members relationship because its laws and institutions in such hierarchical formation take pre-eminence over the existing laws and institutions of its Member States.

Most learned writers in explaining supranationalism from EU model mirrors the concept along *normative* and *decisional* lines. *Normative* supranationalism relates to the link and the hierarchy existing between EU policies and legal measures on the one hand, and the laws and policies of the countries that make up the Union on the other hand. They opine that in normative supranationalism, the policies and measures of the supranational entity should be interrelated with those of the Member States; while *decisional* supranationalism borders on the institutional structure and decision-making processes through which the Union, first, initiates, debates and formulates measures and policies , and second, how it then promulgates and executes them. Thus, normative supranationalism could relate to judicial approach, while decisional supranationalism could cover political approach.

In other words, while normative supranationalism would in the context of ECOWAS refer to the ability of a citizen of ECOWAS state to invoke ECOWAS law in a matter before the national court of that citizen and for that court to be bound to follow that law, the Decisional approach would refer to the making of laws by the Legislature or Parliament of ECOWAS Member- States bearing in mind the provisions of the Revised Treaty and in such a way and manner as not to breach the provisions of the Treaty. This in another parlance is called the direct effect of community law[8].

[6] Sovereignty versus Supranationality: The ECOWAS Conundrum; MP Okon, online at URL:http://dx.doi.org/l0.19044/esj.2016.v12n23p289 accessed I5th July 2019

[7] International Law, Text, Cases, and Materials, Ademola Abass, published by Oxford University Press, 2012

[8]The principle emerged from the case of Van Gend en Loosv Nederlandse Administratie der Belastingen where the European Court of Justice (ECJ) established an important principle that provisions of the Treaty establishing the European Economic Community (EU Treaty) were capable of creating legal rights which could be enforced by both natural and legal persons before the courts of the community's member states. In that case, the ECJ adopted criteria for establishing the direct effect of the EU Treaty: the provision must be sufficiently clear and precisely stated; it must be unconditional or non-dependent; and it must confer a specific right on which the citizen can base his or her claim.

Direct effect is to be differentiated from *direct applicability* by which a country determines how its treaties become part of its national legal system and therefore binding on its national courts. When a treaty is directly applicable, it is enforced as a national law *only upon ratification.* It therefore follows that a treaty that is directly applicable has direct effect in member states from the time of *ratification*[9]. The concept of direct effect has also been extended to legislation adopted pursuant to the Treaty in the form of Directives, and Regulations from the European Commission. However it should be noted that the concept of *direct effect* is not found in the EU Treaty but it is a creation of the European Community Court.

The Revised Treaty constitutes the ECOWAS legal System, a fact which ordinarily should make it directly applicable and of direct effect in West African National Courts. Unfortunately, this is not the case because by reason of Article 5(2)[10], its applicability depends on the manner in which it is incorporated into states national legislation.

This means that it is the constitutional measures applicable for incorporation in each Member State that will determine the direct applicability and effect of the Revised Treaty. Owing to colonial antecedent, there is a sharp divide between English speaking West African countries like Nigeria, Ghana, Gambia, Sierra Leone, and Liberia which are generally regarded as dualist, and the French Speaking West African Member States of ECOWAS who are principally monist in orientation, even if dualist in practice.

International law including Treaties does not have force of law within the territories of English speaking West African Member States of ECOWAS unless it has been promulgated in National legislation. Without such national legislation, a Treaty will not have the force of Law in the country. Since there is no evidence that any of the English speaking countries have domesticated the Revised Treaty, it is not applicable within these countries and is less likely to have direct effect in their national courts.

The crucial question is whether judgments of the ECOWAS Court can have precedential value in national courts of citizens.

Where the Revised Treaty is directly applicable, as in the French speaking countries and Cape Verde, it is clear that the ECOWAS is superior to the national appellate courts and its judgments are of precedential value. Where as in the English speaking countries, the Revised Treaty is not directly applicable, it is not certain whether the decisions of the ECOWAS Court are applicable and if applicable are superior to judgments of the highest national courts[11].

In a similar vein, assuming the Revised Treaty is domesticated, it is equally important to determine the status of the Treaty. Does Domestication make the Revised Treaty inferior or superior to national constitutions?

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[9] Ibid

[10] **Article 5(2) states:** Each Member State shall in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty.

[11] See for example the Foreign Judgments (Reciprocal Enforcement) Act, Chap F35, Laws of the Federation of Nigeria 2004 that designates the High Court of the 36 States and the FCT as the designated Registering Authority.

The answer appears to be that domesticated Revised Treaty is not superior to the Constitutions of English speaking ECOWAS countries because these constitutions declare that they are superior to all other laws [12]. Nonetheless, the superiority of the revised Treaty to municipal legislation might be seen as an encouraging feat since a significant portion of National law will be subject to the Revised Treaty and its derivatives[13].

Another means of domestication is through the making or amending of legislation by a national legislation with the ECOWAS Treaty in mind. Drawing on the preceding, the Revised Treaty and equivalent legislation, including protocols will certainly qualify as capable of influencing domestic legislation and the decisions of national courts in English speaking West African States.

It is also a commendable act that some courts often apply a Treaty even when it has not been domesticated. In **New Patriotic Party v Inspector General of Police, Archer J of Ghana Court said** ; *"Ghana is a signatory to this African Charter and Member states of the Organisation of African Unity and parties to the Charter are expected to recognise the rights and duties enshrined in the Charter. I do not think that the fact that Ghana has not passed specific legislation to give effect to the Charter means that the Charter cannot be relied upon.* "

We applaud the readiness of the West African national judiciaries to regard the Revised Treaty of persuasive authority in the absence of domestication and encourage that such practice be upheld as it will greatly enhance the status of the Revised Treaty.

In the French speaking West Africa Member-States, there is a difference in the manner in which international law is received. The reason is that these countries are *monist* in orientation even if they appear to be *dualist* in practice. Consequently, in some circumstances, some level of legislative activity, including the revision of the constitution, is required before a Treaty takes effect. In these countries, as soon as international law is made, *it becomes part of the national laws of the state,* subject to the *reciprocal enforcement* of international law by other states[14] Thus while in the English speaking Member-States case, domestication is required before the ECOWAS law can authentically be regarded as part of the *'corpus Juris'* of the State, in the French

[12] For example Nigerian courts have held in a plethora of cases that in respect of the African Charter on Human and Peoples Rights (The African Charter), that the Nigerian Constitution is superior to the African Charter but that the Charter is superior to municipal legislation. See also Sections 1 and 12 of the Nigeria Constitution.

[13] In the Nigerian case of Oshevire v British Caledonian Airways, the Nigerian court stated that any domestic legislation in conflict with a convention is void because an international agreement embodied in a convention or Treaty is autonomous, as the High contracting persons have submitted themselves to be bound by its provisions which are above domestic legislation. Nigerian courts have thus recognised the fact that the Nigerian state cannot deliberately enact laws in contravention of its international obligations and undertakings. Significantly, Nigerian courts will interpret domestic statutory laws in such a way that they are compatible with Nigeria's responsibility not to be in breach of international laws.

[14] Using Senegal and Benin as example, **Article 147 of the Constitution of the Republic of Benin 1990 provides** that Treaties or agreements lawfully ratified shall have upon their publication, an authority superior to that of national law without prejudice to each agreement or Treaty in its application by the other party. **Article 146 of the same Constitution** provides that if the Constitutional court upon a submission by the president of the Republic or by the president of the national Assembly, decides that an international obligation allows a clause contrary to the constitution, the authorization to ratify it may occur only after the revision of the constitution. Similarly, **Article 98 of the Senegalese constitution** of2001 provides that treaties or agreements duly ratifies shall upon their publication have an authority superior to that of national law, subject in respect of each treaty and agreement to its application by the other party. See similarly **Article 97** of same Constitution.

Speaking Member States case, such a requirement is absent subject however to the requirement ofreciprocal enforcement by other state(s).

Equally, the Lusophone countries of Cape Verde and Guinea Bissau generally follow the monist tradition. **Article 11 (2) of the Cape Verde Constitution of 1992** provides that 'International Treaties and Agreements, validly approved or ratified, shall be in force in the Cape Verdean legal order after their official publication and their entry into force in the international legal order, and for the time that they are internationally binding on the state of Cape Verde '

In a similar vein, Article 7 of the Revised Treaty established the Authority as the Supreme institution of ECOWAS and by Article 9 (1) enabled it to act by decisions which are the equivalent of a Treaty. In order to discharge its duties, the Authority has made a number of protocols dealing with all kinds of subject matter.[15]. Article 9(4) provides that Decisions of the Authority shall be binding on Member States and Institutions of the Community. Such *Decisions* shall automatically enter into force within 60 days of their publication in the Community's Official Journal and shall also be published in the national gazettes of Member States.

On one hand, the effect is that since the Protocol is regarded as a Treaty, the discussion above on the manner of incorporation will also apply to it. On the other hand, the provision of Article 9(4) can be relied upon to argue that the Authority's decisions, including Protocols are directly applicable in Member States. It is for this reason it may be said that the constitutional requirement for incorporation wherever and however it exists is not applicable to Decisions of the Authority.

With respect to judicial sovereignty, there is little doubt that national judicial institutions are subordinate to Community legal institutions. Adopting and actualizing this position- this direct effect principle will significantly enhance the integration process within the ECOWAS.

As it relates to the Community legal order, it is noted that ECOWAS is an international (supranational) Community with a legal order or system. A combined reading of a number of provisions of the Revised Treaty makes it evident that the Treaty constitutes a legal system within ECOWAS. Furthermore, the aims and objectives of ECOWAS envision a Community Legal system. This is evident from ECOWAS objectives which create norms or provide for the creation of norms by a number of bodies representing a broad spectrum of executive, legislative and judicial competencies. These include the Authority, Council of Ministers, Community Parliament, Economic and Social Council, the Community Court of Justice, (ECOWAS Court); ECOWAS Commission, The Fund for Cooperation, compensation and Development, specialized technical Commissions, and any other institution established by the Authority[16]. The requirement that an enabling legal environment be created, as well as the right of residence and establishment all also point to the work of Community institutions.

[15]The Protocols are available at www.ecowas.int> .
[16] See Article 6

International organizations such as ECOWAS are legal persons whose act1v1tles are governed by Law or a legal order. This Law or legal order includes obligations under general rules of international law, under their constitutions and under international agreements. Their powers are derived directly from their constituent instruments, in this case the 1975 Treaty and the Revised Treaty of 1993, as reflecting the intentions of their founders, and are subject to the limits of law.

Generally[17], the bindingness of international law is based principally on the *consent*[18] of those states that agree to be bound by it. How states consent to the formation and bindingness of international law varies. Like the case of ECOWAS, states may agree to explicitly spell out the rules of international law[19] that they wish to apply and to be applied to them in their relations, and this is usually done in the form of Treaties or Conventions, of which the ECOWAS Treaty is a prime example. Such an agreement or consent can also emerge from the customary practices of states. Thus, these two modes Treaties and Customs are very fundamental. Flowing from this, States that consent to a Treaty are to be bound by the Rules contained in that Treaty. This is a fundamental principle of International Law.

Generally therefore, the legal regime of an international organization such as the ECOWAS would run thus:
Under Internal Law:
The constituent instrument
Relevant decisions and Resolutions of the Organization
Established practice of the Organisation
Under General International Law (Including secondary legislation of other international organizations)
Under National Law:
Contractual relations
Non-contractual obligations

Specifically therefore, under the ECOWAS Community legal Order, you have the Treaty[20] as the Supreme Law of the Community; then you have the *Official Journal/ Supplementary Acts/Protocols/Decisions* made by the Authority of the Heads of State and Governments; the *Regulations* by Council of Ministers; and the *Final Communiques* which is issued at the end of every Summit.

Treaty: The ECOWAS Treaty is a Multilateral Agreement signed by the Member States that made up ECOWAS. The initial Treaty was signed by the Heads of States and

[17] There are a few exceptions.
[18] Consent as one of the fundamental basis of international law is inspired from ancient practice of the Roman Empire, and developments in domestic law in Europe and USA.
[19] In general tenns, the sources of legal obligations establishing the parameters within which such activities may be lawfully carried out may be divided into two broad categories. The first category comprises the 'rules of the organization', sometimes referred to as 'internal law' of the organization. The second category, sometimes referred to as 'external law' comprises those rules arising outside the organization itself, of which there are two types- the rules of international law (in particular, treaties and custom) and the rules of national law.
The applicability of one or more of these sources of obligation will tum on the circumstances of each particular matter, with a dominant factor being the question of whether the issue has arisen in terms of the organisation's relations with one or more of its own members, or with other subjects of international la (i.e. other international organizations or non-member states), or other third persons such as its employees or agents, or private third parties. **SEE BOWETT LAW OF INTERNATIONAL INSTITUTIONS, CHAPTER 14**
[20] The 1975, as well as the 1993 Revised Treaty

Governments of the then 16 Member States in 1975 in Lagos, Nigeria. With new developments and mandates for the Community, a revised Treaty was signed in Cotonou, Benin republic in July, 1993 by the heads of States and Governments of the now 15 member States. The signing of the revised treaty further bound the sovereign states into agreeing on 93 different Articles, which they have agreed to work together as a single regional economic block to attain.

Very fundamentally, a new regime has been adopted for Community Acts which is incidental to the transformation of the Secretariat into a Commission. Until now obligations of Member States were captured principally in *Protocols* and *Conventions* which are subject to lengthy parliamentary ratification processes.

These lengthy processes delayed the entry into force of the legal texts thereby paralyzing the integration process. Under the old legal order, Decisions of the Authority were 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 principle of supranational becomes more pre-eminent. There is now a de-emphasis on the adoption of *Conventions* and *Protocols.* In place of Conventions and Protocols, Community Acts will now be *Official Journals/ 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 the Institutions of the Community. 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. Decisions are enforceable in Member states and all designated therein. Directives and their objectives are binding on all Member States. The modalities for attaining such objectives are left to the discretion of states.

The Commission[21] adopts *Rules* for the implementation of Acts enacted by the Council. These Rules have the same legal Force as Acts enacted by the Council. The Commission makes recommendations and gives advice. *Recommendations* and *advice* are not enforceable.

Till date ECOWAS has made dozens of Supplementary Acts via the instrumentality of the Heads of State and Government and issues final communiques at the end of every summit.

Thus in sum, Supranationality sadly has not permeated the fabric of the West African Member States of ECOWAS viz the implementation of ECOWAS Law because African Member-States cling unto that old word, *Sovereignty,* which though hallowed, has sadly become a spanner in the wheels of economic integration of West African

[21] Formerly known as the Secretariat.

States. Similarly the West African *Common Law/ Civil Law divide* or what you can call the English Legal system versus the French Legal system, which usually manifests in the process of Ratification/Domestication or put differently, the process by which these ECOWAS Laws become applicable in Member States viz whether it is directly applicable or of direct effect, and whether or not it is superior or inferior to the Constitution and/or other Law, and the inability of the current legal regime to harmonise this dual system of law running concurrently in the stream of West Africa has adversely contributed to the current state of things.

But notwithstanding the above, many learned writers have rightly argued that West Africa legal system can be harmonised to produce a single stream of legal system. Happily, the OHADA system is an existing example to spur us onward in this hope.

In rounding off this part, definitely, "an integration problem would arise where the expected cooperation is not forthcoming from Member States because of their unwillingness to surrender part of their sovereignty, since the coordination of economic planning and economic politics *demands* it." It is inevitable to state this in pungent terms: Supranationality is not begged, it is demanded. If the political leaders of Member States truly wish to see the actualization of the lofty vision of the Community, then they have to let go of "narrow - minded economic nationalism: Supranationality is not begged, it is demanded, If and for the ECOWAS to work.

PART B: MEMBER STATES COMMUNITY OBLIGATIONS: CONSEQUENCES FOR NON- FULFILMENT:

The Community obligations of Member States of ECOWAS are clearly embodied in the Treaty[22], Protocols and other legal instruments of the Community. In accentuating the rebirth of ECOWAS, Article 2 boldly declares: *"It shall be the aim of the Community to promote cooperation and development in all fields of economic activity for the purpose of raising the standard of living of its people's and fostering closer relations among its members."*

In setting out the specific aims and objectives of the Community in Article 3 of the Revised Treaty, Member States dedicate themselves 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 to contribute to the progress and development of the African Continent.

In order to achieve this Union, the Community is required to ensure in stages:

'a) The harmonisation and coordination of national policies and the promotion of integration programmes, projects and activities particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade,

[22] The 1993 Treaty. In 1993, ECOWAS Member States revised the Treaty essentially to move towards deeper integration and to recognise, promote and protect a political and social dimension to the Community's economic objectives. The incorporation of political objectives into the Treaty can be traced specifically to the Liberian crisis and to the role played by the Authority of Heads of States and Government in ensuring a ceasefire and establishing a civilian regime.

money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters

b) the harmonisation and coordination of policies for the protection of the environment

c) the promotion of the establishment of joint production enterprises;

d) the establishment of a common market through the establishment of a free trade area, the adoption of a common external tariff and common trade policy... and the removal.. . of obstacles to the free movement of persons, goods, services and capital and to the right of residence and establishment;

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

h) the establishment of an enabling legal environment

Article 4 of the Revised Treaty sets out the **Fundamental Principles** that should govern the conduct and acts of Member States in the following words:

"The High Contracting Parties in pursuit of the objectives stated in Article 3 of the Treaty, solemnly affirm and declare their adherence to the following principles:

(a) equity and inter-dependence of Member States

(b) solidarity and collective self reliance

(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 prerequisite for economic development

(g) recognition, promotion and protection of Human and Peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights

(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 as envisaged by the Declaration of Political Principles adopted in Abuja on 6 July 1991; and

(k) equitable and just distribution of the costs and benefits of economic cooperation and integration

Article 5 contains the General Undertaking expected from each Member State.

1. Member States undertake to create favourable conditions for the attainment of the objectives of the Community, and particularly to take all necessary measures to harmonise their strategies and policies, and to refrain from any action that may hinder the attainment of the said objectives.

2. Each Member State shall in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty.
3. Member States undertake to honour their obligations under the Treaty and to abide by the decisions and Regulations of the Community.

A careful perusal of the foregoing and indeed the Treaty and other Protocols would significantly show that asides the requirement of **financial contribution,** the basic obligation(s) required from Member States can be summed up in one word: ***Cooperation.*** Or perhaps, two words: **Cooperation and Adherence.**

Running through the gamut of the entire Treaty are specific areas that cooperation is required from Member States. Thus Chapter IV, which comprises Article 25 sets out specific terms of Cooperation in Food and Agriculture, Chapter V which comprises Articles 26, 27 and 28 set out in specific details the terms of cooperation in industry, science and technology and Energy, while Chapter VI comprises Articles 29, 30, 31 and sets out details of cooperation in environment and natural resources; Chapter VII comprises Articles 32, 33, 34 sets out the details of cooperation in transport, communication and tourism

Significantly, by the Treaty, Member States are also expected to make financial contributions to facilitate the operations of the Community leading to the actualization of its aims and objectives. This is borne out by **ARTICLE 70.**

Notwithstanding the explicit spelling out of obligations under the Treaty and legal instruments, it is sad to note that ECOWAS Member States do not honour their obligations under the Treaty.

For instance the implementation of the *Free Movement Protocol* has been riddled with allegations of abuse and non-compliance[23]. Thus 'inspite of ratifying the Protocol which ushered in the free movement of persons in the sub region, several border checks continue to exist. This has resulted in severe harassment and extortion of money from travellers by security personnel at the numerous checkpoints. Free movement is also hampered by different official languages at border posts. It has been argued that implementation of the protocol coincided with a period of economic recession in many Member States, and this resulted in the large influx of nationals of West Africa to Nigeria. When the economic situation became unbearable for the government of Nigeria, it revoked Article 4 and 27 of the Protocol and expelled 0.9 and 1.3 million non-national residents most of them Ghanaians in 1983 and 1985 respectively. Besides Nigeria, other Member States that have expelled immigrants of West African origin since the operationalisation of the Protocol include the Cote d'Ivoire, (1999), Senegal (1990), Liberia (1983) and Benin (1998)[24]**.** There had also been reports of torture and

[23] Many nationals of West Africa Member States would still decry influx of 'foreigners whose wages are low because they reason that it would affect wages and jobs of nationals. But Researched work has shown that this fear is not necessarily the case.
[24] See J Agyei and E Clottey 'Operationalising ECOWAS Protocol on Free Movement of People among the Member States: Issues for convergence, Divergence and prospects for sub regional integration, available at www.imi.ox.ac.uk/pdfs/CLOTTEY, accessed 22nd July 2019

killings by security personnel in countries like Senegal and Gambia. The killing of 44 Ghanaians in the Gambia by security agencies in 2005 constitutes an example of harassments and difficulties faced by citizens of Member States in exercising their right to free movement in the sub-region'[25]and a certain Mr. Olajide had to file an application the ECOWAS Court protesting the closure of the borders of a West African Member-State.

In a similar vein, The Community set 1994 to achieve *monetary union*, failed, extended it to 2000, failed, then 2009 and failed again. The reason is not because the Community and the Commission do not wish it but because the Member States are unwilling to back up the written obligations they undertook in the 'books' with unalloyed support and commitment, not to mention the undercurrents of rivalry[26] that flow between the French speaking West Africa bloc and the English speaking West Africa bloc.

Furthermore, for the past two decades, efforts towards putting in place *a common custom tariff* have been on. The goal is to get the Member States to introduce the regional mechanism for a Customs Union and Common External Tariff into the budgetary and fiscal policy scheme of the Member States. But the harmonisation of the customs code and valuation forms was initiated and abandoned. Draft legislation to create a supranational framework to manage issues *of competition and investment* for the purpose of *enhancing the free movement of goods and capital* has been drawn up but it has been filed off. The ECOWAS Trade Liberalization Scheme set up in 1989 for the purpose of relaxing customs and tariff barriers in order to enable people and goods move fluidly within the sub-region, have not yet become functional. The Member States do not consider it a matter of urgency to get it going. The Member States still apply their own regulations.

The foregoing is a sad picture of non-commitment of Member States to their obligation under the Treaty, Protocols and other legal instruments.

The Commission has often decried this lack of commitment, cooperation and adherence of Member States to their obligations to the Community and went further to assert more pungently that: 'a major problem that the region has to confront is the failure of ECOWAS Member States to translate effectively the regional approach into an appropriate national policy framework. In the Member States, there is little evidence of regional integration being seen as a real national priority. The integration process has not had any significant impact on the development of Member States...because of the low level of implementation of Community Acts and Decisions. The Commission went on to add that "ideally, given the commitment to a regional approach, government business should be organized and conducted with the primary objective of meeting the obligations of the ECOWAS integration agenda.

[25] CLOTTEY supra

[26] Some stakeholders do not wish the Eco currency to be a reality because they believe it would rival the CFA.
[27] 2007 Report, page I69

Article 77 of the ECOWAS Revised Treaty empowers the Authority of the Heads of State and Government of ECOWAS to impose certain sanctions on any Member State which fails to fulfil its obligations to the Community.

These sanctions include suspension of new community loans or assistance, suspension of disbursement for on-going community projects or assistance programmes, exclusion from presenting candidates for statutory and professional posts and suspension from participating in the activities of the community.

This power is however seldom exercised by the apex organ offECOWAS[28].

Curiously, **ARTICLE** 77 (3) provides for **EXEMPTION** from consequences of non fulfilment stated in sub 1 of Article 77 on the basis of an independent Report which shows circumstance beyond the control of the defaulting state. In my mind, while on the one hand, this clause could have been a palliative measure to aid and encourage 'less prosperous' West African Member States, this Article should not be called to use unless really extenuating circumstances justify it, otherwise a good number of Member States could hide under this clause to evade responsibility; remarkably the Treaty specifically states that the cost and benefits of integration ought be borne equitably.

The attitude of Member States to their Obligations under the Community calls for a reappraisal of the entire concept and philosophy of Communities and International organizations. Do these Member States truly wish to be part of an International Organization in general terms and part of the ECOWAS in specific terms? Were they coerced into being a part of ECOWAS? Would they rather be left to function in solitude and isolation? Would their citizens be better off for it? Is their attitude merely borne out of the selfish part of most human composition that wishes to take advantage of any endeavour and shirk at responsibilities and obligations?

On the one hand, asides the fielding of candidates for statutory positions, it is doubtful if the (denial of) other measures are of any real value or adequate check on errant Member States. For instance, does ECOWAS have the funds to give to/entice (especially) the more well off nations like Nigeria, Ghana etc who may require much and can readily source for funds elsewhere. On the other hand, the seldom use of sanctions by the Authority of Heads of State and Government is premised on the fact that most Member State are in breach of the core tents of the Treaty, not just the judgment of the Court and if Article 77 is to be invoked, then very few, if any Member State would be left standing.

While the preceding would appear a plausible reasoning but then on the other hand, the use of sanctions is a welcome position because it is a sad commentary that African Leaders are not known to honour words and even solemn 'oaths' and undertakings. It is common place to see them swear by Holy Writs- The Bible and Koran to solemnly uphold the tenets of even their Constitution, to live uprightly and put the tenets of the national interest and cohesion above parochial personal interests and ambitions, and the

[28] ON 20TH OCTOBER 2009, ECOWAS announced the suspension of Niger from the Organisation. ECOWAS had unsuccessfully asked Niger to postpone its controversial 20th October elections. Guinea had been suspended after the 2008 coup d'etat.

next couple of hours they are embezzling their national funds, looting the treasuries and engaging in conduct that can dismember their countries, and doing all things unlawful and antithetical to the very words they spoke. They must be taught by other perhaps severer means to respect and honour words, undertakings, and responsibilities. This is also a wakeup call and a call for reappraisal by West African Member States to decide whether they really wish to be IN or OUT and not to sit on the fence or pay mere lip service to undertakings they had made under the Treaty. Truth though is that Sub African countries must realize that we are living in a global village that is becoming smaller and smaller, being compressed into one. Walls and cultural, geographical constraints are shrinking.

It is worthy of note also that **Article 90** allows amendments and revision at the instance of a Member State through a proposal submitted by the Executive Secretary. There is also provision for withdrawal of a Member State from the Community[29]. But until such a time that any of these two[30] is done if desirable by Member State(s), what is required and expected of the Member States is *adherence and cooperation with the specific provisions of the Treaty.*

In sum, a Unit cannot be greater than the Whole. It is the pooling of adherence, cooperation, and commitment of Member States to their obligations under the Treaty and other instruments that would lead to the actualization of the prime objectives set out in Article 3 of the Treaty.

PART C: LEGAL EDUCATION ON ECOWAS LAW IN MEMBER STATES:

'We have a complex system of government. You have to teach it to every generation' Sandra Day O'Connor, American Supreme Court Justice.

'If Children do not understand the Constitution, they cannot understand how our government functions or what their rights and responsibilities are as citizens' John Roberts, America Supreme Court Justice

Teaching on the core vision, values, mission, objectives and actualization of the objectives of ECOWAS should be a core compulsory *Primary and Junior Secondary* Course in schools of Member States.

If the lofty vision of ECOWAS is to be actualized, pupils should be introduced to this vision at a very tender age and the tutelage continued all through secondary school, such that by the time an average citizen of any of the Member States attain the golden age of 18, the vision, tenets and actualization of the lofty mandate would have been ingrained into the psyche and psychology.

Furthermore, ECOWAS Law especially vis the in depth study of the Treaty, Protocols and emergent body of case law would prove a rich jurisprudence in a *Tertiary academic environment.* Academic institutions should pick up this gauntlet of challenge

[29] This has been exercised by at least one nation namely Mauritania which withdrew from the Community in 2002, Cape Verde joined in 1977.
[30] Revision or Withdrawal

and contribute their quota to the actualization of the lofty dreams of ECOWAS. The civil law common law divide and the intending harmonisation of this dual legal system will provide a rich rare area of jurisprudential study and stirring of young and not-so- young academic minds.

Infact the study of the Treaty alone in a comprehensive format can take up a whole session of academic work in Tertiary Institutions of Member States if a thorough job is to be done, let alone the body of case Laws, Decisions, Supplementary Acts, and erstwhile Protocols.

Another core reason why the teaching of the ECOWAS Law should be encouraged at all levels of Education is because of the obligations expected from Member States as well as the benefits that the citizens and institutions of these Member States stand to derive from the ECOWAS Law. How can one be loyal to what one knows not of? How can one benefit from what one knows not of? Hence the clarion call for the teaching of ECOWAS Law in Schools and Universities of Member-States is ripe and long overripe.

In this regard, it is instructive that the European Union Law[31] is offered as a highly competitive course of studies both at the Undergraduate and Post Graduate Levels in many European Nations tertiary institutions.

ENFORCEMENT OF JUDGMENTS OF NATIONAL COURTS AND THE ECOWAS COURT OF JUSTICE:

'The Law is what the Courts say it is'-Realist School of Law.
The ECOWAS Court, domiciled at Abuja, Nigeria is one of the organs of the ECOWAS. The Protocol which established the Court was signed on July 6, 1991, in Abuja, and it entered into force on November 5, 1996, having been ratified by eleven Member States of the ECOWAS Pursuant to the provisions of **Article 10 of the Supplementary Protocol[32] of the ECOWAS Court[33]** adopted in January 2005 by the Authority of Heads of State and Government, individuals, corporate bodies and governmental organizations have access to the court for the enforcement of human rights.

By the combined provisions of **Article 15 (4) of the ECOWAS Revised Treaty** and **Article 2(1) of the Supplementary Protocol,** the judgments of the court are binding on all the Member States, the institutions of the Community, on individuals and corporate bodies. **Article 19 (2) of the Protocol (A/Pl/91)** on the Community Court of Justice provides that the decisions of the Court are final and immediately enforceable.

Article 24(2) and (3) of the Supplementary Protocol of the ECOWAS Court provides that 'execution of any judgment of the court shall be in the form of the 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

[31] With many variants of it, and also as a Combined Honours Degree Course.
[32] We have already stated how Protocols become binding on Member States vis the Community Legal Order. **See expositions on the Community Legal Order.**
[33] The Revised Treaty provides that a Protocol will be made setting out the details of the Court.

State. Upon the verification by the appointed authority of recipient Member State that the writ is from the court, the writ shall be enforced"

Also by **Article 24 (4) of the Supplementary Protocol,** each Member State is expected to determine a competent National authority that will be responsible for the enforcement of the Court's decisions in accordance with her own Rules of Civil Procedure.

Furthermore, **Article 22(3) of the Protocol** and **Article 5(2) of the ECOWAS revised Treaty** mandates Member States in accordance with their constitutional provisions, to immediately take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of the Treaty including the execution of the decisions of the Court.

By virtue of these provisions, Member States of ECOWAS are mandated to ratify and domesticate the ECOWAS Treaty, Protocol and other legal instruments for the effective and unimpeded implementation of the provisions of the Treaty including the enforcement of the Judgments of the court. Thus, any refusal, failure and or neglect by any Member State to implement the above provisions shall not render the judgments of the court unenforceable, thereby depriving a successful party of the enjoyment of the fruits of his judgment.

A distillation of a plethora of case law of the court clearly crystallizes and firmly establishes various principles beyond contention viz:

- In the exercise of its human rights jurisdiction, the ECOWAS Court is not constrained by the fact that the ECOWAS protocols have not been domesticated by any given Member State. {**Moukhtar Ibrahim Aminu v Governmnet of Jigawa State** & **3 ors**}
- The ECOWAS Court is not bound by the concept of exhaustion of local remedies. Thus a case would be ruled admissible by the Court notwithstanding the fact that the case might be pending at the National court of the citizen or yet to be entertained by the National courts. **{Valentine Ayika v Republic of Liberia}**

It is also very commendable and noteworthy that *this Court* has always been mindful of its supranational nature and has guarded same forcibly and jealously.

As aptly captured in the case of **Musa Saidykhan v The Republic of Gambia:**

'ECOWAS is a supra national authority created by the Member States wherein they expressly ceded some of their sovereign powers to ECOWAS to act in their common interest. Therefore in respect of those areas where the Member States have ceded part of their sovereign powers to ECOWAS, the rules made by ECOWAS supersedes rules made by individual Member States if there are inconsistent.

The Revised Treaty of ECOWAS was ratified by all the Member States of ECOWAS ... this court is the offspring of the Revised Treaty; and this Court is empowered by the Supplementary Protocol on the court of justice, which is part of the instruments of

implementation of the Treaty and has the same legal force as the Treaty, to adjudicate on issues of Human rights arising out of the Member States of ECOWAS. Therefore, it is untenable for a Member state of ECOWAS to claim that a matter is essentially within its domestic jurisdiction when it has expressly or by necessary implication granted ECOWAS powers to act solely or concurrently with national jurisdiction in respect of that matter'.

By **Article 24 (5) of the 19991 ECOWAS Court Protocol,** only the ECOWAS Court can suspend the execution of its own decisions.

Article 9 of the 2005 ECOWAS Protocol states the mandate of the Court which includes:

'1. The Court has competence to adjudicate on any dispute relating to the following:

(a) The interpretation and application of the Treaty, Conventions and Protocols of the Community

(b) The interpretation and application of the regulations, directives, decisions, and other subsidiary legal instruments adopted by the ECOWAS

(d) The failure of Member States to honour their Obligations under the Treaty, Conventions, and protocols, regulations, directives or decisions of ECOWAS

(f) The Community and its Officials...

4. The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State

6. The Court has jurisdiction in any matter provided for in an Agreement where the parties provide that the Court shall settle dispute arising from the Agreements.

National courts represent a critical layer of community institutional structure to enforce Community law. They enable citizens to ensure that, as the primary beneficiaries of the integration process, they are able to engage the Community on issues of implementation or otherwise. Nonetheless, it is important to understand that enforcing Community law in national courts breeds its own problems because of the constitutional diversity of Member States.

The procedure to enforce a local/domestic/ national judgment in the local/domestic/ national courts of West African Member States ofECOWAS are similar. Using Ghana as an example will suffice. The procedure to enforce a local/domestic/ national judgment in the local/domestic/ national courts of Ghana are by: Writ of fiery facias order for a high court enforcement officer to collect a judgment debt; Garnishee Proceedings whereby sums standing to the credit of a judgment debtor in any bank or financial institutions are attached to/for the benefit of the judgment creditor to discharge the judgment sums; A charging order, the appointment of a Receiver, an order of committal or a writ of sequestration in some circumstances; Writ of specific delivery. A person not called to the Ghana Bar or Nigerian Bar cannot practice or have right of audience in their national courts. Thus a lawyer from Senegal for instance cannot practice in Ghana.

The procedure to enforce a foreign judgment in Ghana is by registration and is governed by the Courts Act 1993 (Act 459). The Courts Act (Act 459) provides that

only the President of Ghana by instrument under his hand can specify countries whose judgments can be enforced in Ghana on the basis of reciprocity. In 1993, the President of Ghana passed the foreign judgments and Maintenance Orders (Reciprocal Enforcement Instrument) 1993 LI 1575 stating that the following countries and their courts have reciprocity of enforcement of judgments: Brazil, France, Israel; Italy, Japan; Lebanon; Senegal; United Arab Emirates et al. Significantly, Senegal is the only West African Member State whose name is mentioned in the list.

To be enforceable in Ghana, the judgment must have been final and conclusive between the parties. A fresh action must be instituted for judgments of countries that do not have reciprocity. A judgment will not be registered if at the date of the application, it could not have been enforced by execution in the country of the original court. Very fundamentally, it should be noted that judgment of the ECOWAS Court cannot be regarded as judgment of a foreign Court but rather judgment of a supranational entity.

Like the English speaking Member States, most of the French speaking Member States like Senegal and Togo operate a similar system of enforcement of domestic judgments within their countries. Most have a Civil Procedure Code patterned after the French Civil Procedure Code. Senegal operates a civil law system based on French law with judicial review of legislative acts in the Constitutional Court.

In respect of enforcement of foreign judgments, most of them appear to follow a similar code traceable to France of which the most current version is the France Enforcement of Foreign Judgments 2019. There are also several Multilateral and Bilateral Conventions on mutual judicial assistance that govern this judicial proceeding. The existing procedure for the Domestic Enforcement of Foreign Judgments in Senegal is the exequatur. The Exequatur has been described as "a very challenging procedure". In Senegal, Applications for recognition and enforcement of a foreign judgment must be made to the judge for summary procedures at the regional court with jurisdiction over the place where enforcement is sought.

Over four decades after the formation of ECOWAS as a regional economic and social Community, not much of the Community's lofty objectives have been actualized. One plausible reason for this is the lack of involvement of national courts of Member States. No doubt, enforcing ECOWAS laws on National courts will considerably assist in the realization of the Community's objectives.

Thus in spite of the landmark jurisprudential sagacity consistently exhibited by the Court and its readiness to guard its jurisdictional frontiers, the enforcement of Judgments of the ECOWAS Court has been a major problem. The position of most ECOWAS Member States is that such judgments are not enforceable within their territorial domain. Most Member States successfully get away with this attitude hiding under the thin cloak of the concept of Domestication and Sovereignty. The dictum of the Nigerian Supreme Court in the case of **General Sani Abacha & ors v Fawehinmi** explains the position of most West African member states of ECOWAS.

The Nigerian apex Court said thus:

'An international Treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly. Also the Constitution of the Federal Republic of Nigeria which provides that any Law which is inconsistent with any section of the Constitution shall to the extent of its inconsistency is null and void. Thus it may seem that the Treaties relating to the ECOWAS Court are not binding on Nigeria as they have not been expressly ratified'.

Furthermore some cases are apposite and clearly show how judgments of this court are Not being enforced by the affected Member State:

- The case of **SERAP v Federal Republic of Nigeria** & **Anor**
- The case of **Sambo Dasuki v Federal Republic of Nigeria.**
- **Mr Chude Mba v The Republic of Ghana**
- **Valentine Ayika v Republic of Liberia**
- **Musa Saidykhan v The Republic of Gambia:**

A great percentage of unenforced decisions is primarily because Member States and their Institutions have chosen not to be involved in the integration process.

In the **SERAP** case, the ECOWAS court ruled that the Federal Government of Nigeria should provide free and compulsory basic education to every Nigerian child but it has not been enforced by the Government though it is a decision gotten in 2010, nearly a decade ago. Also in the Sambo Dasuki case, the Federal Government of Nigeria was ordered to release the former National Security Adviser which the Government is still yet to obey nearly three years after.

Nonetheless, my clear position backed up by relevant international law principles is that the position of the Court in the **MOUKHTAR IBRAHIM AMINU V GOVERNMENT of JIGAWA STATE** & **3 ORS**[34] takes precedence over the dictum and posture of most West African Member States of ECOWAS as exemplified by the position of the Nigerian Supreme Court in **General Abacha's case** here above.

This position of Member States viz the many unenforced decisions of the ECOWAS Court, despite the binding nature of the Revised Treaty and the Supplementary Protocol is cause for grave concern and requires urgent resolution if the mandate of the Court is to be actualized. All relevant stakeholders of the Community and citizens that understand the role of the judiciary in any community, national or supranational must rise to defend the integrity of the Community Court via the enforcement of its rich judgments such that the ECOWAS Court of Justice would not be described as a toothless bulldog that only barks.

This anti- ECOWAS posturing offends the principle of private and public international law, as well as the spirit and letter of the Treaty and Protocols to which they had all consented. The ECOWAS Court is not constrained by the domestic laws of its Member States including national Constitutions that are inconsistent with their Treaty Obligations. When a sovereign state freely assumes international obligations and is being held accountable in respect

[34] In the case, the ECOWAS Court dismissed the preliminary objection of the Government of Jigawa State, Nigeria and stated that in the exercise of its human rights jurisdiction, the ECOWAS Court is not constrained by the fact that the ECOWAS protocols have not been domesticated by any given Member states since domestication is purely a matter within the local affairs of a member state.

of those obligations, that state cannot renounce those obligations under the pretext that the matter in question is one that falls essentially within its domestic jurisdiction.

Being Member States of ECOWAS, these nations are bound by the obligations they assumed under the Revised Treaty, the Protocols, and other legal instruments of the ECOWAS. When they undertook to honour their obligations under the Treaty through the process of ratification and to abide by the decisions and regulations of the Community by virtue of the provisions of **Article (5) 3 of the ECOWAS Revised Treaty,** their undertaking is indicative of the fact that they intend to abide, and is thereby bound, by the contents of the Treaty and Protocols.

Having therefore voluntarily undertaken to honour their obligations under the Treaty, these Member States ought to suffer the burdens as they also enjoy the benefits of their membership of the supranational body.

Asides the non-involvement of National Courts in the enforcement process, a major lacuna exists in the legal instruments relating to the ECOWAS Court in respect of enforcement of its judgments. The Revised Treaty, Protocols and other legal Instruments do not make provisions regarding the means of enforcing the issued Writ of execution where the Member States fail to *voluntarily* comply with the terms of the Judgments of the court.

It is this *'unenforceability'* challenge of International Law that has made many scholars to cry out in utter frustration; that *'International Law is not Law!'*, but then notwithstanding the frustrations being felt, it is not the case that International Law is not Law. International Law has been judged rather unfairly- based more on its failures, than on its strengths.

Very fundamentally, the power under **Article 77 of the Revised Treaty**[35] is yet to be put to good use or invoked by the Heads of State and Government. Thus, unless Member States are compelled to comply with the judgments of the ECOWAS Court, the confidence reposed in the court will be completely eroded so much so that the court may be unable to entertain any applications from any person in respect of the violations of the fundamental rights of the citizens of ECOWAS.

It is imperative for the Authority to exercise this power especially as it is known that African countries especially their Governments have been known not to treat human rights as sacrosanct and is even more pronounced when if same has political under-colourings. ECOWAS court needs to be more forceful in this regard to accelerate West Africa coming at par with other regions of the World in this regard that puts a premium on the lives of their citizens.

[35] **Article** 77 **of the ECOWAS Revised Treaty** empowers the Authority of the Heads of States and Governments ofECOWAS to impose certain sanctions on any member States which fails to fulfil **its obligations to the Community** through suspension of new community loans or assistance, suspension of disbursement on on-going community projects or assistance programmes, exclusion from presenting candidates for statutory and professional posts and suspension from participating in the activities of the community.

The Authority should not keep counting on states doing the 'honourable' thing and enforcing the judgments because it is a sad commentary that many African leaders do not know the true meaning of the word 'Honour'? If they would they would make, allow their judiciary truly independent. If they knew, they would make appointments based on merit and fix round pegs in round holes and not on nepotism. If they knew they would understand that education is the hope of the future and use their resources in educating the masses and not in grandiose lifestyle or corruption; they would understand that the untrained child of today constitute a danger and menace to the society wellbeing tomorrow.

Domestication to my mind and as a requirement for enforcement of judgments of the ECOWAS Court is a direct affront and antithesis of the very root, and essence of Community. It is a direct onslaught against the very concept of Supranationality which is a germane plank in the construct of Regional bodies or international organizations. African Leaders must be taught to respect this.

It is Interesting to note that the Treaty of the Organization for the Harmonization of Business Law in Africa (OHADA) is applicable in National Courts of some ECOWAS Member States. This presents an instructive lesson that the issues discussed in this Work already operate in West Africa and can be applied by/to the ECOWAS Court.

The **OHADA[36] Treaty** model is worth learning from. The OHADA Treaty is directly applicable and of direct effect in certain West Africa National Courts. OHADA was constituted by the OHADA Treaty signed at Port Louis, Mauritius on 17th October 1993. Of the 16 OHADA Member States, Nine are also members of ECOWAS[37]. OHADA is open to all African States. OHADA has established uniform business Laws for Member States that are applicable in the national courts of OHADA States as National Laws[38]. OHADA laws have direct effect as citizens of OHADA Member States can invoke OHADA laws in their National courts, to override contrary provisions of a previous or subsequent national law[39].

One important context that illustrates the potential of the Court's mandate is the fact that it is open to the ECOWAS Court to recognise the principle of direct effect. Given the nature of its mandate and the provisions of the Revised Treaty, The Protocols and Decisions of the Authority, if the court were to assert that Community Law has authority which can be invoked in National Courts, the prospects of national integration would be greatly enhanced because it would follow that ECOWAS Citizens may invoke Community law in their National Courts.

Article 14 of the OHADA Treaty endows the OHADA court with the jurisdiction to ensure the uniform interpretation and application of the OHADA Treaty, the regulations promulgated to further the Treaty and the Uniform Acts. OHADA operates by issuing uniform Acts such as Uniform Act Relating to General Commercial Law, Uniform law relating to Commercial Companies and Economic Interest Groups,

[36] Organisation for the Harmonisation of Business Law in Africa
[37] Namely Benin, Burkina Faso, Cote d'Ivoire, Guinea, Guinea Bissau, Mali, Niger, Senegal and Togo.
[38] See Article 13 of the OHADA Treaty
[39] Although OHADA is not a regional economic community, its activities resemble those of such a community and could become a fundamental building block of ECOWAS especially if the other member states ofECOWAS join the organisation.

Uniform Acts relating to organizing Securities et al. Notwithstanding that the OHADA model still has a number of significant problems[40], it however represents what is possible within the ECOWAS System.

In sum, it would make the integration ideal much easier to actualize if judgments of ECOWAS court is enforced in such an easy format as the judgments of National Courts. Moreso, the ECOWAS Court must cure the existing lacuna by providing for enforcement of its judgments in cases where the National court is unwilling to do so.

PART E: THE ROLE OF THE ECOWAS COMMISSION:

ECOWAS, established in 1975 with the prime purpose of promoting regional cooperation and economic integration has gradually widened the scope of its activities to cover political, cultural, and social activities as well as conflict resolution and prevention tasks and it is strengthening the involvement of civil society in regional processes[41].

Article 19 of the Treaty provides that the Executive Secretary shall be the Chief Executive Officer of the Community and all its institutions and sets out the functions of the Executive Secretary of the ECOWAS (Secretariat) Commission in these terms:

1. Unless otherwise provided in the Treaty or in a Protocol,
2. The Executive secretary shall direct the activities of the Executive Secretariat (Now Commission) and shall unless otherwise provided in a Protocol, be the legal representative of the Institutions of the Community in their totality
3. Without prejudice to the general scope of his responsibilities, the duties of the Executive Secretary shall include :
    a) Execution of decisions taken by the Authority and application of the regulations of the Council
    b) Promotion of community development programmes and projects as well as multinational enterprises of the region;
    c) Convening as at when necessary meetings of sectoral Ministers to examine sectoral issues which promote the achievement of the objectives of the Community
    d) Preparation of draft budgets and programs of activity of the community and supervision of their execution upon their approval by Council
    e) Submission of reports on Community activities to all meetings of the Authority and Council
    f) Preparation of meetings of the Authority and Council as well as meetings of experts and technical commissions and provision of necessary technical services
    g) Recruitment of staff of the Community and appointments to posts other than statutory appointees in accordance with the Staff Rules and Regulations

[40] Such as Practical challenges of citizen's access to the court because oflocation in Abidjan, reluctance of national courts to refer cases to the OHADA Court among others..

[41] See the Revised Treaty, 1993.

h) Submission of proposals and preparation of such studies as may assist in the efficient and harmonious functioning and development of the Community

i) Initiation of draft texts for adoption by the Authority or Council

The ECOWAS Commission is the engine room of all ECOWAS programmes, projects and activities. Fundamentally, the ECOWAS Commission plays the role of a moderator for conflict prevention as well as harmonisation and integration in the region.

The core functions of the ECOWAS Commission are strategic management, designing, coordinating and monitoring the regional integration process with professional competence, thereby helping the Member States to improve their implementation of its policy decisions related to economics and trade, and peace and security.

In January 2007, ECOWAS changed its central institution from an *Executive Secretariat* into a *Commission.* This was in fulfilment of a decision to that effect taken the previous year by the Heads of State and Government in Niamey, Niger Republic. This change has made the organisation more effective and given the regional integration process a new dynamic and enhancing the integration narrative. This change of nomenclature and administrative structure is to make ECOWAS adapt better to the international environment, bringing about more equity, transparency and greater functionality in accordance with global best practices. The Commission is in a better position to support ECOWAS Member States to build their capacities for programme implementation thus fulfilling the mandate of the Founding Fathers and meeting emerging challenges.

At the helm of the Executive arm of the Community is the President of ECOWAS Commission appointed by the Authority for a non renewable period of four years. He is assisted by a Vice president and 13 Commissioners of which one is an Auditor General. All 15 are collectively referred to as Statutory Appointees with a Four Year Tenure. With this in place, the Commission is now preoccupied with the implementation of critical and strategic programmes that will deepen cohesion and progressively eliminate identified barriers to full integration as envisaged.

Like its European Counterpart, The ECOWAS Commission also strengthens and expands important continental initiatives and programmes, such as the pan-African integration process of the African Union and in particular, the New Partnership for Africa's Development (NEPAD) thus promoting the integration of Africa into the global economic system. The Commission also carries out the process of harmonisation with the African Peace and Security Architecture. Unlike the European Commission, which initiates legislation, by making proposals for European Laws which are sent to the Council and European Parliament for amendment and approval, The ECOWAS Commission is not imbued with such powers. While the European Union has the ability to act 'politically, the ECOWAS Commission does not enmesh itself in such political drives. Like the European Commission, the ECOWAS Commission also acts as a guardian of the ECOWAS Treaties and other Legal instruments[42].

[42] See Article 19 of the Revised Treaty

ECOWAS Commission possesses the relevant capacities to identify the internal needs for change and to initiate necessary reforms. The Commission also possesses a result-based management system which ensures that all processes, products and services contribute to the targeted results and accountability. Thus, the Commission has integrated strategic planning, monitoring and evaluation, and management information systems into the governance structure. At the regional level, enhanced management capacities and more coherent working procedures enable the ECOWAS Commission to contribute more significantly to good governance in the region.

Staff of the Commission are international civil servants, the highest level of competence, professionalism and loyalty is demanded of them; hence Article 20 sets out the relations between the staff of the Community and Member States and enjoins that their first loyalty is to the Commission and not their home government, and they must not engage in any compromised conducts or acts with any Member State. Reciprocally, Member States are to accord them the highest level of courtesy, civility and respect.

However, despite the Commission's successes, and its effective transformation, various challenges still persist in terms of its institutional management capacity and the management processes. These need to be addressed if the Organisation is to serve its Member States as an adequate motor for regional integration.

Thus through the Commission, ECOWAS is taking ownership of the grand objectives designed to improve the living conditions of the citizenry, ensure economic growth and create an environment conducive to development and meaningful integration. The physical structure of the ECOWAS Commission is situate at **Abuja, Nigeria** and the current head of the ECOWAS Commission is **Jean- Claude Kassi Brou.**

PART F: CHALLENGES AND PROSPECTS:

The challenges confronting ECOWAS vis the themes discussed in this Paper as well as some useful insights to dismantling them have already been highlighted in the course of the discourse. However, a brief highlight of same will be undertaken in this part: A major obstacle to functional Supranationality of ECOWAS and the integration process is the thin cloak of sovereignty which West African leaders desperately cling to. *Functional Supranationality* would require West African political leaders to relax their grip on their 'fiefdoms' and consider the bigger picture.

It cannot be over- emphasized that by voluntarily ratifying the ECOWAS Treaty, the 15 constituting states had expressly ceded some of its sovereign powers to ECOWAS to act in its common interest. Therefore, in respect of those areas where it has ceded part of its sovereign powers to ECOWAS, the rules made by ECOWAS ordinarily ought to supersede those made by the constituting Member States if they are inconsistent. Therefore it is indefensible for these West African Nations to claim that a matter is essentially within its domestic jurisdictions where it has expressly or by necessary implication granted to the ECOWAS powers to act solely or concurrently with national Jurisdiction in respect of that matter.

These Nations have freely assumed international obligations and must be held accountable to the obligations they had freely assumed. They therefore cannot renounce those obligations under the pretext they have not domesticated the ECOWAS Court Protocols. Member States are mandated and are therefore under an obligation in accordance with Article 5 (2) of the ECOWAS Revised Treaty and 22 (3) of the ECOWAS Protocol to domesticate the Protocols and to put all necessary apparatus in place to ensure compliance with the Revised Treaty and the Supplementary protocol machinery.

Judges of the ECOWAS court should consistently rise to the defence of the Court and the Community by compelling through their decisions and orders Member States to comply with the decisions of the court, to avert instances where there might be non-compliance by the Member State. The Authority should by **a further Supplementary Act** cure the lacuna in the legal framework of the Court by empowering beneficiaries of judgments to direct enforcement of the judgment against assets of the Member State found within the territories of any of the Member States of ECOWAS.

Further the court should mandate the Authority of the Heads of State and Government to invoke its powers against any of the Member States by imposing the sanctions provided under Article 77. The ball is squarely in the court of the Authority of Heads of State and Government to act and save the Court from being rendered inefficacious and by implication defeating the every germane essence of the Community. Judges of the ECOWAS Court can also embark on an enlightenment tour of all Member States (as they have done in the past) to press for the unqualified recognition and enforcement of its decisions if the regional integration goals of the Community are to be attained.

Legal Education on ECOWAS Law should be introduced and continued in Member States. Harmonisation of the parallel twin systems of English Law and French Law is non-negotiable as its effect on the integration efforts would be monumental. We recommend two approaches to harmonisation: First is a legal Department within the Commission to spearhead the harmonisation while the second centres on the activities of private individuals and organised sectors like the Legal Profession. We invite the academic Lawyers to show some interest in this area of ECOWAS Treaty and Law. Private institutions which are interested in the evolution of ECOWAS should cooperate with jurists by endowing research projects on Law Harmonisation in the sub-region. The area of Law harmonisation is where the interest of the private business man, government functionaries and practising lawyers coincide. For instance, it would be in the interest of ECOWAS if the Federation of West African Chambers of Commerce, The Association of Central Banks of West Africa, and the ECOWAS Commission all combine and endow a West African Centre for Law Harmonisation.

It is to be accentuated that the harmonious fusion of all the legal systems will accelerate the full economic integration of ECOWAS. For instance, a common land tenure system will facilitate immensely the evolution of a common agricultural policy in the sub-region. The legal scholars in the French speaking Member States and those in the English speaking countries have stayed apart and aloof for decades. But in order to harmonise in the legal field, it is necessary to know the rudiments of the two legal

systems and this demands a meeting of minds between the two groups of legal scholars. Although differences in the official language and the language of instruction in the educational institutions, naturally will create huge problems, the solutions here are of conception and codification. Thus it is not an utopian dream to envisage a time in future when ECOWAS will have a Common Company Law, Common Transportation Law, Labour Law, Agricultural Holdings Law, Common ICT Law, and Common Taxation Law.

Fragmentation of Member-States is also a challenge. The present not-so-encouraging state of ECOWAS is compounded by the fact that the Member States are fragmenting into more micro-groups such as UEMOA (a group of French - speaking countries), the Mano River Union and the Chad Basin Development Authority. Thus, the Member States are shrinking further and further into smaller shells where they will find it easier to put up with weaker demands. Member States must show more loyalty and commitment to the ideals of ECOWAS. It is nonetheless our firm belief that as the Community progressively realises its vision, Member States would realize that multiplicity of regional bodies is unnecessary.

One further point of note, in the Research for this paper, it was discovered while accessing online judgments of this Court that Judgments with English Speaking Nationals were written in English while those with French Speaking Nationals were written in French. This ought not be so. Each Judgment should be written and or translated in the three official languages of the Community, namely English, French, Portuguese, That is what harmonisation signals and would help each citizen of the Community, be they French English or Portuguese to equally access and understand the rich Jurisprudence of this Court.

The prevailing economic realities in Africa make cooperation among African countries non-negotiable. African countries stand to gain more from a functional integration than standoffishness and lip-service. All this would require that African States now more than ever need to play down their differences and put up a more cohesive and unified front to usher in the prosperous economic order the Founding Fathers envisaged in sync with the New World Order.

CONCLUDING REMARKS:

ECOWAS is a supranational entity, though short of a political union.

ECOWAS is a supranational entity especially in the area of its laws, norms, the court and its binding nature on the citizens and institutions of member states across the 15 nation Member States, in a uniform manner. It is through the instrumentality of the court, its laws, decisions and interpretation that the intention and integration purpose of the union will be enhanced and actualized. The Law has done so much in actualizing this vision. The Law will do much more. That to my mind is the purport of this paper and the conference: Integration through the Law.

ECOWAS has not fared badly considering the multifarious challenges it is required to surmount. Expectations of economic integration have always been high and a lot has been accomplished by the regional group since the endorsement of the Treaty which

gave it the required legal teeth. But more is expected. More can be done. More will be done so West African citizens can take ownership for the new vision of moving from an ECOWAS of States to an ECOWAS of People by 2020.

My conclusion is simple: it is the intention of the treaty to make ECOWAS and ECOWAS law a supranational entity and legal system. Whatever divergences are emerging are merely roadblocks to the attainment of that goal, the true intention of the founding fathers of ECOWAS. Whatever can be done by anyone, the court, the other organs of ECOWAS, the institutions of Member States, Citizens of Member States, to make this dream a reality should and will be done.

West Africa will experience enhanced economic integration. It can be done through the instrumentality of the Law. Let us be encouraged by the Realists School of Law, to wit *'The law is what the courts say is the Law'*, The Realist School should interplay with the Sociological school of Law, thereby taking cognisance of social engineering and the intermingling of sociological forces like business men, civil societies, organized private sector, institutions of State and the rest and crystallizing them into a viable working system for West African economic integration.

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INTEGRATION OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) THROUGH THE LAW

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The true measure of the success of legal integration is not whether the integrated legal system is technically sound and functional, but whether the system actually promotes theachievement ofthe integrational objectives.'

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'Cappelletti, Seccombe and Weiler (eds), Integration Through Law: Europe and the American Federal Experience. Volume I: Methods, Tools and Institutions (1986: 42)

Introduction

The Economic Community of West African States (ECOWAS) has a simple core vision: to foster the political and economic integration of the 15 West African countries. Key to economic and political integration is a legal framework that regulates economic relationships and informs political decisions. That is why under Article 3(h) of the ECOWAS Revised Treaty, Member States dedicate themselves to establish an enabling legal environment for integration.

This paper examines some ways to create that enabling legal environment for a better integration. It identifies three avenues for this, namely:

(i) Establishing a Community legal order or hierarchy of laws that recognises ECOWAS laws ("Community Law") at the top of the hierarchy;
(ii) Providing legal education on Community Law within Member States; and
(iii) Providing avenues to enforce judgments of the ECOWAS Court of Justice in national courts, and cross-border judgments from the national courts of Member States.

This paper posits that economic and political integration will largely depend on a sufficient integration of the legal systems of the Member States to ensure uniform applicability, interpretation and enforcement of Community Law. It also proposes steps to standardise the legal environment across the region to achieve the desired political and economic integration.

ECOWAS Supranationality and the Community Legal Order

A clear legal order within ECOWAS is a pre-requisite to successful integration. Regional integration demands that both Community Law and the national laws of the individual Member States must co-exist and regulate the lives of the citizens of the Member States. This naturally creates tension between the different national laws of the Member States inter se, and between municipal laws and Community Law. This tension presents a major constitutional challenge to regional integration, and it therefore requires a clear agreement on the hierarchy of laws within ECOWAS. The effect would be that state sovereignty would, to some extent, be limited so that Community Law is recognised as superior to municipal laws. This requires a hierarchical relationship where national courts recognise and are bound by Community Law. National courts would rely on and be bound by the interpretation given by the Court of Justice on provisions of Community Law to ensure consistent interpretation of that law. Member States would also be able to invoke and rely on Community Law before their national courts.

The sources of Community Law are (i) the Revised ECOWAS Treaty, (ii) the Treaties and Protocols made by the Authority of Heads of State and Government Pursuant to the Revised Treaty, (iii) Regulations made by the Council of Ministers, and (iv) Judgments of the ECOWAS Court of Community Justice.[2] Thus the key point is to ensure that Member States give recognition to Community Law and treat them as superior to municipal laws on issues that touch on economic integration. That presents the question whether Member States have the political will to cede part of their sovereignty to prioritise Community Law.

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[2] Nwauche, ES, "Enforcing ECOWAS Law in West African National Courts," Journal of African Law Vol. 55, No.2 (2011), pages 181-202

Without that, the economic and political integration will be a very high, if not impossible, hill to climb. Establishing an agreed and clear hierarchy within Member States will significantly bolster integration through law within ECOWAS.

Legal Education on Community Law within Member States

Creating and maintaining awareness among the citizens of Member States about ECOWAS, its vision, the legal obligations of the Member States, and the fundamental laws governing the Community is an integral part of integration. Legal education on Community Law must therefore take centre-stage

The law curriculum of the majority of Member States do not include modules specifically relating to ECOWAS, its laws and how these laws interact in the daily lives of citizens. In Ghana for instance, Community Law is not a critical part of legal education. At best it forms a small part of the curriculum for Public International Law, an elective course in the various faculties of law. It also tends to feature as part of the syllabus for international studies but certainly does not involve in-depth analysis of the Community Law and its interaction with the citizens of Member States. This must change.

Making the Community Law an integral part of the legal and diplomatic training in Member States will create awareness, encourage acceptance and facilitate better interaction of ECOWAS citizens. Potentially it could create (i) niche specialisation by lawyers within Member States on Community Law, issues and disputes, and (ii) an enabling environment for lawyers within the Member States to explore employment and professional opportunities across ECOWAS. These will boost cross-border activity among the legal profession.

Member States would also have to explore standardising the municipal rules that regulate qualification of lawyers within Member States to be called to the Bar and practice across Member States. This is arguably a sensitive area as it appears that in the area of legal practice, Member States are set up to protect that turf from non-nationals. And this is exacerbated by the sharp divide between the common law countries and the civil law countries. Thus cross-border legal practice in ECOWAS is largely unexplored. However, integration would require facilitation of cross-border legal practice and the attendant standardisation of the legal market across ECOWAS. The corollary effect may be greater competition within the legal sector which could lead to raising the standards within the profession.

Enforcement of Judgments of the ECOWAS Court of Justice and National Courts

Enforcement of ECOWAS Court Judgments

The 1975 ECOWAS Treaty provided for the creation of a court to adjudicate disputes. The combined effect of Articles 6 and 15 of the Revised ECOWAS Treaty 1993 created the ECOWAS Court of Justice to do just that. The 1991 Protocol on the Community Court established the details for the operation of the Court, the jurisdiction of which Article 9 spells out, that the court "shall ensure the observance of law and the principles of equity in the interpretation and application of the provisions of the Treaty." Article 9 of the 2005 ECOWAS Protocol provides the mandate of the Court of Justice to be, among others, adjudicating disputes relating to the interpretation and application of the ECOWAS Treaty, Conventions, Protocols, regulations and directives, and determining the failure ofMember States to Community obligations.

The ability of an ECOWAS citizen to invoke Community Law, rely on it before a national court and for that national court to be bound to follow that Community Law, are important aspects of integration through the law. The judgments of the ECOWAS Court of Justice is therefore an important source of Community Law. Article 15(4) provides that the judgments of the Court are binding on the Member States, the Institutions of the Community and on individuals and corporate bodies. The reference to 'Member States' will include the judicial bodies or national courts in these States.[3]

Article 19(2) of the 1991 ECOWAS Court Protocol makes the decisions of the Court immediately binding and Article 22(3) requires both Member States and ECOWAS Institutions to take all measures necessary to enforce and execute the Court's judgments. Since no judgment is self-executing and the machinery of the National courts would be relied upon to enforce judgments, those courts represent a critical institution within the Community to enforce Community Law and the decisions of the Court ofJustice.

Nwauche supports this view when he opines that national courts enable citizens to ensure that as primary beneficiaries of the integration process, they are able to implement Community Law or enforce Court of Justice decisions. He therefore agrees that the national courts represent an important institution and step to achieving the Community's integration objectives.

Yet, the ECOWAS Revised Treaty, which is the basis of the ECOWAS legal system, provides in Article 15(4) that the Revised Treaty's applicability in Member States depends on the manner in which it is incorporated into the State's legislation. It is a notorious fact that the Anglophone Member States are dualist States and therefore treaties do not have automatic application unless ratified or passed by a resolution of parliament and further incorporated into national law. In Ghana, Article 75 of the Fourth Republican Constitution provides as follows:

> *Execution of treaties.*
>
> (1) The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana.
>
> (2) A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by
>
> (a) an Act of Parliament, or
>
> (b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.

Ghana's Supreme Court in its interpretation and application of Article 75 appears to go a step further to require not just parliamentary ratification but full incorporation by statute. In *Republic v. High Court (Commercial Division, Accra), ex parte Attorney-General (NML Capital Ltd and Republic of Argentina - Interested Parties),*[4] per Dr. Date-Bah JSC the Court stated that Treaties, even when the particular treaty has been ratified by Parliament, do not alter municipal law until they are incorporated in Ghanaian law by appropriate legislation... The mere fact that a treaty has been ratified by Parliament... does not, of itself, mean that it is incorporated into Ghanaian law. A treaty may come into force and regulate the rights and obligations of the state on the international plane, without changing rights

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[3] *id.*

[4] [2013-2014] 2 SCGLR990

and obligations under municipal law. Where the mode of ratification adopted is through an Act of Parliament, that Act may incorporate the treaty, by appropriate language, into the municipal law of Ghana... The need for the legislative incorporation of treaty provisions into municipal law before domestic Courts can apply those provisions is reflective of the dualist stance of commonwealth common law Courts and backed by a long string of authorities ... [5]

This dictum however emphasises that when a state ratifies a Treaty, it assumes rights and obligations under the treaty "on the international plane" even though the state might not have domesticated the treaty. And, although, Article 40 of the Ghanaian constitution specifically provides that Ghana should adhere to the guiding principles of the ECOWAS Treaty, providing specifically as follows:

> *International relations.*
> In its dealings with other nations, the Government shall ...
> (c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means;
> (d) adhere to the principles enshrined in or as the case may be, the aims and ideals of,
> (i) the Charter of the United Nations;
> (ii) the Charter of the Organisation of African Unity;
> (iii) the Commonwealth;
> (iv) the Treaty of the Economic Community of West African States;
> (v) any other international organisation of which Ghana is a member [Emphases added.]

Thus while the ECOWAS Treaty may not be directly enforceable as law in Ghana because of the lack of parliamentary ratification, Ghanaian courts have an obligation to respect the Treaty and be guided by Ghana's obligations in their decisions. In *The Gorman & Others v. The Republic,* [6] Ocran JSC referred to Article 40 and stated that "under this Article, the promotion of respect for treaty obligations and for international law in general is viewed as a principle of state policy." In *Tsikata v. The Republic,* [7] Adinyira JSC said "signing a treaty imposes a moral obligation on the State not to do anything that would deviate from the object and purpose of the treaty. A state becomes legally bound to a treaty after ratification, accession, acceptance, approval or signature where the treaty so stipulates." And in *New Patriotic Party v. Inspector General of Police,* [8] Archer CJ stated as follows:

> Ghana is a signatory to this African charter, and member states of the Organisation of African Unity and parties to the charter are expected to recognise the rights, duties and freedoms enshrined in the charter and to undertake to adopt legislative or other measures to give effect to the rights and duties. I do not think that the fact that Ghana has not passed specific legislation to give effect to the charter, means the charter cannot be relied upon. [9]

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[5] *id.*,993-994. See also *Banjul v. Attorney-General* [Supreme Court, unreported, Suit No. J1/7/20 I 6, 22/6/2017]
[6] [2003-2004] 2 SCGLR 784
[7] [2011] 2 SCGLR I
[8] [1993-94] 2 GLR459
[9] *id.,* at 466. See also *Mensah v. Mensah* [2012] I SCGLR 391, per Dotse JSC at 414: "As a matteroffact, even though the Universal Declaration of Human Rights is not a binding treaty, its principles and underpinning philosophy has been incorporated into national constitutions and referred to by several national courts." See also *Republic v. Director of Prisons; Ex Parle Yeboah* [1984-86] I GLR 91, *Delmas America Africa Line Inc v. Kisko Products (Ghana) ltd* [2003-2005] 2 GLR 544, per Ocran JSC at 567-568, *Adofo & Others. v. Ghana Cocoa Board[2013-2014]* I SCGLR377 and *Kpebu (No. 2) v. Attorney-General (no. 2)* [2015-2016] I SCGLR 171.

According to Nwauche, the Anglophone ECOWAS countries (Ghana, Nigeria, Sierra Leone, Gambia and Liberia) have not domesticated the ECOWAS Revised Treaty and therefore it is not directly enforceable in these countries.[10] He also states that in practice, the Revised Treaty is not directly applicable even in Francophone ECOWAS countries, although they are monist countries.[11] Nwauche makes the argument t`hat even in Francophone West Africa, some level of legislative activity including the revision of the state's constitution, is sometimes required before a treaty takes effect, and sometimes may be subject to the reciprocal enforcement of international law by other states.[12] It appears that it is only the two Lusophone countries, Cape Verde and Guinea-Bissau, which directly apply the ECOWAS Revised Treaty.[13] There is therefore no uniform practice among the Member States on the status of Community Law and how it applies in each country, or uniformity regarding how it can be invoked before national courts.

There is also no uniform, accepted or agreed position on the status of the Community Court of Justice's judgments within Member States. Decisions of the Court of Justice are not directly enforceable in most of the national courts. In the Ghanaian case of *Re Chudi Mba*[14] for instance, the applicant had sought an order from the High Court of Ghana to enforce default judgment obtained from the ECOWAS Court of Justice, seeking $800,000 award in damages and 500,000 naira in costs after successfully suing the Government of Ghana for alleged violations of his fundamental human rights. The central issue was whether the Court could recognise and enforce the orders or judgment of the ECOWAS Community Court. The court held that the statutory regime for enforcing foreign judgments in Ghana operates on the basis ofreciprocity and that the ECOWAS Community Court is not stated as one of the Courts to which the legislation applies. The court refused to enforce the judgment.

This case highlights how the work of the Court of Justice could be undermined when the critical enforcement mechanism is not available in Member States. The Community Court's decisions then only become pyrrhic or of moral persuasion only with no real practical value to the party that sought and obtained relief from the Court.

However, there are at least two ways by which ECOWAS could develop an enforcement regime to assist in integrating the economies of Member States, namely through the principle of direct effect and through the reciprocal enforcement of treaties. It is to these that I now tum.

Principle of Direct Applicability

Direct effect is a principle of European Union law that enables individuals to immediately invoke a European provision before a national or European Court.[15] This principle was introduced in the case of *Van Gend en Loos v Nederlandse Administratie der Belastingen*[16] where the European Court of Justice held that provisions of the Treaty Establishing the

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[10] Nwauche,supra., at page 186

[11] *id.*

[12] *id.*,at page 188

[13] *id.*,at pages 186-187

[14] *In the Matter of an Application to Enforce the Judgment of the Community Court of Justice of the ECOWAS against the Republic of Ghana and In the MatterofChudi Mba* [High Court, unreported, Suit No. HRCM/376/15, 2/2/2016)

[15] https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/direct-effect

[16] [!963)ECRI

European Economic Community were capable of creating legal rights which could be enforced by both natural and legal persons before the courts of the Community's member states. The court identified three conditions necessary to establish the direct effect of primary EU law, namely that the provision must:

(a) be sufficiently clear and precisely stated;
(b) be unconditional and not dependent on any other legal provision; and
(c) confer a specific right upon which a citizen can base a claim.

This approach may be adopted with the necessary modifications to suit ECOWAS' purposes and context, to ensure the enforceability of the decisions of the Court ofJustice. It is arguable that, based on Article 9(6) and (7) of the Revised Treaty, judgments of the Court of Justice were intended to be directly enforceable in Member States. Those provisions say that decisions of the Court shall automatically enter into force after 60 days of publication in the Community's Official journal and shall also be published in the Gazette of Member States within the same period. The language adopted in the provision lends support to the proposition that the principle of direct effect could be applied in the ECOWAS context.

Multi-Lateral Reciprocal Enforcement Treaty

A second and perhaps more preferable way of creating an enforcement regime for ECOWAS Court of Justice judgments is through a multi-lateral reciprocal enforcement Treaty or Convention ratified by all Community Member States. Presently, most Member States already enforce foreign judgments on the basis of reciprocity. In Ghana, for example, foreign judgments are recognised and enforced based on the principle of reciprocity.[11] Specifically, Part V of the Courts Act, 1993 (Act 459) and the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument 1993 (LI 1575) specifies reciprocity as the basis for enforcing the judgments of specified courts in specified countries whose judgments are registrable and enforceable in Ghana.

In circumstances where the judgment of a foreign court is not enforceable, having been obtained in a country and court that is not listed in LI 1575, the victorious party could institute fresh proceedings in Ghana under common law on the obligation created by the foreign judgment.[18] Clearly, instituting fresh proceedings in Ghana is inadequate for regional integration where the Member States must recognise and enforce judgments from the Court of Justice to provide bite to the Court's decisions. Thus it would appear that what Member States like Ghana have to do is to amend the law to state that the judgments from the ECOWAS Court and all other superior courts in ECOWAS are enforceable on the basis of reciprocity under the Revised Treaty.

Once again, the European Union presents a classic example of how reciprocal enforcement legislation (Convention or Treaty) could assist in regional economic and political integration. The EU adopted the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention) on September 27, 1968. The Preamble to the Convention indicates that the Brussels Convention was necessary "to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements."

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[11] *Republic v. Mallet: Ex Parle Braun* [1975] l GLR 68

[18] Cheshire & North, Private International Law (13th ed, Butterworths, London), Chapter 15. See also *Adams v. Cape Industries Pie* [1990] Ch 433

Under Article 31 of the Brussels Convention, a judgment given in and enforceable in a Contracting State is enforceable in another contracting State if an order for its enforcement has been issued, once an interested party applies for enforcement. Further, Article 32 of the Convention also sets out the specific courts in the various contracting states where applications for enforcement may be sent, therefore making it easy for a party applying for enforcement to know which court has jurisdiction in each Contracting State. Article 37 sets out the various courts in the different Contracting States where an appeal against the decision authorising enforcement must be lodged. Further, where judgment cannot be given for all matters under consideration, judgment could be given in respect of some of them. An applicant may also request for partial enforcement of a judgment.[19] These provisions provide flexibility and some level of certainty in the enforcement process.

Thus the Brussels Convention afforded the judgment obtained in one Member State recognition and enforceability in all other Member States, with some limited exceptions. This approach radically altered the manner in which judgments were recognised and enforced within the European Union, wholly replacing the convoluted system of bilateral recognition and enforcement treaties existing between Member States.[20] The Brussels Convention, however does not apply to arbitral awards.[21]

Similarly, the United Arab Emirates (UAE) is party to a number of multilateral conventions on the recognition and enforcement of foreign judgments, including the Riyadh Convention on the Judicial Cooperation between the States of the Arab League 1983 (entered into without reservations) and the Gulf Cooperation Council (GCC) Convention for the Execution of Judgments, Delegations and Judicial Notifications of 1996 (entered into without reservations). The Riyadh Convention provides for the recognition and enforcement of both judgments and arbitral awards. In relation to judgments, Article 33 of the Riyadh Convention provides in explicit terms that an execution order is binding on all parties to an action domiciled in the territory of the contracting party where the judgment was made. Aparty attempting to enforce a judgment in the jurisdiction where assets are located must obtain a certificate from a judicial authority where the award was granted confirming that the award is enforceable, final and has the power of *res judicata*. This ensures that the parties cannot re-litigate on the same facts in any other court.

Under the Riyadh Convention, a foreign judgment may be enforced in the UAE by a party making a request to the competent court. Once the request is approved, enforcement is carried out.[22] Article 36 provides that writs of execution of a contracting party in whose territory they were issued are enforceable by the other contracting parties in accordance with the procedures for enforcing judgements from national courts, provided that it does not conflict with the provisions of Sharia law, the national constitution, public order or the rules of conduct of the contracting party required to give effect to such writs. Under the GCC Convention, the procedure for executing a judgment is governed by the law of the

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[19] Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention), Article 42

[20] Reuland, Robert C, "The Recognition of Judgments in the European Community: The Twenty-Fifth Anniversary of the Brussels Convention," 14Mich. J. lnt'lL. 559 (1993)

"Brussels Convention, Article 1(4)

[22] United Arab Emirates: Enforcement of Foreign Judgments 2019 para 3.3. Information available at https://iclg.com/practice-areas/enforcement-of-foreign-j udgments-laws-and-regulations/united-arab-emirates (last accessed 29-8-19)

country where the judgment is executed. Again the GCC recognises the need for the judgment to conform to the overriding principles oflslamic Sharia law.

A multilateral treaty-based enforcement regime would aid integration within the Community. ECOWAS must consider both the enforcement of judgments of national courts and the enforcement of arbitral awards arising out of proceedings seated in Member States. It is my view that the Organisation for the Harmonisation of Business Law in Africa's (OHADA) recognition and enforcement structure provides a viable blueprint for enforcing Community Law and judgments of the Court of Justice and other court judgments in Member States. OHADA is in fact not a regional economic community however its structure for the enforcement of the OHADA court's judgments are very instructive. Presently, OHADA is applicable in Francophone Member States and is therefore in force in a section of ECOWAS.

The OHADA Common Court of Justice and Arbitration (CCJA) is an integral part of its member states' national judicial systems and functions as the highest national court of its Member States. The OHADA regime allows national courts and parties to cases before a national court to refer a matter to the CCJA. National courts are also able to seek the advisory opinion of the CCJA on matters before the national court. An example is the CCJA's 2001 advisory opinion, on Cote d'Ivoire's request, which concluded that OHADA Uniform Acts abrogate identical, as well as conflicting, national laws and regulations.[23]

The CCJA also receives appeals from private litigants and decisions of cases on the merits. This is in contrast to the European Court of Justice which can receive cases from private parties but then it decides a point of law (akin to a certified question), after which the case returns to the national court for further adjudication. The CCJA's interpretations of OHADA laws theoretically affect the structure within which private commercial transactions occur i.e. all economic actors from all levels of OHADA Member States' economies. The decisions of the OHADA court are also immediately binding and enforceable in Member States.

In the ECOWAS context, the reciprocal enforcement of arbitral awards within the Community does not appear to be too problematic. All the ECOWAS Member States, with the exception of Guinea-Bissau, Togo, Sierra Leone and Gambia are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award. The easiest way for the Community to ensure enforcement of arbitral awards among all the fifteen Member States is to encourage and put political pressure on the non-Convention Member States to accede to and domesticate the New York Convention. Once Guinea-Bissau, Togo, Sierra Leone and Gambia achieve this, ECOWAS Member States would automatically enjoy reciprocal enforcement throughout the Community. This will eliminate the necessity for the Member States to design and ratify a separate Convention, which had to be done within OHADA because at the time, seven out of the 17 OHADA countries had not ratified the New York Convention, therefore necessitating the introduction of a wholly new Convention for mutual recognition and enforcement of arbitral awards.

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[23] CCJA Advisory Opinion No 001/2001/EP of 30 Apr. 2001 (applying OHADA Treaty Art 10), http://www.ohada.org/ohada-jurisprudence/fr/content/default/3294,avis-n001200 Iep.html

In relation to the reciprocal enforcement of judgments within Member States, however, a multi-lateral Convention based on the EU, Arab League or OHADA structure must be introduced to facilitate enforcement of judgments within the Community. The key features that such a Convention or Treaty would include:

(1) mutual recognition and enforcement of the Court of Justice's judgments and those of other national courts; and

(2) precluding the national courts of Member States from reviewing the merits of such judgments.

Procedure

Enforcing such judgments in national courts may raise its own problems because of the diversity in the constitutions of the various Member States. A key issue that ECOWAS must address in introducing a multilateral treaty enforcement regime is implementation, i.e. how is a foreign judgment or Court of Justice judgment practically going to be enforced?

Under Article 24 of the 1991 Protocol, execution of ECOWAS judgments must be by a writ of execution which the Chief Registrar is required to submit to the Member State. The Member State must then execute the judgment according to its civil procedure rules. This provision allowing enforcement of Court of Justice judgments according to the respective civil procedure rules of Member States may be problematic, considering the differing legal systems and traditions within ECOWAS. In Ghana, for instance, enforcement of a foreign judgment is generally governed by the following:

- Courts Act, 1993 (Act 459), which provides the procedure for registering and enforcing foreign judgments (section 82);
- Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument, 1993 **(LI** 1575), which states the countries whose judgments are enforceable in Ghana on the basis of reciprocity; and
- High Court (Civil Procedure) Rules, 2004 (CI 47), which elaborates further on the procedure for registering and enforcing foreign judgments (Order 71).

Under Order 71 of CI 47, a judgment creditor under a foreign judgment must apply to the High Court to have the foreign judgment registered. The application must be made within six years after the date of the judgment or if there has been an appeal, it must be six years after the last judgment. An order may be made by the High Court for a foreign judgment to be registered if the foreign judgment was given by a superior court and was not heard by the superior court on appeal from a court which is not a superior court. The foreign judgment will not be registered if at the date of application, the judgment cannot be enforced by execution in the country of the original court or if the judgment has been fully satisfied.

A registered judgment for the purposes of execution is of the same force and effect as a judgment given by a Ghanaian court, i.e. the foreign judgment will be treated as a judgment originally given in the Ghanaian court and entered on the date of registration. Once the judgment is registered, it may be enforced by any of the methods of enforcement applicable in Ghana. Judgment for the payment of money may be enforced by writs of *fieri facias*, garnishee orders, charging orders, committals, appointment of receivers, writs of sequestration, and insolvency proceedings against an individual and winding up proceedings against a debtor company. Enforcement of judgment for possession of

immovable property may be enforced by a writ of possession, an order for committal or a writ of sequestration.

The Ghanaian procedure is fairly simple and straightforward, and a similar procedure may be adopted by Member States to facilitate the enforcement ofECOWAS Court of Justice judgments and national judgments from the Member States. However, in the present context, Article 24 creates a risk that enforcement may be more cumbersome in one Member State as opposed to another state, depending on their civil procedure rules. Therefore a measure of standardisation of the enforcement procedure may be helpful. Perhaps, a provision that in the reciprocal enforcement Treaty or Convention requiring that enforcement of a Court of Justice decision must not be more onerous than the enforcement of a decision of a national court may assist. Another approach could be to include a specific, uniform and mandatory procedure for enforcement of ECOWAS judgments in Member States in the multi-lateral Convention or Treaty. This procedure would be separate from the general enforcement procedure under the civil procedure rules of each of the Member States.

The Community must also be willing to take steps against any Member State that refuses to recognise or enforce an ECOWAS Court judgment. There is ample support in Community Law to enable this. For instance, Article 77(1) of the Revised Treaty gives the Community the power to impose sanctions against Member States that do not fulfil their obligations, and this, I would argue, includes the obligation of Member States to comply with the ECOWAS Court ofJustice decisions.

Enforcement of National Court Judgments

Reciprocal enforcement of judgments from the national courts of the 15 Member States, as noted above, is critical to ensure that full integration is achieved. The judgments of national courts of one Member State must be enforceable in another Member State. Treaty/Convention legislation that allows for reciprocal enforcement of judgments from one Member State to another is essential.

Conclusion

ECOWAS has come a long way in its efforts to foster political and economic integration. Treaties passed in succeeding years is a clear indication of the Community's efforts of establishing an enabling legal environment. Enforcement is key in creating an enabling legal environment within the Community and therefore efforts should be made in applying Article 9(6) and Article 9(7) of the Revised Treaty to ensure that judgments of the Court of Justice are directly enforceable in Member States. A test case may also be brought in the Community Court for a proper interpretation of the provisions of the Revised Treaty and its applicability in the national courts. The judgment in this test case can provide valuable guidance.

Further, a multi-lateral reciprocal enforcement Treaty or Convention by all Member States appears to be another way forward in ensuring that judgments can be enforced to secure the principle of supranationality of Community Law.

SUB-THEME 3

THE ROLE OF ECOWAS COURT OF JUSTICE IN THE INTEGRATION PROCESS

THE ROLE OF THE ECOWAS COURT OF JUSTICE IN THE INTEGRATION PROCESS

BY

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INTRODUCTION

The Court was established to strengthen integration law in West Africa, as the founding text indicates. The preamble of the 2005 additional Protocol assigns to it the responsibility of *«removing obstacles to the achievement of the community's objectives and accelerating the integration process», as well as «monitoring the implementation of the commitments of the member states»*.

Reminder: The integration in question is economic, it is about setting up an «Economic Community of West African States», coupled with a «monetary union» according to the ECOWAS treaty.

Has it so far, been fully successful in this mission? This is questionable, not because it has not properly carried out its mission, but because the litigations that have been submitted to it are not necessarily conducive to the law of integration.

This presentation will be in two parts: the identification of a weakness (I) and the possible solutions (II).

The weakness of the jurisprudential law of integration

Two weaknesses can be noted:

A) The very absence of a dialogue with the municipal court through the preliminary ruling technique

- Explain this technique and its justification

Regarding the municipal court, it is through the preliminary referrals that one could have had an idea of the rate of invocation or application of Community law, but this rate too, remains hopelessly low. Unlike other counterpart jurisdictions, like the WAEMU or CEMAC, the ECOWAS Court has never been approached through referral. It should be recalled, that such procedure means that the municipal court, faced with an issue regarding Community law which had been submitted to it by the parties involved, must request the interpretation- with the exclusion of any assessment of validity - of an ECOWAS standard. In principle, it is the number of referrals for preliminary rulings that should have given an idea of the penetration rate of the ECOWAS law in the Member States judicial practices. If we were to stick to the statistics here, we would have to conclude that this rate is low, that integration law in the Member States is indeed ignored or neglected. Admittedly, the Municipal Court remains the first judge of Community law as nothing impedes it, in principle, and as long as it considers the conditions to have been to be met (in particular under the theory of plain meaning rule), from interpreting and applying ECOWAS law itself. There may therefore be instances of the application of Community law of which the Abuja Court is not necessarily aware. But to be honest, there is no reason to say that this spontaneous national application is statistically significant. It is likely that if they were to be reviewed, the relevant cases would be extremely rare.

B) The lack of implementation of the substantive law of integration

Just refer to the two procedures which, by definition, mobilize integration standards: Infringement proceedings (before the court) and preliminary rulings (by the municipal court). The first concerns a State which fails to fulfil its obligations as a member and has therefore failed to comply with the standards laid

down by the Community, regardless of the act setting them out (primary or secondary law). In principle, infringement proceedings are initiated by a Member State or by the President of the Commission (new Article 10 a) of the Court Protocol). However, to date, no infringement proceedings have been brought before the Court. Far from reflecting scrupulous compliance with the obligations of Member States, the absence of infringement proceedings would rather be linked either to a lack of knowledge of the standards set by ECOWAS or to a form of diplomatic reluctance to summon a State for fear that such legal action would deteriorate the quality of the relationship maintained with it. While this last consideration should not be overlooked, and while almost all States are sensitive to it - including in organisations such as the EEC/EU, known for their highly "integrated" nature - it should not be overlooked that it is nevertheless worrying that the Court has never had to deal with a violation of Community law committed by a State in more than fifteen years of operation. The fact shows above all that the law discussed before the Court is not ECOWAS law. Indeed, for the most part, and since the 2005 reform, the Court has become a quasi-exclusive jurisdiction to sanction human rights violations and that - this is what is important-, these rights are stipulated in legal instruments that ECOWAS has not produced. In most cases, the conventions to which the applicants refer have been concluded either within the framework of the United Nations (1966 Covenants or others) or within that of the OAU/AU (African Charter on Human and Peoples' Rights in particular). Other disputes before the Court remain marginal, whether they concern the assessment of the legality of Community Acts or the civil service, as these two proceedings are initiated by private persons whose interests are threatened.

The Court must of course be exonerated in this respect. As it has no power of self-referral, it only judges what is brought to it and, in principle, in the terms laid down by the parties involved in the proceedings. On the contrary, it is up to litigants, i.e. lawyers, to provide the elements for a debate on integration standards.

II- What solutions can be considered?

A) There is no doubt that integration law must be taught, through initiatives taken by the Court: sensitization visits, meetings with the bar associations of the Member States, etc.

Another important point is the teaching of integration law, in the training courses for lawyers and judges. This training does not really exist.

B) But it is from the intensified economic exchanges that change can take place. The law develops through the defence of interests and the interest is where the trade (i.e. Exchange) takes place. The development of intra-Community trade is not only a wish regularly expressed by the ECOWAS Commission in its annual reports, it is also a legal requirement, which is of great interest to the Court.

Conclusion: A prospective reflection: as a human rights judge, does the Court achieve any form of integration, legal or political integration?

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[1] These two procedures, like the other proceedings before the Court, were largely inspired by the 1957 Treaty of Rome creating the European Economic Community. Other integration organisations in Africa, with a judicial bodies, have also incorporated provisions (WAEMU and CEMAC in particular).

As paradoxical as it may be, it is indeed the marginal status of integration law that we must talk about. This law is, the least one can say, largely underutilized, largely untapped.

The current status can even, from a purely psychological point of view, depict the image of the institution. Ruling almost exclusively only on human rights violations, it could be seen as an essentially "repressive" body, and its courtroom as a place dedicated to imposing prejudices on States, instead of fostering their development or the development of their economies. This is why it is urgent to think about ways to restore the law of integration, which for its preservation, the court was created.

THE ROLE OF THE ECOWAS COURT OF JUSTICE IN THE INTEGRATION PROCESS

BY

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INTRODUCTION

The Community Court of Justice of the Economic Community of West African States was established as a Tribunal by the Treaty of Lagos of 1975. The court was however, 'properly' situated by Protocol A/Pl/7/91 on the Community Court of Justice 1991, as the principal legal organ of the Community saddled with the responsibility of enforcing the Treaties, Conventions, Protocols and Decisions of the Community. Consequently, the principal function of the court as defined by the legal instruments of the Community, includes settlement of disputes among or between Member States, institution and officials. The Court also ensures the enforcement of Community laws and protects and enforces the human rights of citizens Member States of the Community. [2]

The Court is equally empowered to hear and determine contentious disputes within its jurisdiction, render advisory opinions brought before it by appropriate institutions or Member state(s) of the Community, as the case may be.

It has the power to act as an arbitrator pending the establishment of an Arbitration Tribunal, and also gives preliminary rulings on issues of Community law referred to it by domestic courts of Member States.

Access to the court was widened in 2005 to allow individuals, and corporate bodies to bring cases before it and to include in its mandate the interpretation of the legal texts of the Community, dispute settlement, enforcement of Community obligations and human rights violation.

The essence of the creation of the court is to drive the integration process, create a body of Community laws to drive the process and ensure some measure of uniformity of laws of Member States in the areas of its jurisdictional competence.

This paper examines the role of the court in the integration process vis-a-vis its mandate of interpreting and applying the Revised Treaty and Community legal Texts, protection of social and Economic rights and its impact on economic development, competence relating to referrals as envisaged by Article l0(f) of the Supplementary Protocol 2005 of the Court, and the absence of such referrals by domestic courts of Member States, access to court for failure of Member States to fulfil their Community obligations as well as the role of the ECOWAS Commission.

2. ECOWAS IN RESTROSPECT

The Economic Community of West African States (ECOWAS) was established in 1975 following the signing of the Treaty of Lagos by the Heads of State and Government of West African Countries.

The aim of ECOWAS was the attainment of self-sufficiency through economic integration of the states of the sub region leading ultimately to the creation of a large trading block and a single monetary Union.

[2] The Human Rights Mandate of the Court was introduced by the Supplementary Protocol of the Court 2005.

Although this aim has not been fully attained, the Treaty of Lagos has been supplemented by other Protocols and Conventions aimed at promoting and attaining the objectives of the organization. These, among other studies, culminated in the promulgation of the ECOWAS Revised Treaty of 1993. In the Revised Treaty the aims of ECOWAS was captured in the following words:

> "to promote co-operation 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. [3]

To drive the realization of these objectives, ECOWAS set up some institution including, the Authority of Heads of States and Government, the council of Ministers, the Community court of Justice and the secretariat (Now ECOWAS Commission) among others. [4]

As earlier noted, the Community Court of Justice (CCJ) is the principal judicial organ of ECOWAS. The basic aim of the court is to ensure "the observance of law and justice in the interpretation and application of the Treaty and Protocols and Conventions annexed there to and to be seized with responsibility for settling such disputes as may be referred to it in accordance with the provisions of Art 76(2) of the Treaty, and Disputes between states and institutions of the Community.

The court therefore was originally conceived as an inter-state court giving no direct access to individuals and corporate bodies. Art 9(3) of the 1991 Protocol, of the court provides that:

> "Member States may on behalf of nationals institute proceedings against another Member State or institution of the Community relating to the application of the provisions of the Treaty, after attempts to settle the disputes amicably have failed".[5]

The Revised Treaty also reinforced the inter-state nature of the court by stating that:

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

2. Failing this, either party or any other Member State or the Authority may refer the matter to the court of the Community where the decision shall be final and shall not be subject to appeal.

[3] Art 3(1) of the Revised Treaty.
[4] Art 6 of the Revised Treaty
[5] Preamble to Protocol A/A.1/7/91 on the Community Court of Justice.

It is axiomatic that as an inter-state court, the court faced two challenges, namely:

(i) Under the Revised Treaty and the Protocol of the court, only Member States and institutions of the Community had direct access to the court. It is on record that even till date, no Member State and sparingly institutions of the Community ever approached the court on any issue relating to the court's mandate and jurisdiction as of right or on behalf of its nationals.

(ii) Individuals and corporate bodies did not have direct access to the court. Thus between 2001 and 2005 only two cases were lodged by individuals without right of access and the two cases were obviously ruled inadmissible.[6]

The effect therefore, was that the court was rendered redundant throughout the period it existed only as an inter-state court. Sadly, Community citizens who were eager to come before the court, were denied access to justice. Similarly, their states were reluctant to espouse claims on their behalf. These anomalies coupled with the agitations of civil society organizations which mounted pressure on ECOWAS authorities to explore avenues to enable individuals to access the court. This culminated in the adoption of Supplementary Protocol A/SP.1/05 in January 2005, amending the 1991 Protocol on the Court of Justice which granted access to individuals and corporate bodies in respect of certain causes of action.

The thrust of the Supplementary Protocol of 2005 relating to the Court of Justice in granting of access to individuals and corporate bodies in respect of certain causes of action from Article 9 of the Protocol, is deducible that the court now has four major distinct mandates, namely:

(i) Mandate as a Community court
(ii) Mandate as an arbitral tribunal
(iii) Mandate as ECOWAS public service court
(iv) Mandate as a human rights court.

Thus, the court is no longer stricto sensu an inter-state court. It is obvious that the Supplementary Protocol is the life wire of the court and has assured its continued relevance and existence other than on paper; and it has been rightly pointed out that in contrast to the two cases lodged between 2001 and 2005 there has been an exponential increase in the number of cases after the adoption of the Supplementary Protocol relating to the court in January 2005 which gave access to individuals and corporate bodies in respect to certain causes of action. It is within the ambit of the function, powers and jurisdiction of the Community Court of justice that its role in the integration process is situated.

In line with the concept note of this conference relating to the areas of influence for the Court in the integration process we shall examine the roles seriatim.

(1) Interpretation and Application of the Revised Treaty

The Court of Justice of the Community was established under the 1993 Revised Treaty and is to carry out the functions assigned to it in a Protocol relating to it.[7] Its judgment is also

[6] Olajide Afolabi v Federal Republic of Nigeria (2008) CCJELR (pt I) and Ukor v. Lalyeye (2009) I CCJELR (pt 2) 30
[7] Art 15(I) & (2) ECWAS Revised Treaty

declared to be binding on the Member States, Institutions of the Community, and on individuals and corporate bodies.[8]

Thus the court is the principal judicial organ of the Community. The Protocol on the Community Court of Justice 1991 as amended by Supplementary Protocol of the Court clearly stated the powers and the jurisdiction of the court.

More particularly, the Supplementary Protocol of the court clearly states that the Community Court of justice has the competence to adjudicate on the following matters; inter alia,

> (a) The interpretation and application of the Treaty, Conventions, and Protocols of the Community .. '[9]

Apart from its human rights mandate, the courts competence under this provision is the fulcrum and pivot of its role in the integration process. In carrying out its function, the Revised Treaty appears to be the supreme law and ground norm of the Community. Member States are enjoined in accordance with established principles of international law to take necessary steps to ensure the enactment of such legislative and statutory texts in accordance with their constitutional procedures necessary for the implementation of the provisions of the Revised Treaty.[10] The Community Court of Justice stressed the importance produced by the Community in the following words:

> "as regards materials competence, the applicable texts are those produced by the Community for the needs of its functioning towards economic integration, the Revised Treaty, the Protocols, the conventions and subsidiary legal instruments adopted by the highest authorities of ECOWAS".[11]

Thus the principal legal regime of ECOWAS are Treaties, Conventions and Protocols made by the Community pursuant to the Revised Treaty; which is the principal source from which the Court derives its powers, it also defined to include the "Protocols annexed there to. As instruments from the Revised Treaty, the Supplementary Acts, Protocols and Conventions cannot rank equally as the Treaty within the ECOWAS normative legal order.

More pointedly, Femi Falana has rightly pointed out that:

> "Under the new legal regime of ECOWAS, Community Acts are known as Supplementary Acts, Regulations, Directives, Decision, Declarations, Enabling Rules, Recommendations and Opinions".[12]

[8] Art 15(3) & (4) ibid.
[9] Art 9(1) of the Supplementary Protocol the court, 2005
[10] Art 5(2) of the Revised Treaty.
[11] Moosa Leo Keila v Mali (2008) CCJELR (pt 2) 58.
[12] Femi Falana, ECOWAS Court,: Law and Practice: (Lagos: Legal Texts Publishing Co. Ltd, 2010) p. 11

In this sense, it is the Authority of Heads of State and Government that adopts additional Acts, issues directives, takes decisions, and makes declarations.

The Council of Ministers adopts regulations, gives directives, takes decisions and makes recommendations and gives opinions based on their areas of competence.

It is the responsibility of the ECOWAS Commission to adopt enabling rules for executing the Acts of the Authority and the Council of Ministers. It also makes recommendations and renders opinions.

As earlier noted and rightly and succinctly summarized by Falana:

> "Supplementary Acts are Acts which complement the treaty and incumbent on Member States to abide by Supplementary Acts, subject to the provisions of Articles 15 of the Treaty. Regulations are Acts with general Application and shall be applicable in Member States. They shall have binding force on ECOWAS institutions. Directives are Acts through which the Authority or Council of Ministers set for Member States the objectives to be attained. They are also binding. Decisions are Acts of individual application to the recipient they are addressed to. They are also binding. They are made by the Authority or adopted by the Council. The ones adopted by the Council are equally used to monitor the functioning of Community institutions or for monitoring the realization of the objectives of the Community. As the first President of the Community Court has rightly pointed out, "Whenever it is used, a Decision is binding on those to whom it is addressed and its most striking effect 'is that it is immediately and totally binding on the addressee Member states, corporate bodies and individuals, and may as a result create rights for third parties."[13]

In exercising its mandate of interpreting these instruments, the Community Court gives directions to ECOWAS Community law; and also reinforces its existence.

It should be noted that ECOWAS is founded on the principle of Supranationality. Supranationality envisages a situation in international law where an authority created by an association of States, exercises (at least in theory) powers within its area of jurisdiction notwithstanding the provisions of the states national laws. Indeed it suggests that a state surrenders part of its sovereignty to such international institution with regard to certain subject matters. The major features of Supranationality include:

(a) It is based on the existence of a treaty to which a state member is a party.
(b) The legal authority of institution created by the treaty superceeds municipal law within the ambit of its authority, power and jurisdiction.
(c) Decisions usually come by way of consensus of its Member States.
(d) Becoming a member of such organization is either by signature, ratification of accession to the treaty establishing it, which is tantamount to giving up part of the Member State's sovereignty.

[13] Hansana Donli, The Constitutional Powers of ECOWAS Court: Nigeria Tribune Monday and January 2006, p. 32.

Thus, where there is a supranational organization, its power and influence on Member states transcend national boundaries.

Sovereignty is an attribute of statehood which all states guard jealously. However, where a state party to a Treaty has voluntarily surrendered its competence to deal with certain subject matter to a Supranational in that treaty, it cannot complain that its sovereignty is violated.

The Community Court in a plethora of decisions has held that ECOWAS is a supranational institution with regard to areas of its competence. Accordingly, the Court has equally maintained that under the Revised Treaty and its Protocols, it is not constrained by any contrary provisions in the domestic laws of the Member States.

In Musa Said Khan v. Republic off The Gambia, the court stated as follows:

> "ECOWAS is a supranational authority created by Member States wherein they expressly ceeded some of their sovereign powers to ECOWAS to act in in their common interest. Therefore, in respect of those areas where Member States have ceded part of their sovereign powers to ECOWAS, the rules made by ECOWAS superceed rules made by individual Members States if they are inconsistent.

The Revised Treaty of ECOWAS was ratified by all the Member States of ECOWAS including the Defendant/Applicant herein. This court is the offspring of the Revised Treaty and this court is empowered by the Supplementary Protocol on the Court of Justice, which is part of the instruments of implementation of the Treaty and has the same legal force as the Treaty to adjudicate on issues of human rights arising out of Member States of ECOWAS"[14]

Furthermore, the acceptance of the doctrine of supranationality as a cardinal or fundamental principle of ECOWAS, implies that the legal instruments of the Community are no longer Treaties requiring ratification by Member States but Acts and Decisions having direct application in Member States.[15]

The law and practice of ECOWAS appears to support the theory of monism in international law where international law forms part of municipal law as opposed to dualism which argues that for international law to be part of municipal law it needs to be incorporated into it by an Act of Parliament. While Francophone Member States of ECOWAS easily embrace monism, Anglo-phones States still stick to the principle of dualism which makes it difficult for Community laws to have direct application in their states without domestication.[16]

[14] Thus, in interpreting and enforcing the legal instrument of the community the court contributes immensely t the creation of ECOWAS Community law. News of the basic intents of the integration process is the creation of some measure of uniformity of laws in the areas of competence of ECOWAS and the court of justice is Protocol in that process.
[15] See Falana Op. Cit. P.11, Ugokwe v. Okeke (2008) 1 CCJELR 149.
[16] See eg S.12 of the 1999 Constitution of the Federal Republic of Nigeria.

2. Protection of Social and Economic Rights as a factor for Economic development

As earlier noted, Supplementary Protocol of 2005, [17] amending the Protocol Relating to the Community Court of Justice, 1991[18] granted the Court of Justice, ECOWAS, the jurisdiction to entertain cases of violation of human rights occurring in Member States of the Community, thus providing an alternative platform for judicial protection of human rights in the West African sub-region. In fact the key element in the functioning and effectiveness of the court is its human rights mandate. Notwithstanding the fact that the court has four distinct mandates, cases of violation of human rights by Member States constitute the bulk of its jurisprudence.[19]

In a long line of cases, the court has roared where national courts have failed to act.

Apart from the protection and enforcement of political rights of ECOWAS citizens, the court has gone a step further, notwithstanding the existence of national laws to the contrary, to protect their Socio-economic rights.

Although human rights are, generally speaking, a compendium and cannot be compartmentalized into categories as Vassak tried to do, except for historical purposes, socio-economic rights are those rights that give people access to certain basic needs, necessary for human beings to lead a dignified life. Most of these rights are enshrined in international human rights instruments.[20]

Government can be held accountable if they do not respect, protect, promote and fight these rights. Socio-economic rights are also available to protect vulnerable and disadvantaged groups in society. They include such rights as the right to education, right to adequate standard of living, right to housing, right to work, right to a living wage, public health care to mention but a few. National Courts in most cases have failed or neglected to enforce these rights either on the grounds of non-domestication of the international instruments providing for them or where national constitutions designate them as non-justiciable. However, in the interest of reinforcing and enhancing the integration process, the Court of Justice has consistently in its jurisprudence upheld the enforcement of these rights, provided Member States are parties to international Human Rights Instruments guaranteeing them. For example in the case of SERAP v. Federal Republic of Nigeria [21]; Chapter 2 of the constitution of the Federal Republic of Nigeria, 1999 contains a provision entitled "Directive Principles' of State Policy." The constitution further provides that matters contained within those provisions are not justiciable by Nigerian courts. In an action bordering on the right of citizens to education, Nigeria questioned the jurisdiction of the Court of grounds that such matters, which is essentially within the domestic jurisdiction of the state and not being justiciable, deprives the ECOWAS Court the jurisdiction to adjudicate on the matter. After recovering the authorities including the fact

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[17] A/SP.1/01/05 of2005
[18] A/SP.1/7/91 ofl991
[19] Nwoke F.C, Alternative Platform for the Protection of Human Rights in the West African Sub-Region: ECOWAS Court of Justice in Perspective (17th Justice ldigbe Memorial Lecture)
[20] University of Benin 2019, p. 18
[21] Suit No. ECW/CCJ/APP/02/2009 of27/10/2009

Nigeria has signed and ratified the African Charter on Human and Peoples' Rights which recognizes the right to education, the Court stated that:

"The Directive Principles of State Policy of the Federal Republic of Nigeria are not justifiable before this court as argued by the 2nd Defendant and the fact was not contested by the Plaintiff. And granted that the provisions under the Directive principles of State Policy were justiciable, it would be the exclusive jurisdiction of the Federal High Court, being a matter solely within the domestic jurisdiction of the Federal Republic of Nigeria. However, the plaintiff alleges breach of the right to education, contrary to the provisions of the African Charter on Human and Peoples' Rights. The right to education recognized under Articles 17 of the African Charter is independent of the right of education captured under the Directives Principles of State policy of 1999 Federal Constitution of Nigeria. It is essential to note that most human rights provisions are contained in domestic legislations as well as international human rights instruments such as the right to life has been elevated to the status of 'jus cogens', peremptory norms of international law form which no derogation is permitted. Hence the existence of a right in one jurisdiction does not automatically oust enforcement in the other.

"They are independent of each other. Under Article 4(g) of the Revised Treaty of ECOWAS, Member States of ECOWAS affirmed and declared their adherence to the recognition, promotion, and protection of human and peoples' rights and in accordance with provisions of the African Charter on Human and Peoples' Rights. The 1st Defendant is also a signatory to the African Charter on Human and Peoples' Rights... the first defendant is also a signatory to the Revised Treaty of ECOWAS and is therefore bound by its provisions. It is trite law that this Court is empowered to apply the provision of the African Charter on Human and Peoples' Rights and Article 17 guarantees the right to education. It is also well established that the right to education guaranteed by the African Charter on Human and People's' Rights are justifiable before this court."

It is apposite to state that human rights protection is a fundamental and core value of ECOWAS as consistently advanced and reinforced by the Court of Justice.

While National Courts of Member States have tended to concentrate on the Protection of Civil and Political rights, the Court of Justice has gone beyond that to also protect and enforce socio-economic rights. This is in recognition of the assertion that human rights are universal, indivisible interdependent and interrelated. [22]

With specific reference to socio-economic and cultural rights their protection is of utmost importance survival and progress of generations unborn. For example the right to education both recognized by the Universal Declaration of Human Rights (UDHR), [23] the Covenant on Social Economic and Cultural[24] Rights (CESCR) as well as the African Charter on Human and Peoples' Rights[25] (ACHPR) is the cornerstone to the development and advancement of any society. In its General Comment No 13, the United Nations Committee on the Right to education stated as follows:

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[22] Vienna Declaration and Programme of Action (1993) para 5.

[23]

[24]

[25] Art.17

"Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling population growth.

Increasingly, education is recognized as one of the best financial investments states can make. But the importance of education is not just practical; a well-educated, enlightened and active mind, able to wonder freely and widely, is one of the joys and rewards of human existence". [26]

Accordingly- education and other socio-economic rights are veritable tools for development the world over, and more specifically in the ECOWAS region. Although variable, education should be made available to all without discrimination.

Although opinions differ as to the extent of the implementation of the rights guaranteed by the CESCR, in view of dwindling state resources, their recognition and enforcement by the Court of Justice of ECOWAS to hold Member States of the organization accountable for their violation is a step in the right direction. Development itself has a symbiotic relationship with the guarantee of socio-economic rights with other human rights. A sick, hungry and uneducated citizen may not fully pursue the realization of his civil and political rights. Although, historically, economic and social rights are latter in time, the realization of political and civil rights is impossible without the assuring the wellbeing of the individual, hence the conclusion that human rights is a compendium and socio-economic rights are complementary to civil and political rights and reinforces them.

Thus, the efforts of the Court of Justice in enforcing and protecting such rights against violation by Member States of ECOWAS is to be commended and pivotal to the integration process.

3. Establishing a synergy between the ECOWAS Court of Justice and National Courts.

The creation of supranational organizations usually throws up issues of the relationship between domestic law and Community law created by the operation of the transnational organization. The European law model has shown how modem system of transnational relations are anchored on continuous negotiations among various levels of government, rather than a neat separation between what is domestic and what is international. This implies that that in such an arrangement, domestic law cannot be a defence to a breach of international legal obligations assumed by states in being Members of Supranational organization(s).

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[26] CESCR General Comment No. 13, The Right to Education (art 13) (8/12/99)

Within the European Union (EU) the primacy of European Community law over domestic law seems settled despite the contestations arising from the British Constitutional arrangement.

In the case of ECOWAS, Community law does not appear to have primacy over domestic laws of Member States, despite the direct application of ECOWAS legal instruments within the domestic systems of Member States. This is essentially due to constitutional bottlenecks inherent in the laws of Member States.

While this paper will not delve into the discourse on the relationship between municipal law and international law as advanced by the dualist and monist theories, there is no denying the fact that the existence of Community law has a direct impact on the domestic laws of Member States. This indeed has been a major stumbling block to the process of integration in ECOWAS.

With regard to the relationship between the Court of Justice and national Courts of Member States, the Court of Justice have consistently, and rightly so refused to constitute itself into an appellate court with the power to review the decisions of national courts of Member States. In Jerry Ugokwe v. Federal Republic of Nigeria,[27] the Applicant who contested and failed Election in Nigeria, subsequently filed an action at the Election Tribunal and Court of Appeal in Nigeria but failed. He approached the ECOWAS Court of Justice. In declining jurisdiction, the Court opined that:

> "... in the current stage of legal texts of ECOWAS, no provision, whether general or specific grants the court powers to adjudicate on electoral issues or matters arising thereof. However, a dispute having a bearing on other rights of the parties may be referred to in any internal or related dispute relating to electoral issues like the present one. "

More specifically, the court reiterated its stance in the case of Musa Leo Keita v. The State[28] of Mali in the following words:

> "in this perspective the Community Court is powerless, it cannot adjudicate upon the decisions of National Courts. Within the meaning of the aforementioned Article 10, the Community Court can only intervene when such courts or parties in litigation expressly so request it within the strict context of interpretation of the positive law of the Community. Hence the objection raised by the defence regarding the ratione materae impotence of the court must be declared admissible."

It is obvious that treaties establishing supranational organizations usually contain provisions governing relationships between institutions of the organization and that of Member States. With regard to the relationship between the Community ECOWAS Court of Justice and the national courts of Member States, Article 10(±) of the 1991 Protocol relating to the Court of Justice as amended by the 2005 Supplementary Protocol (relating to access to the Court, provides as follows:

[27] (2008) ICCELR (pt 1) 149

[28] (2009) CCJELR (pt 2)

> ... where in any action before a court of a Member State, an issue arises as to the interpretation of a provision of the Treaty, or other Protocols or Regulations, the national court may on its own or at the request of any of the parties to the action refer the issue to the court for interpretation.

This provision lends credence to the fact the ECOWAS Court of Justice has the exclusive competence of interpreting the provisions of the Revised Treaty and other Protocols or Regulations of the Community. In this direction, the Court of Justice in determining disputes before it, defines what Community law of ECOWAS is, to the exclusion of any other court or tribunal. However, the drafters of the Treaty in their wisdom and righty too, envisages that issues of Community law may arise in suits pending before a national court of a Member State. Where that is the case, the national court may suo moto or on application of any of the parties refer the provisions of Community law to be interpreted to the Community Court of Justice.

Once the interpretation is given by the Community Court, it binds the national courts of Member States who may be confronted with similar points in the future.

It appears that the essence of this provision is to ensure uniformity in the interpretation and application of Community law. Justice Donli has explained the rationale for the reference in the following words:

"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 courts role is to interpret, while the National Court's role is to apply. Where the court rules in 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, there is no need to make a further reference and if the national court is unhappy with the previous ruling, it can make additional reference even if the matter is ante-clair (see Costa v. Enel 91064) ECR 585(6/64).

This 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 question of Treaty interpretation, unless the point is regarded as clear.

The National Courts decision on whether or not to make a reference is discretionary. The National Court still remains entirely at liberty to make a reference if it wishes. In the UK, the House of Lords has adopted the approach to make reference where the question raised is relevant and has not been interpreted or the correct application of Community law is not so obvious as to leave no scope for any reasonable doubt."[29]

This is a succinct presentation of the practice and procedure relating to preliminary ruling or referrals of issues of Community law to the Community Court of Justice. I have nothing more to add.

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[29] Justice H.N. Donli, The Law, Practice and Procedure of the Community Court of Justice- meaning and Implications; at a workshop organized by West African Bar Association and West African Human Rights Forum, held at Bamako, Mali, 7 -9 December (2006) Quoted from Femi Falana, op. cit. pp. 49-50

However, it is axiomatic that since the inception of the Court of Justice, there is no evidence of referral to the Community Court from National Courts of Member States on issues of interpretation of Community law. This may be due to the absence of such issues of Community law arising before national courts or the fact that being a discretionary pioneer, the national courts are at liberty to decide whether to make such referrals or not. It is equally possible that most National Courts are reluctant to make such referrals because they wish to guard their jurisdiction and sovereignty jealously. However, this is inimical to the progressive development of ECOWAS Community law and the creation of a conducive legal environment for integration and uniformity in Community law. It is hoped that as the process of integration advances, National Courts of Member States will avail themselves the opportunity to contribute to the process by making such referrals.

4. Access to the community Court for failure by Member States to fulfil their Community Obligations

As earlier noted, the principal function of the Court of Justice is the interpretation and application of the Revised Treaty and, Supplementary Protocols, Conventions, regulations Directives, Decisions and other Subsidiary legal instruments adopted by ECOWAS. The court in appropriate cases also determine actions relating to failure of Member States to fulfil their Community obligations. In any case for a court to exercise its jurisdiction in dispute settlement, a person must have the capacity to access or approach it. Access to court means approach or means of approach to the court without constraint.[30] It connotes the capacity of a person to approach a court and have his case determined by the court. Lack of access connotes lack of capacity and makes a case inadmissible.

Access to court is a fundamental element of access to justice. It is also a fundamental issue in the administration of justice and advancement of the rule of law. Accordingly, access to the ECOWAS Court by Community citizens and other stakeholders in the integration process and regional administration of justice is fundamental to the process of integration. Whether a person, group of persons can seek remedy for a wrong done by an act or omission of another is determined by whether the legal instrument establishing the Tribunal or court in question accords him the right to approach the court. With regard to the Community Court of Justice it is the legal instrument setting it up that determines the right of access.

With specific reference to the Community Court of Justice, under Protocol A/P1/7/91 and the Revised Treaty 1993 it was an interstate court with the primary responsibility of interpreting and applying the Revised Treaty and other ECOWAS Community texts. Access was open only to Member States and Institutions of the Community while individuals and corporate bodies had no direct access to the court.

However, the jurisdiction of the Court changed drastically following the adoption of the Supplementary Protocol relating to the Community Court of justice in 2005.

With regard to access to court for failure by Member States to fulfil their Community obligations; the Protocol provides as follows;

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[30] Karibi- Whyte JSC in Amadi v. NNPC (2002) CHR 132(a) 171

Access to court is open to the following:

(a) Members States and unless otherwise provided in a protocol, the Executive Secretary (now the President of the ECOWAS Commission)[31] where action is brought for failure by a Member State to fulfil an obligation.[32]

It appears from the above provisions that where a dispute relates to failure by a Member State to fulfil an obligation only Member States or in appropriate cases the President of the Commission can bring such an action. Thus neither a Community institution nor an individual can bring such an action. An action by an individual for this purpose will be declared inadmissible for want of a standing.[33]

Furthermore, this provision, it is submitted, should be read in conjunction with Article 76 of the Revised Treaty regarding interstate dispute to the effect that;

(1) "Any dispute regarding the interpretation or application of the Provision of this Treaty shall be amicably settled through direct agreement without prejudice to the provision of this Treaty and relevant Protocols.

(2) 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[34]

It is submitted therefore, that before a State or the President of the Commission can bring an action against a Member State for failure to fulfil a Community obligation, compliance with Art 76(1) & (2) of the revised treaty is a condition precedent to such an action. Thus failure to comply with this condition precedent may render the application incompetent or inadmissible or render the court incompetent to determine the Application.[35] Thus litigation against a Member State should be a weapon of last resort. The Committee of Eminent Persons who advised on the revision of the ECOWAS Treaty and expanding the powers of the Authority of Heads of State and Government, to compliance of Member States, rationalized this provision in the following words:

> Legal proceedings against Member States should be a weapon of last resort for obvious reasons. As a rule, the Community should seek accountability from Member States through subtle means as regular submission of reports by Member States on implementation of Community decisions and regulations. The Executive Secretariat (now Commission) also be authorized to invite status reports of implementation from Member States on a regular basis and also bring to the attention of Council or Authority breaches of community laws by states.[36]

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[31] Art I0 (a) Supplementary Protocol 2005

[32] Pursuant to Protocol NSP.1/06/06 Amending the Revise Treaty the Executive Secretary of ECOWAS has been transformed into a Commission with President, Vice President and Commissioners.

[33] See Art 10 (a) of the 2005 Supplementary Protocol of the Court.

[34] Art 76 (1) & (2) ECOWAS Revised treaty 1993.

[35] See Parliament of ECOWAS v. The Council of Ministers of ECOWAS (2004-2009) CCJELR 29

[36] Findings of the Committee of Eminent Persons of the ECOWWAS Treaty, Draft Report ECW/CP/TREV/2, Lagos, I992

While it is important and necessary for disputes to be resolved amicably, litigation also serves the purpose of engendering compliance. The European Court of Justice of the European Union is at the centre of the integration process as it interprets virtually every aspect of European Community law and ensures uniformity and progressive development. It even strikes down domestic laws that constitute a clog in the integration process of the EU. However, with regard to ECOWAS, it appears that the capacity of the Community Court in advancing the process of integration is very limited not only by resort to amicable settlement which more often than not does not happen but also is usually cumbersome and indeterminate. There is the need to review this provision to give individuals at least in limited cases, the right to sue Member States for their failure to comply with Community law. This is because since the inception of the Community Court neither the President of the ECOWAS Commission nor any Member State has taken another Member State to court for failure to comply with Community law including the judgment of the Community Court of Justice. This may be due to lack of political will on the part of the Commission.

The need to allow individuals access to the Community Court for the failure of a Member State to fulfil Community obligations, appears to be reinforced by the Supplementary Act on Sanctions Against Member States that fail to honour their obligations to ECOWAS,[37] which lists out obligation of Member States and the sanctions (both judicial and political) against non-fulfilment. The obligations listed include:

(i) Respect and protect human rights, the rule of law, democracy and constitutional order.
(ii) Ratify ECOWAS Protocol and Conventions.
(iii) Dismantle tariff and non-tariff barriers which hinder the free movement of persons, goods, the right of residence and establishment;
(iv) Pay financial obligations in general and in particular apply texts on the Community levy.
(v) Promptly apply texts adopting the integration policies, projects and programmes of the community.
(vi) Apply the mandatory texts described in Article 1 of this Supplementary Act (Member States are enjoined to apply and observe Acts of the Authority and Council of Ministers which include ECOWAS Treaty, Conventions, Protocols, Supplementary Acts, Regulations, Decisions and Directives of the Community;
(vii) Prohibition and adoption of measures or positions contrary to democratic government and respect for the Rule of law, or likely to constitute either a serious threat to regional security or gross or severe human rights abuses or trigger a humanitarian disaster.
(viii) Refrain from adopting and implementing all measures likely to subvert or compromise the strengthening of the process of regional integration.
(ix) Judgments of the court shall be binding on Member States, the Institutions of the Community and on individuals and corporate bodies.

The provisions of the Supplementary Act are comprehensive enough to cover all areas that Members States may be in breach of their obligations to ECOWAS. However, as

[37] Supplementary Act A/SP.13/02/12

is usually characteristic of the institutions, there seems to be a lack of political will to implement the provisions to the letter, as clearly stated in the Supplementary Act, the essence of the Act is to elicit compliance with Community law by Member States and not punishment. It is axiomatic that apart from sanctions imposed for illegal seizure of power, virtually nothing is done in relation to other breaches. For example, virtually all the Member States of the Community are in arrears of Community levy payment in breach of their financial obligations to the Community. However in most cases, the Community has gone cap in hand soliciting compliance rather than enforcing it.

A fundamental issue that has limited the Court of Justice in the discharge of its functions, is the problem of enforcement and compliance with its judgments. Granted as a general rule that international judicial institutions do not usually enforce their decisions, rather they rely on the political arm of the organization to do that; it is our view that the Supplementary Act on sanctions appears to have given additional support to the Community Court of Justice in its attempt to enforce its own decisions.

The Act makes a distinction between political and judicial sanctions: According to Article 5 of the Supplementary Act relating to judicial sanctions:

> "The Community Court of Justice shall deliver judgments which include but not limited to financial sanctions against Member States in Application of Art 24, paragraph 1 of the Protocol Relating to the Community Court of Justice as amended by Article 6 of the Supplementary Protocol A/S.P 01/01/05 of 19th January 2005, when it notices that they have failed to honour their obligations as started in the Community texts".

It is submitted that by this provision, the Community Court of Justice can deliver judgments imposing sanctions, whether financial or otherwise, on Member States that have failed to honour their obligations as states in the Community texts. By alluding specifically to Art 24(1) of the Supplementary Protocol Relating to the Community Court of Justice 2005, the Court can listen to an application relating to failure of Member States to comply with the decisions of the Court. Although there is no provision as to whether in invoking its powers under this Article the court is to act suo moto or on application of the ECOWAS Commission or the party directly affected by such non-compliance, it is reasonable to infer that both the Commission and individuals affected can bring such an application.

This indeed reinforces the argument that access to the Court should be granted to individuals who are directly affected by the failure of Member States to honour their obligations as stated in Community texts, which includes failure to comply with the judgment of the courts.

5: The Role of The ECOWAS Commission

The role of the ECOWAS Community Court of Justice in the integration process cannot be fully understood without equally considering the role of the Commission in reinforcing the process of integration.

At the outset of its establishment, the ECOWAS Treaty of 1975 entrusted the governance of the Community to a set of Community institutions. It established the Authority of Heads of State and Government (AHSG), the Council of Ministers, the Secretariat, the Tribunal of the Community and the Technical and Specialized Commissions. The AHSG was the Supreme policy-making body composed of the heads of Member States.[38] Next in hierarchy was the Council of Ministers. It was responsible for monitoring the functioning of the Community, making recommendation to the AHSG, giving directions to the Community's subordinate institutions and exercising such powers conferred on it and performing other duties as assigned to it under the Treaty.

The Treaty also created the Executive Secretariat headed by an Executive Secretary.[39] Its mandate was mainly to service and assist institutions of the Community, keeping the Community under continuous examination and submitting report of its activities to all sessions of the Council of Ministers and all meetings of AHSG. It was also authorized to undertake work and studies to perform such other services relating to the Community as assigned to it by the Council of Ministers[40]

As earlier noted, other institutions established by the 1975 Treaty included the Technical and Specialized Commissions and the Community Tribunal.

Although the 1975 Treaty brought into being the Community, it had a number of flaws. Kuffour has stated and rightly, that a major flaw of the Treaty included its vagueness in defining the powers of the Authority of Heads of State and Governments (AHSG), without any definitive statement of its role in the integration process.[41]

Other writers criticized the Council of Ministers' lack of power to give directions in connection with the task of harmonising socio-economic policies of the Community. The decision of ECOWAS was not binding on Member States, save for one relating to budgetary payments. These shortfalls led to the establishment of the Committee of Eminent Persons (CEP) whose recommendations formed the basis of the 1993 Revised Treaty. The Treaty sought to strengthen ECOWAS and established in addition to the existing institutions an ECOWAS Parliament, Economic and Social Council (ECOSOC) and an ECOWAS Court of Justice. It also introduced the concept of supranationality.

The ECOWAS Secretariat continued to function as such until the Administrative secretariat was transformed from an Executive Secretariat to a Commission in 2007 following the decision of the AHSG in Niamey, Niger Republic in 2006. The transformation was aimed at making ECOWAS adapt better to the international environment, bring about more equality, transparency and greater functionality in accordance with global best practices. The ECOWAS Commission which can rightly be described as the engine room of all ECOWAS programmes and activities, is largely instrumental to the modest achievements recorded by ECOWAS.

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[38] Art 4(l) of the 1975 Treaty
[39] Art 8(1)-(2) 1975 Treaty
[40] Art I0(a)-(d) ibid
[41] Kuffour K.K. Law, Power, Politics and Economies. Critical Issues Arising out of the New ECOWAS treaty (1994 African Journal of International and Comparative Law) 429@ 432.

The Commission inherited the functions of the Secretariat as contained in chapter 3 of the Revised Treaty. Art 17 established the Secretariat (now Commission) to be headed by an Executive Secretary assisted by Deputy Executive Secretary and other staff (now President and Vice President of the Commission). By Article 19, the functions of the Secretariat (now Commission) include;

(a) Execution of decisions taken by the Authority and application of the Regulations of Council.
(b) Promotion of Community development programmes and projects as well as international enterprises of the region,
(c) Convening as and when necessary meetings of sectoral Ministers to examine sectoral issues which promote the achievement of the objectives of the Community;
(d) Preparation of the draft budgets and programmes of activity of the Community and Supervision of their execution upon approval by Council.
(e) Submission of report of Community activities to all meetings Authority and Council.
(f) Preparation of meetings of Authority and Council as well as meetings of experts and technical committees and provision of necessary technical services.
(g) Recruitment of staff of the Community and appointment to posts other than statutory appointees in accordance with the Staff Rules and Regulations.
(h) Submission of proposals and preparations of such studies as may assist in the efficient and harmonious functioning and development of the Community.
(i) Initiation of draft texts for adoption by the Authority or Council.

From the totality of these provisions, it is obvious that the ECOWAS Commission plays a central role in advancing, directing and co-ordinating the process of integration. Accordingly, it has a major role to play in the quest of the Court of Justice to contribute to the process of integration.

From the provisions of Art 17 (e) and (i) of the Revised Treaty, the Commission is the only institution that reports its activities and that of other institutions to Council and Authority. This appears to inhibit the capacity of other institutions including the Court to effectively participate in integration process. For example it is the responsibility of the Commission to bring to the knowledge of Council the failure of Member States to fulfil their Community obligations to Council and Authority including non-compliance with the decisions of the Community Court of Justice.

However, it appears that at no time has the Commission reported any delinquent Member State to Council or Authority for non-compliance with the decision of the Court of Justice. This is notwithstanding the fact that the court makes such reports to the Commission. In order to address this anomaly it is suggested that the court should be allowed to report its activities directly to Council or the Authority, as is the case of the African Court of Human and People's rights in the African Union setting. This will go a long way in encouraging compliance with the decisions of the Court.

Similarly, it is only the Commission that initiates, draft texts for adoption by Council and Authority. This gives the Commission enormous powers to control other institutions. In situations where it is necessary and affects an institution it should be initiated by the institution to be directly affected by the Text. For example in 2006, Judges of the court

were designated as Statutory Appointees and their tenure tied to that of other Appointees. This was done without consultation with the court nor was the Protocol Relating to the Community Court of Justice 1991 which stipulate a five year renewable tenure for judges of the court amended. This has indeed undermined the principle of continuity and independence of the court as well as its capacity to function effectively. As a result of this, the ECOWAS Court of Justice has the shortest tenure among international and regional Courts in the world.

Access to the Community Court of Justice with regard to the failure of Member States to fulfil their Community obligations is vested in the Commission. However, it is doubtful whether the Commission has in any one case brought an action against a Member State since the inception of the Court.

Even in situations where individual(s) have brought such action, the Commission has always frustrated those moves via preliminary objections and lack of standing even when it has consistently refused to take action. This is inimical to the development of Community law. Accordingly, unless the Commission garners the political will to discharge its functions as it relates to the Court of Justice, the contribution of the institution to the process of integration may be stultified.

CONCLUSION

In this paper, the role of the ECOWAS Court of Justice in the integration process was examined. The primary function of the Court includes the interpretation and application of the Revised Treaty and Community legal texts. It was posited that the court has not done much in this area because of the absence of actual cases requiring the Court's decision in this area. Like a legal institution that it is, it only exercise jurisdiction when it is moved to do so.

The primary responsibility in bringing actions with regard to the interpretation and application of the Treaty and Community legal texts lies with the ECOWAS Commission. This option has never been exercised either due to the absence of political will on the part of the Commission or the fact that such issues were/are settled amicably or absence of such disputes. The Court can contribute in the integration process only when it pronounces on actual disputes brought before it. In this regard, apart from its tremendous contributions in the exercise of its human rights mandate, the ECOWAS experience typifies the absence of affective judicial framework to strengthen, or at least complement the integration of markets in the schemes of integration.

The Court has brought some measure of uniformity in protecting the social and Economic Rights citizens of ECOWAS. In most national jurisdictions, such rights are denied on grounds of non-domestication of such treaties by the authorities of Member States. The Court has shown courage and leadership in this area by emphasizing the right to education, health, right to work and other associated social and economic rights of Community citizens are protected in accordance with the obligations assumed by Member States in international human rights instruments. Thus, such rights are of equal importance with civil and political rights and their recognition and protection is a condition precedent to the effective realization of civil and political rights. This indeed complements the pursuit of the Community in ensuring an ECOWAS of Peoples rather than of States.

In the area of referrals, there has not been any since the inception of the Court. It is hoped that the domestic courts of Member States will show more commitment in this regard as necessary for the development of ECOWAS Community law.

The paper also noted that access to the court for failure by Member States to fulfil their Community obligations is too restricted. Only the ECOWAS Commission or other Member States are authorized to bring actions against other Member States in this regard.

However, in the practice of ECOWAS litigation against Member State is an exception rather than the rule and Member States prefer negotiations to litigation as provided for in Community texts. It is axiomatic that unless the interest of a Member State is directly affected it may not/have recourse to the Court for settlement. The paper proposes that the texts should be amended to allow individual citizens of the Community to bring such actions especially where the failure by Member States to fulfil their Community obligations directly affects the rights and interests of such a citizen. It is on record that judgments that have financial implication on Member States are rarely obeyed. This is prevalent in human rights cases. A window of opportunity through the law should exist for the individual beneficiaries of judgments to access the Court in such circumstances. Apart from political sanction, the Supplementary Act 2012 on Sanction for failure to fulfil their Community obligations authorizes sanction on a delinquent Member State. Although the Act did not state categorically who should approach the Court, it is suggested that the beneficiary of such judgment should be able to initiate such an action. This is in view of the fact that the judgment of the Community Court is binding on all parties, namely, Member States, Institutions of the Community and individuals as the case may be; and failure to comply with them amounts to breach of the Community obligations of the State concerned.

It was further noted that the ECOWAS Commission is the engine room and major driver of the integration process. While it has achieved a lot in the political and economic front of the integration process, it has paid lip service to the judicial ones. This is essentially due to its lack of will in reporting non-compliant States to the Council or Authority of Heads of State and Government. Such report would have elicited compliance because most States guard their honour and integrity jealously. In the alterative the Court of Justice should be given access to report its activities especially the ones relating to non-compliance with its decisions directly to the Council or Authority without necessarily going through the Commission as is the case with the African Court on Human and People's Rights.

Finally, the ECOWAS Court is confronted with a number of challenges related to the contextual environment of its operation, inadequacy of legal texts, the multi-lingual character of its operations, reduction in the number of judges, inadequate funding and other administrative bottlenecks too numerous to mention. There is also the usual suspicion by politicians and administrators over the role of judicial institutions in their domestic environment. Accordingly, this department is usually stifled by denial of financial autonomy. This appears to have crept into the regional arrangement. If ECOWAS is to realize the objectives of its founding fathers, the Court must be recognized as central to the maintenance of the delicate equilibrium for the harmonization of the competing interest of Member States and institutions of ECOWAS.

THE PRELIMINARY RULING PROCEDURE OF THE ECOWAS COMMUNITY COURT OF JUSTICE: WHY WOULD THE COURTS NOT PLAY?

BY

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A. Introduction

The Preliminary Reference Procedure (or Referral Procedure) was introduced into the legal framework of the Economic Community of West African States (ECOWAS) in 2005 when the 1991 Protocol[1] that established the ECOWAS Community Court of Justice (ECOWAS Court) was amended.[2] In addition to whatever other reason the ECOWAS legislator might have had for introducing it, the procedure would also have been introduced as a mechanism to enhance the role and involvement of the ECOWAS Court in the integration process. Emerging from a four year period of near complete inactivity, in 2005 the jurisdiction of the ECOWAS Court was expanded and access to the Court was liberalised and extended to national courts and non-state actors raising expectation that the workload of the Court would increase (partly) by the flow of referrals from the national courts of ECOWAS Member States.

While the expansion of the jurisdiction of the ECOWAS Court to cover complaints of human rights violations by non-state actors has contributed in no small measure to increasing the docket of the Court since 2005, the Preliminary Ruling Procedure has remained unutilised. As at September 2019 - fourteen (14) years after its introduction - no single referral has been received by the ECOWAS Court from any national court. One consequence of this reality is that the ECOWAS Court has been forced to shift its focus from the economic integration agenda and process of ECOWAS to the field of human rights, earning a reputation as a formidable human rights court in West Africa.

In Europe on the other hand, the preliminary reference procedure has been a tremendous success story since the 1960s, leading some commentators to refer to it as the 'keystone' of the European Union's legal system.[3] By one account, it is through the' the preliminary referral procedure and the willingness of national courts to bring cases to the ECJ' that 'the legal *and* political content of the European Community has gradually, but fundamentally, been transformed'.[4] In other words, it is through the preliminary reference procedure that the European Court of Justice (ECJ, now known as the Court of Justice of the European Union CJEU) has been able to shape integration in Europe. Scholars of European integration agree that the success of the procedure and the consequent impact that the CJEU has made is 'as a result of the cooperation of national courts'.[5] In simple terms, preliminary reference works in Europe and the national courts of member states of the European Union (EU) cooperate with the CJEU by referring cases to the regional court.

Viewed against the success story of the procedure in Europe and the consequent legal impact that the CJEU has made, the ECOWAS experience calls for urgent evaluation. The glaring absence of cooperation between national courts and the ECOWAS Court has to be interrogated to enable us understand why the courts just would not play. Accordingly, applying wisdom borrowed from scholarly analysis of the referral

[1] Protocol A/p.1/7/91 On the Community Court of Justice (adopted on 6 July 1991)
[2] See the amended art IO(f) of the 2005 Supplementaty Protocol NSP.1/01/05 Amending the Preamble and Articles 1,2,9 and 30 of PRTOCOL NP.1/7/91 Relating to the Community Court of Justice and Paragraph 4 of the English Version of the Said Protocol (2005 Supplementaty Protocol).
[3] See J Krommendijk, 'The Preliminaty Reference Dance Between the CJEU and Dutch Courts in the Field of Migration', (2018) European Journal of Legal Studies, IO I, I03
[4] M Wind, DF Martisen and GP Roiger, 'The Uneven Legal Push for Europe: Questioning Variation when National Courts go to Europe' (2009) European Union Politics, 10, 64
[5] Krommendijk, note 3 above, 103.

behaviour of national courts in Europe, this paper investigates possible explanations for the refusal or failure of national courts to take advantage of the Preliminary Reference Procedure to contribute to ECOWAS integration. Instead of asking and answering why national courts of ECOWAS Member States do not play - a question that demands extensive field research involving fifteen (15) ECOWAS Member States, this paper employs a comparative desk approach to ask why national courts would not or may not play.

B. The nature and purpose of the preliminary reference procedure

To appreciate the challenges associated with the operationalisation of the preliminary reference procedure in the ECOWAS Community framework, it is imperative to have a basic understanding of the nature of the procedure and how it works in practice. Proceeding on the assumption that in the absence of referrals,[6] no such practical understanding currently exists at a general level in ECOWAS, this section is devoted to a non-exhaustive examination of the nature and purpose of the procedure.

The character of international law provides an excellent starting point for understanding the nature of the procedure. Despite its more intrusive structure, like most of international law, the laws of an integration Community (generally referred to as community law or European Union law in the case of the European Union) are not self-enforcing. The bulk of community law is generally implemented and enforced within national spaces by national agencies and authorities. The preliminary reference procedure advances this enforcement or implementation element. Maher emphasises this enforcement character in the observation that 'the involvement of the national courts in the enforcement of Community law is crucial in increasing pressure on member states to fulfil their Community obligations especially in relation to directives' .[7] However, the procedure is not an independent enforcement procedure for community law.[8] It does not necessarily create an independent cause of action before national courts on infringement of community law.

Responsibility for enforcement of community law through an infringement procedure generally lies with member states and the secretariat or commission of integration organisations.[9] Rather, the preliminary reference procedure provides a secondary enforcement or implementation opportunity through regular civil (and occasionally, criminal) action before national courts. Litigants seeking to claim rights conferred by community law or resist obligations imposed by community law in their regular lives are able to invoke community law or aspects of community law and litigants may raise questions involving community law before national courts in national legal systems. This means that conflicts arising from the implementation of community law usually (should) occur at the national level, either vertically as between implementing authorities and the general public or in horizontal relationships between members of the general public who come under the operation of the law.[10] Ideally, such conflicts are resolved by national

[6] As at the time of writing, not a single reference had been made to the ECOWAS Court from any ECOWAS Member State. This contrasts sharply with the human rights mandate of the ECOWAS Court.
[7] I Maher, 'National Courts as European Courts' (1994) 14 Legal Studies 226, at 235.
[8] See MA Dauses, 'Practical Considerations Regarding the Preliminary Ruling Procedure under Article 177 of the EEC Treaty' (1987) IO Fordham International Law Journal 538, 542.
[9] See for instance, art 10 (a) of the 2005 Supplementary Protocol of the ECOWAS Court.
[10] J Golub, 'Rethinking the Role of National Courts in European Integration: A Political Study of British Judicial Discretion', paper prepared for the Fourth Biennial International Conference of the European Community Studies Association, South Carolina, May 11 -14, 1995.

courts in all the respective states where implementation takes place creating a risk of fragmentation and conflicting interpretation and application of community law. Thus, the preliminary reference procedure is a coordination tool available to the judicial organ of an integration community to ensure coherence of community law. In other words, the procedure is not a mechanism that empowers the community judicial organ to 'force integration by intervening in national cases' [11] but is one that recognises the primary role of national courts in the implementation and enforcement of community law. In order to realise the objective of coherence through the preliminary reference procedure, the regional judicial organ of an integration community is conferred with jurisdiction to give 'authoritative and final rulings' on the interpretation of community law.[12]

The preliminary reference procedure also performs a legitimising role for community law within national legal systems. As some informed commentators have noted, this characteristic of the procedure is related to a similar role that national courts play in relation to domestic societies, governments and social order.[13] According to this view, through the instrumentality of judgements, national courts reinforce 'an ideology which legitimates government and maintains social order' at the national level.[14] Thus, it is argued, the acceptance and application of community law by national courts simultaneously legitimises community law and helps to 'accelerate its integration into the domestic legal order'.[15] In other words, by allowing litigants to raise issues and questions of community law not before a regional court, but before national courts, the procedure enables the national courts announce their recognition and acceptance of community law as a legitimate part of the national legal order with legal consequences arising for those who fall under that legal system. In Hartian terms, the rules of recognition in the national legal system is stretched to accommodate community law even though that body of law is outside the immediate control of the national legislator.

Another attribute of the procedure is that it facilitates judicial dialogue between national courts and the judicial organ of the integration community. The European Parliament, for instance, describes the procedure as 'an institutionalised mechanism of dialogue' .[16] The procedure is also not based on a 'principle of judicial hierarchy' but on an understanding of a coordinate relationship. For some scholars, the dialogue that the procedure facilitates 'is an expression of ... cooperation between ... courts.[17] Linked to this attribute is the fact that the determination of the referred question before the community judicial organ is non-contentious even though it has to arise from a real and contentious litigation at the national level. This is not to suggest that the procedure is another form of advisory opinion, there has to be a 'genuine dispute' before a national court for a competent referral to be made.[18] The procedure is non-contentious to the extent that there is no winner or loser before the community judicial organ which only provides answers that guide the referring court with regards to the point of community law that will enhance a resolution

[11] Also see Golub, as above.
[12] See for instance, CO Lenz and G Grill, 'The Preliminary Ruling Procedure and the United Kingdom, (1996) 19 Fordham Int'! L.J. 844,847.
[13] Maher, note 7 above, 234 for instance, takes this view.
[14] As above.
[15] Maher, note 7 above.
[16] European Parliament Briefing Paper on the Preliminary Ruling Procedure of the CJEU, July 2017.
[17] See R Yirzo, 'The Preliminary Ruling Procedures at International Regional Courts and Tribunals', (2011) 10 Law & Prac. lnt'l Cts. & Tribunals 285.
[18] For instance, see C O Lenz, 'The Role and Mechanism of the Preliminary Ruling Procedure ', (1994) 18 Fordham Int'! L.J. 388, 397.

of the substantive matter.[19] Hence, the procedure is analogous to the case stated mechanism in some legal systems in the sense that the referring court frames the question to be answered and suspends the proceedings in the given case to await the response from the interpreting court.[20] This effectively means that national courts reserve a discretion as to whether or not to refer, even if litigants before those courts have requested that a reference be made. Thus, as Wind *et al* indicate, the workability of the procedure depends on the willingness of national courts to 'bring cases forward'.[21] At the risk of restating the obvious, a critical ingredient for the success of the preliminary reference procedure, is therefore, the willingness of national courts to open up their legal systems to receive community law by electing to refer questions. The procedure provides indirect access for the interpretation of community law while enhancing immediacy in the application of community law within national legal systems.[22] Without usurping the powers and jurisdiction of national courts or creating additional causes of action in national legal systems, the preliminary reference procedure recruits willing national courts in their normal lines of duty to ensure immediate, expansive but uniform application of community law.[23] In a nutshell, this is the nature of the procedure. Europe provides the best example yet of a successful procedure fuelled by national courts willing to make referrals on questions of EU law. It is then to Europe's experience that this paper now turns for a glimpse of the trajectory of the procedure in its most effective and successful milieu.

C. Preliminary reference in the European Union legal framework.

Article 177 of the European Economic Community (EEC) Treaty of 1957[24] is generally recognised as the origin of the preliminary reference procedure within the European integration framework. From the entry into force of the EEC Treaty in 1958, it took at least three years before the first reference to the ECJ would be made in 1961.[25] Keen observers of European integration record further that the rate of references to the ECJ in the early years was relatively low. For instance, Lenz and Grill show that in the period between 1961 and 1970, only an average of around eleven **(11)** references were made to the ECJ annually.[26] By the following decade, it is recorded that the average annual number of references increased to around seventy three (73), representing a huge leap from the first decade of the procedure.[27] Between 1991 and 1994, the number of references further increased to about 189 per annum, but rose to 204 in 1993 before declining to 196 in 1995.[28] These figures meant that of the cases that came before the ECJ in its early years, preliminary references rose from a mere four percent (4%) of the total cases in 1961 to over sixty four percent (64%) in 1998.[29] It is no wonder that Dauses took the view that the procedure has moved from 'a relatively minor role', becoming increasingly dominant until it has become a 'pillar of the community legal order'.[30] The picture that emerges from these statistics is arguably that even in Europe, the procedure

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[19] Also see the European Parliament Briefing Paper, note 16 above.
[20] Also see Maher, note 7 above, 236.
[21] Wind et al, note 4 above, 64. Also see the European Parliament Briefing Paper, note 16 above.
[22] T Teimidas, 'Knocking on Heaven's Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure' (2003) 40 Common Market Law Review 9, 17.
[23] Wind et al, note 4 above,
[24] Signed 25 Mar 1957 and entered into effect on 1 Jan 1958.
[25] Also see Trimidas, note 22 above, 11.
[26] Lenz and Grill, note 12 above, 848.
[27] As above.
[28] As above.
[29] Trimidas, note 22 above, 16.
[30] Dauses, note 8 above, 539.

was not an instant hit. Rather, acceptance of the procedure was gradual, with national courts in different European states moving at different paces in their acceptance of European Community law and their consequent willingness to refer cases to the ECJ.

By 2015, the CJEU was receiving up to 436 new references from national courts across Europe. The CJEU's own statistics indicate that out of 692 cases that it recorded in 2016, 453 representing about 65% of the total number of cases brought to the court that year, were preliminary references.[31] In 2018, out of 849 cases brought before the CJEU, no less than 568 (representing nearly 70% of the total number of new cases) were preliminary references.[32] In other words, acceptance of European Union law and of the procedure has continued to grow, questions of EU law increasingly arise in domestic proceedings and the national courts in Europe have continued to tum to Luxembourg for authoritative interpretation of EU law which the national courts apply in their own jurisdictions.

A few important points need to be highlighted at this juncture. First, it is significant to note that the provision in the treaty relating to the preliminary reference procedure permits certain courts and tribunals to submit references to the CJEU but obligates or requires apex courts (from which no appeal lies) to submit references. Put differently, while national courts lower in national judicial hierarchies may elect to make referrals to the CJEU, the highest courts of each EU member state must make referrals once questions touching on Union law arise in those courts. The CJEU is therefore assured of a minimum number ofreferrals each year insofar as questions of Union law arise in cases before the highest national courts. The second important point to note is that up till 2018, there has been a variation amongst states, in the number ofreferrals made. For instance, of the 568 referrals received in 2018, the states with the highest referrals were Germany (78), Italy (68), Spain (67), France (41) and Belgium (40).[33] Not all national courts in all European states are eager and willing to submit referrals to the CJEU. A third point is that national courts in states that newly joined the community (or Union) do not immediately embrace the preliminary reference procedure. For instance, some scholars observed that it took two years after Denmark's accession for the first reference to be made by a Danish court, three years after Portugal's accession for the first reference from a court in Portugal to be made and five years after Greece's accession for the first reference by a national court in Greece to reach the ECJ.[34] National courts apparently took time to understand the procedure and gradually pick up momentum even though they had the benefit ofleaming from the experiences of national courts in older member states of the ECC/EU. It is equally important to note that preliminary references to the CJEU usually arose mainly in certain subject areas such as 'free movement and internal market law; taxation; intellectual property; competition and state aid; and in freedom, security and justice.[35]

The discussion in this section up to this point demonstrates that national courts in EU member states have come to embrace European Community/Union law over time and enhanced the functioning of the preliminary procedure even if initial acceptance was not necessarily enthusiastic in the early days. It has also been shown that new entrants into the community/union have also been generally slow in embracing the procedure. A puzzle

[31] Annual Report of the CJEU 2016, available at https//curia.europa.eu/jcms/jcms/jo2_7000/en at page 91 of the report.
[32] Annual Report of the CJEU 2018, available at https//curia.europa.eu/jcms/jcms/jo2_7000/en, at page 45 of the report.
[33] As above.
[34] As reported by Lenz and Grill, note 12 above, 484.
[35] See for instance, the Briefing paper of the European Parliament.

that remains is why the procedure appears to have become so popular among litigants and national courts in Europe in recent times. Insights in the literature arguably provide some pointers in this regard. A first explanation can be found in the wide range of legal issues that can be referred under the EU framework. As Lenz notes, 'the entire area of Community law, including the founding treaties, general principles of law and so-called secondary legislation passed by EC institutions' can be the subject of reference to the European judicial organ.[36] The expansion of European law into previously unimaginable areas and the consequent creation of new sets of rights for the European citizen has also been offered as explanation for this trend.[37] For some scholars, in addition to the growing spread of European law and the expansion of the rights of the European citizens is the fact that awareness and capacity to use the law grew but direct access to the European Court did not improve thereby 'forcing' potential litigants 'back to their domestic courts'.[38]

The peculiar character of European Union law as expressed in some of its exclusive legal principles have equally contributed to the success of the procedure. For instance, it has been suggested that the twin principles of supremacy of European law and direct effect have increased its impact on both horizontal and vertical relationships within EU member states so that national courts are more frequently confronted with questions of community or union law.[39] EU institutions other than the Court have also contributed by increasing legal outputs that authorities in member states are required to apply directly in their respective legal systems.[40] The significance of these observations lie in the fact that the absence of referrals may not always be indicative of non-cooperation by national courts but may well represent the paucity of relevant cases as a result of the failure of community law to 'gain a foothold' within the domestic legal system.[41] Simply put, national courts in Europe have made referrals because European law has immediate, tangible and direct consequences for legal actors and potential litigants. When national courts face questions arising from European law that they either do not feel competent to address or are required by law to refer, the tendency is for those courts to make such referrals.

Despite the strong case for preliminary references to be made to the European Court, scholars still noted cases of resistance on the part of national courts. One commentator noted as far back as 1987 that 'as at 1987 there were still cases of considerable reluctance among the national courts to use the procedure' .[42] Several years later, by 2009, others were still writing about reluctance to participate in the European judicial construction project.[43] Thus, literature on European integration also provides insights as to why national courts would fail or decline to refer cases under the preliminary reference procedure. The next section engages this body of literature to gain insights that should be useful in the ECOWAS context.

[36] Lenz, note 18 above, 390.
[37] For instance, see Golub, note 9 above.
[38] Maher, note 7 above, 227.
[39] Lenz, note 18 above, 389. Also see Trimidas, note 22 above, 10.
[40] Lenz, note 18 above, 391
[41] Golub, note 9 above.
[42] Dauses, note 8 above, 540.
[43] Wind et al, note 4 above, 71.

D. Motives and justifications for defiance and cooperation

A variety of explanations have been put forward to explain why national courts follow the instructions of the ECJ and offer preliminary references. One explanation emphasises formalism, whereby national courts complied with ECJ instructions simply because courts are charged with upholding the law. Not only was the ECJ composed of senior jurists who commanded the respect of national courts, but its rulings were enormously persuasive because they offered a logical and compelling interpretation of the Treaty and the obligations which it placed on national judges.

Other authors have suggested that national judges make preliminary references out of self-interest, stemming from their stake --professional, financial and social in the continued expansion and acceptance of Community law at the national level.

Finally, a number of authors, particularly Weiler, have suggested a particular form of self-interest motivating preliminary references, namely, that judicial empowerment explains why national judges actively assist the ECJ in fostering integration. By supplying Article 177 references which the ECJ then uses as ammunition with which to advance European integration, the argument goes, national judges experience the personal self-aggrandisement which comes from directly participating in Community-building. In addition, by empowering the judicial branch, national judges take the opportunity to gain partial control over the other decision making institutions--the Commission, Council, and indirectly over national governments themselves. Burley, for example, contends that the Court successfully convinced lower courts to "leapfrog the national judicial hierarchy and work directly with the ECJ."

108 -Secondly, based on neo-realist or intergovernmentalist theories, the sustained resistance view, takes the opposite stance and argues that national courts have a strong incentive to 'shield' national legislation from the CJEU by withholding references because of national interest considerations. They prefer to 'shield' national policy and legislation from undesirable influence of the CJEU, especially in politically sensitive cases.17 This preference could stem from the national court's loyalty towards the executive, its resistance against the dynamic interpretation by the CJEU, the pressure from the public or other domestic political considerations

110 -Against this background, five mechanisms can be distilled from existing theoretical and empirical accounts. Firstly, legal-formalist or 'compliance pull' motives based on the 'power of the law'. National courts refer because they feel responsible for a correct application of EU law or, in the case of the highest court, they consider themselves obliged to refer.

110 -Secondly, pragmatic considerations other than strict legal obligations to refer also play an important role. This includes, for example, case specific reasons which relate to the importance of the questions concerned or efficiency reasons concerning the consequences of referring in terms of the delay in the specific case or other cases involving the same EU law issue

111 -Thirdly, personal and psychological factors related to the individual judge have been mentioned as well. This includes, for example, the limited knowledge about EU law and/or the preliminary ruling procedure as a reason for non-referral. It has also been noted

that some judges might be reluctant to refer, because they are afraid that they ask a wrong question and that the CJEU declares their question inadmissible

111 -Fourthly, institutional and organisational factors related to the institutional dynamics of a particular court have also been put forward. These factors include, for example, the need to meet 'production targets' which discourages references to the CJEU

111 -Fifthly, the literature has also noted that the parties and their requests to refer can influence the courts willingness to refer

850 – It provides a useful and vivid illustration of the problems which the arrival of European law posed for the legal community in the United Kingdom. A country so deservedly proud of its rich legal traditions had to adjust to a completely new legal system.

235 - Having created a Community role for the national courts the European Court, despite its position as an authoritative body and the sole interpreter of Community law, remains primarily dependent on rhetoric to influence, persuade and ultimately to induce action among the national courts. The extent of its control over the national courts is limited. National judges are appointed and trained within a single member state and take an oath to that state. Common law judges spend years at the Bar and when in practice may not have had any exposure to Community law and as a system of law arising out of the civil law tradition it is not familiar.

235 -The culture of all judges in terms of the traditions they follow and the environment in which they work has little to do with the Community institutions. They are neither paid nor promoted by the Community, this limits indirectly the amount of control on a cultural/institutional level that the European Court has over national courts. As a cheap form of Community law enforcement, the system is inevitably weak as courts remain entrenched within their national legal orders.

235 - Member states do appoint younger judges as *referendaires* to the European Court who provide Community law expertise on their return to the national judiciaries. Even with this limited injection of expertise, it still remains the case that national judges are primarily experts in their national law and Community law is not part of their intellectual tradition. Thus the dependent nature of Community law enforcement through the national courts necessarily limits the extent to which the European Court can influence and guide the national courts.

236 - A national judge can be called to choose between a domestic law which, but for the Community law would enjoy validity and possibly even immunity from challenge, and Community law which is to have priority where there is conflict with a national law. Recognition of the supremacy of the Community norm may amount to a break with constitutional tradition and the acceptance of the legal norms of a system which is generally recognised as suffering from a democratic deficit

237 - In short, the national courts are faced with a legitimacy problem. If they give full sway to the supremacy doctrine and enforce Community law unequivocally and without

due reference to national law and legal traditions, they may be perceived as giving effect to a legal doctrine at odds with the domestic order and thus they may lose their cloak of neutrality.

238 - The difficulties experienced by these courts in relation to the hierarchy of laws and the subsuming of the constitution to the Community legal order reflects the fact that they do not have the experience, nor does the legal culture in which they operate provide the tools for them to be as dynamic and creative as the jurisprudence of the European Court would seem to require. Although the European Court has provided some assistance, tensions still exist between well established national legal traditions which until quite recently have not had to take account of the Community, and the role of national courts as enforcers of a Community law. They are called on to accommodate not just a new set of rules but an entire and rapidly expanding legal system which continually needs to prove its legitimacy.

391 -The Common Customs Tariff and the various individual customs regulations, for example, are applied by the customs authorities of the individual Member States.

103 - National court judges seem to lack the necessary knowledge of EU law or they simply appear unwilling to refer

106 - 107:-Such factors include the level of GDP, the willingness to litigate, support for European integration, presence of judicial review and the monist or dualist nature of the legal system.

107 - 108:-Firstly, based on neo-functionalist theories on European integration, the judicial empowerment hypothesis posits that national courts prefer to compel the government to change its laws when they are of the opinion that a national measure violates EU law. Referring is hence used as a 'sword' vis-a-vis the legislator or executive

71 -Our hypothesis is that member states with the institutional legacy of majoritarian democracy are more reluctant to participate in the construction and main- tenance of the judicial constitutionalization of Europe.

There is evidence to suggest that national courts increasingly view the length of proceedings in Luxembourg as an argument against making a reference.

E. The preliminary reference (in)experience of the ECOWAS Court

F. Conclusion

389 - Because Community law, by reason of its supremacy and direct effect impacts relationships between individuals, Member State courts are asking the Court to decide Community law questions more frequently.

105 - Omissions to refer could mean that breaches of EU law remain unaddressed. This could in tum have severe implications for the judicial protection of individuals, and most certainly for individuals who are in vulnerable positions such as asylum seekers

THE ROLE OF THE COMMUNITY COURT OF JUSTICE IN THE REGIONAL INTEGRATION PROCESS

BY

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INTRODUCTION

Wherever mankind exists as a society, there also will Law always exist. This principle is best articulated in the words of the Latin maxim: UBI SOCIETAS IBI JUS".

To find an apt illustration, one needs to look no further than the declaratory nature of the laws governing international organisations, as exemplified by that of the Economic Community of West African States (ECOWAS), established by its 1975 Treaty, revised in Cotonou (Benin) in 1993, and institutionalised, for the purpose of raising the living standards of the peoples of the region, through the implementation of actions and programmes within various regional integration-related domains. These include:

- the ECOWAS agricultural policy; infrastructure;
- free movement of persons and goods, right of residence and establishment;
- the trade liberalisation scheme ;
- promotion of democracy and good governance ;
- facilitation of inter-State transit, etc

The implementation of these programmes and actions involve natural persons, companies, and development partners.

Under the terms of Protocol A/P.1/5/79 on Free Movement, and Right of Residence and Establishment, natural and legal persons move freely from one Member State of the Community to another, for purposes of:

- Either transacting commercial activities or trading in goods and merchandise;
- Or offering services to other economic operators or development agencies.

On their part, development partners allocate grants or provide technical assistance to ECOWAS within the framework of cooperation agreements, or by way of direct interventions in project implementation.

In the process of implementing these grants and agreements, conflicts and disputes may arise.

Similarly, natural and legal persons (companies, commercial enterprises, consultancies or legal firms) are not always immune to conflicts arising in the relations established and nurtured between themselves, between themselves and the Community, between themselves and a Member State, or between the Member States themselves.

Above and beyond this, international agreements or commitments may be undertaken with one another, by the Member States of the Community, or between third countries and ECOWAS, which may breed contention during the implementation process.

How do you resolve these issues?

Under the provisions of Article 15 of the ECOWAS constitutive Treaty, the ECOWAS Authority of Heads of State and Government established a Community Court of Justice which was made operational in 1991, by virtue of Protocol A/P1/7/91. The original protocol establishing the Community Court of Justice underwent successive revisions, the

most significant of which was that of 2005, extending the scope of the Court's jurisdiction.

With more than a decade of legal practice since the creation of the Community Court of Justice, there is a need to take stock of the effective role the institution has played in the consolidation of Community law, which is one of the core concerns of regional integration. In other words, how has the Court kept pace with the regional integration process by way of legislation enacted to ensure uniform and dependable implementation of Community laws, with a view to supporting, wherever necessary, the actions of each entity (the man in the street, national administrative bodies, or governments) involved, each in its own capacity, in the regional integration process?

The response to this question in this instance, requires a sort of legal bypass, de-emphasising the technicalities of pure procedure which are very familiar to all legal practitioners and addressing the theme for today by way of an analytical approach to the modalities adopted by the Community Court of Justice in the discharge of its jurisdictional or consultative functions, which are aimed at ensuring the coherent application of Community law, with a focus on the consolidation of the pillars of regional integration.

The first step in a discursive approach to the consideration of this topic views the exercise of the jurisdiction of the Community Court of Justice through the lens of a legal mechanism for the consolidation of the regional integration process (I).

The next step is the consideration of the necessary cooperation on judicial matters between the national Judges of the ECOWAS Member States and the Community Court of Justice (II), as an indispensable means for enabling the Court to play its role as a **"builder"** of the pillars of regional integration.

The final step is the raising of awareness of the activities of the Court, as an extra-judicial contribution to the Community legal integration process (III).

I. JURISDICTION OF THE COMMUNITY COURT OF JUSTICE AS A LEGAL MECHANISM FOR CONSOLIDATION OF THE REGIONAL INTEGRATION PROCESS

A. The Legal Basis for Jurisdiction

The provisions of paragraphs 3 and 4, Article 15, and Article 76 of the ECOWAS revised Treaty, collectively stipulate the independence of the Court in relation to the States and Institutions, and vests it with the powers for the settlement of disputes brought before it. The Treaty goes further to provide that" ***the ... (functions of) the Court of Justice shall be as set out in a Protocol relating thereto.*** "

In furtherance of this idea, the Authority of Heads of State and Government, by Protocol A/P.1/7/1991, effectively vested the Court with such sovereign functions of a Court of Justice, as exist in other regional economic communities.

The exercise of these jurisdictional powers was impeded by the principle of exhaustion of local remedies at the national level in the settlement of disputes between Member States and their citizens, between State-owned companies and nationals or other ECOWAS countries.

Natural and legal persons, as well as civil society organisations, convinced of their right to a legal guarantee of justice before the Law, played a very active part on the ground, in favour of the extension of the primary jurisdiction of the Community Court of Justice, as contained in the 1991 Protocol granting citizens greater access to the Community Court.

On the strength of these considerations, the ECOWAS Authority of Heads of State and Government, in 2005, through Supplementary Protocol A/SP.1/01/2005, further expanded the jurisdiction of the Court to include hearing of the disputes of which it is seized. This jurisdiction is expressly established by Article 9 of the said Protocol. Thus the Court has specific jurisdiction to hear all disputes submitted to it concerning the matters hereafter:

Article 9: Jurisdiction of the Court

1. The Court shall have jurisdiction in the settlement of disputes brought before it in matters pertaining to :
   a) The interpretation and implementation of the Community Treaty, Conventions and Protocols, and of all matters provided within such agreements as may be concluded between the Member States or with ECOWAS, by which it is granted necessary jurisdiction;
   b) The Court has jurisdiction to declare commitment of extra-contractual obligations and condemn the Community to the payment of reparations for damages caused either by material actions or normative acts on the part of Community institutions or their agents in the discharge of their functions;
   c) Human rights violations in any Member State ;
   d) The Court has full jurisdiction in matters pertaining to the provisions of this Protocol granting it such other jurisdictions as it may be vested with by subsequent Community Protocols and Decisions;
   e) The Authority of Heads of State and Government has powers to bring before the Court disputes other than those provided in this Article.

By these provisions, Supplementary Protocol A/SP.1/01/2005 vests the Court with new powers in addition to those already vested in it by other Community texts not relating exclusively to the issue of the jurisdiction of the Community Court of Justice.
As a result the Court now has jurisdiction over:

- **Commercial matters and movement of citizens in the pursuit of their professional activities**

  - by Protocol A/P.1/5/79 relating to Free Movement of persons, Right of Residence and Establishment;
  - by Supplementary Protocol A/SP.2/79 relating to the Concept of Products Originating from Member States, amending the Protocol defining the Concept of Products Originating from the ECOWAS Member States, signed at Lomé, on 5 November 1976 ;
  - by Supplementary Protocol A/SP.1/5/1981 amending Article 2 of the Protocol defining the Concept of Products Originating from Member States of the Economic

Community of West African States;

- by Supplementary Protocol A/SA.1/12/2008 Adopting Community Rules on Competition.

- **Political and Security Matters** :

- by Protocol A/SPl/12/01relating to Democracy and Good Governance, additional to the Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security;
- by the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

- **Human Rights:**

The African Charter on Human and Peoples' Rights, and international agreements to which the Member States are signatories.

B. Judicial Practice or Jurisprudential Application

In the implementation of the powers conferred on it, and in compliance with Article 76(2) of the Revised Treaty of ECOWAS, the Community Court of Justice fully exercises its jurisdiction and settles the disputes that are brought before it, by delivering judgments which are binding on both natural persons and legal entities, and on Member States and Community Institutions.

In that respect, while carrying out its mandate on the settlement of disputes among the contending parties which appear before it, the Court can declare that the implementation of the Community texts on integration has not been observed. The target of the intervention of the Community Court of Justice has therefore been to put things in their normal order, so as to consolidate the Community law. From this perspective, judgments have been made in various areas:

Protection of Human Rights against States

Nabintou against the State of Niger for the violation of human rights. Protection of human rights against those States failing to respect their international commitments in the matter of human rights, constitutes a substantial part of the litigation before the Court.

Political Affairs: Protocol A/SPl/12/01 relating to Democracy and Good Governance, judgments delivered on matters pertaining to contested election results:

- Social Matters
- Goods

Free Movement of Goods and Right of Residence and Establishment

- Freedom of establishment and of services (CRUDE Mba v. the Rep. of Ghana/ Judgment dated 2019 unpublished);
- Closure of borders (Afolabi v. the Federal Rep. of Nigeria).

The International Civil Service

(Kokou Edoh v. ECOWAS Commission)

As a partial conclusion to this discussion, it has been made abundantly clear to the Member

States and the ECOWAS institutions, that the position of the Court is unequivocal as to the grounding of Community law in the texts of the Community, and that accordingly, this law must be applicable to all.

Although one aspect of the role of the Court in the regional integration process involves relations between the Court and extra-legal stakeholders, a further aspect of this role concerns the matter of cooperation with national Judges on the issue of reference for preliminary rulings.

II. THE REFERENCE FOR A PRELIMINARY RULING TECHNIQUE USED BY THE COURT AS A MEANS FOR ITS INTERVENTION IN THE CONSOLIDATION OF THE REGIONAL INTEGRATION PROCESS

A. How this legal technique should be understood

It is common knowledge that national Judges are responsible for the application of all Community texts relevant to the suits brought before them, within specific areas of regional integration. This broad jurisdiction granted the national Judge is known as **"common law"** and may be in conflict with the interpretation of the Community law which it is the Judge's function to apply.

However, it is unanimously accepted in law that a Judge who has jurisdiction in the application of a law also has jurisdiction in its interpretation.

If it is true that ECOWAS is a regional organisation with a primarily economic purpose, which is strongly committed to the objective of the creation of a common market within which Community regulations are uniform from one Member State to another, then it must equally be true that the obligations imposed and the rights granted to the citizens by the basic texts informing the Community must be the same, in whichever ECOWAS country economic operators or citizens may be.

The point at issue is whether the interpretation of Community law should be abandoned to the plethora of national Judges.

In fact, the number of the national jurisdictions would necessarily generate a *multiplicity* of interpretations which would irremediably compromise the existence of the ECOWAS common market. Meanwhile, it should be noted, that according to the 2018 report on the status of trade relations between the ECOWAS Member States, in the last forty years, intra-Community trade has not exceeded 6%.

How then, under such conditions, can a uniform interpretation of Community rule of law be achieved, in order to consolidate regional integration?

The ECOWAS Treaty has vested the Community Court of Justice with responsibility for the uniform and autonomous interpretation of ECOWAS texts.

National Judges, who are responsible for the application, even of Community texts, must, in such case, ask the Community Judge, by way of the reference for a preliminary ruling, how to proceed - in other words, what best interpretation of the text to apply. When the Community Judge responds to the request of the national Judge on the interpretation of the Community text, the national Judge is bound to adopt the interpretation given. This

reference for a preliminary ruling technique enables Community and national Judges to participate directly and reciprocally in decision-making, with a view to ensuring the uniform application of Community laws in all the Member States.

B. Judicial Practice or Jurisprudential Application of Reference for a Preliminary Ruling

Although in judicial practice, reference for a preliminary ruling between Community and national Judges in the European Union is unequivocal with regard to judgments delivered by the European Union Court of Justice, ***(See CJEC Judgment Firma Schwartze of 1 January 1965 and Judgment Lorenw Dias 16.07. 1992),*** jurisprudence on this particular issue is non-existent in the ECOWAS region.

Why? One can only guess: perhaps because national Judges understand and properly apply Community texts, or perhaps because they do not apply the texts at all - which explains everything.

If this situation is to be remedied, there is a need for sensitisation outreach.

III. MEMBER STATES NEED TO BE SENSITISED ON THE ACTIVITIES OF THE COMMUNITY COURT OF JUSTICE, AS AN EXTRA-JUDICIAL ACTIVITY IN SUPPORT OF THE CONSOLIDATION OF COMMUNITY LAW.

For a number of years now, the Community Court of Justice has carried out sensitisation activities in ECOWAS Member States with a view to making itself better known. The expected outcome of these sensitisation activities should, in theory, be the readiness with which cases are brought before the Court of Justice. Although the statistics on this performance indicator do not bear out this optimism, the consubstantially African timidity which tends to leave all justice in God's hands, should not discourage the sensitisation effort, because no great undertaking is achieved without difficulty. The major social, economic, political and cultural integration projects are constructed with the same patience and passion that possessed Penelope as she endlessly awaited the return of her love. And indeed, our Court is comprised of both male and female Judges, who are passionately committed, and believe as a body, in their role as the builders of the pillars of regional integration through the fearless application of our Community laws.

CONCLUSION

I shall conclude my presentation with another Latin maxim **"sol lucet omnibus"** - the sun shines for everyone. In other words, the role of the Community Court of Justice in the regional integration process must become a reality which brings with it the hope of a uniform application of Community law to all of us, wherever in our Community we may be; and the hope that national Judges will apply Community law, taking into account the fact of ECOWAS citizenship, so that the sun may rise and shine on everyone.

Community Judges, for their part, must, even when they return to their countries of origin, at the conclusion of their tenures, continue the work of sensitisation, so that our common region may gain the confidence of all, with regard to the law.

Thank you.

ROLE OF THE COMMUNITY COURT OF JUSTICE ECOWAS IN THE INTEGRATION PROCESS

BY

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INTRODUCTION

On 6 July 1991, the Council of Ministers of Justice signed the Abuja Protocol A/P1/7/91 establishing an ECOWAS Court of Justice. The Court is located in Abuja, Nigeria, but it can be transformed into a transit Mobile Court, sitting in any other location, where necessary. It is made up of seven (7) independent Judges, appointed by the Authority of Heads of State and Government of ECOWAS from a list of two (2) Judges proposed by each Member State. The first set of Judges of the Court were appointed on 30 January 2001, but the Court only became operational on 22 August 2002. The ECOWAS Court of Justice is charged with « *ensuring the observance of law and principles of equity in the interpretation and application of the provisions of the Treaty, protocols and conventions, and resolving disputes that may be submitted to it in accordance with the provisions of Article 76 (2) of the Treaty and disputes which may arise between Member States and the Institutions of the Community* ». The main international institution with «judicial», administrative jurisdiction, as well as a «Supreme Court» with the ultimate responsibility of ensuring consistency, validity and uniform interpretation of the Community acts, the ECOWAS Court of Justice is subject to rules of organization and competence which illustrate this mandate. These will be examined through the role of the Court in the protection of human rights on one hand, and the role of the Court in the execution of Community Law on the other.

I) Role of the Court in the protection of human rights

As the name implies, ECOWAS is first of all a Community of **economic interests.** However, Member States have decided to give the ECOWAS Court of Justice jurisdiction to examine cases of alleged human rights violations.

Applicable human rights are those that the Member State has undertaken to respect and enforce, by **Treaty or Protocol:**

- Universal Declaration of Human Rights of 1948 (Protocol),
- International Convention on Human Rights (Treaty),
- African Charter on Human and Peoples' Rights (Treaty), etc.

It only has power of attribution: it can only intervene in particular cases and with regard to only persons indicated in the Treaties.

Prohibition from becoming a Court of last resort of national Courts. Exercising jurisdiction marked by the seal of subsidiarity, the ECOWAS Court of Justice is not a fourth or fifth level of jurisdiction: it does not have the power to overrule decisions of the national authorities. *(06 October 2015, in the case of Gen. Amadou Haya Sanogo and Others v. Republic of Mali, finding that «where in principle it does not appreciate the reasons for a judicial decision made within a Country in so far as it is neither made by a Judge of national legality in the broad sense nor a Judge of the Appeal or Supreme Court, it nevertheless remains that it has the jurisdiction to hear complaints relating to national decision on human rights violation cases»).* Its competence is restricted to identifying a violation of the provisions of a treaty and possible award of financial compensation based on the principle of *restitutio in integrum* («It is a general principle of lnternational Law that the violation of a commitment entails the obligation to make reparation in an adequate form, and reparation is the indispensable complement to a failure to apply a Convention, without the need to include it in the Convention itself». «The State indicted is bound to make full reparation for the injury caused by the internationally wrongful act ... this reparation takes the form of restitution, compensation and relief»). Moreover, the Court, in ECW/CCJ/APP/19/15 *CDP et al. R Republic of Burkina Faso,* affirmed its «refusal to

establish itself as a Judge of the internal legality of States. It is not an organ responsible for adjudicating on cases whose stake is the interpretation of the law or the Constitution of the ECOWAS Member States». The Court justified its position in the same case by its desire not to « be in competition with the national Courts on their own territory which is precisely that of interpretation of the national texts».

A) Conditions of referral to the jurisdiction of the Court

According to the system set up by the 1991 Protocol, the Court could only hear complaints from Member States and ECOWAS institutions as well as issues on financial liability of Member States. Today, since the case of *«Olajide Afolabi v. Federal Republic of Nigeria»* in 2004, and the introduction of Supplementary Protocol of 2005, the Court has accepted the submission of individual complaints from any of the Member States, in case of violation of Protocols, Decisions, Treaties or Conventions adopted by ECOWAS in general, and it is empowered to adjudicate on human rights violations through an individual complaints procedure in particular. The ECOWAS Court of Justice has thus become a reliable Community Court which individuals can approach, without any intermediary, in the interpretation of the legality of Community law and human rights issues.

- The applicant's locus standi: the Court makes a distinction between referral to challenge the legality of Community acts based on Article 10 (c) of the Supplementary Protocol *(any aggrieved corporate body or individual may bring an action before the Court for assessment of the legality against any Community act)* and referral of human rights violations. If in the first case the Court considers that the referral by corporate bodies is admitted in Private law, it declares its referral inadmissible by these individuals making claims for human rights violations. In some cases, the Court clarified that only an individual (or an NGO acting on his behalf) shall bring an action on human rights violations. It indicated that in the context of Article 10 (d) of the Protocol as amended, the term «individuals» refers only to human beings and no more. *According to the reasoning of the Court, since Article 10 (c) refers to corporate bodies and individuals, the purpose of the legislation was to distinguish between human beings and other corporate bodies. By specifically granting access only to individuals under Article 10 (d), the Supplementary Protocol was intended to grant this right exclusively to human beings who are victims of human rights violations, to the exclusion of all others. (ECW I CCJ I APP I 11/18 JUDGMENT ECW I CCJ I JUD I 02/19 TAAKOR TROPICAL HARDWOOD COMPANY LTD v. Republic of SIERRA LEONE).*

This interpretation of the Court is similar to that of the ECHR which grants the status of applicant, corporate bodies, only to non-governmental organizations (Articles 1 and 34 of the ECHR, excluding non-autonomous corporate bodies and individuals by right vis-a-vis the State *(ECHR, 26 August 2003, Breisacherv. France).*

The applicant must also be a victim within the meaning of International Law: *«A victim is a person who suffers individual or collective harm (or pain) such as physical or mental injury, emotional suffering, economic loss, or more generally any human rights infringements resulting/ram acts or omissions that constitute gross violations of human rights or serious human rights violations or norms of Humanitarian Law».* ***(ECW I CCJ I JUD I 06/19 REV. FR SOLOMON MFA and Others v. Federal Republic of Nigeria)***

- The defendant: On the issue of human rights violations, the defendant must necessarily be a State. The Court recalled in its judgment of 8 November 2010, *«Mr. Mamadou Tandja v. HE Gen. Salou Djibo v. Republic of Niger»* (ECW/CCJ/JUD/05/10): § 18 1 a): *that «Article 9.4 of the 2005 Supplementary Protocol states that «The Court has jurisdiction to examine cases of human rights violations in any Member State ... However, it is generally accepted that human rights are directed against States and not against individuals. Infact, the obligation to ensure the observance of law and protect human rights rest with the States. Obligations of respect and protection of human rights come from the International Conventions accepted and signed by the States ...* ».

In a particular case, the Court declared an action against BCEAO inadmissible on the grounds that it «is not liable for the stipulated obligations by the African Charter on Human Rights or set out in the Universal Declaration of Human Rights which are the two instruments invoked by the applicants» *(Case No. ECW/CCJIAPP/20/16, Mr. BAMA BOUBIE & 10 OTHERS v. REPUBLIC OF COTE D'IVOIRE and the BCEAO).* The same remedy was upheld in an action against Sierra National Airlines *(ECW/CCJ/JUD/17/16 KHADIJATU BANGURA and Others v. REPUBLIC OF SIERRA - LEONE 2 - SIERRA NATIONAL AIRLINES).*

B) Conditions for admissibility of appeal

The Court has, in numerous judgments, affirmed or specified the conditions for admissibility of appeal. For example, in *Case No. ECW/CCJ/APP/10/16;* the Limited Liability company « *Maseda Industrie LTD* » *v. Republic of Mali,* in declaring the application admissible, the Court reasoned in the following terms:

> *«Considering that the Court notes first of all that the request submitted to it refers to human rights violations, including the right of an aggrieved person to an effective remedy before a Judge and the right to a fair trial within a reasonable time. The Court also notes that this application invokes at least two international norms that bind the Respondent, namely the International Convention on Civil and Political Rights and the African Charter on Human and Peoples' Rights. In accordance with its Case-Law, it considers that these elements are sufficient in themselves to justify its competence ratione materiae* ».

Clearly, the Court considers that in order for its jurisdiction to be invoked, there must be a violation of human rights, that the alleged violation must be based on an international or Community obligation of the State.

Moreover, it should be emphasized because the ECOWAS Court of Justice as the highest Arbitration Court, does not make exhaustion of domestic remedies, one of the conditions of admissibility of its referral, although it recognizes the subsidiary character of its jurisdiction as an international order. It has repeatedly held that *«prior access to a national*

Court cannot therefore be a ground of inadmissibility before the ECOWAS *Court of Justice at least as long as it is an area of competence of the Community Court». (Judgment No. ECW/CCJ/JUD/15/15 of30June 2015).*

Moreover, the Court has always received applications and maintained its jurisdiction even in the event of prior referral of a national Court. This practice is contrary to the Rules of Procedure of referral to the European Court of Human Rights and *the Tribunal of Southern African Development Community* (TSADC). Before these two Courts, the exhaustion of domestic remedies is a condition of admissibility of the action.

In addition, the Court strictly follows and applies the terms of Article *10 of the Supplementary Protocol (AISPl/01/05) of 19 January 2005* which states:

- The request shall not be anonymous: *the applicant (s) must be clearly identified by name and address in accordance with Article 33 of the Rules and Regulation.* In practice, each application must specify: the name and address of the applicant; the name of the party against which the application is made; the subject matter of the proceedings; and a summary of the legal claims on which the application is based, the form of injunction sought by the Plaintiff, what kind of order the applicant wants the Court to make; where appropriate, the nature of any evidence offered in support of the claim; a service address at the place where the Court is sitting and the name of the person who is authorized and who has expressed willingness to accept to render service.

The application shall not be brought before the ECOWAS Court of Justice when it has already been brought before another competent international Court. In fact, under the terms of this Article, it is prohibited to bring before the Court a dispute which is pending before another competent international Court, in order to avoid the cumulation of international procedures. (Principle of non bis in dem et litispendance). ECOWAS had to clarify this condition by its Decision of 14 May 2010. In this important Decision, the ECOWAS Court of Justice firmly laid down two main principles which will henceforth be part of the Judicial Annals. First of all, the Court says that the AU is not an international Court of Justice within the meaning of the law, and therefore its role is not to administer justice or to interpret the law. Then, as this case is already under consideration before the UN Committee against Torture, the Highest Court of the European Union addresses the condition posed by the Article under analysis by stating that this Committee is not a jurisdiction either. Its role is limited to monitoring the implementation by the signatory States of the provisions of the Convention against Torture. As such, it is a mere warning organ whose «recommendations» and other «injunctions» are devoid of any enforceable power.

C) Protection of economic, social and cultural rights

Economic, social and cultural rights are fundamental rights in the workplace, social security, family life, participation in cultural life including access to housing, food, water, health care and education. Unlike civil and political rights, economic and social rights do not presuppose abstention, but intervention by public authorities, not only to guarantee them, but also to ensure their effective execution through the establishment of legal systems or institutions giving them a concrete scope or, more importantly, by granting benefits, hence the classification of « rights-claims» attributed to them.

The Court's Case-Law in this area are not many because there is an impressive body of rules of secondary law which the Court usually refers to, for the execution of these rights.

In fact, when it comes to expressing itself on the issues of law on contracts implementation which the parties described as «economic rights», the Court pointed out the principle of ***civil rights and obligations,*** which is not within its area of competence.

In the judgment of 2 November 2007, «Chief Frank C Ukor c. Rachad Laleye v. Republic of Benin», the Court, after recalling that «the two parties were in business relations», noted that « there was no mention of human rights violations but simply of contractual relations» (§28) and thus concluded that it was incompetent.

In *Case No. ECW/CCJIAPP/1 OIi 6* (the Limited Liability Company «Maseda Industrie LTD» v. Republic of Mali), the Court recalled that it does not legislate on contracts and, as such, unlike the ordinary Courts, it cannot pass any judgment as to the implementation or non-implementation of the contract binding the parties.

Based on the International Convention on Social, Economic and Cultural Rights, and the African Charter on Human and Peoples' Rights, we must emphasize the importance of the Court of Justice Case-Law production on labour rights:

- Right to a fair wage,
- Right to equal treatment in the Public Service,
- Right to equal access to employment.

(Judgment No. ECW/CCJ/JUD/08/16 in the case of Lady MEDAGBE Rita, wife of ABALO v. Republic of TOGO)

On protection of the family, particularly of women and children, not much progress has been recorded *(CASE N° ECW/CCJ/APP/35/17 AM/NATA DIANTOU DIANE v. REPUBLIC OF MALI)*.

In this respect, it should be recalled that the ECOWAS Court of Justice, in its approach, notes the violation or not of the right invoked by the applicant and where necessary grants pecuniary compensation. The European Court of Human Rights, on its part, opts for a method of extensive interpretation based on principles of rights contained in the Conventions (teleological method). Thus the ECHR has enshrined fundamental social rights: guarantees against unfair dismissal, right to unemployment benefits, retirement pensions or other social benefits, right to social assistance for vulnerable people or those in precarious situations.

II) Role of the Court in the execution of Community law

The Court plays an important role in the event of a State's failure to fulfill its ECOWAS obligations, for a preliminary ruling and for the interpretation of ECOWAS Rules and Regulations.

A) Infringement proceedings

It helps to control activities of the Member States. In their wisdom, those who drafted the Treaty considered that, in spite of their reciprocal commitments, Member States could, in certain areas, show little or no willingness or unwillingness to honour the obligations imposed upon them by the ECOWAS Rules and Regulations. Infringement proceedings to

fulfill an obligation is based on Article 9 (1) (d) of the amended Protocol of the ECOWAS Court of Justice, which provides that *«The Court shall have jurisdiction over all disputes referred to it on issues (..) of Member States failure to fulfill their obligations under the Treaty, Conventions, Protocols, Rules and Regulations, Decisions and Directives»*.

In addition, the 40th Ordinary Session of the Authority of Heads of State and Government of ECOWAS adopted, on 17 February 2012 a Supplementary Act imposing sanctions on Member States that fail to honour their ECOWAS financial obligations. Article 1 of this text defines the notion of State obligations as follows: *«Constitute obligations for Member States, the application and respect of the Acts of the Authority and the Council of Ministers which are the ECOWAS Treaty, Conventions, Protocols and Supplementary Acts, Rules and Regulations, Decisions and Directives of the Community, as well as Decisions of the ECOWAS Court of Justice»*.

Areas of infringement proceedings:

The scope of action for failure to fulfill obligations is very wide: any Member State to which a Directive is addressed must take all the measures necessary, at national level, to give full effect to that Directive. Any action or inaction of a State contrary to the obligations incumbent on it under the Community law may be declared as constituting a breach. This often include:

- Adoption of a national measure contrary to the Community law.
- Long delays in integrating Community directives into national law.
- Non-compliant transposition of a directive. (Since this measure is contrary to Community law, it has no place in the legal order of the Member State concerned, whether it has been applied or not).
- Contradiction between the national provisions and stipulations of the Community texts.
- Absence of Report to the Commission on the transposition of the Community directives by the State.
- Refusal, negligence, omission or failure to adopt measures imposed by the law of the Union.
- The fact that a State refuses or delays the implementation of a judgment that is infringed. (Procedure of double default or breach of default).
- Establishment of material operations contrary to the law of the Union (e.g. hindering free movement of persons through border controls).

Referral to the Court of Justice for infringement

The parties

Application for failure to fulfill obligations is open to the privileged applicants designated by Article 10 (a) of the Supplementary Protocol: Member States and the President of the Commission.

In this regard the ECOWAS Court of Justice declared the actions brought by some individuals as inadmissible. Thus, in directive ECW/CCJ/JUD/11/12 delivered on 6 July 2012, in the case of Kemi Pinheiro v. Republic of Ghana, the Court held that:

«*... unlike other situations in which individuals are allowed to bring a case directly*

to the Court (..), the Court Protocol does not give individuals the right to prosecute a Member State for breach of its obligations as contained in the Community texts. According to Article 10 (a), only a Member State or the ECOWAS Commission may apply to the Court to compel a Member State to fulfill an obligation».

There is not obligation for the applicant to have a direct and personal interest in bringing proceedings before the Court. Clearly, the complainant does not have to establish or prove that the State party's failure to do so adversely affects him. It is sufficient for him to prove (or to adduce prima facie evidence) the existence of a failure by a Member State to fulfil obligations.

The defendant in the infringement Procedure is still a Member State, which is accused of having infringed the Community law. The notion of State is understood here in a broad sense. Thus, only States may be prosecuted before the Judge of the ECOWAS Court of Justice, independently of the victim of the alleged violation, which may be the responsibility of the central (Executive, Legislative or Judiciary) or intra-State relevant authorities (Federated States, decentralized authorities, etc.).

Rules of Procedure

Within the ECOWAS framework, the Commission plays a decisive role in the implementation of this type of appeal, even where any Member State may also bring it against any other Member State. In practice, for obvious political reasons, States rarely take the initiative in this aspect. In fact, the right of State appeal is tantamount to an institutionalized right of interference, open by right to any State Party against any other Contracting State. They prefer to let the Commission act.

However, the President of the Commission has not yet taken the initiative to refer any infringement action brought against a Member State to the ECOWAS Court of Justice.

The Court has nevertheless registered some complaints concerning the failure of States to fulfill their Community obligations. However, none has managed to move through the preliminary objection phase. Several applications submitted to the ECOWAS Court of Justice have been declared inadmissible for lack of locus standi of the applicants.

In the European Union system, the procedure takes place in two phases: if, after informal contacts and formal notification, the State persists in its breach, the committee issues a reasoned opinion setting a final deadline for the State concerned. If the State fails to comply with the opinion within the time limit set by the Commission, it may refer the matter exclusively to the Court of Justice of the European Union. There is then a contentious phase during which the Court examines the parties' arguments in accordance with an adversarial jurisdictional procedure. If the breach is established, it declares that the State concerned has failed to fulfill its obligations. Execution of judgment since the Maastricht Treaty falls within the competence of the Commission. If a State fails to take the necessary measures to comply with the judgment within the time limits set by the Commission, the Commission may again apply to the Court to impose a pecuniary sanction on the State at fault, in the form of a penalty payment, the daily amount of which may be particularly dissuasive.

The scope of infringement action:

Judgment delivered on infringement proceedings is of general application insofar as it allows a uniform interpretation of Community texts and directly or indirectly encourages all Member States to comply with them.

Judgment delivered on infringement proceedings is declaratory in nature. It confines itself to ascertaining the existence or not of the alleged breach. Even in the event that it is established, the Court can neither annul national measures declared contrary to Community law nor prescribe to the Member State concerned specific measures to be taken to put an end to the breach. The choice of means for a return to Community legality is left to the State, but it must be carried out within the prescribed period, failing which it commits a new breach which exposes it to new legal proceedings.

To conclude on this point, it is important not to confuse the action for breach which is a judicial procedure, with the political procedure of sanctions applicable in the event of non-compliance by a Member State, as provided for in Article 77 of the Treaty, which falls within the initiative and competence of the Authority of Heads of State and Government.

B) Reference for a preliminary ruling

The application of Community law is foremost and binding on all the national Courts. Where «the prosecuting Judge is also the presiding Judge of exception», there are limits when the defense raises a question within the exclusive jurisdiction of another jurisprudence. The preliminary question is thus characterized and the reference for a preliminary ruling is instituted. The preliminary jurisdiction of the ECOWAS Court of Justice is a condition of the unity of the Community law.

Preliminary ruling on the matter by the ECOWAS Court of Justice is provided by **Article 10 (f)** of the Supplementary Protocol: *«The following may be brought before the Court: the national Courts or the parties concerned, when the Court has to give preliminary rulings on the interpretation of ECOWAS Treaty, Protocols Rules and Regulations; the national Courts may decide to, or at the request of one of the parties to the dispute, refer an issue for interpretation to the ECOWAS Court of Justice».*

Presented as a model of cooperation between national Judges and the Court, implemented by the Judges or at the request of one of the parties to the dispute, by litigation submitted to them, mainly in economic and social matters, it is a major instrument of sub regional integration. Its purpose is to ensure that the primary and secondary Community law, are interpreted in the same way by all Judges in all Member States. This is why the Court has exclusive jurisdiction to interpret the Community law, at the request of all national Courts, and to answer their questions as to the validity of the acts adopted by the Community institutions. According to a simple Rule of Procedure, any national Judge or any party to a case may or ought to submit to the Court in any dispute the rules, as to how such Community law is to be interpreted. *It is a preliminary Community issue.*

For the sake of consistency and harmonization of this right, the national Judge, faced with arguments of defense drawn from the Community texts whose application is open to discussion, must adopt this proactive and constructive attitude which implies for him to stay the proceedings, in order to seek further interpretation from the Court of Justice

ECOWAS. It is the only Court empowered to give Community texts an interpretation or application of genuine validity, thus avoiding the risks inherent in overlapping competences or contradictions of Case-Law on similar Rules and Regulations of Community law.

Decisions handed down by the ECOWAS Court of Justice make an exceptional contribution to the construction of the Community legal order. The unity of interpretation of Community law, which constitutes the essential objective of the preliminary ruling, would be seriously compromised if judgments of the Judge of the ECOWAS Court of Justice were not binding on the national Courts. This is why the judgment of the former is binding on the national Court, which must therefore comply with the judgment given by the ECOWAS Court of Justice and its interpretation of Community Law. *(Article 15 - 4 of the Treaty: Judgments of the ECOWAS Court of Justice are binding on Member States, Community Institutions, corporate bodies and individuals).*

It is important to note, however, that the Court does not settle disputes. Disputes are decided exclusively by the national Courts even when the outcome of the latter requires the application of one or more norms of the Community Law. The Court intervenes in the context of a dispute decided by the national Court to provide the latter with information on the Community Law to which the national Court is required to comply. Unfortunately, the Court does not have a mechanism to monitor the effectiveness of the application of its judgments by the national Courts.

However, in order to avoid overburdening the role of the ECOWAS Court of Justice, obligation to refer the matter to the Judge of the ECOWAS Court of Justice becomes unnecessary, if the question to be put across has already been the subject of the Court's Case-Law. This implies that a dispute identical or similar to that in the national Court has already been the subject of a reference for a preliminary ruling which has given rise to a question materially identical to that which the national Court would raise. Similarly, the reference for a preliminary ruling must not be made if the issue of interpretation of Community Law raised by one of the parties before the national Court is irrelevant, that is, the question cannot have any influence on the outcome of the dispute.

It is important to note that the Supplementary Protocol of the ECOWAS Court of Justice retained only one case for preliminary ruling: the application for interpretation. On the other hand, the WAEMU Court of Justice (Article 12 of the Supplementary Protocol No. 1) and the CEMAC Court of Justice (Article 26 of the Convention) set up a second category of preliminary ruling: the return of the Community norm by which the national Court may have to ask the ECOWAS Court of Justice to review the validity of an Act of the Community Law.

The requirement to refer the preliminary issue to the ECOWAS Court of Justice varies from one jurisdiction to another.

Before the WAEMU Court of Justice, Article 12 of the Supplementary Protocol No. 1 introduces a distinction between national Courts whose decisions are not subject to judicial review under national law and the others. According to this Article *«The ECOWAS Court of Justice gives preliminary rulings on the interpretation of the Union Treaty, on the legality and the interpretation of acts taken by the organs of the Union, on the legality and interpretation of the statutes of bodies created by an Act of the Council, when a*

national Court or an authority with jurisdictional function seek clarification in the event of a litigation. Lastly, national Courts are required to bring cases before the ECOWAS Court of Justice. Referral to the ECOWAS Court of Justice by other national Courts or authorities with jurisdictional functions is optional».

Moreover, Article 13 of the same Protocol makes the interpretations made in the context of the preliminary ruling procedure legally binding on all the judicial and administrative authorities of the States of the Union and obligatory, failure to comply, they shall be liable of an action for infringement against them. In case of misinterpretation of one of its judgments by a State of the Union, the Court renders another judgment restating the exact interpretation which it notifies to the superior Court of that State (Article 14).

The binding effect of the judgment given for a preliminary ruling is contained in Article 26 of the Convention governing the CEMAC Court of Justice, which provides that «interpretations given by the Court in the event of a preliminary ruling are binding on all administrative and jurisdictional authorities in all Member States. Failure to comply with these interpretations gives rise to infringement proceedings».

In the European Union system, the preliminary issues of the Community are of two kinds: one relating to respect for free competition (Article 85 of the Treaty of Rome), are within the competence of the Commission of the European Union and operate, grosso modo, as the preliminary issues of criminal law (in application of the rule «the criminal charge places the civil suit in obeyance»), while the others, concerning the interpretation of the Rules and Regulations of the Community law must be addressed to the Court of Justice of the European Union (Article 177 Treaty of Rome: Supplementary Article 234 of the EU Treaty) and falls under a singular regime characterized by two essential elements: referral can only come from a Judge and it is obligatory when the decision of the national Court is not subject to appeal.

C) Interpretation of Community Rules

Apart from litigation, the Court has advisory powers. As such, the Court issues legal opinions on matters which require the interpretation or application of the provisions of the Treaty and related Protocols upon referral by the Authority, the Council of Ministers, any Member State, the Commission and any Community institution (Article 76-2 of the Treaty).

It should be noted that the jurisdiction of the Court of Justice in interpreting or applying the Community law is marked by the seal of subsidiarity. The Treaty in its Article 76-1 instituted the principle of consensual interpretation between the parties. (Practice of subsequent interpretative agreements). It is the same principle that is applied for the Tribunal of SADC in Article 49 of its Protocol.

The ECOWAS Court of Justice does not intervene upstream, in the drafting of Community law or in the assessment of the legality of the drafting of Supplementary law in relation to the existing law. However, it would be judicious and should be indicated that any new norm of ECOWAS Law and any decision to apply that right by an institution must be subject to effective judicial review. For this reason, the Court of Justice of the European Union monitors the legality of acts adopted jointly by the European Parliament and its Council, Acts of the Council, the EU Commission and the European Central Bank, as well as some Acts of the European Parliament.

For the time being, the role of the ECOWAS Court of Justice is confined to the issuance of advisory opinions and the verification of the legality of Community Acts adversely affecting the application of Article 9 (1) (a) (b) and (c).

Providing advisory opinions

Article 10 of the 1991 Protocol regulated by Articles 96 and 97 on the Rules of Procedure further provides that the Court may express an advisory opinion in line with the Treaty.

An advisory procedure is brought before the Court by means of a request for an advisory opinion addressed to the Chief Registrar by the Authority, a Member State, the President of the Commission, or any other ECOWAS institution. Contrary to the judgments, and except in rare cases where it is expressly provided that they will be legally binding (for example, Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, United Nations and the Headquarters Agreement between the United Nations and the United States of America), advisory opinions are not binding. It is for the institutions or organs that have requested them to decide, by their own means, what action to take on these opinions.

In the system of the ECOWAS Court of Justice and Arbitration of OHADA, according to Article 14 of the Treaty, it may be consulted by any State Party or by the Council of Ministers. The same power to request the Court's advisory opinion is granted to the national Courts hearing a dispute (different from the preliminary ruling).

Appeal for assessment of the lawfulness of a Community Act

The ECOWAS Court of Justice ensures the legality of the Acts adopted by the competent Community institutions. This appeal for the assessment of legality, which in reality is an *«action for annulment»*, is largely open to the Member States, the Council of Ministers and the President of the Commission.

On the other hand, actions brought by individuals are admissible only in respect of the decisions adversely affecting them and of which they are addressed, as well as against decisions which, although taken under the guise of a regulation or a decision addressed to another person, concerns them directly and individually.

What is the fate of the Community Acts in the event of a decision declaring the request to be well established? The texts and practice of the ECOWAS Court of Justice do not address the issue.

Before the Court of Justice of the European Union, a genuine action for annulment of the Union Act adversely affecting it is instituted. Appeals by individuals are only admissible in respect of decisions adversely affecting them and to those decisions which, although taken under the guise of a regulation or a decision addressed to another person, concern them directly and individually. The appeal for cancellation must be filed within two months; it can only be based on grounds of incompetence, breach of essential procedural requirements, and breach of the Treaty or any rule of law relating to its application or misuse of powers. If the ECOWAS Court of Justice declares that the appeal is well established, it declares the contested Act null and void with retroactive effect and, if it is a regulatory Act, it is binding on all.

This same principle is adopted by the WAEMU Court of Justice in its Supplementary Protocol No. 1, Articles 8, 9 and 10. The latter Article states that *«The organ of the Union from which the annulled Act is issued is to take necessary measures to comply with the judgment of the Court of Justice. It has the power to indicate the effects of the annulled Acts which must be regarded as final»*.

Application for annulment before the CEMAC Court of Justice is similar, mutatis mutandis, to appeals to the WAEMU Court of Justice and to the CJE. It allows the Judiciary Chamber to review the legality of Community Acts of secondary legislation (that is, adopted by the Community authorities) intended to produce legal effects vis-a-vis third parties at the request of a Member State or an institution of the Community, within two months of their publication or notification.

Article 25 of the Convention mentions four defects which may affect a legal act: incompetence, breach of essential procedural requirements, breach of the Treaty or any rule of law relating to their application and misuse of powers.

Within the same two-month period, any corporate body or individual who has a legitimate complaint may appeal to the judicial organ to challenge Community decisions or regulations where it is directly and individually concerned.

Conclusion

Like any human endeavour, the action of the ECOWAS Court of Justice is not irreversible. Most of the texts governing its means of action only define its field of material competence, without specifying the scope of its decisions, like the other Community jurisdictions studied above.

In order to make the ECOWAS Court of Justice a veritable stakeholder, even a leading stakeholder in the integration process, the Court's legislature must undertake reforms aimed particularly at controlling and sanctioning the inactivity of Community institutions through the implementation of an «action for failure to act», by setting up a system of prior control of the legality of Community Acts, as well as strengthening the enforceability of all decisions of the ECOWAS Court of Justice.

Internally, the non-revocation of the national law of Member States by the Case-Law of the Court would be a major step forward in the integration process.

Thank you.

SUB-THEME 4

RULE OF LAW & GOOD GOVERNANCE AS PRIME FACTORS IN ECONOMIC DEVELOPMENT

RULE OF LAW AND GOOD GOVERNANCE AS PRIME FACTORS IN ECONOMIC DEVELOPMENT IN WEST AFRICA

BY

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INTRODUCTION

The rule of law and good governance have become a *sine qua non conditio* in the economic development of West Africa. In this presentation, I am going to demonstrate that both concepts are not neutral terms but defined on the basis of political and ideological considerations. I shall conclude by stating that rule of law and good governance cannot be guaranteed with the religious implementation of neo-liberal economic policies which have continued to increase poverty and endanger political stability in the Member States of the Economic Community of West African States (ECOWAS).

CONCEPT OF RULE OF LAW AND GOOD GOVERNANCE

Former Secretary General of the United Nations, Kofi Anan once gave a comprehensive definition of the rule of law when he described it as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency." [1]

Kofi Anan has also said that "Good governance is ensuring respect for human rights and the rule of law, strengthening democracy, promoting transparency and capacity in public administration.

"Good governance has been said to have 8 major characteristics. According to Yap Sheng, it is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society. [2]

With respect, the definition of the rule of law is based on the assumption that the law is neutral and supreme and that all members of a given society are equal before the law. But in reality, the law is enacted by parliament and interpreted by judges who are drawn from the ruling class in every bourgeois society. To that extent, human rights are limited to political and civil rights in liberal democracies. To maintain the status quo, majority of indigent people are denied access to socio economic rights on account of alleged lack of resources to fund them. In advocating a paradigm shift in the enforcement of human rights in Africa, I had expressed the view that "To ensure that the provisions of the Constitution which guarantee fundamental rights have life and practical meaning to the majority of poverty stricken people of Africa, socio economic rights should no longer be relegated to

[1] Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

[2] Mr. Yap Sheng, Chief Poverty Reduction Section of the United Nations Economic and Social Commission for Asia and the Pacific

irrelevance and insignificance. African lawyers and judges should always be constantly reminded that the promotion of human rights has to be linked with other struggle for popular democracy and development [[3]l".

RULE OF LAW UNDER MILITARY REGIMES

A large majority of the Member States of ECOWAS were ruled in the 1980s and 1990s by authoritarian regimes which suspended national constitutions. In fact, apart from two Member States, Senegal and Cape Verde, all the others were ruled for several years by military dictators who replaced the rule of law with the rule of might and violated human rights with impunity. It was an era which witnessed regime change via coups and counter coup d'etats. Elections were annulled in some Member States while political power was seized by armed rebels, war lords, mercenaries and militias in others.

The military rulers engaged in wanton corruption and abuse of office which led to the underdevelopment of the region. But with popular resistance against unending military rule coupled with demand for the restoration of democracy in the Member States the ECOWAS Treaty was revised on July 24, 1993. Specifically, Article 4 of the Revised Treaty calls for:

1. The recognition, promotion and protection of human rights in West Africa in line with the provisions of the African Charter on Human and Peoples' Rights.
2. The promotion and consolidation of a democratic system of governance in line with the Declaration of Political Principles adopted in Abuja on July 6, 1991 and
3. Accountability, economic and social justice and popular participation in development.

In 1999, the ECOWAS Member States took a step further by adopting the *Protocol Relating to the Mechanism for Conflict Prevention, Management Resolution, Peace Keeping and Security.* Essentially, the Protocol provided a mechanism to prevent, manage and resolve internal and inter-state conflicts. However, the main shortcoming of the Protocol is that "Like previous treaties, the Mechanism Protocol does not expand on the process for strengthening democracy, human rights and good governance"[4].

However, it has been rightly observed that the Protocol "outlines 12 constitutional convergence principles that promote the rule of law with autonomy for the parliament and judiciary, free and fair elections and political participation, civilian supremacy over military forces, and civil liberties, with special provisions for women and youth"[5]. The significance of the Protocol has been emphasized by Diallo when he said that:

[3] (Femi Falana SAN: Nigerian Law & socioeconomic rights Legal text publishing company Ltd, 2017 P.10)

[4] Faten Aggad & Luckystar Miyandazi in Understanding ECOWAS efforts in promoting a governance agenda P. 6

[5] Bid

> ***"The Supplementary Protocol represents both a defining point and an important dimension in the regional process of building democratic political governance framework for supporting economic and social development in West Africa."*** [6]

Sequel to the Protocol, ECOWAS had suspended military regimes which sacked elected governments and used force to install military rulers from participating in the activities of the body. The African Union has equally suspended Member States headed by unelected rulers. Both President Charles Taylor and President Yahya Jammeh were compelled by ECOWAS to step down for disrupting the democratic process in Liberia and The Gambia respectively. To stop violent conflicts or prevent chaos in some Member States the Economic Community of West African States Monitoring Group (ECOMOG) had been deployed to restore law and order and ensure the restoration of democratic rule.

Apart from entrenching human rights in their national constitutions the Member States have ratified the African Charter on Human and Peoples Rights and adopted the ECOWAS Revised Treaty as well as the ECOWAS Supplementary Protocol on Democracy and Good Governance which requires that governments be operated under the rule of law. Accordingly, ECOWAS has given rule of law a central place as outlined in Article 33 of the Protocol on Democracy and Good Governance which stipulates as follows:

1. "Member States recognize that the rule of law involves, not only the promulgation of good laws that are in conformity with the provisions on human rights, but also a judicial system, a good system of administration, and a good management of the state apparatus.
2. They are also convinced that a system that guarantees the smooth running of the State and its administrative and judicial services, contributes to the consolidation of the rule of law".

Furthermore, ECOWAS resolved to "facilitate the adoption, reform and enforcement of national constitutions and human rights instruments to promote human rights, access to justice and social services for all and shall monitor compliance by Member States".[7] But it ought to be pointed out that the human rights guaranteed in the national constitutionss of the Member States of ECOWAS are limited to civil and political rights. Hence, majority of poor Community citizens are disabled from enjoying any of the guaranteed human rights. Such marginalization has been compounded by the implementation of neo- liberal programmes imposed on Member States by the International Monetary Fund. It is submitted that it is a grand illusion to speak of rule of law and good governance in the midst of poverty confronting the majority of the people in West Africa.

[6] Workshop on "Processes for ending the crisis in West Africa: The Place of Political dialogue in reforming the Security Sector", Bissau, (Guinea Bissau) 16-18 November, 2005 by West African Network on Security and Democratic Governance (WANSED)

[7] Article 57 of the ECOWAS Plans on Conflict Prevention Framework.

INTERVENTION OF THE ECOWAS COURT

The Court of Justice has been established for the purpose of promoting regional integration under the rule of law. Initially, access to the court was limited to Member States and Institutions of ECOWAS. But the Protocol of the Court was amended in January 2005 to empower individuals and corporate bodies to access the Court of Justice to secure the enforcement of human rights guaranteed by the African Charter on Human and Peoples' Rights and other international human rights instruments.

While Member States have opted for political approach with respect to the resolution of disputes, Community citizens have continued to access the Court of Justice to challenge the infringements of their human rights by Members States and institutions ofECOWAS. However, like the municipal courts of Member States the Court of Justice has stoutly defended civil and political rights which have become the exclusive preserve of the bourgeoisie. The Court cannot be blamed as only a few applicants have challenged the violation of the economic, social and cultural rights of the people. In fact, in the cases of **Registered Trustees of the Socio-Economic and Accountability Project (SERAP) v Federal Republic of Nigeria**[8], and **Registered Trustees of the Socio Economic and Accountability Project v Federal Republic of Nigeria[9]** the Court did not hesitate to uphold the right of Community citizens to education, safe and healthy environment.

ENFORCEMENT OF JUDGMENTS OF COURT OF JUSTICE

Under colonial rule the King could not be sued in his own court as it was presumed that His Majesty could do no wrong. African governments are yet to move away from the era of colonial, military and apartheid regimes when the rulers were not accountable to the people. Hence, the hostile attitude to courts in post-colonial African states has continued. Not only are court orders disregarded, judges who rule against governments are harassed by security forces. The culture of disobeying court orders by heads of government in the Member States has been extended to regional and international courts.

Only a few Member States have complied with the judgments handed down by the Court. Even the ECOWAS Commission has failed to lead by example in this regard. In the case of **Mrs. Lijadu Oyemade V ECOWAS,** [10] the defendant frustrated the decision of the Court of Justice to reinstate the plaintiff as a staff of the Commission. In the same vein, the Commission has refused to discharge its duty of ensuring that the decisions of the Court are complied with by Member States in accordance with the provisions of the Protocol of the Court. However, it is pertinent to note that the government of The Gambia has complied with all outstanding judgments of the Court including the payment of damages to victims of human rights.

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[8] (2010) CCJELR 183

[9] (2012) CCJELR 349

[10] (2009) HRLRA 128

However, the principal reason adduced for the reluctance of some Member States to comply with the judgments of the Court is that parties who are dissatisfied with the decisions of the Court have no opportunity to challenge them on appeal. Thus, in the absence of the appellate chamber of the Court some aggrieved parties have either brought applications for review or stay of execution. Invariably, such applications are usually dismissed pursuant to the rules of procedure of the Court. As democracy cannot thrive without a functional judiciary to check the excesses of governments and powerful individuals the Court should be strengthened to defend and protect the rights of Community citizens and institutions of ECOWAS. Apart from defending the composition of the Court, the legal profession and other stakeholders should pressurize the ECOWAS Commission to carry out the decisions of the Council of Ministers on the establishment of the appellate division of the Court. No doubt, the Court of Justice is ahead of other regional tribunals in Africa. But surprisingly, in spite of the congestion of cases in the court the Authority of Heads of State and Government has reduced the number of judges from seven to five.

Recently, the members of the African Union threatened to pull out of the International Criminal Court for having the temerity to indict incumbent heads of State in genocide and crimes against humanity. But due to the progressive stand of Nigeria, Senegal and Algeria the move did not succeed. Even though the African Union decided to cloth the African Court on Human and Peoples Rights with criminal jurisdiction, the Malabo Declaration designed to achieve the objective has not been ratified by a single Member State while only 10 out of the 54 Member States of the African Union have made the Declaration accepting the competence of the African Court on Human and Peoples Rights to enable victims of human rights abuse to seek legal redress in the Court

In order to ensure that all ECOWAS Member States commit themselves to cooperating with the judicial system on the basis of the rule of law and respect for human rights, the leadership of the ECOWAS must utilize all available mechanisms to ensure that the judgments and orders of the Court of Justice are respected by Member States. The Authority of Heads of State and Government must expressly and clearly propose specific ways in which recalcitrant States can be compelled to abide by the decisions of the Court, including adoption of targeted sanctions.

Conscious efforts should be made to uphold and promote international law, general principles of law, international human rights law, international humanitarian law, and international criminal law. When implementing ECOWAS decisions, the Authority of Heads of State and Government should give greater weight to establishing or re-establishing the rule of law. Such efforts may include transitional justice mechanisms but also efforts to build mechanisms for peaceful resolutions of disputes. In a period of transition, it may be necessary to establish temporary institutions to combat impunity, prevent revenge killings, and lay the foundations for more sustainable political order. This may include the use of alternative dispute resolution mechanisms for dealing with conflicts.

To establish the rule of law in the Member States requires the development at the national level, of a relatively autonomous institutional legal and judicial structure to counterbalance the political power of the authorities. But the rule of law in a normative sense is impossible without judges who are prepared to act independently, lawyers who have the freedom to represent their clients vigorously, and legal academics who may conduct research and educate students without political interference. To reduce the workload of the Court of Justice efforts should be made to strengthen the legal and judicial system in each Member State to protect internationally recognized human rights, including economic, social and cultural rights.

DEMOCRATIC CONTROL OF THE ECONOMY OF MEMBER STATES

It is not in dispute that the national economy of the Member States is controlled by the International Monetary Fund and other external forces to the detriment of the people. But for the opposition of Nigeria and The Gambia, ECOWAS Member States would have adopted the EU-ECOW AS Partnership Agreement, a neo-colonial agenda that could have completely ruined the infantile industries in the Member States of ECOWAS. My submission is that in the midst of grinding poverty in the region, for the rule of law and governance to constitute prime factors in economic development, the economy has to be freed from imperialist control and transferred to Community citizens. Even though Burkina Faso is one of the poor countries in Africa the former Thomas Sankara did not apply for any external loan from 1984-1987.

The demand for popular control of the resources of the Member States is in consonance with the obligation imposed on African States by Articles 21(**1)** and 5 of the African charter on Human and Peoples' Rights which provides:

> ***"21(1) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it."***

But contrary to the provision of article 5 (1) supra, Community citizens have been deprived access to the natural resources which have been privatised, sold or leased to local and foreign corporate bodies by Member States while the economy is run on basis ofloans secured from Western countries and China. To ensure the control of the economy of the region, imperialism has kicked against the resolution of ECOWAS to have a common currency. Through the imposition of the Structural Adjustment Programme on African States in the 1980s, the economy collapsed while poverty increased phenomenally. Even though the World Bank has expressed regret over the imposition of the programme, the IMF has insisted on the implementation of neo-liberal policies by each Member State. Hence, access to justice and economic prosperity remain a tantalizing reality for Community citizens.

The crisis of underdevelopment in the Member States has since been compounded by corruption, money laundering and capital flight. President Muhammadu Buhari has revealed that Nigeria lost an estimated US$157.5 billion to illicit financial flows between 2003 and 2012. Quoting from the 2014 Global Financial Integrity Report in his address to the High-Level National Side-Event organised by the African Union Development

Agency and New Partnership for Africa's Development (AUDA-NEPAD) and the Economic and Financial Crimes Commission (EFCC) on Wednesday in New York, on the margins of the 74th United Nations General Assembly, under the theme, Promotion of International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Assets Recovery and Return to Foster Sustainable Development, the Nigerian leader noted that such massive loss of assets, resulted in dearth of resources "to fund public services or to alleviate poverty in the country". [11]

Some Member States have engaged in border closure to curb smuggling or prevent threat to security. Others have closed borders during elections. For the past one month Nigeria has closed her land borders to prevent the smuggling of rice and petroleum products. But Professor Akin Oyebode has condemned the closure because "it not only violates the ECOWAS Protocol on Free Movement of Persons, Capital and Establishment, it is also against the spirit of the AFCFTA, which Nigeria signed not too long ago. While describing AFCFTA as a very interesting instrument, which envisaged the coming together of nearly one billion people, adding that it has tremendous potential to consolidate the movement towards an economic union of Africa." He has therefore cautioned that "Having made our point, we have to cut our losses and review and revise our options in terms of the porous borders of Africa, especially Nigeria vis-a-vis Benin Republic, Niger Republic, Chad and Cameroun. [12]

To address the economic crisis, Member states of ECOWAS will have to jettison Western and Chinese imperialism and mobilize the people to take their political destiny in their own hands. In urging Africans to take control of their political and economic destiny Nkrumah had observed that:

> ***"Africa is a paradox which illustrates and highlights neo-colonialism. Her earth is rich, yet the products that come from above and below the soil continues to enrich not Africans predominantly but groups and individuals who operate to Africa's impoverishment*** [13]".

[11] The Nation, September 25, 2019.
[12] THISDAY, September 22, 2019
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RULE OF LAW AND GOOD GOVERNANCE AS ESSENTIAL FACTORS FOR ECONOMIC DEVELOPMENT

BY

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RULE OF LAW AND GOOD GOVERNANCE AS ESSENTIAL FACTORS FOR ECONOMIC DEVELOPENT

The Rule of Law as against a police State, should be based on values contrary to those on which the latter is based.

A Police State or perhaps more simply, a Dictatorial State, originates from the use of force, or in any case, the failure to respect the rules of law; there are various cases where this can occur:

- When power is acquired by force and if legal rules are subsequently established, they will strengthen this force. Power is therefore established by force, functions by force and could collapse under the influence of force. This is often the case with regimes resulting from military coups d'etat.
- When power is established in a State that is governed by a constitution and other legal rules and may even come from a more or less regular election. It is when this power is in place that it will use all kinds of manoeuvres, all kinds of tricks to disguise the rules, to weaken all the other existing powers, to destroy any desire to contest. We are witnessing the emergence of a real dictatorship under the guise of a legal regime.

When the government is interfering, it may even allow for the organisation of elections at certain regular dates. But these are dummy elections that will not change the logic of the system.

These two types of dictatorship have been practiced for many years, in several States in Africa in general, and particularly in West Africa. A change movement was initiated in the early 90s, notably with the organisation of national conferences in several countries. Important constitutional reforms have taken place: political and trade union pluralism has been established, social movements have exploded, greater emphasis has been placed on the exercise of various freedoms: freedom of opinion, freedom of press, freedom of assembly and even of public demonstrations, etc.

We can therefore hope to have left the cycle of dictatorships to enter a new phase, one that places a major emphasis on the respect for the law, that gives primacy to institutions, and not to strong men, to providential men. It is therefore a case of establishing the Rule of Law. This is what ECOWAS itself expects from its Member States, as can be seen in its **Protocol A/SPl/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.**

In fact, Article 33 of the said Protocol stipulates that:
"Member States recognise that the Rule of Law involves not only the promulgation of good laws that are in conformity with the provisions on human rights, but also a good judicial system, a good system of administration, and good management of the State apparatus. They are also convinced that a system that guarantees the smooth running of the State and its administrative and judicial services, contributes to the Consolidation of the Rule of Law".

While all Member States seem to have signed up to these commitments, it is easy to note that very few of them actually comply with them. It must be noted that, except for a few States who have remained on the right track, we are witnessing a regression in the progress

of the Rule of law. Not to mention a total reversal for other States.

The legal rules on which the Rule of Law is founded have been distorted and sometimes even openly disregarded, elections are less and less responsive to democratic requirements, the expression of fundamental rights is hampered, the separation of powers is increasingly a fiction, attacks on the proper functioning of administration and proper management of public funds are jeopardising considerably, all ideals of good governance.

Our approach will therefore consist of presenting the characteristics of the Rule of Law on one hand, and on the other hand, deciphering its violations.

I- The fundamental principles of the Rule of Law and the issue of their effectiveness

In a Rule of Law proper, the government and the citizens are subject to a number of obligations that must be respected.

A) A Civilian Government

It is the civilian who commands the armed and security forces. This is well explained in articles 19 and 20 of Protocol A/SPl/01 on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. We only need to mention a few prov1s10ns.

Article 19:

"The armed forces shall be non-partisan and remain loyal to the nation. Its mission shall be to defend the independence and the territorial integrity of the State and its democratic institutions. Public security agencies are responsible for the maintenance of law and order and the protection of persons and their properties".

Article20

"The armed forces, the police and other security agencies shall be under the authority of legally constituted civilian authorities':
The civilian authorities shall respect the apolitical nature of the armed forces; all political or trade union activities and propaganda are forbidden in the barracks and within the armed forces".

These provisions are absolutely clear. However, during demonstrations, for example in Guinea, but probably also in other countries, soldiers and law enforcements agents openly display stances based on ethnic or political considerations, the repressive measures they use may be selective and may be harsher on some ethnic groups more than others.

Additionally, it has often happened that soldiers come to power following a coup d'etat, adopt a constitution and remain in power by now donning a civilian coat.

However, military coups have become much less frequent. And when they do occur, the military regime knows that it is already condemned and subject to sanctions by ECOWAS. Everything is therefore implemented, under international pressure, to ensure the rapid return to civilian regime, a constitutional regime.

B) **Primacy of the Law**

All constitutional bodies, administrative authorities, private individuals, whether natural or legal, are subject to respect of the law.

The legal rules, their hierarchy, the institutions, their respective powers, the separation of powers, the relationships established between them, as defined by the Constitution, must be observed.

Respect for the law is the foundation of social peace. We must respect the spirit of the law, the idea that no institution, no individual is above the law. This is the only way to establish sustainable social peace. But what do we see? This is the great freedom we give ourselves, regarding respect for constitutional principles. Afew examples will help us illustrate this.

1) Constitutional Instability

This can be reflected by the increase in constitutional revisions to respond to the changing desires of the dominant authority. There is no hesitation in using the referendum procedure to bypass or shorten debates. If the referendum is perceived as a democratic means, it can also be analysed as a strategy to serve the desires of a dictator of an authoritarian. It all depends on the underlying basis for the organisation of the referendum, the political and social circumstances, the procedure followed, the way in which the debates are organised, the conduct of the voting operations, the manoeuvres of the political and administrative authorities, the independence or otherwise of the electoral judge, etc.

Many factors must therefore be considered when assessing the democratic nature of a consultative referendum.

This situation has occurred in several ECOWAS States, to focus on the region of concern to us. But we would like to use the case of Guinea to illustrate this, because if we are not careful, the situation could lead to a major crisis, with consequences which are likely to extend beyond national borders. The first signs concerned the questioning of the legitimacy of the constitution, on the grounds that it had not been adopted by referendum in 2010.

This is a mix-up, if not a show of bad faith, because in 2010 the mission of the National Transition Council (CNT) was not to adopt a new constitution, but to review and enrich the 1990 Fundamental Law. This mission had been accomplished to the satisfaction of the people and all stakeholders. It should be recalled that this fundamental law was adopted through a referendum. Moreover, a constitution with which the various institutions were set up, and on which an oath was sworn in, cannot be considered illegitimate unless it is assumed that these institutions are themselves illegitimate. But this challenge was only a pretext, the real reason is now out in the open. The objective is to revise the constitution to overcome the obstacle of the limitation the number of terms of office of the President of the Republic, to either two consecutive terms or nothing else. However, Article 154 of the Constitution stipulates that this limitation cannot be revised.

Since it was not possible to revise it, it was decided to change the constitution, to adopt a new constitution better adapted to the realities of the country and that would set up a fourth Republic. It is being suggested that this constitutional change would be based on the will of the people. We have not been told when and through what channel the people made their will known to some, a will that others are unaware of.

This way of doing things is sheer deception, it is a process that is often used by dictatorial regimes, and the most curious thing about this process is that the draft constitution has not been published. It may be known to a small group of insiders, but for the vast majority of citizens it is a ghost text.

What is even more astounding is that a major campaign is being launched to get the idea of a new constitution accepted. The government and the parties that support the President of the Republic are being mobilized, huge sums of money, mainly from State coffers, are being distributed, State material resources are being used, public media are being widely used, etc...

All this deployment of resources has not succeeded in getting this idea accepted by a large part of the population. A strong resistance has been organized, a National Front for the Defence of the Constitution has been formed comprising a number of civil society organizations, political parties including all the major opposition parties, trade union movements, intellectuals etc... To try to weaken this resistance, the government has banned demonstrations, made arrests, used the judiciary, etc...

This repression clearly did not seem to have deterred opponents of a new constitution, and who are by far the most numerous. If the government decides to make a forceful transition, this could lead to unpredictable consequences.

The arguments put forward to justify the creation of a new constitution is not in any way convincing. The only real reason is this desire to hold on to power, to maintain the privilege ofa group ofreal, well-known predators.

This futile, but dangerous debate is an opportunity for the government to hide the real problems facing the country, which are great poverty, endemic unemployment, the hopelessness of young people, etc...

2) Serious breach of the principle of separation of powers

Contrary to absolute power, the principle of separation of powers has been confirmed, it makes it possible to distinguish between different powers in the State, to confer on them respective jurisdictions, and to define the relationships that should exist between them. The main idea is to avoid a situation where all powers are concentrated in one State authority. The idea of limiting power was initially expressed even before the French revolution of 1789 by authors such as Montesquieu in his book titled "The Spirit of Laws".

To briefly paraphrase him, this author considers that all power tends to become absolutist; to avoid such a tendency, powers must be distributed between different bodies, and that every power in the State may eventually be restricted by the other powers.

This principle of the separation of powers, through the creation of bodies with their own responsibilities and the relationships that are established between them, can serve as a criterion for distinguishing between different political systems. For instance, we could distinguish between the parliamentary system and the presidential system. All the classifications that can be made have many variations, but the important idea we must retain is that an organ should not have all the powers concentrated in it.

However, we cannot say that there is absolute equality between the powers or that there is a perfect balance between the powers, the balance can tip in favour of one or the other, on both the legislative and executive sides due to several factors. But the most important fact today is that the imbalance is much more often in favour of the executive for so many reasons that it would be tedious to list here. This is an almost general trend in the world, and it is even more prevalent inAfrican countries.

The executive therefore exercises a certain dominance over the legislature, but the same applies to the judiciary. This is not often a defence against violations of the rules of law and failure of the various bodies to comply with their respective duties. Therefore, regarding the drafting and adoption of laws, whether ordinary laws or organic laws, which are in principle the prerogative of the legislature, the executive plays a major role. The partisan trend and the almost mechanical vote of the MPs of the majority in favour of the government, transforms parliament into a kind of chamber for recording the government's will. The minority opposition is often marginalized, with very few means at its disposal. Whereas, if the majority is called upon to govern, it should not crush the opposition.

It the worst-case scenario, if we can have a single-party assembly, some governments would not mind. There is, for example, what has just happened in Benin, where, through a rather curious legislation, many parties, and good ones at that, have been excluded from participating in legislative elections and therefore from representation in parliament, because some of them have been in power for many years.

As for the judiciary, in addition to its jurisdiction to settle disputes, it plays an important role in constitutional and electoral matters.

In these essential areas of the State's operations, judges' interventions are highly criticized. We do not trust the judge, we doubt his impartiality, his ability to be independent, especially from the executive authorities. It is rightly or wrongly considered that the judiciary being used by the executive power, which in fact does nothing to improve the image of the judge. On the contrary, any judge who risks doing his or her job properly is subjected to intimidation, persecution, arbitrary assignment and even outright alienation. The case of the President of the Constitutional Court of Guinea is worth mentioning in this context.

In his speech at the inauguration of the President of the Republic re-elected for a second term in December 2015, the President of the Constitutional Court thought it appropriate to remind the elected President that he was inaugurating his second and final term, urging him not to yield to "revisionist sirens" which would seek to encourage him to violate this imperative limitation as formulated in article 154 of the Guinean Constitution. This reminder should not be shocking since it only highlighted the obvious. Unless it is considered inappropriate to say so at an official ceremony in front of foreign delegations including Heads of State. At worst, it could be understood as only clumsiness. However, the assessment changes radically if there was already a secret intention at the time to violate the mandate limitation, as was subsequently verified. Nevertheless, since that day, the President of the Constitutional Court fell out of favour with the Head of State.

Since he could not be directly dismissed, there was division within the Court, where members soon joined forces against their President. The Court then lurched from one publicly displayed crisis to another. This reached its height when one-third of the members

of the Court were replaced at random, which is usually conducted every three years, in accordance with article 101, paragraph 3, of the Constitution.

A few minor procedural errors, made by the President of the Court during the selection by lot procedure, gave his colleagues the opportunity to engage in a real arm-wrestling match. They passed a vote of no confidence against their President and declared him dismissed. The problem is that no such measure is provided for in any text. This process has caused a real stir and was denounced by prominent lawyers. Despite the clear support of the Head of State, the attempt failed. But this respite was short-lived. The adversaries of the President of the Court returned to the issue, no longer citing a legal problem but rather a management failure. Their President allegedly made opaque the management of the Court. It is for this reason and undoubtedly with the support of the Head of State that they were finally able to dismiss him, without however indicating the text that give them such power.

This episode ended up discrediting the Constitutional Court and tarnishing the image of the judiciary in Guinea. The abuses observed during the litigation of the various elections, considerably undermined the credibility of judges in the eyes of citizens. Whereas, when justice is discredited, it is difficult to talk about the Rule of law.

(C) Legitimacy of Political Power

Such legitimacy shall be conferred by democratic, fair, transparent elections, held m accordance with firmly fixed deadlines.

Elections at all levels must take place on the dates and within the periods set by the constitution or electoral laws.

This requirement is often undermined in several States and for various reasons, notably financial, with the State often invoking lack of budgetary, material, logistical or human resources, as an obstacle to the holding of elections. It is a constant fact that our States seek external aid, both bilateral and multilateral, for the organisation of elections.

In Guinea, for example, with the exception of the 2015 presidential election, no other election, national or local, has been held within the stipulated deadlines. This poses the fundamental problem ofrespecting the length of time accorded, in terms of the fixed period assigned to the mandateof political power.

The term of office of elected officials must end at a specific time. This allows voters to express their fundamental right to choose their leaders within specific deadlines. They can appoint new leaders, renew their trust in some former elected officials, and equallydismiss others.

If the fixed period of the mandate in power were to be extended, for lack of capacity to organise elections on time, a serious violation of the rights of the citizens and of democracy occurs. However, such extensions are not uncommon nowadays, and they occur in several States. They concern both the national electionsand the election oflocal representatives.

In Guinea, for example, the mandate of the Parliamentarians, which ended in the first quarter of 2019, was extended by an executive order of the President of the Republic, for an unspecified period.

The legislative elections, which should have taken place in September 2018, have still not been held, for various reasons, as alleged. However, the truth remains that the incumbent

political power never showed any genuine will to organise the elections as required. Appropriately, a text had been voted, according to which the Parliamentarians cease their functions with the installation of the new National Assembly. And it was deduced that as long as there is no election, the current legislature could remain in place and continue to exercise the full powers of the National Assembly.

Another significant problem relates to the limitation of the number of presidential terms by way of an express provision of the Constitution. Such a restriction is not confined to Guinea. It is provided for in the Constitutions of several ECOWAS Member States, such as Ghana, Senegal, Mali, Nigeria, Niger, Benin, Liberia, Sierra Leone, etc. In a word, it is a provision which goes in agreement with the support of several ECOWAS Member States, and which therefore, should benefit from a certain degree of intangibility.

It is in this sense that attempts to question such limitation in Guinea must come a challenge for us. Indeed, Article 27 of the 2010 Constitution of Guinea provides that:
"The President of the Republic shall be elected by direct universal suffrage. The term of office shall be five (5) years renewable once. Whatever the case may be, no one can exercise more than two presidential terms of office, whether consecutive or otherwise. "

As for Article 154 of the Constitution, it deserves to be quoted in full, because it places a limitation on the presidential mandate, apart from espousing the firm principles upon which the Republic is founded.

Article 154:

> *"The Republican nature of the State, the principle of a secular State, the principle of indivisibility of the State, the principle of separation and balance of powers, the principle of political pluralism and trade unionism, as well as the fixed number and duration of the term of office of the President of the Republic, shall not be subject to revision.*"

These provisions have the merit of being very clear. Notwithstanding this fact, the current President of the Republic and his supporters have launched a vigorous campaign, seeking to break this firmly locked grid, in order to allow the Head of State to run for a third term. This relentlessness leads us to a number of considerations. The electorate's freedom to renew its trust in the elected State officials, without any limitation on the number of their terms of office, has been the rule for a long time. But it has been found that this so-called long-term trust of the electorate is not as real as it is claimed: all kinds of tricks were often used to create the illusion of a limitless trust of the people in the elected officials. The occurrence of a popular revolt here and there has enabled one, from time to time, to expose the unrealistic nature of this so-called'permanent trust' of the people in their elected leaders.

Based on this observation, is limiting the number of terms of office a timely solution?

It seems to us that the answer to this question must be in the affirmative, for several reasons.

- The limitation of the number of presidential terms necessitates a change, not only in the system of governance, but also at the very least of the man at the head of the State.

- Incidentally, it has not been demonstrated that keeping a man in power for many years necessarily leads to a great step forward for his country, and better for development. This longevity in power can even be counterproductive. The first few years can be fruitful, but by forcibly remaining in place, one settles into a routine, exhaustion occurs, clans and privileges are formed and, from then on, the sole concern of the rulers is to perpetuate and increase their advantages, the interest

of the country taking second place, while the head is taken hostage and paralysed by the battles between the clans.

- We often hear that we must give a particular leader time to complete his or her work. This is pure conceitedness. What does it mean to finish his work? Is social life fixed? We must obviously respond negatively to this, as society is on the contrary very dynamic. Each progress is accompanied by new challenges and it is an endless cycle, and no man is immortal.

- This mandate problem should be compared with a relay race, for example the 4 x 100 metre course, each runner having covered his distance, passes the baton and so on, up to the finish line. The essential thing for each of the participant is to do a quality job during their journey.

- Another advantage of this limitation is that the deadlines are precise, which can also encourage patience from those who have difficulty supporting the ruling government.

- Election is a long process, with different steps that must be properly carried out to ensure its legality, transparency, equity and accuracy. It must be acknowledged that often, serious failures affect its progress and sometimes undermines its credibility.

1) <u>The Voters List</u>

Persons who meet the legal requirements must be registered on the Voters' lists. Rules and time periods are clearly indicated, but they are not often respected. Voters' lists rarely incorporate the requirements of the law: either they are not updated to remove persons who should no longer be on them; or they register persons who do not meet the required conditions, such as minors and foreigners, all with a clear aim of fraud.

The electoral register is rarely up to date. However, there is a period of the year for the revision of voters' lists, and modem technology makes it possible to do so, but there is often no real will to do so. The dead are still being made to vote, multiple registrations of some people are being made and several voters' cards issued to them to enable them vote successively at several polling stations. To correct this, efforts tend to be made to eliminate duplication without success. However, the fact remains that credible elections cannot be held without an accurate electoral register.

2) <u>Organisation of elections</u>

Multiple acts can occur that undermine the credibility of elections: poor organization of polling stations, lack of election materials, multiple voting, fraudulent use of proxies, obstruction of the representation of certain parties in polling stations, interference by political and administrative authorities in the conduct of the vote, purchase of votes, intimidation of voters, etc.

3) <u>Announcement of the results</u>

Rules are laid down concerning the compilation of ballots, the drawing up of voting units, the announcement of results and deadlines. On this point too, the rules may be flouted, the results may be falsified or announced with considerable delays, political or administrative

authorities may exert pressure to have them amended, etc.

The results must therefore be announced within a reasonable time depending on the nature of the election. However, this is not always the case.

The recent example of the municipal and community elections in Guinea deserves to be highlighted. These elections took place on the 4th of February 2018, after a ten-year delay. The results of such a local election should in principle, be released after a few days. This was however not the case; it took months, the time needed to« fix» the results, especially since the trend did not seem favourable to the majority party. When these results were finally announced after a long delay, it was time to move on to the next phase, which involved the election into the offices into the municipal and community councils. This process lasted a year and a half and only came to an end after all kinds of manoeuvres.

A shocking situation occurred during the elections of the local executives of Matoto, Guinea's largest community. We started with the election of the mayor, the opposition candidate won. While we were preparing to elect the other members of the bureau, a militant of the majority party who was in the audience rushed to the polls and tore all the ballots, causing real confusion in the room. He was arrested at the time, but no legal action was subsequently taken against him.

As for the voting procedure, it was suspended till things were normalised. Surprisingly, the Minister of Territorial Administration decided to cancel the election of the Mayor, which had been already decided, and ordered the whole voting process be repeated. He had no jurisdiction to do so, therefore, he acted in: flagrant violation of the law.

The opposition brought the matter before the court, which declared itself incompetent to examine the case, and the Minister immediately summoned the members of the council for new elections. The opposition refused to participate. Nevertheless, the authorities, after taking impressive security measures around the town hall to stifle any demonstration, repeated the election without the opposition present, banning journalists and the public from the area. The majority candidate who had been defeated in the previous round was proclaimed mayor.

Another example is the 2016 Gambian presidential election. To everyone's surprise, outgoing President Yahya Jammeh was defeated, acknowledged his defeat, congratulated the winner and said he was willing to hand over power. Then, suddenly, he turned around and refused to accept his defeat. He probably had the means to hold on to power by force. It took the vigorous intervention of ECOWAS to remove him from power and ensure that the will of the voters was respected. President-elect Adama BARROW was thus able to be inaugurated.

4) <u>Electoral disputes</u>

Disputes relating to the organisation, conduct and declaration of the election results must be credible. It falls within the jurisdiction of the electoral court. Unfortunately, one observation is becoming increasingly obvious: there is a widespread mistrust of electoral justice. This poses a serious problem that leads to more or less violent post election crises. The phenomenon is less frequent in English-speaking countries where judges are more independent of political authorities. On the contrary, in many French-speaking States, the electoral judge often shows a shocking bias; sometimes he declares himself incompetent or invokes the inadequacy of alleged means. If he cannot completely overlook the

irregularities, he sometimes notes them, but it is immediately obvious that they are not likely to undermine the sincerity and credibility of the vote, which he therefore validates.

The apprehension towards the judge is sometimes so strong that some refuse to seize him even if the irregularities are very obvious. They consider that the appeal is unnecessary, as the direction of the judge's decision is known in advance.

5) The electoral body

The electoral body must be independent, neutral and trusted by political actors and stakeholders.

For a long time, this responsibility fell to the State services. In general, the Ministry of Interior played this main role. At that time, there were many disputes from candidates and parties opposed to the current government. The lack of transparency and neutrality of the administration was criticised.

The objective was therefore to set up structures that were supposed to be independent of the State in the hope of having more credible elections.

Electoral commissions where created, which may vary in name, composition and powers from one State to another. But it cannot be said that the experience was equally successful everywhere. There are even more failures. Generally, we can observe that this experience seems to be more successful in anglophone countries than francophone countries of ECOWAS.

In Guinea, the experience is not yet conclusive; the institution experienced a transformation in its name, composition, competences before reverting to its current configuration, under the name of Independent National Electoral Commission, CENI. When it was created, there was an issue of choice between a technical CENI, composed of persons recruited for their competences, regardless of political affiliation (this was the initial option of the National Transition Council, when the text was drafted) and a political CENI, whose members would come mainly from political parties. This second option, which was favoured by the Government and the majority and opposition political parties, eventually became the preferred option. The CNT was concerned that members chosen according to their political affiliation, might not be able to demonstrate the required independence, or that they might be instrumentalised by their respective parties, which will subsequently be confirmed.

Until recently, this CENI had 24 members, mainly from persons appointed by the political parties (opposition and majority). Three members were from the civil society and the president of the institution was elected from among them. Two government officials completed the composition of the CENI. A recent law reduced the number of members to 17 but kept the same type of representation.

CENI's resources are mainly from the State budget. It also receives, as appropriate, technical, material and financial assistance from bilateral and multilateral partners.

According to article 132 of the 2010 Constitution, « The Independent National Electoral Commission, CENI is charged with the establishment and the updating of the voters register, the organisation of the conduct and supervision of voting operations. It shall announce the provisional results ».

CENI therefore has the necessary means to accomplish its mission. But it has never succeeded in properly organising an election. Errors occur before, during and after voting operations. The announced results have never been convincing, leading always to more or less violent unrest.

Beyond the institutional aspects that we have just examined, other factors can play an important role in the Rule of Law, to either strengthen or hinder it.

II **Factors that can strengthen or weaken the Rule of law and good governance**

The aim is to examine public or private structures, which through their organisation, functioning and mode of action, can strengthen or weaken the Rule of Law. There are also behaviours which, due to their dire nature, can affect governance and the Rule of Law.

1) Political Parties

Political pluralism is the rule in the Rule of Law. Parties are created and freely carry out their activities in accordance with the current laws. Their creation and activities must not be based on any racial, ethnic, religious or regional considerations. They participate freely and without hindrance or discrimination in any electoral process. They compete in the voting process and are designed to win and exercise power. They ensure the political education of their members. In principle, they develop government programmes which they present during electoral campaigns.

All these elements are seriously shaken by current developments. Little attention is paid to planning, ideologies are being erased. It is all about personal problems. More worrisome, ethnic, regionalist or communitarian factors, although prohibited by constitutional laws, are omnipresent.

The proliferation of political parties leads to the emergence of many small parties that have no chance of attaining power by themselves, but whose leaders, depending on their interests, will negotiate their support for a particular candidate of the major parties. Other methods are used that distort free competition between the parties.

- The use of State's material and financial resources by the ruling party.
- The use of ploys to weaken opposition parties and even eliminate them from the electoral process. The manoeuvre used by the government in Benin to eliminate opposition parties from the last legislative elections has so far been unprecedented. Parties were prevented from participating in the parliamentary elections, on the grounds of an alleged conformity requirement. This measure affected the country's most important parties, whose leaders were at the helm of the country for many years. For a country that launched the cycle of national conferences, which was at one time, cited as an example of democratic breakthroughs, this is a real setback.
- The requirement of a high number of signatures from citizens for the approval of a candidate. In Senegal, one of the conditions imposed on all candidates in the last February 2019 elections was the support of ***at least 53,000 signatories spread over several districts.*** This made it possible to drastically reduce the number of candidates.
- The requirement to pay very large sums of money as a guarantee for the validation of candidatures.
- Harassment and intimidation of opposition party activists.

Some of these measures seem reasonable and can be used, for example, to limit unserious candidacies, but the real objectives are often elsewhere and aim to distort democratic

competition, and reduce opposition forces. All this leads to a certain degradation of the Ruleof law.

2) **Administration**

The administration plays an essential role in a State. Its good organisation, functioning, competence of its officials, its permanency, is a guaranty for the stability of the Rule of Law.

Unfortunately, our administration suffer from many shortcomings; bad functioning, lack of material and financial resources and especially gross incompetence of some officials. Mediocrity is cultivated, competent persons are excluded, appointments to different positions are based on partisan, ethnic, regional, etc. considerations.

All this inefficiency is fueled by widespread corruption, officials have nothing to fear because the criteria that led to their appointment guarantee them impunity.

3) **Decentralisation**

It is the preferred way for citizens to participate in the management oflocal affairs. Central authorities use different means to hinder the full exercise of local powers.

The financial autonomy of local governments is inadequate, as they rarely have enough budgets. Supervision is often very strict, there is an effort to subordinate local authorities; through the electoral system, they become mere political spokespersons for the parties in the elections.

It is obvious that this caricature of decentralization is not general, there are States, especially English-speaking States, that have a good practice of decentralization. The heritage of the British-style administration has prepared them well in this respect, which is not often the case in French-speaking countries. Yet decentralization, if properly practiced, could have been a good model for democracy.

4) **Rights and Liberties**

These rights and liberties are provided for in constitutions, declarations, charters, agreements and may be exercised individually or collectively, as the case may be. There is no need to list them here. What must be highlighted, is the willingness of some authorities to hinder them.

One such example is the right to demonstrate, which is often seriously violated. Some people have a real allergy to this right. This is the case for the Guinean government. Article 10 of the Guinean Constitution enshrines this right according to the declarative system, it only needs to be exercised in accordance with the legal provisions. There is therefore no need for an authorization. Nevertheless, the authorities have created multiple obstacles and prohibitions to make its exercise not the rule but an exception.

Sometimes preventive prohibition measures are taken, sometimes certain places, certain routes are excluded from any demonstration, sometimes, demonstrations are purely and simply not allowed without specifying how long they will last. This is practically the case now. When there is a demonstration, however, it is never safe from the repression of the police. This repression can cause significant damage, injury and even death. Dozens of people, particularly young people, have been killed in recent years during demonstrations.

Freedom of expression and freedom of the press are also targeted. Special attention should be given to broadcast media.

Public media are generally the monopoly of those in power and their allied parties. They give very little space to the opposition or to all those who have different opinions. Contradictory discussions are rare. They are often real instruments of celebration of the Head of State. Private media may exist. They are often the only ones who open themselves to the opposition or other opinions, sometimes at their own peril. As these media can be subject to sanctions: prosecution against journalists, or media managers, temporary or even permanent closure of media etc.

5) **Civil Society**

It is a concept that has gradually established itself in today's societies. It covers a wide range of fields: scientific, social, humanitarian, electoral, environmental, legal, etc.

It aims to put itself above political contingencies: to distance itself from political parties, sometimes it seeks to be the good conscience of society.

There is no denying its usefulness, its contribution to social change. But civil society itself does not escape the turmoil of the State, it sometimes spawns its own divisions. In any case, in States where political parties can no longer enjoy great credibility, civil society organisations are increasingly investing in the ground left free by the parties. Whether they acknowledge it or not, they are increasingly involved in the political sector.

They were at the forefront of the struggle in the insurrectional movement that led to the fall of President Blaise Compaore in Burkina Faso.

They contributed to the victory of President Macky Sall of Senegal in the 2012 presidential elections, when he defeated outgoing President Abdoulaye Wade.

In Guinea, it is at the forefront of the fight against President Alpha Conde's desire for a third presidential term, in direct violation of the mandatory two-term limit provided for in the current constitution of the State. Otherwise, to overcome this obstacle, he is prepared to have a new constitution adopted. A National Front for the Defence of the Constitution (FNDC) has been formed under the aegis of civil society, and to which several political parties belong, including all the major opposition parties.

6) **The fight against corruption**

ECOWAS Member States have made the fight against corruption a fundamental concern, as have other international organisations. This is easily explained by the fact that corruption is nowadays a real scourge that risks hindering the economic and social development of our States.

The ECOWAS Protocol A/SPl/12/01 on Democracy and Good Governance, supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security vigorously affirms in article 38:

> *«Member States undertake to fight corruption and manage their national resources in a transparent manner, ensuring that they are equitably distributed. In this regard, Member States and the Executive Secretariat undertake to establish appropriate mechanisms to address issues of corruption within Member States and at the Community level».*

This concern is explained by the magnitude of the scourge of corruption, a phenomenon that is unfortunately widespread.

Corruption can be external or internal. It targets different sectors of society: the top echelon of the State and the administration at all levels in such a way that corruption is finally considered as the norm, as ifit were a given.

It is officially condemned, and even anti-corruption structures with very broad powers are being created. But all this seems to have the effect of a sword cutting through water.

It is difficult to fight corruption when the country's highest leaders are not setting a good example. We are witnessing an exponential enrichment of State officials whose sources of wealth cannot be explained, other than by massive embezzlement and corruption with total impunity. It is therefore not surprising that these people are seeking to ensure the sustainability of the regime that allows them to continue such predation.

This is, for example, one of the challenges of this desire for a third term for the President of the Republic, or of a new constitution, which is currently stirring Guinea. It has been unusual for us to see so much money in circulation. It is the State's money that is distributed so casually, that it is bordering on being obscene. It is understood that those who distribute them will have first filled their pockets before giving crumbs to others. With such practices, one cannot speak of good governance, and the Rule of Law is severely undermined, if this expression can still be used in such a situation.

7) **Political and Social dialogue**

The need for dialogue is often affirmed in speeches, legal texts and even in resolutions or other texts of some international organizations.

The difficulties faced by our States, often linked to non-compliance with the law or refusal to apply appropriate legal solutions, are increasingly leading to the need for dialogue, in order to reach some sort of consensus. National or international mediators, religious or customary authorities are often called upon to intervene. The increase in these dialogues shows that States have not yet been legally stabilized. What must govern States is above all the rules and their compliance. Dialogue, if necessary, should only be complementary. The considerations that are taken into account to reach consensus sometimes have nothing to do with the rules governing a Rule of Law.

However, we are increasingly seeing that very precise legal provisions, regulating a situation, are being set aside in favour of dialogue with a view to reaching political agreements with all the uncertainties that this entails.

Sometimes a monitoring committee is set up to monitor the implementation of the agreements. In principle, this committee includes representatives of the Government, the majority and opposition political parties, civil society, the electoral body, some accredited diplomats in the country, representatives of international organizations, etc.

It is a question of settling crises that sometimes result from the clear violation of legal provisions. Sometimes fraudulent elections are organised which lead to unrest, and the consequences are not dealt with in front of the judge but through tinkering within the framework of this monitoring committee. The Rule of Law cannot be served by such political manoeuvres. In a nutshell, dialogue may be a necessity, it is likely to unblock certain situations, particularly in times of crisis, it sometimes reminds us of the traditional discussions under the palaver tree that made it possible to solve many problems, but it cannot be used as an alternative to the observance of the law.

Conclusion

The rule of law, the institutions, the mechanisms that make it possible to establish a Rule of Law seem to exist in our countries. The problem, as we have pointed out throughout our work is the effectiveness of implementation. They are often diverted from their purpose and put in the service of a man's ambitions and his propensity for omnipotence.

If the desire is to achieve strong institutions that make it possible to establish a true Rule of Law, we are still far from achieving this. If some people think that we need strong men to move our States forward, their failure is obvious. Those who are often presented as strong men only confiscate the levers of the State to stay in power for as long as possible. They claim that they have not yet completed their work and that they still need time, there is no greater boastfulness for a man than to believe that he can complete the work of a State. Believing in such an idea is probably lacking a sense of the history and evolution of human societies. History is not fixed; societies are not static. Each step taken triggers a new one that must also be tackled. How can you claim to complete your work in such a perspective?

What must also be noted is that we are witnessing a certain regression of democracy; progress seemed to have been made everywhere in the 1990s, but we are seeing a sudden halt and even a regression in some States.

It is suggested that Westerners, who often criticize us, have taken centuries to reach their current political level, so we should not ask our people to perform miracles. This argument is irrelevant in our view. First, we are not saying that we must follow the same pace of progress as they are. We must use them as a model to move faster.

Subsequently, some States with which we share the same history and similar realities manage to make their institutions work fairly well, to hold fairly free, fair and transparent elections and to accept the results. This means that those who make the above argument often have no convincingjustification, their only concern being the seizure of power.

Finally, the serious threat to our States, our democratic experiences and our development comes from these ever-increasing terrorist attacks, which affect even larger regions. ECOWAS must inevitably commit to a collective response.


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RULE OF LAW AND COOD GOVERNANCE AS PRIME FACTORS OF ECONOMIC DEVELOPMENT: THE ROLE OF THE ECOWAS PARLIAMENT

BY

MR. JOHN AZUMAH
Secretary General of the ECOWAS Parliament

INTRODUCTION

Mr. Chairman, honorable participants, ladies and gentlemen, I bring you warm greetings from the Rt. Hon. Speaker, honorable members and staff of the ECOWAS Parliament. The sub-theme of my presentation in this international conference is: *Rule of Law and Good Governance as prime factors of Economic Development: The Role of ECOWAS Parliament.*

It would be inappropriate for me to try to provide a definition to such complex concepts as the rule of law and development in a forum where you have legal luminaries, governance experts and economists from our various Members States and Community Institutions such as the Community Court of Justice and the Commission.

But Mr. Chairman permit me to attempt the following layman's remarks:
First, Rule of Law: **The rule of law** presupposes not only the existence of laws, but above all, their compliance by all, including the State and its institutions. In other words, there cannot be a rule of law in the absence of objective and impersonal laws governing the relationship between the people themselves and between the people and the State through its institutions. The rule of law is only effective when every person, including the State, is subject to the law. In line with this, the judicial institution responsible for the enforcement of the laws will be the main guarantor of the Rule of Law. In this regard, the institution, in itself, shall be impartial in its strict application of the law and nothing but the law in its entirety, as the judges often said.

Regarding the good governance concept, it necessarily implies the prevalence of the rule of law in terms of compliance with the laws, including the fact that the Constitution determines protection of rights and freedoms, but also the thorough and rational management of public funds, as well as promotion and protection of economic investments.

In the case of **economic development,** beyond the complex definitions, it implies the existence of productive activities with the aim of providing social welfare. Hence, economic activities are an essential part of human activity, which inevitably connects it with other people and entities. The conditions regarding the implementation of these activities, just like the established relationships between the various economic actors, are governed or at least are regulated by the laws. It goes without saying that to carry out its activity, any economic actor will yearn for favourable laws and respect for such laws by other actors and the State.

Thus, the rule of law, good governance and economic development are closely related and form an inseparable whole in any impact assessment of regional integration agenda.

ECOWAS political and legal frameworks for the promotion of the rule of law and good governance

Promotion of regional integration as an essential factor of economic development has been the main motivation of the founding fathers ofECOWAS, as shown in the preamble and objectives of the Constitutive Treaty adopted in May 1975 in Lagos.

Conscious of the inextricable link between economic development, regional integration and the promotion of good governance, the Community authorities undertook reforms in the 1990s in the areas of political affairs, peace and security, and institutional and legal matters.

The adoption of the ECOWAS Revised Treaty signed on July 24 1993, in Cotonou, Republic of Benin, did not only strengthen cooperation between the States in the area of accelerating the regional integration, but it also and especially took into consideration the political and institutional aspects in the quest for greater effectiveness of regional integration.

This phase was exemplified in the ECOWAS institutional reform, particularly through the establishment of a Community Parliament expected to represent the populations, as well as the Court of Justice established to ensure that the commitments made by the States within the framework of the objectives of the regional integration are respected and finally, through the adoption of several Community legal instruments on the promotion of democracy and good governance.

Establishment of strong institutions, promotion of democratic culture and rule of law

Within this framework, ECOWAS adopted several relevant texts, the most important of which is Protocol A/ SPl / 12/01 on Democracy and Good Governance signed on 21 December 2001 in Dakar, Republic of Senegal.

It is a key reference document which enshrines the respect, by all Member States, for the basic principles governing a democratic state. These principles are known as the constitutional convergence principles.

It is on the basis of this Community text considered by some researchers as the **ECOWAS Constitutional Charter** that ECOWAS is able to act effectively against coups d'etats and the tampering with constitutions. Consequently, in April and March 2012, ECOWAS applied the appropriate sanctions against the military juntas responsible for the coup d'etats in Guinea Bissau and Mali, respectively, thereby, forcing them into accepting successful transitions.

The force of the democratic institutions established by each Member State, owe their legitimacy, i.e. the confidence they inspire in the eyes of the citizens on the conditions under which the election take place.

It is in the same context that ECOWAS strives to follow up on the electoral processes in the various Member States by providing assistance and monitoring the elections.

Regarding the democratic culture, it stems from the acceptance of the democratic values by the political class and the military of each Member State, as expressly cited by the constitutional convergence principles.

The fight against corruption, promotion of good governance and economic and social development

The fight against corruption is a crucial factor of good governance. Indeed, the paucity of resources in the face of the numerous challenges linked to the economic and social development of Member States makes it imperative to eradicate the phenomenon of corruption. Hence, within the framework of the promotion of the fight against corruption, ECOWAS adopted a specific protocol called Protocol A/ P3 /12/01 on the fight against corruption, signed on 21 December 2001 in Dakar, Republic of Senegal.

The purpose of this Protocol is to create a Community legal framework dedicated to the fight against corruption in Member States, particularly through the harmonization and coordination of the national laws and policies against corruption, as well as cooperation between the States in the fight against the various forms of corruption.

To this end, the Protocol provides, inter alia, for measures to be taken by Member States within the framework of prevention, criminalization and sanctioning of corrupt persons, the fight against the laundering of the proceeds of corruption and related offences, but also protection and assistance to witnesses and victims, as well a mutual legal assistance and cooperation.

In addition, the provisions of particularly Article 19 of the Protocol, provide for the periodic evaluation of its implementation by Member States. For this purpose, there is a plan to establish a Committee to be called Anti-Corruption Committee.

To facilitate the implementation of the relevant provisions of this Protocol, ECOWAS initiated, in 2010, the establishment of a Network of National Anti-Corruption Institutions in West Africa with the aim of promoting coordination and cooperation between the institutions established to fight corruption in the West African region.

Several Member States subsequently adopted specific national laws for the fight against corruption.

Contribution of the ECOWAS Parliament towards the promotion of democracy and good governance

Although, from a purely legal point of view, no specific role has been defined for Parliament in the various specific texts relating to the promotion of democracy and good governance, but the Parliament as the representative of the people has not remained indifferent. Parliament has consistently supported the efforts of the ECOWAS Commission and the Authority of Heads of State and Government towards upholding the democratic principles, including the proper conduct of elections in Member States; compliance with the rule of law guiding political stability and advocacy for the ratification and domestication of Community protocols; which are indispensable for economic and social development.

The existence of Parliament lends legitimacy to the actions taken by the Community Executive in the field of regional integration and this inspires and attracts the confidence of the investing public. A Supplementary Act, A/SA.1/12/16 signed by The Authority of Heads of State in December 2016 which enhanced the powers of Parliament gave wide-ranging roles to Parliament including among others to promote and defend the principles of human rights, democracy, the rule of law, transparency, accountability and good

governance and involvement in the enactment of all Community Acts relating to ECOWAS Economic and Monetary integration policies or the Treaty. Hence, at each session of Parliament, Country Reports produced and presented by each delegation enables the Parliament to have a general view of the Community and to take up any situation that may occur in any Member State, which is likely to undermine the principles of constitutional convergence.

The participation of ECOWAS Members of Parliament in election observation exercises, as well as parliamentary debates on the State of the Community Address by the President of the Commission during sessions of Parliament are also occasions that Parliament uses to make its contribution towards the promotion of democracy and good governance in Member States. Several resolutions are normally adopted and forwarded to Community decision-making bodies. An example is the case condemning the coups d'etat in Mali and Guinea Bissau in 2012.

During delocalized meetings of its Standing Committees, Parliament normally deals with topics relating to democracy and good governance. An example here was a delocalized meeting held by the Parliament's standing committees in Ouagadougou which focused on the fight against corruption from 6-10 August 2019. The reports and recommendations resulting from these meetings are sent to the ECOWAS Commission.

In terms of inter-institutional relations, Parliament stands ready to cooperate and support the Court in its raison d'etre of dispensing justice to the people. Community citizens want to do business in a free, transparent and confident environment and should be able to easily access justice where their freedoms to associate are guaranteed. Community protocols and the necessary institutions to execute the regional integration agenda have been well established to dispense justice. However, the Court just like any human institution may have enormous challenges in terms of logistics and will therefore need the support from the Community Executives-TheAuthority ofHead of States, The Council of Ministers and ECOWAS Commission to speedily dispense justice because the lawyers have a saying that justice delayed is justice denied.

Conclusion

In conclusion, Parliament in the exercise of its role, is not devoid of challenges. There is the usual issue of inadequate funding for parliamentary activities as in all institutions. Secondly, the present arrangements where the membership of the Parliament is drawn from National Parliaments of Member States poses a challenge in terms of time dedicated by Honorable members for the work of the ECOWAS Parliament. As a way to resolve this challenge and to deepen the support of Parliament for Community Executives and institutions in the integration process, it is hoped that the ECOWAS Authorities would consider elections by universal adult suffrage in the next phase of the enhancement of the Powers of the Parliament.

Merci Beaucoup
Muito Obrigado
Thank you very much

RULE OF LAW AND GOOD GOVERNANCE AS PRIME FACTORS IN DEVELOPMENT

BY

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DEFINING GOOD GOVERNANCE & THE RULE OF LAW

- The rule of law is defined as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.'

Essential Requirements of the Rule of Law

- The rule of law requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

KEY ELEMENTS OF GOOD GOVERNANCE: 2. World Development Report (1997).

1. **Internal rules and restraints** (including internal accounting and auditing systems, independence of the judiciary and the central bank, civil service and budgeting rules);

2. **"Voice" and partnership** (including mechanisms for public deliberation of proposed laws and the enabling of partnerships among different actors in society); and

3. **Competition** (including competitive social service delivery and private participation in infrastructure).2

What is Good Governance?

- Good governance defines the extent to which the security and prosperity of the individual is guaranteed in the Community.
- Good governance based on **accountability and transparency** is the foundation for peace and stability.

Accountability and Transparency

- **Accountability and transparency** is the foundation for effective public service delivery.
- Indeed, much of a country's economic activity is centered around the provision of public services such as health, transport and education and effective public service delivery is integrally tied to economic growth.

MEASURING PROGRESS IN GOOD GOVERNANCE

- There are several guides to measure progress on good governance.
- One set of indicators is the World Bank's Worldwide Governance Indicators:
  1. Voice and Accountability
  2. Political Stability and Absence of Violence
  3. Government Effectiveness
  4. Regulatory Quality
  5. Rule of Law
  6. Control of Corruption

I. Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies (2004).

1. Voice and Accountability

- Looks at perceptions of the extent to which a country's citizens are able to participate in

  (a) selecting their government;
  (b) freedom of expression and a free media;
  (c) freedom of association,

Political Stability and Absence of Violence

- Looks at perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism.

Government Effectiveness

- Looks at perceptions of-
  (a) the quality of public services;
  (b) the quality of the civil service and the degree of its independence from political pressures;
  (c) the quality of policy formulation and implementation and
  (d) the credibility of the government's commitment to such policies.

Regulatory Quality

- Measures perceptions of the ability of the government to-
  (a) formulate and implement sound policies; and
  (b) Introduce laws and regulations that permit and promote development.

Rule of law

- captures perceptions of-
  (a) the expectation that agents will abide by the rules of society, and in particular the quality of contract enforcement and property rights;
  (b) confidence in the police and the courts; and
  (c) the likelihood of crime and violence.

Control of Corruption

- Measures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption.

THE RULE OF LAW AND GOOD GOVERNANCE ARE

- Measuring progress on good governance along these metrics and
- sharing that information,

will unlock a country's growth potential and enable it to achieve and implement its sustainable development agenda.

GOOD GOVERNANCE AND BUSINESS AS A COMMON INTEREST

- Business needs predictability in the -
  (a) development of rules based on reason;
  (b) the enforcement of rules based on fairness, and
  (c) resolution of disputes based on justice.

Business thrives and is free to innovate when it understands the current rules and standards and has a sense of what changes may occur in the future.

Business needs stable societies governed by the rule of law;

- On this stable foundation, business can innovate, grow and create jobs to solve the challenges posed by its customers' needs and preferences and the economic priorities oflocal, regional and national governments.
- Even more fundamentally, where chaos and disorder reign, business and economic opportunities cannot take route and flourish.

Rule of law and legal certainty

- The rule of law and legal certainty are the foundation of stable economies.
- Legal frameworks must be accessible and based on rules-
  (a) requiring disclosure of conflict of interest;
  (b) prohibiting bribery;
  (c) Ensuring fairness;
  (d) requiring transparency;
  (e) promote competition and prohibit discrimination by sound procurement laws;

A system that-
Is backed by an independent, efficient judicial system, including the availability of alternative dispute resolution mechanisms that keep pace with the speed of the market;focus on providing benefits to everyone, encourages diversity of voices, enable the people to assess the effectiveness of leaders and provide feedback if the leaders are not delivering benefits.

Informality undermines legal certainty

- Informality undermines legal certainty and is a drag on economic growth and social development.
- Government institutions can more effectively and efficiently guide economic growth and public policy where the legal rights and social benefits of all members of society are prescribed.

Good governance is an essential attribute of any successful business.

- From local businesses to large multinational corporations, businesses must be accountable to their customers, shareholders and other stakeholders.

- To survive, businesses must be transparent to promote a trusting relationship with their customers, and with the society that gives them oxygen to operate.

Protocol on Democracy and Good Governance (A/SPl/12/01)

- **Protocol on Democracy and Good Governance (A/SPl/12/01)** Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security is perhaps the Economic Community of West African States attempt to crystalise legal certainty in the rule of law and good governance among Member States.

Constitutional principles shared by all Member States:

- Article 1: The following shall be declared as constitutional principles shared by all Member States:
  (a) **Separation of powers** - including empowerment and strengthening of parliaments and guarantee of parliamentary immunity, Independence of the Judiciary.

(b) Every accession to power must be made through **free, fair and transparent elections.**
(c) Zero tolerance for power obtained or maintained by unconstitutional means.
(d) **Popular participation in decision-making,** strict adherence to democratic principles and decentralization of power at all levels of governance.
(e) **Freedom to have recourse to the common or civil law courts,** a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of rights.
(f) The freedom of association and the right to meet and organize peaceful demonstrations shall also be guaranteed; Political parties shall be formed and shall have the right to carry out their activities freely, within the limits of the law.
(g) The freedom of the press shall be guaranteed.

THANK YOU FOR YOUR ATTENTION

SOUS-THÈME 5

LEGAL ASPECTS OF ECONOMIC INTEGRATION

LEGAL ASPECTS OF ECONOMIC INTEGRATION

BY

KOFI KONADU APRAKU Ph.D
Commissioner OF Macroeconomic Policy
and Economic Research, ECOWAS Commission

Honorable Chairman
President of the ECOWAS Court of Justice
Distinguished Delegates
Ladies and Gentle

I wish on behalf of the President of ECOWAS, His Excellency, Dr. Jean-Claude Kassi BROU, and on my own behalf, express my sincere thanks to the ECOWAS COURT OF JUSTICE leadership and the entire management and staff of the Court for the invitation extended to me to be part of this conference. Permit me to take this opportunity to also express our deep gratitude to the President of Ghana, His Excellency, NanaAkufo-Addo, and the good people of the Republic of Ghana for accepting to host this important meeting and for the excellent facilities put at the disposal of all delegates. I also wish to extend sincere thanks and appreciation to you distinguished delegates for sparing time out of your busy schedules to attend this important meeting to deliberate on the ECOWAS regional integration programme, and in particular, the ECOWAS Single Currency Programme.

I am particularly delighted that this conference is coming at a very auspicious time when the region is accelerating progress towards regional economic integration and in particular as we prepare for the launch of a Monetary Union, which will be characterized by a single currency issued by a Common Central Bank. I must therefore commend the ECOWAS Court of Justice for this timely initiative. May I use this opportunity to inform you that meaningful developments have occurred in the last few months that is worth taking note. It is no longer news that the ECOWAS Authority has affirmed the decision of the Special Presidential Task Force on the Single Currency to adopt the following:

- ECO as the name of the currency
- AFederal system for the common Central Bank
- AMonetary Policy Framework based on Inflation Targeting
- A Flexible exchange rate regime that would ensure the stability of the currency and support the monetary policy to deliver a low and stable inflation.
- Operationalization of the Special Fund for financing the implementation of the revised roadmap activities.

There are obvious issues still to be addressed in the coming months. The symbol for the currency, the institutional arrangements for the launching of the common currency as well as the location of the Common Central Bank. Consultations are still going on in these areas.

Honorable Chairman
Distinguished Delegates

Progress towards macroeconomic stability convergence has improved significantly in recent years and the growth trajectory continues to remain high when compared to other regions on the continent. The ECOWAS economic recovery, which started since the last quarter of 2016 continued in 2018, and the recent decline in global oil and commodity prices, which adversely affected Member States is easing off, with evidence of recovery beginning to show in the most affected economies. Thus in 2018, eight (8) Member States have better growth prospects in comparison to five (5) in 2017. This included six Member States (Benin, Burkina Faso, Cabo Verde, Ghana, Niger and Senegal) that record growth

rates above 6% in 2018. The improved economic growth in the region was largely driven by good agricultural production, increased investment in infrastructure (both physical and social), rapid expansion in financial services and sustained implementation of macroeconomic policy reforms.

The path to convergence in the region on a sustained basis, still remains very challenging as only two Member States met all the four primary criteria in 2018 against four in 2017. Similarly, no Member State met all the primary and secondary criteria in 2018 which compared unfavorably with the outturn in 2017 when three (03) countries met all the prescribed benchmarks. Meeting the target of budget deficit including grants continued to be challenging as ten (10) countries missed the target in 2018 compared to eight (08) in 2017. In order to improve on the performance of our Member States on the convergence scale in the medium term, it is essential to ensure that our Member States continue to implement prudent fiscal, monetary and exchange rate policies and adopt policy measures aimed at enhancing revenue mobilization and diversification of our economies. However, I wish to commend the efforts of several Central Banks to stabilize the exchange rates of national currencies and the reduction in monetary financing of budget deficits. These actions have made it possible to improve the profile of macroeconomic convergence within the region.

Honorable Chairman
Distinguished Delegates

It is pertinent to remind us that this meeting is taking place just a few weeks and months before the deadline for the establishment of monetary union within ECOWAS, so we need to carefully assess our preparedness for this deadline. In this regard, ECOWAS Commission, in collaboration with the relevant regional institutions and the Central Banks in the region, is cataloging what needs to be done in the remaining months to the launch of our single currency. The activities being undertaking include the preparation of the ECOWAS Macroeconomic Convergence Report for the first half of 2019 to assess the state of preparedness for the launch of the ECOWAS Monetary Union in 2020. This meeting is therefore saddled with the responsibility of proposing concrete actions and measures on what needs to be done, especially from the legal stand point to achieve our monetary integration objectives in a timely manner.

This Conference is very timely considering the importance of legal aspects of regional economic integration. Let me assure you that we are making good progress and the future is not that bleak. There have been positive developments with respect to the preparation of various legal texts. For instance, the institutional framework for the harmonization of the Balance of Payment Statistics, among others is receiving due attention. The texts on the legal protection of the name of the currency, review of the draft statute of the common central bank, rules for Reserve Pooling are being addressed and actions that would ensure a sustainable monetary union are being worked upon.

I am thus aware that periodically the Court organizes international conferences on important legal themes in order to develop Community laws and review existing ones and to keep abreast with international best practices. I have also been informed that these conferences have taken place since 2004 covering several topics, which I find very interesting and germane to our integration program. Issues relating to human rights, appraisal of the implementation of Community laws, strategies for strengthening the Court of Justice and lastly the analysis of the Jurisprudence of the Court have been

addressed. I must thus commend the Court of Justice for maintaining relevance in its area of operation and responsibility.

Honorable Chairman
Distinguished Delegates
The theme of this year's conference is quite appropriate, considering the various challenges that face our region today. The path to convergence in the region on a sustained basis, still remains very challenging. These challenges have, undoubtedly impacted adversely on economic activities in the region and the status of macroeconomic convergence in our Member States. Compliance with these criteria have proven a daunting challenge over the years as no country has met all the criteria on a sustainable basis. This has been partly owing to the vulnerability of our economies to external shocks and also to the dwindling revenues that has combined to obfuscate the ability of the region to meet the fiscal deficit criterion. The effective implementation of the roadmap for the ECOWAS Single Currency has been hampered by inadequate funding and limited technical capacity to ensure timely implementation of the core activities. In this regard, there is need for technical assistance in the implementation of roadmap programmes relating to the harmonisation of economic, financial and statistical policies as well as in the harmonisation of public finance frameworks.

Apart from the challenging macroeconomic environment, the devastating effects of organized crimes especially terrorism, banditry, and the proliferation of small arms are even more daunting to tackle and has severe implications for the stability of our region necessary to drive integration. In other words the degree of convergence or divergence should not only be assessed from the stand point of the macro-economy. Attention needs to be paid on some of the structural and debilitating social and political issues affecting our Community. The legal umbrella that would mitigate the crisis that may erupt through these concerns needs to be addressed. Good governance, democratic accountability, fiscal responsibility, building an inclusive society and respect for diversity and individuality are all issues that must also be addressed for the success of our integration project.

Honorable Chairman
Distinguished Delegates
As we are aware, the deadline set for the introduction of single currency by the ECOWAS Authority is only a few months away, and time is now of the greatest essence. Thus, we have the responsibility to deliver on the duty assigned to us by our principals. Needless to say that expectations are very high within the Community regarding the introduction of the single currency. This means that we need to re-double our efforts to put in place all the key structures and institutions necessary for the establishment of the monetary union in a timely manner. The observations and recommendations of your Committee will be presented at the next meeting of the Ministerial Committee on the ECOWAS single currency that is scheduled to be convened in December 2019 here in Accra. The decisions taken by the Ministerial Committee will subsequently be submitted for discussion at the next Summit of the ECOWAS Heads of State and Government also scheduled to hold in December 2019 in Abuja, Nigeria.

In conclusion, I wish to, once again, express my sincere thanks and gratitude to you Honourable Delegates for your continued cooperation and commitment to the effective implementation of the ECOWAS Single Currency Programme. Thus, I wish to crave your indulgence to make, as you have always done, frank and positive contributions that will

accelerate progress towards the establishment of the ECOWAS Monetary union in a timely manner.

On this note, may I **thank you for your kind attention and wish us all successful deliberations.**

LEGAL ASPECTS OF ECONOMIC INTEGRATION OF WEST AFRICA

BY

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INTRODUCTION

The historic signing of the African Continental Free Trade Area (AFCFTA) on 21 March 2018 marked a momentous milestone for regional economic integration in Africa. Despite the strong signals of commitment by policy makers and African leaders to regional economic integration, the process faces challenges such as limited energy and infrastructure development, insecurity and violent conflicts, multiple and overlapping membership of Regional Economic Communities (RECs), poor sequencing of the regional integration arrangements and limited financial resources (UN Economic Commission for Africa, Addis Ababa, 2019: Assessing Regional Integration in Africa (Part ix).

Regional integration is now widely accepted as indispensable for expanding economic opportunities in Africa. African nations are vigorously pursuing an integration agenda in order to participate effectively in the globalization process. African leaders therefore view regional integration as the most direct route to fast, broad based economic development, an effective way to overcome the limitations of small internal markets and reducing the high rates of poverty and unemployment plaguing the continent. [1]

In view of the slow pace of continent-wide integration, African leaders have provided a framework for the implementation of the integration agenda. This framework is enshrined in the Abuja Treaty[2] of 1991, which provides, inter alia, for the establishment of the African Economic Community (AEC), sets out its objectives and laid out six stages for the implementation of the integration agenda.[3] Included in this framework is the critical role of African Regional Economic Communities (RECs), as the building blocks of the AEC in ensuring harmonization of their monetary, financial and payment policies, in order to boost intracommunity trade, establish a common market and to enhance monetary and financial cooperation among Member States.[4]

Accordingly, African leaders have firmly committed themselves to accelerating regional integration and cooperation. Underlying this commitment is a belief that most African countries cannot achieve rapid economic growth and development in a reasonable time without first overcoming the constraints of small economies and populations. [5] Of the 54 African countries, 32 have populations of less than 15 million, while one third have populations of 3 million or less. Moreover, of the 46 least developed countries in the

[1] See UN Economic Commission for Africa (2004): Assessing Regional Integration in Africa. UNECA Policy Research Report, Addis Ababa, Ethiopia, pp. 1- 227.
[2] The Treaty establishing the African Economic Community (AEC) was done in Abuja, Nigeria on the 3rd of June 1991 during the 27th Session of the O.A.U.
[3] The Preamble to the Treaty itself traces the history behind the establishment of the AEC, dating back to the Resolutions and Declarations of the OAU at the Algiers Summit of September 1968 up to the Lagos Plan of Action and the Final Act of Lagos, April 1980. It was at that 1980 Lagos Summit that a firm commitment was made by African Heads of States to establish an African Economic Community by the year 2000.
[4] See Articles 29 to 34 and 44- 45 of the AEC Treaty, 1991; See also UNECA report Part I 2004, op cit.
[5] Ibid.

world, 31 are in Africa.[6] Thus, the contribution of regional integration and cooperation to the promotion of intra-group trade, growth, development, social and political cohesion is unquestionable.[7] Removal of border controls, harmonization of macroeconomic, sectoral and institutional policies and actions, liberalization of trade, free movement of people, goods, services and capital are expected to result in a more efficient use of resources as well as in productivity and income gains. Participating countries are expected to fare better with integration than without it.[8] The productivity gains arising from economies of scale and cost-saving arrangements are also likely to strengthen internal as well as external competitiveness of products and firms. Economic gains in tum are likely to facilitate the process of political and social cohesion and unity.[9]

The launching of the African Union (AU)[10]and the adoption of the New Partnership for Africa's Development (NEPAD),[11] together with the keen interest of African countries to become effective members of World Trade Organization (WTO), all attest to the continent's drive to achieve economic and political integration and avoid global marginalization.[12] It is an embodiment of Africa's will to accelerate its transformation as a continent of predominantly least developed and developing individual economies. The RECs, like ECOWAS, were expected to evolve into free trade areas, customs union and, through horizontal coordination and harmonization, to culminate a common market and economic union embracing the entire continent. [13]

Hence under the leadership of Nigeria and Togo, West African States established the regional Economic Community of West African States (ECOWAS) on 28th May 1975.[14] Under the 1975 ECOWAS Treaty, membership of the Community was open to all West African States, an expression that is not defined by the Treaty.[15] Although the 1993

[6] See UNECA, Addis Ababa (2008): - Assessing Regional Integration in Africa, part III at p. 23. Forupdate see, UNECA 2019, Assessing Regional Integration in Africa, (Part ix)

[7] Ibid at pp. 1-288

[8] Ibid

[9] See Ajomo M.A. and Adewale, 0., (1993) eds):- African Economic Community Treaty: Issues, problems and Prospects. Nigerian Institute of Advanced Legal Studies, Lagos.

[10] The Constitutive Act of the African Union was adopted at Lome, Togo, on 11 July, 2000 by the 36 ordinary session of the Assembly of Heads of State and Government.

[11] NEPAD is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the global economy and politics, the objective of NEPAD is to consolidate democracy and sound economic management on the continent. This development strategy/agenda was adopted by African leaders at Abuja, Nigeria in October 2001.

[12] ibid, NEPAD, October 2001, at pp.1- 16.

[13] See UNECA, Addis Ababa, Ethiopia (2006): - Assessing Regional Integration in Africa part II: -Rationalizing Regional Economic Communities, at pp. 1- 100. For update see, UNECA 2019, Assessing Regional Integration in Africa, (Part ix)
Also see UNECA, AU, AFDB (2010): - Assessing Regional Integration in Africa Part IV: - Enhancing IntraAfrican Trade, at pp. 1-496

[14]Treaty of the ECOWAS in 14 ILM, 1200 (1975) hereinafter called the 1975 ECOWAS Treaty. Signed in Lagos, Nigeria.

[15] Ibid, Article l (2). The Treaty was later ratified byte then 16 number states: - Benin, Cape Verde, Ghana, Ivory Coast, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta (now Burkina Faso). In 2000, Mauritania debounced the ECOWAS Treaty in favour of full membership of the Maghreb Union.

Revised ECOWAS Treaty[16] requires, among others, the pursuit of economic integration for the realization of the AEC objectives, a movement towards a common market and an economic union.[17] There is however, a huge information deficit in the ECOWAS region, regarding this ambition among Community individual and corporate citizens. While many are cynical about the slow pace of implementation of the regional integration agenda since 1975, others are apprehensive about the possible adverse effects of increased competition for Jobs and markets arising from a further move towards a deeper integration. [18] It is obvious that a much greater effort at public education and sensitization is necessary.[19]

It is against this background that this paper seeks to achieve the following objectives;-

i. To provide conceptual clarification of relevant key terms such as 'regional, trade, market, monetary and financial economic, integration', 'Community law' and 'harmonization' of laws and policies;
ii. To examine the nature and scope of the legal regime for regional economic integration in ECOWAS;
iii. To underscore the importance of implementation of Treaties and ECOWAS Laws in Member States;
iv. And to conclude with the way forward for ECOWAS.

1. Conceptual Clarification of Key terms

This part of the paper seeks to clarify the following key concepts: - regional integration, economic integration, financial and monetary integration, trade and market integration, harmonization of laws and Community law.

1.1 Clarifying Regional Integration

The term 'Regional Integration', "is a modem process of amalgamation or fusion or the bringing together of two or more sovereign entities within a given global or continental-geo political zone into one unit for the greater or enhanced protection and promotion of their economic, political, social, cultural or legal priorities or interests."[20] Hence regional integration may be economic, political, legal or a combination of any two or all of the above interests or priorities.

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[16] The ECOWAS Revised Treaty done at Cototnou, Benin Republic, on 24 July 1993. Hereinafter called the 1993 Revised ECOWAS Treaty.

[17] Ibid, Article 2 (1_ provides that member states hereby reaffirm the establishment of the ECOWAS and decide that it shall ultimately be the sole economic community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community (AEC)

[18] See ECOWAS Commission, Abuja (2009): - ECOWAS Common Investment Market Vision at p.1.

[19] Ibid. Also See Ladan M.T., (2012); - Ways of strengthening Legal and Judicial integration in the ECOWAS region. A presentation made at the 2012-2013 Legal Year ceremony of the ECOWAS Court of Justice, Abuja, Nigeria. on 27 September, 2012, at the Community Court Premise, Abuja.

[20] See Ladan M.T., (2009): - Introduction to ECOWAS Community Law and Practice: - Integration, Migration, Human RIGHTS, Access to Justice, Peace and Security. Ahmadu Bello University Press Ltd, Zaria, Nigeria, at pp. 10-11.

Integration cannot be achieved without some measure of supranationalism. The experience of the ECOWAS, though not perfect, confirms that unless Member States give up some parts of their national Sovereignty and empower regional integration institutions to make binding decisions, and to implement them, little progress can be made.[21]

1.1.1 Types and features of regional integration models

Regional integration arrangements take a variety of forms:
Preferential Trade Area-an arrangement in which members apply lower tariffs to imports produced by other members than to imports produced by non members. Members can determine tariffs on imports from non members.

Free Trade Area-a preferential trade area with no tariffs on imports from other members. As in preferential trade areas, members can determine tariffs on imports from non members. Customs union- a free trade area in which members impose common tariffs on non members. Members may also cede sovereignty to a single customs administration.

Common market -a customs union that follows free movement of the factors of production (such as capital and labour) across national borders within the integration area.

Economic union- a common market with unified monetary and fiscal policies including a common currency.

Political union- the ultimate stage of integration, in which members become one nation. National governments cede sovereignty over economic and social policies to a supranational authority, establishing common institutions and judicial and legislative processes - including a common parliament.

Countries can start with any of these arrangements, but most begin by removing impediments to trade among themselves. They then introduce deeper and wider integration mechanisms.

1.1.2 Benefits of regional integration

The benefits of regional integration are gams from new trade opportunities, larger markets, and increased competition.[22]

First, regional integration arrangements can help African countries overcome constraints arising from small domestic markets, allowing them to reap the benefits of scale economies; stronger competition and more domestic and foreign investment[23]. Such benefits can raise productivity and diversify production and exports.

Second, the small size of many African countries makes cooperation in international negotiations an attractive option achievable through regional integration arrangements. Cooperation can increase countries' bargaining power and visibility.[24]

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[21] Ibid at p.11
[22] See UNECA et. al (2010) op. cit
[23] See ECOWAS Commission, Abuja, Nigeria (2007): - Regional Investment Policy Framework at pp. 1-6.
[24] Ibid.

Third, the similarities and differences of African countries could make regional integration and cooperation beneficial. Many African countries share common natural resources, such as rivers and problems such as HIV-AIDS and low agricultural productivity. But they also exhibit important differences, particularly in their endowments. Though most have limited resources, some have well-trained workers, some have rich oil deposits, some have water resources suitable for hydro-electric generation, and some have excellent academic institutions and capacity for improving research and development. By pooling their resources and exploiting their comparative advantages, integrated countries can devise common solutions and use resources more efficiently to achieve better outcomes.[25]

Fourth, in many African countries regional integration can help make reforms deeper and less reversible. Regional integration arrangements can provide a framework for coordinating policies and regulations, help ensure compliance, and provide a mechanism of collective restraint.[26]

Fifth, regional integration arrangements can help prevent and resolve conflict by strengthening economic links among African countries and by including and enforcing rules on conflict resolution. On a continent where political instability and conflict remain major problems, the potential importance of this role cannot be overstated.[27]

Economic theory and reliable evidence suggest that the benefits of regional integration are neither automatic nor necessarily large. In this regard, a number oflessons are relevant for African countries: - regional integration is just one instrument for advancing African countries. To be effective, integration must be part of the overall development strategy; the nature and magnitude of the benefits depend on the type of integration arrangement being pursued; realizing the benefits of regional integration requires strong, sustained commitment from Member States; regional integration arrangements can create winners and losers, making it essential that members assess the prospective benefits and costs of regional integration to boost gains and minimize losses.[28]

Hence, Regionalism in Africa can promote multilateralism in several ways: - By going beyond the narrow issues of trade and global welfare to measures promoting foreign investment; acting as a restraint that locks in welfare-enhancing trade reforms; creating larger political economy units that can bargain more effectively in international fora; building pro-export constituencies to counter domestic protectionist constituencies; increasing competition in domestic markets, lowering prices, improving quality, and making products that are more competitive in global markets.[29]

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[25] See UN Economic Commission for Africa (2005-2006): - Sustainable Development Report on Africa:- Managing Land-Based Resources for sustainable Development, pp. 1-172.
[26] See ECOWAS (2007) Investment Policy Framework, op. cit.
[27] See ECOWAS Commission, Abuja (1999): - Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. Done at Lome, on 10 December, 1999.
[28] See UNECA (2010) op. cit.
[29] See African Economic Outlook 2013 by the African Development Bank Group (Af.D.B.), OECD Development Centre, UNDP and UNECA, at pp. 7- 30.

By strengthening regional integration, Africa would move towards being an integral part of the global economy and avoid further marginalization.[30] But much work is needed to ensure that Africa's regional integration arrangements conform to World Trade Organization (WTO) requirement under Article XXIV of the General Agreement on Trade and Tariffs (GATT). So, one challenge for Africa is ensuring a harmonious co-existence of sub-regional economic integration arrangements with the multilateral system to which the majority of African countries now belong. Another challenge is building the capacity of African countries to compete in the multilateral trading system.[31]

1.3.1 Meaning of Economic integration

The term 'economic integration' refers to a process whereby a group of sovereign entities adopt and implement measures that would make doing business within the regional grouping cheaper, easier, more conducive and effective, removing all constraints to intra-regional trade and investment opportunities.[32]

For any meaningful economic integration, there must exist certain amount of solidarity among the integrating (or cooperating) states to enable the institutional mechanism of the regional economic community of states to be created and fully empowered to ensure the progressive realization of the goals of integration and effective implementation of the plans, programmes and projects of the Community in the best interest of all. Consequently, the political authorities of the integrating states must be prepared to surrender aspects of their Sovereignty, shift their loyalties, expectations and political commitments towards a new and larger centre, whose principal common institutions possess powers to make binding decisions affecting all Member States and their individual and corporate citizens.[33]

As a further indicator to the priority to be accorded the economic integration of Africa, the African Economic Community Treaty (AEC) provides in Article 88 (3) that the Community shall coordinate, harmonise and evaluate the activities of existing and future regional economic bodies.[34] This is irrespective of the fact that the Treaties establishing regional economic bodies like ECOWAS were entered into[35] and became effective before the Abuja/ABC Treaty was even signed.[36]

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[30] See ECOWAS Commission, Abuja: - ECOWAS Trade Regime, at pp. 51- 65 . See also UNECA (2012) op.cit.

[31] See ECOWAS Commission, Abuja: - ECOWAS Trade Regime, at pp. 51- 65 . See also UNECA (2012) op.cit.

[32] See Ladan M.T. (2009): - introduction to ECOWAS Community Law and Practice, op. cit.
See Articles 3, 5 and 6 of the 1993 Revised ECOWAS Treaty as amended: - on the aims and objectives of the Community, general undertaking by member States and on the institutional mechanism established by the Treaty to promote economic integration in West Africa

[33]. See Articles 3, 5 and 6 of the 1993 Revised ECOWAS Treaty as amended: - on the aims and objectives of the Community, general undertaking by member States and on the institutional mechanism established by the Treaty to promote economic integration in West Africa

[34] Like ECOWAS, SADC, EAC etc.

[35] The ECOWAS founding Treaty was signed in Lagos, Nigeria on 28 May 1975, op. cit.

[36] The AEC Treaty was done in Abuja on yct June 1991, op. cit.

Accordingly, the African Union recognized the following Regional Economic Communities for the pursuit of the ultimate goal of the continent-wide economic integration.[37]

CEN- SAD: Benin, Burkina Faso, Cape Verde, Central African Republic, Comoros, Cote d'Ivoire, Chad, Djibouti, Egypt, Eritrea, Gambia, Ghana, GuineaBissau, Guinea, Kenya, Liberia, Mali, Mauritania, Morocco, Niger, Nigeria, Sao Tome & Principe, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia.

COMESA: Burundi, Comoros, Democratic Republics of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.
EAC: Burundi, Kenya, Rwanda, Tanzania, Uganda.

ECCAS: Angola, Burundi, Cameroon, Central African Republic, Chad, Democratic Republics of Congo, Equatorial Guinea, Gabon, Republic of Congo, Sao Tome & Principe.

ECOWAS: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea-Bissau, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo.

IGAD: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, Uganda.

SADC: Angola, Botswana, Democratic Republics of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

UMA: Algeria, Libya, Mauritania, Morocco, Tunisia.

1.2.1 **Trade and Market Integration**

The ultimate goal of the African Economic Community (AEC) is to create an African Common Market. [38] An area where Regional Economic Communities (RECs) like ECOWAS have been observed to be most active is trade and market integration. [39] In the economic literature, 'market integration'[40] is said to exist when product flows between countries are on the same terms and conditions as within countries. In an integrated market, prices of identical products are the same across cooperating member states, geographical Jurisdictions, and any deviations being attributable to transportation transaction costs. In a REC like ECOWAS, this means that supply and/or demand changes

[37] See UNECA (2012) op. cit.
[38] Read together Articles 2 and 4(1) of the AEC Treaty/Abuja Treaty op. cit.
[39] See UN Economic Commission for Africa (2012): - Assessing Regional Integration in Africa, part V, op. cit.
[40] See UNECA (2008): - Assessing Regional Integration in Africa, op. cit., p.31.

in one-country affect the price and/or volume of transactions in other member States of the REC.[41]

In all African RECs, market and trade integration is being advanced through a series of measures such as; - (i) Removal of tariff barriers to intraREC trade; (ii) Removal of non-tariff barriers; (iii) Development and enactment of common trade policies.[42]

The effective implementation of these and other measures will lead in the long run to the achievement of zero tariffs for intra-REC trade and, conditional on convergence ofRECs, a common external tariff for the continent.

The Constitutive Act [43] of the African Union makes it clear that the primary goal of the Union is to establish an AEC [44] and assigns to RECs like ECOWAS the primary responsibility for making that happen.[45] An intermediate step in this effort is the transition of RECs into customs unions. Significant progress has been made on this issue in many African RECs like ECOWAS and the East African Community (EAC).[46]

It is a well-known fact that infrastructure deficiencies undermine the capacity to trade and grow economically. [47] Several meetings and literature continue to suggest that lack of adequate and quality infrastructure in roads, railways, electricity and other forms of energy, water, ICT, plant and equipment technology severely hampers the production and sale of goods. [48] When goods cannot easily cross borders in Africa because of poor transport networks,[49] intra-African trade suffers. But Africa is making some progress in its infrastructure development, though much still remains to be done in terms of inter-State links to facilitate the movement of goods across Africa.[50]

1.3.1 Monetary and Financial Integration.

The success of regional integration depends critically on member States pursuing convergent macroeconomic policies. Misalignments of tariffs, inflation rates, exchange rates, debt-to-GDP ratios, money growth rate and other macroeconomics variables between member States would be disruptive to economic integration. It is therefore imperative that the process of strengthening regional integration should include

[41] See ECOWAS Trade Regime Publication, op. cit.
[42] Refer to UNECA (2010): - Assessing Regional Integration in Africa part IV: - Enhancing intra-African trade, op. cit.
[43] Done at Lome, Togo, on 11July 2000, op. cit; see preamble and Articles 3 (c) and (J) of the Act. .
[44] Ibid
[45] See Articles 29 - 34 of AEC Treaty, op. cit.
[46] A customs Union is the entry point into the EAC, which became a customs union on 1st January, 2005
[47] See African Union and UN Economic Commission for Africa, Addis Ababa (2013):- Economic Report on Africa: making the most of Africa's Commodities.
[48] See UNECA (2008): - Sustainable Development Report on Africa at pp. 79- 162.
[49] Ibid.
[50] See UNECA (2012): - Assessing Regional Integration in Africa, op. cit.

guidelines for the convergence of the macroeconomic and trade policies of the entire regional space so as to strengthen the overall regional integration agenda.[51]

The purpose of monetary integration or cooperation amongst countries within a regional economic community like ECOWAS is to establish a common monetary area with greater measure of monetary stability in order to facilitate economic integration efforts and foster sustained economic development. In this regard, monetary integration or cooperation could be achieved if Member States pursue convergent macroeconomic policies.[52] For macroeconomic convergence to be successful, Member States must meet the following minimum conditions: - (i) Efficient markets for products and factors of production; (ii) Effective and efficient compensatory financing arrangements to make the domestic costs of coping with the ill effects of economic liberation bearable. In this regard, there should be an equitable sharing of the costs and benefits of integration among Member States, taking into account the effects of macroeconomic exogenous shocks, external financing shocks, terms of trade shocks and adverse weather conditions; (iii) proper timing and sequencing of convergence variables; (iv) creation of enabling policies and environments that reduce risks.[53]

Although monetary union or integration has its own costs and benefits, the theoretical and empirical evidence suggests that, if established and sustained, regional currencies among developing economies can bring considerate benefits, similar to those expected and being experienced from the introduction of the euro currency.[54] They can reduce the cost of doing business within a region like ECOWAS and eliminate exchange rate spreads and commissions in currency trading associated with intra-regional trade and investment.[55] Furthermore, a supranational central bank can reduce the influence of populist national politics on monetary policy, but still be accountable to Member States.

Financial integration involves a process whereby a country's financial markets become linked or integrated with those of other countries or with those of the rest of the world. In fully integrated markets, all forms of barriers are eliminated to enable foreign financial institutions to participate in domestic markets. In such an environment, national banking networks, equity and other types of financial markets are linked to their foreign counterparts.[56]

Financial integration could occur through membership in a regional integration community where formal treaties[57] have been established to link up the financial markets

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[51] See UN Economic Commission for Africa (2008): - Assessing Regional Integration in Africa part III: - Towards Monetary and Financial integration in Africa, op. cit., at pp. 59- 96.

[52] Ibid at pp. 137- 253. See also the 1993 ECOWAS Revised Treaty, Article 3 (2) (a), (d), (e), (i) and (j).

[53] Ibid.

[54] See Swann, D. (2000): - The Economics of Europe: - From Common Market to European Union. New Edition, London: Penguin Books.

[55] See ECOWAS Commission Abuja (2009): - ECOWAS Common Investment Market Vision, op. cit.

[56] Financial integration could also occur through the penetration of foreign financial institutions into domestic banking and insurance markets and pension funds, securities trading abroad and direct borrowing by domestic firms in international markets.

[57] See the 1993 ECOWAS Revised Treaty, op cit., see also Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and modalities for their implementation within ECOWAS.

of the community. In this arrangements, the regional integration community like ECOWAS would remove or minimize restrictions that impede the flow of capital, and harmonize all financial rules, regulations and taxes between member states.[58]

However, for financial integration to be effective in Africa, it needs to be achieved through the regional economic opportunities. The RECs like ECOWAS would allow small African economies to increase their financial links with the rest of the world.

The strengthening of African financial markets through integration with world financial markets would also lead to the promotion and strengthening of trade and investments.[59]

The benefits of financial integration include: - more opportunities for risk sharing and risk diversification; better allocation of capital for investment; and potential for higher economic growth. There is ample evidence in the literature that financial integration leads to stronger economic growth in a region.[60]

1.4.1 Nature of Harmonization of laws

The term "Harmonization" entails the convergence of various legal systems, laws or regulations, policies or practices which governments or organizations agree in a friendly way to make them the same or similar, or to make them fit 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.[61]

It is beyond doubt that where harmonization exists, each country will still retain its legal system. The advantage of this approach is that there would be convergence of various legal traditions and the consequent enrichment of the respective legal systems. It further encourages the establishment of a Community Court of Justice to provide uniform interpretation of concept and issues, which may arise under the regional treaty. This in turn encourages the development of autonomous Jurisprudence through a cosmopolitan approach to the interpretation of principles and concepts.[62]

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[58] Ibid.
[59] Ibid, Article 3 (2) (d) and (f).
[60] See UN Economic Commission for Africa (2008): - Towards Monetary and Financial Integration in Africa, op. cit. at pp. 103- 179.
[61] See Ladan M.T., (2005): - Harmonization of Trade and Investment (Business) Laws in Africa; - issues, challenges and opportunities for ECOWAS. In Le biJurisdime au Service de l'integration et de la securite juridque en Afrique sous l'egide de l'OHADA. Francophonie International Agency, Paris, France, at p. 72.
[62] See Ademola, J.Y., (1990): - Hannonization of Laws in Africa. Malthouse Press Ltd, Lagos, Nigeria, at pp. 21- 42 and 61- 77.

One of the non-tariff barriers to intra-regional trade and investment is the disparity in the national business or commercial laws and policies.[63] It is submitted therefore, that the elimination of legal obstacles is vital to the effective functioning of any economic integration scheme in Africa.[64]

1.5.1 Nature of Regional Community Law

A regional Community law is a body of founding Treaties and legislations made by competent Community institutions. Such legislations include Supplementary Acts, Regulations and Directives, which have binding and direct or indirect effect on the laws of Continent-wide Union or regional Community member States.[65]

1.6.1 Founding Treaties

A Treaty is the law incorporating the agreement of members States in respect of a particular subject matter, such as economic integration or political union. Where a treaty is ratified by a required number of States and enters into force, it becomes legally binding on them. Such State Parties are obliged to respect, observe, comply with and implement the treaty provisions consistent with their obligations thereunder. [66] A Treaty can be amended by agreement between the parties, though a separate treaty (often known as protocol) is the usual method of amending the provisions of the existing treaty.[67]

The primary sources of the ECOWAS Community Law are the founding Treaty of 1975[68] and its revised version of 1993.[69] The main Community legal instrument that established the ECOWAS was the 1975 ECOWAS Treaty, which also sets out the modalities for its operation.[70] The 1993 Revised ECOWAS Treaty reaffirmed the establishment of ECOWAS and decided, under Article 2, that it shall ultimately be the sole economic Community in the region for the purpose of economic integration [71] and the realization of the objectives of the African Economic Community.[72]

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[63] See the Private Sector Department, ECOWAS Commission, Abuja (2010): - Operational Guidelines for the Harmonization of National Investment Laws, pp. 1- 40.

[64]. See the 1993 Revised ECOWAS Treaty Article 3 (2) (a), (f) to (j).
Also see Ladan, M.T. (2005) op. cit.

[65] See Ladan M.T., Introduction to ECOWAS Community Law and Practice (2009) op. cit.

[66] . See Ladan M.T. (2008); - Materials and Cases on Public International Law. A.B.U. Press Ltd, Zaria, Nigeria, at pp. 11- 13.

[67] ibid. Note: - A Treaty can take the form of a Charter, convention, covenant or protocol. And a Protocol can be additional to, optional, or Supplementary to any existing treaty.

[68] Done in Lagos, Nigeria on 28th May 1975 by the 15 founding member States, including Mauritania which withdrew its membership of the organization in the year 2000. Cape Verde subsequently acceded to 1975 Treaty. Of the 16 West African States geographically speaking, only Mauritania that is not a member of ECOWAS. Hence there are 15 ECOWAS member States.

[69] The Revised ECOWAS Treaty was adopted at Cotonou, Benin Republic, on 24 July 1993 and entered into force on 23'd August 1995. As at December 2008, 14 out of the existing 15 member States had ratified the treaty. [7°] Following its establishment, ECOWAS adopted expanded protocols to extend its scope to collective security and mutual defence. See Protocol on Non- Aggression (1978) and the Protocol on mutual Defence A./SP.3/5/81, adopted on 29 May 1981. These were to be tested through the deployment of a West African Peace keeping operation in Liberia in 1991, later followed by similar operations in Sierra Leone, Guinea Bissau, Cote d'ivoire and Mali.

[7°] Following its establishment, ECOWAS adopted expanded protocols to extend its scope to collective security and mutual defence. See Protocol on Non- Aggression (1978) and the Protocol on mutual Defence A./SP.3/5/81, adopted on 29 May 1981. These were to be tested through the deployment of a West African Peace keeping operation in Liberia in 1991, later followed by similar operations in Sierra Leone, Guinea Bissau, Cote d'ivoire and Mali.

[71] See Article 3 of the 1993 ECOWAS Revised Treaty on the aims and objectives of the Community

[72] See Articles 2 and 4 of the 1991 AEC Treaty on the establishment and objectives of the AEC.

Under Article 6 (2) of the 1993 Revised ECOWAS Treaty, the Institutions of Community established under para **1** of Article 6, shall perform their functions and act within the limits of the powers conferred on them by the Revised Treaty and by the Protocols relating thereto.

1.7.1 Community Conventions and Protocols

Consistent with the provisions of the 1975- ECOWAS Treaty and the 1993 Revised Treaty on the realization of Community aims and objectives, a total of 39 Community Conventions and Protocols were ratified and entered into force between 1978 and 2006. The breakdown covers 6 conventions, 17 Protocols and 16 Supplementary Protocols relating to the programmes and projects of economic integration, institutions of the Community, Peace and Security, democracy, human rights and access to Justice in the ECOWAS region. [73] These Community Conventions and Protocols relating to the founding Treaty and its revised version also constitute the primary sources of the Community Law in West Africa.[74]

1.8.1 New legal regime and legislative Power of the Community

For the purpose of endowing the Community with modem legal instruments whose interpretation and implementation shall contribute to the acceleration of the ECOWAS integration process [75] and for expanded decision making, the principal instruments of lawmaking will no longer be conventions and protocols[76] (which require the cumbersome process of ratification by Member States).

Under the new Article 9 (1) of the 2006 Supplementary Protocol Amending the 1993 Revised ECOWAS Treaty, [77] henceforth, Community Acts (Law) shall be known as Supplementary Acts, Regulations, Directives, Decisions, Recommendations and Opinions.

Notwithstanding the above provisions of new Article 9, all Community, Conventions, Protocols, Decisions, Regulations and Resolutions of the Community made since 1975 and which are still in force shall remain valid and in force, except where they are incompatible with the present 2006 Supplementary Protocol.[78]

To accomplish their missions, the Authority of Heads of State and Government passes Supplementary Acts to complete the Treaty. Such Acts adopted by the Authority shall be

[73] See ECOWAS Commission, Abuja (Executive Secretariat as at February 2005); - Status of Ratification of the ECOWAS Revised Treaty, Protocols and Conventions as at 10th February, 2005, pp. 1- 24. NB; - update up to 2006 provided by the author of this paper.
[74] See Ladan M.T. (2009): - Introduction to ECOWAS Community Law and Practice, op. cit.
[75] See the Preamble to the 2006 Supplementary Protocol, A/SP.1/06/06 Amending the Revised ECOWAS Treaty of 1993.
[76] Ibid, New Article 9 of the 2006 Supplementary Protocol.
[77] Done at Abuja, Nigeria, on 14th June 2006.
[78] Ibid, Article 6.

binding on the Community Institutions and Member States, where they shall be directly applicable without prejudice to the provisions of Article 15 of the Revised Treaty.[79]

The Council of Ministers enacts Regulations, issues Directives, makes Decisions and Recommendations.[80] Regulations shall have general application and their provisions shall be binding on both Member States and Community Institutions and be directly applicable in Member States.[81] Directives[82] are binding on all Member States for the realization of the stated objectives. The modalities for attaining such objectives are left to the discretion of Member States. On the other hand, Decisions[83] are binding on all those designated therein. Whereas Recommendations and opinions are not enforceable.[84]

The ECOWAS Commission adopts Rules[85] for the implementation of Acts enacted by the Council of Ministers.[86] These Rules have the same legal effect as Acts enacted by the Council.

The Executive Secretary under Article 10 of the 1993 Revised Treaty, was responsible, inter alia, for the execution of decisions of the Authority of Heads of State and Government as well as the application of the regulations of the Council of Ministers; and initiation of draft (legislative and policy) texts for adoption by the Authority and the Council. [87]

For an enhanced legislative role and expansive powers in the promotion and development of the Community integration agenda, Article 1 of the 2006 Supplementary Protocol[88] transformed the Executive Secretariat to a Commission. Article 2 of the same Protocol abrogated the provisions of Articles 8, 9, 10 (2), 12, 17, 18, 19, 22 (1), 79, and 83 of the 1993 Revised Treaty and replaced them with new Articles. Under new Article 9 for example, the Commission's Acts shall have the same legal force as those Acts. Further, under new Article 19, the Commission's President is the legal representative of the Community and responsible for the external relations of the Commission, inter-national cooperation, strategic planning and Policy analysis of regional integration activities within the sub-region. Furthermore, the Commission is empowered to ensure the smooth functioning of the Community and protect the overall interest of the Community, by submitting to the Authority and Council, any recommendation necessary to promote the interest of the Community; and by formulating (legislative and policy) proposals that will enable the Authority and the Council to take decisions on matters relating to both member States and the Community.

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[79] ibid, New Article 9 (2) (a) and (3).
[80] Ibid, Article 9 (2) (b).
[81] Ibid, Article 9 (4).
[82] Ibid, Article 9 (5).
[83] Ibid, Article 9 (6).
[84] Ibid, Article 9 (7).
[85] Ibid, Article 9 (2) (c).
[86] Under new para 2 of Article 10 of the 2006 Supplementary Protocol, op. cit, "The Council of ministers shall comprise the minister in charge ofECOWAS Affairs, the minister in charge of Finance and any other minister where necessary."
[87] See Article 10 (3) (a) and (i) of the 1993 Revised ECOWAS Treaty.
[88] Op. cit.

Moreover, Article 3 of the 2006 Supplementary Protocol provides for new Article 13 which replaced the old Article 13 of the 1993 Revised Treaty on the Community Parliament. Under the new dispensation, the Parliament enjoys greater visibility and involvement in decision making processes affecting the Community.[89] However, having been established, the modalities for its involvement in decision making shall be defined in a Protocol relating thereto.[90]

Although the 1993 Revised ECOWAS Treaty among others, established a Community Parliament as an institution of the Community, [91] it remained a relatively powerless body with mere advisory and consultative role under the 2006 Supplementary Protocol that amended the Revised Treaty to the considerably strengthened institution it is today. On December 15 , 2014, the Authority of Heads of State and Government of ECOWAS finally adopted and signed into law, Supplementary Act on the Enhancement of powers of ECOWAS Parliament, at the 46th ordinary Session of the Authority in Abuja, thereby granting the ECOWAS Parliament a co-decision making status with the ECOWAS Council of Ministers and an enhanced role in the activities of ECOWAS.[92] Itemizing the new competences of the Parliament under the Act, the legislation states that, "the Parliament shall jointly, with Council, approve the Community Budget; exercise Parliamentary oversight functions over activities of the institutions and organs of the Community, as laid down in the Supplementary Act, without prejudice to Article 15 of the Revised Treaty. The Parliament shall also confirm the appointment of Statutory Officers appointed directly by the Authority. In conforming with Article 9 of this Supplementary Act, the Parliament may consider any matter concerning the Community without prejudice to Article 15 of this Treaty, among others."[93]

2. Nature and scope of the Legal regime on regional economic integration in West Africa

It is evident from the above analysis that regional economic integration is firmly rooted in the 1975 ECOWAS Treaty and the 1993 Revised Treaty as amended by the 2006 Supplementary Protocol.

ECOWAS was clearly established by the 1975 Treaty to drive the regional integration process leading to the establishment of an Economic Union. Re-affirming the establishment of ECOWAS, Article 2 of the 1993 Revised Treaty revealed the decision of Member States to make ECOWAS the sole economic Community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community (AEC).

From the Treaty provisions, the ambition of the founding fathers of ECOWAS is clear, namely, for ECOWAS to promote and progressively realize all the various phases of economic integration: - free trade area; customs union; common market and economic

[89] New Article 13 (2) under Article 3 of the 2006 Supplementary Protocol.
[90] Ibid Article 13 (3).
[91] See Article 13 of the 1993 Revised ECOWAS Treaty.
[92] Reported by the Newswatch Times online on December 16, 2014. See mynewswatchtimes.com
[93] Excerpts from chapter 2.

union, in order to raise the living standards of its people, maintain and enhance economic stability, foster relations among Member States, and contribute to the progress and development of the African Continent.[94]

2.1.1 Overview of ECOWAS' Integration and Harmonization Efforts and Gaps Identified

The Economic Community of West African States (ECOWAS) 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 realization of the objectives of the African Economic Community.[95]

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.

The objectives of the Union in order to realize the above aims, include ensuring the following:

(a) the harmonization and coordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform, policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters;

(b) the harmonization and coordination of policies for the protection of the environment;

(c) the promotion of the establishment of joint production enterprises;

(d) the establishment of a common market through:-

  (i) the liberalization of trade by the abolition of customs duties levied on imports and exports, among Member States, of non-tariff barriers in order to establish a free trade area at the Community level;

  (ii) the adoption of a common external tariff and trade policy vis-a-vis third countries;

  (iii) the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment;

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

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[94] As required by Article 3 (1) of the 1993 Revised ECOWAS Treaty on the aims of the Community.

[95] Original 16 member states of West Africa except for Mauritania that pulled out from the Community on 26 December 1999, reaffirmed the Treaty establishing the ECOWAS SIGNED IN Lagos on 28 May 1975. This Treaty was revised on 24 July 1993

(f) the promotion of joint ventures by private sector 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;
(j) the harmonization of standards and measures.[96]

In the pursuit of the objectives stated above, Article 4 of the above Treaty provides for the declaration of the Member States to adhere to the following fundamental principles:-

(a) equality and inter-dependence of Member States
(b) solidarity and collective self-reliance;
(c) inter-state cooperation, harmonization 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' rights in accordance with the provisions of the African charter on Human and Peoples' Rights;
(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.

By virtue of Article 5 of the same Treaty, Member States; undertake to create favourable conditions for the attainment of the objectives of the Community, and particularly to take all necessary measures to harmonize their strategies and policies and to refrain from any action that may hinder the attainment of the said objectives. Further, they undertake to provide all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the Treaty. Furthermore, they undertake to honour their obligations as required by theTreaty and to abide by the decisions and regulations of the Community.

[96] Article 3 of the Revised Treaty.

In Chapter 8 of the same Treaty, from Articles 35 - 53, nineteen economic policies in respect of cooperation in Trade, Customs, Taxation, Statistics, Money and Payments are enunciated. Policies were made on the following issues: liberalization of trade, customs duties, common external tariff, community tariff treatment, trade deflection, fiscal charges and internal taxation, quantitative restrictions on community goods, and dumping. Other issues are most favoured nation, internal legislation, re-exportation of goods and transit facilities, customs cooperation and administration, drawbacks, compensation for loss of revenue, exceptions and safeguard clauses, trade promotion, money, finance and payments.

Chapter 9, on the other hand, discusses the establishment and completion of an economic and monetary union. However, it contains only two articles namely establishment of an economic union, and completion of economic and monetary union.

The Executive Secretariat of ECOWAS has been making efforts to effectively implement all the policies contained in the Treaty. The Policy Harmonization Directorate of the Secretariat is in charge of implementing the economic policies of the Treaty. The Directorate has recorded some achievements and where there are challenges, it has made efforts to address them effectively.[97]

The Secretariat reported that in January 2003, the ECOWAS Authority of Heads of State and Government adopted the new instruments of the harmonized trade liberalization scheme (revised rules of origin, single customs declaration form, simplified approval procedure, revised compensation scheme). All Member States are required to apply fully the provisions of the scheme to ensure the consolidation of the free trade area status established since January 2000. In order to get new products admitted into the scheme, the new approval procedure requires each Member State to create a National Approvals Committee. Approval Committees of countries like Ghana, Nigeria, Burkina Faso, Senegal, Togo and Cote d'Ivoire, have already granted approval to their enterprises and products covered under its area of competence.[98]

It further reported that, in December 1999, the ECOWAS Authority as a strategy to accelerate the integration process, adopted a set of macroeconomic convergence criteria. In addition, on 21 December 2001, the Authority in Dakar, Senegal, decided to create a mechanism for multilateral surveillance of economic and fiscal policies of ECOWAS Member States. The sole objective of the surveillance mechanism is to ensure the harmonization and closest coordination of economic policies of Member States and convergence of the performance of national economies so as to promote stable and sustainable economic growth.[99]

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[97] See Mame C.S., Role of ECOWAS Secretariat in the implementation of ECOWAS economic policies. A paper presented at a 2 day sensitization seminar on the Implementation of ECOWAS Community Laws organized by the ECOWAS Secretariat and the European Union, in Abuja, between 25 - 26 November, 2004.

[98] Ibid, at pp. 4 - 8.

[99] Ibid, at pp. 6 - 9.

The components of ECOWAS macro-economic policy harmonization which are aimed at achieving the emergence of a monetary union are as follows:- (a) evaluation of macro-economic convergence programmes under the multilateral surveillance mechanism; (b) establishment of the second monetary zone and the single monetary zone; and (c) statistical harmonization and database development. The fast-tract integration process of 1999 has led to the establishment of the West African Monetary Zone (WAMZ), which is a currency zone for the non-UEMOA Member States like Ghana, Nigeria, Gambia, Guinea and Sierra Leone.

It is evident from the above analysis that, despite many implementation challenges identified by the Executive Secretariat, efforts have been made so far, to translate into action the provisions and spirit of chapters 8 and 9 of the Treaty on the integration of economic programmes, projects and activities, and of harmonization of economic policies consistent with the provisions of articles 2 - 5 of the revised Treaty earlier mentioned.

2.1 Free Trade Area

A free-trade area is characterized by intra-regional free trade but with each Member State having separate tariffs on imports from the rest of the world and trade controlled by a set of rules of origin to prevent trade deflection (i.e duty-free imports from the rest of the world through the Member State with the lowest general tariff).

ECOWAS is mandated under Article 3 (2) (d) (i) of the Revised ECOWAS Treaty to eliminate tariffs and non-tariff barriers among Member States, through "the liberalization of trade by the abolition, among Member States, of customs duties levied on imports and exports, and the abolition among Member States, of non-tariff barriers in order to establish a free area at the Community level."[100]

Discharging its mandate on free trade, ECOWAS has emphasized three areas. First, it is establishing a Free Trade Area (FTA) through the ECOWAS Trade Liberalization Scheme. The objective of the ECOWAS Trade Liberalization Scheme is to progressively establish a Customs Union among the Member States of the Community over a period of 15 years, starting from **1st** January, 1990, the date of entry into force of the Scheme. The Scheme involves three groups of products: unprocessed goods, traditional handicrafts products, and industrial products. The Customs Union to be established by this Scheme will lead to the total elimination of customs duties and taxes of equivalent effect, removal of non-tariff barriers and the establishment of a Common Customs External Tariff to protect goods produced in Member States.[101]

Second, it is setting up a common external tariff, and has made large strides since, it formally adopted the ECOWAS common external tariff structure in January 2006,[102] and created the ECOWAS- UEMOA Committee for concluding the project.[103]

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[100] Ibid, Article 3 (2) (d) (i)

[101] See ECOWAS Trade Regime publication, op. cit. at pp. 51- 65.

[102] See Decision A/DEC. 17/1/06 Adopting the ECOWAS Common External Tariff, at Niamey, Niger Republic, on 12th January, 2006.

[103] See Decision A/DEC. 14/01/06 on the Creation, Organization and Functioning of the ECOWAS- UEMOA Joint Management Committee on the ECOWAS Common External Tariff, done at Niamey, on 12th January, 2006. During the 29th Session of the Authority of Heads of State/Government.

Third, the ECOWAS Council of ministers has directed the Commission to take every necessary step to assist those Member States which are yet to adopt a Value Added Tax (VAT).[104]

2.2 Customs Union

This second phase of economic integration adds a Common External Thriff (CET) to create a customs union. This effectively removes the problem of trade deflection to which a free trade area is usually exposed. ECOWAS is mandated to establish a common external tariff structure and commercial policy towards nonmember States. Article 3 (2) (d) (ii) of the 1993 Revised Treaty requires "the adoption of a CET and a common trade policy vis-a-vis third countries."

Having achieved some success with respect to customs union by putting in place the CET in 2006,[105] the Community is on its way to a Common market by allowing the intra-regional flow of factors of production.

2.3 Common market

This third phase of economic integration allows the intra-regional free flow of factors of production and is known as a Common market. ECOWAS is mandated to establish a common market under Article 3 (2) (d) of the 1993 Revised Treaty through:-

1. The liberalization of trade by the abolition , among Member States, of customs duties levied on imports and exports, and the abolition, among Member States, of non-tariff barriers in order to establish a free trade area at the Community level;
11. The adoption of a common external tariff and a common trade policy vis-a-vis third countries;
111. The removal, between Member States of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment.

One of the factors of production envisaged above is the increase of intraregional and external investments; and improving the competitiveness of existing private sector/corporate entities to benefit from the common market economy on investment in ECOWAS region. The legal basis for the envisioned Common Investment market[106]is Article 3 (2) of the 1993 Revised Treaty. Specifically, there are two provisions relating to investment. First, is Article 3 (2) (f) providing for "the promotion of Joint ventures by private sector enterprises and other economic operators, in a particular through the adoption of a regional agreement on cross-border investments". Second, is Article 3 (2) (i) on the "harmonization of national investment codes leading to the adoption of a single Community Investment Code".[107]

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[104] See UNECA (2012) Assessing Regional Integration in Africa, Part V, op.cit.
[105] Refer to ECOWAS Authority's Decision A/DEC. 17/1/06 and Decision A/DEC. 14/01/06 op. cit.
[106] See ECOWAS Commission, Abuja (2009): - Common Investment Market Vision, pp. 1- 95.
[107] Between 2012 and 2014, ECOWAS Technical experts drafted, reviewed and finalized on the Draft Investment Policy and Draft Investment Code for ECOWAS. The two drafts are meant to be adopted by the Community by June 2015.

With the adoption of three major Supplementary Acts by the ECOWAS Authority of Heads of State and Government, on 19th December, 2008, the Commission is making progress with the implementation of the Regional Common Investment Market agenda.[108] These Acts are: - (1) The Supplementary Act A/SA.1/12/08 Adopting Community Competition Rules and the Modalities for their application within ECOWAS; [109] (2) The Supplementary Act A/SA.2/12/08 on the Establishment, Functions and Operation of the Regional Competition Authority for ECOWAS; [110] and, (3) Supplementary Act A/SA/.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation within ECOWAS.[111]

2.3.1 Overview of the ECOWAS Legal Regime on Trade and Investment.[112]

- ECOWAS Treaty 1975 - Revised 1993: 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 (Art 3.1)
- Investment objectives: facilitate 4 freedoms (labour, capital, goods and services)
- Promote investment by private sector and other economic operators through adoption of a regional agreement on cross-border investment (Art 3.2 (f))
- Harmonize national investment codes leading to the adoption of a single Community investment code. (Art 3.2 (i))
- Regional integration
- ECOWAS Trade Liberalisation Scheme to eliminate customs duties and other charges of equivalent effect b/n MS
- Customs Union - CET (5 bands)
- Common Market - Free factor movement, Trade Facilitation/ Corridors, Industrial Master Plan
- Monetary integration
- 2014 Anglophone West Africa Monetary Zone, WAMZ
- 2015 Monetary Union and intro of ECO
- Post 2015 merger of CFA + WAMZ
- ECOWAS Common Investment Market - Supplementary Acts annexed to ECOWAS Treaty

On the 19 December 2008, the authority of the Heads of State and Government of the ECOWAS region adopted the following three Supplementary Acts on: -

1. Competition Rules,
11. Investment Rules, and
111. The establishment of a Competition Authority.

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[108] Having developed and published the Regional Investment Policy Framework in 2007; the Common Investment Market Vision, in 2009; and the Operational Guidelines for the Harmonization of National Investment Laws in ECOWAS region, 2010.

[109] Done at Abuja on 19th December, 2008

\JO Ibid

Ill Ibid

[112] See generally the Conference Proceedings of the First ECOWAS Trade and Investment Conference Brussels, Belgium, 4-5 June, 2009

These three Acts[113] signal the take-off of the ECOWAS Investment Market process and the creation of a single economic space in West Africa.

i. Supplementary Act on Community Competition Rules within ECOWAS

The High Contracting Parties
MINDFUL of Articles 7, 8, 9 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of Article 3 of the said Treaty that provides for the harmonization and coordination of National Policies in the area of trade as a means of maintaining and enhancing economic stability within the subregion.

RECOGNIZING that the economy in the ECOWAS Common market must be efficient and competitive in order to promote and facilitate conditions necessary for economic growth in the region;

CONVINCED that an effective regulatory environment is advantageous for the promotion and sustainability of a vibrant economy within the Common market and the domestic economies of ECOWAS Member States;

NOTING that the promulgation of Community Competition Rules is consistent with the economic development objectives of ECOWAS Member States;

RECOGNIZING also that the protection of market conditions through the effective implementation of competition rules is consistent with international best practices and is in the interest of economic integration within the ECOWAS region;

DESIROUS of endowing ECOWAS with competition rules that are consistent with international standards in order to promote fairness in trade and effective liberalization of trade;
The Supplementary Act begins by clarifying selected key terms, inter alia, the following:

(a) "acquire" in relation to-
  i) goods: means to obtain by way of gift, purchase or exchange, lease, hire or hire purchase;
  ii) services: means to accept benefit from or to perform the service;
  iii) intellectual property rights: means to obtain by license, assignment or government grant;
(b) "agreement means any agreement, arrangement or understanding, whether oral or in writing and whether or not it is in intended to be legally enforceable;
(c) "economic activity" means economic activities involving:
  i) Manufacturing, producing, transporting, acquiring, supplying, storing, distribution and otherwise dealing in goods for gain or reward; and

[113] Adopted on 19th December 2008 by the ECOWAS Authority of the Heads of State and Government.

ii) Acquiring, supplying and otherwise dealing in services for gain or reward;

(d) "concerted practice" means a practice involving direct or indirect contacts between competitors falling short of an actual agreement;

(e) "anti-competitive practice" any practice coming from a physical or moral person the object or effect of which is to restrain competition of the disadvantage of the common market;

(f) "consumer" means a person, partnership or body corporate or incorporate acquiring goods or services other than the purpose of carrying on a trade or business;

(g) "trade" means any business, industry, profession or occupation relating to the supply or acquisition of products.

The Act provides also for the following objectives, scope, agreements and concerted practices in restraint of trade as well as compensation for victims of anti-competitive practices.

The objectives/purposes of this Supplementary Act are to-

a) promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce at the regional level;

b) prohibit any anti-competitive business conduct that prevents, restricts or distorts competition at the regional level;

c) ensure the consumers' welfare and the protection of their interests;

d) expand opportunities for domestic enterprises in Member States to participate in world markets.

Scope

(1) This Supplementary Act applies to agreements, practices, mergers and distortions caused by Member States which are likely to have an effect on trade within ECOWAS. The Rules shall concern notably acts, which directly affect regional trade and investment flows and/or conduct that may not be eliminated other than within the framework of regional cooperation.

(2) The Community Competition Rules shall also apply to state-owned enterprises.

(3) The under-listed agreements and activities shall be excluded from the scope of this Supplementary Act:

a) labour-related issues, notably activities of employees for the legal protection of their interests;

b) collective bargaining agreements between employers and employees for the purpose of fixing terms and conditions of employment;

c) activities expressly exempted by virtue of any treaty or any instrument or agreement in relation thereto or flowing therefrom, so long as the activities are not inconsistent with the purposes of this Supplementary Act;

d) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public;

e) such other activity declared, after consultation with the ECOWAS Competition Authority, by the Council of Ministers.

Agreements and Concerted Practices in Restraint of Trade

(1) The following shall be prohibited as incompatible with the ECOWAS Common Market: - all agreements between enterprises, decisions by associations of enterprises and concerted practices which may affect trade between ECOWAS Member States and the object or effect of which are the prevention, restriction, distribution or elimination of competition within the Common Market, and in particular those which:

a) directly or indirectly fix purchase or selling prices, terms of sale or any other trading conditions;

b) limit or control production, markets, technical development, or investment;

c) share markets, customers, or sources of supply;

d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no condition with the subject of such contracts.

(2) Any agreement or decision prohibited under the sub-paragraph **1** of this Article shall be automatically void and of no legal effect in any Member State of the ECOWAS Community.

Compensation for victims of anti-competitive practices

1) A person or Member State who has suffered losses as a result of any anti-competitive practice prohibited under this Supplementary Act, may, upon application to the Authority, receive compensation for such losses.

2) The conditions for granting the compensation stipulated in paragraph (1) above shall be defined in a subsidiary Regulation.

ii. Supplementary Act on ECOWAS Investment Rules[114]

This Supplementary Act begins by clarifying the following selected key terms, among others: -

(a) **"company"** means any corporate entity constituted or organized under the applicable law of any ECOWAS Member State, whether or not for profit, and whether privately or governmentally owned or controlled;

(b) **"national"** means a person who is a citizen of any Member State of ECOWAS;

(c) **"investment" means**

i) a company;

ii) shares, stock and other forms of equity participation in a company, and bonds, debentures and other forms of debt interests in a company;

[114] For full legal text see Ladan M.T., supra note 29 at Chapter Seven item 7.7.2

iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions or other similar contracts;

iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages; liens and pledges on real property;

iv) rights conferred pursuant to law, such as licences and permits provided that

- such investments are not in the nature of portfolio investments which shall not be covered by this Supplementary Act;
- there is a significant physical presence of the investment in the host State;
- the investment in the host State is made in accordance with the laws of that host State;
- the investment is part or all of a business or commercial operation; and
- the investment is made by an investor as defined herein.

(d) **"investor"** is any individual or company of any Member State of ECOWAS or a company that has invested or is making an investment in the territory of a Member State;

(e) **"measures"** includes any legal, administrative, legislative, judicial or policy decision that is taken by the host State, directly relating to and affecting an investment in the territory of the host State, but does not include measures in draft form;

(f) **"home State"** means a Member State of ECOWAS from where the investment or the investor comes;

(g) **"host State"** is the ECOWAS Member state where the investment is located.

(h) **"Third Country"** is any other State which is not a member of ECOWAS.

The Act further provides for the objective, scope of coverage, standards of treatment to Member States' investors, obligations of investors and investor liability dispute settlement, Host and Home State obligations and rights, relations to other investment agreements and obligations, general exceptions and regional cooperation etc.

The **objective** of the Community Rules on investment is to promote investment that supports sustainable development of the region.

Scope of Coverage

(1) This Supplementary Act applies to all investments by an investor, whether the investment is made before or after the entry into force of this Supplementary Act.

(2) This Supplementary Act applies to any measure adopted or maintained by a Member State, after the entry into force of this Supplementary Act by a governmental authority of the host State.

(3) This Supplementary Act does not create retroactive obligations or responsibilities for investors. However investors who are not in compliance with ongoing obligations and responsibilities shall seek to comply with them within 24 months of the entry into force of this Supplementary Act.

Minimum Regional Standards

(1) Each Member State shall accord to investors from a Member State or their investments treatment in accordance with customary international law, including fair and equitable treatment and reasonable protection and security under the domestic law. This obligation shall be understood to be consistent with the obligation of ECOWAS Member States.

(2) Paragraph (1) prescribes the customary usage of international law minimum standard of treatment of aliens as the minimum standard of treatment to be accorded to investments. The concepts of "fair and equitable treatment" and "full protection and security" are included within this standard, and do not create additional substantive rights.

(3) Each Member State shall accord to investors and their investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

(4) Notwithstanding Paragraph (3), if an investor ofa State, in the situations referred to in that Paragraph, suffers a loss in the territory of another Member State resulting from:

1. requisitioning of its investment or part thereof by the latter's forces or authorities; or

11. destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the host State within the Community shall provide the investor restitution or compensation, which in either case shall be prompt, adequate and effective, and, with respect to compensation, shall be in readily convertible form.

(1) No Member State may directly or indirectly nationalize or expropriate an investment in its territory ("expropriation"), except:

a) for a public purpose;
b) on a nondiscriminatory basis;
c) in accordance with due process of law; and
d) on payment of compensation in accordance with Paragraphs (2) to (6).

(2) Appropriate compensation shall normally be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

(3) Compensation shall be paid without delay and be fully realizable

Transfers of Assets

(1) Each Member State shall permit all transfers relating to an investment to be made freely and without delay. Such transfers include:

a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns, physical assets and other

amounts derived from the investment;

b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

d) payments made pursuant to Article 8 of this Supplementary Act; and

e) payments arising under any dispute settlement process.

(2) Each Member State shall permit transfers to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

(3) Notwithstanding Paragraphs (1) and (2), a host State within the Community may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

a) bankruptcy, insolvency or the protection of the rights of creditors;

b) issuing, trading or dealing in securities;

c) criminal or penal offenses;

d) transfers of currency or other monetary instruments; or

e) ensuring the satisfaction of judgments in adjudicatory proceedings

Notwithstanding Paragraph (2), a host State may restrict transfers or returns in circumstances where it could otherwise restrict such transfers under this Supplementary Act.

General Obligations

(1) Investors and Investments are subject to the laws and regulations of the host State.

(2) Investors and investments must comply with the host State measures prescribing the formalities of establishing an investment, and accept host State jurisdiction with respect to the investment.

(3) Investors shall strive, through their management policies and practices, to contribute to the development objectives of the host States and the local levels of government where the investment is located.

(4) An investor shall provide such information to a potential host State Party to this Supplementary Act as that Party may require concerning the investment in question for purposes of decision-making in relation to that investment or solely for statistical purposes. The host State shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this Paragraph shall be construed to prevent any Member State of the Community from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law.

Corporate Governance and Practices

In accordance with the size and nature of an investment,

(1) Investments shall comply with and maintain national and internationally accepted standards of corporate governance for the sector involved, in particular for transparency and accounting practices.

(2) Investors and relevant public authorities of the host State(s) shall make available to the public, any investment contract or agreement with the host State govemment(s), subject to the law governing the release of confidential business information.

(3) Investors shall, where appropriate, establish and maintain with the local community, liaison processes in accordance with regionally accepted standards.

(4) Where relevant regionally accepted standards of the type described in this Article are not available or have been developed without the participation of member countries, the Community shall establish such standards.

Corporate Social Responsibility

(1) In addition to the obligation to comply with:
all applicable laws and regulations of the host Member State;
and the obligations in this Supplementary Act and in accordance with: -

- the size, capacities and nature of an investment, and taking into account;
- the development plans and priorities of the host State;
- the Millennium Development Goals and the indicative;
- list of corporate social responsibilities agreed by the Member States.

(2) Where standards of corporate social responsibility increase, investors should endeavour to apply and achieve the higher level standards.

Investor Liability

Investors shall be subject to civil actions for liability in the judicial process of their host State for acts or decisions made in relation to the investment where such acts or decisions lead to significant damage, personal injuries or loss of life in the host State.

iii. Supplementary Act on Establishment of ECOWAS Regional Competition Authority[115]

This Supplementary Act provides for the establishment, function and operation of the ECOWAS Competition Authority responsible for implementing the Community Competition Rules.

The Act provides for the following functions and powers among others of the Competition Authority: -

Functions of the Authority

In accordance with the provisions of Article **1** of this Supplementary Act, the ECOWAS Competition Authority shall perform the following functions:

a) keep under review commercial activities in the Community Market with a view to ascertaining practices which may distort efficient market conduct or which may adversely affect the economic interests of consumers;

b) carry out on its own initiative or at the request of any person from the Member States or of the Community Court of Justice, such investigations in relation to the conduct of business in the Common Market as will enable it to determine whether any enterprise is engaging in business practices in contravention of the Supplementary Act adopting a Common Competition

Regulation;

c) preclude and eliminate anti-competitive agreements and conduct amounting to an abuse of a dominant market position;

d) propose, through the ECOWAS Commission, to the Council of Ministers for adoption, the setting and periodic review of the schedule of fines and various levels of compensation to be applied within the framework of this Supplementary Act;

e) at the request of the executive and judicial authorities of Member States and Community institutions, issue advisory opinions regarding the interpretation and application of Community Compensation Rules;

f) cooperate with national and regional competition agencies in taking measures necessary to ensure implementation of the obligations arising from this Supplementary Act;

g) cooperate with and assist any association, intergovernmental organization, or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Supplementary Act;

h) make available to persons engaged in business as well as to consumers, general information with respect to their rights and obligations under the Supplementary Act adopting the Community Competition Rules;

i) undertake studies and publish reports and information regarding matters affecting the interests of consumers in the implementation of the Supplementary Act adopting the Community Competition Rules;

j) as input into the activity report of the Community, prepare and transmit to the President of the ECOWAS Commission, an interim report and an annual report on the activities of the Authority;

k) contribute to the training of the staff of national competition authorities and provide them with support notably in the management of investigations, creation of a competition-related data base, advocacy on competition and consumer-related issues.

Powers of the Authority

1) Without prejudice to the provisions relating to the powers of the Community Court of Justice, the Authority, in the execution of its functions under this Supplementary Act, shall have power to:

a) declare certain business practices to be abuses of dominant position;

b) recommend to a competent national institution-

i) to order the termination of an agreement;

ii) prohibit the making or carrying out of an agreement;

iii) prohibit the attachment of extraneous conditions to any transaction having the effect of lessening competition;

iv) prohibit discrimination or preferences in prices or other related matters;

v) require the transparent publication of commercial information (prices, scale of rates, general conditions of sale, product composition and expiry dates);

[115] For full legal text see Ladan M.T., supra note 29 at Chapter Seven item 7.7.3

c) Subject to the respect of the provisions of the present Supplementary Act, undertake the necessary actions for the effective performance of its functions.

2) In considering applications for authorizations, mergers, acquisitions or business combinations as provided for in Article 7, paragraph 3 of the Supplementary Act adopting the Community Competition Rules, the Authority shall take into consideration:

i) the position on the market of the businesses concerned as well as their economic and financial power;
ii) the structure of all the markets concerned;
iii) the actual or potential completion from enterprises located within or outside the ECOWAS Common market;
iv) the effects of the transaction on suppliers and buyers;
v) the legal or other obstacles to entry as well as the supply and demand trends in respect of the goods and services considered; and
vi) any potential for technical and economic progress created by the proposed transaction, which may be in the interest of the consumer and may not constitute a hindrance to competition.

3) For the purpose of granting to any physical person and to any Member State, the authorization provided for in Article 12 of the Supplementary Act adopting a Common Competition Regulation, which article relates to the conclusion or execution of an agreement for the purpose of engaging in business practices likely to violate prohibitions imposed by that Supplementary Act, the Authority shall take into consideration, the following factors:

i) the vulnerability of the sectors concerned;
ii) the impact that the said agreement or practices will have on the capacity of small and medium enterprises to effectively compete;
iii) the promotion of socio-economic development within the Community; and
iv) any other relevant consideration.

4) The Authority may withdraw or modify an authorization if it observes that:

i) the information provided in support of the application for authorization were false or misleading; or
ii) the conditions and obligations governing the grant of authorization are violated.

5) The Authority shall, before cancelling or reviewing any authorization, forward a notification in writing to the interested party, detailing the reasons of its decision and informing it of its right to request hearing by the Authority on the matter within a deadline to be specified in the said notification.

6) The Authority shall keep a register of authorizations granted, in a form that it shall determine. The register shall be open to consultation by the public.

7) The Competition Authority shall obtain such information as it considers necessary to assist it in its investigations and inquires and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.

8) The Authority shall have power to:

a) summon and examine witnesses;
b) demand any document to be communicated for examination;
c) require that any document submitted to it be supported by affidavit;
d) require the furnishing of such returns or information as it may require within such period as it may specify by notice; and
e) adjourn any investigation or inquiry, where necessary.

9) The Authority may hear orally or in writing from any person who in its opinion will be affected by an investigation or inquiry being carried out by the Authority.

10) The Authority may require an enterprise or such other person as it considers appropriate to state such facts concerning products manufactured, produced or supplied by that person as the Authority may think necessary to determine whether the conduct of the business in relation to the products constitutes an anticompetitive practice.

11) If the information specified in paragraph (7) if this Article is not furnished to the satisfaction of the Authority, the Authority may make a finding on the basis of information available to it.

12) All enterprises or persons summoned to attend and give evidence or produce documents at any sitting of the Authority shall be bound to obey the summons served thereupon.

13) Hearing of the Authority shall take place in public but the Authority may, whenever the circumstances so warrant, conduct a hearing in camera.

14) A person commits an offence and is liable to a fine if that person:
a) without sufficient cause, fails or refuses to:
i) attend before the Authority in obedience to a summons validly served;
ii) produce a document which he/she is required by such summons to produce;
b) destroys any record likely to be required for an investigation that has commenced under this Supplementary Act, with intent to mislead the Authority or to prevent or impede the investigation;
c) being a witness, leaves a sitting of the Authority without the Authority's perm1ss1on;
d) willfully;
i) insults any member or officer of the Authority; or
ii) obstructs or interrupts the proceedings of the Authority.

Sanctions of anti-competition practices

1) Should the Authority, upon conclusion of investigations, be convicted that there are serious and corroborating evidence to presume a violation of the provisions of this Supplementary Act adopting the Community Competition Rules, which violation is liable to a fine, it shall pronounce the appropriate sanction against the offender. An appeal can be filed against the decision of the Authority before the Court of Justice of the Commission.

2) Apart from the sanction provided for in Articles 4 paragraph 14 and 8 paragraph 2, the Authority can also grant the compensations provided for under Articles 8 paragraph 3, 9 paragraphs 3 and 10 of this Supplementary Act.

3) The decisions taken by the Authority in accordance with the paragraphs 1 and 2

of the present article are likely to appeal. The appeal suspends the execution of the decision of the Authority. The Community Court of Justice decides in appeal in last instance.

The adoption of the ECOWAS investment Policy Framework [116] aims at facilitating the simplification and harmonization of the various national investment laws in the region towards a Community Investment Code (CIC)[117] for the take off of the Common Investment Market.

As at the 18 December, 2018, the ECOWAS Common Investment Code (CIC) and Draft ECOWAS Investment Policy (ECOWIP) were adopted by the relevant ECOWAS authorities. They were signed by Member States in June 2019. With the above instruments, ECOWAS is heading gradually towards an economic umon.

It is important to note that the common market being envisaged is not an end in itself, but a means to enable every stakeholder in the ECOWAS Community to make the most of the opportunities offered to them by a more open and integrated regional economy.

2.3.2 Economic Union:- Monetary and fiscal matters

Economic union refers to a final phase of a regional economic integration process which includes the integration of monetary and fiscal matters. ECOWAS is mandated by Article 3 (2) (e) to ensure "the establishment of an economic union through the adoption of common policies in the economic, financial, social and cultural sectors, and the creation of a monetary union."[118]

In an effort to discharge the above mandate, ECOWAS Member States (Ghana, Gambia, Guinea, Liberia, Nigeria and Sierra-Leone) are setting up a second West African Monetary Zone as part of the efforts towards an eventual monetary union in the ECOWAS region.[119] It is envisaged that this zone will be merged with the CFA Franc zone to form a single monetary zone in West Africa.

A number of important documents relating to the institutional, administrative and legal framework for establishing the zone was adopted[120] as follows: -

- The agreement of the West African Monetary Zone (WAMZ);
- The statutes of the West African Monetary Institute, (WAMI);
- The statutes of the West African Central Bank (WACB); and
- The provisions on the Stabilization and Cooperation Fund.

[116] See Regional Investment Policy Framework (2007) op. cit., pp. I- 51.

[117] A Draft Code (CIC) already drafted, reviewed and finalized by the ECOWAS Technical Experts Working Group between 2012 and 2014. The Present author served as a member on this Group. The Group also finalized on the Draft Investment Policy. Both documents are expected to be adopted by the relevant authorities by June 2015.

[118] Article 3 (2) (c) of the 1993 Revised ECOWAS Treaty.

[119] Having signed the Accra Declaration on April 20, 2000 at the Summit of the Heads of State of the zone.

[120] At the 2nd Summit of State/Government of the zone held in Bamako, Mali, December 15, 2000.

The date for the introduction of the common currency was rescheduled more than thrice in order to give Member States more time to fully comply with the convergence criteria.[121] Under the Roadmap for the ECOWAS Single Currency Programme, ECOWAS countries are expected to launch a single currency by 2020.[122]

2.4.1 *Adoption of ECO - single currency, 29 June, 2019: Challenges and Prospects*

On 29th June, 2019, the Authority ofECOWAS Heads of States and Government adopted 'ECO' as the name of the Single Currency to be issued in January 2020. The leaders at their 55th Ordinary Session in Abuja endorsed the name and instructed the ECOWAS Commission to work with West African Monetary Institute and National Central Banks to accelerate the implementation of the revised roadmap with regard to the symbol of the Single Currency.

Almost 30 years since the goal was first sketched out, the ECOWAS plans to boost cross border trade and commerce among Member States with the adoption of the common currency. However, a single currency will only work if all the countries involved are economically aligned, which is not currently the case in the region.

The fact that different exchange regimes co-exist in a small area does not favour trade between countries due to the high transaction costs involved for fees for currency conversion and the insurance costs incurred by importers and exporters to cover exchange risks.

Further, the Franc Zone, whose currency is tied to the Euro, and a set of non- convertible national currencies whose exchange rates in relation to the dollar or the euro are fixed administratively to a greater or lesser degree, constitute a challenge.

For currencies not pegged to an international currency, the problems linked the credibility of their exchange policies and the uncertainties linked to volatile exchange rates discourage stable foreign capital and investment over the medium and long term.

Implementing a single currency in ECOWAS will depend on the political will of the Member States. A monetary union has better chances of survival when the Member States have similar economic structures, when their economic policies are coordinated, and when each country agrees to refrain from adopting policies that would be detrimental to the goal of the monetary union.

It is not enough to have a single currency. The exchange regime is a fundamental issue, because decisions have to be made about what is best for the countries in their relationships with the rest of the world.

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[121] Originally set at January 1st 2003 was rescheduled to July 1, 2005 and rescheduled again to December 1, 2009. The WAMZ monetary union would be launched in 2015 or 2016.

[122] In order to facilitate the creation of the Common Central Bank and the introduction of a common currency, an interim institution, the West African Monetary Institute was set up in Accra, Ghana in January 2001. The institute which undertakes technical preparations for the establishment of a common West African Central Bank started operations in March 2001.

The future single ECOWAS currency could be allowed to float against international currencies, or it could be pegged to them at a fixed exchange rate, or it could even fluctuate in relation to a bundle of selected currencies. Choosing an exchange regime is difficult because to do so, one must take all aspects of economic and social well being of Community citizens into account: eg. debt profiles, impact on trade, inflation, economic growth, protection of the region's agricultural and industrial potential, among other considerations.

In the financial arena, ECOWAS has established a Bank for Investment and Development.[123] Its primary objective is to finance and promote economic growth and development within ECOWAS. It offers a range of financial products and services to businesses.

2.5 Harmonization of Laws and Policies

One of the non-tariff barriers to intra-regional trade and investment is the disparity in the national business, trade and investment laws. It is submitted that the elimination of legal obstacles is vital to the effective functioning of any economic integration scheme in Africa.[124]

Accordingly, Article 3 (2) (a), (b), (h), (i) and G) of the 1993 Revised ECOWAS Treaty mandated ECOWAS to ensure the harmonization of relevant laws and policies in order to pave way for a smooth and legally certain regional trade and investment environment.

(a) The harmonization and co-ordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters;

(b) The harmonization and co-ordination of policies for the protection of the environment;

(c) The establishment of an enabling legal environment;

(d) The harmonization of national investment codes leading to the adoption of a single Community investment code;

(e) The harmonization of standards and measures.

Discharging the above mandate, ECOWAS Commission has in the last ten years embarked upon a vigorous harmonization of business and investment laws and policies in the best interest of the Community and her citizens as well as other stakeholders. This has resulted in the finalization of the following drafts by the Technical Experts Working Group for the Commission's due consideration: -

i. Common Investment Code (CIC) adopted on 18 December, 2018; Signed by Member States in June, 2019
ii. ECOWAS Investment Policy (ECOWIP); adopted on 18 December, 2018; Signed by Member States in June, 2019
iii. Draft Directives on Intellectual Property: - Copyright, Trademark,
iv. Patents and Design;

[123] An off-shoot of the ECOWAS Fund.
[124] Ladan M.T. (2009) Introduction to ECOWAS Community Law and Practice, op. cit.

v. Draft Directive on Uniform Rules on the Sale of Goods;
vi. Draft Directive on Security of Tenure for Local and Foreign;
vii. Nationals relating to Business Premises in ECOWAS;
viii. Six other drafts relating to company law, commercial contracts, Agency, Insurance, and carriage of goods may be finalized by 2020.

3. ***Implementation of Treaties and ECOWAS Laws in Member States***

Implementation of Treaties that are legally binding on State Parties require the following measures to be put on ground in good faith: implementing legislative, policy, administrative, budgetary, institutional and judicial measures to discharge treaty obligations.

It further requires addressing the key problems facing the ECOWAS Court of Justice regarding its mandate, lack of enforcement of its Judgment and no referral to it by Member States.

3.1 Role of the ECOWAS Court of Justice in ensuring a human rights approach to sustainable economic integration of the region

The adoption of the Supplementary Protocol in January 2005, which granted human rights Jurisdiction to the Community Court of Justice, was a turning point in the history of the Court,[125] and the citizens.

Under Article 9 (4) of the 2005 Supplementary Protocol,[126] the Court was for the first time given Jurisdiction to determine cases of human rights violations that occur in any Member State.[127] Article 10 (d) thereof, gave individuals access to the Court, on applications for relief for violation of their human rights on the conditions that the application shall not be anonymous nor be made whilst the same matter has been instituted before another international Court for adjudication.

Developing its own human rights Jurisprudence, the Court, applying Article 4 (g) of the 1993 Revised ECOWAS Treaty, carefully and boldly delineated its scope of human rights Jurisdiction based on certain guiding principles.[128] First, the Court will not admit of any application which does not clearly indicate the alleged human rights violation. In Moussa Leo Keita's case,[129] the Court held that even if it were competent to adjudicate in cases of human rights violation, the applicant had not indicated any proof of a characteristic violation of a fundamental human right.

Second, the Court will continue to uphold the supra-nationality[130] of ECOWAS introduced by the Revised Treaty into its decision making for the realization of Community integration objectives.[131] Accordingly, the court has been holding Member States accountable for their

[125] See Tony, A.M. (2013): The mandate ofregional Court: Experiences from the ECOWAS Court of Justice. A paper presented at the Regional Colloquium on the SADC Tribunal, held at Johannesburg, South Africa, between 12-13 March, 2013 at p.11

[126] A/SP.1/01.05 done at Acrra Ghana, on 19th January, 2005, op. cit

[127] See Ladan M.T., (2009) Introduction to ECOWAS Community Law and Practice, op. cit. also see Ladan M.T., (2002): - Economic and Human Rights Framework under the ECOWAS Treaty. A.B.U. Journal of Commercial Law, Vol., No. 1, at pp. 54- 67.

[128] See ECOWAS Community Court of Justice, Abuja, (2011): Law Reports,2004 -2009

[129] Musa Leo Keita v. The Republic of Mali ECW/CCJ/JUD/03/07 at pp. 63- 76.

[130] In this context, supra-nationality refers to a situation where an international institution is endowed with powers to take decisions binding on Sovereign States either generally or in specific areas of State activity. In effect, most legal

Treaty obligations and has refused to be constrained by the domestic laws of Member States, including national constitutions that are inconsistent with their Treaty obligations.[132] The Court's Jurisprudence on the supra-nationality of ECOWAS and the ECOWAS Court of Justice in Musa Saidykhan, [133] SERAP, [134] Mukhtar Ibrahim Aminu[135] and Peter David,[136]is anchored on Articles 9 (4), 12 (3) and 15 (4) of the 1993 Revised ECOWAS Treaty and cemented by the provisions of Articles 1-7 of the Supplementary Protocol Amending the Revised Treaty, especially, the new Article 9 on the new legal regime of the Community earlier discussed above.[137]

Third, triggering Article 10 (d) of the Supplementary Protocol, 2005, on access to the Community Court by individuals on application for relief for human rights violation, the Court's emphatic Jurisprudence is that exhaustion of local remedies [138] is NOT a requirement under the Community Law for human rights litigation.[139] Neither is the lack of provision for it, a lacuna in the law that the Court can fill in, using its Judicial discretion.[140]

Fourth, notwithstanding the rationale behind the requirement of exhaustion of local remedies, the ECOWAS Court, in its Jurisprudence on the application of the conditions in Article 10 (d) (ii) of the 2005 Supplementary Protocol, has ruled the case of Valentine Ayika v. Republic of Liberia,[141] admissible notwithstanding the fact it was alleged to be pending before the Supreme Court of a Member State (in this case Liberia).[142] But in a related case of Mme Azieblevi Yovo et 31 Antres v. Societe Togo Telecom et Etat Togolais, [143]the Court declined Jurisdiction on the ground that the matter was previously instituted before the OHADA [144] Court,[145] which is an international court within the condition of Article 10 (d) ii.

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instruments adopted by ECOWAS are now directly applicable within member States. See also the Supplementary Protocol Amending the Revised Treaty, op. cit.

131 See ECOWAS, Abuja (1992); - Review of the Treaty, op. cit, p. 16, para 42.

132 See Musa Saidykhan v. Republic of the Gambia (2009) ECW/CCJ/APP/11/07, See paras 48- 50 of the Ruling of 30th June 2009.

133 Ibid

134 Registered Trustees of the SERAP v. Federal Republic of Nigeria and UBEC (2009), ECW/CCJ/APP/08/08, Ruling of 27th October 2009 at paras 18-20

135 Mukhtar A.l. v. Government of Jigawa State (2011) ECW/CCJ/APP/02/11 Ruling of7 July 2011 paras 42- 45.

136 Peter David v. Ambassador Ralph Uwechue ECW/CCJ/APP/04/09.

137 See item 1.4 of this paper on analysis of the nature ofECOWAS Community Law.

138 Although it is a well recognized principle of customary international law, and the most important requirement for admissibility of cases before the African Human Rights Commission and other international human rights bodies, the African Commission has created eight exceptional grounds where a complainant need not exhaust local remedy. See Centre for Human Rights, University of Pretoria, South Africa (2011): - A Guide to the African Human Rights System:- Celebrating the African Charter at 30 years, at p. 26.

139 See the following cases: - Prof. Etim Moses Essien v. Republic of Gambia, ECW/CCJ/APP/05/05 - ECW/CCJ/JUD/05/07, CCJELR (2004- 2009) at pp. 113- 130 ; Hadijatou Mani Koraou v. the Republic of Niger ECW/CCJ/APP/08/08 - ECW/CCJ/JUD/06/08, CCJELR (2004- 2009) at pp. 217; Musa Saidykhan, op. cit; Femi Falana v. Republic of Senegal ECW/CCJ/APP/05/08- ECW/CCJ/RUL/01/10 of 27 -4- 2010.

140 Hadijatou Mani Korau's case, op. cit.

141 ECW/CCJ/APP/07/11- ECW/CCJ/JUD/04/12 of lst January, 2012.

142 Ruling of 19 December, 2011.

143 Suit No. ECW/CCJ/APP/08/11 -ECW/CCJ/JUDG/04/12 of 31 January, 2012.

144 OHADA refers to the Organization for the Harmonisation of Business Law in Africa. Set up by a Treaty adopted on October 17, 1993 in Port Louis, Mauritius. OHADA establishes the Supremacy and the direct effect of OHADA Uniform Laws. OHADA business law is applicable to 16 west and Central African countries, including all the 8 Francophone ECOWAS and Lusophone Guinea-Bissau. Its permanent secretariat is at Younde, Cameroon. See www.ohada.com.

145 The OHADA Common Court of Justice and Arbitration, based in Abidjan, Cote D'ivoire, advises member States on the Uniform application and interpretation of common OHADA business Law; reviews decisions rendered by Courts of Appeal of member States in relation to OHADA business law; and monitors the arbitration proceedings conducted pursuant to the OHADA Uniform Arbitration Act.

Fifth, based on relevant authorities and the need to enhance access to the Community Court for Justice [146] and human rights protection in the African context, the court's Jurisprudence favours duly registered NGOs[147] under national laws of ECOWAS Member States and enjoying observer status with ECOWAS institutions, as having the right to institute actions for human rights violations, especially public interest litigations involving group rights. [148]

Sixth, while clearly the Community Court does not have appellate Jurisdiction over the decisions of national courts, [149] it has correctly emphasized its international character within the scope of its human rights Jurisdiction. [150] Accordingly, it has declined Jurisdiction in an action by an individual against another individual for human rights violations; [151] and has dismissed applications for human rights violations instituted by or against limited liability companies due to lack of Jurisdiction. [152] The Court has rightly ruled that only Member States and Institutions of the Community can be sued before the court for human rights violations.[153]

Finally, for the progressive realization of the aims and objectives of the regional economic integration [154] agenda for West Africa, the Community Court is mandated, [155] inter alia, to adjudicate on any dispute relating to the interpretation, application and legality of the ECOWAS Community Law,[156] and the failure by Member States to honour their obligations thereunder.[157]

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[146] See Ladan M.T., (2010) Access to Justice as a Human Right under the ECOWAS Community Law. A paper presented at the Commonwealth Regional Conference on the 21st Century Lawyer- present challenges and future skills. Organized by the Commonwealth Lawyers Association, UK, in collaboration with the Nigerian Bar Association. Held at Transcorp Hilton Hotel, Abuja, Nigeria. on April 8- 11 , 2010.

[147] NGOs like Socio-Economic Rights and Accountability Project (SERAP) and Socio-Economic Rights Action Centre (SERAC).

[148] See SERAP v. President of Federal Republic of Nigeria and 8 ors, ECW/CCJ/APP/08/09, Ruling of 10 December, 2010. Also see SERAC v. Nigeria (2001) AHRLR60.

[149] See Frank Ukor v. Rachad Laleye and Anor ECW/CCJ/APP/04/05- ECW/CCJ/JUD/06/07, CCJELR (2004- 2009) at pp. 131- 150. Also see Mousa Leo Keita, op. cit; and Jerry Ugokwe, op. cit.

[150] See Peter David v. Ambassador Ralph Uwechue ECW/CCJ/APP/04/09, Ruling of 11 June, 2010, paras 40- 41.

[151] Ibid.

[152] See SERAP v. Federal Republic of Nigeria ECW/CCJ//APP/08/09, Ruling of 10 December 2010; Starcrest Investment Ltd v. President, Judgment of 8th July, 2011; and Ocean King Nig. Ltd v. Senegal. ECW/CCJ/APP/05/08, Judgment of 8 July 2011.

[153] Rightly because since they cannot, as a rule, be sued before the domestic courts/Jurisdiction, the only avenue left to the victims of human rights violations for seeking redress for grievance against those institutions is the Community court of Justice.

4. Conclusion and Way Forward

It is evident from the above analysis that regional integration shares some common features with regional human rights regimes. Like legal commitments assumed for human rights protection, regional integration agenda limits or constrains sovereignty. Hence the rationale behind the principle of supra- nationality of ECOWAS and ECOWAS Court of Justice in decision making processes affecting the Community and its citizens.

Integration cannot be achieved without some measure of supra-nationalism. The experience of the ECOWAS, though not perfect, confirms that unless Member States give up some parts of their national Sovereignty and empower regional integration institutions to make binding decisions, and to implement them, little progress can be made.

Further, it is obvious that in the context of West Africa, the effective realization of the aims and objectives of the economic integration agenda through the establishment of a free trade area, customs union, common market and economic union, is heavily dependent on the political will of Member States to discharge their obligations towards ensuring the finalization and adoption of the draft harmonized business, trade, investment, monetary, employment and labour laws and Policies in the region.

For any meaningful consolidation of the role of the Community Court of Justice as the engine of human rights approach to regional economic integration in West Africa, there is the need for the Court to go beyond heavy reliance on Article 4 (g) of the Revised ECOWAS Treaty in determining its scope of human rights Jurisdiction. This is necessary because, in the context of economic integration, the provisions of the following Community Legal instruments are of equal importance: - Articles 56 (2), 63 (2) and 66 of the same Revised Treaty; Article 2 (b) and (d) of the Protocol Relating to the mechanism for Conflict prevention, etc. Article 1 (h) of the Supplementary Protocol on Democracy and Good Govemanc3e; and Article 21 (2) and (5) of the Supplementary Act Adopting Community Rules on Investment.[158]

It is evident from the above that the ECOWAS Court has fairly demonstrated its capacity to assist government of Member States in building a culture of democracy and good governance through its few landmark human rights decisions, thereby contributing to strengthening human rights protection and respect for the rule of law.

For effective delivery of justice and realization of Community objectives, it is very imperative for Member States to demonstrate greater political will in the enforcement of the Community Court's judgments as required by the Community law.

Furthermore, in order to avoid conflicting interpretations of ECOWAS Community Texts, it is highly desirable for National Courts to comply with the provisions of Article 10 (f) of the 2005 Supplementary Protocol on referral for such interpretations to the Community court of Justice.

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[154] See Articles 3, 4 and 5 of the 1993 Revised Treaty op.cit.

[155] Mandatory by the cumulative effect of Articles 15 and 76 (2) of the Revised Treaty and new Article 9 (i) (a) to (d) of the Supplementary Protocol Amending the Protocol Relating to the Community Court of Justice.

[156] As defined in this paper under item 1-4.

[157] Article 9 (i) (d) 2005 Supplementary Protocol on the Community court of Justice, op.cit.

[158] See item 3.1 of this paper for a detailed discussion on this subject.

Finally, there is an urgent need for strategic collaboration between the judiciary and the executive/legislative arms of government in the region, in uplifting Community citizens out of their conditions of extreme poverty, poor quality oflife and standard ofliving through upholding the principles of democratic governance;- respect for the rule of law, human rights, transparency and accountability in governance and effective delivery of justice as fundamental values of ECOWAS.[159]

[159] Ladan M.T., (2012): - Contribution of the ECOWAS Court ofJustice in the Consolidation of Democracy, Good Governance and Human Rights in West Africa. A paper presented at the International Conference on Human Rights, Democracy and Good Governance: - Role of the ECOWAS Court ofJustice. Organized by the ECOWAS Court of Justice, Abuja in collaboration with UNDP regional office, Dakar in October at Mensvic Hotel, Accra, Ghana on 15-19, 2012 at pp. 20-21.

LEGAL ASPECTS OF ECONOMIC INTEGRATION

BY

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Director - General
West African Monetary Institute (WAMI)

OUTLINE

1.0 Introduction

2.0 Literature Review

3.0 Law and Economic Integration

4. Law and Regional Alliances

5. Law and Institutional Issues of Economic Integration

6. Issues in Implementing Community Treaties and Laws in ECOWAS

7. Conclusion

8.0 Recommendations

INTRODUCTION

Economic integration refers to the harmonization of policies among a group of countries through the reduction or elimination of trade and non-trade barriers and coordination of monetary and fiscal policies.

ECOWAS integration agenda seeks to promote co-operation and integration among Member States to establish an economic union in order to improve living standards, maintain and enhance economic stability, foster interrelationships among Members States and contribute to promoting the development of the African Continent.

Key pillars of the ECOWAS integration agenda are trade and financial market integration, and harmonization and co-ordination of national policies.

Trade Integration policies include:

- ECOWAS Trade Liberalization Scheme (ETLS);
- ECOWAS Common External Tariff (CET);
- ECOWAS Single Customs Declaration Form.

WAMZ financial market integration agenda is anchored on the following policy priorities:

- full capital account liberalization;
- cross-listing of stocks;
- regional currency convertibility/quoting and trading in the WAMZ currencies;
- harmonization of financial institutions practices; and
- cross-border payment systems.

WAMZ financial market integration programmes:

- Payment Systems Development project in The Gambia, Guinea, Liberia and Sierra Leone (2012-2016);
- Harmonization of banking and non-bank financial institutions legislations;
- Promoting quoting and trading in WAMZ currencies;
- Implementation of the Pan-African Payment and Settlement Systems (PAPSS);
- Establishment of College of Supervisors for banks and non-bank financial institutions; and
- Promotion of the West African Capital Markets Integration Council (WACMIC) forum.

Benefits of lntegration

The benefits of regional integration depend on the level of economic integration.

Benefits results from a combination of policy, institutional and regional actions, market-driven expansion and deepening of the financial system (AfDB, 2010).

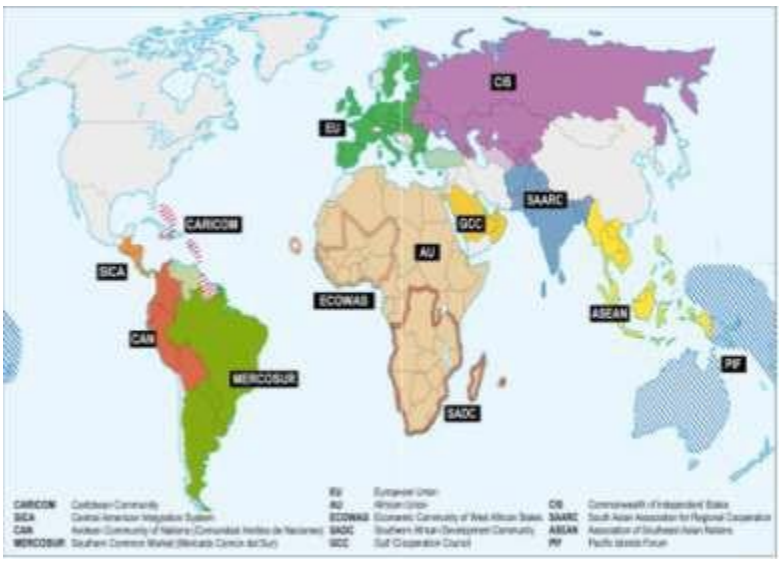
Benefits accruing from economies of scale, efficiency gains from increased competition and increased access to financial services (World Bank, 2007).

Specific Benefits oflntegration

Access to enlarged market;
Lower cost of transacting business;
Promotes trade development;
Increases foreign direct investment;
Accelerates financial inclusion;
Promotes private sector development through increased competition, capital flows and expanded market;
Strengthens the negotiating capacity of the region with other regional and multilateral agencies;
Improves infrastructure capacity, especially transport and telecommunications
Increases security and promotes solidarity;
consolidation of historical heritage

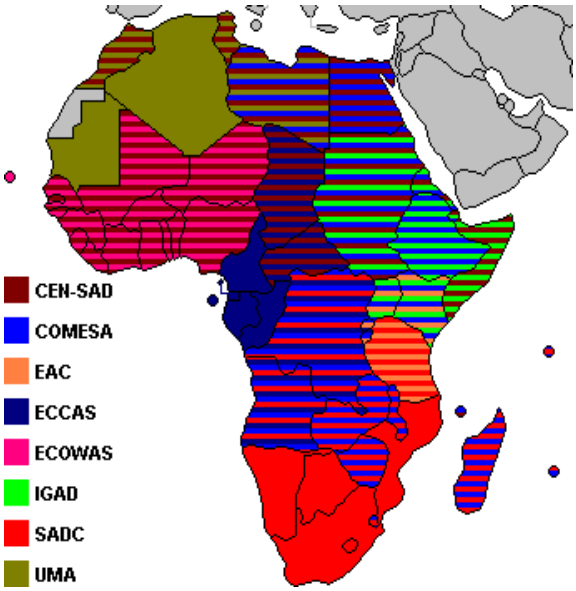
Geographic Spread

Regional integration is a phenomenon that has spread to every continent on the globe because of the benefits that countries stand to gain in a globalized world.



RECs in Africa

African Regional Communities form the building blocks of the continental body.


CEN-SAD
COMESA
EAC
ECCAS
ECOWAS
IGAD
SADC
UMA

OBJECTIVE

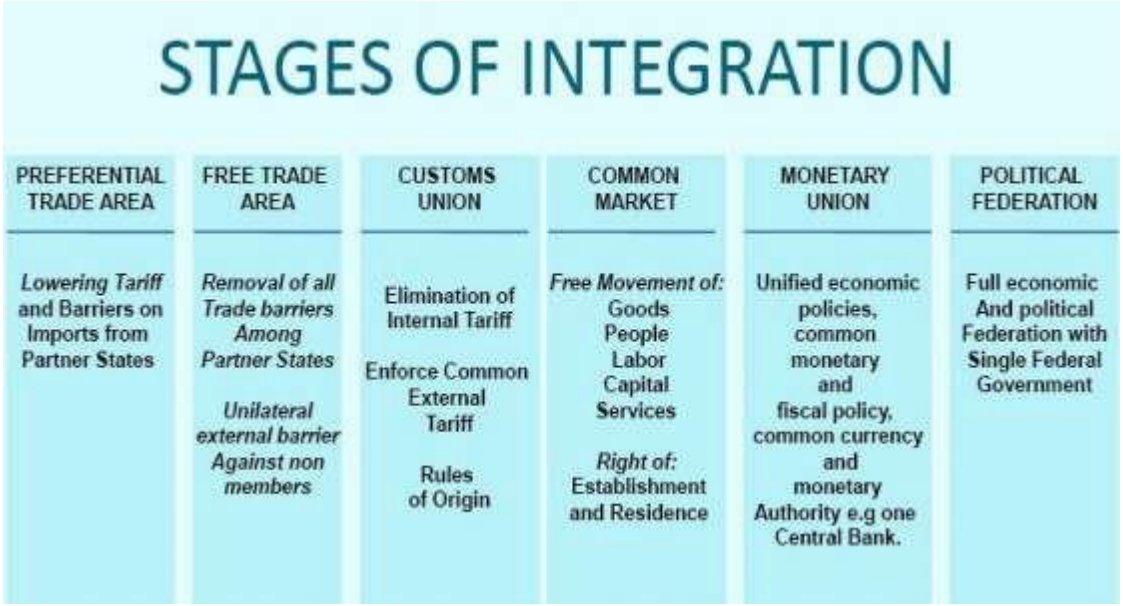
To highlight the fundamental relevance of the law and legal issues to economic integration.

- To advance the argument that the law is one of the important fields central to economic integration.

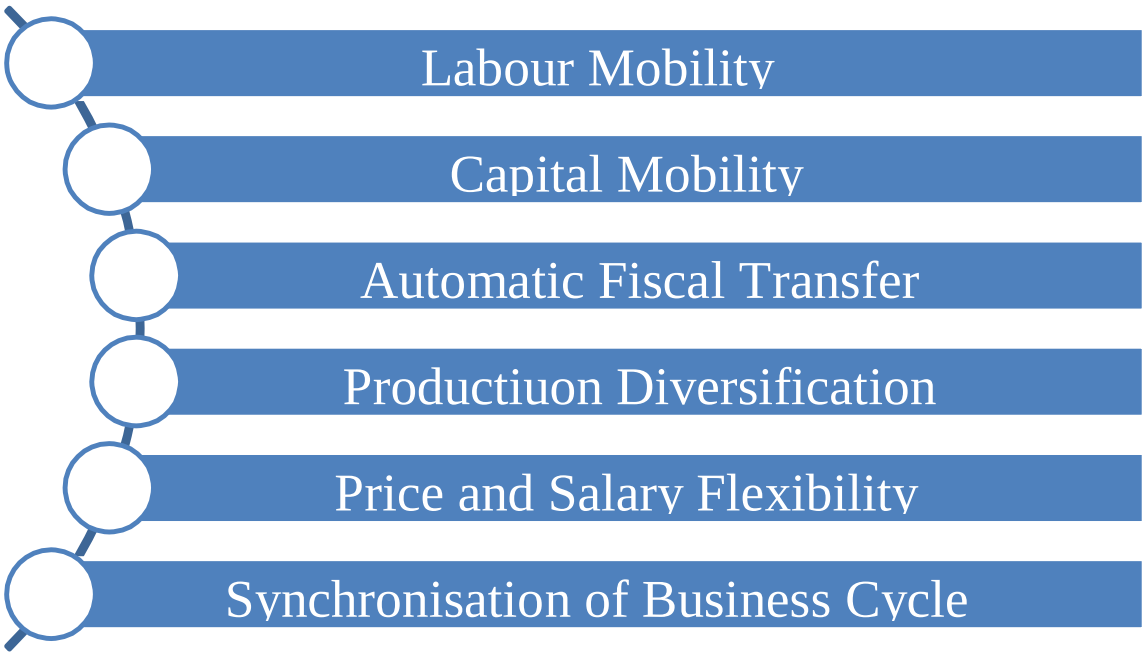
Specifically, this paper provides an overview of the legal aspects of economic integration, focusing on policy frameworks of economic integration that ensure conformity with the law and regulations.

LITERATURE REVIEW

Bela-Balassa's 5-Stage Integration Model



Optimum Currency Area (OCA) Model



EMPIRICAL LITERATURE

Author/s	Paper/Book	Key Conclusion
WAMI (2018)	A Composite Index of Economic Integration in West African Monetary Zone	The results ofWAMI (2018) shows that in spite of the binding constraints to process of regional integration, the intensity of integration among Member States of the WAMZ appears to be rising steadily since 2016, implying the increased commitment of the Member States to the WAMZ integration agenda
Egbuna (2018)	Towards Regional Integration in the WAMZ: Achievements, Issues and the Way Forward	Nigeria's GDP share of 80.4 percent in the WAMZ is huge, and when combined with Ghana's, it represents 91 percent of the Zone's GDP. The two countries become the natural leaders. Nigeria is the anchor country to the WAMZ, just as Germany is to the Euro Zone. For the WAMZ to eventually emerge, Nigeria and Ghana, therefore, should act as the leaders and be able to carry along the other Member States
UNECA (2016)	African Regional Integration Index	A country's economic weight (percent of regional GDP) does not necessarily correspond to its regional integration index score. For example, Nigeria is the leading contributor to wealth creation in ECOWAS. Yet, it does not feature in the top performing countries ranking in regional integration.

Author/s	Paper/Book	Key Conclusion
Oshikoya (2010)	Monetary and Financial Integration in West Africa	WAMZ does not satisfy all the OCA conditions. The study further reveals that the cost of monetary union in the WAMZ would be minimised in the long run as structural convergence takes hold.
Cappelleti, Seccombe & Weiler (eds) (1986	Integration through law: Europe and the American federal experience.	Integration is not a simple exercise in power sharing, but goes deeper and aims at a fundamental restructuring of society and of societal attitudes, and these changes are reflected in and promoted by law.

ECOWAS Monetary Cooperation Programme (EMCP)

The monetary integration agenda of ECOWAS commenced with the introduction of EMCP in July 1987.

The program designed a roadmap for monetary integration in the Community, borne out of the need of Member States to forge economic alliances in order to establish a common market and address mutual challenges.

Following the transformation of ECOWAS Secretariat into a Commission in June 2007, the Commission was mandated by ECOWAS Authority to re-examine the EMCP.

Two major objectives under the EMCP in the roadmap in preparation for the ECOWAS Single Currency Programme:

Introduce single currency in ECOWAS by 2020;
Introduce single currency in the WAMZ by January 2015.

The two-track approach was abolished for a one track approach and the roadmap of activities was revised.

Proposal for the establishment of an ECOWAS Monetary Institute (EMI) to undertake preparatory activities for the establishment of a common central bank in ECOWAS.

At its 55th Ordinary Session held on the 29th of June, 2019 in Abuja, Nigeria, the Authority of Heads of State and Government of ECOWAS (the Authority), adopted 'Eco' as the name of the single currency for ECOWAS.

The Authority agreed that countries who had fulfilled all conditions precedent would launch the 'Eco' in January 2020, while others would follow suit on meeting the convergence criteria.

LAW AND REGIONAL ALLIANCES

"Integration is not a simple exercise in power sharing, but goes deeper and aims at a fundamental restructuring of society and of societal attitudes, and these changes are reflected in and promoted by law" -Cappelleti et al *(1986).*

Evolving economic blocs logically look towards the EU to examine issues and factors that have helped it achieve so much success.

The EU is adjudged to be the most successful regional integration bloc in the world in terms of both longevity and level of achievements, largely due to its robust legal framework, its effective enforcement regime and the European Court of Justice (ECJ).

Regional groupings in West Africa were formed by countries sharing similar colonial history or by countries from the same geographical area.

They all have the aim to establish a custom union and a common market.

ECOWAS

Was established on May 28, 1975 by a founding treaty.

It comprises fifteen (15) West African countries.

The Protocols that launched ECOWAS were signed in Lome, Togo on November 5, 1976.

ArevisedECOWAS Treaty was signed in July 1993.

The ECOWAS Commission is an institution ofECOWAS saddled with the economic integration agenda and has specific mandate.

Some Objectives of the ECOWAS Revised Treaty

Harmonisation and co-ordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport, among others.

Establishment of a common market through;

- ✓ liberalisation of trade by the abolition, among Member States, of customs duties levied on imports and exports, and the abolition, among Member States, abolition of of non-tariff barriers in order to establish a free trade area at the Community level;
- ✓ adoption of a common external tariff and a common trade policy vis-a-vis third countries;
- ✓ removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right ofresidence and establishment;
- ✓ Establishment of an enabling legal environment;
- ✓ Harmonisation of national investment codes leading to the adoption of a single Community investment code;
- ✓ Harmonisation of standards and measures;

WAEMU

Was created by a Treaty signed in Dakar, Senegal, on 10th January, 1994, by the Heads of State and Government of the Member States.

The objectives ofWAEMU are to: strengthen the competitiveness of the economies of Member States based on free market principles; ensure the convergence of the economies of Member States through a multilateral surveillance mechanism; create a common market premised on free movement of persons, goods and services, rights of residence to undertake independent commercial activity. among others while remaining committed to the objectives ofECOWAS and the African Union.

The UEMOA Commission pursues the general aims and objectives ofWAEMU and provides the link between the political authorities in the Member States and the various organs of the Union among other functions.

WAMZ

It was established by the Authority of Heads of State and Government in 2000 and conceived out of the desire to fast-track the ECOWAS Monetary Cooperation Programme (EMCP). It comprises six (6) Member States, namely: The Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone.

It was conceived out of the The WAMZ project and is guided by ten programme areas, anchored on five strategic pillars.

WAMI was established to undertake technical preparations leading to the introduction of a single currency and the establishment of a single central bank for the WAMZ.

The mandate ofWAMI was expanded by the Banjul Treaty in 2005 to promote regional development and integration, in particular trade and financial integration.

Since the establishment of the WAMZ, the Member States were unable to meet the convergence criteria on a sustained basis, resulting in postponements.

LAW AND INSTITUTIONAL ISSUES OF ECONOMIC INTEGRATION

Effective economic integration is the product of properly structured and managed, within well-defined legal frameworks, vertical and horizontal relations among states' legal systems, laws and institutions.

Legal and institutional frameworks for sub-regional integration alliances are not new to WestAfrica.
The "Declaration of Conakry" in April 1959 by Ghana and the Republic of Guinea was one of the earliest of such groupings. The countries committed to strengthening ties between them and also to further the goal of African Unity.

Conseil de l'Entente, ("Council of Accord" or Council of Understanding"), a French West African initiative designed to promote the economic development of the region, was founded by Dahomey (now Benin), Cote d'Ivoire, Niger, and Upper Volta (now Burkina Faso).

A West African Customs Union was also established around 1959, which later metamorphosed in 1966 to the Customs Union of West African States (UDEAO) and later in 1972 to the Economic Community of West Africa (ECWA). The ECWA Treaty, signed in 1973 by Cote d'Ivoire, Upper Volta, Mali, Mauritania, Niger and Senegal, was for the establishment of a single economic and customs area between member countries and the harmonisation of their sectoral policies.

The governments of Liberia and Sierra Leone set up the Mano River Union (MRU) in 1973 for the shared management of the Mano River and promotion of the economic development of member countries. Guinea and Cote d'Ivoire joined in 1980 and 2008, respectively.

These Regional Economic Communities were some of the forebears of the Economic Community of West African States (ECOWAS), established with the goal of economic integration of the sub-region for the betterment of the welfare ofits people.

Regional alliances were facilitated using the instrumentality ofTreaties.

Treaties, otherwise, known, inter alia, as international; protocols, agreements, conventions, covenants, pacts, or exchange of letters, are very serious legal endeavours that establish the foundation for international law.

A treaty is a legally binding instrument that creates rights and imposes obligations on the state actors that are signatories to the treaty to abide faithfully to its dictates.

The Vienna Convention provided that 'every treaty in force is binding upon the parties to it and must be performed in good faith'.

The founding Treaty ofECOWAS was reviewed and replaced with the signing of the ECOWASRevisedTreatyin 1993.

The Revised Treaty enriched the founding Treaty in both qualitative and quantitative terms.

The Revised Treaty increased in both chapters and articles and made ECOWAS stand apart from the other Regional Economic Communities in Africa and beyond, particularly with the inclusion of principles relating to maintenance of peace and security, respect ofhuman rights and promotion of democracy and rule of law

ISSUES IN IMPLEMENTING COMMUNITY TREATIES AND LAWS IN ECOWAS

Supremacy of Community Law

The success of economic integration relies heavily on the extent of national acceptance of Community laws and protocols.

The relationship between Community laws and national laws should be provided for and clearly defined in the establishment of treaties.

Community laws should be given top ranking over national laws in treaties and Members States must undertake reforms in national constitutions and their local jurisprudence to make the required allowances for the accommodation and enforceability of Community laws in their countries.

However, some of the national constitutions of ECOWAS Member States have provisions that declare their constitutions supreme over all laws in the land which is inimical to the goals of the Community.

Modes of lmplementation

International or Community laws are applied within sovereign national borders in two different ways:

direct applicability - Community laws and protocols require no implementing legislation within individual Member States. They take effect as national laws as soon as they are enacted or pronounced at the Community level.

ratification and/or domestication - international or Community laws are ratified/domesticated by the appropriate local authority before they can become nationally binding.

The European Union has articulated the primacy of its treaties and protocols and their direct applicability in Member States.

This is not the case in ECOWAS - the Revised Treaty contains very weak suggestions to the direct applicability of its laws, leaving the implementation of ECOWAS laws to the whims of governments and parliaments of Member States, thereby threatening economic integration

Harmonisation of Laws

The unique and individual nature of the broad legal systems of the different Member States of the Community and the diverse legal traditions and cultures they practice presents an obstacle to economic integration.

Harmonisation of policies, programmes and laws is the solution. It is the process of aligning or organising laws, regulations or entire legal systems so that they are similar, differences are reduced to a minimum and integration and application is done seamlessly.

Harmonisation guarantees certainty in the law and creates a culture oflegal protection of Community citizen's rights to move freely, engage in intra-regional trade and investment activities and right of access to Justice and legal remedies and enforcement ofJudgments of one country in another country within the regional group.

Regional Enforcement Mechanism

The role of the European Court of Justice (ECJ) in the operations and functioning of the European Community (EC) is very crucial.

It is charged with interpreting and enforcing primary and secondary laws of the EC. It also has the powers to interpret provisions of the treaty when dealing with cases referred to it by national courts or tribunals.

The ECJ has settled the question of the primacy of EU law and has been pivotal in the success of the integration process of the EU.

The ECOWAS Revised Treaty provided for a Community Court of Justice (CCJ) and that judgments of the CCJ were enforceable on Member States, institutions of ECOWAS, individuals and corporate bodies.

The CCJ could hear disputes between Member States, and between Member States and Community institutions on questions concerning the interpretation and application of the Revised Treaty.

However, unlike the EC Treaty, the Revised Treaty did not contain any provision for the referral of law suits by courts in Member States to the CCJ for the interpretation of treaty provisions.

This has severely limited the area of influence of the CCJ and denied it the capacity and opportunity to establish the supremacy of ECOWAS law (through case law) and contribute to the development of the economic integration process of the region.

RECOMMENDATIONS

International or Community laws once ratified or domesticated in Member States should be enforceable and implemented.

Member States should amend their constitutions to accommodate Community laws ratified

Provisions within these Community laws must be strong enough to stand the test of time and must be drafted in a way that it can be easily interpreted and implemented to achieve economic integration.

Member States must ensure that they have institutions in place that are mandated and resourced to adequately ensure the applicability of these community laws domesticated.

National laws relating to business, finance and even trade should be harmonized across the region for a better economic integration.

CONCLUSION

An effective Community should, from a legal perspective, ensure:

free flow of goods, services, person, capital and property, including judgments within the Community consistent with the stage of economic integration it has reached;

existence and development of a significant body of Community laws including judicial decisions to regulate the integration process;

integration of Community law into the laws of Member State;

existence of a carefully structured legal framework for addressing and managing the multiple relationships (for example, community-state, interstate, inter-community, inter-institutional) created by economic integration;

existence of institutions adequately designed, mandated and resourced to ensure the application of Community law; and existence of well-outlined procedures for monitoring and addressing breaches of Community law.

adherence to Community law in Member States;

a lot of work has been done by ECOWAS to further the integration agenda in the region, but more needs to be done in strengthening the Legal frameworks of the economic integration process.

Legal reforms at both the regional and national levels would need to be done to properly position the economic integration efforts of the region.

The reforms would need to focus on;

- expounding provisions of the Revised Treaty on the status of Community laws in Member States;
- strengthening the CCJ to enable it effectively enforce regional laws;
- recognition by Member States and all institutions of Member States of the primacy of regional and Community laws;
- an aggressive drive for the harmonisation of all national laws, beginning with laws relating to business and finance.

THANK YOU

ECONOMIC INTEGRATION OF THE WEST AFRICAN STATES WITHIN THE ECOWAS FRAMEWORK: VISION, PROSPECTS AND ILLUSION*

BY

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*Paper Presented at the International Conference on "Economic Integration of West Africa: Challenges and Prospects", hosted by the ECOWAS Court Of Justice at Accra, Ghana October 21-23 2019.The presenter expresses gratitude to the President of the Court and the Chief Registrar for the invitation and opportunity to present this paper.

1. INTRODUCTION

An **Economic Community** is any economic and or political alliance which is designed specifically to foster trade and cooperation among its Member States. The basic underlying purpose is to reduce trade barriers and increase cooperation among its members.

The establishment of an Economic Community or Union is preceded by **Economic co-operation and Integration.** Usually the community or union is a last stage in a process of integration culminating in the establishment of an overarching framework of governance which often imposes an Economic Policy system on Member States.

In the Revised Treaty of the *Economic Community of West African States*[1] the aim for which the ECOWAS was set up is stated as "to promote co-operation and Integration, leading to the Establishment of an Economic Union in West Africa[2]

It is already Forty Four years since the ECOWAS was established and twenty five years since the Revised Treaty was adopted by Member States. How much of Economic Integration has happened and how has the body fared in the March towards an Economic Community or Union?

This Paper will *highlight* some major achievements towards Economic Integration and the extent of preparedness towards the actualization of an Economic Union through necessary Legal Frameworks, as well as the challenges of implementation and Harmonization of Community Laws and Rules within Member states.

The Paper is divided into VI sections to address some sub issues necessary to comprehensively cover the various areas slated for discussion. **Section** I is the Introduction; **Section** II is a brief and general discussion on Economic Integration**; Section** III discusses the Legal Frameworks which exist for the Economic Integration of West African States; **Section IV** discusses the implementation of Treaties and ECOWAS Laws within the Member States; **section V** discusses the Harmonization of ECOWAS Laws; **VI** is the Conclusion.

II. ECONOMIC INTEGRATION

Economic Integration (like the one promoted under the ECOWAS), involves an arrangement among countries, by which those countries seek to reduce, and eventually

[1] Treaty of 1993, signed on the 24th of July. The Preamble affirmed the Treaty of Lagos of 28 May 1975 which established the **ECOWAS, and** took cognizance of the need to 'encourage,foster,and accelerate the economic and social development of Member States in order to improve the living standard of the peoples

[2] This is found in **Article 3(1)** of the Revised Treaty. Before this, the Treaty had stated in **Art.2 (1)** that the ECOWAS is the sole Economic Community in the region for the Purpose of Economic Integration.

remove, tariff[3] and non-tariff barriers[4] which impede or hinder a free flow of goods, services and factors of production among others.

It is essentially, the unification of economic policies among nations involving the partial or full abolition of tariffs and non-tariff restrictions on trade. It is the process in which two or more states in a broadly defined geographic area reduce or eliminate a range of trade barriers to advance or protect a set of economic goals.

Economic Integration in its political form, is different from the broader idea of regionalism. Thus, although Economic decisions go directly to the intrinsically political question of resource allocation, an Economic region can be deployed as a technocratic tool by the participating governments to advance a clearly defined and limited economic agenda, without requiring more than a minimal political alignment or erosion of formal state sovereignty.

The unifying factor in the different economic regionalism is thus the desire by the participating states to use a wider, trans-nationalized sense of space to advance national economic interests.[5]

Economic Integration though framed by trading interests, acquires a political character as it reaches deeper forms[6]

A. Stages of Economic integration

Economic Integration is achieved over time and in different stages, including the Preferential Trading Area; Free Trade Area; Customs Union; Common Market; Economic and Monetary Union and the complete economic integration which represents a complete Monetary Union and policy harmonization.[7]

We will proceed to consider some of these stages:

i. The **Free Trade Area** is said to be the most basic stage or form of Economic Integration. The focus is to *reduce* or *eliminate* trade barriers between Member States. Trade barriers like tariffs, have been demonstrated to cause more economic harm than good; they raise prices and reduce availability of goods and services;

ii. The **Custom Union** is the stage which provides for Economic Cooperation arrived at, with the trans- nationalization of production structures across the region. The Customs Union presents a common stance to the markets outside the region which also rely on a common external tariff. Implicit in the Customs Union is the harmonization of national rules and regulations, particularly, *those relating to the control and flow of external trade into the region.*

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[3] A tariff is a tax imposed upon imports in other to raise revenue and protect local industries. Several tariff types exist, including *ad valorem* tariffs, specific tariffs, and trade licenses. The effect of tariff barriers is to make imports more expensive than locally manufactured products

[4] Non-tariff barriers are those barriers which hamper trade and which are caused by obstacles other than fiscal. non-tariffbarriers include quotas,embargos,sanctions,and levies, usually employed by countries to further their political and economic goals

[5] Economic Integration: www.britannica.com, accessed August 2, 2019

[6] ibid

[7] Economic Integration, Reviewed by Brian Abbot & Will Kenton, www.investopedia.com, accessed August 3 2019.

111. The **Common/Single Market:** A single market is a trade bloc in which most trade barriers have been removed with some common policies on product regulation, freedom of movement of factors of production, of enterprise and of services. *The common market* allows for the creation of an economically integrated market between member countries. With the increased inflow of trade and factors of production imported into the economies of Member States, production chains begin to form across the Member States. This results in a sustained pressure to reduce costs of transporting finished and semi- finished goods between Member States in the integration project.

The outcome is *the harmonization of border procedures* leading to the elimination of national boundaries and internal barriers to trade, and therefore, the formation of a free-flowing economic state, followed by *liberalization of Labour mobility,* which makes it possible for the inhabitants of one Member State to work in all the other Member States of the region.

iv. The **Monetary Union:** As the Common Market evolves, there is a surge in intra-regional trade. This creates a new source of expenses for businesses; the cost of trans-national transactions. Although the borders are open to the free transit of goods and services, there is a heightened need for foreign exchange transactions to settle payments as well as the costs arising from the different national economic policies that impose financial and administrative expenses on firms operating within the region. These bring about the next stage in Regional Economic Integration -adopting the Monetary Union. This is achieved either by fixing an agreed exchange rate or adopting a Common Currency.[8]

B. What are the reasons for desiring economic integration?

The extent to which states in a region or sub-region like West Africa will go to deepen its economic Integration and adopt the characteristics of a supra-national entity (Union) is partially influenced by the factors that led the states to seek regionalization in the first place.

There are four broad reasons identified as reasons for regional integration.

i. **Reactive or Defensive Regionalism:** States are compelled to move towards regionalism and to pursue economic integration in order to protect shared interests from a specific or a nebulous external threat. The argument is that the participating states seek to employ their combined economic mass and density, to mitigate their external vulnerabilities as individual economic blocs. By binding together, they are better able to confront larger economies.[9]

ii. **Peace and security:** As part of desire to ensure peaceful co-existence of states within a region, Economic Integration may be employed as tool. It is argued that by

[8] See, *supra*, Fn. 7.

[9] See: Burges,'Economic Integration', *Supra, note5*. See also Tanja A.Borzel, (2011) "Comparative Regionalism: A New Research Agenda, 2/KFG Working Paper no.28/August 2011, available on the KFG website www.transformeurope.eu; Accessed on August 9, 2019. The author discussed among others, the processes and structures of state-led regionalism driven by the delegation of policies and political authority to regional institutions.

developing an economic Inter-Penetration, Member States are less likely to resort to armed conflict; rather they will seek pacific settlement of their differences. [10]

111. **Efficiency:** It is argued that *states* adopt Regionalism and Economic Integration as a result of their collective desires to *reduce the cost of transactions* within the region. This is said to bring about growth in trans-national production structures to the benefit of states within the Integration arrangement. An Example in this regard is the Association of South East Asia Nations.

iv. **Externalization:** Governments often adopt national policies which are justified by recourse to *need to meet regional obligations*. To this extent, Economic Integration is said to emerge as a device employed by states on domestic political arena for externalization.[11]

C. The political factor

Although Economic Integration of states in a region or sub-region results in the Organization of inter-state relations which focuses on economic questions, regionalism becomes ultimately, a political question. It is rare for states to accidentally fall into an economic regionalism; they usually engage in long, sustained and highly technical discussions over time, to carefully delimit the policies and geographical boundaries of the region.

Divergent views exist as to how the integration project should operate and evolve over time, as well as what roles the anchor states are to play, and the role for states with the larger markets. These result from the existence of different levels of economic strength, sophistication and global competitiveness of each individual constituent state.

In the Economic Region, the power relations and equations which exist in international relations, also manifest, sometimes, in different and indirect form.
The pursuit of economic integration can and do also present new international challenges for participating states. For example, developing or less developed states engaged in defensive regionalism to improve their collective bargaining power against predominant states in the global economy, can be faced with a divide and conquer strategy in interregional and multi-national negotiations. This then places additional strains on the anchor states to maintain solidarity of the region.

D. Advantages and Disadvantages

According to Brian Abbot and Will Kenton[12] Economic Integration leads to a reduction in the cost of trade, improved availability of and wider selection of goods and services, and efficiency gains that lead to greater purchasing power.

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[10] See Generally an Interesting Article by Thomas A O'Keefe (2004) "Economic Integration as Means For Promoting Regional Political Stability: Lessons from the European Union and MERCOSUR" *Vol.80, Issue I Symposium: Final Status for Kosovo: untying the Gordian Knot Available at https://scholarship.kentlaw.iit.edu/cklawreview/vol80/issl/9; Accessed 9th Aug.2019.*

[11] Supra,note 5

[12] Economic Integration. Available on www.investopedia.com, Visited August 5 2019.

Also employment opportunities tend to improve because trade liberalization leads to market expansion, technology sharing, and cross border investments, these enlarge available opportunities for citizens of the community.

Finally, political cooperation among countries of the region tends to improve because stronger economic ties can help to resolve conflicts peacefully and lead to greater regional cohesion and stability.

On the flip side, Economic Integration often leads to erosion of national sovereignty, as Member States are typically required to adhere to rules on trade, monetary and or fiscal policies established by an unelected external policy maker.

This idea often leads to resentment among local politicians and citizens in countries with dualist legal system or a growing nationalist movement.

III. THE LEGAL FRAMEWORK FOR ECONOMIC INTEGRATION IN WEST AFRICA

A. Need for an enabling legal environment

Creating the enabling environment for regional economic integration was central to the founding fathers of the ECOWAS as they articulated the vision from 1964 to 1975 when the Lagos Treaty was signed.This was followed in1993 with the *Revised Treaty* in which, Member States, by **Article 2** Reaffirmed the ECOWAS as "sole Economic Community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community"[13]

Again, in the Preamble to the Treaty, the signatories were convinced that the promotion of harmonious economic development. .. called for effective cooperation and integration through a determined and concerted policy of self-reliance.

Furthermore, they were convinced that *integration into a viable regional Communitymay* demand 'partial and gradual pooling of national sovereignties' to the Community within the context of a collective political Will (supra-nationality)

Finally, they accepted the need to 'face together the political, economic and socio-cultural challenges' ... and to pool resources together, while respecting the diversities for the most rapid and optimum expansion of the region's productive capacity.

Various institutions were established[14] to drive the integration agenda and help smoothen the patchy road while the necessary bureaucracy was set up. In this regard, the Treaty created the Authority of Heads of State and Government [15]; established the Council of Ministers [16]; the special Technical Commission[17]; the Court of Justice[18]; the Economic and

[13] Art.2 (I), Revised ECOWAS Treaty.
[14] Generally under Article 6(1)
[15] Art.7
[16] Art. JO
[17] Art.22
[18] Art.15

Social Council[19]; the Executive Secretariat[20]; the Community Parliament[21]; the FUND for Cooperation Compensation and Development[22]

In establishing the various institutions and structures for integration, the Treaty also set out their functions and powers and categorically instituted the ultra vires principle when in Article 6 sub 2 that "The institutions of the Community shall perform their functions and act 'within the limits 'of the powers conferred on them by this Treaty and by the Protocols relating thereto."

B. What legal instruments exist?

From our discussions on the various aspects and components of Regional Economic Integration, it is clear that for this to manifest, certain structures have to be put in place by the instrumentality of law.

This was not lost on the framers of the Treaty and Protocols as they set out to achieve the aim of Economic Integration. In this segment we will consider the necessary legal provisions which set out the ECOWAS Free Trade Area, the Custom Union; the Common Market and the Monetary Union.

In so doing we will keep in mind also the journey so far, what has been achieved and what is lacking as we approach the concluding stages.

i. The Free Trade Area within the ECOWAS

A Free Trade Area is a grouping of countries within which *tariffs and non-tariff trade barriers between the members are generally abolished but with no common trade policy with non-members.* Examples of Free Trade Areas include the North America Free Trade Area (NAFTA) composed of the United States of America, Canada and Mexico and the European Free Trade Area (EFTA)[23].

Considering ECOWAS as a Free Trade Area entails a discussion on the legal framework for establishing a Free Trade Area among members as contained in the revised Treaty.

In **Article 3 (2) (i),** reference is made of achieving trade liberalization by *the abolition, among Members States of customs duties, levied on the imports and exports, and the abolition, among Member States, of non- tariff barriers in order to establish a Free Trade Area at theCommunity level,* among the aims of the ECOWAS.

In **Article 35** there was an elaboration of the trade liberalization policy to clearly establish a Free Trade Area among Member States of the Community.

[19] Art.14
[20] Art.17
[21] Art.13
[22] Art 21
[23] Originally founded by Austria, Denmark, Norway, Portugal,Sweden,Switzerland and the United Kingdom in 1960 as an intergovernmental organization by the EFTA Convention for the promotion of free trade and economic integration of its members see OECD Glossary of Statistical Terms, Glossary of Insurance Policy Terms, OECD, Center for Co-operation with Non-Members, 1999. Available at stats.oedc.org, Visited August 9 2019

Reference is made of the progressive setting up of a Customs Union within which Customs *duties or other charges with equivalent effect on Community originating imports shall be eliminated.* That same Article 35 declared that: *Quota, quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed.*

Again, under Article 36, the framework for the Free Trade Area was further established.

The Article provided inter alia *that Member States shall reduce and ultimately eliminate customs duties and any other charges with equivalent effect imposed on or in connection with the importation of goods which are eligible for Community tariff* [24]

The Article added that *Community originating unprocessed goods and traditional handicraft products shall circulate within the region free of all import duties and quantitative restrictions. There shall be no compensation from loss of revenue from importation of these products*[25].

Import duties on industrial goods are also subject to the regime of the Free Trade Area. To this end, the Treaty provided that *Member States shall undertake to eliminate import duties on industrial goods which are eligible for preferential Community tariff treatment in accordance with the decisions of the Authority and Council relating to the liberalization of intra-Community trade in industrial products.*[26]

Clearly, there is a desire to establish a Free Trade Area within the region. The elimination of all trade obstacles whether tariff or non-Tariff existing among Member States of the ECOWAS ought to have been clearly seen to be operational. The operational context may differ.

ii. The ECOWAS as a Customs Union

In the Free Trade Area, the emphasis is on removal of obstacles of trade carried on by Member States *inter-se.* There is no concern for trade with non-Member States. At this stage of economic integration, Member States are at liberty to negotiate and trade with third states as are mutually agreed.

With time, Member States of the Free Trade Area will seek to establish a Common External Tariff with trading partners of Member States. The aim is to arrive at a treatment uniformly applied. This is the stage of the *Customs Union.*

In Article 35, the Revised Treaty provided that a *common external tariff in respect of all goods imported into the Member States from third countries shall be established and maintained.* This clearly set the direction for the establishment of a customs union within the ECOWAS region.

[24] Art.36 (I)
[25] Art.36 (2)
[26] Art.36 (3)

Prior to that, under the aims and objectives of ECOWAS, Article 3 (2) (d) (ii) had stated that among the aims was the "adoption of a common external tariff' and a "common trade policy" *towards non-member countries.*

The framework for a Customs Union is set out in Article 37 which established a Common External Tariff (CET) for the region. By the provisions, *Member States agree to the gradual establishment of a common external tariff in respect of all goods imported into the Member States from third countries in accordance with a schedule to be recommended by the Trade, Customs, Taxation, Statistics, Money and Payments Commission.*[27]

The Article provided further that Member States shall, in accordance with a schedule to be recommended by the Trade, Customs, Taxation, Statistics, Money and Payments Commission, abolish existing differences in their external Customs tariffs[28], and that Member States undertake to apply the common Customs nomenclature and Customs statistical nomenclature adopted by Council.[29]

An ECOWAS supplementary measure was adopted by the Council of Ministers in which the decision was reached to implement the ECOWAS CET in all Member States from 1st of January 2015.[30] This was followed by the adoption of the content of the ECOWAS CET again by the Council of Ministers at its 70th Ordinary session[31]

On 25th October 2013, at a summit of the Assembly of Heads of State and Government held in Dakar, a final structure of the CET and its regulatory measures as well as implementation date was adopted. On 14 January 2014, the Customs Chiefs of all Member States met in Ouagadougou to adopt the implementation road map

This was followed by the Declaration of Heads of State and Government of West African States on the Implementation of the ECOWAS Common External Tariff in Abuja[32] committing Member States to the implementation of the ECOWAS CET from pt January 2015, and directing the President of the ECOWAS Commission to 'take all necessary measures to accompany Member States to ensure a smooth application of this important regional instrument.'

Some assessment reports have been written on the challenges and opportunities inherent in the implementation of the regime of the Common External Tariff in some Member States including Nigeria and Ghana[33]

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[27] Art.37 (1)
[28] Art.37 (2)
[29] Art.37 (3)
[30] That was in Abidjan in September 2003
[31] Held in Abidjan in June 2013
[32] On 15 December 2014
[33] See for example: *Von Uexkull,Erik; and Shui,Lulu.* 2014. Implementing the ECOWAS Common External Tariff: Challenges and Opportunities for Nigeria. Africa Trade Practice Working Paper Series; no.5.World Bank, Washington, DC Available at https://openknowledge.worldbank.orf/handle/10986/189 35 License:CC BY 3.0 IGO. Accessed August 20,2019.Also:
"World Bank Group.2015.Assessing the Economic Impact of the ECOWAS CET and Economic Partnership Agreement on Ghana. World Bank,Washington,D.C.Available at https:// openknowledge.worldbank.org/handle/10986/232 42 License:CC BY 3.0 IGO"

In pursuit of the Custom Union agenda, the Community in 2015 adopted a plan to implement a Common External Tariff with the EU forming a new economic partnership with the EU[34], under a term which was to be executed in phases.

iii. The ECOWAS as a Common Market

Typically a common market is achieved, when in addition to having a Free Trade Area; there is relative free movement of capital and services among members of the union. In a common market, all quotas and tariffs on imported goods from trade within the region is eliminated. A common market is an essential first step towards the creation of a single market[35]

It is worthy of a recap that a common market is achieved when three conditions exist: tariffs, quotas and all barriers to trade in goods and services among members are eliminated; common trade restrictions such as tariffs on other countries (non-members), are adopted by all members of the community and production factors such as labor and capital are able to move freely without restriction among member countries.[36]

That ECOWAS is envisioned to achieve the status of a common market is evident from the provisions of the revised Treaty, as well as the Protocols on the free movement of goods and persons within the region.

Among the aims of ECOWAS is *the removal between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment:3*[7].

The provision on Immigration contained in Article bear testimony to the desire to create a regime in aid of a seamless movement and establishment of citizens of the Community in attempt to create the Common market and Economic Union.

The Article provides:

1. Citizens of the Community shall have the right of entry, residence and establishment and Member States undertake to recognize these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto.
2. Member States undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights referred to in paragraph lofthis Article.

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[34] The Economic Partnership Agreement remains the singular most known attempt to institute a common external tariff with ECOWAS as a region.

[35] The concept involves the elimination of all obstacles to intra-Community trade **in** order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market. It is important that not only commerce but also private persons who happen to be conducting economic transaction across national frontiers should be able to enjoy the benefits of that market. See the Judgement of the European Court of Justice of May 5 **1982,Gaston Schul Douane Expeditur BV v Inspecteur der Jnvoerrechten en Accijnzen,** Roosendaal-Case 15/81,European Court reports 1982,page O1409

[36] There has to be a free movement of goods,labour,services and capital among members of the community for there to exist a common market.

[37] Art.3 (2) (d) (iii)

3. Member States undertake to adopt, at national level, all measures necessary for the effective implementation of the provisions of this Article.

To further strengthen the full realization of the Common market, the Authority of Head of States and Government established a Travel Certificate for ECOWAS Member States in 2014 by Decision A/DEC.1/07/14[38] by which the National Biometric Identity Card was established as a Travel Document within the ECOWAS Region. This was propelled by the need to establish a uniform travel document to facilitate and simplify the movement of community citizens at border crossings of Member States.

Prior to that, some other Decisions had been reached, and Protocols executed in efforts to remove obstacles to the intra-Community movement of goods, Labour, persons and capital, essential in the establishment of a common market. These include:

Decision A/DEC.2/7/85 which established a Travel Certificate for ECOWAS States (as amended)[39];Supplementary Protocol A/SP2/7/85 on the Code of Conduct of the Implementation of the Protocol on Freedom of Movement of Persons, the Right of Residence and Establishment; Supplementary Act A/SA.2/07/14 which amended the code of conduct for the implementation of the protocol on the free movement of persons, right of residence and establishment, *to ensure that a citizen who is a national of one Member State and resides in a Member State other than his state of origin is granted equality of rights with the citizens of the Member State where he resides.*[40]

In spite of all these provisions and efforts it is in doubt that many citizens of the region have actually felt free to move in, live and establish in any part of the Community of their choice. Attacks on "foreigners" and their businesses still remain in parts if not all of the region among citizens of Member States.

iv. **The Monetary and Economic Union**

The Economic union is the most advanced type of economic integration in which all the attributes of the common market are fully realized. In an Economic Union, members eliminate internal barriers, adopt common external barriers, allow free movement of all resources and factors of production, *and adopt a common set of economic policies with one currency and single monetary policy.* An economic union develops into a political, social and territorial union.

There is no doubt that ECOWAS aims to become an Economic Union, *through the adoption of common policies in the Economic, Financial, Social and cultural sectors, and the creation of a Monetary Union*[41].

[38] Adopted at the Forty Fifth Ordinary Session held in Accra,10-11 July,2014

[39] This established the National Biometric Identity Card and its implementation modalities

[40] By this supplementary protocol provisions were made establishing that a valid travel document includes a valid passport, official biometric national identity card issued by a member state or an ECOWAS institution; provision was also made granting the right of entry to private vehicles registered in the territory of a member state to another member state upon the presentation of A valid license; certificate ofregistration; insurance policy recognized by member states or the Emergency travel certificate from customs. The same right was granted to commercial vehicles

[41] This is contained in Article 3 (2) (e) of the Treaty. And of course the West African Monetary Union has been created.

Additionally, the aim of harmonizing the monetary policies of Member States, of standards and measures, establishing a fund for cooperation, compensation and development[42], are clearly geared towards establishing an Economic Union.

Articles 51 to 54 of the Treaty make copious provisions regarding the necessary Economic, Financial and Monetary policy harmonization required to achieve an Economic and Monetary Union.

By **Article 51** of the Revised Treaty, in order to promote monetary and financial integration, and facilitate intra-Community trade in goods and services, and the realization of the Community's *objective of establishing a Monetary Union,* members undertake to-

a) study monetary and financial developments in the region;
b) harmonize their monetary, financial and payments policies;
c) facilitate the liberalization of intra-regional payments transactions and, as an interim measure, ensure limited convertibility of currencies;
d) Promote the role of commercial banks in intra-community trade financing;
e) improve the multilateral system for clearing of payments transactions between Member States, and introduce a credit and guarantee fund mechanism;
f) take necessary measures to promote the activities of the West Africa Monetary Agency in order to ensure convertibility of currencies and creation of a single currency zone;
g) Establish a Community Central Bank and a common currency zone.

Article 54 (1) reiterates the undertaking of the states to achieve the status of an Economic Union, while in Article 55 the Member States set down steps they wish to undertake in order to *establish an economic and monetary union,* through:

i. the adoption of *a common policy* in all fields of socio-economic act1v1ty particularly agriculture, industry, transport, communications, energy and scientific research;
ii. *the total elimination of all obstacles to the free movement of people, goods, capital and services and the right of entry, residence and establishment;*
iii. the *harmonization of monetary, financial and fiscal policies,* the *setting up of a West African monetary union,* the establishment of a single regional Central Bank and the *creation of a single West African currency.*

Evidently, some bold steps are being taken towards achieving an Economic and Monetary Union Already there is the establishment of an ECOWAS Monetary Agency, and the adoption of the ECO which is the common currency for the Member States.

[42] Contained in Art.3 (2) (h) (i-ii)

IV. IMPLEMENTING TREATIES AND COMMUNITY LAWS WITHIN MEMBER STATES

From discussions so far on the path to Economic Integration, it is safe to surmise that the foundational framework is fairly established. We can see, though not m very comprehensible terms an attempt to move forward in the last 44 years or so.

However, if we gather operators in this space at this moment and ask them of their experiences trading within the West African regional corridor, the verdict may well be damning. It is too risky for any businessman to pretend that the ECOWAS Treaty guarantees a Free Trade Area, or offers the benefits of a Customs Union, or indeed operates as a common market.

The Challenge has been in the implementation of the Treaty provisions and relevant laws. Again, this is not due to lack of laws. The whole of Article 5 deals with undertakings by each and every Member State towards the implementation of Treaty.

The Article provided that:
Member States undertake to create favourable conditions for the attainment of the objectives of the Community, and particularly to take all necessary measures to harmonize their strategies and policies, and to refrain from any action that may hinder the attainment of the said objectives.[43]

Again, that *Each Member State shall, in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty*[44].

Each Member State undertakes to honor its obligations under this Treaty and to abide by the decisions and regulations of the Community. For the Community to achieve the full realization of its mandate, Member States have to take all necessary legal and administrative measures within their respective states to implement Community decisions.

The problem remains that of poor implementation driven possibly by fear. The political leadership across Member States are trepid at the prospect of diluting their hold on power within their states. The idea of integration may sound sweet to the ears, but is not as sweet to the mouth.

V. HARMONIZATION OF LAWS

Aside of, or in addition to implementing their obligations under the Treaty and Laws of ECOWAS,there is the need to harmonize the various Community laws; the Treaty provides for the Harmonization of Investment codes leading to the adoption of a single Community investment code[45],the harmonization of standards and measures[46] among the aims and objectives of the Community.

[43] Art.5(1)
[44] Art.5 (2)
[45] Art.3(2)(i)
[46] Art.3 (2) G)

Harmonization of Laws and policies is ongoing in several aspects of the Community relations, such as the harmonization of ECOWAS Maritime regulations; Harmonisation of telecommunications policies and establishment of a regional regulatory body; harmonization of economic and financial policies; harmonization of commercial laws and so on.

The ECOWAS Regional Competition Authority was a product of the desire to harmonize competition rules and modalities within the region.

VI. CONCLUSION

The vision of the founding fathers of the ECOWAS is salutary; the long journey towards the realization appears to have no end in sight. As we have seen, setting up an Economic Community or Union is the final stage arrived at, after proper Economic Integration has been instituted. We have discussed the benefits of Economic Integration.

We have traced the various stages involved in the process of Economic Integration and the challenges of Implementation, even of the most basic idea of a Free Trade Area- borders are still heavily manned and often times closed altogether; Attempts at having a Customs Union is fraught with several challenges, there appears to be a chaotic implementation of even the Protocol on free movement of goods and persons within the region; the Harmonization of National Investment Codes which is envisaged under Article 3(2)(i) to lead to the adoption of a single Community investment code, remains in the pipeline, so also the harmonization of standards and measures.

In the final analysis the greatest challenge remains the will to trust each other. How can our political and economic leaders truly commit to this project? Until the region closes all the gaps and come together by truly instituting common Community laws which have supranational effect and are so applied, then so will the journey towards Integration remam a mirage.

The vision is clear, even if expressed in form that appears hazy; the prospect is bright and promising; the challenges of economic integration and establishing a borderless Community may yet prove an illusion.

Thank you for Listening as I share these thoughts.

KEY ISSUES IN ECOWAS ECONOMIC INTEGRATION

BY

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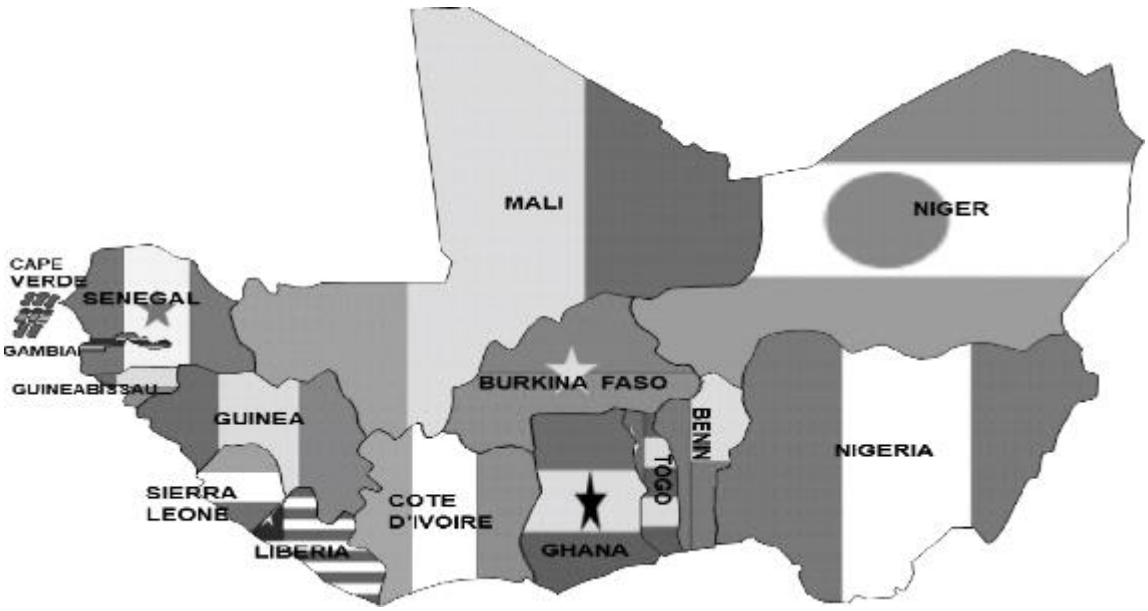
CONTENT

ECOWAS Economic Integration Objective

ECOWAS at a glance



ECOWAS Economic Integration

- ECOWAS: objective to promote economic integration in all fields of economic activity, in particular in **trade,** etc.
- Mission ofECOWAS - reflected through its common goal of building an "ECOWAS of People" from an "ECOWAS of States" - is to promote policies that will improve the economic and social well-being ofits People
- Article 3 of the 1993 Revised ECOWAS Treaty states the trade objective of ECOWAS as:

"...the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and eestablishment."

"... adoption of common policies in the financial, transport, energy, cultural sectors, etc."

- Article 3 of the 1993 Revised ECOWAS Treaty establishes the aims and objectives to be the formation and subsequent evolution of:
  - Free Trade Area (FTA) = ECOWAS Trade Liberalisation Scheme (ETLS)
  - Customs Union [implementation of Common External Tariff (CET) commenced in January 2015]
  - Common Market (Free Movement of persons, goods, services and capital)
  - MonetaryUnion(adoption ....
  - Economic Union

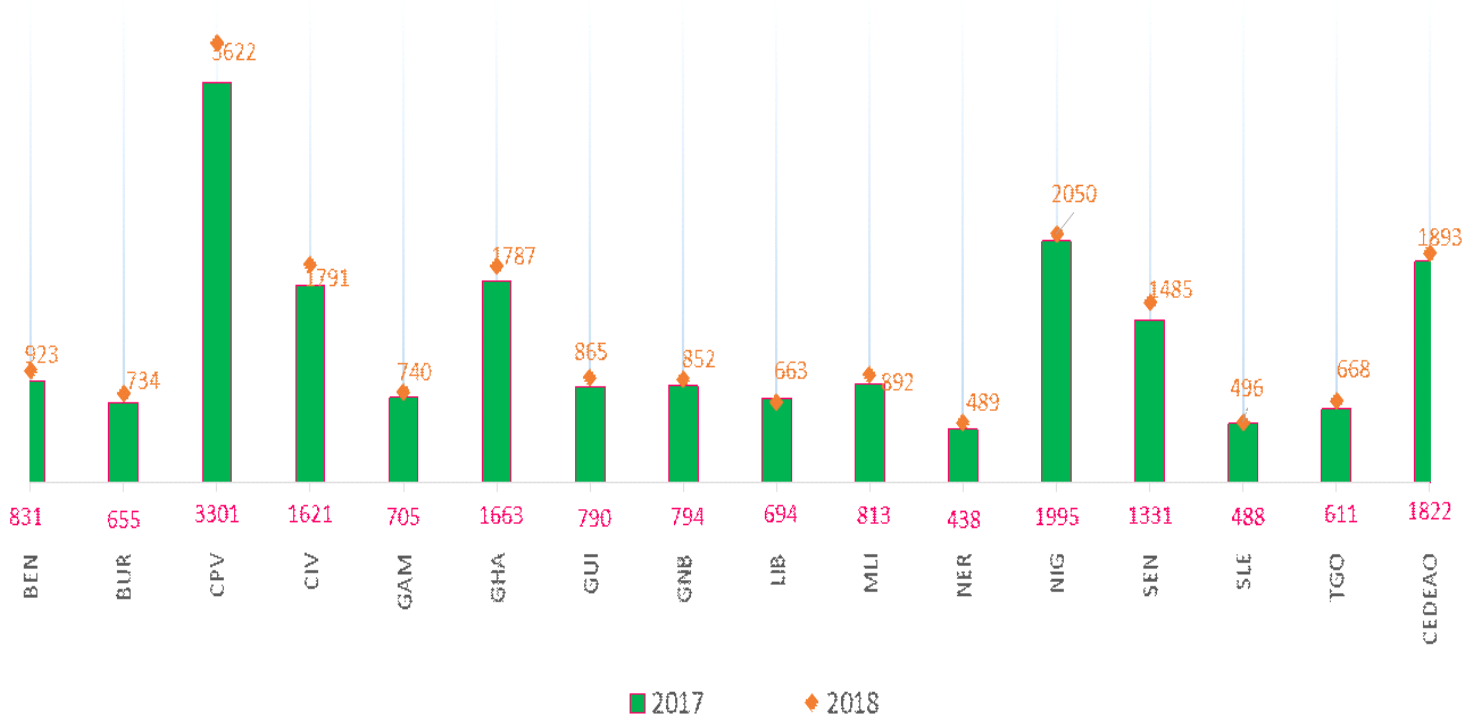
Key Facts on ECOWAS Economic Integration

ECOWAS - Key Indicators of Interest

Indicators	ECOWAS	Sub-Saharan Africa
GDP at current prices (billion USD)	556.9	1594.8
GDP per inhabitant (USD)	1822.1	1572.3
Total external trade (billion USD)	155.5	635.4
Intra-regional trade (%total trade)	10.6	18.5
Total Population (million)	367.6	1014.3
Density	145	45.2
Less than 25 years (% total population)	62.9	62.5
Total birth rate (live birth per women)	5.3	4.8
Mortality rate of less than 5 years (for 1 000 live births)	85.2	75.5
Neonatal mortality rate (for 1 000 live births)	29.2	27.2

Source: ECOWAS Commission

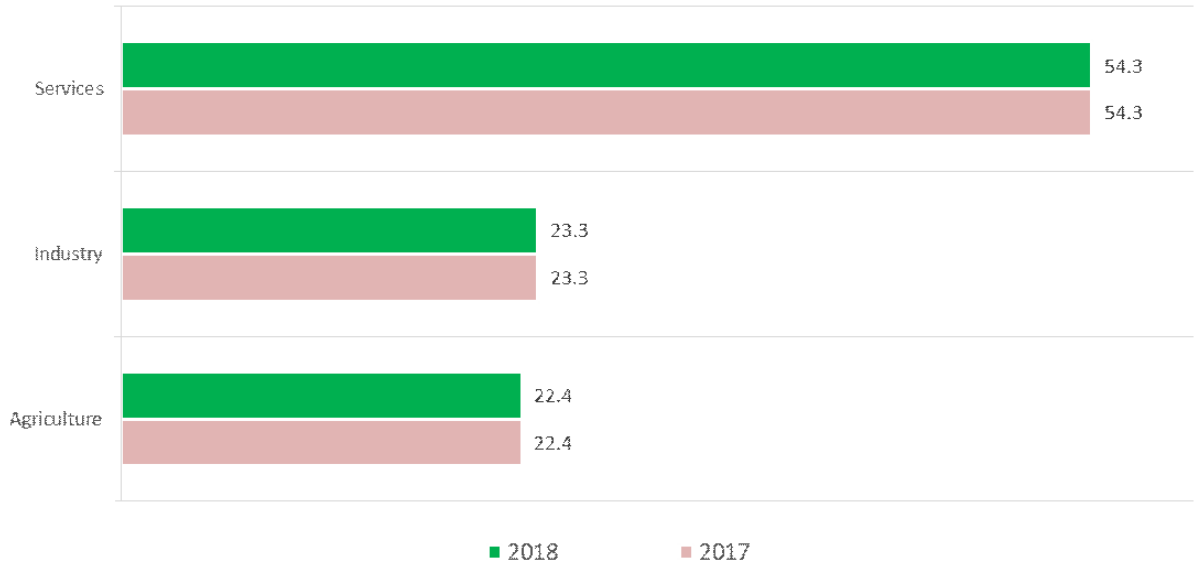
GDP per inhabitant of ECOWAS Member States



Source: ECOWAS Commission

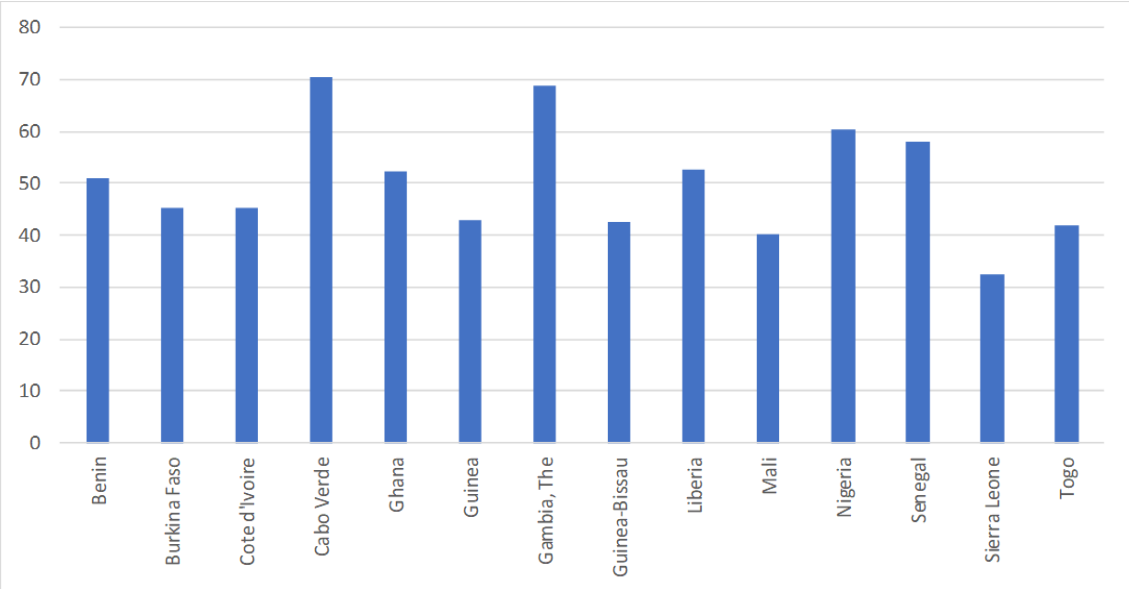
372

Sector contribution to GDP (in %)



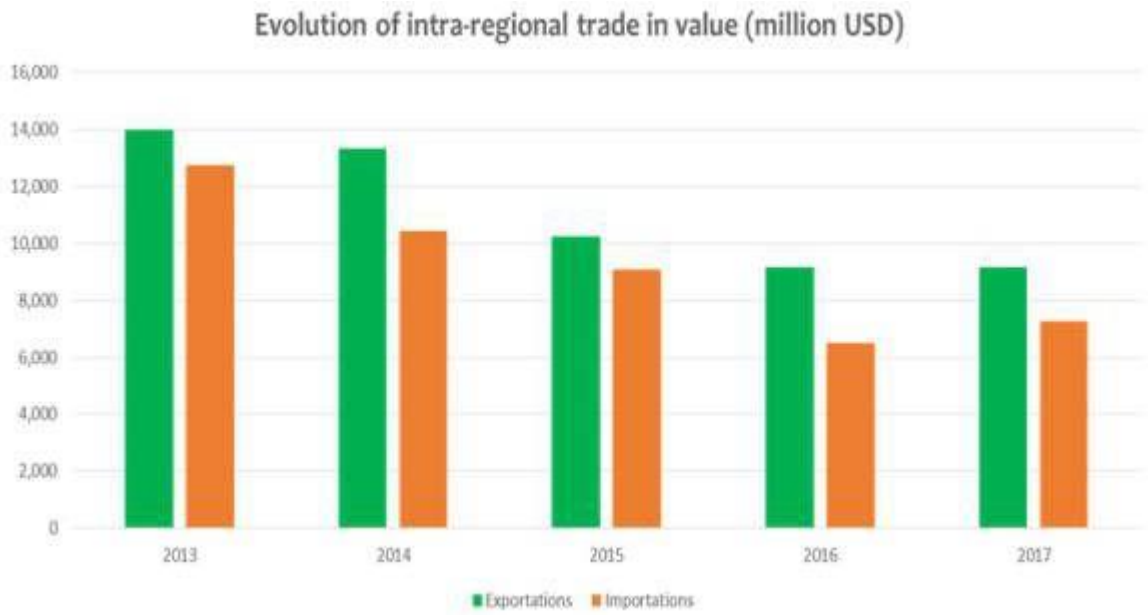
Source: ECOWAS Commission

How much of GDP comes from services sector in ECOWAS?



Source: World Development Indicators

Intra-ECOWAS Trade



Source: ECOWAS Commission

Intra-ECOWAS Trade

CET HS2012 / Years	2015	2016	2017	Av. (2015-2017)	Share(%)
Mineral products	3 950,5	3 793,1	4 112,4	3 952,0	41,5
Products of the food industries	871,7	797,9	844,9	838,1	8,8
Chemicals and Related products	739,7	710,0	752,3	734,0	7,7
Transport equipments	935,0	448,6	532,2	638,6	6,7
Plastics and rubber	490,3	524,1	511,0	508,5	5,3
Precious stones and metals	662,9	322,3	318,3	434,5	4,6
Machines and appliances	359,6	663,0	269,9	430,8	4,5
Common metals and structures	434,8	356,5	423,2	404,8	4,3
Live animals	427,4	409,8	321,0	386,0	4,1
Fats and oils	337,8	393,3	338,9	356,7	3,7

Source: ECOWAS Commission

ECOWAS Trade in Goods Integration

Features of ECOWAS Trade Integration

- **Internally:**
  - ECOWAS Trade Liberalisation Scheme (ETLS): Goods-only FTA duly notified at the WTO;
  - ECOWAS Common External Tariff (CET) towards third party trade
  - Free Movement Protocols: entry, residence and establishment
- **Externally:**
  - African Continental Free Trade Area (AfCFTA);
  - West Africa- European Union Economic Partnership Agreement;
  - Other third party requests: China; Indonesia; India and Turkey (Indicating Interest for FTA with ECOWAS)

ECOWAS Trade Liberalisation Scheme (ETLS)

- Established in 1983, launched in 1990 and reaffirmed as part of the 1993 Revised ECOWAS Treaty
- Governs products of Community Origin
- Preferential tariffs for intra-regional trade set at O percent
- Certificate of Origin required for industrial products but not for agricultural, livestock products and traditional handicrafts (certification process in each Member State)
- For purposes of identifying products, veterinary and SPS certificates are accepted, where necessary

COUNTRY	TOTA	L
	COMPANIES	PRODUCTS
BENIN	21	88
BURKINA FASO	10	35
CABOVERDE	4	7
COTE d'IVOIRE	80	207
THE GAMBIA	9	12
GHANA	131	261
GUINEA	9	42
GUINEA-BISSAU	3	11
LIBERIA	8	21
MALI	47	119
NIGER	2	11
NIGERIA	221	603
SENEGAL	76	207
SIERRA LEONE	8	48
TOGO	13	36
TOTAL	**642**	**1708**

ECOWAS Common External Tariff (CET)

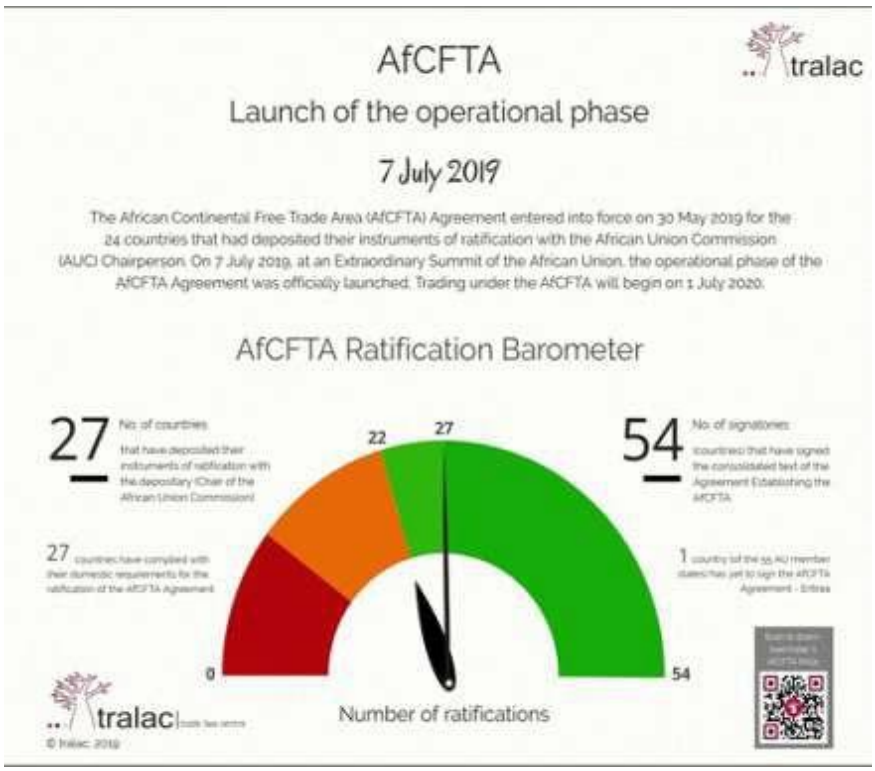
- Decision A/DEC.17/01/06 of the 29th Session of the Authority of Heads of State and Government which adopted the ECOWAS CET for Member States
- Transitional period of 5 years
- Implemented by 14 of15 ECOWAS Member States
- Cabo Verde being the only remainder
- Impact Assessment currently ongoing

S/N	Category	% of Duties	Description
1	0	0%	Essential Social Goods
2	1	5%	Goods of Primary Necessity, Raw Materials and Specific Inputs
3	2	10%	Intermediate Goods
4	3	20%	Final Consumption Goods
5	4	35%	Specific Goods for Economic Development

ECOWAS External Trade Relations

AfCFTA Recent Developments

- 54 African countries have so far signed the AfCFTA Agreement. Eritrea - the only remainder (All 15 ECOWAS Member States are signatories)
- 27 African countries are State Parties to the AfCFTA Agreement by virtue of their ratifications and deposit of the instruments ofratification
- 10 ECOWAS Member States are currently State Parties
- Benin; Cape Verde; Guinea-Bissau; Liberia; Nigeria
- Implications for ECOWAS: Community Levy; CET and ETLS



Developments on the West Africa - EU Trade

- Everything ButArms (EBA) Initiative for 11 ECOWAS Member States
- Cote d'Ivoire: Market Access Regulation [agreed (2007) and signed (2008) the interim EPA]
- Ghana: Market Access Regulation [agreed (2007) and signed (2008) the Interim EPA];
- Cabo Verde: EBA till end of 2011; Generalised System of Preferences (GSP+);
- Nigeria: Generalised System of Preferences (GSP)
- WA - EU EPA signed by 14 of 15 Member States, with Nigeria being the only remainder

Other Free Trade Area (FTA) Requests

- In view of the considerable strides in integration, ECOWAS has in recent years, aroused the interest of countries from North Africa and Asia mainly, which have expressed their intention to join the regional group
  1. China;
  2. India;
  3. Indonesia;
  4. Turkey;
  5. Tunisia- granted Observer Status
  6. Morocco

Trade in Services Integration

Trade in Services in the ECOWAS Region

- Preferential trade in services is an essential component of the ECOWAS Revised Treaty
- On the one hand, there is no full specific services protocol or services-only agreement (asper EAC and SADC) in ECOWAS preferential trade
- On the other hand, ECOWAS has some relevant preferential rules that establish disciplines for establishment in goods and services
  - Right of Establishment (Free Movement Protocol)
  - Right of non-establishment (Sector- specific approach)

ECOWAS Trade in Services
Regulatory Approach

- Cross Cutting/Horizontal Services
  - Free Movement Protocols: Right of Entry, Residence and Establishment
  - Cooperation on Pro-Competitive Regulation
  - ECOWAS Investment Policy
- Infrastructure Services
  - Cooperation to Address Differences in Energy Services;
  - Cooperation on Transportation Services;
  - Cooperation on Domestic Regulation in Telecommunications Services;
  - Cooperation to ensure liberal trade in Digital Services and Free Data Flows;
  - Monetary Cooperation
- Other Services
  - Convention ofRecognition ofEquivalence in Education
  - Cultural FrameworkAgreement

Trade in Services in the ECOWAS Region

- Typical ECOWAS barriers the Protocols seek to address:
  - Discriminations (directly or indirectly based on nationality);
  - Prohibitions on having establishments in other Member State;
  - Involvement of competing operators;
  - Quantitative and territorial restrictions;
  - Differences in tariffs (as per energy);
  - Specific legal form and shareholding requirements

ECOWAS Member States' WTO GATS Commitments

Sector	Member States with commitments in the Sector
Business	Benin; Cote d'Ivoire; Gambia; Guinea; Senegal; Sierra Leone
Communication	Cote d'Ivoire; Gambia; Ghana; Nigeria; Senegal; Sierra Leone
Construction	Cote d'Ivoire; Gambia; Ghana; Sierra Leone; Togo
Distribution	Senegal
Education	Gambia; Ghana; Mali; Sierra Leone
Environment	Guinea; and Sierra Leone
Financial	Benin; Cote d'Ivoire; Gambia; Ghana; Nigeria; Senegal; Sierra Leone
Health	Gambia; Guinea; Sierra Leone
Tourism	Benin; Burkina Faso; Cote d'Ivoire; Gambia; Ghana; Guinea; Guinea Bissau; Mali; Niger; Nigeria; Senegal; Sierra Leone; Togo
Cultural	Gambia; Guinea Bissau; Senegal; Sierra Leone; Togo
Transport	Benin; Cote d'Ivoire; Gambia; Ghana; Guinea; Niger; Nigeria; Senegal; Sierra Leone

W/120 sectors	Business	Communication	Construction	Distribution	Educational	Environmental	Financial	Health and social	Tourism	Recreational, etc	Transport	Other	Total
Number of possible sub-sectors	58	24	5	5	5	4	16	4	4	5	35	1	155
Benin	1	-	-	-	-	-	3	-	1	-	9	-	14
Burkina Faso	-	-	-	-	-	-	-	-	2	-	-	-	2
Cabo Verde	35	13	5	3	4	4	16	-	3	2	15	-	100
Cote d'Ivoire	3	8	1	-	-	-	7	-	3	-	7	-	29
Gambia	1	24	5	5	5	4	16	4	4	5	25	1	99
Ghana	-	20	3	-	1	-	10	-	2	-	3	-	39
Guinea	1	-	-	-	-	2	-	1	2	-	3	-	9
Guinea Bissau	-	-	-	-	-	-	-	-	1	1	-	-	2
Liberia	27	9	4	4	5	4	16	3	2	4	16	-	102
Mali	-	-	-	-	1	-	-	-	1	-	-	-	2
Niger	-	-	-	-	-	-	-	-	3	-	3	-	6
Nigeria	-	4	-	-	-	-	13	-	4	-	4	-	25
Sierra Leone	16	1	5	-	5	4	16	4	4	3	27	-	85
Togo	-	1	-	-	-	-	-	-	3	1	-	-	5

Key Issues in ECOWAS Economic Integration

Competence in trade and trade policy matters

- The competence of ECOWAS as an intergovernmental organisation is not stated *expressis verbis* in the Revised ECOWAS Treaty;
- Unlike the European Union (EU) where the powers of the supranational organisation were clearly defined from the onset as to be distinguished from the competence of the Member States, in ECOWAS the situation is quite blurred;
- In fact, the competence ofECOWAS can rather be implied from the objectives of the Community as broadly set in Article 3 of the Revised Treaty;
- In Article 3, the aims of the Community are to promote cooperation and integration ....harmonisation and coordination of national policies and in different fields...
- ECOWAS' competence is limited to enhancing cooperation in specific areas where the Member States agreed to undertake in common
- Inferred that competence has been conferred by the Member States to ECOWAS, which is entitled to act within the powers conferred upon to it

Competence in Trade and Trade Policy Matters

- These include the formulation of policies, the adoption of laws, regulations, the adoption of directives, decision-making, recommendations and opinions designed to promote the objectives of the Community.

- In the same Article 3, Member States are required to work closely with ECOWAS institutions in their economic and other policies, with a view to achieving the objectives of the Community.

- The possible interpretation of this provision is that it encourages a kind of concurrent competence between ECOWAS and the Member States. This means that the competence conferred on the Community with regard to certain matters, does not imply that Member States have automatically lost their power to act on the same matters.

- In fact, Member States have the right to continue to develop and apply their own policies and laws, even with regard to matters within the competence of ECOWAS, as long as ECOWAS has not yet succeeded in defining common rules applicable to all Member States.

- In other words, the competence of the Member States shall cease when the Community begins to exercise its competence.

Competence in trade and trade policy matters

- The Revised ECOWAS Treaty does not contain a single article that exhaustively lists the areas or powers that the Member States intend to confer on the Community;

- The wording of the Revised Treaty is rather very subtle and requires attention to find out whether a specific area of competence has been transferred to ECOWAS

- In fact, Revised Treaty provisions generally impose obligations directly on the Member States in terms such as "the Member States shall... " and "the Member States agree ... " which confirms that ECOWAS a Member States-led organisation in accordance with the its intergovemmentalist integration approach;

- However, some paragraphs are are inserted under those articles to legitimise the intervention of the ECOWAS Institution

- Careful reading of the Revised Treaty provisions suggests that the Member States intended to confer powers on the Community in the following areas:
  - Trade liberalisation and development, including the establishment of an FTA; Customs Union [ECOWAS Common External Tariff (CET) and ECOWAS Common Trade Policy (CTP)]; and a Common Market (Article 3 and35-53);
  - Investment and Industrial Development [Article 3];
  - Monetary and financial matters, including the free movement of capital [Articles 54 -55];
  - Infrastructure [Articles 32-34]
  - Free Movement of Persons [Article 3 and 59]
  - Political matters, Legal and judicial affairs & regional security [Articles 56- 59]
  - Agriculture and food security [Article 25]

- The above list is not exhaustive as, pursuant to Article 67 of the Revised ECOWAS Treaty, the Member States may decide to extend their scope of cooperation to other fields.

- Implied competences in any other domain not listed above as long as such competence is necessary to perform the activities under these areas to achieve the revised treaty prov1s10ns

Principle of Variable Geometry

- The "Principle of Variable Geometry" is defined as the flexibility that allows for progression in cooperation among a sub-group of Members in a larger integration scheme in a variety of areas and at different speeds, the ECOWAS situation is quite different;

- The principle rests on the rationale that in any given community some members are able to integrate more than others in a variety of areas and at different speeds;

- It is not a rule of exclusion, it simply allows Member States to jointly agree on issues but implement them at different speeds;

- Unlike theAfCFTA Agreement or the EAC region or the CARICOM region, where this principle is applied, the ECOWAS situation is quite different [all Member States are treated the same irrespective of their size and ability to implement some decisions]

Principle of Variable Geometry

- The East African Court of Justice (EACJ) had cause to give an opinion on the principle ofVariable Geometry;
- It opined that the principle is in harmony with the requirement for consensus in Council decision-making, adding that the principle is a strategy for implementation of Community decisions and not a decision making tool itself and it therefore guides the integration process;
- The Principle is a necessary means of enabling those ready to proceed and hoping the remaining Member States follow later, however, danger there is a of creating a small Community within a Community that might endanger the cohesion of the larger Community
- The EACJ advised that the principle should be resorted to as an exception, not as a rule since institutionalised flexibility might lead to a breakup of the Community or its transformation into a mere free trade area.
- It is advised that in a young community like ECOWAS, the principle of legal unity should be stressed instead of variable geometry.

Member States' Right to Regulate a Services Sector

- As ECOWAS continues its economic transformation, a major aspect of this process remains the consolidation of its trade in services sector;

- Article 3 of the 1993 Revised ECOWAS Treaty states the trade objective ofECOWAS as:
  "...the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment."

- In other words, the ideal sought to achieve is full market access, where all restrictions and obstacles to ECOWAS service suppliers in providing services and establishing companies across national borders within the region are removed;

- One of the major challenges to services liberalisation is Member States' "right to regulate" a specific sector: regional market access can be negated by discriminatory, non-transparent, and unreasonable domestic regulation

- For instance, Article 3 of the Supplementary Protocol on the Right of Establishment states:
  "For the purpose of implementation of this Protocol, **companies which are formed in accordance with the laws and regulations of a Member States... "**

- Inherent in the Free Movement Protocols (and this is a major challenge) is the discretionary powers that are vested in national governments. For example, although the Protocol sets out the right of ECOWAS citizens to enter, reside and establish in a Member State (Article 2 of the Free Movement Protocol); they must do so in accordance with the laws and regulations of that Member State;

- Regional Integration effort can be negated by "Member States' right to regulate an activity" could pose challenges for the regional integration efforts

Elimination of Non-Tariff Barriers

- Removal of NTBs remains an important aspect of ECOWAS trade integration, but efforts to remove them rely on a voluntary approach, which has had limited impact.
- One central challenge identified is the institutional fragmentation of the national institutions involved in implementation
- Distinguish between Non-Tariff Barriers (NTBs) and Non-Tariff Measures (NTMs)
- Absence of a Guideline for the implementation ofNTMs measures
- Absence of a notification mechanism for NTBs monitoring and elimination
- Non-application of the sanctions system under Article 77 for failure to fulfil its obligation
- Being resolved under the UNCTAD Project on NTBs in the ECOWAS Region

Implications of Third Party Trade Agreements

- WA- EU EPA cannot be implemented without Nigeria
- AfCFTA liberalisation periods must be uniform in a Customs Union - ratifications and signatures must also be the same
- Article 7 of the Protocol on Trade in Goods will pose implications for the ECOWAS Community Levy

Concluding Remarks

- The competence of ECOWAS as an intergovernmental organisation is not stated *expressis verbis* in the Revised ECOWAS Treaty;
- Unlike the European Union (EU) where the powers of the supranational organisation were clearly defined from the onset as to be distinguished from the competence of the Member States, in ECOWAS the situation is quite blurred;
- In fact, the competence of ECOWAS can rather be implied from the objectives of the Community as broadly set in Article 3 of the Revised Treaty;
- Significant progress made but not reflected in the level of intra-ECOWAS trade.

THANK YOU!
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MONETARY INTEGRATION OF WEST AFRICA - ECOWAS COMMON CURRENCY: CHALLENGES AND PROSPECTS

BY

MR. FRANK OFEI
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INTRODUCTION

A. Once the Economic Community of West African States (ECOWAS) became operational in 1977, there was a deliberate effort to broaden the initial focus of the 1975 ECOWAS Treaty on intra-regional trade liberalization. In line with the name of the regional organization, a substantive regional programme was adopted within ten years as the basis for evolving towards an *economic community;* in addition to embarking on the creation of a free trade area (the first phase of market integration), the ECOWAS programme was geared towards the other forms of regional integration, namely: physical integration of the national infrastructures (road transport, telecommunication networks, energy generation and distribution); a regional production system (regional industrial master-plan, promotion of Community Enterprises, coordinated development of livestock and agriculture, and fisheries exploitation); and a firm commitment to monetary integration. In effect, the regional cooperation and integration efforts were designed to promote the rapid development of the fragile national economies into an integrated and buoyant regional economy.

B. By 1987, the ECOWAS Authority of Heads of State and Government (ECOWAS Authority) had adopted a regional monetary cooperation programme, the objective being the eventual replacement of the CFAfranc (the regional common currency of eight ECOWAS countries) and the other national currencies with a single regional currency. Along with the abolition of travel visa for West African nationals under the 1979 ECOWAS protocol for free movement of persons, all appeared set for the implementation of the adopted comprehensive regional economic integration programme. Additionally, the adoption of protocols on non-aggression and mutual assistance in defence matters provided the basis for cooperation in defence and regional security, an initiative subsequently expanded for ensuring the peace and stability necessary for regional growth and development.

C. However, more than forty years after the ECOWAS take-off, it is difficult to point out much convincing evidence of progress on this regional integration agenda. There is the obvious success story of visa-free entry of Community citizens throughout the region. A nominal free trade area has been in existence since 2000 and, many years later, an ECOWAS common external tariff has been introduced. The ECOWAS regional peace and security initiatives have been acclaimed world-wide. The ECOWAS decision-making authorities have been able to chum out an impressive set of regional policies in all the socio-economic fields - Community acts that are all binding on every ECOWAS Member State.

D. ECOWAS is far from being an everyday reality for the ordinary person in West Africa; furthermore, it has not become the potent development instrument being utilized by member governments for the structural transformation of their national economies. Aprimary reason is that, within each ECOWAS country, the culture of complying with ECOWAS and other international agreements has remained undeveloped; actual implementation of the regional policies and schemes at the national level has always been a problematic.

E. This paper draws attention to the need for understanding and addressing the basic factors responsible for the slow pace and ineffectiveness of the ECOWAS integration process - a process meant to form the basis of West African participation in the African Economic Community (Article 78 under Chapter XVII of the Revised ECOWAS Treaty). This is a very necessary analysis in the particular case of monetary integration in the West African context. The paper therefore focuses first on the evolution of the monetary union, then turns attention to the challenges that have dogged the process, and ends with suggestions that would enhance the future prospects of a single regional currency in West Africa.

I. Evolution of the ECOWAS Monetary Integration Programme

i. The revision in 1993 of the original ECOWAS treaty of 28 May 1975 reaffirmed the legal basis of the evolution and expansion that the West African integration process had already witnessed. Article 3(2.e) of the Revised Treaty stipulates as a primary ECOWAS objective: *the establishment of an economic union through the adoption of common policies in the economic, financial, social and cultural sectors, and the creation of a monetary union,* while Article 55 provides for the completion of the economic and monetary union.

ii. Monetary integration is at the heart of economic integration as it relates to the harmonization of the monetary and fiscal policies of the participating countries. Since it touches on the key macroeconomic aggregates, the regional monetary integration programme should become a critical instrument in the management and development of national economies, paving the way for their harmonious conversion into an integrated regional economy. General Yakubu Gowon of Nigeria, one of the ECOWAS founding fathers, stated in 2015: "the objective when we founded ECOWAS was for an organization that will work for the benefit of all people in the Community and pending when the dream of a United States of Africa is realized... ".

iii. The Revised Treaty states in its Article 3**.1:** *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.* The economic integration process in West Africa is meant to address the low volume of intra-regional trade, small fragmented markets; correct individual countries ineffective implementation of their national economic policies, programmes and projects; eliminate the multiplicity of non-convertible currencies, and underdeveloped financial systems.

iv. The first major step at forming a monetary union in the ECOWAS region was taken in June 1983 via DecisionA/DEC.5/6/83. This was an Authority of Heads of State and Government (ECOWAS Authority)

decision to take the necessary steps to establish an ECOWAS monetary zone to resolve the difficulties that the existence of many currencies pose to the development of intra-regional trade, and to promote limited convertibility of the currencies of the region. Following this, the Authority adopted, at its July 1987 Summit in Abuja, DecisionA/DEC.2/7/87 establishing the ECOWAS Monetary Cooperation Programme (EMCP), in order to collectively implement policy measures aimed at achieving a harmonized monetary system through common management institutions, and create a single monetary zone with a single central bank which conducts a single monetary policy.

v. However, thirty-two (32) years after the 1987 Authority Decision on the single monetary zone, ECOWAS is yet to establish one. But this is not for want of trying; at every summit of the Authority, there is a briefing on the state of play of the monetary integration process and appropriate directives are issued. What then are the challenges militating against the establishment of the monetary zone and what are the prospects of having a viable monetary zone for West Africa? It is necessary here to outline first the legal framework, and the institutional arrangements being operated.

II. Legal Framework and ECOWAS Monetary Cooperation Programme

The legal regime upon which the ECOWAS monetary union is based consists of the following legal instruments:

i. The 1975 ECOWAS Treaty (Lagos 28 May 1975)
ii. The 1993 RevisedECOWAS Treaty (Cotonou24 July 1993)
iii. 1983 Decision A/DEC.6/5/83 on the creation of the ECOWAS Single Monetary Zone
iv. 1987 DecisionA/DEC.2/7/87 on the adoption of the ECOWAS Monetary Cooperation Programme (Abuja July 1987)
v. 1993 ProtocolA/P.l/7 /93 relating to the establishment of the West African Monetary Agency (WAMA) (Cotonou 24 July 1993)
vi. 1999 Decision A/DEC.17/12/99 which adopted convergence criteria as part of the EMCP (10 December 1999)
vii 2001 Decision A/DEC.17/12/01 which created a Mechanism for Multilateral Surveillance of economic and financial policies of Member States (Dakar 21 December 2001)
viii. 2012 Supplementary Act A/SA.4/06/12 relating to the Macroeconomic Convergence and Stability Pact among ECOWAS Member States adopted 29 June2012
ix. 2015 Supplementary Act A/SA.01/12/15 adopted in Dakar on 16 December 2015 which rationalized the convergence criteria to four primary and two secondary criteria, and also set 31 December 2019 as the deadline for macroeconomic convergence.

III. As earlier stated, Chapter IX of the Revised Treaty provides for the Establishment and Completion of an Economic and Monetary Union, and Article 55.iii relates specifically to *"the harmonization of monetary, financial*

and fiscal policies, the setting up of West African monetary union, the establishment of a single regional Central Bank and the creation of a single West African currency".

IV. As the above-listed legal instruments indicate, a number of measures have been taken since 1993 to give concrete expression to the collective undertaking of the countries to complete the establishment of a monetary union in West Africa. The process has revolved principally round the harmonization of the national monetary and fiscal policies, convergence of the implementation of these policies and satisfaction of the selected convergence criteria on a sustainable basis.

V. The institutional arrangement involves a review of country performance every six months, first by a committee of experts (principally from BCEAO and the national central banks, Ministries of Finance, and ECOWAS National Units), then by the Committee of Governors of Central Banks, then Ministers of Finance and Governors meeting as the ECOWAS Convergence Council, which submits its report to the ECOWAS Authority. The technical papers presented at these review meetings by the ECOWAS Commission are the Convergence Reports produced by officials of the West African Monetary Agency (WAMA) and the ECOWAS Commission, based on joint surveillance field missions conducted by WAMA and the Commission in all Member States. The field missions gather data and discuss country performance with officials of central banks, Ministry of Finance and national statistics offices.

VI. Typically, the Convergence Reports conclude with a series of pertinent policy recommendations, designed to correct shortcomings and re-orient national policies towards the achievement of the convergence targets on a systematic basis. These series of regional meetings on individual country performances constitute a peer review mechanism, highlighting success stories, how good performance was achieved, and also developing a spirit of accommodation and encouragement towards countries facing genuine difficulties with meeting the set targets.

VII. A careful study of country performance over the thirty-two years raises the fundamental problem of domestication and ownership of the ECOWAS single currency drive: what national priority has been given to the macroeconomic policy reforms that the ECOWAS programme entails and demands; compliance with the policy adjustments directed by the ECOWAS Authority following each of its convergence review meeting, adoption and adherence to a national medium-term programme aimed at satisfying the convergence criteria in a systematic manner, etc. Lack of concrete evidence of conscious pursuit of the ECMP leads to the uncomfortable feeling that achievement of some of the targets was mere happenstance, or a welcome by-product of the pursuit of some other national macroeconomic preoccupation.

VIII. A basic concern over the protracted stagnation of the ECOWAS monetary integration programme is the non-observance of budgetary discipline over a sustainable period. A test of preparedness and capacity to be in a monetary union is

the degree of monetary and fiscal discipline attained by a country over an appreciable period of time; the convergence criteria relate to such prudent policies as minimal budget deficits, inflation rates, and exchange rate variation. Admittedly, there are structural challenges and also shocks emanating from the environment within which national economies are operated. It would have been expected, however, that these are well-known recurring national macroeconomic challenges for which long-term plans and/or national contingency measures should have been envisaged.

IX. The ECOWAS Authority has agreed all along that without the prescribed degree of policy convergence, there would not be the required technical basis for the introduction and operation of a viable regional monetary system. Failure to achieve this minimum set of performance criteria has led to the multiple postponement of the dates fixed for the introduction of the regional single currency (2003, 2005, 2009 and 2015). A review of the process by the ECOWAS Authority at the end of 2015 led to fixing 2020 as the new date for the monetary union.

X. The Supplementary Act A/SA.01/12/15, which amended Supplementary Act A/SA.4/06/12 establishing a Macroeconomic Convergence and Stability Pact, is the latest formal undertaking by Member States to achieve the monetary union; it is to be implemented in the two following stages:

i. Convergence Stage: 1 January 2016 to 31 December 2019: Member States are expected to implement policies to achieve the primary convergence criteria by the deadline of31 December 2019.

ii. Performance, Stability and Consolidation stage: with effect from 1 January 2020, Member States are expected to have achieved the objectives of the Convergence Stage and should now strengthen policy implementation in order to achieve sustainable growth.

XI. Other provisions of the Macroeconomic and Stability Pact are as follows:

i. The macroeconomic convergence criteria shall comprise four primary and two secondary criteria.
ii. Member States should develop a convergence plan aimed at achieving the medium-term convergence objectives on a five-year rolling basis.
iii. The Convergence Council has the authority to modify the convergence criteria.
iv. Compliance with the primary criteria is the benchmark for evaluating compliance and thus qualification to join the monetary umon.
v. The Convergence Council should institute an enforcement mechanism to set a deadline for Member States to implement corrective actions to get back to compliance in case they do not comply with one or more primary criteria.

XII. Earlier in 1999, in its bid to accelerate efforts towards the realization of the monetary union objective, the ECOWAS Authority adopted a *Fast Track Initiative,* resulting in the establishment of the West African Monetary Zone (WAMZ) as a second monetary zone that would ultimately merge with the CFAFranc Zone of the Francophone ECOWAS Member States to form an

ECOWAS-wide monetary union. The West African Monetary Institute (WAMI) was consequently established to provide the necessary technical support for the creation of the second regional currency. WAMI collaborates closely with the Commission and WAMA in performing their multilateral surveillance duties.

XIII. Preference of Single-track Approach over the Two-track Approach

XIV. In view of the slow pace of establishing the second monetary zone, the ECOWAS Authority requested the ECOWAS Convergence Council in June 2007 to make recommendations for accelerating the "single track" approach to the ECOWAS monetary union. The subsequent review in 2008 led the ECOWAS Convergence Council to adopt, in May 2009 at Abuja, a Roadmap for the ECOWAS Single Currency Programme. Another significant step to expedite monetary integration was taken by the ECOWAS Authority at its Dakar Summit on 25 October 2013: President Mahamadou Issoufou of Niger and President John Dramani Mahama of Ghana were appointed to supervise the monetary integration process and oversee the activities leading to the creation of the common currency in a timely manner. This Committee of Heads of State and Government was later expanded to include the Presidents of Cote d'Ivoire and Nigeria.

XV. To implement this decision, the Presidents established a high-level Presidential Task Force to accompany and advise them on all aspects relating to the acceleration of efforts in realising the ECOWAS single currency by 2020. These activities are highlighted in a roadmap leading to the creation ofan ECOWAS single monetary zone in January 2020.

XVI. The elements for implementation in the Roadmap of the ECOWAS Single Currency Programme are:
Macroeconomic Convergence;
Unification ofMonetary and Fiscal Policies and Frameworks;
Development ofExchange Rate Policy;
Development ofRegulatory & Supervisory Frameworks;
Common Policies and Standards on Statistics;
Integration of Financial Systems Operations and Management;
Development and Integration of Regional Payment &
Settlement System;
Establishment ofECOWAS Monetary Union Institutions;
Regional Credit Risk Database;
Sensitization Campaign;
Launch ofECOWAS Monetary Union; and
Introduction of common currency.

XVII. The last review of the state of preparedness against the January 2020 deadline will be conducted in September 2019. Joint surveillance field missions to the countries are to be conducted by WAMA, WAMI and the ECOWAS Commission, and would cover both country performance on the convergence criteria and implementation of the relevant elements of the Roadmap. The Convergence Report to be produced in October will be presented to the Convergence Council in November 2019.

XVIII. Macroeconomic Performance, Challenges and prospects

XIX. One major indicator of readiness for a single monetary zone relates to satisfaction

of a set of macroeconomic convergence criteria. ECOWAS first adopted its macroeconomic policy convergence in December 1999, but individual country performance has generally not been steady and smooth; over the years, this erratic and unsatisfactory performance has caused the review of the criteria a number of times. The current set of convergence criteria consists of the following primary and secondary convergence criteria:

Primary Criteria

i. Budget deficit (commitment basis, including grants)/Gross Domestic product (GDP): lower than or equal to 3% of GDP
ii. Annual average inflation rate: lower than 10% and 5% as at 31st December 2019
iii. Budget deficit financing by the Central Bank: lower than or equal to 10% of the previous year's tax revenue
iv. Gross external reserves: higher than or equal to three (3) months of imports

Secondary Criteria

i. Nominal exchange rate variation (+/-10%)
ii. Government debt-to-GDP ratio: lower than or equal to 70%

XX. Using the most recent data available, the macroeconomic convergence status in 2018 indicates that the performance of Member States slightly deteriorated compared to the performance level in 2017. Under the primary criteria in 2018, the situation deteriorated slightly for the criterion on budget deficit including grants as a percentage of GDP, with five (5) countries meeting the standard compared to seven (7) in 2017. There were improvements in compliance with the inflation and Central Bank financing of budget deficit criteria by one additional country in each case, bringing the total number to 12 and 14 countries respectively. The performance on the gross external reserve remained unchanged in 2018 with fourteen (14) countries meeting the criterion, just as in 2017.

XXI. Overall, no country met all the convergence criteria in 2018, compared to the three (Guinea Bissau, Mali and Senegal) which did in 2017. Only two (2) countries met all primary convergence criteria in 2018, compared to four (4) in 2017. However, eleven (11) countries met ail the secondary criteria in 2018, compared to ten (10) in 2017.

XXII. Concerning performance on secondary criteria in 2018, the Member States' performance improved with respect to nominal exchange rate stability. Two (2) additional countries met the criterion, bringing the total number of countries to fourteen (14). With regard to compliance with the public debt criterion, the situation remained unchanged with twelve (12) countries meeting the benchmark in 2017 and 2018. The performance of the Member States with respect to the convergence criteria is contained in Tables 1-3 which are annexed to this presentation.

XXIII. The deterioration in performance for the budget deficit criterion resulted particularly from poor tax revenue, and an elevated level of recurrent expenditure, particularly salaries, subsidies and transfers, linked sometimes to elections in some countries. For the inflation criterion, there was an easing of inflationary pressure, linked to the relative stability of the exchange rates and supply of locally made products to markets. The commendable performance level for the gross external reserves criterion resulted from the improvement in the

balance of payment and prudent management ofreserves by central banks.

Challenges

XXIV. Challenges affecting the single currency programme include the following:

i. Weak performance of Member States in achieving the convergence criteria. The relative decline in macroeconomic convergence and the lack of sustainability in performance give cause for concern, in view of the approaching 2020 deadline for the creation of a monetary union;

ii. Vulnerability of the regional economies to external shocks, especially the volatile oil price, which makes it difficult for Member States to achieve convergence on a sustainable basis;

iii. Increasingly high current account deficit, which has serious consequences on the external reserves and exchange rate stability;

iv. High and increasing budget deficit in some Member States, which has ripple effects on exchange rate, external reserves and public debt;

v. Impact of an adverse security situation in some countries in the Community, particularly in the Sahel region, namely Burkina Faso, Mali, Niger and North-Eastern part ofNigeria;

vi. Lack of adequate human and financial resources at the national level to effectively implement the activities outlined in the Roadmap in a timely and coordinated manner;

vii. low pace of ratification and domestication of some of the legal statutes, thus impeding the entry into force of the affected legal instruments;

viii. Non-commencement of review of the constitution of each Member State to recognize the *Eco* as a legal tender; and

ix. Ineffective participation of the judiciary in the discourse on the single currency programme.

Prospects

XXV. There are prospects of a viable single monetary zone in West Africa, in view of some favourable developments such as the following:

a. Political will of the Authority of ECOWAS Heads of State and Government. There are four champions among the fifteen ECOWAS Heads of State and Government driving the monetary integration agenda. The champions are the Presidents of Cote d'Ivoire, Ghana, Niger and Nigeria.

b. Existence of a roadmap of activities with timelines which, when adhered to and properly undertaken, will lead to the creation of a sustainable single monetary zone in West Africa.

c. A Special Fund of $6 million for the financing of roadmap activities, contributed to by the Central Bank of Nigeria ($3 million), BCEAO ($2 million) and Bank of Ghana ($1 million).

d. Willingness by the economic managers at national and regional levels to ensure and sustain macroeconomic stability and convergence by taking corrective measures to address the slippages identified in their macroeconomic performance.

e. Achievements recorded in the development of real-time payment systems in

the region. The West African Monetary Institute (WAMI), with financial support from the African Development Bank (AfDB) has assisted The Gambia, Guinea, Liberia and Sierra Leone to upgrade their national payment systems into a real time gross settlement (RTGS) system.

f. Over the years, implementation of the single currency programme has enhanced the development of the financial system comprising the money and capital markets in the region. That is, cross-border banking and capital market trading are operational in West Africa. The Ghana Stock Exchange (GSE), Nigerian Stock Exchange (NSE) and the *Bourse Regionale des Valeurs Mobilieres* (BRVM) based in Abidjan are collaborating to integrate capital markets in Nigeria under the auspices of the West African Capital Market Integration Council (WACMIC).

g. Budgetary resources are being provided for policy harmonization and the operationalization of an online database on macroeconomic convergence, known as ECOMAC Online Database.

h. Commitment of the ECOWAS Authority to ensuring peace and security in the region, especially in the Sahel. For instance, on 14 September 2018, an Extraordinary ECOWAS Summit was held in Ouagadougou to address the menace of terrorism.

i. The decision of the African Union that all its mid-year summits will be dedicated to the issue of continental integration; these are to be organized in collaboration with the regional economic communities (RECs) which are the building blocs of the African Economic Community. Thus, the first AU-RECs mid-year Coordination Meeting was held on 8th July, 2019 in Niamey, Republic of Niger. This development shows the growing importance attached to regional integration at the continental level.

XXVI. Strengthening the role of regional and national institutions, including the Court of Justice

XXVII. The regional monetary integration process is multi-faceted and each dimension needs the full participation of all the partners involved in its implementation. Indeed, a viable ECOWAS monetary union requires diligent performance by all stakeholders including the ECOWAS Court of Justice. The relatively weak institutional support at the national level needs serious attention; national ownership of the integration process demands that all the relevant institutions play their respective roles in a diligent manner.

XXVIII. The Community Court of Justice, mobilizing the rest of the West African judiciary, could usefully assist with the single currency drive by undertaking the following activities:

a. Sustained sensitization of legal and judicial officers on the developments in the ECOWAS economic and monetary integration agenda. This specific international conference on regional integration is a good example, and a step in the right direction.

b. Facilitating objective discussions by the bar and bench on the adoption of a common currency; the process is a constitutional issue requiring the countries to review their national constitutions, to enable *Eco* become a legal tender in their respective territories.

c. Engagement in an in-depth analysis of the legal framework of the ECOWAS Monetary Integration Initiative, as in the Macroeconomic Convergence and Stability Pact (Additional Act A/SA.01/12/15). This should facilitate the understanding and resolution of cases of non-compliance with one of the related national criteria or obligations.

d. Adequate involvement and participation of legal and judicial officers in the discussions about monetary union and economic governance (a forum which is otherwise dominated by economists and politicians). This should enhance the competence of the judiciary in playing its crucial role of interpreting and ruling on the Community law relating to the monetary and other integration processes in West Africa.

e. Facilitating the translation of the Community fiscal rules into the legal system of each ECOWAS country, which would enhance domestication and fulfilment of these regional commitments. The Court of Justice has the important role of interpreting and adjudicating cases brought by the ECOWAS Commission or any member country concerning budgetary discipline.

f. Participating in the essential task of defining the competencies of the Community Court of Justice, and other Community institutions servicing the ECOWAS Monetary Union (EMU); this review might possibly lead to a future treaty revision.

Concluding Remarks

XXIX. With the approach of the January 2020 deadline, the question people are asking is: Is ECOWAS ready for a single monetary union? On the technical level, ECOWAS is not ready as shown in the unimpressive performance on the macroeconomic convergence scale. In this particular regard, the standard requirement is sustained macroeconomic convergence over at least a consecutive two-year period, and credible evidence of policy harmonization.

XXX. However, it is the expectation that the proposed launch of the monetary union in January 2020 will be based on political considerations and not on both technical and political considerations. This is because there is real concern that a further postponement of the launch of the single currency (for the fifth time), may not bode well and may seriously affect the credibility of the entire ECOWAS leadership.

XXXI. To avert such loss of credibility, the ECOWAS Authority has taken the issue very seriously. In fact, the West African Heads of State always discuss the status of the monetary integration agenda in all their ordinary summits.

XXXII. During the 55th Ordinary Session of the ECOWAS Authority held on 29th June, 2019 in Abuja, the Ministerial Committee on the Single Currency programme was commended for the considerable progress recorded in the implementation of the revised roadmap, particularly as concerns the exchange rate regime, monetary policy, the model of the common Central Bank and the proposal of a name for the single regional currency. The Authority reaffirmed the gradual approach to the creation of the single currency, with an emphasis on starting with the Member States that meet the convergence criteria.

XXXIII. The Authority adopted the flexible exchange rate regime together with a monetary policy framework centred on inflation targeting and the federal system for the common central bank. "ECO" was also adopted as the name of the ECOWAS single currency.

XXXIV. The Authority instructed the ECOWAS Commission and Central Banks to accelerate the operationalization of the Special Fund for financing the programmes in the revised Roadmap for the ECOWAS Single Currency Programme. The Commission was further directed to ensure the effective implementation of the recommendations of the meeting of the Ministerial Committee of the ECOWAS Single Currency Programme held in Abidjan on 17 and 18 June 2019, as well as preparation and implementation of the Communication Strategy for the single currency programme.

XXXV. Considering all the efforts deployed at the highest level of decision-making in ECOWAS and the commitment of all stakeholders, the establishment of a strong, sustainable and credible monetary union in West Africa is feasible in the nearest possible future.

XXXVI. It is more likely, however, that the Community may start with a virtual currency and print the bank notes at a much later date.

XXXVII. The regional integration process depends on the commitment and participation of many institutions, operating at both national and regional levels. The judiciary in the region, for example, is an important stakeholder and is therefore expected to show more active interest in the single currency programme.

XXXVIII. Regional integration offers itself as a viable tool for the growth and structural transformation of the national economies in the region. Fortunately, the underlying factors impeding the integration process in West Africa are not insurmountable. Therefore, the specific policy recommendations that have been proffered in this paper, and those by other participants in this forum, are meant for adoption and implementation at regional and national levels, as applicable.

XXXIX. These proposed policy reforms are to overcome the institutional, attitudinal, financial and technical challenges facing ECOWAS and its Member States regarding the implementation of the monetary and other key ECOWAS integration programmes. It should also be emphasized that the call for a renewed drive towards effective regional integration recognizes the multi-dimensional nature of the regional integration and socio-economic development processes; hence, the strong advocacy for the involvement and active participation of all key stakeholders in the various sections of the West African population (both public and private sectors, civil society and the media).

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Annexes

Table 1: Number of countries which complied with ECOWAS convergence criteria

CRITERIA	TARGET	2011	2012	2013	2014	201s	2016	2011	201s	2019*
Primary Criteria										
Budget deficit (commitment basis, including grants)	-S::3%	9	7	9	6	5	3	7	5	12
Average annual inflation rate	-S::10%	12	12	12	14	14	12	11	12	12
Central Bank financing of Budget Deficit	?}0%	12	13	14	13	12	14	13	14	14
Gross external reserves	23	14	13	14	14	12	13	14	14	1s
Secondary Criteria										
Nominal exchange rate variation	±10%	13	14	14	13	13	12	13	14	13
Public debt to GDP ratio	-S::70%	13	13	14	14	14	12	12	12	14

Source: *ECOWAS Convergence Report 2018*

** Forecasts*

1. FIDE (i.e. Federation Internationale pour le Droit Europeen/Intemational Federation of European Law) focuses on research and analysis of European Union law and EU institutions, as well as their interaction with the legal systems for the EU Member States.

Table 2: *Number of primary criteria met per country*

	2014	2015	2016	2017 *	2018 *	2019 **
BENIN	4	3	3	3	3	4
BURKINA FASO	4	4	3	3	3	4
CABOVERDE	3	3	3	3	4	4
COTE D'IVOIRE	4	4	3	3	3	4
GAMBIA	2	1	1	3	3	4
GHANA		2	2	2	3	3
GUINEA	3		3	3	3	3
GUINEA-BISSAU	4	3	3	4	3	4
LIBERIA	3	3	4	3	3	3
MALI	3	4	3	4	3	4
NIGER	3	3	3	3	3	3
NIGERIA	4	4	3	3	3	4
SENEGAL	3	3	3	4	3	4
SIERRA LEONE	3	3	1	1	1	2
TOGO	3	3	3	4	4	4

Source: *ECOWAS Convergence Report 2018*

Table 3: *Total number of primary and secondary criteria met per country*

	2014	**2015**	**2016**	**2017 ***	**2018 ***	**2019 ****
BENIN	6	5	5	5	5	6
BURKINA FASO	6	6	5	5	5	6
CABOVERDE	4	4	4	4	5	5
COTE D'IVOIRE	6	6	5	5	5	6
GAMBIA	2	2	2	4	4	5
GHANA	1	2	3	4	5	5
GUINEA	5	3	4	5	5	5
GUINEA-BISSAU	6	5	5	6	5	6
LIBERIA	5	5	6	4	4	4
MALI	5	6	5	6	5	6
NIGER	5	5	5	5	5	5
NIGERIA	6	5	4	4	5	6
SENEGAL	5	5	5	6	5	6
SIERRA LEONE	5	5	2	2	3	4
TOGO	5	4	4	5	5	6
Number of countries meeting all the convergence criteria	**5**	**3**	**1**	3	0	**8**

Source: *ECOWAS Convergence Report 2018*

LEGAL ASPECTS OF ECONOMIC INTEGRATION

BY

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The harmonious economic development of the West African sub-region has clearly become the ultimate objective for improving the standard of living of the people. To achieve this, economic integration has proven to be the preferred way to attain the objective of accelerated and inclusive growth for all the States.

This has required and still requires Legal structures and mechanisms to support various common policies drafted at the sub-regional level within the Economic Community of West African States (ECOWAS).

It should be recalled, that the founding Treaty of this African sub-regional organisation was signed in 1975 in Lagos Nigeria, by all the Heads of State and Government of the then sixteen (16) Member States. Subsequently, a revised Treaty was signed in Cotonou, Benin in July 1993, in order to adapt the founding Text to the several changes and to comply with the new Community mandates.

Initially made up of sixteen (16) States, the Community now has fifteen (15) Member States, following Mauritania's withdrawal. Like any cooperation or sub regional organisation, the establishment of ECOWAS, as well as its operations, have called for adjustments in national legislations and the ceding of parts of national sovereignty as well as the transfer of powers in order to create the necessary dynamics for the proper functioning of this multidimensional Union.

I- Legal Framework for Economic Integration

Taking into Account the African Charter on Human and Peoples' Right and the Declaration of Political Principles of the Economic Community of West African States Adopted in Abuja by the Fourteenth 14th Ordinary Session of the Authority of Heads of State and Government of ECOWAS on 6 July, 1991, the Heads of State and Government agreed on the fundamentals of integrating the Member States into a viable regional Community and worked on the partial and gradual pooling of national sovereignties for the profit of the Community within the context of a collective political will.

This resulted in the creation of Community institutions with relevant and adequate powers.

In practice, the establishment of the Community has resulted in legal and institutional adjustments, such as the establishment of the free trade zone, the creation of a Customs Union in order to facilitate trade between States, the creation of a common market, involving monetary and economic union.

1. The Establishment of a Common Market and a Customs Union

The desire for economic integration between ECOWAS States has been widely affirmed through various legal acts, one of the most important is the revision of the founding Treaty.

In fact, Article 3 of the revised ECOWAS Treaty highlights one of the main objectives of this organisation, as promoting economic integration in the sub-region by creating a common market and customs union, increasing intra-regional trade, enhancing

economic activity, improving West Africa's competitiveness in the global market, boosting the GDP of Member States and improving the well-being of the citizens.

In other words, the establishment of free trade zones within each ECOW AS Member State aims to boost economic policy through tax benefits, including VAT exemptions, profit tax exemptions or custom duty exemptions (import and export taxes), with the aim of attracting investors and boosting economic activity.

It is for this reason that the ECOWAS Trade Liberalisation Scheme (ETLS) was established in 1979. ETLS is an essential first step towards achieving the Community's objective of creating a common market via "trade liberalization through the abolition of customs duties on imports and exports and the removal of non-tariff barriers among Member States"

This scheme, which at that time only covered agricultural products and handicrafts, was later expanded to include industrial products in 1990. This Expansion created the need for the rules defining the notion of ECOWAS «originating products», with the "Rules of Origin"[1] clearly spelt out.

The ETLS mechanism assures the free movement of goods with exemption from custom duties and from taxes with similar effect regarding importation into the ECOWAS region and the implementation of measures to reduce the many administrative formalities at the borders. The ETLS is a tool for implementing the principle of free trade and the free movement of people and goods within the ECOWAS sub-region, which is supported by a customs union established to facilitate the operation of the common market

Following the tradition of the West African Customs Union, the economic Union created in 1959, the Economic Community of West African States (ECOWAS) established a customs union through the « Common External Tariff » (CET)[2]. Adopted on the 12th of January 2006 by the 22nd session of the Authority of Heads of State and Government and entered into force on the 15th of January 2015, the CET implemented attractive custom practices between members of the Community.

2. Economic and Monetary Union

Economic and Monetary integration remains dependent on the establishment of a solid common means of payment.

The idea of active cooperation began in 1975 with the creation of the West African Clearing House. The encouraging results of this initiative gave rise to the idea of a common currency for the region in May 1983, which led to the gradual establishment of a customs union and the will to launch a single currency, which has been postponed many times since 1983.

[1] The Rules of Origin governing this concept are defined in the ECOWAS Protocol A/Pl/1/03 of 31st January 2003
[2] Regulation No.2/97/CM/WAEMU on adoption ofWAEMU's CET

In this regard, on the 20 of April, 2000 in Accra (Ghana), six West African Countries (Gambia, Ghana, Guinea, Liberia, Nigeria, Sierra Leone) announced their intention to create a Monetary Union in West Africa alongside the WAEMU, in order to coincide the frontiers of the monetary union with that of the ECOWAS.

The Accra Declaration, outlined the convergence criteria on inflation, public finances and foreign exchange reserves aiming at organising multilateral surveillance of the convergence process and to prepare the Monetary Union. In order to achieve this, a Central Bank, the West African Monetary Institute (WAMI) was created in Accra.

This led to the creation of the West African Monetary Zone (WAMZ) in April 2002, which required a commitment by each Member State to maintain its exchange rate within a 15% band of fluctuation against the Dollar. However, faced with the observation that the convergence was insufficient at the end of 2002, Member States were compelled to postpone the Monetary Union to the 1st of July 2005.

The Heads of State and government of the Economic Community of West African States, in view of the need to establish this important tool of economic integration,decided on the 29th of June 2019, at the Abuja summit, to adopt the "ECO" as the common currency as early as 2020, thereby endorsing the proposals from the meeting of the ministerial Council on the ECOWAS single currency program held in Abidjan (Cote d' Ivoire) on the 17th and 18th of June 2019.

This time, the creation of this ECOWAS common currency by 2020 seems to have been irreversibly launched. Indeed, according to the agenda, the launch of the single currency is to start with the countries that have their own currency (Gambia, Ghana, Guinea, Nigeria and Sierra Leone) after which the 8 WAEMU member countries that are part of the Franc Zone and share the CFA will be added.

However, the question of its pegging to the Euro or dollar remains unresolved. Indeed, for some Heads of State, a flexible currency rate seems more appropriate, others believe that the pegging of the currency to a stronger currency, specifically the Euro, provides guaranteed security.

II- The implementation of ECOWAS Treaties and Laws in the Member States

The implementation of ECOWAS Treaties and laws in the Member States raises the question of sovereignty of States, with regards to the reciprocity of this implementation and the remedies available in cases of conflicts.

Every economic integration must inevitably overcome the test of Equality of States and of sovereignty of the Member States.

At the national level, since the State is sovereign, no rule of law other than that which it chooses to apply, through its signature, ratification or accession, should be applied in its territory.

At the international level, the sovereign State is equal to all other sovereign States,

which implies in particular the respect for its independence and consequently the non-interference in its national affairs.

Given this legal equality, it has often proved difficult for any Community institution established by the union, to make a decision concerning the other states without the prior consented agreement of all concerned.

In this logic, the operation of integrated institutions are bound by the rules of Equality of States that impacts their operation, and effectiveness (barriers, delays).

By adhering to the Community Treaty, each Member State, is compelled to make concessions for the benefit of the Community, committing not only to the ceding of parts of their sovereignty for this purpose, but also committing to the achievement, and the implementation of the aforementioned Treaty. Thus, in addition to the responsibility not to violate the provisions of the Treaty and its supplementary protocols, ECOWAS Member States are working to undertake measures in favour of its implementation.

These are legislative measures of adjustment and adaptation in order to align the internal text with the provisions of the Treaty (which has a superior status) or taking practical or administrative policy measures for its implementation.

Also, when a reform takes place or aSupplementary Protocol is made, it requires each Member State to reform its municipal law in order to adapt it to the provisions of the Treaty, which in principle has a superior legal status as compared to the municipal law. This general principle of law is also reflected in the constitution of the Member States. This is the case in Coted' Ivoire. Article 123 of the November 8 2016 constitution States that : « *Treaties or agreements duly ratijied shall, upon their publication, have an authority superior to that of the laws, subject for each treaty and agreement, to its publication by the other party* »[3].

As can be noted, the implementation of ECOWAS Treaties and laws is faced with the challenge ofreciprocity, which can be an obvious obstacle to their implementation.

This also applies to the political will to implement the provisions as stated at the time of the signature or ratification of the said texts. By way of illustration, the increasing will to implement the commitments has inevitably prompted the desire to create a « borderless region » by promoting the « free movement of goods and persons » and the right of residence and establishment as set out in the 1979 protocol on free movement.

Consequently, the free movement of persons and goods, having been in force for decades, with the existence of an ECOWAS passport, to facilitate movement and intra-regional trade, is experiencing difficulties in its implementation. Thus, the implementation of labour mobility has remained ambivalent despite the provisions of Article 4 of the WAEMU Treaty which provides for free movement and the right of establishment for self-employed or employed persons.

[3]Article 123 of Law No. 2016-886 of8 November 2016 Constitution of the Republic of ivory coast

In addition, another real challenge lies in the protection of the rights of migrant workers, whose rights have not been ratified by all Member States (e.g: Coted' Ivoire).

III- **Harmonization of Legislation**

The implementation of integration in the Community entails the coexistence of two legal systems (Community Legal systems and national legal systems of the Member States) which must in case of conflicts be harmonised.

The harmonisation of the legislation within the ECOWAS region thus reflects the will to align agreements and Treaties concluded at the Community level and to connect various parts of the whole into a perfect agreement. The harmonization of frameworks therefore reflects a common vision and strong commitment to work towards greater political economic integration of the region in all sectors.

To this end, it seems necessary to gradually develop regulations by defining the criteria for the convergence and harmonisation of policies, legal and institutional frameworks for an integrated development of the ECOWAS region. In this respect, the revised ECOWAS Treaty posits, providing its principles and objectives are stated, that « *community action will include the harmonisation of standards and measures* »4.

The harmonisation of legislation must therefore be done in order to address conflicts between various legislations. In the event of their occurrence, the judge, guardian of Laws and Human Rights, must intervene. The judge's intervention within the framework of the Economic Community of West African States is carried out through a Court of Justice.

The ECOWAS Community Court of Justice, the main judicial body of the Community was established by a protocol signed in 1991 which was formalised in Article 15 of the revised Treaty of the Community in 1993, and ensures respectforthe law and the principles of equity in the interpretation and application of the provisions of the revised Treaty and other subsidiary legal instruments adopted by the Community.

It is also competent to rule on violations of the principles of fundamental human rights. However, in order to strengthen its authority and res judicata, it is important for the Member States, without exemption, to strengthen the independence of this judicial institution, by enforcing its decisions. With regard to the principle of sovereignty, one of the major challenges of this court lies in the fact that it does not have the means to constrain states in the execution of judgments. However, the very existence of the court and its increasingly regular use by litigants of the Community, as well as the increase in the number of judgments delivered, is beneficial in the sense that it provides an alternative resort apart from domestic remedies.

[4] ECOWAS Treaty, article 3 :2 :i

IV- Common Currency: Challenges and Prospects.

The implementation of a single currency within the Economic Community of West African States (ECOWAS), the ECO, which would replace the CFA franc (XOF) in less than two years and seven (07) other national currencies used in the region will face various challenges. Beyond the economic challenges, various legal and human rights concerns will have to be addressed.

The first challenge is undoubtedly the exchange rate regime, which will have to be determined. Will the ECO have a flexible exchange rate regime or pegged as the CFA franc is to a single foreign currency (the EURO). The variance of declarations on the issue calls for a formal determination to allow this currency play its full role.

Moreover, the challenge of sovereignty (the respective sovereignties of the Member States) could be a preliminary question or a source slowing down the mechanism. Indeed, just like the implementation of Community texts, for the implementation of this common currency, eight other countries will have to abandon the CFA franc and seven other countries their national currencies. This issue undoubtedly has a bearing on the legal status of the Central Banks in the transition period of the WAMI.

All these questions affirm the idea that respecting the implementation agenda remains a major challenge. Indeed, given the delays already observed in the implementation of the revised road map activities, the human capacities of the regional institutions involved in its implementation must be strengthened in order to enable them to accelerate the implementation of the planned activities.

Conclusion

The purpose of this paper, which is intended to be a an open window for the interactions that will follow, it can be underscored that the ECOWAS cooperation platform, as well as its operation, have called for adjustments in State municipal legislation and the ceding of parts of sovereignty. To this end, a gradual transfer of powers will contribute to creating the necessary dynamics for the proper operation of this multidimensional union. The establishment of this ©mmunity undoubtedly reflects the stated will to pool the forces of the Member States in order to improve the living conditions of the Community's population. This is accompanied by, as we have seen for decades, the evolution and strengthening of the law of economic integration, which is essential to the convergence of the policies of the Member States.

THANK YOU.

SUB-THEME 6

ECOWAS INTEGRATION & SUB-REGIONAL STABILITY

ECOWAS INTEGRATION AND THE STABILITY OF THE SUB-REGION

BY

DR. ABDOU LAT GUEYE
Director, ECOWAS Early Warning Directorate

INTRODUCTION

It is a real pleasure for me to be here with you in Accra, as part of this important conference on the theme: The Economic Integration of West Africa: Challenges and Perspectives.

Permit me to begin this address by extending my appreciation and congratulations to the Court on the choice of this theme, and for the distinction conferred on the Early Warning Directorate by your kind invitation to me.

Distinguished Ladies and Gentlemen,

The history of international relations is liberally interspersed with periods of war and of peace between States - the major stakeholders in international relations. It was with the aim of bringing about enduring peace between States and banishing for all time the spectre of such wars as the First and Second World Wars, that the United Nations Charter was signed at San Francisco, on 26 June 1945. Other strategies for peace have emerged since the adoption of this memorable text prohibiting war, and calling on States to cooperate. These include integration, which is defined as "going beyond existing political sovereignties, thereby reducing the fragmentation of the system in favour of autonomous political and military centres"[1].

Current schools of thought establish a distinction between political and economic integration. For Barrea[2], integration is "an international peace strategy: peace through the political unification of States is peace through the rule of law or by political power". Kamara Lai on the other hand, views economic integration from a dual perspective[3] : respectively, as an objective, in which context it seeks to establish "a coherent, territorially delimited, national or international economic zone, comprising previously independent areas or registered domains", and also as a means, in which context it advocates "techniques for the realisation of set objectives, aimed at endowing the economy or economies under consideration with the sort of substantial socio-economic foundation, which can be provided by economies of scale, enabling the rapid growth of the zone's potential".

West Africa, like many other regions, has succumbed to the lure of integration, and specifically, to the lure of economic integration, as evidenced by Article 2 of the ECOWAS Treaty of 28 May 1975, which stipulates: "It shall be the aim of the Community to promote cooperation and development in all fields of economic activity".

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[1] BARREA Jean, Theorie des relations intemationales, 3eme edition, Arte], 1994, p.23 (Theory ofinternational Relations, yct edition, Arte] 1994, p.23)

[2] BARREA Jean, Ibid.

[3] KAMARA Lai", [11] Integration fonctionnelle et developpement accelere en Afrique [11] Revue Tiers Monde, n° 48, octobre-decembre 1971, p 21 (« Functional Integration and Accelerated Development in Africa», Revue Tiers Monde, n° 48, October - December 1971, p. 21)

Distinguished Ladies and Gentlemen,

I have been tasked with making a presentation on the sub-theme "**ECOWAS Integration and the Stability of the Sub-region".** To this end, I propose to first identify the challenges arising in connection with conflict prevention, viewed as the foundation on which the ECOWAS economic integration edifice stands.

My presentation will be divided into two parts, namely: Conflict and Insurrection - Obstacles to the Economic Integration Process **(Part One);** and Establishment of the Early Warning System- linchpin of the ECOWAS Peace and Security Mechanism **(Part Two).**

I. Conflict and Insurrection - Obstacles to the Economic Integration Process

A. *The Impact of the Liberian Conflict on the Integration Process*

Article 4 of the 1975 ECOWAS Treaty provides for the creation of 4 Specialised Technical Commissions, namely: The Trade, Customs, Immigration, Monetary and Payments Commission; the Industry, Agriculture and Natural Resources Commission; the Transport, Telecommunications and Energy Commission and the Social and Cultural Affairs Commission.

18 years later, in 1993, the revised Treaty makes provision for 8 Technical Commissions: Food and Agriculture; Industry, Science and Technology, and Energy; Environment and Natural Resources; Transport, Communications and Tourism; Trade, Customs, Taxation, Statistics, Money and Payments; Political Affairs, Judicial and Legal Affairs, Regional Security and Immigration; Human Resources, Information, Social and Cultural Affairs; Administration and Finance.

Other than the increase in the number of Commissions, the major development of note is obviously the creation of a Commission for Political, Judicial and Legal Affairs, Regional Security and Immigration. At first glance, the creation of this Commission might appear anomalous, for an organisation with economic integration as its primary objective, and as attested by its name: Economic Community of West African States.

What could possibly have happened between 1975 and 1993 to make the Heads of State review the ECOWAS Founding Treaty, in order to take the peace and security dimension into account?

You will all recall the shock engendered by the outbreak of the Liberian conflict in 1989. The nature of this conflict was distinctive in two major and cumulative ways: firstly, because it was internal, pitching Liberian citizens against one another in opposing factions, based on identity and partisanship. Secondly, it presented a very real threat of spill-over into other States of the region, as was in fact subsequently the case, during the Sierra Leonean conflict.

In addition to being taken unawares, the region also lacked the appropriate legal framework which would have empowered ECOWAS to intervene very rapidly in the management of this internal Liberian conflict. Existing legal texts, namely, the Protocol

on Non-Aggression (1978) and the Protocol on Mutual Assistance in Defence (1981), were aimed, essentially, at defending the sovereignty of the signatory Member States, and protecting them against external aggression.

It was this legal vacuum that justified the creation, and then the life-saving deployment of 10,000 ECOMOG troops in 1990, representing a tool, it should be recalled, not provided for in the 1975 Treaty.

In order to clearly understand the decision of the Heads of State to intervene in the resolution of the Liberian conflict, there are a number of facts about the impact of this conflict which need to be called to mind.

More than 250,000 dead[4]; 500,000 refugees[5] dispersed among the following States: Cote d'Ivoire, Guinea, Sierra Leone, Ghana and Nigeria; between 500,000 and 1 million internally displaced persons. To this heavy toll must be added the impacts of the outbreak of the conflict on Sierra Leone and the destabilisation in Guinea.

In the light of the preceding, it would have been illusory for ECOWAS to limit itself exclusively to the pursuit of its economic integration objectives, without first cleaning up the security situation in the region. The securing of the ECOWAS region is more than an objective to be pursued, it is in fact a prerequisite to the implementation of the region's economic integration policies and programmes. Full awareness of this fact became manifest with the review of the ECOWAS Treaty, and the adoption of two important protocols, namely:

1. The Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security, signed at Lome, on 10 December 1999;
2. The Protocol, dated 2001, on Democracy and Good Governance, supplementing the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security.

This is the new architecture which has empowered ECOWAS to intervene in conflict prevention and management in West Africa, by means of different mediation and preventive diplomacy initiatives, or by the deployment of its interposition forces.

A particularly noteworthy component of the ECOWAS legal arsenal is the Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, adopted on 14 June 2006, and entering into force on 29 September 2009.

It has been concluded by a number of observers that the intensity of internal conflict in the Mano River area, and later, in the Sahelo-Saharan zone, has been caused by the ready availability of small arms and light weapons, of which more than 7 million are estimated to be in circulation[6]. In addition to their impact on internal conflicts, these light weapons

[4] https://www.francetvinfo.fr/monde/afrique/liberia/normalisation-en-marche-au-liberia-13-ans-apres-la-fin-de-la-guerre-civile_3061429.html
[5] https://www.hrw.org/legacy/french/reports/liberia1997/liberia.htm
[6] Adedeji Ebo, Small Arms Control in West Africa, p.11 October 2003, (MISAC) International Alert

also aggravate urban and trans-border criminality. The adoption of a convention to combat their proliferation was therefore a matter of grave necessity.

B. Overview of the Current Security Situation

Having already lived through both inter-State and post-Cold War-type internal conflicts, the ECOWAS region is now subject to new threats, which include terrorism and inter-Community conflicts.

On the issue of the terrorist threat, the ECOWAS zone is crisscrossed by 2 terrorist zones of activity in which a certain number of recognised terrorist groups, included in the United Nations list of designated terrorist groups, operate. These groups all have one objective in common - that of seeking by force of arms, to replace the state model with a theocratic entity.

They operate in areas which straddle several States or several Regional Economic Communities. The operation zones of the different terrorist groups are reflected as follows:

- ***The Lake Chad Basin***

The ECOWAS Early Warning System, ECOWARN, has recorded more than 900 deaths resulting from 124 terrorist incidents in the Lake Chad Basin, particularly in Niger and Nigeria. The main terror threat is from the Boko Haram group, which resorted to violence in 2009, on the death of their historical leader, Mohamed Yousouf. After years of violence, concentrated exclusively in Borno, North-Eastern Nigeria, the terrorists extended the reach of their areas of operation, and began to target, first, other North-Eastern States in Nigeria, and subsequently, the other States bordering the Lake Chad Basin, namely, Niger, Cameroon and Chad. On 7 March 2015, after several years of existence, Boko Haram succeeded in establishing an affiliation with the international terrorist movement, thereafter setting up the West African province of the Islamic State. At present, the situation of the group is somewhat unclear, in that it is divided into two factions: one, led by Aboubacar Shekau (Boko Haram), and the other by Abu Musab Al-Barnawi (West African Province of the Islamic State) who is the new representative of the Islamic State, after the deposition of Shekau by Al-Baghdadi, on 3 August 2016.

The modus operandi of the terrorist movement in the Lake Chad Basin is primarily asymmetric in its approach, consisting of raids, the use of IEDs, often activated by women and children during suicide missions. By order of importance, the targets of the terrorists are the civilian population and the armed and security forces. Priority targets, again by order of importance, are the civilian population, members of the Nigerian defence and security forces, and members of the Multinational Joint Task Force against terrorism in the Lake Chad Basin.

The emergence of terrorism in the Lake Chad Basin may have been facilitated by the following:

- the existence of a section of the population sympathetic to the enforcement of Islamic law, to the detriment of the laws of the Federal Republic of Nigeria, which is a secular State;

- the deterioration in the economic situation, aggravated by the contraction of Lake Chad, both factors of which have exacerbated youth unemployment, rendering the youth vulnerable to extremist indoctrination; and
- the porosity of the borders between the different States around the Lake Chad Basin.

- ***The Sahelo-Saharan Zone***

More than 300 terrorist attacks were recorded by ECOWARN in 2019, costing more than 500 lives in Mali, Burkina Faso and Niger, three States occupying the Sahelo-Saharan zone. This area is a vast stretch of desert, which has come to symbolise the junction point between Africa and international terrorism, in the wake of the declaration of allegiance to the Al-Qaeda Group by the Salafist Group for Preaching and Combat, in 2007. As a reminder, the Salafist Group for Preaching and Combat (SGPC) is an Algerian terrorist group which contributed to inflict grief upon Algeria, before being forced into the Sahara under pressure from the Algerian defence and security forces.

The culminating point of terrorism in the Sahara was reached when 55% of Malian territory fell under the control of a coalition initially comprised of armed Tuareg secessionist groups, demanding independence for the three northern Malian regions of Kidal, Timbuktu and Gao, but which subsequently fell apart when the secessionist groups were driven out by terrorist groups, beginning in January 2012.

Following the intervention of France and the Malian and Chadian armies in January 2013, leading to the destruction of the terrorist safe havens in northern Mali under the control of the Al-Qaeda in the Islamic Maghreb Group, the Movement for Unity and Jihad in West Africa, and Ansar Dine, the terrorists made up for their losses by resorting to full-scale asymmetric warfare (raids, ambushes, harassing mortar fire), and by targeting the Malian Armed Forces, the MINUSMA Blue Helmets and soldiers of the Operation Barkhane Force.

In terms of their development, the terrorists initially extended the territorial reach of their operating zones to other regions of Mali, including the Centre and the South, two areas within which the Ansar Dine Group established Katibat Macina Ansar Dine and Katibat Sikasso Khalid Ibn Walid at the Cote d'Ivoire border.

Today, Al-Qaeda appears to have changed its approach to the struggle, now promoting highly ethnicised local terrorism. It is from this perspective that the fusion of the different terrorist groups to form the Group for the Support of Islam and Muslims should be viewed. The group is led by Iyad Ag Ghaly and includes Amadou Koufa and the Algerian leaders of Al-Qaida in the Islamic Maghreb. This new development blurs the line of demarcation between terrorism and ethnic demands, and impacts and complicates the conduct of counter-terrorism operations.

The spread of terrorist groups in the Sahelo-Saharan zone has been facilitated by the vast geographical extent of the zone, the porosity of borders, and the traffic in drugs and arms, all of which factors are further exacerbated by the insecurity in Libya.

The current situation on the ground is far from encouraging, particularly in the light of the risk of spill-over into the coastal ECOWAS Member States (in Benin, two French citizens and their Beninese guide were taken hostage on May 1st 2019; Cote d'Ivoire was the scene of terrorist attacks at Bassam, on 13 March 2016, Togo and Ghana have also experienced attacks) all this, despite the intensification of counter-terrorist operations by the different defence and security forces of the region, separately, or within the framework of coalitions (the *GS* Sahel Joint Force ; the Multinational Joint Task Force against terrorism in the Lake Chad Basin).

In addition to the terrorism threat, West Africa is also experiencing an upsurge in inter-community conflicts, which have their roots in very old historic conditions. The sources of tension in these situations, are many and varied: competition for resources; the desire for security etc... A case in point is the conflict between opposing farmers and herdsmen virtually everywhere in West Africa, which has intensified, due to the following factors: population growth; the increase in the quantity of cultivated land; climate variability and change, resulting in a decrease of available resources; and the possession of military weaponry by the opposing sides.

Another example of inter-community conflict is the kind that is fanned by terrorist groups, particularly in Mali and Burkina Faso, and which has resulted in the stigmatisation of the Fulani communities.

II. Establishment of the Early Warning System - Lynchpin of the ECOWAS Peace and Security Mechanism

As mentioned earlier, the Heads of State, in their desire to avoid being again taken by surprise by unfolding events, decided to prioritise conflict anticipation and/or mitigation by the creation of an early warning system, which has evolved appreciably since its creation.

A. The ECOWARN of Yesterday

Further to the provisions of Article 58 of the ECOWAS revised Treaty establishing an ECOWAS Early Warning System, Articles 23 and 24 of the 1999 Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, laid down the modalities for the organisation and functioning of this system. The system comprised an Observation and Monitoring Centre, with 4 Observation and Monitoring Zones covering the different Member States, and zonal headquarters located in the capital cities of Banjul, Ouagadougou, Monrovia and Cotonou.

The regional centre was responsible for the compilation and processing of the data collected by the zonal centres, and the preparation of reports for submission to the President of the ECOWAS Commission. In addition to the zonal centres, the early warning system set up a network of 77 field instructors, with 5 assigned to each Member State and 7 to Nigeria, in view of its size and population. The network fed real time information into the system thereby boosting data collection efforts.

With the operationalisation of this system, ECOWAS was able to mitigate the outcomes of a number of different crises in the West Africa region, including that of The Gambia, which reached a positive resolution, marking an indisputable victory for the early warning effort.

However, after years of operation, and notwithstanding the successes recorded, the system reveals certain limitations, including the time-gap between alert and response, and inadequacies in the face of new, emerging sources of insecurity.

Responding to these limitations, ECOWAS Management undertook to modify certain aspects of the ECOWARN system.

B. The ECOWARN of Today

Today, the early warning system has undergone two major changes: due account has been taken of emerging threats, and the early warning system has been decentralised.

- **Taking into Account of Emerging Threats in the Functioning of the West African Early Warning System and Upgrading Thematic Analysis**

A number of studies conducted by the Early Warning Directorate, focusing on risk vulnerability in the Member States, have highlighted the need to pay more attention to threats directed at the safety of human beings, and not focus exclusively on conflict situations. The following are the 5 themes adopted by the early warning system in response to the new guidelines emerging from the findings of these studies:

- Crime & Criminality: Drugs/Human Trafficking and Organised /Cyber Crime/Migration;
- Security: Terrorism, Violent Extremism and Maritime Security;
- Governance: Politics/Elections/Explosion of the Youth Population/Unemployment/ Gender Governance & Human Rights;
- Health: Epidemics/Pandemics/ Public Health Infrastructures;
- The Environment: Climate Change and Natural Disasters/Food security/Transhumance/Land Issues.

In addition to taking emerging threats into proper account, these new themes position the Early Warning Directorate in alignment with the human-centred ECOWAS Vision 2020, of an "ECOWAS of peoples".

- **Decentralisation of the Early Warning System**

The evaluation of the ECOWAS Early Warning System conducted 10 years after its creation, revealed that warnings sent out by the system failed to elicit the appropriate responses aimed at preventing or mitigating harm to human beings, particularly on the part of the Member States. The States, in fact, manifested an inability to anticipate and coordinate responses. In order to boost the response capability at the Member State level, the Heads of State and Government, at their 45th Summit held at Accra, on 14 July 2014, adopted a framework for the deployment of an early warning and response mechanism at the national level. The decision was encapsulated in a Regulation adopted by the ECOWAS Council of Ministers in December 2015, laying down the modalities for the establishment of the mechanism in the Member States.

In concrete terms, the mechanism functions at two levels: the political and the technical. At the political level, it is driven by a Steering and Monitoring Committee chaired by the Prime Minister or Vice President, depending on the nature of the political system in place. The rest of the membership of the Committee shall comprise the Minister of the Interior, the Minister of Defence, the Minister of Justice, the Minister of Foreign Affairs, the Minister of the Environment, the Minister of Health, the Minister of Solidarity, in fact all the Ministers whose portfolios impact on human insecurity, together with the minority Leader of the Parliamentary Opposition, the President of civil society organisations, and the ECOWAS Permanent Representative.

As of today, this mechanism is operational in the first 5 pilot Member States: Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Liberia, and Mali. Action is on-going to ensure its deployment in the remaining 10 ECOWAS Member States.

Conclusion

A conscious choice was made, during the preparation of this presentation, to underscore the impact of instability on the ECOWAS integration process. This stance reveals the particular importance attached by the ECOWAS Heads of State to ensuring that the form of insecurity prevention adopted today, will shield the ECOWAS citizenry from fear and need.

To observe that instability is an obstacle to economic integration is a given. However, a balance must be struck between the dialectics of economic integration and of stability. The Heads of State and Government, in the Preamble to the 1975 Treaty, decided in favour of economic integration, "Conscious of the overriding need to accelerate, foster and encourage the economic and social development of their States in order to improve the living standards of their peoples". A detailed analysis of the sources of insecurity indicates that conflicts and insurrections are essentially engendered by the fact that the feeble gains of economic progress make no impact on the living conditions of the peoples, or on poverty.

In view of the preceding, the dialectic of the relationship between economic integration and stability in the sub-region, only serves to demonstrate that it is a variant of the inseparable link that binds development to security. Combating instability is a "sine qua non" for accelerating economic integration - and vice-versa.

Thank you for your kind attention.

ECOWAS INTEGRATION & SUB-REGIONAL STABILITY

BY

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INTRODUCTION

Art. 3 ECOWAS Revised Treaty:

Art 3, para.1:
«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»

Art. 3, para. 2: The 4 Major Stages for the Establishment of an Economic Union:

- A Free Trade Zone, which involves the abolition of customs duties and quantitative restrictions on imports between the member countries ;
- A Customs Union, which is a free trade zone with a Common External Tariff (CET) ;
- A Common Market, which is a customs union within which factors of production can move freely from one country to another;
- An Economic Union, or common market, characterised by the harmonisation of the economic policies of the different Member States.

The economic and monetary union is the fifth and final phase of the economic integration process, which culminates in the creation of a Single Currency.

- Conflicts and Civil Wars of the 1990s: realisation of the fact that there can be no economic integration (development) in the absence of stability, peace and security, and of the need to factor in regional peace and security-related actions.
- Hence the introduction, into the 1993 revised Treaty, of provisions relating to political affairs, peace and security:

  * **Art. 56:** « In pursuit of the integration objectives of the Community, Member States undertake to cooperate on political matters…»;

  * **Art. 58**: « ... to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the sub-region.» Paragraph 3 of the Article provides that the detailed provisions governing political cooperation, regional peace and stability shall be defined in the relevant Protocols.

RELEVANT LEGAL AND POLITICAL FRAMEWORKS (for peace and security)

- The Protocol on the Mechanism for Conflict Prevention, Management,
- Resolution, Peace-keeping and Security (1999);
- The ECOWAS Convention on Small Arms and Light Weapons (2006);
- The Praia Declaration on Prevention of Drug Abuse, Illicit Drug Trafficking and Organised Crime in West Africa (2008), and its Regional Action Plan (2016 -2020);
- The ECOWAS Counter-terrorism Strategy (2013);
- The ECOWAS Integrated Maritime Security Strategy (EMS, 2014);
- The ECOWAS Conflict Prevention Famework (ECPF, 2008);
- The ECOWAS Political Framework for Security Sector Reform and Governance (2016).

<u>Final Objective</u>: to *create a peaceful and safe enabling environment/or the economic integration and development of the region.*

ADOPTION OF THE« SECURITY FIRST» APPROACH: THE LINK BETWEEN SECURITY AND DEVELOPMENT

1. Taking account of the consequences of insecurity and instability

- the high numbers of dead, wounded, displaced persons and refugees;
- Shutdown or dysfunction of primary socio-economic infrastructures: schools, health centres, markets, etc ;
- Destruction of infrastructures : public buildings, roads, etc;
- Slowdown of economic activity, job losses, etc
- Curtailment of freedoms.

ADOPTION OF THE« SECURITY FIRST» APPROACH: THE LINK BETWEEN SECURITY AND DEVELOPMENT

2. The reciprocal link between *Security and Development*

- Security and stability create an enabling environment for economic activity and development: fostering assurance and confidence in investors;
- Security requires means : availability of human resources, training and preparation;
- equipment adequate to the need, etc;
- *security comes at a price;* Only a strong and thriving economy is capable of effectively and efficiently generating adequate resources for the security services, thereby, strengthening security at the national level; *availability of the resources for security must be ensured;*
- *A weak* economy deprives the State of the resources needed to ensure its security: investing in security is a challenge for weak economies.

ADDRESSING THE MAJOR SECURITY THREATS

1. To Stem the Expansion of Terrorism and Ensure its Eradication

Effective and well planned implementation of the ECOWAS Counter-terrorism Strategy: *prevent; pursue; reconstruct.*

Execution of priority actions identified by the Extraordinary Summit of Heads of State and Government of 14 September 2019:

a. Pooling of efforts and coordination of counter-terrorism initiatives;
b. Effective and direct information and intelligence sharing between the security services of the Member States;
c. Training and equipping of State counter-terrorism stakeholders.
d. Strengthening of security management and control at air, land and sea borders;
e. Strengthening of control measures for arms and sensitive multiple-use items;
f. Counter-terrorism financing measures;
g. Promotion of inter-Community communication, dialogue and prevention measures against violent extremism;
h. Resource mobilisation to finance counter-terrorism measures;

Finalisation of the 2020 - 2024 Action Plan covering 8 priority areas, and including a budget and implementation schedule, for submission to the Ordinary Session of the Authority in December 2019.

2. Combatting proliferation of small arms and light weapons (SALW)

- Basic principle : monitoring of legal, and combat of illegal transactions;
- Reinforcement of the institutional framework: Small Arms Unit at the ECOWAS Commission and National Anti-SALW Commissions at the level of the Member States;

Implementation of the ECOWAS Convention on SALWs, with particular reference to:

a. Control of arms transfers in the region through strict and secure application of exemption procedure (Art. 3, 4, 5 and 6 of the Convention)
b. Study and/or adoption of the legal texts applicable to SALWs
c. Control by the Member States, of the acquisition, possession and bearing of arms by civilians,;
d. Control oflocal arms manufacture by the Member States;
e. Management and securing of arms and munitions.

3. Promotion of Maritime Safety and Security

Implementation of the ECOWAS Integrated Maritime Security Strategy;

a. ***Operationalisation of the regional and inter-regional maritime security architecture.***

Start up of the Zone G MMCC in Praia;
More effective operationalisation of CRESMAO;
Effective institutionalisation of the Yaounde ICC.

b. ***Contributing to the Fight Against Maritime Insecurity:***

«Project Support to the West African Integrated Maritime Strategy (SWAIMS) » and «Project Improving Fisheries Governance in Western Africa» (PESCAO):

- Strengthening of integrated maritime governance;
- Development of a data base of criminal acts perpetrated on the high seas ;
- Evaluation of the financial channels created by illegal activities at sea;
- Improvement of maritime response operations by the provision of rigid-hull inflatable boats ;
- Upgrade of operational maritime training ;
- Fight against illegal, undeclared and unregulated fishing;
- Support in terms of equipment.

STABILISATION OF COUNTRIES IN CRISIS

ECOWAS Mission to Guinea Bissau (ECOMIB) - Since April 2012

- A force of 543 personnel from Burkina Faso, Cote d'Ivoire, Nigeria, Senegal and Togo ; **Current Mandate Extending to 31 March 2020**
- To support the government of Guinea Bissau by consolidating its authority, in order to enable it to confront its security challenges;
- To support the government in order to enable it to secure its institutions and citizens;
- To provide humanitarian assistance as necessary;
- To support the Defence and Security Reform Programme in the areas of security, training and the restructuring of its security agencies; and to contribute to ensuring security during the electoral process.

ECOWAS Mission to The Gambia (ECOMIG)- Since Dec. 2016)
Initial Mandate

- To ensure the safety of the President-elect, the political leaders, and the general population ;
- To ensure acceptance of the results of the presidential election held in the Republic of The Gambia on 1st December 2016 ;
- To ensure that the President-elect was sworn in on 19 January 2017, in accordance with the Constitution of the Republic of The Gambia.

ECOWAS Mission to The Gambia (ECOMIG) - Since Dec. 2016
A force of 1000 personnel from Ghana, Nigeria and Senegal.

- Current Mandate- Extending to 31 March 2020
- To ensure the safety of the President of The Gambia;
- To ensure the safety of the members of government and the institutions;
- To facilitate the establishment of trust between the new authorities and the Defence and Security Forces of The Gambia, in order to enable the former to discharge their constitutional functions ;
- To maintain surveillance over Kanilai, the village of the former President ;
- To provide support in the training and re-orientation of relevant components of the Armed and Security Forces.

CONCLUSION

Attainment of the ECOWAS regional integration objective, notwithstanding the strong political will expressed by its Heads of State and Government, remains conditional upon the success of the regional agenda for peace, stability and security.

The region needs a peaceful, stable and secure enabling environment in order to embark on the process and engage the reforms necessary for the establishment of an effective economic and monetary union.

Such an environment is crucial to the development and smooth functioning of our fragile economies in their progression towards economic union.
If the « security - development» factors are to form a virtuous circle in the ECOWAS region, a way must be found to reconcile, among others, **the principle of free movement** and **the imperative of security.**

Obrigado
Thank you
Merci

ECONOMIC INTEGRATION AND REGIONAL SECURITY IN WEST AFRICA

BY

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INTRODUCTION

1. West Africa has suffered serious security challenges since the early 1990s as demonstrated by the sad episodes in Liberia, Sierra Leone, Guinea Bissau, and of recent Cote d'Ivoire and Mali. These security challenges have had serious humanitarian consequences and jeopardized the economic and social development efforts engaged by the affected countries and by extension, the entire region. This led to the adoption of the "security first" approach which intrinsically links economic development and security. Furthermore, this approach provides that there is no development without peace and vice versa.

2. Security is a precondition for economic and social development as much as economic and social development is a precondition for security. Thus, these questions often arise: Is there a trade-off between security and economic integration? Is economic and social integration possible without security? How much security does economic integration need? While most economists view security as a (pre-) condition for economic development and integration, political scientists and security experts view it the other way round, that is, economic development is a precondition for national, internal and external security

3. According to AS Timoshenko (Member former USSR Academy of Science), "today we cannot secure one aspect of security at the expense of the other. Security can only be universal, but security cannot only be political or military, it must be economic as well, if the State is to be secure". Also, Franklin D Roosevelt, a former President of the United States opined that, "true individual freedom and development cannot exist without economic security". There are divergent views around the world on economic development and how they affect and are affected by security.

4. A nation's level of security is a direct product of its level of economic development. If a nation's economy is poor and lower than what is required to meet the nation's aspirations and security threats, then such a nation will find that it will never achieve those aspirations and will perpetually be haunted by insecurity pathogens.

AIM

5. My task therefore is to interrogate the nexus between economic integration and security; especially from the view point of our Region, West Africa.

SCOPE

6. The presentation attempts to illuminate the path for answering questions such as: What is economic integration? What is security, and what are its various dimensions? How does the economic integration interact or relate with security? What are the security challenges confronting West Africa? What is the impact of security/insecurity to the economies of West Africa? What are some of the strategies to mitigate these challenges?

CONCEPTUAL CLARIFICATION

7. To ensure better understanding and appreciation of this presentation, it is deemed necessary here to define and discuss the concepts of economic integration and security.

ECONOMIC INTEGRATION

8. Before discussing economic integration, let us look at what economy is and why it is important to understanding economic integration. Technically speaking, an economy can be defined as a system of structures, institutions and procedures that enable individuals, corporate and public organizations within and outside a defined social and geographical confine to engage in the production and exchange of goods and services needed for their survival and growth over time.[1]

9. To facilitate an in-depth and sharper analysis of its performance and dynamics, economists often compartmentalize the economy into two broad categories namely, the 'real sector' and the 'services sector'. While the real sector is the main engine house of the economy, the services sector plays a definitive support role. Perhaps, this explains why the searchlight is often on the real sector whenever an analysis of the performance and dynamics of the economy of any nation is to be carried out. This is precisely the focus of my discourse in this presentation. I shall attempt an examination of the major components of the real sector of a typical economy, using Nigeria as a reference point from time to time, with the objective of tracing its (real economy) contributions to social and economic wellbeing of the people as well as national development.

10. **The real sector** refers to the sector of the economy in which the production of goods and associated services is done through combined utilization of raw materials and other production factors such as the labour force, land and capital; or by 'means of production' process for short. It is sometimes further divided into the primary sector and the secondary sectors. The primary sub-sector is that segment of the real sector that extracts or harvests products from the earth and also includes the production of raw materials and basic foods. Some of the activities associated with the primary sub-sector include agriculture (both subsistence and commercial), mining, forestry, farming, grazing, hunting and gathering and quarrying. Also, associated with the activities of this sub-sector are packaging and processing of the raw materials. The secondary sub-sector is that segment of the real sector that manufactures finished goods. As all of manufacturing, processing and construction takes place within this sub-sector, activities such as metal working and smelting, automobile production, textile production chemical and engineering industries, aerospace manufacturing, energy utilities, engineering, breweries and bottlers, construction and ship-making are associated with the secondary sub-sector.

11. **The services sector** of the economy provides essential and supportive services to the general population and to businesses. Such activities that are often associated

[1] Ibrahim Gerah, *Impact of Nigeria's Real Sector of the Economy on National Development,* Lecture delivered to Participants of National Defence College Course 20, Abuja.

with this sector include retail and wholesale actlv1tles, transportation and distribution, entertainment (movies, television, radio, theatre, and so on), hotel and restaurant services, clerical services, media, tourism, insurance, banking, healthcare and law. Some analysts classified governmental and non-governmental (such as public and security as well as philanthropic), library, scientific research, educational, cultural and information technology services as activities under the services sector.

12. Economic Integration is an arrangement among different countries or between different regions that often includes the reduction or complete elimination of trade barriers, and the coordination of monetary and fiscal policies. Economic integration aims to reduce costs for both consumers and producers as well as to increase trade between the countries involved in the agreement. As economies become integrated, there is a lessening of trade barriers while economic and political coordination between countries increases. There are seven stages of economic integration: preferential trading area, free trade area, customs union, common market, economic union, economic and monetary union, and complete economic integration. The final stage represents a complete monetary union and fiscal policy harmonization.

13. Countries embark on economic integration for a number of advantages. However, for our discussion today, we will outline the following advantages: **trade benefits, employment opportunities** and **political cooperation.** For **trade benefits,** economic integration typically leads to a reduction in the cost of trade, improved availability of a wider selection of goods and services; and efficiency gains that leads to greater purchasing power. **Employment opportunities** tend to improve because trade liberalization leads to market expansion, technology sharing, and cross-border investment flows. **Political cooperation** among countries can improve because of stronger economic ties, which can help resolve conflicts peacefully and lead to greater stability.

14. In summary and according to Amartya Kumar Sen, an Indian economist and philosopher who received the Nobel Memorial Prize in Economic Sciences,: "Economic Integration is about creating freedom for people and removing obstacles to greater freedom. Greater freedom enables people to choose their own destiny." Obstacles to freedom, hence to integration, "include poverty, lack of economic opportunities, corruption, poor governance, lack of education and lack of health"

SECURITY

15. Security is an ambiguous concept and therefore, there is no single universally accepted definition. It is a powerful concept that has been used to justify suspending civil liberties, making war, and massively reallocating resources during the last fifty years. How we define security, shapes our conceptions of current threats by an enemy and of future risks to militarize our society or environment. Security guides government priorities and policies and reflects how we understand our collective selves in relation to others.

16. Simply put, security in its natural habitat simply means freedom from fear, danger, turmoil, hostility, war, and violence which can all generate uneasiness and threat to human life, properties, and social values. The **traditional or state-centrist** school of thought views security from a military perspective, through the amassing of weapons, large size of armed forces personnel, and state freedom from international coercion. This school of thought sees security as when "A nation does not have to sacrifice its legitimate interests to avoid war and is able, if challenged, to maintain them by war" (Walter Lippmann, 1943: 32). Thus, security was perceived as the protection of the territorial integrity, preservation of sovereignty, and survival of the state through militarism. The human aspect of security is not considered and the term becomes synonymous with *realpolitik,* the interest of the state. (Aderemi Ajibewa, 1994: 14)

17. The non-traditional or contemporary school, often referred to as the Human Security school of thought, insists that security rests on the welfare of the people. McNamara asserts that: "In a modernizing society, security means development... and without development there can be no security". This school of thought posits that military threats are not the only threats that face states. It recognizes threats and vulnerabilities in many diverse areas. It postulates that security must entail the environment that mitigates the risks of survival and create conditions to ensure the continuation of daily life and human dignity. It recognizes the protection of freedoms/human rights, especially for the voiceless; while permitting focus on gender and puts significant value on ***personal empowerment.***

18. As security practitioners, I am certain that you are all aware that the concept of security has moved beyond traditional definitions to encompass non-military, local, regional & transnational security threats and future risks. Yet, military threats still dominate theory and practice of security. Shifting focus from the security of the state to the security of people and communities, which is often referred to as ***human security,*** will yield the right knowledge to design appropriate policies and strategies to truly make ***"the security and welfare of the people ...the primary purpose of government"*** as spelt out in the 1999 Constitution of the Federal Republic of Nigeria.

NEXUS BETWEEN ECONOMIC INTEGRATION AND SECURITY

19. Security is part of the primary obligation of any government worth its salt anywhere in the world. Security has two key aspects in terms of agency division of labour - the External aspect which is the domain of the military forces, and the internal aspect which is the domain of the Police and other para-military agencies. Our concern in this discourse paper shall cut across both aspects.

20. Security requires capital assets many of which cost money such as fighter jets, bombers, warships, tanks, etc. Some of these require high cost of maintenance, while others are readily perishable requiring fast replacement. For example, in one serious battle, as many as five tanks and five aircraft could be lost; and if not quickly replaced, may mean victory for the enemy who may over-run the loser-nation's territory with all the accompanying consequences - loss of independence,

and sovereignty, looting and plundering of its resources, and subjugation of the citizens with the accompanying trauma.

21. It is commonly accepted that a strong and viable economy enhances security. It is also agreed that security creates the conducive environment for the economy to develop. Therefore, there is a direct link between the economy and security and vice versa.

22. In West Africa, there has been a recurring challenge relating to financing the security sector. There is the challenge of sourcing for funds to acquire the right equipment and platforms, replenishing the logistics supply of the security forces and providing the requisite training for personnel. The reason for this is not far-fetched. The economies of most West African countries simply do not produce enough goods and services for the government to earn and then finance the security sector. The case of Mali is a clear example of lack of proper funding for security. If the economy in Mali was vibrant, there was no need to rely on France to provide security for Mali. There are other sectors that are also competing for funding; such as education, health, agriculture, to mention just but a few.

23. The message, therefore, is that the security sector must be adequately funded to ensure the adequate protection of a nation. Only a strong and flourishing economy could provide effective and efficient resources needed by the security agencies and thereby enhancing the nation's security. Therefore, economic integration would greatly enhance the economies of the countries involved thereby enabling them to meet their security requirements. However, there could also be a situation whereby the economy could be flourishing but other factors still make security unattainable. For example America's 9/11 is not due to weak security or economy, but a product of the country's double standard foreign policy in the Middle East. In Nigeria, despite increased budgetary allocations to the security sector in recent years, the country is being overwhelmed by insecurity due to the activities of Boko Haram, Pipeline vandals, kidnappers, among others.

OVERVIEW OF THE WEST AFRICAN ECONOMY

24. In this section, I shall try to give you a broad overview of the West African Economy without boring you with too much details or statistics.

25. The West African economy is the third largest in Africa with an estimated real growth rate of 3.4% in 2019, compared to 3.1% in 2018[2].

This is an improvement in line with the expected consolidation of economic activities in almost all the States of the region. It is further expected that the region would record the second best economic performance of the continent. Current GDP stands at$ 668.1 billion in 2019, or 27.3% of Africa's total GDP, giving a per capita GDP of$ 1,750.[3] The positive outlook for the regional economy is in

[2] ECOWAS 2019 Interim Report, Page 22.
3. Ibid.

line with the consolidation of the performance of most countries, particularly Nigeria (2.1%), Ghana (8.8%), Cote d'Ivoire (7%) and Senegal (6.9%)[4]. With the exception of Liberia, which is expected to decline from 1.2 per cent in 2018 to 0.4 per cent by the end of 2019 due to decline in rubber production, which accounted for about 90% of gross domestic product (GDP), all other States would see an improvement in the pace of their economic growth. However, that of Nigeria (2.1%) would be below the regional average of 3.4%.[5]

26. The sectoral distribution of economic growth in ECOWAS in 2019 and 2020 suggests, on average, a still dominant contribution from the primary sector and a good performance of the secondary sector. Indeed, the primary sector is expected to record growth of 7.1% in 2019 compared to 6.4% in 2018. The secondary sector is expected to increase from 1.9% in 2018 to 3.3% in 2019 with a more positive outlook with (3.4%) in 2020. The tertiary sector is expected to grow at a slower pace, reaching 1.8% in 2019 and 2% in 2020.

27. Investment, in particular public asset, contributes significantly to economic growth, even though it is expected on average to slow down its growth rate in 2019 (1.5%) against 7.3% in 2018. On the other hand, the anticipated growth of investment in 2019 and its positive impact on real GDP is more likely to be seen in Ghana, Niger, Nigeria, Senegal and Cabo Verde compared to 2018. Similarly, increase in public spending and its positive effect on economic growth would be globally significant in most countries in 2019, with the notable exception of The Gambia and Liberia, where a depressive effect of government spending is anticipated compared to the previous year.

28. The global demand for goods and services plays a major role in the economic growth dynamic in the ECOWAS region. Projections call for an increase in exports of 3.9% in 2019, following a 5.8% increase in 2018. In general, the acceleration of economic growth in ECOWAS states depends on the good performance of the export sector. Hence, the expected positive impact of exports on growth would be pronounced in Ghana, Sierra Leone, Niger, Guinea and Togo in 2019 compared to 2018.

OVERVIEW OF SECURITY CHALLENGES FACING WEST AFRICA

29. While the economic outlay of the region looks promising, the security outlay appears gloomy. I shall, in this section, proceed to show to you the above assertion. I will discuss the security overview of the region to cover challenges in the Gulf of Guinea, terrorism and the Sahel region.

30. **Gulf of Guinea.** The Gulf of Guinea stretches from Cape Lopez in Gabon, up to Cape Three Points in Western Region Ghana. Among the many rivers that drain into the Gulf of Guinea are the Niger and the Volta. The coastline on the gulf includes the Bight of Benin and the Bight of Bonny. This large expanse of ocean

4. Ibid
5. Ibid

water is particularly deposited with organic sediments of over millions of years ago which became crude oil. The Gulf of Guinea region is now regarded as one of the world's top oil and gas exploration hotspots. The region also has rich deposit of fish stock. The region is however faced with weak maritime domain awareness and capability.

31. There is a growing awareness that the vast resources and potential in the Gulf of Guinea are being undermined by multifaceted domestic, regional and international threats and vulnerabilities. Rather than contributing to stability and economic prosperity for countries in this region, pervasive insecurity in this resource-laden maritime environment has resulted in more than $2 billion in annual financial losses, significantly constrained investment and economic prospects, growing crime and potentially adverse political consequences. [6]

32. One of the threats in the Gulf of Guinea is **Poaching.** Poaching by vessels from Asia, Europe and other parts of Africa costs the sub-region some $370 million annually.[7] Poaching also has a number of indirect effects, including the drastic reduction of incomes and loss of means of livelihood in fishing communities. Another security challenge in the Gulf of Guinea is **Piracy.** The International Maritime Bureau ranks the Gulf of Guinea as one of the most troubled global waterways. It is consistently ranked among the top piracy hot spots worldwide. Other security threats include Transnational Organized Crimes (TOC) and Environmental Degradation, Human Trafficking, to mention just a few.

33. **Terrorism.** The threat of terrorism in Northern Mali, Boko Haram insurgency in North Eastern Nigeria and surrounding countries are the biggest security challenges facing the West African region. The fact that terrorist groups have special modus operandi and are very resourceful, makes it easy for them to cross porous borders easily, thereby disturbing the stability of hitherto peaceful countries.

34. It was few years after the 9/11 attacks in the United States that the issue of the vulnerability of West Africa to domestic and transnational terrorism assumed centre stage in international discourse. Notwithstanding that Algeria-based Salafist Group for Preaching and Combat (GSPC) had first set foot in northern Mali in 2003 and began forging ties with the local population (through marriage and protection of smuggling routes), there was a collective security nescience concerning the growing vulnerability of West Africa to domestic and transnational terrorism.

35. In 2006, the debate centred on whether terrorism was a real, emerging or imagined threat in West Africa.[8] However, the reality of the situation over the past decade put the debate to test. In fact, the rising number of attacks, the multiplicity of

6. Raymond Gilpin, *Enhancing Maritime Security in the Gulf of Guinea,* January 2007, Centre of Contemporary Conflict
7. Ibid
8. Freedom Onuoha and Gerald Ezirim -Terrorism and Transnational Organized Crime in West Africa, Al-Jazeera Centre for Studies June 2013.

active terror networks and the growing links between and among these groups speedily transformed the threat of terrorism from imagined or emerging to a real security challenge in West Africa.

36. At the core of this is the attacks Al-Qaeda in the Islamic Maghreb (AQIM) has mounted on West Africa as well as the tactical, weapons and ideological support it extends to groups such as Ansar Dine, Ansaru, Boko Haram, and alongside other sleeper cells dotting the region. Countries such as Burkina Faso, Niger, Nigeria, and Mali have witnessed new outbreaks or escalation of attacks. Groups hitherto considered as domestic groups, such as Boko Haram and Movement of Oneness and Jihad in West Africa (MUJAO), have successfully launched transnational attacks or struck at international targets, thereby fundamentally changing their prior description and designation.

37. Mali slipped into instability after the March 2012 coup that created a power vacuum enabling predominantly the Tuareg National Movement for the Liberation of Azawad (MNLA), backed by a patchwork of lslamist forces (Ansar Dine, AQIM, and MUJAO) to take control of nearly two-thirds of the country. The MUJAO has since then mounted audacious attacks.

38. The growing audacity of the Nigerian Boko Haram in Nigeria is one among many developments that have made West Africa a region of growing terror concern. Following an anti-government revolt it waged in July 2009 that attracted worldwide attention, Boko Haram members have escalated their attacks targeting mainly security and law enforcement agencies, in addition to civilians, public infrastructure, community or religious leaders, places of worship, markets, and media houses, among others. Its tactics include the use of improvised explosive devices, targeted assassinations, drive-by shootings and suicide bombings. Recently, Al Jazeera stated that the Boko Haram attacks are estimated to have cost more than 27,000 lives since 2002, including deaths caused by the security forces. The 26 August 2011 bombing of the United Nations headquarters in Abuja that killed 23 people was a devastating evidence that the group aimed to internationalize its acts of terror.

39. **Proliferation of Small Arms and Light Weapons** - The ECOWAS Region has suffered an immense negative influence of the proliferation of Small Arms and Light Weapons (SALW) with destabilizing impact on the peace, security and development of Member States. Particularly from the late 1980s, the region has witnessed the devastating impact of illicit trade in SALW which stemmed primarily from the increasing incapacity of governments to control violence and commercial arms trade as well as from violent and protracted armed conflicts. Small Arms Surveys estimated that out of the 639 million SALW circulating globally, about 7 million are in West Africa.

40. The sources of SALW proliferation in the ECOWAS Region are multiple. The basis of this proliferation is rooted in the nexus between unresponsive governments and widespread poverty in contradiction to the region's impressive natural resources. The scramble for resource endowments by various internal and

external interests, within the context of a pervasive governance crisis, explains in part the persistence of SALW proliferation in the region. In addition, porous and ineffective border control measures, diversion of imported SALW, ineffective management of national stockpiles of SALW have contributed to SALW proliferation. The outflows from Libya after the death of Gaddafi and those smuggled from ECOWAS Member States stocks, for instance, have been an important source of illicit SALW in the region. However, the character of SALW proliferation in the region is by no means state-centric. It is important, thus, to emphasize that non-state actors are playing more prominent roles in the proliferation of SALW in the region. Ethnic militia groups, arms smugglers, criminal gangs, local arms manufacturers, insurgent groups and terrorist groups all play their respective roles in the proliferation of SALW in the ECOWAS Region.

41. The impacts of the proliferation of SALW are multiple and interrelated. Millions have died in clashes and all kinds of violence involving SALW since the 1990s. The indiscriminate use of SALW have destroyed lives, properties and the physical environment; aggravated conflicts, insurgency, terrorism, homicide, communal clashes; ignited mass human displacement (engendering refugees and Internally Displaced Persons-IDPs), as well as undermined the rule of law, thereby stimulating and sustaining a culture of violence in many Member States.

42. **Others** - Other security challenges in the region include institutional corruption, human/drug trafficking, as well as electoral challenges, to mention but a few.

IMPACT OF SECURITY CHALLENGES ON ECONOMIC INTEGRATION IN WEST AFRICA

43. I have, in the previous section, tried to give you an overview of the security challenges facing West Africa. I have also mentioned in some of the preceding sections the impacts in terms of economic or financial losses on the economies of West African countries. According to the World Investment Report (WIR) of 2018 and statistics from the Central Bank of Nigeria. There is a progressive decline in FDI flows into Nigeria- from $8.9 billion in 2011 to $314million as at December 2018.[9] The loss of $8.5 billion for a country in desperate need of money - such as Nigeria - was a staggering blow.

44. A number of West African economies are believed to benefit from illicit financial flows, which, given the predominance of cash-based economies in the region, is easily hidden or moved into the formal economy. In the context of poor or non-existent delivery of basic services, organized criminal activities are often deemed legitimate sources of funding for services, at times providing income and employment or investment in local communities. The corrosive longer-term effects, however, outweigh these short-term positive gains. In particular, drug money can create false pockets of political legitimacy. It can harm the performance of legitimate economic sectors, distort economic performance, and

[9] The African Business Journal: Boko Haram and its Impact on the Nigerian Economy, http://www.tabj.co.za/features/june14_features/boko_haram_and_its_impact_on_the_nigerian_economy.html and Nigeria Foreign Direct Investment https://www.ceicdata.com/en/indicator/nigeria/foreign-direct-investment

ultimately enrich a few at the expense of many. In addition, increased levels of money laundering are placing pressure on the financial reputation of countries in the region and can ultimately increase the cost of borrowing for both the publicand private sectors in international markets. Another concern is the degree to which legitimate business inadvertently facilitate organized criminal activity, including money laundering, in predominantly cash-based economies.

STRATEGIES TO MITIGATE WEST AFRICAN SECURITY CHALLENGES IN ORDER TO ENHANCE THE ECONOMY

45. In this section, I will be proffering some strategies that would help to mitigate the security challenges in order to enhance economic integration in West Africa.

46. The imperative of addressing security challenges has inspired the adoption of several regional mechanisms and instruments for enhancing security, development, good governance and conflict management in the region. Some of these instruments include the Protocol on Non-Aggression (1978) and Mutual Assistance in Defence (1981); the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999); the Protocol on Democracy and Good Governance (2001); the ECOWAS Convention on Small Arms and Light Weapons, Ammunition and Other Related Materials (June 2006); and the ECOWAS Conflict Prevention Framework (2008). Furthermore, there is the Political Declaration and Common Position against Terrorism (2019), which provides for the regional Counter Terrorism Strategy and Implementation Plan to help Member States combat terrorism and other security challenges.

47. In spite of these interventions, security challenges still pervade our region. The challenge, therefore, has not been the regional lack of frameworks and instruments to respond to these threats, but rather the failure to address the underlying factors contributing to the outbreak of these challenges as well as the complex linkages between them. In order to deal effectively with the threats of terrorism and TOC as well as other forms of security challenges, there must be a broad approach that integrates efforts at the national (Member States) and regional (ECOWAS) levels into a robust strategy, focusing on improving governance, development and security in the region. The strategies are hereby proffered:

a. **Governance** - This has to do with the strengthening of all institutions and processes that promote efficiency, accountability and transparency in the management of national resources across West Africa; the strengthening of institutions that promote the rule of law, enforce sanctions for human rights violations and diligently prosecute criminals and militants; the broadening and democratization of the political space to accommodate people and groups that have been marginalized along ethnic, religious, gender or racial lines.

b. **Development/Capacity Building** - Implementation of targeted development interventions in border communities to earn their goodwill so as to support governments' efforts at combating TOCs facilitated across borders; Implementation of a region-wide security consciousness and

awareness programme for people; Evolution of broad-based strategic communication or information operations strategy to counter growing extremism and jihadist narrative radicalizing the minds of impressionable youths.

c. **Security** - This includes the establishment of a Regional Intelligence Fusion Centre (RIFC) for warehousing intelligence and information on militant activities within the region to inform proactive responses. Also, ECOWAS could initiate partnership with Central and North African states to develop a robust tri-regional mechanism combating the flow of drugs, arms, weapons, explosives and fighters in the Sahara-Sahel region. Lastly, national governments in conjunction with ECOWAS could undertake Social Security Reform (SSR) to ensure respect and protection of human rights, including during counter terrorism operations.

CONCLUSION

48. In conclusion, though many governments are taking steps to formulate and implement national and regional strategies to address the growing challenges being faced in the region, we need to move from good intentions to tangible results. It is also clear that no single country will be successful on its own. The benefits of the region's abundantly endowed natural resources could be derived through a firm commitment to collective action. A shared investment in regional security (which is a "public good") would have far-reaching human security benefits, and positive global implications.

49. I thank you for your attention.

ECOWAS INTEGRATION AND SUB-REGIONAL STABILITY

BY

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ABSTRACT

Regionalism and (sub) regionalism have been models of supranational integration adopted in different parts of the world and are seen as alternatives to nationalism. It is no coincidence that the integrationist, liberal, globalist, federalist and other theoretical paradigms have gained ground and some consistency. In this statement of the theoretical and epistemic field that emphasizes the relevance of (sub)-regional integrations, the advocates of the paradigm of globalization and complex interdependence and legitimation of global governance have been affirmed in conjunction with the empirical evolution of the global geo-economics and political framework that see integrations as responses to different problems and challenges such as insecurity, economic globalization and market competitiveness are generally seen as institutions capable of promoting peace and economic development.

However, from the different supranational integrations adopted around the world, their evolution has been different due to the endogenous dynamics of each (sub)-region and the complexity of the international system. In the case of ECOWAS, a supranational and sub-regional organization, the initial assumptions that it would promote development, it has several problems that have made it difficult to integrate.

Since we assume that integration is fundamental, especially in the current context, where nationalism and unilateralism are inconsistent, we take the theoretical inference anchored in functionalism, neo-functionalism and the liberal theoretical paradigms of lnternational Relations/International Politics as our methodological support. We articulate this theoretical assumption with our critical appreciation resulting from the reflections already written in our doctoral dissertation (2016), in the lectures taught on Cape Verdean Foreign Policy, in the conferences we have presented and in the critical appraisals that we have made such as the Evora doctoral thesis (2017).

We have an optimistic teleological view of a good long-term integration in the West African region, but, as we highlighted in the previous paragraph, it depends on solving a number of problems. A successful supranational integration is impossible without consistently achieving national integrations, i.e., there has to be bottom-up integration, not the other way around. There is no supranationalism that works without cohesion among the Member States, and a discursive rhetoric that believes that supranational mechanisms will solve all the internal problems of the Member States, is worthless.

Problems of a political nature, combined with problems of a socio-anthropological nature, stand out from the problem of conflicts that have neutralized subregional integration. That is why we bring up the issue and propose the need to eradicate or mitigate the conflicts. Hence the affirmation of a large sub- regional market, in this sense, the focus on the policy of mediation, conflict management and resolution, combating impunity and sanctioning those responsible for causing the instability, instruct the civil society and combat the different types of threats that directly or indirectly heighten hostilities such as drug trafficking, terrorism, arms trafficking and proliferation, fighting corruption and strengthening political and democratic culture.

Keywords: ECOWAS, Sub-regional Integration, Conflicts, Economic Development

Biographical Note

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INTRODUCTION

Regionalism and (sub)-regionalism have been models of supranational integration adopted in different parts of the world and are seen as alternatives to nationalism. It is no coincidence that the integrationist, liberal, globalist, federalist and other theoretical paradigms have gained ground and some consistency. This affirmation from the theoretical and epistemic field that emphasizes the relevance of sub-regional integrations, the defenders of the paradigm of globalization and complex interdependence and legitimation of global governance have been affirmed in articulation with the empirical evolution of the global geo-economic and political framework that sees Integrations as responses to different problems and challenges such as insecurity, economic globalization and market competitiveness are generally seen as institutions capable of promoting peace and economic development. However, from the different supranational integrations adopted around the world, their evolution has been different due to the internal dynamics of each (sub)-region and the complexity of the international system.

Notwithstanding the initial assumptions upheld in its creation, such as the promotion of development, the case of ECOWAS, a supranational and sub-regional organization, has several problems that have hampered its integration.

In this presentation, we aim at discussing and critically assessing the pertinent aspects of West African sub-regional integration, including the obstacles and possible solutions.

Since we assume that integration is fundamental, especially in the current context, whereby nationalism and unilateralism are inconsistent, we take the theoretical inference anchored in functionalism, neo-functionalism and the liberal theoretical paradigms of International Relations/International Politics as our methodological support. We articulate this theoretical assumption from our reflections already written in the doctoral dissertation (2016), in the lectures taught on Cape Verdean Foreign Policy, in the conferences that we presented and the critical appraisals that we made as one of the examiners in the Evora (2017) doctoral thesis.

This presentation/text is structured as follows: apart from a general introduction, we begin with a critical debate on Nation building, underdevelopment and conflict in Africa, and then highlight this issue in the context of ECOWAS. Next, we begin to lay down the grounds of the ECOWAS problem with a focus on the role of conflict and insurrection

in economic development. In the next point, we address the early warning system of conflict as an asset for the institution. We will also address peace and security for economic development, and lastly, the proliferation of small arms and light weapons. Finally, but not least, we end with some final conclusions and recommendations.

1. A Short Theoretical Incursion on Integration, Stability and Development

In the post-Cold War period, the international system has brought together several elements that often rival or even threaten the sovereign States. Between old and new types of collective actors, there are new types of conflicts - according to the classic definition of Coser (1964, 8), clashes over values, statutes, powers or scarce resources, in which the aim of each protagonist is to neutralize, weaken or eliminate his/her rivals.

The emergence of these new elements or "international sectors" in the international system and the proliferation of new types of conflict, different from the classic or traditional ones (interstate conflicts), have predominated and intensified, contrary to the arguments presented by Fukuyama (1989, 4-17) in the early periods of the new post-Cold War world order, foreseeing the emergence of a world harmonious with the universalization of liberal and Western democracy and consequently the end of global conflict. On the contrary, the so-called cultural or civilizational conflicts have increased and become more dangerous than in any other period in history (Havel 1994, 27; Kissinger 1994, 22-24). The profound changes that occurred with the end of the Cold War are not only about the polarity of the international system, as Fukuyama first theorized; but the system has brought together other more complex elements such as civilizational conflicts and international sectors, dangerous to international security (Huntington 1993, 22-49, Badie and Smouts 1999, 22-49). As a result of the fragmentation of the international system, all the above aspects are inseparable from a multi-sectoral analysis of national and international security. In this international geopolitical configuration, the classic model of military and sovereign defense of a country undertaken in isolation by the national State has become obsolete. New threats and risks to States and international security require concerted and cooperative action by States and international institutions, following a functional or shared sovereignty model. International society must be analyzed as a complex structure, where no part works in isolation, and the problem of one or some may become the problem of all.

For a long time, for some functionalists and theorists of international integration, the model of international integration has been, in the perspective of Mitrany (1933), one of the potential solutions to various international problems, such as world conflicts and international insecurity (cf. Haas and Scmitter 1964, 707, Burton 1972, Groom and Taylor 1975, Willetts 1983). However, models of integration and cooperation are not always or may not be effective due to the diverging interests that often characterize the political praxis of States in international relations - it is the general problem of cooperation in situations whereby self-interest is conducted in the absence of a central authority to enforce the cooperative attitude (Axelrod 1984). However, in the current international context, international cooperation is a higher than zero-sum game, as cooperation and integration processes to address threats and risks can be advantageous for all parties. According to Nef (2002, 29-62), in a system of complex interdependence, even the most developed and apparently most protected territories are vulnerable to

situations of extreme insecurity compared to other less developed sectors or territories. Combating these intricate phenomena on the international scene requires a lot of resources. States with more limited resources cannot act or act inefficiently, which makes cooperation by industrialized countries for their own interest imperative. Therefore, in the face of new threat typologies, the development imperatives merge with security imperatives (Tadjbakhsh and Chenoy 2009, 989).

Thus, notwithstanding a certain pessimism that reigns in the realist and neo-realist trends of international relations theory in this field (Bull 1977, Carr 1939, 87, Morgenthau 1967, Waltz 1979), international cooperation and integration is indispensable because of the existence of problems whose solutions go beyond the States' capabilities - imperative and underlying reasons to the institutionalization of international regimes, according to Ruggie (1975, 570; cf. Krasner 1983, 2, Hasenclever, Mayer and Rittberger 1997). As stated by Dunne (1998, 10), corporations generally establish cooperative mechanisms aimed at guaranteeing reciprocal advantages of their components. This notion applies to the consideration of international relations, in a global system characterized by complex interdependence (Keohane 1989, 99-11), whereby States have been losing authority over many aspects, thus obliging them to cooperate in an international framework in a systemic manner. (Little 1985, 74). Thus, today more than ever, security appears to be an extremely important sector in international cooperation and integration processes. In both international cooperation and integration organizations, security and defense policy have become priority sectors, as is the case in the EU (Keohane and Hoffman, 1991, Bretherton and Vogler 2005), ECOWAS, and the Community of Portuguese Speaking Countries (CPLP). Notwithstanding this also, one cannot devalue bilateral cooperation, which has been very fruitful.

Based on the conceptual distinction of Karl Deutsch et al. (1954, 58-70) between pluralistic and value-sharing security communities, we can cite the concrete examples of NATO and the Warsaw Pact during the Cold War (Leffler and Painter, 2005) as security-oriented organizations that communed of their own values and ideas, which opposed the values of others, constituting political, ideological and military subsystems that affect the strategic interests of States. However, such models of international regimes are currently unsuited to the cooperative security policy, given the dynamics of threats and risks to international security that require the institutionalization of pluralistic security communities with progressive advances towards a global security identity, over and above an integration anchored in shared values of some against opposing values and interests of others. Even NATO, created in the bipolar Cold War context to defend Western values, had to readjust to the new international conjuncture in the post-Cold War period. Despite criticism, including being an organization serving US interests, NATO is the only international organization with its own military command, and there has been interest from non-Western countries to cooperate with it in the domains of security and defense.

From this small theoretical incursion that is not intended to be exhaustive, as it is a conference communication text[1], we can take some important notes for the conference problem that was assigned to us. The first note is that there is a theoretical consensus, if

[1] If it were a doctoral dissertation or a scientific paper, we would have to broaden this theoretical framework.

we may say so, and some practical experience that integration plays a relevant role in solving various political, economic, security and other problems. Based on this theoretical assumption, the central idea is that the integration process progressively provides security, stability and development. The second note is that, although integration is an important factor in promoting development at various levels, it must be designed, worked on and adapted to the political, economic and socio-anthropological specificities of each (sub)-region, and thus avoiding being just a simple copy of the exogenous integration models. The third note, based on the two previous ones, assuming a progressive, optimistic and teleological vision of a successful integration into the West African area, there is a need for a careful analysis of a set of endogenous space indicators that allows a more assertive and consistent reflection with regard to integration pathways and policies. Based on this assumption, we will further discuss ECOWAS integration, stability and development.

2. The African Continent: Nation-State, underdevelopment and conflicts

The African continent is a *case study* on the issues of conflict, corruption, misgovernment and transnational organized crime, with negative consequences on international peace and security.

At first glance, we may consider it as almost consensual that the current stage of development of the continent could be better, and that its problems have negative effects on the international security system. However, such a consensus does not exist, inside or outside the academic world, about the causes of these problems and the solutions to them. The central aspects of this debate revolve around colonialism and post-colonialism, and therefore, all the dynamics associated with the two periods and their relative impacts on Configuration of States in Africa.

According to Odair Varela (2014, 16-17), one of the critics of the configuration of States in Africa, the analysis of the political program after independence on the African continent has been dominated by two theoretical trends. One of the trends argues that Africa should be studied according to the (economic and political) theories of development applicable to the rest of the world, and that it will develop just as did the rest of the more developed world. Following this trend, Varela highlights two schools of thought, one based on development models drawn from US political science, with David Ernest Aptes and Samuel Huntington as reference authors, and the other on Marxist and neo-Marxist theories of development, in which authors like Walter Rodney, Claude Ake, Samir Amin and Immanuel Wallerstein stand out. Both trends admit that there is a linear path to development and that the factors that contribute to or undermine it are universal.[2]. On the other hand, other analytical perspectives emphasize the particularity of the cases, invoking specific factors that have been an obstacle to the development of the African continent, especially the issue of tribalism or multi-ethnicity.

Some authors place a strong emphasis on the correlation between colonialism and underdevelopment, arguing that, despite political independence, the new States remain

[2] Varela also quotes Crawford Young (1976; 1993; 1998) and Lonsdale and Berman (1992) as sharing this analytical perspective on the African particularity.

under the neo-colonialism yoke and that former metropoles continue to practice colonialism using new instruments that allow perpetuation of dependence of the former colonies (Ake 2000, Amin 1973, Bah 2014, Nkrumah 1965, Pettman 1996, Silveira 2005). According to this perspective, the various problems that Africa has been facing result from the lack of political and economic autonomy due to chronic and excessive dependence on the global North, which uses various political, economic and cultural instruments to oppress the global South. In essence, it is the main argument of dependency theory (Weisskopf 1970; more focused on Africa: Bah 2014, Onimode 1992, 0. Varela 2014). In the same line of argument, some authors highlight the Configuration of States in Africa, addressing the negative impacts of colonization on this statehood, namely the border problems and the socio-cultural fragmentation of the continent (multi-ethnicity) which, along with weak economic structures that make the continent very dependent on the North, are inheritances of a multi-century colonial construction whose deconstruction in the postcolonial period is not easy and will take a long time (Cardoso 1986).

A more socio-anthropological line of analysis puts the emphasis on the reconstruction of the nation in Africa. This perspective highlights that there were already clearly established nations on the continent before the arrival of the colonizers, who destroyed this sociological and national identity base; that is why today, in the postcolonial period, one cannot speak of *construction* of the nation in Africa but rather of the *reconstruction* of the nation (Correia 2005, 466, Vieira 2005, 122). From an Afro-centric perspective, other analysts call for caution with regards the Nation-State building failure in Africa as a result of the importation of the so-called "universal" values, but which result from Western matrices to the detriment of particular values in these societies (Ki-Zerbo, Mazrui, Wondji and Boahen 2010, 587, Vieira 2005).

Other approaches, in contrast, point to gaps and inconsistencies in the excessive attention given to the colonial and pre-colonial legacy, warning of an incipient analysis of post-colonial endogenous political and governmental dynamics. Robert Gilpin (1987), for example, notes that the colonial legacy is not a credible predictor of development on the continent, given the existence of African countries that did not have a colonial past, but whose development indicators and performance are lower than those of others that were colonized. Instead, such approaches emphasize the lack of political leadership and internal governance in the countries of the continent, associated with corruption practices and the dynamics of access to power, as the main causes of the region's misgovernment and underdevelopment (Abubakar 1989, 130-139, PB Grace 2005, 81, Ntalaja 2005, 416-423, Smith 1981).

Indeed, from an early stage, Africa sparked the interest of the Western powers in the race for their colonial occupation and domain. In order to solve the problem of sharing the African continent and the disputes between the colonial powers, the Berlin conference in 1884 proceeded to divide it arbitrarily, without respecting its ethnic organization and all its sociocultural complexity, which may be at the base of the persistence of various ethnic and tribal conflicts on the continent (Brunschwig sd, Ferreira 1998, 18). Many of the ethnic and tribal conflicts on the African continent are a materialized historical heritage of these disputes and the resulting sharing. It is a fact that the colonial administrations used the ethnic element as a means of distancing and fomenting conflicts, with the

purpose of maintaining their domains and control over the territory; Rwanda is an example (Ferreira 1998, 18). However, tribal conflicts in Africa existed long before the very period of colonization. Prior to the arrival of Europeans on the African Continent, there were ethnic conflicts, which in some cases were reinforced with the colonization process.

Ethnic groups are not in themselves a factor of hostility and conflict, but they can be when combined with other factors. Among them are socioeconomic factors, considering that within a country with several ethnic groups, there are ethnic groups who are in a more privileged position, with greater economic power and who exploit the other ones, which often leads to revolts; political factors, because there has often been the ethnicization of political power, that is, the dominance of government by an ethnic group; sociocultural factors, as myths about the superiority of some ethnic groups have emerged around ethnic issues, sometimes accompanied by ethnic, religious persecution and, in more extreme cases, ethnic cleansing. The emergence of nationalisms across the continent in the post-World War II period (Wilson 1994), which rebelled against the colonial powers, culminated in various struggles for national liberation. Non-negotiated decolonization processes had their perverse effects, notably in the creation of political parties that monopolized power and hampered the very democratization process. The results were quite negative in the creation of many States, which have a large deficit in terms of the institutions' functioning (Chabal 2002, 103, Tavares 2010, 28-29). In countries where decolonization was negotiated, the process of democratization has been simpler and faster, corruption tends to be lower and development is greater (Kpundeh 2004, 12).

Where, as in most of the new African States, decolonizations were via armed struggle, this did not favor the creation of political and democratic institutions, but rather the creation of movements and later political parties that led to internal armed conflicts, with large national and international dimensions. This was the case of civil wars in Angola between the three liberation movements, which then became political parties (MPLA, FNLA, UNITA), and in Mozambique between Frelimo and Renamo, among others. These conflicts were also incited and exploited during the Cold War period by foreign powers with strategic interests in these territories, such as the USSR, China and the United States of America. As a result of these internal struggles, dictatorships and rampant corruption have set in, together with the dynamics of endemic struggle for access to power, with consequences on the chronic political, social and economic instability.

The deep underdevelopment of the continent, however, should not be attributed solely to colonization to which it has been subjected in the past - in which there has always been complicity and collusion, especially by local or internal leaders (Couto 2005, 13-14) - but it is also necessary to consider the local leadership factor and other underlying factors in the postcolonial period (Chabal 2002, 103, PB Gra9a 2005, 81, Kpundeh 2004, Smith 1981, 756-757). Bauer (1969, 56) found out that some African States that were not subject to colonization, such as Ethiopia and Liberia, were more backward than the neighboring States that were colonized. For Michel Doyle (1986, 12 and 20-24), the classical theorists of imperialism were not concerned with constructing analyses of the imperialist phenomenon from an academic and scientific perspective, but were rather criticisms with a political character. For example, it is necessary to recognize the high

degree of corruption perpetrated by local political elites, which makes development unfeasible, and also that the least developed countries have a problem of internal inefficiency (Gilpin 1987, 303-304, Pettman 1996, 67 and 192, Smith 1981,756-757).

There is no doubt that the arrogance and misrepresentation of local political elites - which still deserve to receive the attribute of *bad* governments, according to Bobbio's theoretical conception (in Bovero 2000, 207), for whom a good government is the one that simultaneously pursues public ends and complies with constitutionally established laws - acting in breach of domestic and international law, have contributed to instability, just like the absence of international sanctions have contributed to the sense of impunity of the offenders. For these reasons, pacifist conflict resolution diplomacy, generally referred to as *soft power,* namely preventive diplomacy, the *peacemaking, peacekeeping* and *peace-building* have proved fruitless precisely because of their non-compulsive or sanctioning nature (Viana 2002, 134-153) [3].

Nowadays, many new States are unable to guarantee their economic independence, remaining in a situation of extreme dependence on external resource, lacking the basic commodities, which does not allow the minimum of social welfare of their populations. On the other hand, there has been an accelerated demographic growth in such territories, which has caused conflicts among the populations in disputes over scarce resources. Several problems arise in terms of such States' viability in the international scene. The fact is that a number of fragile States have been engendered, unable to guarantee national unity, as they are divided by conflict and unable to effectively monitor their borders, giving room for maneuver to the transnational drug trafficking networks that use such weak States for storage and transit to other regions, notably Europe. There is also a proliferation of illegal migration and the promotion of other types of transnational organized crime such as terrorist bases (Zoellick 2011, v). For example, according to official data for the period 2006-2008, 11% of drug shipments through maritime route from South America to Europe were done through West Africa (UNODC 2010). In short, we argue that the building of African nations and the evolution of their political processes, characterized by conflict and corruption, have had and have negative impacts, notably on the emergence of a set of fragile States posing a great threat to international peace, stability and security (Collier 2007).

In short, whatever the perspective taken, the analysis of the security problems in the region and their reflection on the international security system cannot neglect the problem of (re)-building the Nation-State in the region and its internal and/or external determinants.

3. The ECOWAS Issue

In a first observation worthy of note, it should be highlighted that despite the critical analysis and discourse that has been built in the *social media* and several fora, Africa and the West African region in particular, have many positive aspects that must be explored and enhanced in order to deconstruct the negative image of the region. It is a region with

[3] The concept of preventive diplomacy is embodied in Article 1 of the Charter of the United Nations, and results in collective and effective measures to prevent and remove threats to peace. Cfr. Annan (1999), Organizai;ao das Nai;oes Unidas (2001, 4).

the potential to transform itself into a large economic and broad consumer market, due to its demographic dimensions, existing natural resources, which may boost the circulation of goods, capital, people as well as highly qualified professionals, which in fact are the motivational assumptions that drove the West African sub-regional integration project.

For the purposes of contextualizing our problem, it is pertinent to underline that in Africa, different perspectives of integration are brought forth and discussed: (i) regional integration; (ii) sub-regional integration; (iii) national integration.

The first perspective and/or model has as its reference point in the post-Second World War period that fits within a revolutionary and progressive logic of the African continent. It is a process of evolution parallel to the process of European integration and coincides with the context of the emergence of the Pan-Africanist emancipatory movements (advocated by figures like Kwame Nkrumah, Lepold Sedar Senghor, Jomo Kenyatta and later by other political leaders like Amilcar Cabral, Samora Machel, among others. Not least, this process of integration is contextualized in terms of its genesis in the wave of African decolonization.

If we take a look at it, the perspective of regional integration (OAU, later AU) was more ideologically and politically motivated, and consisted of an identity and emancipatory approach to the continent, disconnecting from the colonial features and constructions and ending up in promoting rhetorical development policies based on premises such as: Endogenous continental and sub-regional development, decreased external dependence, redefinition of Africa's role in the global economy, African unity, progress and development. What can be noted (in that initial context) is that there was a progressive, optimistic, Kantian, and teleological vision of a prosperous continent, for that, it is enough to paraphrase Kwame Nkrumah when he said: *"Seek ye first the political kingdom and all things shall be added unto you"*, interpreting him, is the same thing as saying that political independence (Political Kingdom) was the right way for such achievements, consequently, an ideological and political integration that would bring economic integration and other sectors of integration.

The second integration perspective (sub-regional), that is, several sub-regional blocs, nevertheless, it is thought to be a simultaneous process with regional integration, but in fact the *nuances* and the assumptions are different. First, it worked as an alternative to continental integration that had its peak in the 1970s of the 20th Century. Secondly, the fact of opting for an integration philosophy with a more economic and less ideological and political vision such as that of regional integration. Thirdly, the inability of the continental integration to provide answers to all its problems, therefore, the inevitability of affirming parallel models of integration.

The third perspective is that of national integration, which does not refer to political and/or radical nationalism per se, but rather to the resolution of States' internal problems such as ethnic and/or tribal conflicts, political instability, consequently assuring national unity and economic development. And, this perspective of integration is crucial, because

there will be no successful regional or sub-regional integration if national problems are not properly addressed.

The ECOWAS issue fits into the last two perspectives we have just reviewed. A sub-regional integration in which the creation of a large sub-regional market was envisioned or envisaged, but in the meantime, the problems that mostly affect the integrationist project have to do with the national problems of the Member States. Therefore, it is necessary to consider that in this process of integration (ECOWAS) there is a set of contradictions, which is also common in other regions of the continent, with a political, economic and socio-anthropological colorations. The contradictions of a political nature are mainly related to the evolution of the quite troubled political process, characterized by ruptures, counter-ruptures, coups d'etats and, consequently, frequent political instabilities. As for the contradictions of an economic nature, it is explained by the fact that it is a region rich in natural resources, but nevertheless, it is unable to maximize such resources for economic development. And the contradictions of a socio-anthropological nature result in the fact that they are multiethnic, which can potentiate conflicts.

Having said that, and from a critical yet constructive point of view, we can summarize by highlighting the real main problems that have to do with conflict and other problems that affect the development of the sub region, and consequently the integration process such as: Corruption, struggles and dynamics for access to power; incipient political and government leaders; situations of excessive external dependency; external interventions and interference; inability of international and regional institutions in conflict measurement, management and resolution; a sense of impunity and political unaccountability. And in the face of this situation, the region has become attractive for illicit acts such as international drug trafficking, terrorism and other related acts.

3.1. Effects of Conflict and Insurrection on the Integration Process

As we highlighted in the theoretical incursion, integration plays a relevant role in solving various problems such as conflicts. However, recognizing this positive evidence of the role of integration, there are situations that need to be safeguarded, attenuated, mitigated, perhaps resolved in their entirety before advancing with the integration processes and/or policies. More perplexing situations are the conflicts albeit there are complex situations which integration alone will not easily resolve, on the contrary, they are serious obstacles to integrationist projects.

In the case of ECOWAS, empirical data point to a very troubled sub region because of the conflicts. Cases of frequent Coup d'etat, civil conflicts, the emergence of new typologies of conflict such as terrorism and the booming drug trade. Not least, reaffirming that most of the problems are national, and which end up having a contagion effect on the sub region as a whole. Hence it is imperative that there should be good national integration, so that there will be good sub-regional integration, teleologically speaking.

Moving on to the foundation of the problem of conflicts and insurrection in the process of integration, there is the need to revise some details, which make it easier to understand the subject matter. One of the obvious situations attributable to the reality of individual country

presently has to do with how independence was achieved. In the specific case of Guinea-Bissau, which is one of the sub region's major problems, the national independence was the result of a national liberation struggle that took more than a decade. In such situations, under a pyro logical analysis, it is evident they inherited a set of problems resulting from the struggle and which hinders the process of democratization and generated conflicts in the post-colonial period.

Another situation has to do with military insurrections, and consequently, military governments. Indeed, ECOWAS is one of the regions with the highest cases of military insurrections. And on this particular subject, paraphrasing Robert Dahal (2000), one of the favorable conditions for democracy is to have a civilian government, and this government, citing Shumpeter (2006), has to be anchored on sovereignty and popular will, exercised through free and transparent elections.

For being a very troubled sub-region due to instabilities, the negative impacts on the integration process are evident. Indeed, these instabilities oppose the whole motivational logic of the integration process, which is the creation of a market for the free movement of people, goods and capital. In fact, a market that does not offer serious security conditions, would be unable to attract investment and free trade, movement of people, and services will be poorly rendered. On the other hand, paraphrasing more liberal authors such as Fukuyama (1989; 2001), Keoahone and Nye (2003), when States share certain values such as democracy, a liberal market eventually increases the rapprochement between them, consequently promoting peace and democracy development. These are requirements that would also indelibly increase the integration.

Given this brief analysis of the sub region's conflict issues and their impacts on the integration process, mitigating these conflicts becomes an undeniable obligation in order to achieve the region's full and effective integration. While recognizing that the process of European integration is a different reality and that it fits into a different socio- political, socio-economic and socio-cultural context, it is important to follow some practical and positive examples of that organization. For example, the European Union admits only States which fulfill certain requirements, such as the functionality of Rule of Law and democracy, whereas in ECOWAS integration is seen as a geographical sub- region, i.e., all States that geographically belong to the sub region can be members of the organization. Given this model, it is certain that many States bring up problems to the organization to the detriment of solutions.

Another finding and that should be mitigated is a tendency for (re)-emergence of strong forces, geopolitical and geo-economics contrasts within the organization. In this sense, it is evident the trends and/or demand for hegemonic interests within the organization. In fact, it may be geopolitically advantageous the existence of a power or powers capable of ensuring sub-regional equilibrium and which is seen in the international politics language as hegemonic stability. However, what should be avoided is the contrary tendency, like the *realpolitik praxis,* which embodies the particular interests of the most powerful within the organization, opposing the integrationist logic to the detriment of nationalisms or the domination of the weaker ones. In this same logic, must be avoided or contained the external strategic interests that provide or contribute to the evolution of

negative political values such as authoritarianism and totalitarianism, violation of human rights and harmful management of public resources.[4]

3.2. ECOWAS Early Warning System

Given the internal socio-political dynamics of the West African sub region that we have already discussed at various points in this presentation, it is justifiable that ECOWAS has an early warning system with capabilities and consistency to act in conflict prevention, but that would also reflect positively in crisis management processes and in real conflict situations.

In a society/sub region quite fragile in terms of social and political stability such as that of West Africa, an early warning system of conflict when functioning efficiently can mitigate major political, economic and social costs caused by conflict. As the most radical Kantian-inspired pacifists would say, war is unjustifiable under any circumstances because of its high costs, for it is a situation that can be avoided or prevented by means of appeal and/or preventive diplomacy.
We have to analyze the logic of this conflict prevention policy in terms of costs and benefits. If its implementation requires an investment or cost that is normal under such mechanism, let us imagine neglecting this policy, and consequently bearing the consequences/costs of the social disruption caused by conflict, post-conflict reconstruction costs, the costs of any military intervention and other peacekeeping or peace enforcement forces, the instability in the functioning of markets, the lack of external credibility of these conflicting spaces which makes it impossible to attract foreign investment or even the impending irreparable costs or damage.

While Machiavellian-inspired warmongers have an understanding that war is justifiable, perhaps because of political motivations and a teleological view of post-conflict benefits, we position ourselves in conjunction with moderate pacifist thinking and act primarily in favour of prevention, considering it as one of the most consistent policies in conflict mitigation. It is what is expected in the West African region. However, the effectiveness of the ECOWAS Early Warning System depends on addressing or mitigating other issues that appear to be of concern in the sub region. For example, it is crucial to have a strengthened, more educated, cohesive civil society and with an excellent culture of social capital, which would avoid many basic problems and problems from the ruling political class, would counteract corruption and organized crime (such as drug trafficking), would impose sanction on the political elites that do not abide by political and democratic culture and constitute threats to the citizens' freedoms, rights and guarantees.

The aforementioned aspects that we advocate should be considered so that they do not neutralize or create obstacles to the Early Warning System and cause potentiate instabilities and which are not resolved simply through mediation, but with sanctions and/or repressions, and combating the feeling of impunity.

[4] In this particular aspect, we are referring to external interventions aimed at influencing negatively the evolution of political values. For example, situations in which authoritarian and totalitarian leaders and regimes enjoy the protection and support of external powers.

Not least, the Early Warning System will play a key role in detecting and predicting the aforementioned situations. It would be the same as creating a political, institutional structure with strong research components that act in the construction of prospective and deductive scenarios of the political and social context.

3.3. Peace and Security for Economic Development

Economic growth alone is no longer an indicator for measuring the development of a city, a country or a region. Economic development is fundamentally based on sustainability, to this end, its measurement requires a positive evaluation of various indicators that function interdependently as economic, socio-cultural and political-social. In this sense, peace and security indelibly appear to be very important political and social indicators in measuring sustainable development, i.e., without security and social welfare there will be no development.

In the specific case of ECOWAS, the question arises in these terms, that is, how come the region is rich in natural resources, but which have not necessarily promoted consistent economic development, meaning that the other indicators have been rated as very low, especially in the socio-political or political-social aspects?

To better explain the role of peace and security in economic development, we have to resort to an empirical example of a stable country and make a political analysis comparing it with the sub-region. In this sense, Cape Verde serves as an example and a fundamental comparative unit for this purpose. It should be noted that this small country and the only insular country in the West African sub-region has many limitations in terms of natural resources. Indeed, at its independence in 1975, all international indicators pointed to its unfeasibility as a sovereign and independent State. However, presently it tops African rankings in terms of human development.

Contrary to the reality of most West African countries, Cape Verde has never had conflict situations. It had a negotiated political transition from the colonial to the post-colonial regime, it lived for fifteen years under an authoritarian regime, but far less than other repressive, authoritarian and totalitarian regimes that occurred in the twentieth century, it had a peaceful political transition from single-party regime to multi-party regime, and in the post-democratic period there had been rotation of political powers done in a peaceful and democratic manner.

If on the one hand we have critical cases like Guinea-Bissau, which despite its potentials, have had its development process stunted by instabilities, which consequently constitute obstacles to the sub-regional integration process, and on the other hand, we have positive cases like Cape Verde, which despite the structural vulnerabilities, has comparative advantages in peace, stability and functionality of the rule of law which have nurtured its economic development, and therefore serve as an important indicator of West African integration. In this regard, we consider it pertinent for Cape Verde to develop a foreign tax policy of *soft power* in institutionalist terms (Nye 2004), which comprises the measurement, management and resolution of conflicts in West African space.

3.4. Proliferation of Small Arms and Light Weapons in West Africa

In an introductory analysis of this issue, the impact of political instability on the proliferation of small arms and light weapons in West Africa is evident, and vice versa. As we have pointed out in a previous section, the sub-region is plagued by conflicts, so it is not surprising that the proliferation of such weapons in the region is highly prevalent.

Paraphrasing liberal authors like Kant (2008) and Wilson[5], permanent armies and/or mercenaries must disappear and there should be a policy agreement to reduce arms to the minimum necessary for the security and defense demands of a territory. These findings are important because if in one hand the war causes suffering for so many, on the other hand, it is a profit for companies specialized in manufacturing weapons, advantageous for exporting countries and an increase in transactional illicit acts linked to smuggling and trafficking of war materials. In this regard, it is noteworthy that the data points to arms trafficking as one of the most profitable businesses in the world, obviously, the opportunity for arms trade networks to destroy countries, regions and foster conflicts with lucrative intentions remains high.

In the case of ECOWAS, the issue of arms proliferation should be well founded in the analysis and articulation of consistent policies that can mitigate the negative impacts of the phenomenon. The fact is that if the proliferation of weapons is considered dangerous to societies that view themselves politically and socially stable, it would, therefore, be an extremely disturbing and aggravating factor to societies with a history of conflict such as West African space. In this respect, there are cases of countries with fragile peace, populations living in the aftermath of conflict, cases of peace reconstruction processes, porous land borders, existence of transnational organized groups and terrorism that get different types of financing, such as trafficking, as well as use these weapons in hostilities.

At this point, let's paraphrase some information we gathered a few years ago as part of our doctoral thesis (2016), which reported on the problem of small arms proliferation in Cape Verde. This same information shows that Cape Verde, which has no history of civil or political conflicts, has a serious problem with this situation. In this sense and with the help of one of Ana Leao's work *(paper)* the following was found:

> Known data on the dissemination of [legal] firearms in the country point to 9,500 guns in civilian hands, equivalent to a rate of 5.4 firearms per 100,000 inhabitants, placing Cape Verde at number 172 in world ranking on the universe of weapons in private possession (178 countries in total) (Leao 2011, 9).

This small volume of firearms legally in civilian hands is corroborated by data on licensed guns in the country, which between 2000 and 2008 was a total of 475 (Ministry of lntemal Affairs 2010, in Leao 2011,7).

> Apparently, these figures seem to disprove the many reports and media reports made in Cape Verde on the topic of firearms dissemination in the country, as well as the prominence that the issue has received on the country's political agenda (Leao 2011, 9).

[5] Woodrow Wilson influenced by Kantian philosophy presented the 14 points as prerequisites for peace in the aftermath of World War I. One of the points was the reduction of armaments.

The discrepancy of the data presented with public and political perceptions about the proliferation of firearms in civilian hands has to do with the inability of the database to control the proliferation of weapons in the country, an argument also put forward by our interviewee Redy Lima.[6]. To date, there is no accurate estimate of the total universe of firearms in circulation in the archipelago (Leao 2011, 8). Without an estimation, it can be said that the proliferation and circulation of weapons in the country is beyond the control of national authorities, which can be extremely dangerous in the short or medium term.

In fact, despite these statistics, the proliferation of weapons in hands of civilians in Cape Verde is a serious problem given their impact on crime. What are the sources and funding sources of these weapons? Answering this question is not an easy task, as it touches on a subject confined to the confidentiality of the authorities, where secrecy and the silence code make it difficult for the investigator to gain access to inside information that could make the security system vulnerable. However, the data we have been able to compile despite these obstacles allows us to point out to the main sources with some confidence (Cardoso 2012, 38-42).

Firstly, the Armed Forces themselves and the National Police, which seems contradictory, but it has been happening. Some cases of weapons disappearances in this sector of the State, reported by the media and confirmed by official authorities, confirm the hypothesis that the Armed Forces themselves are one of the sources of weapons proliferation in the hands of civilians. As to the whereabouts of these weapons, little is known yet, but the information gathered indicates that at least some of them are being used by *gangs,* some of which, according to Redy Lima, are led by former military personnel[7].

The second source of access to firearms are the drug traffickers operating in the archipelago. We saw earlier on that there are *gangs* who work for drug traffickers, and there is no doubt that drug traffickers provide weapons to such groups. Ana Leao (2011, 7) reported that:

> The Cape Verdean press report incidents involving the use of firearms, whether imported or homemade, almost on a daily basis. Most of these concerns are related to struggles between *gangs,* locally called *thugs*. At times, gun arrests are also related to drug trafficking, especially cocaine probably from Latin America.

Finally, just as drug trafficking has exploited the archipelago's extensive maritime territorial area to perform this criminal activity, arms trafficking has also operated in the same way, i.e., the seaway is the main gateway to arms in the archipelago (Leao 2011).

In addition to the aforementioned sources, in recent years there have been proliferation of artisanal handicraft weapons in Cape Verde called *"Boca Beciju"*. These homemade weapons produced by individuals themselves have been widely used in aggressions and homicides, especially in conflicts between rival *gangs.*

[6] Redy Lima, unrecorded interview granted to us in 2013.

The complexity of this issue is that when it comes to the proliferation of weapons and crime in Cape Verde, it involves a set of correlated factors. Based on the analysis made, we see that the proliferation of weapons and incidents involving their use are related to phenomena such as corruption, drug use and drug trafficking, underlying youth and urban delinquency, without setting aside other factors such as the deficit of education and citizenship and the culture of masculinity among others (Cardoso 2012, 36)[8].

Although the aforementioned data are quite outdated even as we used them in the doctoral thesis, they serve to elucidate how dangerous the proliferation of weapons is and its ability to destabilize a society. If in the Cape Verde archipelago such negative consequences are observed, what becomes of the most unstable countries within the West African sub-region?

FINAL CONSIDERATIONS AND RECOMMENDATIONS

If the truth be told, ECOWAS was created with clear objectives to carry out a sub-regional integration project, not only economic, but also political, cultural, security. It was anchored in the functionalist and neo-functionalist theoretical paradigm (Haas 1968, Haas and Scmitter 1964, Mitrany 1933; 1943) - it started the integration in a sector (economic) and consequently would gradually expand the integration to other sectors until it achieves full and effective integration. It moves from the ideological, political and identity matrix of African regional integration (unification of Africa and deconstruction of the colonial frontier) to a project of sub-regional integration and border delimitation. On the other hand, an initial project that assumes a more economic integration model would have a contagion effect on other integration sectors. The range of its ambitions can be highlighted thus: the mobility of goods, capital, movement of people, skilled professionals and others.

Undoubtedly, West African sub-regional integration can be considered to share the same aspects and assumptions as other supranational integrations that have occurred elsewhere. Thus, in the present national and international political context, supranational integrations are seen as "strategies" to meet the challenges of globalization, to adapt to a new context that many consider as post-Nation States (Armstrong, Lloyd and Redmond 2013, Carey 2003, Hurrelmann, Schneider and Steffek 2007) and hence the need for the legitimation of regionalism and global governance to address a context in which unilateralism is not a political and economic option for any (sub)region, an important role in harmonization of norms and regulations, the possibility of a stable constitutional and economic framework, multi-polar strengthening of the international system, and in the most optimistic view, presupposes the alignment of the Global South into the International System.

However, the success of West African sub-regional integration depends on solving a number of problems, particularly of a political nature, which are aggravated by the existence of other obstacles, many of which were inherited from the colonial period. Thus, the problems are: (i) the ineffectiveness and lack of functioning of supranational

structures; (ii) the absence of an organizational agglutinating power capable of bringing together and harmonizing various interests, and consequently, enhancing sub-regional stability; (iii) demotivation of Member States due to the lack of realization of political and economic enterprises; (iv) existence of States with enormous economic, political and sociocultural difficulties.

We have an optimistic teleological view of a good long-term integration in the West African region, but, as we highlighted in the previous paragraph, it depends on solving a number of problems. Successful supranational integration is impossible without consistently achieving national integrations, i.e., there has to be a bottoms-up integration, not the other way around. There is no supranationalism that works without the Member States being consistent, and the idea that supranational mechanisms will solve all the internal problems of Member States remains mere rhetoric.

Underlying the problems of a political nature, which add to the problems of a socio-anthropological nature, is the problem of conflicts that have neutralized sub-regional integration. That is why we argued and propose the need to eradicate or mitigate conflicts, based on a policy of mediation, conflict management and resolution, combating impunity and sanctioning those responsible for causing the instability, instruct civil society and combat the different types of threats that directly or indirectly posed such threats as drug trafficking, terrorism, arms trafficking and proliferation, corruption and low political and democratic culture.

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SUB-THEME 7

BASIC INFRASTRUCTURE FOR ECONOMIC INTEGRATION

PRIMARY INFRASTRUCTRE FOR ECONOMIC INTEGRATION

BY

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TABLE OF CONTENTS

INTRODUCTION

Starting in 1999, ECOWAS undertook the implementation of a programme designed to culminate in the creation of a customs union, a common market and a monetary union. The programme is encapsulated in the ECOWAS Vision 2020. The following are its identified priority areas of action:

- Development of infrastructure;
- Creation of a single currency and deepening of economic and commercial integration;
- Introduction of common sectoral policies in the areas of agriculture, industry, the environment and water resources ;
- Building of commercial capacities ;
- Consolidation of peace and democracy.

The points of focus of this presentation are:

- Diagnosis and constraints in the West African infrastructure sector;
- Presentation of our vision, projects and programmes;
- Implementation status of certain priority projects ;
- Projected reforms and measures.

DIAGNOSIS AND CONSTRAINTS OF THE WEST AFRICAN INFRASTRUCTURE SECTOR

West Africa suffers from an infrastructure insufficiency which impedes the progress of regional integration and contributes to the marginalisation of the West Africa region within the framework of the global economy.

The rate of access to energy, which stands at only 30%, is one of the lowest in the world (53% in urban areas and less than 7.5% in rural areas)

The status of road transport is as follows:

- Low network density and poor interconnections ; roads are dilapidated, with poor access to rural areas ;
- Insufficiency of funding;
- Transportation costs in African countries are 30% higher than m other developing countries in Asia.

The rail network is dilapidated and ill-adapted to modem rail transport needs; existing rail links have different, non-interconnected gauges.

Maritime transport became non-existent with the disappearance of national weapons arsenals.

Telecommunication services are characterised by poor international connectivity and high consumer charges.

PRESENTATION OF THE BROAD OUTLINES OF THE ECOWAS STRATEGY FOR THE INFRASTRUCTURE SECTOR

In order to remedy these observed deficiencies, ECOWAS drew up programmes covering the sectors of road, maritime, air and rail transport, energy, telecommunications and water resources.

Roads

- Development of the West African road network, with the construction of the 4560 km-long Lagos-Dakar Trans-coastal Highway, and the 4460 km-long Dakar-Bamako-Ouagadougou-Niamey-Kano-N'Djamena Trans-Saharan Highway;
- Construction of inter-connection roads linking hinterland countries (Burkina Faso, Mali and Niger) and opening up land-locked areas.

Railroads

- The West African rail interconnection programme aimed at establishing rail links between all the Member States.

Air Transport

- Creation of an air transport common market in the ECOWAS region and strengthening air security oversight;
- Creation of a regional aircraft maintenance centre ; and
- Creation of a regional aircraft leasing centre.

Maritime and River Transport

- Rehabilitation of ports ;
- Upgrade of the regional maritime company in order to boost growth of maritime traffic and freight ;
- ECOWAS also plans to encourage the development of river transport as a means of opening up the hinterland of certain countries in the sub-region.

Telecommunications and Information and Communications Technology (ICT)

- The objective of the programme in this sector is the modernisation and interconnection of national networks, reduction of communication charges, establishment of a regional roaming system and improved internet access.

Energy

The major on-going projects within the strategy framework are:

- The West African Gas Pipeline Project, which has built 600 km of pipeline to carry gas from Nigeria to Ghana, through Benin and Togo ;
- The West African Power Pool (WAPP) which is designed to integrate national actions within the energy sector into a single regional electricity market, supplying steady, adequate and readily available electric power; to develop and share hydraulic and gas resources ; increase interconnective capacity and establish a regional institutional energy framework;
- The Energy Access Programme aimed at making energy accessible to at least half the population of rural and peri-urban areas by 2015.

Water

- Water sector projects are aimed at contributing to improved access to potable water in both rural and peri-urban areas, as well as developing the irrigation techniques necessary for agricultural development.

JOINT BORDER CONTROL POSTS

PROGRAMME	COMPONENTS	EXPECTED RESULTS
Objective - Improvements : Reduction of transportation costs for transborder trade as a result of adequate road corridors which permit reliability of services, reduce travel time and the cost to users; Facilitation of free movement of persons and goods within the Community as a result of effective joint control posts at land borders.	**Programme for the 11 JBPs in West Africa:** i. **SÈMÊ KRAKÉ,** Nigeria-Benin**, equipment & inauguration on 23rd October 2018** ii. **NOÉPÉ -AKANU,** Togo-Ghana **equipment & inauguration on 26th October 2018** iii. . **Mfum,** Nigeria-Cameroon, 90 % completed Iv Border control post on the Gambia River between Senegal and The Gambia; v. Elubo/Noé, Ghana-Côte d'Ivoire, vi. Paga, Ghana-Burkina Faso vii. Cinkanse, Togo-Burkina Faso viii. Hillacondji/Sanvee-Kondji Benin-Togo ix. Malanville Benin-Niger: x. Kourémalé: Guinea-Mali : Joint Border Post between Sierra-Leone and Libéria.	20% reduction in the cost of commercial activities and logistics in 10 years; 20% growth in intra-regional trade in 10 years; 20% increase in government earnings in 10 years ; Improvement in free movement for citizens of the ECOWAS Member States ; Improvement in transborder cooperation, security and sharing of intelligence and resources between border control agencies by 2020; Reduction of corruption and loss of revenue at borders by 2020 ; Reduction in operational delays, costs and the incidence of negative social behaviour such as alcohol consumption or promiscuity on the part of transporters and persons in transit, attributable to the delays at border posts ; Impact evaluation of available primary data

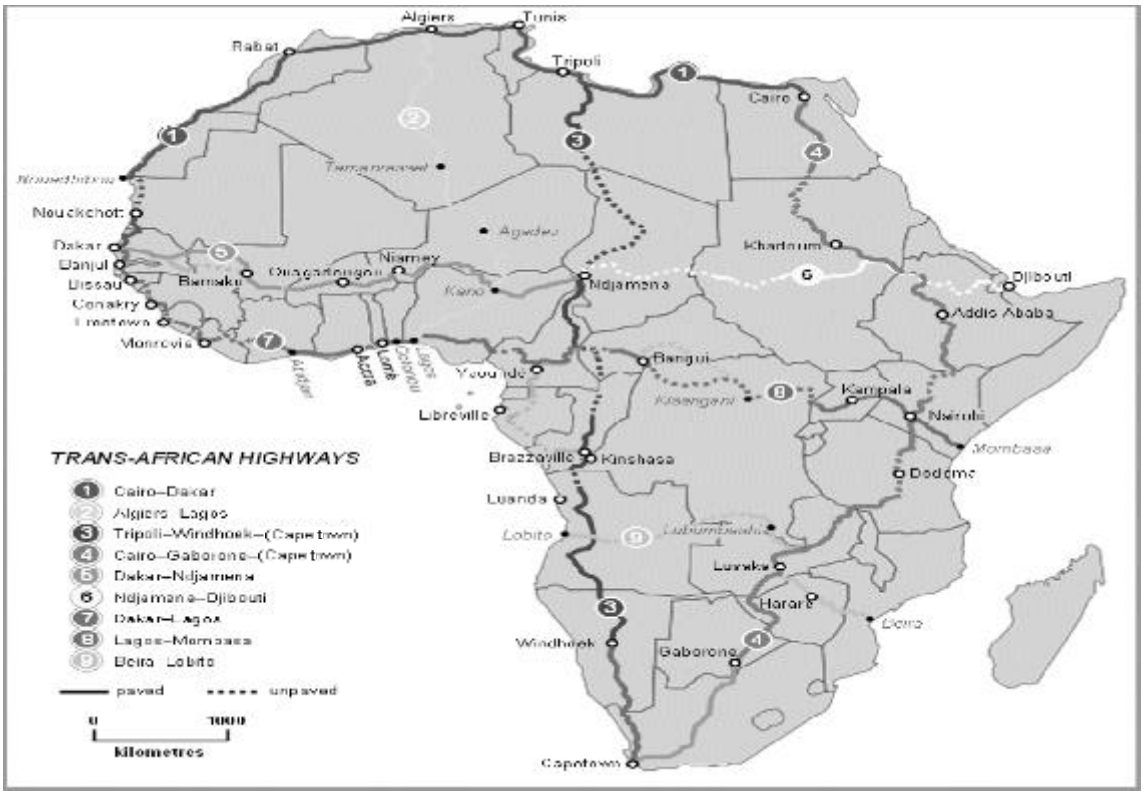
REGIONAL DEVELOPMENT PROGRAMME FOR JOINT BORDER CONTROL POSTS (JBPs)

INAUGURATION CEREMONY OF THE NOEPE-ANAKU JBP (Ghana/Togo Border) 26 October 2018

Cutting of the ribbon by His Excellency, Nana Addo Dankwa AKUFO-ADDO, President of the Republic of Ghana, and His Excellency, Faure Essozimna GNASSINGBE, President of the Togolese Republic, attended by His Excellency, Jean-Claude Kassi BROU, President of the ECOWAS Commission

SEME-KRAKE INAUGURATION CEREMONY 23 OCTOBER 2018

ECOWAS CORRIDOR DEVELOPMENT PROGRAMME



ABIDJAN-LAGOS CORRIDOR DEVELOPMENT PROJECT

Treaty signed in 2014 by the Heads of State and Government of the 5 Member States of the Corridor: Cote d'lvoire, Benin, Ghana, Togo and Nigeria.
Components:

- Construction of a 1081 km 6-lane dual carriage highway (2x3 lanes) ,
- **Lot 1:** 295.3 km (Abidjan (Cote d'Ivoire)-Takoradi-Apimanim (Ghana);
- **Lot 2:** 466 km (Takoradi-Apimanim-Akanu) Ghana;
- **Lot 3:** 320.06 Km Noepe (Togo)-Athieme (Benin) Lagos Eric Moore

On-going Actions
Preparation of feasibility, preliminary, detailed technical studies, and invitations to tender began in March 2019 and will be concluded in June 2021, under the sponsorship of the African Development Bank and the European Union.

PRAIA-DAKAR-ABIDJAN MULTIMODAL CORRIDOR DEVELOPMENT PROGRAMME

Treaty signed on 4 June 2017 by 7 Member States: Cote d'Ivoire, The Gambia, Guinea, Guinea Bissau, Liberia, Sierra Leone and Senegal.

PRINCIPAL OBJECTIVE:
Transformation of the Dakar-Abidjan road into an Economic Development Corridor. The components are the following:

- Construction and management of a 6-lane multinational highway (2x3)
- Feasibility and commissioning of a maritime transport service between Cabo Verde, Dakar and other West African ports
- Economic and spatial development initiatives for the corridor
- Legal and institutional study for the creation and operation of a Dakar-Abidjan Corridor Management Authority

DAKAR-BAMAKO-OUAGADOUGOU- NIAMEY-NIGERIA-CHAD BORDER CORRIDOR MODERNISATION AND IMPROVEMENT PROJECT

The project is 3800km long, and multimodal (highway and railway), linking Senegal, Mali, Burkina-Faso, Niger and Nigeria.

The programme is designed:

- To improve cross-border access (infrastructure and facilitation) to persons and goods between Senegal, Mali, Burkina Faso and Niger
- To contribute to accelerating regional integration, rendering trade more competitive, and boosting tourism between Senegal and Mali
- To set up integrated road access using a dealer-operated rail traffic management system

DAKAR-BAMAKO RAILWAY REHABILITATION PROJECT

The project involves the conduct of feasibility, technical, economic and environmental studies with a view to carrying out the rehabilitation of the 1286km of the railway between Dakar and Bamako

The objective is to improve the competitiveness of the region by offering affordable prices for transport of agricultural produce, mining products, and other goods.

AIR TRANSPORT SECTOR PROJECTS

FIXED OBJECTIVES:
ARTICLE 32, 1993 ECOWAS revised Treaty

Para. (f)... « *Encourage cooperation in flight scheduling, leasing of aircraft and granting and joint use of fifth freedom rights to airlines of the region»*

Para. (g)... « *Promote the development of regional air transportation services and endeavour to bring about the merger of national airlines in order to promote their efficiency and profitability»*.

1. SINGLE AFRICAN AIR TRANSPORT MARKET (MUTAA/SAATM)

ON 28/01/2018 THE SINGLE AFRICAN AIR TRANSPORT MARKET (MUTAA/SAATM) LAUNCHED the flagship project of the AU Agenda 2063, in accordance with the Yamoussoukro Decision

OBJECTIVES: To create a single, unified air transport market in Africa, liberalise civil aviation across the continent and drive economic integration

MEMBERSHIP: 27 African States, 13 of which are ECOWAS Member States: **Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Sierra Leone and Togo;** Guinea Bissau and Senegal are in the process of adhering

BENEFITS:

- Success of liberalised markets on other continents: Europe, Latin America
- Opening and linking markets renders trade more fluid and less costly through competition, enabling African businesses to be integrated into the global supply chains
- Improved airline connectivity contributes to increased productivity, growth and job creation
- Encourages the development of tourism - a source of strong currency earnings

2. COMMON POLICY ON AVIATION FEES AND TAXES

Status: Aviation fees and taxes in the ECOWAS Member States are not uniformly compliant with ICAO standards (ICAO Doc. 9082, Doc. 9161 and Doc 9562)

Objectives: To formulate a Common Policy on Aviation Fees and Taxes for the ECOWAS Member States, which is in compliance with ICAO principles and procedures (key principles of non-discrimination, costing, transparency and consultation with users in order to ensure adherence to these principles by airport authorities and air navigation service providers), based on a transparent price structure which ensures that passengers and other airport users pay only for services effectively provided.

Expected results

Reduction in airline operating costs and passenger fares
Promotion of low cost airlines in the ECOWAS region
Creation of new jobs for the youth and for women

3. REGIONAL AIRCRAFT MAINTENANCE COMPANY

Status: Aircraft owned by airlines in the ECOWAS region are maintained outside the region and/or in the industrialised countries, incurring heavy costs, particularly for C and D checks.

Objectives: By pooling resources from the Community, to set up a public-private partnership aircraft maintenance company in West Africa for airlines and aircraft operators, with state of the art aircraft maintenance infrastructure, in order to reduce operating costs and strengthen aviation security in the region, in accordance with ICAO standards and recommended practices (SARPs).

Expected Results: Reduction in cost and in the delays experienced by airlines from having to send their aircraft to maintenance centres in Europe or America, and a reduction in the amount of taxes paid on imported aircraft spare parts.

4. CREATION OF AN AIRCRATF LEASING COMPANY

Status: **a 2013 World Bank** study reveals a more than 35% increase in the cost of aircraft leases for West Africa as a result of the "country risk" policy practiced by the lessors (Aercap, IFLC, etc)

Objectives: To set up a public-private joint venture involving the private sector, banks, donors and development partners, to provide airlines, governments/VIPs in the ECOWAS region, with aircraft for hire-purchase, and purchase and sales services, including facilities such as sale/lease transfer, operating lease, lease-purchase and lease of engines and spare parts (durable or reparable aeronautical components).

Expected Results

Improvement in the operating costs of ECOWAS airlines and in their competitiveness and profitability.

Facilitation of access by the airlines to new, modern fleets which are more reliable, consume less fuel, require less expensive maintenance, and are more environment-friendly.

MAJOR CHALLENGES

- The challenge of project preparation
- The challenge of project financing

The ECOWAS Regional Infrastructure Master Plan comprises 63 investment projects, and 59 « soft » projects, at a cost of 102.6 billion American dollars, for the period from 2018 to 2040.

In order to attract private investment, countries must establish a competitive marketplace, buttressed by a clear legislative system, which upholds business law, and provides the assurance of transparency in the public tendering process, as an encouragement to public-private partnerships.

In addition to private sector resources, innovative financing measures must be adopted with regard to project preparation and investment financing. These include:

- infrastructure bonds ;
- financing of loan guarantees ;
- ECOWAS own resources (Community levy and ECOWAS Infrastructure Project Preparation Fund;
- funds from the diaspora ;
- pension funds ;
- etc...

CONCLUSION

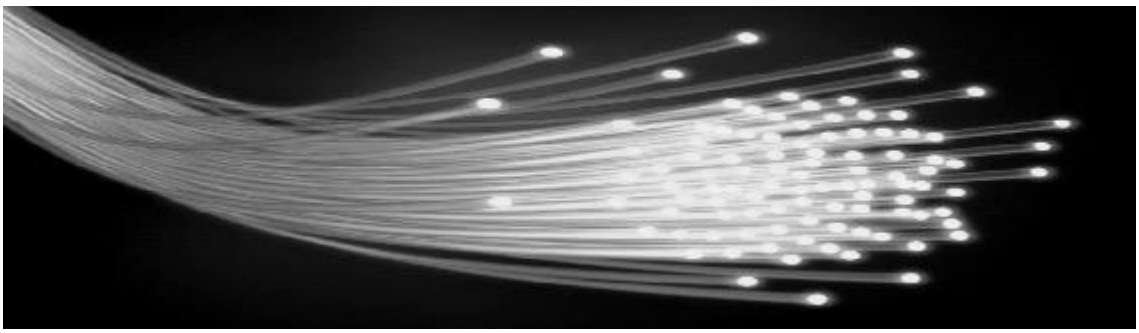
These projects and programmes will permit:

- Increased generation and distribution capacity in the energy sector ;
- Operationalisation of a regionnal electricity market ;
- Linking of capitals, ports, border crossing points and secondary towns by good road networks ;
- Provision of access to quality agricultural land in Africa, for all farming seasons;
- Improvement of the rate of access to water and sanitation ;
- Provision of access by 100 % of the population to world class mobile telephone systems and open broadband networks.

Implementation of this ambitious programme will:

- Improve the competitiveness of our economies, and drive development in agriculture and the processing industries ;
- Improve intra-regional trade ;
- Contribute to the creation of thousands of jobs through the construction, operation and maintenance activities generated by these projects.

THANK YOU!
OBRIGADO !
JE VOUS REMERCIE !



BASIC INFRASTRUCTURE FOR ECONOMIC INTEGRATION

BY

MR. BASHIR MAMMAN IFO

President of ECOWAS Bank for Investment and Development

Distinguished guests
Ladies and Gentlemen:

1. Good afternoon! It is with great honour and personal pleasure, that I address this extraordinary gathering on this very important talk on basic infrastructure for economic integration.

2. Before deliberating further, let me start with something we are all familiar with: the history of ECOWAS. Over 40 years ago, our political leaders championed together a great vision that eventually gave birth to our political and economic union. Their underlying motive was clear: that regional integration was not a matter of choice but a necessity for promoting resilient, equitable, and sustainable growth and development.

3. They were also of the view that the region's s fragmented markets and small size economies could be connected through a single market with over 300 million consumers which in turn will have a considerable impact on jobs and manufacturing value chains.

INFRASTRUCTURE A SA CHALLENGE TO ECONOMIC INTEGRATION

Distinguished guests
Ladies and Gentlemen:

4. While the region has made good strides over the past decade, considerable challenges remain to fully exploit the benefits of regional integration.

5. According to the Africa Regional Integration Index (2016), the ECOWAS Community is among the worst performers in terms of infrastructure and productive integration compared with other Regional Economic Communities (RECs) within Africa.

6. On average, the level of intra-regional trade among the ECOWAS Member States is estimated at 10.6% which is relatively low compared with 20.6% for the Southern African Development Community (SADC) and 20.3% for the East African Community (EAC). To demonstrate to you further, Nigeria-the largest economy in the region- accounts for less than 15% of intra-regional trade while exporting more than 80% of its goods to the non-regional Member States.

7. And the fundamental driver of this status-quo is the existence of large and persistent infrastructure deficits in the region.

8. It is estimated that almost half of the roads in the sub-region are in bad conditions and only 18.3% paved. Energy supply is limited and relatively expensive. Ports are relatively small with little spare capacity in container terminals. Regional fiber-optic submarine cables are almost non-existent. Rails are the least developed with almost all of them in poor conditions.

9. Soft infrastructure challenges are also pervasive. For instance, non-tariff barriers such as customs delays, burdensome customs and inspection procedures, multiple licensing requirements, among others.

10. A recent World Bank study estimated that the poor state of infrastructure in sub-Saharan Africa reduced economic growth by two percentage points every year and cut business productivity by as much as 40%. Also, the Infrastructure Consortium of Africa (ICA) has shown that poor infrastructure increases by between 30-40% the costs of goods traded among African countries.

11. The financing gap of our infrastructure needs is also monumental.

12. The African Development Bank estimated that Africa infrastructure investment need ranges between USD 130-170 billion, at an annual cost of around USD 35-47 billion. Similarly, a Programme for Infrastructure Development in Africa (PIDA) study showed that West Africa requires USD 6.2 billion to finance its infrastructure needs.

13. According to the Africa Infrastructure Consortium (2017), West Africa's total commitments in the energy sector amounted to USD 1.65 billion in 2017, representing only 5% of its total financing needs. The revised ECOWAS master plan for the development of regional power generation and transmission infrastructure (2019-2033) also estimated that the region would need to plug in an estimated USD 36.39 billion for 59 priority projects to meet its average forecast electricity growth rate of more than 8% in the next 15 years.

14. As Member States face declining revenues and limited fiscal space to embark on ambitious regional infrastructure projects, it is clear that we must act together quickly to mobilise needed resources for critical infrastructure development.

THE ROLE OF ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT

15. At the ECOWAS Bank for Investment and Development (EBID)-the regional financing arm of the ECOWAS Community-we have been at the forefront of financing economic development in the region since its inception in 1975. The overarching mission of the Bank is to "assist in creating favourable conditions for the emergence of an economically strong, industrialized and prosperous West Africa that is fully integrated into the global economic system with a view to taking advantage of the opportunities and prospects offered by globalization".

16. From the inception of the institution to 30th June, 2019, the net cumulative approvals to the Member States amounted to USD 2.6 billion in respect of 286 projects in various sectors.

17. In recognizing infrastructure as an integral part of regional integration, the Bank has committed more to infrastructure development than any other sector in its entire portfolio. As of30^{1h} June, 2019, infrastructure accounts for almost half of the Bank's total approvals, corresponding to USD 1.23 billion for 125 projects. Most of these targeted infrastructure investments comprise road and energy projects with a strong regional dimension. Furthermore, infrastructure development and regional integration are among the Bank's core priority sectors for interventions under its medium-term strategic plan 2016-2020.

18. The Bank is also increasingly playing a major role by utilizing a variety of financing mechanisms, including direct loans, guarantees and equity participation

in financing infrastructure development in the region. Other innovative methods such as Public-Private Partnership (PPPs) and structured project finance are also utilized.

19. Can the Bank do more for the region? Yes, EBID may be better placed to respond to regional needs and demands than any other Development Finance Institution (DFI). Regional development banks like EBID have specific and localized roles, which are not always covered adequately by other DFIs like African Development Bank and the World Bank. With access to more concessionary and commercial resources, the Bank can multiply its interventions, especially in fragile and resource constrained-countries within the region.

The Way Forward

20. We recognise that to overcome this perpetual policy problem, we, as a region, will require a novel approach that shifts away from the status quo to one that calls for partnership and collaboration.

21. To do this, we are proposing three areas of consideration:

a. *First,* to create a large infrastructure facility or fund for the ECOWAS Community. This would be similar to the Africa50, launched by African Development in July 2013. This giant new facility will serve as a vehicle that will prepare and finance big "transformative" infrastructure projects, like the ECOWAS regional corridors identified by PIDA. It will focus particularly on targeted mega-infrastructure projects that require both public and private sector needs;

b. *Second,* strengthen collaboration between key institutions of the ECOWAS such as Infrastructure Projects Preparation and Development Unit (PPDU), the ECOWAS Commission, and the ECOWAS Bank for Investment and Development to serve as a mechanism to connect local and international stakeholders in structuring and financing regional infrastructure investments. These institutions will serve as "off-takers" in developing and implementing effective, attractive but complex infrastructure projects of the region; and

c. *Finally,* devote limited resources strategically by carefully targeting infrastructure investments that will facilitate the emergence of competitive regional value chains and growth poles.

Conclusion

22. Let me conclude by saying that infrastructure is critical for regional integration and more so at a time when the whole Africa region is clamouring for the African Continental Free Trade Area (AfCFTA)-a single continental market for goods and services, with free movements of people and capital.

23. If the region is to maximize the benefits of economic integration, it must tackle its infrastructure deficits innovatively and strategically with strong commitments, unity, and optimism.

24. So let us work together as partners. Let us weave together a better economic fabric that benefits us all.

Thank you for your attention.

IMPORTANCE OF INFRASTRUCTURE TO ECOWAS INTEGRATION

BY

MRS. HALIMA AHMED
Commissioner for Finance, ECOWAS Commission

Introduction

My intervention/contribution on the topic of the panel will be centred around three points

- **I.** Importance of infrastructure to ECOWAS integration
- **II.** Current Financial and Technical Mechanisms for infrastructure development in Africa/ECOWAS
- **III.** New mechanisms (PPP - investments)

I. IMPORTANCE OF INFRASTRUCTURETO ECOWAS INTEGRATION

As highlighted by the previous speaker(s), infrastructure is critical for the integration and development of the ECOWAS region. However, when we talk about infrastructure for regional economic integration, we are referring to:

1. Physical infrastructure - as in the transport sector, such as roads, railways, air transport interconnectivity; and the energy sector relating to electric power systems, gas supply etc; and
2. Non-physical infrastructure-such as internet connectivity, etc.

Regarding this, the infrastructure gap in ECOWAS is still wide, which presents a huge opportunity for investment in the region. We have a long way to fully deploy regional infrastructure that will enable our integration and development.

According to the AfDB, the key challenges for Africa are to supply the burgeoning population with reliable electricity, affordable housing, and transport infrastructure, though these industries will also create new jobs.

Statistics provided by AfDB shows that household electrification rate in Africa stands at just 43%, leaving 600 million people without access to electricity. Moreover, electricity coverage ranges from 65% in urban areas to 28% in rural areas.

In the transport sector, roads are the main mode of transport, carrying at least 80% of goods and 90% of passengers. Yet, 53% of the roads are unpaved, isolating people from basic education, health services, trade hubs and economic opportunities. Less than half of Africa's rural population has access to an all-season road. Road safety is also an issue, with road fatalities resulting in 225, 00 deaths every year - that is about one-fifth of total fatalities from road crashes worldwide.

Rail- The rail infrastructure is outdated and ineffective in Africa. In total, Africa counted 84, 000 km of rail track, most of it in Southern and Northern Africa.
Ports- Africa operates 64 ports, many of them poorly equipped and uneconomically operated. Handling costs average 50% more in Africa than in other parts of the world. Further challenge stems from a lack of efficient linkages between roads and rail lines, and their poor connectivity to ports.

Information and Communication Technology - The Internet's contribution to Africa's overall GDP is low, but is projected to grow to at least between **5% and 6%,** the same level as Sweden, Taiwan, and the United Kingdom, **by 2025.** In2012, over **197.6 million** people in Africa used the internet, which corresponds to **18.6%** of the population. Broadband coverage is at **16%** and will likely reach **99% by 2060.**

The wide gap in infrastructure, therefore, is not only a constraint to Africa's growth, but an opportunity to leapfrog to new, more efficient technologies. According to the AfDB's *African Economic Outlook 2018*, the annual infrastructure deficit in Africa is currently estimated at $108 billion.

On paper, there are many infrastructure projects awaiting funding. In West Africa alone, there are 84 projects in various sectors, including airport, seaport, border post, power interconnection between or among countries, fibre optic cable, petroleum/gas pipeline, road, railway, etc. These projects are at various levels of preparation, study, and construction.

Typically, project investments occur in at three (3) levels:

- **"Project identification"** - when a project aims to develop or prioritise other projects
- **"Project preparation"** - assessment of feasibility and design of a specific project
- **"Investment phase"**-project construction and implementation

Therefore, the different funding mechanisms target these levels or stages of the infrastructure project. In the next section, different technical and funding mechanisms for infrastructure development in Africa/ECOWAS are explained.

II. CURRENT FINANCIAL AND TECHNICAL MECHANISMS FOR INFRASTRUCTURE DEVELOPMENT IN AFRICA/ECOWAS

There are a number of financial and technical mechanisms for infrastructure development in Africa and by extension in ECOWAS. This reflects the increasing interest and demand for infrastructure in the region.

1. **National Budgets:** Typically, infrastructure projects are financed through national budgets. Even if it is a regional project, some aspect of the costs may be covered by the beneficiary state. But this is grossly inadequate in view of the quantum of investment required.

2. **Donor/Partner grants:** Infrastructure projects are also financed through grants secured from donors/partners and development finance institutions. Grants can be provided in the form of:

   Technical assistance for preparatory work like feasibility studies, Environmental and Social Impact Assessments, Resettlement Action Plans, etc., for project supervision, and also for targeted capacity building such as reinforcing the technical and administrative capacity oflocal staff in Africa.

   Interest rate subsidies to enable EU-AITF Financiers to make long-term loan finance available in flexible ways in order to reduce the total amount of debt service. Such subsidies allow the final financing package to achieve the concessionality by debt sustainability programmes of e.g. the World Bank or the IMF.

   Investment Grants are non-reimbursable contributions to finance tangible or intangible project components with the aim to decrease the total investment costs or to increase the concessionality of the financing

package of a project. Investment grants can also target the financing of specific project components which have substantial demonstrable social or environmental benefits or which can mitigate negative environmental or social impacts.

Financial Instruments comprise, but are not limited to, guarantees, loan guarantee cost financing, insurance premiums, equity or quasi-equity investments or participation and risk-sharing instruments.

In **ECOWAS,** a major development partner on infrastructure is the European Union, using the European Development Fund (EDF) instrument or budget of the EU Member States.

The principal vehicle is the EU-Africa Infrastructure Trust Fund, which was created in 2007 by the European Commission and European Union Member States. The Fund is a "blending instrument", which combines long-term investments from development finance institutions (loans, risk capital, etc.) with grant monies to gain financial and qualitative leverage as well as project sustainability. Another objective of Blending is the promotion of cooperation and coordination between European and non-European aid actors.

The EU-AITF offers grant support from **two different envelopes:**

- The Regional envelope promotes regional infrastructure projects (energy, transport, water, ICT): cross-border projects or national projects with a demonstrable regional impact on two or more countries.
- The SE4ALL envelope supports regional, national and local energy projects targeting SE4ALL objectives:
    - Ensure universal access to modem energy services.
    - Double the global rate of improvement in energy efficiency.
    - Double the share of renewable energy in the global energy mix.

In **the energy sector,** the EU has allocated a total of 1.1 billion Euros for West Africa since 2007:

o 10th EDF (including Sustainable Energy for All - SE4ALL)	€254m;
o EU-ACP Energy Facilities 1 and2	€97m
o Africa Infrastructure Trust Fund (AITF) projects	€85m
TOTAL	**€1134m**

The African Development Bank, World Bank and the likes provide grants in support of project preparations in Africa. For example, the ECOWAS joint border posts built with funding from the EU also benefitted from the intervention of the African Development Bank.

3. **Regional Funds** - this refers to funds mobilised at the regional level, such as the AU and ECOWAS in favour of infrastructure projects. Regional funds are mobilised from the revenue of the regional organisations, a special funding mechanism and contributions from partners. A typical example is the Programme for Infrastructure Development in Africa **(PIDA),** a strategic continental initiative which has the buy-in of all African countries, and intend as platform for mobilising resources to transform Africa through modem infrastructure. Its 51 cross-border infrastructure projects comprise more than 400 actionable sub-projects across four

main infrastructure sectors, namely energy, transport, trans-boundary water and ICT.

The instruments used to deliver PIDA include:

a) **Service Delivery Mechanism (SDM),** which is the provision of technical assistance for countries and agencies that originate PIDA projects to address early-stage project preparation issues and challenges.

b) **The Continental Business Network (CBN),** which was launched in Cape Town, South Africa, in June 2015. The CBN aims to "crowd- in" financing and support for infrastructure projects by creating a platform for collaboration between the public and private sectors.

c) **Policy and Regulatory Framework,** which was designed to address soft issues that impact on infrastructure development, namely the harmonisation of policies, laws and regulations to enhance private sector investment in African infrastructure.

d) **Presidential Infrastructure Champion Initiative (PICI).** This is an initiative where African heads of state and government voluntarily become champions in the development and implementation of regional and continental infrastructure projects. The champions bring visibility, unblock bottlenecks, coordinate resource mobilisation, provide leadership and ensure rapid project implementation within a specified threshold period.

In ECOWAS, efforts to mobilise funds for infrastructure development led to the elaboration of the Fund for the financing and development of transport and energy sectors (FODETE) in 2009. The fund is to be generated from levy imposed on income generated from principal export commodities in the region, such as agricultural products, petrol/gas, natural resources etc. The modalities for establishing the Fund are still being worked out.

General Assessment of the current financial and technical mechanisms: Overall, these various financial and technical mechanisms are helpful, but inadequate. Within the ECOWAS region, there is no adequate capital and big enterprise with the requisite expertise, organisational set-up and experience that can invest in public infrastructure for long term gains. It has therefore become imperative to create an enabling environment for other forms of investments.

C. INNOVATIVE FINANCING OF INFRASTRUCTURE

As earlier mentioned, there is a huge infrastructure gap in West Africa. Developing this infrastructure can create immediate employment, improvement in the living conditions of the people and spur economic growth and development. A number of such innovative financing modes already exist and have been implemented on different projects:

Public Private Partnerships (PPPs): In many parts of the world, there has been an increase in the use of the market for the provision of public services through deregulation (or liberalisation), privatisation and contracting. It is globally acclaimed that the government cannot do it alone. The European Commission identifies four principal roles for the private sector in **PPP** schemes:

to provide additional capital;

to provide alternative management and implementation skills;

to provide value added to the consumer and the public at large;

to provide better identification of needs and optimal use of resources.

The PPP is therefore a means of filling the gap in the ability of government to develop and operate public facilities or services effectively and efficiently.
The PPPs take a wide range of forms varying in the extent of involvement of, and risk taken by, the private party. The terms of a PPP are typically set out in a contract or agreement to outline the responsibilities of each party and clearly allocate risk. The PPP agreements covers a broad spectrum, which sets out the level of involvement of the parties and their responsibilities.

At the extreme left of the spectrum is a context where there is full public ownership and operation of an asset.

The different forms of Contracts for Infrastructure

Service outsourcing	Contribution Contact
	Operation and Maintenance Contract
management outsourcing	Design Build
	Design Build Major Maintenance
Lease	Design Build Operation
	Lease Develop Operate
Concession	Build Lease Operate Transfer
	Build Transfer Operate
BOT/BOOT	Build Own Transfer
	Build Own Operate Transfer
Stripping	Build Own Operate
	Buy Build Operate

Each of these contract types enable financing and sustainability of infrastructure projects in a unique way.

ECOWAS should therefore focus on exploring and exploiting these funding mechanisms as they are more sustainable. Governments alone cannot provide and sustain the needed infrastructure for the development of the region. Infrastructure provided through the EU such as the joint-border posts would require innovative private sector participation to sustain their services. Governments are not fit for that.

COMMUNIQUE OF THE INTERNATIONAL CONFERENCE HOSTED BY THE ECOWAS COURT OF JUSTICE

IN ACCRA, GHANA, 21st - 24th OCTOBER, 2019

1.0. Preamble

In line with its annual programme of activities, the Community ECOWAS Court of Justice organised an international conference on the theme : « **Economic integration of West Africa: Challenges and Perspectives** », held from 21st to 24th October 2019 at Mensvic Grand Hotel, East Legon, Accra, Republic of Ghana.

General Objective

The general objective of the International Conference was to critically appraise the legal aspects of the economic integration agenda of ECOWAS, the enabling legal environment, the community legal order, the challenges and prospects for the realization of the community objectives and the role of the ECOWAS Court of Justice in the integration process. It also highlighted the role and primacy of Member States as the primary stakeholders in the integration process, the need for Member States to provide the necessary political will and fulfill their community obligations in order to drive the integration process. The conference addressed the need for rule of law, promotion and protection of human rights, democracy and good governance and measures for conflict prevention and management in order to provide the enabling peaceful environment for economic development.

Participants at the conference included:

The President of the Republic of Ghana; The Chief Justice of Ghana; Hon. Chief Justices/Presidents of the Supreme Courts of some ECOWAS Member States or their representatives; Hon. Minister for Foreign Affairs and Regional Integration of Ghana; Honourable President of the Community Court of Justice; Honourable Judges of the ECOWAS Court of Justice; Representative of the President of ECOWAS Commission/Commissioner in charge of Macroeconomic Policies; Honourable Speaker of ECOWAS Parliament; Representative of the Honourable President of the Court of Justice of UEMOA; ; Representative of the Director General of EBID;, representing the President of ECOWAS Commission; Commissioner for Finance, ECOWAS Commission, Commissioner for Infrastrastructure, ECOWAS Commission, Auditor General of ECOWAS Institutions; Heads of ECOWAS National Offices; Special Representatives of the President of ECOWAS Commission in the Member States; Resource Persons; Directors ECOWAS Court and ECOWAS Commission and Staff; Members of the Ghana Bar Association; academics; NGOs and the civil society organizations and the Press.

2.0 OPENING CEREMONY

The high point of the opening ceremony was the opening statement made by His Excellency Nana Addo Dankwa Akufo-Addo, President of the Republic of Ghana. The following statements were also made during the opening ceremony:

- Welcome speech by the President of the Community Court of Justice, Hon. Justice Edward Amoako Asante;
- Speech by the Hon. Speaker, ECOWAS Parliament, Honourable Moustapha Cisse Lo;
- Speech by Hon. Minister of Foreign Affairs and Regional Integration of Ghana, Her Excellency Shirley Ayokor Botchway;
- Speech by the President of the ECOWAS Commission, His Excellency Jean-Claude Kassi BROU;
- Speech by the Lady Chief Justice of the Republic of Ghana, Hon. Justice Sophia Abena Boafoa Akuff o.

3.0 CONDUCT OF PROCEEDINGS

The conference proceedings took place in seven plenaries, where participants followed presentations and engaged in constructive debates on the following seven (07) sub-themes:

- Free movement of persons, goods and services as an important factor for integration;
- Integration through the Law;
- The role of ECOWAS Court of Justice in the Integration Process;
- Rule of Law and Good Governance as Prime Factors for Economic Development;
- Legal Aspects of Economic Integration;
- ECOWAS Integration and Sub- Regional Stability; and
- Basic Infrastructure for Economic Integration.

4.0 RECOMMENDATIONS

After three days of proceedings and fruitful debates, participants made and adopted the following recommendations:

i) *On the respect for the right to free movement, residency and establishment*

1. Participants observed that the level of integration attained by UEMOA Member States, especially in the area of the harmonisation of their national legal instruments, that renders the right to free movement and establishment very effective, could serve as a source of inspiration for ECOWAS.

2. On the control measures at borders, especially between the Federal Republic of Nigeria and Republic of Benin on the one hand and the Republic of Benin, on the other, participants called upon Member States to respect their obligations, as regards free movement, residency and establishment within the borders of the Community, pursuant to the relevant provisions of Community Law. However, the exercise of such rights should not, in anyway, compromise the imperative of security, which constitutes a major concern for all Member States in the sub - region

3. Recognizing the imperative of ensuring security, participants recommended to Member States, especially those carrying out legitimate fight against terrorism and insecurity, to engage their neighbours, in a concerted effort that is likely to link Member States' obligation of ensuring security, to citizens' right to enjoying free movement within the territory of the Community. In this regard, participants recommended the setting up of a Joint Tripartite Border Surveillance Force between Benin Republic, the Republic of Niger and the Federal Republic of Nigeria to prevent, not only terrorist attacks and cross - border smuggling, but also the regrettable consequences of taking unilateral measures that could affect good neighbourliness between States.

ii) *On building a Community governed by rule of law and the role of the ECOWAS Court of Justice in the process of integration*

4. Participants called on Member States not to lose sight of the objectives of regional integration, which is to build, through free adherence by Member States and due respect for the constitutional rules of their countries, a Community governed by law that guarantees the respect for human rights, democracy and good governance.

5. In this regard, they noted with concern the current practice of manipulating National Constitutions for political gains. They recalled the principles of constitutional convergence as enshrined in the Protocol on Democracy and Good Governance, and therefore recommended that their inviolability should be guaranteed and enshrined under ECOWAS Community Law, in order to prevent Member States from infringing upon it, by tampering with the constitution.

iii) *On the organisation and functioning of the Court:*

6. Recalling the crucial role that the ECOWAS Court of Justice is called upon to play in the integration process, participants called for the strengthening of the Court not only in its organisational structure, but also, in the exercise of its jurisdiction, and the enforcement of its judgments by Member States. Consequently, participants recommended as follows:

- Restoration of the composition of the Court as prescribed in the initial Protocol on the Court, by increasing the number of the Hon. Judges of the Court from five [5] to seven [7], as well as their tenure from four [4] years non-renewable to five [5] years renewable for another term of five [5] years as prescribed in the initial Protocol on the Court and to restore the staggered nature of their tenure in order to avoid loss of institutional memory as was done when there was a complete renewal of the Court in 2014 and 2018, in order to ensure the preservation of the institutional memory of the Court and the continuation of its jurisprudence;
- The institution of a Legal Aid Fund at the Court, to enable the most indigent litigants to bring cases before it;

- The approval for an Appellate Chamber at the Court, in order to enable an aggrieved litigant to exercise a right of appeal which is a fundamental right;
- The establishment of a framework for dialogue, collaboration and joint sessions on information sharing between the Community Court of Justice and the national courts of Member States, in order to ensure the effectiveness of the application of community law in the Member States, especially through the instrumentality of pre- trial referrals;
- The need to increase sensitization sessions of the Court, in order to bring it closer to the litigants and community citizens at the grass roots, and to better make its workings and procedure known to the public; and
- The inclusion of Community Law and the Jurisprudence of the ECOWAS Court of Justice in the Teaching Programmes of Law Faculties and other Judicial or Legal Training Institutions, in the sub-region.

iv) On the full exercise of the jurisdiction of the Court

7. Participants noted with regret the unsatisfactory rate of enforcement of the judgments of the Court, the challenges in the implementation of the judgments of the Court and the difficulty in implementing the procedure for sanctions on erring Member States for failure to fulfil their obligations under ECOWAS Community Law, as only the President of ECOWAS Commission and Member States are the only entities empowered to initiate such procedure;

8. They recommended the granting of access to individuals and corporate bodies to initiate actions in respect of the failure by Member States to fulfil their community obligations to ECOWAS, particularly the failure of a Member State to implement the judgments of the ECOWAS Court of Justice and for the imposition of necessary sanctions in accordance with the provisions of Article 77 of the Revised ECOWAS Treaty, and the Supplementary Act on Sanctions against Member States that fail to fulfil their Obligations to ECOWAS, 2012.

9. Participants equally recommended that access should be granted to individuals and corporate bodies who are affected by the actions of any Community institution or organ that violates community law, to the ECOWAS Court of Justice for redress.

v). On the enforcement of the judgments of the Court

10. Participants highly commended the decision of His Excellency Nana Dankwa Akufo-Addo for appointing the Attorney General and Minister of Justice of Ghana, as the National Authority for the enforcement of the ECOWAS Court's Judgments in Ghana. They enjoined other Member States that are yet to do so, to comply with the provisions of Article 24 of the Protocol on the Court.

11. Participants also requested the ECOWAS Court of Justice to draw- up a list of its judgments that are yet to be enforced, and forward a copy each to the

President of ECOWAS Commission and the Speaker of ECOWAS Parliament, to enable the former to carry out his responsibility as enshrined under the relevant ECOWAS Texts, and the latter to plead, within the organs of, and Parliamentary Networks, in favour of the enforcement of the judgments of the Court.

12. It was further recommended that the Court should be authorised to forward an Annual Report to either the ECOWAS Council of Ministers or the Summit of Heads of State and Government on its activities, especially on the state of enforcement of its judgments.

13. Participants also called on the Court to carry out a review of the mechanism of the enforcement of its judgments; and seek approval for the introduction into the national laws of Member States, appropriate provisions enabling the enforcement of the judgments of ECOWAS Court of Justice in Member States.

vi). On the need to create opportunities for social and economic development within the Community

14. Participants noted, with indignation, the tragedy that the suicidal immigration towards other regions by young West Africans, constitutes for the West African region. Faced with immigration flux, participants recognised the need for ECOWAS Member States to promote good governance, at all levels, and to increase economic opportunities for the Community citizens, in order to create for the youths hope and perspectives on self - fulfillment in their own countries and within the Community landscape.

15. Conscious that neither free movement, nor economic development could be very effective, nor even possible in the absence of adequate infrastructure, participants recommended that Member States should double their efforts in order to avail the Community the necessary infrastructure for its integration, and its economic take - off.

16. Considering the exorbitant costs needed for the construction and maintenance of standard infrastructures, participants recommended that Member States should diversify the sources of financing, by exploring the possibility of allowing private investments, including public - private partnerships.

17. Having noted with satisfaction the important role played by EBID, in the realization of these infrastructures, participants recommended the strengthening of the capabilities of that Community Institution, in order to give impetus to integration and intra- regional trade.

18. Recognising the great importance of a common currency for ECOWAS, participants commended the fully expressed determination of the leaders in the sub - region to create a common currency for ECOWAS, as from 2020. Consequently, they exhorted all Member States to respect fully the criteria for convergence, in order to allow for the rapid realisation of the West African Monetary and Economic Union.

Done at Accra, this 24th day of October 2019

GENERAL REPORT

2019 INTERNATIONAL CONFERENCE

TABLE OF CONTENTS

INTRODUCTION

1. The ECOWAS Community Court of Justice, in the implementation of its annual programme of activities, organised a four-day international conference on the theme ***"ECONOMIC INTEGRATION OF WEST AFRICA: CHALLENGES*** & ***PROSPECTS,"*** from 21st to 24th October 2019 at Mensvic Grand Hotel, East Legon, Accra, Republic of Ghana.

2. Among other things, the conference was to critically appraise the legal aspects of the ECOWAS integration agenda; the enabling legal environment; the Community legal order; the challenges and prospects for the realization of the Community's objectives and the role of the Court in the integration process. It was also an opportunity to highlight the role and significance of Member States as the primary stakeholders in the integration process, the need for Member States to demonstrate the necessary political will and fulfill their community obligations in order to drive the integration process. The conference also examined the need to respect the Rule of Law, the promotion and protection of human rights, democracy and good governance, as well as the measures for conflict prevention and management in order to provide a conducive environment for economic development.

3. Participants at the conference were drawn from various backgrounds. They included officials from governmental institutions and agencies, National focal points for ECOWAS in Member States, Community institutions, national judicial authorities of the Member States, Representatives of lnternational Organisations, Regional courts and tribunals, Universities, Human Rights Organisations, the media etc.

4. In particular were the President of the Republic of Ghana, His Excellency Nana Dankwa Akufo-Addo, who declared the conference open, as well as the host Chief Justice and Hon. Chief Justices/Presidents of the Supreme Courts of some ECOWAS Member States or their representatives; Hon. Minister of Foreign Affairs and Regional Integration of Ghana; the Honourable President of the Community Court of Justice; Honourable Judges of the ECOWAS Court of Justice; Representative of the President of ECOWAS Commission/Commissioner of Macroeconomic Policy; Honourable Speaker of the ECOWAS Parliament; Representative of the Honourable President of the Court of Justice of UEMOA; Representative of the Director General of EBID; Commissioner for Finance, ECOWAS Commission, Commissioner for Infrastructure, ECOWAS Commission, Auditor General of ECOWAS Institutions; Heads of ECOWAS National Offices; Special Representatives of the President of ECOWAS Commission in the Member States; Resource Persons; Directors and staff of the ECOWAS Court and ECOWAS Commission; Members of the Ghana Bar Association; academics; NGOs, Civil Society Organizations and the Press. **(The full list of participants is annexed to this report).**

OPENING CEREMONY

5. Presided over by His Excellency, the President of the Republic of Ghana, the opening ceremony was marked by six key statements, including the opening address of His Excellency, Nana Addo DankwaAkufo-Addo and a Welcome Address by the Honourable President of the Community Court of Justice, Hon. Justice Edward Amoako Asante.

6. In his address of welcome, the President of the Court, Honorable Justice Edward Amoako Asante, recalled the main objectives of the Community as encapsulated in Article 3 of the ECOWAS Revised Treaty as "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 people, to maintain and enhance economic stability, foster relations among Member States and to contribute to the progress and development of the African Continent". He stated that since the creation of ECOWAS, a lot had been achieved albeit with a lot more still outstanding. In choosing the theme of the conference, he explained that the Court wanted to focus on such issues as the economic agenda of ECOWAS and the enabling legal environment for its attainment as well as the legal aspects of economic integration and the role of the Court in facilitating the economic integration objectives of the Community.

7. He noted that although the human rights mandate of the Court was introduced through the 2005 amendment of its Protocol, it had since become its overarching mandate and overshadowing its other three mandates. He, however, stressed the need to refocus on its primary mandate of facilitating the attainment of regional integration objectives. Consequently, he re-emphasised the importance of Member States as critical Stakeholders in this process, noting that in granting ECOWAS supra-nationality powers, Member States had equipped it to achieve its objectives. On the Court, the President mentioned its challenges to include the reduction in the number of judges from seven to five; the reduction in the tenure of the judges from a 5-year renewable term to 4-year non-renewable term; the difficulties experienced with the implementation of its decisions; the non-appointment of the competent national authority to follow up on the implementation process by some Member States and the establishment of an Appellate Chamber for the Court, among others. He concluded by reassuring the Member States and the conference participants of the unfettered commitment of the Court to the continued discharge its mandate despite the challenges.

Statement of the Hon. Speaker of the ECOWAS Parliament, Hon. Mr. Moustapha Cisse Lo

8. The Speaker of the ECOWAS Parliament, Honorable Moustapha Cisse Lo used the opportunity of his statement to stress the importance of the economic integration and development of the West African sub region based on the vision of the founders as encapsulated in the ECOWAS Treaty of 1975. He described the vision of a union to integrate the States in the region as a critical step for strengthening the region economically, politically and socially. Beyond the positive impact of economic integration to the region through the promotion of free movement of goods and services across borders and the promotion of economic growth for most of the members, he said the integration process still faced enormous challenges of insecurity, trans-border crimes and difficulties in the effective collection and

utilisation of the Community levy.

9. He then challenged Member States to step up their efforts to combat insecurity in the region, in order to curb the upsurge in terrorist activities. In this regard, he suggested the creation of a common regional defence policy as a collective response to the security challenges facing the region. He also advised Member States to ensure the effective discharge of their financial obligations to the Community as finance is one of the major constraints to the effective implementation of its activities. He also spoke of the ECOWAS single currency project highlighting its realisation as an important tool for strengthening the regional economy.

Statement of the Honourable Minister of Foreign Affairs and Regional Integration of the Republic of Ghana, Hon. Shirley Ayokor Botchway

10. In her speech, Ghana's Minister of Foreign Affairs and Regional Integration, Honourable Shirley Ayokor Botchway praised the theme as apt because of the transformational impact regional integration programmes have had on the expansion of economic opportunities in Africa. She noted that this would help ensure Africa's effective participation in the global economic and trading system for the benefit of the people of the region. She emphasised that regional economic integration remains the most direct, fastest and broad-based approach for the development of the Community and highlighted the significant strides made during the four decades of the existence of ECOWAS. For example, Community citizens now enjoy various rights conferred by legal institutional frameworks and structures of the Community. She listed the achievements of the Community to include the introduction of the Common External Tariff, the ECOWAS Trade Liberalisation Scheme (ETLS) and the Protocol on Free Movement of Persons, Goods and Services.

11. She also cited the establishment of the ECOWAS Parliament and the Court as significant institutional achievements that had helped to entrench democracy, promote human rights and justice, while fostering public trust in the Community. She stated that the role of the Court in the integration process is to keep faith with its mandate as captured in the 1993 ECOWAS Revised Treaty and the Protocol on the Court as amended by effectively interpreting and applying Community Texts, holding Member States accountable for their community obligations and guaranteeing a human rights based approach to the economic integration of the region. She also mentioned some of the challenges facing the region, such as the alarming level of insecurity, trade barriers and the excessive reliance on commodity production and imports, and called for a collaborative approach in resolving them.

12. Concluding, she expressed the need for Member States and Community institutions to play their respective roles in ensuring the success of the integration process while pledging Ghana's continued commitment to strengthening the Community.

Statement the Hon. President of the ECOWAS Commission, His Excellency Jean-Claude Kassi BROU

13. The statement of the President of the Commission was delivered on his behalf by Dr. Konadu Apraku, the Commissioner for Macroeconomic Policy. In the statement, the Commission President expressed the gratitude of the Community to the President and the good people of Ghana for hosting the conference as well as the excellent facilities made available for its success. He stated that the timing of the conference was apt, coinciding with a time when the region is progressively accelerating towards the realisation of its economic integration. He noted that despite the numerous challenges confronting the region, ECOWAS remains the most dynamic regional Economic Community (REC) in Africa exemplified by its outstanding achievements. These are not only in the areas of peace and security for which it has become a model, but also in the implementation of such programmes as the Common Investment policy, the ECOWAS payment and settlement systems, the West African Capital Market Integration Programme, the ECOWAP, the ECOWAS Agricultural Policy, and the ECOWAS Monetary Cooperation programme for the creation of a single monetary union.

14. On the economic front, he maintained that although the region continues to experience relative good macroeconomic performance, unemployment and poverty still constituted a problem, while food security and the infrastructure deficit remained contemporary challenges. He spoke of the various regional initiatives designed to enhance integration and promote overall socio economic development of the region, in particular, the Community Development Programme (CDP) adopted in 2014 as a long term development plan for the region.

Statement by the Honourable Chief Justice of the Republic of Ghana, Hon. Justice Sophia Abena Boafoa Akuffo

15. In her own speech, Ghana's Chief Justice, Honourable Justice Sophia Abena Boafoa Akuffo expressed gratitude to the Court for the privilege of holding the conference in Accra. She spoke of Ghana's role as a key player in West Africa's integration and assured that the country will continue to play a positive role in ensuring the realisation of Community objectives. She then called for concerted efforts by Member States to promote trade and the free movement of people across the region. She described an effective legal and judicial body independent of state control as an indispensable tool for a successful integration of the region.

16. She, however, lamented that the mechanisms put in place for the cross-border enforcement of Community instruments have not been scrupulously followed and applied, oftentimes motivated only by goodwill rather than a sense of obligation. She described this as an aberration deserving the attention of Member States. By way of illustration, she said that in Ghana, judgments of the ECOWAS Court of Justice are still considered as foreign judgments, a situation that shouldn't be so; but instead strenuous efforts should be deployed to resolve the problem. She further said that efforts should be made to ensure that the liberalisation of the intra-Community movement of citizens was not hijacked by trans-border criminals engaged in human trafficking, drug smuggling and money laundering. In conclusion, she recommended that the ECOWAS court should be strengthened to enable it to operate effectively.

Keynote Address by Prof. Chidi Odinkalu, the Guest Speaker

17. The keynote address for the conference was delivered by Professor Chidi Odinkalu who eulogized the Court as 'Africa's most effective and oldest regional court or Tribunal,' while commending it for inviting him as Guest Speaker. He noted the co-incidence of the conference being hosted in Accra, the capital of Ghana whose founding President, Late Kwame Nkrumah, should arguably be credited for inspiring the regimes of integration that exist in the continent today. He traced the the origins of the ECOWAS as a regional Union and attributed its founding to the leaders of the region at the time, in particular the late President Gnassingbe Eyadema of Togo and Yakubu Gowon, former Head of State of Nigeria. He also recalled the main objective of the Community as the economic integration of the region leading to the establishment of a monetary and economic union.

18. He said that the conference coincided with a period when the region was being confronted with multi-faceted crises some of which had external dimensions. He cited the unilateral closure of its border with Benin by Nigeria since August 2019; the issues of democratic deficit and legitimacy within the region; the prevailing political instability and the challenges of organised crimes and terrorist activities as affecting the region. He stressed the importance of good leadership and good governance practices in furthering the integration process and highlighted the objectives of the region's integration to include the development of human well-being and dignity, including guarantees of human rights, all of which extend beyond the traditional understanding of economic integration. He then identified some emerging challenges facing the integration process, including the low rate of intra-community trade, poor transportation infrastructure, piracy and terrorism. To resolve these challenges, he said, regional institutions must be made to play a more active role in providing assistance to national authorities in tackling these issues as an additional way of strengthening their relevance in solving national problems.

Opening Address by the President of the Republic of Ghana, His Excellency Nana AKUFO ADDO

19. Declaring the conference open, President Nana Akufo-Addo said that since the first time he sought the exalted office of President, he had nursed the ambition of using the platform to promote the economic integration of the region, for the advancement of the people of Ghana in particular and the Community. Drawing from the European integration experience, he assured that the Economic integration of the region will help enhance trade and uplift the people of the region. He stressed the paramount role of political will and leadership in the realisation of the objectives of the Community and identified the absence of long term development plans as the bane of the region's integration project.

20. While noting the myriad challenges confronting the Court, the President promised to spare no effort in supporting ECOWAS in general and the Court in particular because an improved Community will be beneficial to all Member States. He announced the appointment of Ghana's Attorney General as the National Authority for the purpose of the enforcement of the judgments of the Court while acknowledging the role of the Court, as the principal legal organ of the Community, to the region's integration and urged it to rise to its challenges. He concluded by urging Member States to step up efforts towards the complete integration of the

region.

21. The opening address was followed by a group photograph of the eminent personalities on the high table.

II. CONDUCT OF PROCEEDINGS

22. Proceedings of the conference began after the official opening with the division of its general theme into 7 sub-themes, each of which was examined in a plenary session of the conference. Each session was conducted by a team presided over by a Moderator and comprising the presenters and the rapporteurs.

23. The presenters made their presentations on the various sub themes followed by constructive debates by the participants on the sub themes as follows:

- Free movement of persons, goods and services as an important factor for integration;
- Integration through the Law;
- The role of ECOWAS Court of Justice in the Integration Process;
- Rule of Law and Good Governance as Prime Factors for Economic Development;
- Legal Aspects of Economic Integration;
- ECOWAS Integration and Sub-Regional Stability; and
- Basic Infrastructure for Economic Integration.

24. After the presentations, each session gave way to an open discussion between the participants. During the discussion, several questions were asked and answers were given on the different aspects of the sub-theme. Some of the issues discussed span several sessions. In order to avoid repetition, the ideas discussed are summarized below after each presentation.

A. THE PRESENTATIONS

SUB-THEME 1:
Free Movement of Persons, Goods & Services as an Important factor for Integration

Moderator:

a. **The Hon. Justice Koffi Basah Agbenyo,** President of the Judicial Chamber, Supreme Court of the Republic of Togo

Presenters:

b. **Dr. Tony Elumelu,** P.P.O. Free Movement, ECOWAS Commission;
c. **Mr. Mohamed Koedoyoma,** Head of Intelligence and Investigation, Immigration Head Office, Sierra Leone
d. **Mr. Abdool Ben Meite,** Legal Practitioner, Member of Parliament & President, African Parliamentary Department of Human Rights, Abidjan, Cote d'Ivoire
e. **Dr. Emmanuel Brasca Udo lfeadi,** Former Deputy Comptroller-General, Nigerian Immigration Service, CEO Conflict Resolution and Migration Awareness Initiative, Federal Republic of Nigeria
f. **Mr. Allahidi Diallo,** Director of Cabinet of the Minister of Integration, Burkina Faso

Rapporteurs:

Mr. Injonalo Indi & Mr. Sidi Bamouni

25. Dr. Tony Elumelu began his presentation with a brief overview of the objectives behind the establishment of ECOWAS. According to him, the founding fathers had the ambition of reviving the cordial relations existing among the states preceding the balkanization of Africa and the post-colonial rush for its resources by the colonial powers. To achieve these objectives, the presenter said that the 1975 Treaty establishing the Economic Community of West African States (ECOWAS) and the ECOWAS Protocols Relating to Free Movement of Persons, Goods, Services and Capital (1979), the Right of Entry (1986) and on the Right of Residence and Establishment (1990) reflected the will and commitment of the Member States to remove all obstacles to free movement. He, therefore, commended the efforts made to facilitate the free movement of people, goods and services by the Member States, since the establishment of the organization, albeit gaps still remained in spite of its enviable achievements.

26. He stressed that ECOWAS had adopted some initiatives, within the framework of the policy of« Vision 2020 », which would lead to the drawing- up and adoption of directives on the issue of migration which will compensate for the lack of legal and institutional frameworks. He concluded by emphasizing the need for ECOWAS to set its priorities and address the multiple challenges based on its strategic plan while taking stock of the relevant strategies needed to guide its activities in the medium term.

27. As a backdrop to his presentation, Mr. Koedoyoma Mohamed spoke of the dynamism that had characterized the evolution of the Community since its creation more than forty years ago. He said that through its achievements, the Community had earned a reputation as the most effective integration organisation

in Africa. Among its achievements he listed, were the liberalization of the movement of persons, goods, services and capital, as well as the introduction of the ECOWAS passport and the ECOWAS biometric identity card, among others.

28. In spite of the great strides recorded by the Community towards the integration of the region, however, he said great challenges remained for the region to overcome its underdevelopment. He regretted that ECOWAS had adopted and applied untimely and indigestible policies and rules for the legal systems of the Member States who have difficulty mainstreaming them into their structures. He urged Community Citizens and the private sector to support the actions undertaken by the Member States and Community institutions in furtherance of the region's integration. In conclusion, he remarked about the nagging issue of migration, whilst congratulating ECOWAS for its common approach to migration. He then called for the adoption of a Community Action Plan on Migration and Development as a tool for minimizing its negative impact on the region's achievements on integration and which will also contribute to improving the objectives of the Community and impact on the life of its citizens.

29. After providing an overview on the history behind the creation of ECOWAS, Barrister Ben Abdoul Meite hailed the Community as an example of regional integration worthy of interest. He reiterated the objective of the Community as the gradual establishment of a common market and an economic and monetary union of the Member States. In his view, the pursuit and achievement of such an objective requires the liberalization of trade, the establishment of a Common External Tariff (CET), the adoption of a Common Trade Policy towards non - ECOWAS countries, the abolition of intra-Community obstacles to the free movement of persons, goods, services and capital, as well as the recognition of the right of residence and establishment, in order to promote and increase intra-Community trade

30. Furthermore, he pointed out that the free movement of persons, goods and services is a principle founded in the fundamental instrument of ECOWAS, the 1975 Lagos Treaty. This was strengthened by additional texts in order to enshrine the principle in its different forms, thus facilitating free movement of persons, goods and services. The culminating point of this evolution, he added, resides in the creation of the Court as an international Court of competent jurisdiction and the main judicial organ of the Community that is expected to play a very significant role in the regional integration process. He pointed out that the powers of the Court were strengthened with the adoption of the 2005 Supplementary Protocol, thereby extending the jurisdiction of the Court to the protection of human rights in order to equip it for jurisdiction in this domain. In spite of these notable achievements, however, the presenter acknowledged the persisting obstacles to the free movement of persons, goods and services within the over forty years of the region's liberalization and integration effort. According to him, these obstacles undoubtedly accounted for the low level of intra-Community trade.

31. The presentation by Dr. Emmanuel Brasca Udo Ifeadi was prefaced with a brief historical background on the regime of movement of persons, goods and services across national borders around the world and its significance to the African Region. He pointed out five (5) fundamental phases related to the subject; mainly

the massive intra-Community movement of citizens, easy intra-Community movement of goods and services, the existence or provision of an ECOWAS Common Passport, the emerging surge of youth migration and its consequent push and pull factors, the place of ECOWAS and all its operational elements, protocols and agencies, as a veritable sub-regional Institution for an all-round socio-economic and political integration. These, he said, provide the backdrop for the rigorous ECOWAS efforts towards deepening economic, social and political cooperation and integration in Africa.

32. He identified the key achievements of the ECOWAS project to include the creation of a borderless ECOWAS, the harmonization of ECOWAS and UEMOA programs relating to trade liberalization and the multilateral fiscal surveillance mechanisms of both institutions, the free movement of persons as illustrated by the abolition of the visa regime amongst Member States, the establishment of free trade areas, the promotion of private sectors, as well as the efforts towards the fulfillment of the macro convergence criteria for the creation of the ECO, the region's single currency. He also urged Member States to fully implement the Protocol on the right of residence and establishment and critically examine the problem of Youth Migration, including its push and pull factors. He also urged ECOWAS to engage the African Union and its members for a collective approach towards stopping the deadly xenophobic attacks on fellow Africans in the continent, citing an example in the recent attack on the Nigerian business community in South Africa.

33. Mr. Diallo Allahidi introduced his presentation by recalling the legal basis for the Protocol on the Free Movement of Persons, Goods and Services. He stressed the need for a workable and updated text, while ensuring the effective application of the established rules under the Protocol. The presenter spoke about the experience of his country, Burkina Faso, in the implementation of the ECOWAS Community Law in facilitating free movement.

34. He said that part of the success achieved in this area remained the ECOWAS Biometric Identity Card, which will surely contribute to the mobility of the community citizens within the region, while easing intra - Community trade. He also touched on the knotty issue of migrations, its factors, the advantages and the concomitant risks, as well as the measures needed to be put in place at Community level for the improved management of the phenomenon. To better achieve the objectives of Community Integration, he recommended an all-inclusive approach that takes into account the needs of the populations, and associating them with the search for solutions as integration can only be effective with the involvement of the stakeholders.

SUB-THEME 2:
Integration through the Law

Moderator:

a. **Hon. Justice Edward Amoako Asante,** President of the Community Court of Justice, ECOWAS.

Rapporteurs:

b. **Ms. Emiliana M.S.B. Mendes, Mr. Yusuf Danmadami,** & **Mr. Issah Tauheed.**

Presenters:

c. **Prof. Amos Enabulele,** Professor of Public International Law and Jurisprudence, University of Benin, Benin - City, Nigeria.

d. **Dr. Liriam Delgado,** (Mestre), Coordinator of Masters Programmes in African Regional Integration, Superior Institute of Judicial and Social Sciences (ISCJS), Priai, Cape - Verde.

e. **Prof. Epiphany Azinge SAN,** Professor of Law, Senior Advocate of Nigeria, Former Director General of the Nigerian Institute of Advanced Legal Studies, Federal Republic of Nigeria.

f. **Barrister Ace Anan Ankomah,** Practicing Lawyer, Ghana.

35. The first presentation on this sub theme by Prof. Amos Enabulele focused on the sovereignty of Member States and the supra nationality of ECOWAS with regards to the 1975 and 1993 ECOWAS Treaties and their challenges and prospects. The presenter introduced his paper by noting with satisfaction that despite its many challenges, ECOWAS should be celebrated for having weathered the storm of internal armed conflicts, political instability, economic crises, and poverty in Member States over the last 44 years of its history. He expressed optimism that on its present trajectory, it will ultimately realise its potential as the model it was meant to be. He cautioned that for this to be achieved, however, Member States must be seen to be traveling on the same path in practice with their theoretical Treaty commitments in all the areas that competence has been ceded to ECOWAS through the pooling together of the sovereignties of Member States.

36. Indeed, he added, the collective exercise of sovereignty and the concomitant agreement by Member States to give direct effect to some of the Community decisions, had engendered the consensus that ECOWAS is a supranational organisation. Be it the monist or the dualist Member States, he said, there is a general deference to the Constitutions of the States in the domestic application of international law. Consequently, he said, Member States should not just consent to supranational provisions but show good faith by ensuring that all Constitutional obstacles are removed by enacting, amending or repealing the relevant legislation. The ultimate goal, he noted, should be to have a bit of the same aspect of ECOWAS in the legal systems of all Member States and not to have a bit of the States in ECOWAS. Accordingly, he said, integration through the law involves the integration of legal systems and the use of law to integrate societies by eliminating divergences that would stand as a permanent obstacle to the integration process. In conclusion, he asserted that legal integration is not just a means to an end but an end in itself, while supra - nationality is its by-product given that it is through legal

integration that the unity of legal systems is created with the concomitant deference of laws of Member States to the unitary authority of the supranational organisation in the ceded areas.

37. Dr. Liriam Delgado premised her presentation on the objective of encouraging the teaching of ECOWAS Community Law in the Member States. Citing her country, Cape Verde, as an example, she posits that this issue creates great challenges, in regard to access to ECOWAS Community Law, making any viable analysis on the issue very difficult. In general terms, the non - accessibility to Community Law contributes to the propagation of judicial insecurity, since it is not possible to impose on litigants a whole legal norm whose existence they are not aware of.

38. In concluding her presentation, she shed light on the national laws of Cape-Verde and the relationships between national laws and Community law. In the specific case of Cape-Verde, she noted that these relationships were at times very complex. Indeed, even though the Constitution of the Republic of Cape-Verde of 1992 provides, notably under its art. 12 (3), that Cap-Vert is signatory to conventions signed by supra - national organizations and provides that the resultant law is automatically domesticated in the Cape -Verde law, there were still difficulties as to its implementation. Particularly, there is need to clarify the legal status of Community law in the national laws of Member States. She acknowledged the eminent role of law and the ECOWAS Court in the economic integration process, but pointed out the intrinsic limits to the process, which are also economic, political and social in nature.

39. The next Presenter, Prof. Epiphany Azinge commenced his presentation with a history of the establishment of ECOWAS. He stated that ECOWAS had created an integrated region where the population enjoys free movement, have access to efficient education and health systems and engaged in economic and commercial activities while living in dignity in an atmosphere of peace and security. The presentation also highlighted the following spectra: Supra nationality of ECOWAS and the Community Legal Order; Obligations of Member States; Consequences of non-fulfillment; Legal Education in ECOWAS; Enforcement of Judgments of National and regional Courts, and the Role of the ECOWAS Commission. He examined the challenges of this laudable Community and proffered workable solutions through the eyes of the Law and social engineering.

40. In emphasizing the primacy of the Supra nationality of ECOWAS and the Community Legal Order, he maintained that the formation and functionality of any regional (supranational), body requires the surrender of a measure of sovereignty of the constituents for the purpose of making the body effective and expressed the view that as a supranational entity, ECOWAS should be made to work. He cited Article 77 of the ECOWAS Revised Treaty that empowers the Authority of the Heads of States and Government of ECOWAS to impose a wide range of sanctions on any Member State that failed to fulfill its Community obligations. The Presenter's subsequent focus was on Legal Education on ECOWAS Law in the Member States and on the enforcement of Judgments of national courts and the ECOWAS Court. He argued that in spite of the landmark jurisprudential sagacity consistently exhibited by the Court and its readiness to guard its jurisdictional frontiers, the enforcement of Judgments of the ECOWAS Court had been a major

problem. In conclusion, Prof. Azinge expressed the view that West Africa will experience enhanced economic integration through the instrumentality of the Law.

41. Barrister Ace Anan Ankomah who presented the next paper posited that the key to economic and political integration is a legal framework that regulates economic relationships and informs on political decisions. He noted that ECOWAS Member States had committed themselves to establishing an enabling legal environment for integration by virtue of Article 3 (h) of the ECOWAS Revised Treaty. He identified three avenues for strengthening the integration process, namely the supra-nationality of ECOWAS, legal education on Community Law and the enforcement of the judgments of the ECOWAS Court. He emphasized that for any regional economic and political integration to succeed, it will largely depend on a sufficient integration of the legal systems of the Member States to ensure uniform applicability, interpretation and enforcement of Community Law. Consequently, he said, National courts would have to rely on and be bound by the interpretation given by the Court of Justice on provisions of Community Law to ensure consistent interpretation of that law. Moreover, Member States would also be able to invoke and rely on Community Law before their national courts.

42. He referred to the ECOWAS Supra nationality and the Community Legal Order as a pre-requisite for a successful integration. He stated that Regional integration demands that both Community Law and the national laws of the individual Member States must co-exist and regulate the lives of the citizens of the Member States. However, there exists tension in this regard, which, he said, clearly presents a major constitutional challenge to regional integration, and it therefore requires a clear agreement on the hierarchy of laws within ECOWAS. The effect, he noted, would be that state sovereignty would, to some extent, be limited so that Community Law is recognized as superior to municipal laws. Thus, the key point is to ensure that Member States give recognition to Community Law and treat same as superior to municipal laws on issues that touch on economic integration. He stated that creating and maintaining awareness among the citizens of Member States about ECOWAS, its vision, the legal obligations of the Member States, and the fundamental laws governing the Community is an integral part of integration and therefore, Legal education on Community Law must therefore be prioritized. Likewise, the ability of ECOWAS citizens to invoke Community Law, rely on it before national courts is an important aspect of integration through the law.

SUB-THEME 3:
The Role of ECOWAS Court of Justice in the Integration Process

Moderator:

a. **Hon. Justice Gberi-Be Ouatarra,** Vice - President of the Community Court of Justice.

Rapporteurs:

b. **Me Kouassi Ferdinand, Mr. Kuakuvi Anani and Miss. Zara Carew**

Presenters:

c. **Prof. Alioune Sall** (Hon. Justice), Professor of International Law, University of Dakar, Senegal and Former Judge of the ECOWAS Community Court of Justice
d. **Prof. F.C. Nwoke** (Hon. Justice), Professor of lntemational Law, University of Jos, Federal Republic of Nigeria and Former Judge of the ECOWAS Community Court of Justice,
e. **Prof. Solomon Ebobrah,** Dean, Faculty of Law, Niger Delta University, Bayelsa State, Federal Republic of Nigeria
f. **Mr. Daniel Lago,** Director, Legal Affairs, ECOWAS Commission.
g. **Hon. Judge N'draman Kablan Fidele Amilcar,** Judge, Court of First Instance, Abidjan, Cote d'Ivoire.

43. Speaking on the role of the Court in the integration process, Prof. Alioune Sall first recalled the objectives behind the creation of the Court, which was setup to support and strengthen integration law in West Africa. But after nearly two decades of its operation, he said, it had become imperative to examine whether it had succeeded in its mission with regards facilitating the integration process in the sub-region. He expressed his doubts about the Court's success because the cases submitted to the Court had very rarely given it the opportunity to make a pronouncement on issues relating to the building of the Community. The presenter attributed this weakness to the lack of referral to the Court on the application of Integration Law. He attributed this weakness to the non-implementation of the pre-trial referral, an indication of the non-application of the substantive integration law at the national level.

44. As part of the solutions to the challenges he identified, Professor Sall suggested that a curriculum on Integration Law be designed and proposed by the ECOWAS Court for adoption, through its sensitization campaigns, in conjunction with the National Bar Associations of Member States. He expressed the hope that the teaching of the law of integration will be included in the training cycle for judges and lawyers, and that training activities would be intensified to bring about change, because legal issues are developed through the defense of interests which often reside in training activities.

45. Prof. Friday Chijioke Nwoke in his own presentation examined the role of the Court in the integration process vis a vis its mandate of interpreting and applying the Revised Treaty and other Community Texts, the protection of social and economic rights and its impact on economic development, the competence of the Court relating to referrals as provided in Article 10 (f) of the 2005 Supplementary Protocol on the Court, the absence of such referrals by domestic courts of Members

States, the access to the Court in cases bordering on the failure of Member States to fulfill their Community obligations as well as the role of the ECOWAS Commission.

46. He stated that the acceptance of the doctrine of supra nationality is a cardinal principle of ECOWAS and that the Community Texts do not require ratification by Member States, rather they provide for their direct application in Member States. He noted that the Court had made an important contribution to the integration process of ECOWAS, mainly through the interpretation and application of Community law as well as through the protection of socio-economic rights, a double role commended as pivotal to the integration process.

47. While considering the feasibility of recourse to the Court for the failure by Member States to fulfill their Community obligations, he stressed the need to review the texts to empower individuals to sue Member States for their failure to comply with Community obligations because, since its inception, neither the President of the ECOWAS Commission nor any Member State had taken another Member State to Court for failure to comply with community obligation, including the obligation to implement the judgment of the ECOWAS Court. According to him, the role of the ECOWAS Court in the integration process cannot be fully understood without equally considering the role of the ECOWAS Commission in reinforcing the process of integration. He noted that the Commission had never reported any Member State despite the failure of many to fulfill their Community obligations. He, therefore, proposed that the Court should be allowed to report its activities directly to Council and the Authority. He called on the domestic courts of Member States to show more commitment in forwarding referrals to the ECOWAS Court for the development of Community law.

48. In introducing his own presentation, Prof. Solomon Ebobrah clarified the legal basis for the pre-trial referral procedure before the ECOWAS Court, and proceeded with a comparison of the operation of this mechanism in the European and West African Courts. He pointed out that pre - trial referral procedure was enshrined in the ECOWAS legal order by virtue of the 2005 amendment to the Protocol on the Court. He regretted that the plethora of cases for the violation of human rights filed before the ECOWAS Court had hampered the Court's capacity to exercise its jurisdiction over issues under pre-trial referrals. In the absence of pre-trial referrals, the Court had no choice but to concentrate on its human rights mandate, to the detriment of its original function of stimulating and guiding the process of Community Integration.

49. On the contrary, he explained that pre-trial referrals had been a resounding success in Europe since the 1960s, a situation that had led some observers to qualify it as the "keystone" of the judicial system of the European Union. With the benefit of hindsight, he further posits that even in Europe, the practice started timidly, leaving one to only marvel at the progress made and the incontrovertible success recorded in the dialogue established between the European Community Judges and the courts of the Member States, through the implementation of the pre - trial referral procedure. Indeed, pre-trial referrals form the majority of the cases filed before the EU Court of Justice, accounting for nearly 70 percent of the referrals in 2018, he said. In conclusion, the presenter recommended that an in-depth research

involving the 15 ECOWAS Member States be conducted to determine the reasons for the lack of pre-trial referrals by the national courts to the ECOWAS Court.

50. In his presentation, the Director, Legal Services at the ECOWAS Commission, Mr. Daniel Lago, said ECOWAS was created with a view to supporting the efforts of Member States in improving the standard ofliving of the populations of the region. In this regard, he said Member States concluded agreements and signed Conventions with each other or with non-member state entities. Since the implementation of these commitments were likely to generate conflicts, Article 15 of the Treaty establishing ECOWAS provided for the creation of the Court so that it can contribute its quota, in achieving the integration objectives as well as resolving these conflicts, through the interpretation and application of Community Law.

51. After more than a decade of the provision being in force, Lago said it had become necessary to analyse the Court's discharge of this obligation through which it has guided and accompanied the regional integration process. He argued that it was through the exercise of its jurisdiction, including over pre-trial referrals, that the Court can succeed in consolidating that process. He lamented the fact that this privileged channel of engagement between the Community judge and the national judge had not been explored more than a decade after it was enshrined in the instrument, through the 2005 amendment to the Protocol of the Court. In conclusion, he recommended that judicial cooperation between the national judges of the Member States and the Court be stepped-up; whilst there should be a systematic increase in the awareness creation activities of the Court.

52. In his presentation, Hon. Judge N'draman Kablan Fidele Amilcar, of the Tribunal de Premiere Instance, Abidjan, Cote d'Ivoire, pointed out that regional integration is a complex process involving various actors. He declared that in this process, the role of the Court was twofold: protecting human rights, on the one hand, and implementing Community law, on the other. However, he said that the contribution of the Court is a function of the litigations brought before it by parties. Thus, to enable the Court to play its role to the fullest, it was important to facilitate the filing of cases before it by simplifying the procedural rules and broadening the range of litigants that qualify to lodge an application with the Court.

53. He observed that the Court has developed an important case law on human rights litigations, and that it can still do same with regards to the implementation of Community Law, by ensuring the uniform interpretation of Community Texts, as well as the fulfilment of Community obligations by Member States with a provision for sanctions for any observed breach on their part.

SUB-THEME 4:
Rule of Law and Good Governance as Prime Factors in Economic Development

Moderator:

a. **Hon. Justice Dupe Atoki** of the Community Court of Justice, ECOWAS

Rapporteurs:

b. **Mrs. Hajara Onoja, Mr. Adams Aboubacar and Mrs. Samira Mijinyawa**

Presenters:

c. **Mr. Femi Falana, S.A.N,** Senior Advocate of the Federal Republic of Nigeria and Human Rights Activist
d. **Prof. Salifou Sylla,** Professor of Law, University of Conakry, Former Minister of Justice, Republic of Guinea, Former Ambassador
e. **Mr. John Azumah,** Secretary General, ECOWAS Parliament.
f. **Mr. Dandison, 0. Thompson,** First Parliamentary Counsel, Law Officers' Department, Ministry of Justice, Sierra - Leone.

54. The Paper by Mr. Femi Falana focused on the meaning and operation of the rule of law and good governance in the economic integration and development of West Africa. He applauded the coming into force of the ECOWAS Revised Treaty in 1993, particularly Article 4 on the recognition, promotion and protection of human rights as well as the promotion of a democratic system. He acknowledged that ECOWAS had given the rule of law a central place through Article 33 of the Protocol on Democracy and Good Governance. While commending the Court for its laudable human rights jurisprudence, he, however, pointed out regrettably that only a few cases had been brought before the Court in relation to economic, social and cultural rights.

55. He lamented the disregard of Court orders by some Member States and the unwarranted ordeal successful litigants go through in order to be compensated. He recalled the effort he made for the establishment of an Appellate Chamber, which is yet to be put in place, and decried the reduction in the number of Judges of the Court from seven to five in amidst congestion of cases. He also criticized the poor response by Member States in accepting the competence of the African Court of Human and Peoples' Rights to enable victims of human rights abuses to seek redress and urged African States to show more commitment and dedication to the rule of law, democracy and good governance.

56. Prof. Salifou Sylla's paper focused on the principles of the rule of law and the difficulty in implementing them, on the one hand, and the factors that are likely to either encourage or weaken the rule of law and good governance on the other. He emphasized the importance of the principle of separation of powers and respect for the rule of law which is facilitated through the conduct of an inclusive, free, fair and transparent elections, as well as the strict respect for the Constitutions of the States. He illustrated this submission with the prevailing situation in the Republic of Guinea, where there is a manifest desire of the authorities to modify the Constitution, to pave the way for the current Head of State to stay in power beyond the Constitutionally approved two - terms. He posits that the issue of tenure is part of the issues, that are not likely to improve, warning that if care was not taken, the

situation may degenerate and plunge Guinea and, by extension, the whole ECOWAS Region into grave political, social and economic instability.

57. To strengthen the principle of the rule of law, Prof. SYLLA submitted that political parties should take up the duty of educating their followers through consistent voter education, thereby contributing to shaping public opinion. He listed the factors that strengthen the rule of law to include the conduct of elections within a legal framework as well as the respect for a free press and freedom of expression, among others. He spoke of the value of political dialogue but expressed regret that this was mostly as a consequence of disregard for, and the putting aside of legal texts. He acknowledged with gratitude, the enormous role played by Civil Society Organizations in such a process, while at the same time exhorting them to rise above party affiliation, which is often affected by issues of ethnicity, regionalism, clannish tendencies, and others. He frowned at the abusive use of state resources by parties in power while working by subterfuge, to eliminate the opposition from electoral contests, citing the case of Benin Republic. He concluded by condemning the endemic corruption manifested by governments.

58. Mr. John Azumah, the Secretary General of the ECOWAS Parliament said that the rule of law implies not only the existence of laws but also the compliance by all, including the State and its institutions, adding that the rule of law is only effective when every person, including State officials, is subjected to the law. In his presentation, he argued that the judicial organ responsible for the enforcement of the laws should be independent and impartial so as to ensure a uniform interpretation and thus effective application of the laws. He highlighted the inter-relationship between the rule of law, good governance and economic development, which together form an inseparable whole in any analysis of integration because the process needs to be inclusive, involving the people of the Community. This, he explained, provided the rationale for the establishment of the ECOWAS Parliament with enhanced core competences. Moreover, he said, compliance is also key and it is up to the Court to ensure that commitments and obligations of Member States are fulfilled. He cited the most important ECOWAS texts as the Protocol on democracy and good governance as well as the Protocol on the Fight against Corruption, which led to the establishment of a Network of National Anti-Corruption Institutions in West Africa (RINLCAO) for coordination and efficiency.

59. He stated that the Parliament had supported the efforts of the ECOWAS Commission and the Authority of Heads of State and Government towards upholding the democratic principles as part of its contributions to the promotion of democracy and good governance within the region, including the proper conduct of elections in Member States; compliance with the rule of law, political stability, as well as playing an active advocacy role for the ratification and domestication of Community protocols. In conclusion, he said the very existence of the Parliament lends legitimacy to the actions taken by the Community's Executive in the field of regional integration, thereby inspiring confidence in the public. He, therefore, called for the consistent support of the Parliament by Member States, through the provision of adequate legal, material and financial incentives for the realization of integration and development across West Africa.

60. Mr. Dandyson began by defining the rule of law as a principle of governance according to which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly enacted, applied equally and independently judged, and that are in conformity with international human rights standards. He stated that the essential requirements of the rule of law include measures to ensure respect for the principles of the rule of law, equality before the law, criminal accountability, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, prevention of arbitrariness and procedural and legal transparency. He added that the key elements of good governance include internal rules and restrictions, expression and partnership, competition. In defining good governance, the speaker said that it was based on accountability and transparency, which are the foundation of peace and stability. He stressed that the rule of law and good governance are essential for measuring progress, as they unlock a country's growth potential and enable it to achieve and implement its sustainable development agenda.

61. He said companies need predictability and that good governance is an essential attribute of any successful business. In conclusion, he stated that all Member States shared the following constitutional principles: separation of powers, free, fair and transparent elections, zero tolerance for power obtained or maintained by unconstitutional means, popular participation in decision-making, freedom to apply to ordinary or civil courts, freedom of association and the right to assemble and organise peaceful demonstrations, and freedom of the press must be guaranteed.

SUB-THEME 5:
Legal Aspects of Economic Integration

Moderator:

a. **Hon. Justice Sylvain Ore,** President of the African Court on Human and Peoples' Rights

Rapporteurs:

b. **Miss. Cassandra Labor, Mr. Moussa K. Maina and Mr. John Istifanus**

Presenters:

c. **Dr. Konadu Apreku,** Commissioner for Macroeconomic Policies, ECOWAS Commission
d. **Prof. M. T. Ladan,** Professor of International Law, ABU, Zaria, and Director General, Nigerian Institute of Legal Studies, Federal Republic of Nigeria.
e. **Dr. Eunice Ngozi Egbuna,** Director General, West African Monetary Institute, Accra, Ghana.
f. **Dr. Sam Ojogbo,** Consultant and Senior Lecturer, Benson Idahosa University, Benin - City, Edo State, Nigeria.
g. **Dr. Gbenga Obideyi,** Director, Trade, ECOWAS Commission.
h. **Mr. Frank Ofei** (Accra), Former Director, Macroeconomic Policies, ECOWAS Commission
i. **Mr. Diane Hassane**, General Secretary, National Council of Human Rights, Abidjan, Cote d'Ivoire.

62. The first presentation by Dr. Konadu Apreku focused on the launching of the single currency and its ancillary issues, including the primary and secondary convergence criteria, the choice of a name and the symbol for the currency, the Central Bank of the monetary Union, the exchange rate as well as the pooling and management of common reserves. He explained that the convergence criteria that needed to be met by Member States are related to economic, monetary and fiscal parameters such as the Budget deficit, the annual inflation rate, the level of the external reserves and public debt, etc. Although the intention was to adopt the common currency in 2020, he said that none of the Member States appeared to be in a position to meet the requirements ahead of the launch.

63. Drawing on data on the performance of the States, he said performance had not been comforting, citing the year 2018 when only 8 Member States improved on their economic performance driven by improvements in agriculture, infrastructure and macro-economic reforms, among others. The concern was that most economies were plagued by stability issues in sustaining their growth, against a backdrop of only two Member States meeting the primary convergence criteria in 2018 as against four in 2017. Alarmingly, he said, none of the Member States met all the primary or secondary criteria in 2018 as opposed to one in 2017. Moreover, budget deficits also remained a challenge to the establishment of the single currency due to the high borrowing rate of governments that leaves their economies vulnerable. He suggested that Member States should adopt measures to enhance revenue mobilization and focus on infrastructural growth.

64. Prof. M. T. Ladan, in his paper, dwelled on the legal foundation of economic integration through the single currency and the role of the Court in the process. According to him, the Court is expected to be the main driver of the legal regime for integration, in keeping with Chapter 2 of the ECOWAS Revised Treaty, especially Article 2 (1), 3, 78 and 79 of Revised Treaty. He stated that the harmonization of laws should be enough for the purpose of the integration as it is pursued within ECOWAS, contrary to the uniformity approach of the OHADA region.

65. He applauded the ongoing process of monetary integration, enhanced by the demonstrated political will of regional leaders. He concluded with a call for the implementation of treaties of the Community by Member States and compliance with the judgements of the Court. He also called for the operationalization of Article 10 (f) of the Supplementary Protocol of 2005 of the Court by national courts in an effort to establish the complementary feature of the ECOWAS Court.

66. The Director General, West African Monetary Institute, Accra, Ghana Mrs. Ngozi E. Egbuna began her presentation with an analysis and definition of economic integration, which she described as the harmonization of policies among a group of countries through the reduction or elimination of trade and non-trade barriers and the coordination of monetary and fiscal policies. She recalled the objective of the ECOWAS integration agenda as seeking to promote cooperation and integration among Member States for the creation of an economic union in order to improve living standards, maintain and enhance economic stability, foster inter-relationships among Member States and contribute to promoting development of the African Continent.

67. She stated that integration provides some specific benefits amongst which are access to an enlarged market, lower cost of business transaction, greater access to foreign direct investment and improved infrastructure, especially in the transport and telecommunication sectors, According to her, the relevance of law and legal issues to economic integration is paramount at all stages of the integration process be it; Preferential Trade Area, Free Trade Area, Customs Union, Common Market and Monetary Union. She described economic integration as a product of a properly structured and managed relationship, within well-defined legal frameworks, vertical and horizontal relations among States' legal systems, laws and institutions. In conclusion, she observed that the success of economic integration relies heavily on the extent of national acceptance of Community Laws and Protocols, which must be clearly defined both in terms of mode of implementation and enforcement.

68. The Presentation of Prof. Chijioke Chris Ohuruogu was delivered by Dr. Sam E. Ojogbo, Barrister at Law. In the paper, he defined integration as an arrangement among countries by which they seek to reduce trade barriers and foster cooperation, resulting in wider availability of goods and services as well as increased employment opportunities. He noted that this was the spirit that propelled the establishment of ECOWAS more than 40 years ago in order to promote co-operation and foster integration among Member States. He stressed the need for an enabling legal environment conducive to greater integration and

stronger development for the benefit of the Community.

69. He dwelled on some of the provisions setting out the ECOWAS Free Trade Area, the Custom Union, the Common Market and the Monetary Union. He cited Article 3(2) (i) of the Revised Treaty which aims to abolish customs barriers as well as Articles 35 and 36 of the Treaty which are all geared towards the attainment of a Free Trade Area. He said that the ECOWAS Custom Union is rooted in Article 37 of the Revised Treaty, establishing a Common External Tariff for the Region. According to him, the Community is headed towards the Common Market which, he said, could be achieved with more liberalization of Services, including the capital market. He noted that progress had indeed been made towards this objective and assured that as far as economic integration was concerned, the foundational framework had been fairly established in West Africa.

70. In his own presentation, Dr. Gbenga Obideyi, Director, Trade, ECOWAS Commission, provided statistics on intra-regional trade, including Services, Industry and Agriculture. He noted that there was a steady decline between 2013 and 2017 in the number of exports and imports. He described the following as the milestones of ECOWAS Trade Integration: the ECOWAS Trade Liberalization Scheme (ETLS) which governs products of Community origin with preferential tariff for intra-regional trade; ECOWAS Common External Tariff towards third party trade which is currently implemented by almost all the Member States, and the Free Movement Protocols (for entry, residence and establishment). According to him, the external features include: The African Continental Free Trade Agreement (AFCFTA) of which all Member States are signatories, whilst 10 are state parties by virtue of ratification; the West African-EU Economic Partnership Agreement (WA-EU EPA) of which 14 of the 15 Member States are signatories in various categories and; other third-party requests for Free trade agreement with ECOWAS. He noted the various expressed interests to join the regional group by several countries outside the region.

71. He called for a consolidation of ECOWAS trade in the service sector for the continuation of economic transformation aimed at achieving full market access and total removal of all obstacles and restrictions across national borders within the region for ECOWAS service suppliers. He stressed that the major challenges to the liberalization of services relate to the right of Member States' to regulate specific areas of the sector. Other major challenges are the non-tariff barriers to trade as well as the institutional fragmentation of the national implementation institutions.

72. Mr. Frank Ofei introduced his presentation with the history behind the integration process in the ECOWAS region, pointing out that the ECOWAS Monetary Cooperation Programme (EMCP) among Member States began in 1987, when the Summit of Heads of State and Government adopted an ambitious plan, whose main thrust was the progressive creation of an Economic and Monetary Union, with the long term aim of eventually replacing the CFA franc, and other national currencies, with a common single currency. While reviewing the monetary integration within ECOWAS, he noted the renewed political commitment of Member States towards its realization exemplified by the adoption of a roadmap, the development of a programme of activities with timelines as well as the creation of a $6 million fund

for financing activities on the road map.

73. He pointed out that the major stages of the process of monetary integration includes the adoption in 1983 and in 1987 of two important decisions on the monetary cooperation programme, with a view to creating the ECOWAS Monetary Zone. The aim, he added, was to put in place, in a concerted manner, political measures geared towards the achievement of a harmonious monetary system with common management institutions, a common monetary zone and a Central Bank. However, he noted with regret that 32 years after that decision by the regional leaders, the envisaged monetary zone still remained at project level. He identified some challenges and ways of overcoming them. In conclusion, he insisted on the need for the harmonization of economic, monetary or even monetary policies at the national level, the effective implementation of the common policies adopted at the regional level, and the satisfaction by all Member States of the convergence criteria.

74. In his presentation, Mr. Hassane DIANE, General Secretary, National Council of Human Rights, Abidjan, Cote d'Ivoire said that it was imperative to improve the living standards of the people in the ECOWAS Region; citing Economic Integration as the requisite tool for the attainment of accelerated and inclusive development of all Member States. He averred that in practice, the creation of the Community necessitated and continues to imply some adjustments at the legal and institutional levels, such as the creation of Free Trade Zones, and a common customs tariffs, with a view to easing intra - community trade, ensuring the creation of a Common Market and, finally, the achievement of the monetary and economic union, as is clearly provided for under Article 3 of the ECOWAS Revised Treaty.

75. He recalled the creation of the West African Clearing House in 1975, as the embryo of the cooperation and monetary integration process which, after some years in operation, gave birth to the idea of a common currency in the Region. Furthermore, he said that on 20 April 2000, six Member States expressed their commitment to a monetary union to complement that of the WAEMU, in order to bring the borders of the monetary union closer to the borders of the ECOWAS Monetary Union. He also recalled that on 29 June 2019, at the Summit in Abuja, the Heads of State and Government of ECOWAS decided to adopt a common currency to be known as the « ECO ». He described that decision as a critical step that pointed to the irreversibility of the common currency project. However, he noted that the issue of stowage of the new currency to the Euro or the dollar was yet to be settled.

SUB-THEME 6:
ECOWAS Integration and Sub - Regional Stability

Moderator:

a. **Hon. Justice Januaria Tavares Silva Moreira Costa,** Judge of the Community Court of Justice, ECOWAS

Rapporteurs:

b. **Miss. Emiliana M.S.B. Mendes, Mr. Zoumana Camara and Mr. Duke Ekpenyong**

Presenters:

c. **Dr. Lat Gueye, Director,** Early Warning, ECOWAS Commission
d. **Dr. Cyriaque Agnekethom,** Director Peace Keeping And Regional Security, Ecowas Commission
e. **Dr. Remi Ajibewa,** Director of Political Affairs, ECOWAS Commission
f. **Dr. Adilson Tavares,** Professor of International Relations and Diplomacy and coordinator, Superior Institute of Judicial and Social Sciences (ISCJS), Praia, Cape - Verde.

76. After identifying the difference between political integration and economic integration, Dr. Lat Gueye, Director, Early Warning, ECOWAS Commission, touched on the challenges tied to stability in the ECOWAS Region and conflict prevention, as the basis for economic integration. He equally presented a report on conflicts and insurrections which, he described as real stumbling blocks to economic integration and the development of the Region.

77. Relying on an analysis of the impact of conflicts such as those that destabilised Liberia and Sierra - Leone in the 1990s, as well as a study on the security situation in the Lake Chad Basin, and the Sahel/Sahara landscape, he enumerated the various wars that were fought in the region and concluded that there was the need to prevent them from impacting negatively on regional integration and the stability of Member States. In this regard, he said, the Early Warning System put in place by ECOWAS should be understood and analysed as a peace and security mechanism, which must be used to fight instability as well as speed up the economic integration process within ECOWAS.

78. The paper by Dr. Cyriaque Agnethekom, was presented by Dr. Ajibewa. The presenter stressed the need for a peaceful and secured environment conducive to economic integration and development through the implementation of relevant legal and political instruments. He stated that his presentation aimed to analyze the nexus between economic integration and security in the West African sub-region, noting that a strong and viable economy enhances security which, in tum, creates a conducive environment for the economy to develop. While establishing a nexus between security and development, he pointed out that whereas security certainly comes at a price, insecurity compromises every opportunity for development. Thus, it is better to put the required resources at the Community's disposal, to ensure security and stability which are guarantees for a strong regional economy and sustainable development, he said.

79. He stressed the need for the region to bring the expansion of terrorism under control, while working assiduously towards its full eradication as well as controlling the proliferation of light and small arms, and ensuring maritime safety and security through a total backing for the West African Maritime Support Strategy. He also called for the implementation of the agenda on Regional Peace, Security and Stability, saying that the liberalization of intra-Community movement of citizens should not be to the detriment of the imperatives of security of Member States and their populations.

80. The presenter then identified seven phases of economic integration as a preferential trading area, free trade area, customs union, common market, economic union, economic and monetary union, and complete economic integration. Economic integration, he said, brings about trade benefits, employment opportunities and political cooperation. In his overview of the security challenges facing West Africa, he also identified the threats posed by poaching and piracy in the Gulf of Guinea, terrorism, the proliferation of small arms and light weapons with destabilizing impact on the peace, security and development of Member States. Other security challenges in the region, he added, include institutional corruption, human/drug trafficking, as well as electoral challenges. These security challenges, he explained, impact negatively on FDI flows into the region.

81. In order to mitigate the security challenges facing the sub-region and enhance its economy, he enumerated the regional mechanisms and instruments for enhancing security, development, good governance and conflict management in the region to include: the Protocol on Non-Aggression (1978) and Mutual Assistance in Defense (1981); the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999); the Protocol on Democracy and Good Governance (2001); the ECOWAS Convention on Small Arms and Light Weapons, Ammunition and Other Related Materials (June 2006); and the ECOWAS Conflict Prevention Framework (2008). He also cited the Political Declaration and Common Position against Terrorism (2019), which provides for the regional Counter-Terrorism Strategy and Implementation Plan to help Member States combat terrorism and other related security challenges. He stated that in order to deal effectively with the threats of terrorism and other forms of security challenges, a broad-based approach must be adopted that integrates efforts at the national and regional levels into a robust strategy, focusing on improving governance, development and security in the region. He reiterated the need to strengthen all institutions and processes that promote efficiency, accountability, and transparency in the management of national resources across West Africa. In conclusion, he urged all stakeholders to move from good intentions to tangible results, towards reaping far-reaching human security benefits.

82. The presentation by Dr. Adilson Tavares explored the link between integration, stability and development. The presenter deplored the fact that the African continent was tom apart by conflicts, largely caused by corruption, bad governance and trans border criminality, with dire consequences for peace and international security.

83. Despite these challenges, the presenter expressed optimism about Africa's capacity to transform itself into a vast economic consumer market. This, he said, was

because it has at its disposal, all the necessary ingredients to carry out this qualitative mutation. These ingredients include a dynamic demography, abundant natural resources, available and qualified human resources and very active integration organisations. In conclusion, he stressed the importance of peace and security as critical social and political indicators because development can't take place without security.

SUB-THEME 7:
Basic Infrastructure for Economic Integration

Moderator:

a. **Hon. Justice Keikura Bangura,** Judge of the Community Court of Justice, ECOWAS

Rapporteurs:

b. **Mrs. Elizabeth Akhigbe, Mrs. Frances Ibanga and Mrs. Bintou Diallo**

Presenters:

c. **Mr. Pathe Gueye,** Commissioner for Infrastructure, ECOWAS Commission
d. **Mr. lfo Bashir,** President, ECOWAS Bank for Investment and Development (EBID)
e. **Hajia Halima Ahmed,** Commissioner of Finance, ECOWAS Commission.

84. In his presentation, Mr. Pathe Gueye described the evolution of Community efforts towards the development of a network of infrastructure that would speed up the process of integration, because without adequate infrastructure, free movement can hardly be achieved. He recalled that since 1999, the Community had started an ambitious programme for the creation of common regimes in customs tariffs, a common market and a monetary union. He stressed that this programme was already encapsulated and amplified in the Vision 2020 Policy of ECOWAS with the clearly defined priorities. Unfortunately, he noted that in spite of these programmes, the region was still faced with an infrastructure deficit, which militates against the attainment and promotion of integration objectives. In order to remedy these inadequacies and surmount the challenges relating to the provision of infrastructure, he said that ECOWAS had elaborated sectoral programmes for the implementation of road, maritime, rail and air transportation, energy and telecommunications projects as well as harness its Water Resources.

85. According to him, the road networks include the construction of trans-border Lagos-Dakar Route along the coast, the Trans-Sahel Dakar-Bamako-Ouagadougou-Niamey-Kano-Ndjamena route, the Abidjan-Lagos Corridor, the multi-nodal Praia-Dakar-Abidjan Corridor, and the Dakar-Bamako-Ouagadougou-Niamey-Nigeria-Chad border Corridor. The Inter-State connections by road or rail is equally envisaged as well as improvements in air transport infrastructure through the development of a Regional Centre for Aeroplane Maintenance and a Centre for hiring of Aeroplanes. Also, on the programme are Port rehabilitation, strengthening of the Regional Maritime Company, the development of Water Transportation, Telecommunications and Information and Communications Technologies, whose objective is to reduce the costs of Communications. In conclusion, he said, the implementation of these programmes would on completion, stimulate significant improvements in the economies of the States and provide impetus to the development of agriculture and allied transformation industries. It will also improve intra- community trade and contribute to the creation of millions of jobs, through the construction, exploitation and maintenance of these various projects.

86. The paper of the Chief Executive of the ECOWAS Bank for Investment and

Development (EBID), Bashir Ifo, was presented by a representative. The presenter began by reminding the participants of the mission and vision of ECOWAS and emphasised the need to interconnect smaller markets in the region into a formidable economic hub, which will in tum create jobs for the citizens of the Member States and accelerate growth and development within the region. He observed that despite some modest gains in the past years, the expected gains of economic integration were yet to be fully actualised because of persistent challenges. He pointed at the low level of intra-Community compared to the other Regional Economic Communities and attributed the situation in West Africa to its infrastructural deficit particularly in the areas as roads, power supply, rail, ports and communication which hampered intra community trade

87. Outlining the enormous areas of financial needs of Africa and ECOWAS, he recalled that the EBID was created precisely to support economic growth in the region through funding development projects and connecting the region to the global economy in order to help Africans leverage on the gains of globalisation. He identified infrastructure as being at the centre of the bank's medium term plans explaining that as at June 2019, the bank had granted approvals of$2.6b for about 286 projects across various sectors in the region of which $1.23b was devoted to infrastructural projects. He added that the bank was also mobilising resources through PPP, equity participation, loans and guarantors. He further added that the bank remained vital to the growth of the region as it complements the financial contribution of other institutions such as the AfDB.

88. In her presentation, the ECOWAS Commissioner for Finance, Mrs. Halima Ahmed emphasized the need for building a strong regional infrastructure to stimulate economic cooperation and integration within ECOWAS. She identified two categories of infrastructure: physical infrastructure and non-physical infrastructure, noting that the infrastructure gap in ECOWAS offered a huge opportunity for investment in the region. Unfortunately, she said, ECOWAS was yet to fully leverage on regional infrastructure to stimulate integration and development. She highlighted the key challenges facing the region to include; unreliable electricity supply as well as the lack of affordable housing and transport infrastructure. On Internet penetration, she stated that broad band coverage, currently at 16 percent, is projected to rise to 99 percent in 2060, noting that there were many infrastructural projects awaiting funding in West Africa, with about 84 projects across various sectors at different levels of construction.

89. Furthermore, she enumerated three levels of project investment which includes; (1) project identification (2) project preparation and (3) investment phase while identifying the sources of funding to include mainly national budgets, regional funds and partner's grants for infrastructure development in Africa, including ECOWAS. She noted that the various financial and technical mechanisms, though helpful, were oftentimes inadequate. She pointed out that Infrastructure development can create immediate employment, improve the living conditions of people and foster economic growth and development, arguing that ECOWAS should strategically explore and exploit more sustainable funding mechanisms, including encouraging private sector participation, since government alone cannot provide and sustain the infrastructural development required for the economic integration of the region.

III. CONCLUSIONS AND RECOMMENDATIONS

90. At the end of the three-day proceedings and fruitful debates, participants made and adopted the following recommendations:

i) ***On the respect for the right to free movement, residency and establishment***

1. Participants observed that the level of integration attained by UEMOA Member States, especially in the area of the harmonization of their national legal instruments, that renders the right to free movement and establishment very effective, could serve as a source of inspiration for ECOWAS.

2. On the control measures at borders, especially between the Federal Republic of Nigeria and Republic of Benin, participants called upon Member States to respect their obligations, as regards free movement, residency and establishment within the borders of the Community, pursuant to the relevant provisions of Community Law. However, the exercise of such rights should not, in anyway, compromise the imperative of security, which constitutes a major concern for all Member States in the sub - region

3. Recognizing the imperative of ensuring security, participants recommended to Member States, especially those carrying out legitimate fight against terrorism and insecurity, to engage their neighbours, in a concerted effort that is likely to link Member States' obligation of ensuring security, to citizens' right to enjoy free movement within the territory of the Community. In this regard, participants recommended the setting up of a Joint Tripartite Border Surveillance Force between Benin Republic, the Republic of Niger and the Federal Republic of Nigeria to prevent, not only terrorist attacks and cross-border smuggling, but also the regrettable consequences of taking unilateral measures that could affect good neighborliness between States.

ii) ***On building a Community governed by rule of law and the role of the ECOWAS Court of Justice in the process of integration***

4. Participants called on Member States not to lose sight of the objectives of regional integration, which is to build, through free adherence by Member States and due respect for the constitutional rules of their countries, a Community governed by law that guarantees the respect for human rights, democracy and good governance.

5. In this regard, they noted with concern the current practice of manipulating National Constitutions for political gains. They recalled the principles of constitutional convergence as enshrined in the Protocol on Democracy and Good Governance, and therefore recommended that their inviolability should be guaranteed and enshrined under ECOWAS Community Law, in order to prevent Member States from infringing upon it, by tampering with the Constitution.

iii) ***On the organisation and functioning of the Court:***

6. Recalling the crucial role that the ECOWAS Court of Justice is called upon to play in the integration process, participants called for the strengthening of the Court not only in its organisational structure, but also, in the exercise of its jurisdiction, and the enforcement of its judgments by Member States. Consequently, participants recommended as follows:

- Restoration of the composition of the Court as prescribed in the initial Protocol on

the Court, by increasing the number of the Hon. Judges of the Court from five [5] to seven [7], as well as their tenure from four [4] years non-renewable to five [5] years renewable for another term of five [5] years as prescribed in the initial Protocol on the Court and to restore the staggered nature of their tenure in order to avoid loss of institutional memory as was done when there was a complete renewal of the Court in 2014 and 2018. The recommendation will help ensure the preservation of the institutional memory of the Court and the continuation of its jurisprudence;

- The institution of a Legal Aid Fund at the Court, to enable the most indigent litigants to bring cases before it;
- The approval for an Appellate Chamber at the Court, in order to enable an aggrieved litigant to exercise a right of appeal which is a fundamental right;
- The establishment of a framework for dialogue, collaboration and joint sessions on information sharing between the Community Court of Justice and the national courts of Member States, in order to ensure the effectiveness of the application of Community law in the Member States, especially through the instrumentality of pre-trial referrals;
- The need to increase the sensitization sessions of the Court, in order to bring it closer to the litigants and community citizens at the grass roots, and to better make its workings and procedures more widely known to the public; and
- The inclusion of Community Law and the Jurisprudence of the ECOWAS Court of Justice in the Teaching Programmes of Law Faculties and other Judicial or Legal Training Institutions, in the sub-region.

iv). <u>On the full exercise of the jurisdiction of the Court</u>

7. Participants noted with regret the unsatisfactory rate of enforcement of the judgments of the Court, the challenges in the implementation of the judgments of the Court and the difficulty in implementing the procedure for sanctions on erring Member States for failure to fulfil their obligations under ECOWAS Community Law, as only the President of the ECOWAS Commission and Member States are the entities empowered to initiate such procedure;

8. They recommended the granting of access to individuals and corporate bodies to initiate actions in respect of the failure by Member States to fulfil their community obligations to ECOWAS, particularly the failure of a Member State to implement the judgments of the ECOWAS Court of Justice and for the imposition of necessary sanctions in accordance with the provisions of Article 77 of the Revised ECOWAS Treaty, and the Supplementary Act on Sanctions against Member States that fail to fulfil their Obligations to ECOWAS, 2012.

9. Participants equally recommended that access should be granted to individuals and corporate bodies who are affected by the actions of any Community institution or organ that violates community law, to the ECOWAS Court of Justice for redress.

v). <u>On the enforcement of the judgments of the Court</u>

10. Participants highly commended the decision of His Excellency Nana Dankwa Akufo-Addo appointing the Attorney General and Minister of Justice of Ghana, as the National Authority for the enforcement of the ECOWAS Court's Judgments in Ghana. They enjoined other Member States that are yet to do so, to comply with the provisions of Article 24 of the Protocol on the Court.

11. Participants also requested the ECOWAS Court of Justice to draw - up a list of its judgments that are yet to be enforced, and forward a copy each to the President of ECOWAS Commission and the Speaker of ECOWAS Parliament, to enable the former to carry out his responsibility as enshrined under the relevant ECOWAS Texts, and the latter to plead, within the organs of, and Parliamentary Networks, in favour of the enforcement of the judgments of the Court.

12. It was further recommended that the Court should be authorised to forward an Annual Report to either the ECOWAS Council of Ministers or the Summit of Heads of State and Government on its activities, especially on the state of enforcement of its judgments.

13. Participants also called on the Court to carry out a review of the mechanism for the enforcement of its judgments; and seek approval for the introduction into the national laws of Member States, appropriate provisions enabling the enforcement of the judgments of the ECOWAS Court of Justice in Member States.

vi). <u>On the need to create opportunities for social and economic development within the Community</u>

14. Participants noted the persistent tragic and suicidal immigration by young West Africans and the dire consequences it portends for the West African region. Faced with immigration flux, participants recognized the need for ECOWAS Member States to promote good governance, at all levels, and to increase economic opportunities for Community citizens, in order to create for the youths hope and new perspectives on self-fulfillment in their own countries as well as within the Community territory.

15. Conscious that neither free movement, nor economic development could be very effective, nor even possible in the absence of adequate infrastructure, participants recommended that Member States should double their efforts in the area of infrastructural development in order to avail the Community the necessary infrastructure for its integration, and its economic take - off.

16. Considering the exorbitant costs needed for the construction and maintenance of standard infrastructures, participants recommended that Member States should diversify their sources of lnfrastructure financing, by exploring the possibility of allowing private investments, including public-private partnerships.

17. Having noted with satisfaction the important role played by the EBID, in the realization of these infrastructures, participants recommended the strengthening of the capabilities of that Community Institution, in order to provide impetus to integration and intra-regional trade.

18. Recognising the great importance of a common currency for ECOWAS, participants commended the fully expressed determination of the leaders in the sub-region to create a common currency for ECOWAS, as from 2020. Consequently, they exhorted all Member States to fully respect the criteria for convergence, in order to ramp up the rapid realization of the West African Monetary and Economic Union.

IV- CLOSING CEREMONY

91. The closing ceremony consisted of three parts viz.: - the presentation of the general report, the ensuing discussion of the report and its adoption; the vote of thanks presented by Hon. Judge Gberi-Be Ouattara, the Vice-President of the Court; and the closing speech made by Hon. Judge Edward Amoako Asante, the President of the ECOWAS Court of Justice.

92. The Director of Research and Documentation Department of the Court and General Rapporteur of the Conference, Dr Ousmane Diallo, read the Draft Report. Participants examined and considered all recommendations made. At the end of this exercise, the report was adopted, with amendments.

93. In his vote of thanks, the Vice-President of the Court of Justice conveyed the appreciation of the participants for the generosity extended to them and the facilities placed at their disposal during the conference which facilitated their work, describing this as evidence of authentic African hospitality. He expressed the profound gratitude of the participants to the government and people of Ghana under the able leadership of His Excellency Nana Addo Dankwa Akufo-Addo, President of the Republic of Ghana for their hospitality.

94. He also commended the President of the Republic of Ghana who, not only gave his approval for the hosting of the conference and put at the disposal of participants the necessary facilities for a successful hosting, but also eminently enhanced the conference by attending the opening ceremony during which he announced the appointment of the National Authority of Ghana for the enforcement of the judgments of the ECOWAS Court of Justice, in compliance with Article 24 of the Protocol on the Court.

95. In his closing remarks, Hon. Judge Edward Amoako Asante, the President of the Court thanked all participants for their devotion to the conference proceedings as well as their interest in the contributions of the ECOWAS Court of Justice to the Community integration process. He observed that although the programme for the conference was heavily loaded, this did not affect, in any way whatsoever, the determination and enthusiasm of the participants nor the quality of their input. He expressed his sincere gratitude to His Excellency Nana Addo Dankwa Akufo-Addo for the inestimable support for activities related to regional integration and for accepting to preside over the opening ceremony, despite his very tight schedule.

96. He expressed satisfaction with the conduct of the proceedings at the conference, and heartily thanked the Hon. Judges of the Court and other staff, especially the organizing committee, for the smooth handling of the conference. He exhorted the authorities at all levels, particularly the distinguished Representatives of ECOWAS Member States, to support the Community Court of Justice, in the swift and integral implementation of the conference recommendations.

97. On this note, the Hon. President of the Court declared the conduct of proceedings at the conference closed.

ANNEX 1

LIST OF PARTICIPANTS FOR 2019 INTERNATIONAL CONFERENCE OF ECOWAS COURT OF JUSTICE IN ACCRA-GNANA
21st - 24th OCTOBER 2019

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