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EXPANSION OF ECOWAS WHIMS FROM REGIONAL ECONOMIC INTEGRATION TO HUMAN RIGHTS VIOLATIONS CASES: A CRITIQUE

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Abstract

The establishment of Economic Community of West African States (ECOWAS) came into existence at a time of searching for a perfect economic performance and social stability led African leaders to seek integration and/or cooperation among their countries. The African economic integration steps derived considerably from the European experience, by way of institutional design, ideologies and theories that have formed the foundation of most arrangements. The ECOWAS established six institutions among which are ECOWAS Court of justice in order to interpret ECOWAS treaties and settle disputes among member States. However, in year 2005, human rights mandate was covered on this Court which transformed it into an international law court to handle human rights abuse cases within West African region. Since acquiring jurisdiction over human rights violation in 2005, the ECOWAS Court has issued numerous decisions condemning human rights violations by the member states of the Economic Community of West African States. To this end, this paper, while adopting analytical research methodology, examines the role of ECOWAS institutions in discharging their duties. The paper revealed that the new mandate and its initial objective of promoting economic integration in West African states have therefore generated a series of reactions in the sub-region, most especially in Nigeria.

Keywords: Expansion, Whims, Regional, Economic, Human, Rights, Violations

1. Introduction

The Establishment of Economic Community of West African States (ECOWAS) represented one of the major of numerous examples of regional economic integration among developing countries,[1] it was the result of a strong and complex history of West African economic cooperation given the colonial history between African countries and the European powers. The African economic integration steps derived considerably from the European experience, by way of institutional design, ideologies and theories that have formed the foundation of most arrangements[2]. The call for regulation of state affairs through international organizations led to the inevitability of African integration arrangements with close semblance to other regional organizations around the world today.

The West African states began the arrangement bordering on rapid economic integration and transformation of the newly independent states after most of the countries secured their independence.[3] There have been efforts towards a West African community such as Nigeria and Togo, who signed an agreement in 1964 which removed visa requirements placed on the movements of the citizens.[4]Likewise, President William Tubman of Liberia when he conveyed a meeting of

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[1] Others main sub-regional economic communities in Africa in addition to Ecowas are: Common Market for East and Southern Africa (COMESA), Economic Community of Central African States (ECCAS), Intergovernmental Authority on Development (IGAD), Arab Maghreb Union (AMU) and Southern African Development Community (SADC).

[2]W AAxline, 'The Economic Community of West African States (ECOWAS) in Comparative Perspective: The Lessons of Asian, Caribbean, and Latin American Integration' <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA089017> accessed 10 August, 2023

[3] Assessing Regional Economic Integration in Africa (Addis Ababa: UNECA, 2004), P. 6 Also, United Nations Conference on Trade and Development, Economic Development in Africa Report 2009: Strengthening Regional Economic Integration for Africa's Development (Geneva: UNCTAD, 2009).

[4] Nigeria's Treaties in Force, V. 1; Lagos, Federal Ministry of Information, Printing Division, 1971, p. 25.

four West African countries; Cote d'Ivoire, Guinea, Liberia and Sierra Leone, to explore the feasibility of setting up a Free Trade Area. Unfortunately, this initiative did not materialize due to lack of sincerity and political will on the part of the concerned West African leaders and their strong adherence to their newly won political sovereignty,[5] inadequacy of the legal framework that led to the failure to meet objectives of the community.

Thurs, the focus of this paper is to trace the framework for integration under ECOWAS regimes, examining impact of some of the policies of ECOWAS in the protection and promotion of regional integration. How the ECOWAS court of justice expand its jurisdiction to accommodate human rights mandate. The expected result in this paper is to identify the achievement of the organization if any, challenges facing the organization in the promotion of economic integration at the sub-regional and the continental levels and the obstacles in the enforcement of human rights cases of the court.

2. The Birth of West African Economic Integration

History has it that, economic integration is not something that is new in Africa. It has been observed by some historians that pre-colonial history shows political and economic integration through limited trade and free movement of factors of production throughout various kingdoms in African region. To buttress this point, ECOWAS is one of the six main sub-regional economic communities in Africa in addition to Common Market for East and Southern Africa (COMESA), Economic Community of Central African States (ECCAS), Intergovernmental Authority on Development (IGAD), Arab Maghreb Union (AMU) and Southern African Development Community (SADC). The issue of global and regional integration has always been in the front burner of international politics. In 1964, Nigeria and Togo, which had a long history of political intercourse, signed an agreement in 1964 which removed visa requirements placed on the movements of the citizens of the two States by their respective governments.[6] In 1966, the two countries entered into a trade agreement whose goal was the generation of maximum trade between the two countries, characterized by a covenant to promote and develop trade in compliance with the laws and regulations in force in each of the States. They also agreed that in order to enhance commercial intercourse, the contracting parties also agreed to furnish each other on request, all necessary information concerning the possibilities of supplying goods and commodities originating form their respective territories. They also contracted to grant freedom of transit of commercial goods originating in the territory of one of them and transported over the territory of the other.[7]

In this same year, an attempt was also made to create a regional economic organisation for the West African sub-region, the idea was brainchild of President William Tubman of Liberia. He conveyed a meeting of four West African countries; Cote d'Ivoire, Guinea, Liberia and Sierra Leone, to explore the feasibility of setting up a Free Trade Area. Almost a year later in February 1965, diplomats from the four states met again in Freetown, Sierra Leone, to draw up a document that would have led to the formation of what they called an Organisation for West African Cooperation. Unfortunately, this agreement did not see the light to achieve any of its goals.[8]

Later in April, 1972 a more drastic effort was made to actualise the idea led by General Gowon of Nigeria and General Eyadema of Togo who had emerged as clear leaders of the movement for integration developed a scheme of action travelled to twelve countries within West Africa and

[5]S. Amadu, & O. Moshood, 'The Politics of Regional Integration in West Africa', *West Africa Civil Society Institute, WACSERIES Vol. 2 Num 2, October*, (2011) at 11

[6] Nigeria's Treaties in Force, V. 1; Lagos, Federal Ministry of Information, Printing Division, 1971, p. 25. On the same day, Nigeria also exchanged notes with Cameroun, Chad, Dahomey, Ivory-Coast, Niger and Morocco, abolishing visa requirements. Nigeria exchanged similar notes with Guinea less than one year later.

[7] ibid.

[8] 'The Economic Community of West African States (ECOWAS) in Comparative Perspective: The Lessons of Asian, Caribbean, and Latin American Integration' Page 4

making viable consultations with fellow leaders to bring into existence a regional economic community.[9] The States agreed to set up the required institutional structures for a Community and possible areas of cooperation, as well as the taxonomies and nature of various levels of integration.[10] A Draft ECOWAS Treaty was drawn up in Lome, Togo, with the assistance of the ECA, after which a second ministerial meeting was convened in Niamey, Niger, in March 1974 to deliberate on it. Later that year, it was adopted in Liberia and submitted to the Heads of State Conference in Lagos on May 28 1975, where it was signed and became the ECOWAS Treaty.[11]

3. Role of ECOWAS in the African Economic Integration

Regional integration does not have a single, comprehensive and universally acceptable definition. Scholars defined regional integration based on individual thought and perspectives. According to Phillippe De Lombaerde and Luk Van Langenhove, regional integration is a process of large scale territorial differentiation characterised by the progressive lowering of internal boundaries and possible rising of new external boundaries... in which states move from a condition of total or partial isolation towards complete or partial unification, among others.[12]

The EU defines regional integration as ...the process of overcoming, by common accord, political, physical, economic and social barriers that divide countries from their neighbours, and of collaborating in the management of shared resources and common national goals. Asante opined that regional integration and regional cooperation have in common the involvement of neighbouring countries in collaborative ventures.[13] Onwuka and Sesay on the other hand, regional integration refers to the various forms and contexts of economic integration arrangements including common markets, free trade areas and harmonisation policies prevailing or proposed at both the continental i.e. African Economic Community, AEC, and regional such as ECOWAS, SADC, levels among many others.[14]

Regional integration as a strategy of the collective economic survival of nations around the world has gained prominence in recent times. It has given nations the options of cooperation and competition. It has provided for participating states the options of promoting the best areas of specialization whilst at the same time ceding to other participating nations products considered to be within the purview of the strength of those other states. The most attractive factor of integration is chronicled on the general principle of the creation of a common market where goods, services and capital are guaranteed freedom of movement unhindered within the integrated area. This prompted the establishment of the Economic Community of West African States (ECOWAS) on 28 May 1975, in Lagos where Nigeria and fifteen (15) other West African countries[15]created the community[16] as a regional body with the aim of the economic integration of its member states. The 1975 treaty describes the aim of the community as follows: "... to promote co-operation and

[9] The Heads of State who signed the Treaty were: Mathew Kerekou, (Dahomey); Dauda Jawara, (The Gambia); Liuiz Cabral, (Guinea – Bissau); Felix Houghphet Boigny, (Ivory Coast); William Tolbert, (Liberia); Moktar Duld Daddah, (Mauritania); Seyni Kountche, (Niger); Yakubu Gowon, (Nigeria); Siaka Stevens, (Sierra – Leone); Gnassingbe Eyadema, (Togo); A. Anguole Lamizana, (Upper Volta). The four Plenipentiaries were from Ghana, Guinea, Mali and Senegal

[10] 'The Economic Community of West African States (ECOWAS) in Comparative Perspective: The Lessons of Asian, Caribbean, and Latin American Integration' Page 4

[11]P O Michael, 'Economic Integration In ECOWAS: 40 Years After' *European Scientific Journal July 2016 edition vol.12, No.19 ISSN:* 1857 – 7881

[12]K N Lolette, 'Regional Integration: Concepts, Advantages, Disadvantages and Lessons of Experience' <http://www.sarpn.org.za/documents/d0001249/P1416-RI-concepts_ay2005.pdf,> accessed 20 July, 2023, at. 6-7

[13]S K B Asante, 'ECOWAS: Coping with Regional Integration in the Twenty-First Century' A Chapter prepared for the UNDP Regional Human Development Report for Western and Central Africa, June 6, (2002) at .4

[14] 'The Politics of Regional Integration in West Africa' pages 11-12

[15] They are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. In 1979 Cape Verde became the 16th member nation. Mauritania withdrew from the community in 2002 after it had complied with the provision of Article 91 of the 1993 Treaty (Revised Treaty) bringing the present number of member countries of ECOWAS to 15.

[16] The text of the Treaty of the Economic Community of West African States (hereafter ECOWAS Treaty) reproduced in 1975 United Nations Treaty Series 1010, 17

development in all fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions and in social and cultural matters for the purpose of raising the standard of living of its peoples, of increasing and maintaining economic, stability, of fostering closer relations among its members and of contributing to the progress and development of the African continent.[17]

To achieve this, the treaty in its Article 2(2) provided that the community shall by stages realize its principal objectives by: The establishment of a customs union through the creation of a free trade area and the adoption of a common external tariff by gradually abolishing all custom duties and taxes of equivalent effect and quantitative and administrative restrictions on trade among the Member states as well as all other obstacles to the free movement of goods, services, capital and personnel; The harmonisation of policies and promotion of Community projects in all the main socio-economic sectors, including transport, communications, agriculture, industry, natural resources, energy, social and cultural matters; and The harmonisation of monetary and financial policies of member states.[18] The harmonisation and co-ordination of policies for the protection of the environment; the promotion of the establishment of joint production enterprises. the establishment of a common market through: the liberalisation 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; the adoption of a common external tariff and., a common trade policy vis-a-vis third countries; the removal, between member states, of obstacles to the free movement of persons, goods, service and capital, and to the right of residence. the promotion of joint ventures by private sectors enterprises and other economic operators, in particular through the adoption of a regional agreement on cross-border investments; 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; the establishment of an enabling legal environment; the harmonisation of national investment codes leading to the adoption of a single Community investment code; the harmonisation of standards and measures;[19] the promotion of balanced development of the region, paying attention to the special problems of each member state particularly those of landlocked and small island member states; the encouragement and strengthening of relations and the promotion of the flow of information particularly among rural populations, women and youth organisations and socio-professional organisations such as associations of the media, business men and women, workers, and trade unions the adoption of a Community population policy which takes into account the need for a balance between demographic factors and socioeconomic development;[20] the establishment of a fund for co-operation, compensation and development; and any other activity that member states may decide to undertake jointly with a view to attaining Community objectives. The court was called upon to adjudicate on issue of free movement of person and property across the region in the case of Olajide v Federal Republic of Nigeria[21] wherein Mr Olajide a Nigerian businessman complained of breach on his right to Free Movement across West Africa States borders in line with ECOWAS Protocol. The respondent raised preliminary objection of a lack of individual access to the ECOWAS Court and same was upheld, even though the court can now as a matter of law hear and determine individual complaint brought before it.[22]

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[17] Article 2(1) 1975 ECOWAS Treaty

[18] Revised Treaty of the Economic Community of West African States (ECOWAS), Annex VII-2 Cotonou 1993, Article 3. Available online at http://www.comm.ecowas.int/sec/index.php?id=treaty, accessed 10 August, 2013

[19] ibid.

[20] ibid.

[21] *Mr Afolabi Olajide v Federal Republic of Nigeria* 2004 ECW/CCJ/04 (Judgment delivered in April 2004) that precipitated the review that led to the 2005 ECOWAS Court Protocol and the grant of individual access to the Court

[22] Article 4 (g) of Supplementary Protocol A/SP1/01/05 Amending the Preamble and Articles 1, 2, 9 and 30 of Protocol (A/P.1/7/91) Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol, Jan. 19, 2005 [hereinafter 2005 Protocol], at http://www.courtecoas.org/site2012/pdf files/supplementary protocol.pdf. Accessed on April 17, 2023

4. The Institutional Framework of ECOWAS

In order to promote the aim and objectives of the Economy Communities of West African States (ECOWAS) as envisaged, the treaty was subsequently revisited in 1993 to address some of the challenges and omissions in the treaty there by restructuring its policies to improve the socio economy life of member states.[23]The following institutions were established under the revised Treaty:

(i) The Authority of Heads of state and Governments.[24]
(ii) The Council of Ministers[25]
(iii) The Community Parliament[26]
(iv) The Economic and Social Council[27]
(v) The Community Court of Justice[28]
(vi) The Executive Secretariat[29]
(vii) The Fund for Co-operation, compensation and development of specialized Technical Commissions;[30] and
(viii) Any other institutions established by the authority as provided for under article 6(1) of the revised Treaty.

In addition to these, the authority is empowered to establish various technical commissions as it deems necessary to easy the implementation of their duties, the Treaty especially provides for the establishment of four technical and specialized commissions. The commissions are as follows Trade, Customs, Immigration, Monetary and Payments; Industry, Agriculture, and Natural Resources; Transport, Telecommunications, and Energy; and Social and Cultural Affairs. Each commission has only two express functions: i.e., to submit reports and recommendations from time to time to the Council, and to possess such other functions as are imposed on it under this Treaty.[31] It is therefore necessary at this juncture to discuss function of each institutions mentioned above as provided for by the ECOWAS Treaty.

Authority of Heads of State and Governments

The provision of Article 10 of ECOWAS Treaty establishes the Authority of the Heads of State and Governments of member states, which is the apex organ of the community. It is responsible for the general direction and control of the community and takes all measures to ensure the organization's progressive development and the realization of its objectives. In view of its responsibilities the Authority has made a number of Protocols dealing with various area or subject matter[32] The

[23]Z. Bruce, "The Economic Community of West African States (ECOWAS): An Analysis and Prospects" case western reserve international law journal 2005
[24] Article 7 of the revised Treaty of the Economic Community of West African States (ECOWAS)
[25] ibid Article 10
[26] ibid Article 13
[27] ibid Article 14
[28] ibid Article 15
[29] ibid Article 17
[30] ibid Article 21
[31] ibid Article 22
[32] Noticeable among the Protocols includes: a/sp.2/5/90 on the implementation of the third phase (right of establishment) of the Protocol on free movement of persons, right of residence and establishment; supplementary convention a/sp.1/5/90 establishing a community guarantee mechanism for inter-state road transit of goods; supplemntary 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; supplementary protocol a/sp.1/7/86 on the second phase (right of residence) of the Protocol on free movement of persons, the right of residence and establishment; supplementary protocol, a/sp1/12/01 on democracy and good governance supplementary to the Protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping and security; ECOWAS energy protocol a/p4/1/03; protocol relating to the definition of the concept of products originating from member states of the ECOWAS; protocol relating to the application of compensation procedures for loss of revenue incurred by ECOWAS member states as a result of the trade liberalization scheme; protocol relating to the mechanism for conflict prevention, management, resolution, peace-keeping and security; supplementary protocol , a/sp.1/7/85 on the code of conduct for the implementation of the protocol on free movement of persons, the right of residence and establishment; protocol a/p.1/11/84 relating to community enterprises; convention a/p.5/5/82 for mutual administrative assistance in customs matters; protocol a/p.3/5/82 relating to the definition of community citizens; convention a/p.4/5/82 relating to interstates road transit of

authority, shall among other things, oversee the functioning of the Community Institutions and ensure implementation of community objectives. The commission, where it deems necessary is expected to refer any matter to the community court of justice, when it confirms that a member state, or 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 the treaty by a decision of the Authority, or a regulation of the council. Article 9 provided further that the decision of the Authority shall be binding on member states and institutions of the community though subject to the provision set out by ECOWAS Treaty which relates to the functions of the community court of justice.[33]

The Council of Ministers

The Council of Ministers is another organ set up by the treaty,[34] composed of representative from all members state, the Council is empowered to make recommendations to the Authority, or any action, aimed at attaining the objectives of the Community, issue directives on matters concerning coordination and harmonisation of economic integration policies. The Council is also an important body that is obliged to act in accordance with the African Charter on Human and Peoples' rights, as well as all ECOWAS Treaties and Protocols.

The Community Parliament

Article 13 sets up the Community Parliament whose election, composition, function, powers and organization are defined in a protocol relating thereto. The parliament has 115 seats, which represent the 15 member states. Each of them has at least 5 seats, the rest is shared in correspondence to the population. The Speaker of the Parliament chairs it. Below him is the Secretary General, who is responsible for the administrative functions of the institution.[35]

The Parliament is empowered to consider matters relating to human rights and fundamental freedoms of citizens; the interconnection of energy networks; increased cooperation in the area of radio, television and other intra- and inter-Community media links, as well as the development of national communication systems; a common educational policy through harmonisation of existing systems and specialisation of existing universities; the review of the ECOWAS Treaty; the interconnection of communication links between member states; the interconnection of telecommunications systems; public health policies for the Community; the adjustment of education within the Community to international standards;scientific and technological research; the youth and sports; the Community policy on the environment; citizenship, and social integration among others.[36]

The Economic and Social Council

The Economic and Social Council established by the Treaty[37] whose composition shall include representatives of the various categories of Economic and Social Committee with duty to perform an advisory role to the commission.

goods; convention a/p.2/5/82 regulating inter-state road transportation between ECOWAS member states; supplementary protocol a/sp.1/5/81 amending article 2 of the protocol relating to the definition of the concept of originating products of the member states of the economic community of west African states; supplementary protocol a/sp.3/5/80 amending article viii of the French text of the Protocol relating to the definition of the concept of products originating from member States (treatment of mixtures); a/sp.2/5/79 supplementary Protocol amending Protocol relating to the definition of the concept of products originating from member states; supplementary protocol. text of the protocol are available at www.ecowas.int (accessed on 3rd May, 2023)

[33] Article 15 of ECOWAS Treaty

[34] Article 10 ECOWAS Treaty

[35] Article 13 ECOWAS Treaty

[36] ibid

[37] Article 14 ECOWAS Treaty

The ECOWAS Court of Justice

Articles 15, 16 and 17 establish the Court of Justice, Arbitration Panel and the Executive Secretariat respectively, whose functions are to be set out in protocols relating thereto. A president also chairs the court. The Court Registrar, who handles the administrative functions with the support of other professionals, assists him. The Court ensures the interpretation and application of Community laws, protocols and conventions.

Having examined the structure, powers, and functions of the Economic Community of West African States institutions, it is not out of place to admit that the community is patterned after the European Economic Community (EEC) in all ramifications.[38] Even though, the achievements of ECOWAS institutions may well depend upon the ability of the commissions to perform meaningful and autonomous activities. Though, some member states governments are still not willing to surrender sovereignty to inter-governmental organs has prevented the establishment and efficient functioning of organizations capable of achieving effective regional integration. It is therefore apposite to consider some of the ECOWAS policies on promotion of regional integration programmes.

5. ECOWAS Policies on Promotion of Regional Integration Programmes

The request for greater regional integration among West Africa States arose mainly from the perceived economic potentials of a sub region premise by the challenges of insecurity, underdevelopment and adequate policies. The developed countries globally, have applied regional integration approach/policy to achieve development and security[39], thus, contributing to global peace. It is therefore necessary here to examine some of the ECOWAS policies such as Policy for the Protection of the Environment, policy on the Establishment of a Common Market, Policies on Economy, Finance, Education, Social and Cultural Sectors, policy on Promotion of the Establishment of Joint Production Enterprises, Policy on transportation and Communication etc.

ECOWAS Policy for the Protection of the Environment

Member States of ECOWAS under the revised treaty decided to protect, preserve and enhance the natural environment of the region and co-operate in the event of natural disasters, they shall adopt policies, strategies and programmes at national and regional levels and establish appropriate institutions to protect, preserve and enhance the environment, control erosion, deforestation, desertification, locusts and other pests.[40]The environmental policy proposes the vision of a peaceful, dignified and prosperous ECOWAS region where various and productive natural resources are preserved and managed on sustainable basis for the development and equilibrium of the sub-region. Therefore, production, processing, consumption, trading and disposal activities are controlled and managed in a healthy environment, from the point of view of raw material flows, wastes and final processes.[41]

Thus, the ECOWAS Supplementary Act relating to the Environmental Policy proclaims that: The ECOWAS Environmental Policy shall concern all activities relating to the management of natural resources (mines, forests, wild fauna, water resource), preservation of the eco-system and biological diversity, prevention and management of technological risks, the climate, pollutions and other environmental risks. The ECOWAS Environmental Policy shall be part of the ECOWAS vision for a "peaceful, dignified and thriving West Africa whose various productive natural resources are sustainably preserved, strengthened and managed for the development and stability of the sub-

[38]PElissavet, 'The Structure of the Economic Community of West African States (ECOWAS)' *University of Applied Sciences Bonn-Rhein-Sieg,* www.h-brs.de2015 accessed on 3/06/2023 page 2-10

[39]T Shaw, 'Regionalism and the African Crisis: Towards a Political Economy of ECOWAS and SADCC' *West African Regional Co-operation Westview Press, Boulder* (1999),

[40]Revised Treaty of the Economic Community of West African States (ECOWAS), Annex VII-2 Cotonou 1993, Article 29(1) and (2)

[41]ECOWAS: ECOWAS Environmental Policy", ECOWAS Commission, Abuja, Nigeria, 2008, at 13available online at <http://www.comm.ecowas.int/dept/d/d2/en/ecowas_environment policy.pdf >, accessed 10 August, 2023

region. The ECOWAS Environmental Policy shall in its implementation, take into account actions and initiatives of various stakeholders' parliamentarians, civil society, and private sector etc. the sub-regional institutions in charge of environment and sustainable development.[42]The policy shall seek to address these challenges through: good governance and sustainable use of natural resources, national policies and regulations that will address industrial, pollution, urbanization and waste disposal. Efficient resource management aimed at poverty reduction and general improvement of the livelihood of the people.[43]

ECOWAS Policy on Establishment of a Common Market

ECOWAS member States takes a gradual approach to the evolution of a common tariff policy and the liberalization of trade, when this West Africa region was confronted by serious supply and demand side constraints as well as weak institutional and political capacities. They are thus less able to reap potential benefits of trade, investment and technological transformation from globalization. It is hence argued that for developing poor countries, regional market integration is crucial for meeting the challenges of globalization. Regional market integration has been seen as a way out of the problem of small size of most ECOWAS countries and economies.[44] ECOWAS, though, has followed the European Union's model which moved from an economic to a political union as it tagged on supplemental treaties to its Union's original protocol. The 1960 Rome Treaty provided for establishing a common market, a customs union and common policies for the EU countries. ECOWAS original treaty set up eight technical committees of which trade, customs, taxation, statistics, money and payments was one.[45] The Treaty provides that its goals will be accomplished in three stages. It sets forth an initial two-year grace period from the entry into force of the Treaty during which time a Member State may not be required to reduce or eliminate import duties.[46]

In order to assist building on the commitment to have a common market, better policies and regulations for investment, ECOWAS Member States decided to use the impetus of preparations towards the Economic Partnership Agreements (EPAs) to harmonize their regulations on investment and work for the establishment of a common regional investment rule and code, to establish the common investment market. The Road Map to EPAs negotiations between West Africa and the European Union (EU) was adopted on August 4, 2004 in Accra, Ghana.[47]The Council of Ministers during their 60th Session on 17-18 June, 2008 adopted the two documents signalling the commencement of the process towards the harmonization of community investment rule into a code.[48]

The Treaty also requires that Member States, upon the Trade Customs, Immigration, Monetary and Payments Commission, harmonize and standardize their customs regulations and procedures.[49] Certain safeguard provisions are contained in the Treaty as well. Most importantly, the Council of Ministers, on the report of the Executive Secretary and recommendations of the appropriate commissions, must determine the compensation to be paid a Member State which suffers loss of

[42] Articles 3-6 of the Supplementary Act A/SA.4/12/08 Relating to the ECOWAS Environmental Policy, Thirty Fifth Ordinary Session of the Authority of Heads of State and Government Abuja, 19 December, 2008

[43]ECOWAS: ECOWAS Environmental Policy", ECOWAS Commission, Abuja, Nigeria, 2008, at 13<http://www.comm.ecowas.int/dept/d/d2/en/ecowas environment policy.pdf> , accessed 10 August, 2023 see

[44]N.O Rosemary, "Market Integration And Expansion of Intra-Regional Export Trade: The Case of Nigerian Cocoa in ECOWAS" available online at http://www.unionbankng.com/uddrose.pdf, accessed 10 August, 2023

[45]BNapoleon, 'The Political and Security Challenges Facing ECOWAS in the Twenty-first Century: Testing the Limits of an Organization's Reputation' *International Journal of Humanities and Social Science Vol. 3 No. 3; February* 2017 at 16

[46] ECOWAS Treaty supra

[47]N.B. Lambert "ECOWAS Common Investment Market Initiative" <http://www.privatesector.ecowas.int/en/III/Key Note Address of Commissioner.pdf>, accessed 9 August, 2023

[48]Director: Private Sector Department ECOWAS Commission, 'Basis for ECOWAS Common Investment Market' <http://www.privatesector.ecowas.int/en/III/Basis English for ECOWAS Common Market.pdf> accessed 9 August, 2023

[49] Article 23 ECOWAS Treaty

import duties resulting from the lowering and elimination of customs.[50]The Treaty gave multinationals, fund managers and other investors now give preference to regional, rather than national markets in making decisions where to invest. The focus of the ECOWAS common investment market will be to make ECOWAS one of the major destinations for regional and international investors while simultaneously enhancing national investment. Investment is critical not only for sustainable regional integration, but also for overall socio-economic development of the entire region.[51]

Member States agreed in Article 37 of the 1993 revised ECOWAS treaty that there shall be a 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.[52] Member States shall, schedule to be recommended by the trade, customs, taxation, statistics, money and payments commission, abolish existing differences in their external Customs tariffs. Member States undertake to apply the common Customs nomenclature and Customs statistical nomenclature adopted by Council. The treaty further provided that goods shall be accepted as eligible for Community tariff treatment if they have been consigned to the territory of the importing Member States from the territory of another Member State and originate from the Community.

ECOWAS Policy on Transportation and Communication

The aim towards realizing integration task can be attained through successful transportation and communication projects. Transportation projects bring direct and indirect benefits by means of job creation and efficiency of operation. These benefits may be realized by coordinated planning, building and/or the operation of transportation facilities, such as West Africa Airline, a joint airline system, replacing the now defunct East African Airlines, a regionally integrated railway network with identical railway gauges, regional shipping companies, or an integrated highway system. The Transport, Telecommunications and Energy Commission have important responsibilities with regard to establishing transportation and communications infrastructure.[53] These responsibilities include: formulating plans for a comprehensive network of roads within the community; supervising the rapid completion of the West African section of the Pan African telecommunications network, directing the improvement, reorganization and linking of railways and establishing the links necessary for the economic and social development of the community; planning the harmonization of policies on shipping and international waterways of the Member States; and formulating proposals designed to improve postal services.

The Commission initiated in 2008 a study aimed at developing a master plan on the interconnection and modernisation of the region's rail networks. The proposed ECOWAS railway system is expected to commence soonest after years of neglect to connect Nigeria Benin, Togo, Ghana and Côte d' Ivoire with a single railway line, expected to be 1,178 kilometres long, to connect the sub-region and end in Abidjan, Ivory Coast.[54] The project is expected to transform the region's transportation system by launching new high-speed passenger and goods rail services among others

ECOWAS Policies on Economy, Finance, Education, Social and Cultural Sectors

ECOWAS Member States have been saddled with the necessity of relying on foreign assistance funds whether in the form of government loans and grants or private investment. As a result of their

[50] Article 25 ECOWAS Treaty

[51]Abubakar M.S, 'ECOWAS: The Challenges of Regional Integration' Available online at http://www.gamji.com/article8000/NEWS8443, accessed 9 August, 2023

[52] Article 37 Revised Treaty of the Economic Community of West African States (ECOWAS), Annex VII-2 Cotonou 1993.

[53] ibid

[54] ECOWAS Commission, "Recruitment Of A Consultant For The Update of The ECOWAS Railway Networks Interconnection Master Plan" available online at services.ecowas.int/wp-content/uploads/.../EOI-ECOWAS-Railway.docx accessed 5 August, 2023

reliance on foreign funds, Member States of ECOWAS also have been plagued by unfavorable trade balances and budgetary restrictions. ECOWAS member States undertake to achieve the status of an economic union within a maximum period of fifteen (15) years following the commencement of the regional trade liberalization scheme, adopted by the Authority through its Decision A/DEC. 119/ 83 of 20 May, 1983 and launched on 1 January, 1990. The Treaty of Lagos takes a relatively conservative to moderate approach towards promoting cooperation in monetary and financial policy. The Trade, Customs, Immigration, Monetary and Payments Commission have chief responsibility in regard to the fostering of monetary and financial cooperation among ECOWAS nations. Its responsibilities include making recommendations to the Council of Ministers on the harmonization of the economic and fiscal policies of the Member States, and attending to the maintenance of a balance of payments.[55]

Under the ECOWAS revised treaty in 1993, the following were proclaimed under the Economic, Financial, Social and Cultural Sectors by the member states: 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, Member States undertake to: study monetary and financial developments in the region; harmonies their monetary, financial and payments policies; facilitate the liberalization of intra-regional payments transactions and, as an interim measure, ensure limited convertibility of currencies, establish a Community Central Bank and a common currency zone.[56]

On the other hand, the implementation of three major Supplementary Acts by the ECOWAS Heads of States, on 19 December, 2008, the Commission is proceeding with the adoption of the Regional Common investment market.[57] The steps in economic integration are defined in terms of the definitions of integration arrangements that follow in logical progression, First, a free trade area is characterized by intra-regional free trade but with each member country 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 duty free imports from the rest of the world through the member state with the lowest general tariff.[58] The second type of economic integration adds a common external tariff to create a customs union. This effectively removes the problem of trade deflection to which a free trade area is usually exposed. The third type of economic integration allows the intraregional free flow of factors of production and is known as a common market. Therefore, a key and immediate concern is to develop a regional investment one of the factors of production code, compliant with West African macro-economic convergence criteria that will make the countries in the community to improve their macro-economic stability as well as to enhance credibility of the regional economic policy.[59]

ECOWAS Policy on Energy, Gas Pipeline and Power Pool

Article 28 of ECOWAS treaty was targeted to co-ordinate and harmonized policies and programmes in the field of energy to ensure the effective development of the energy resources of the region; establish appropriate co-operation mechanisms with a view to ensuring a regular supply of hydrocarbons; promote the development of new and renewable energy particularly solar energy in the framework of the policy of diversification of sources of energy; harmonies their national energy development plans by ensuring particularly the inter- connection of electricity distribution

[55] Article 36 ECOWAS Treaty

[56]Revised Treaty of the Economic Community of West African States (ECOWAS), Annex VII-2 Cotonou 1993, Article 51 (a)-(g)

[57]These Acts are; Supplementary Act A/SA.1/12/08 Adopting community competition rules and the modalities for their application within ECOWAS; Supplementary Act A/SA.2/12/08 on the establishment, functions and operation of the regional competition authority for ECOWAS; and Supplementary Act A/SA.3/12/08 adopting community rules on investment and the modalities for their implementation with ECOWAS.

[58] ECOWAS: 'ECOWAS Common Investment Market Vision', ECOWAS Commission, Abuja, 2009 at 6-7, <http://www.ecobiz.ecowas.int/en/pdf/cim English version.pdf>Accessed 12 August, 2023

[59]Articles 3.2 (f) and 3.2 (i) of the revised ECOWAS Treaty

networks; articulate a common energy policy, particularly, in the field of research, exploitation, production and distribution; establish an adequate mechanism for the collective solution of the energy development problems within the Community, particularly those relating to energy transmission, the shortage of skilled technicians and financial resources for the implementation of energy projects of Member States.[60]

While the WAPP aims to integrate the national power systems: to create a unified regional electricity market; provide adequate, reliable and affordable electricity; share hydro and gas resources; and quadruple within 20 years inter-connection capacities between member states. ECOWAS adopted, in December 1999, the principle of setting up a West African Power Pool system (WAPP). This led to the formulation of a master plan for the development of energy production means and inter-connecting electricity grids with a view to boosting Member States' inter-connection capacity and multiplying it by four between 2005 and 2020. WAPP's objective is to interconnect national grids across 5,600 km in most West African countries.[61] The ECOWAS programme on its Energy Policy has two major energy projects namely the West African Power Pool (WAPP) that aspires to inter-connect the power grids of all Member States, and the West African Gas Pipeline Project (WAGPP) that aims to link three nations (Benin, Ghana and Togo) to Nigeria's natural gas supply.[62]The policies are put in place by ECOWAS with vision to achieve its objectives in the nearest future.

6. Expansion of ECOWAS Whims to Human Rights Violations Cases

In the spirit of togetherness, and in order to actualise her goal, Article 4(g) of the Treaty guarantees its peoples the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People Rights. This provision had empowered the court with human rights mandate which has transformed it into an international law court for human rights abuse for the West African region.[63]

This important new mandate and its initial objective of promoting economic community in West African states have therefore generated a series of reactions[64] in the sub-region, and across the global world most especially challenges in the enforcement of her judgment. The court on several occasions had given a suppose impactful decision/judgment[65] in the area of violation of human rights of ECOWAS citizens but due to lack of political will of the regional government, same have not be comply with. Hence, it has attracted criticisms/condemnation across the global world.

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[60] Revised Treaty of the Economic Community of West African States (ECOWAS), Annex VII-2 Cotonou 1993, Article 28

[61] Davidson O, 'Sustainable Energy in Sub Saharan Africa', International Council for Science (ICSU) Regional Office for Africa Science Plan, Report approved by the ICSU Regional Committee for Africa, on 5–6 March 2007 in the Seychelles, at 8

[62] The WAPP was created in 1999 by ECOWAS Member States (A/DEC.5/12/99) and granted the status of ECOWAS Specialised Institution in 2006 (A/DEC.20/01/06)

[63] Supplementary Protocol A/SP1/01/05 Amending the Preamble and Articles 1, 2, 9 and 30 of Protocol (A/P.1/7/91) Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol, Jan. 19, 2005 [hereinafter 2005 Protocol], at <http://www.courtecoas.org/site2012/pdf files/supplementary protocol.pdf.> Accessed on April 17, 2023

[64] ST Ebobrah, 'Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice' *Journal of African Law, 54, 1 (2010), 1–25 © School of Oriental and African Studies*, 2010)
<doi:10.1017/S0021855309990143> accessed on 7/06/2023
Also in J Karen, 'A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice' American Journal of International Law, A.J.I.L (2015) p. 107.

[65] Some of these cases include *Hadijatou Mani Koraou v the Republic of Niger* ECW/CCJ/APP/08/08 ECW/CCJ/JUD/06/08, CCJELR (2009) ; *Musa Saidykhan v Republic of the Gambia* (2009) ECW/CCJ/APP/11/07; *Prof. Etim Moses Essien v Republic of Gambia*, ECW/CCJ/APP/05/05 ECW/CCJ/JUD/05/07, CCJELR (2009) ; *Femi Falana v Republic of Senegal* ECW/CCJ/APP/05/08-ECW/CCJ/RUL/01/10 of 274-2010 Community Court of Justice, ECOWAS: List of Decided Cases [CEDEAO]; Nigeria and ECOWAS Judgement; List of Decided Cases 2004-2014; ECOWAS Court Report'; List of Decided Cases from 2004 ECOWAS Court of Justice Home>Cases> Accessed January, 12th, 2023

Thus, the case of *Socio-Economic Rights Accountability Project v Federal Republic of Nigeria*[66] is apposite here. The applicant claimed that Peoples' right to satisfactory environment for development under Article 24 of African Charter have been infringed upon by the respondent. The applicant a non-governmental organization registered in Nigeria contended that the Niger Delta, rich in resources, plants and wildlife had suffered decades of oil spills which destroyed the surrounding environment, reducing its farming and fishing productivity for local communities. The spills impacted the communities' access to food and had a negative impact on their health. The applicant attributed the damage to the government's poor maintenance of infrastructure, human error, vandalism, oil theft and conflict leading to poverty. The applicant argued that as a result of these failures, the people of the Niger Delta were denied their rights to an adequate standard of living, clean water and environment, social and economic development, life, dignity, and human security. The Court held that although ECOWAS has not adopted a specific human rights instrument, the Court considers all international human rights treaties to which ECOWAS member states are parties in matters that come before it[67].

Again, in *Hon. Justice Aladetoyinbo v FRN*[68] one of the issues contended among others was whether the applicant disclosed any reasonable cause of action against the Respondent for court to assume jurisdiction on it. The court in handling this issue, defined cause of action as follow; "a matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is a right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or suit is grounded whether or not legally maintainable. The court further stated that "a cause of action is the heart of any complaint, and it is gleaned from the pleadings that initiate a lawsuit. Without a proper and adequately stated cause of action a Plaintiff's case may be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitles the Plaintiff to relief. All the elements of each cause of action must be detailed in the application."[69] Parties are therefore mandated to stick to the rules and practice direction of the court in order to bring a competent application before the court.

Similarly, former Nigeria's National Security Adviser, Rtd. Col. Sambo Dasuki who is being hounded and detained by the Economic and Financial Crimes' Commission for financial misappropriation, misapplication and diversion of security funds meant for insurgency-fighting Arms' purchase, dragged the Federal Government to the ECOWAS Court[70]. He sued the Federal Government for the enforcement of his rights to freedom as guaranteed by the African Charter on Human and People's Rights, as enshrined in Article 17 of the International Covenant on Civil and Political Right and Article 12 of the 1948 Universal Declaration of Human Rights. He equally sought an order of injunction restraining the federal government or any of its privies from intimidating and infringing on his fundamental rights under national and international laws on human rights protection. He has been kept in Prison custody since December 2015 despite being granted bail by the Nigerian Court. Even though the Federal government through its counsel, opposed the application and made a preliminary objection on the grounds that the court lacked jurisdiction on criminal matters, lacks appellate court powers over national court matters, that the applicant should have approached the national court since the court can grant all the remedies sought, but the court through its Judge, Nwoke J assumed jurisdiction nonetheless as it deems the matter to be purely a human rights' violation. Despite the order of the court, the Nigeria government failed to release him as ordered by the court.

[66] ECOWAS, General List No. ECW/CCJ/APP/09, Judgment No: ECW/CCJ/JUD/18/2012
[67] Ibid
[68] JUGDEMENT NO: ECW/CCJ/JUD/18/20
[69] ECOWAS court of justice cases wherein cause of action was considered *Incorporated Trustees of Fiscal & Civil Rights Enlightenment Foundation v Fed Rep of Nigeria & 2 Ors* ECW/CCJ/JUD/18/1, *Rev. Solomon MFA & 11 ORS v Federal Republic of Nigeria & 5 Ors* Judgment NO ECW/CCJ/JUD/06/19 @ *Pg and Ebere Anthonia Amadi & 3 Ors v The Federal Government of Nigeria Judgment NO* ECW/CCJ/JUD/22/19 @ Pg. 10
[70]<www.thisdaylive.com/index-Nigeria> Accessed March 15th, 2023.

Furthermore, in the case of *President of the Commission of ECOWAS v Ndiaye*[71] the claimant/respondent who was a staff of the Commission of ECOWAS sued the defendant/appellant in the National Industrial Court in Nigeria for orders declaring his suspension from office by the Commission unlawful and a violation of ECOWAS Regulations, and damages from the defendant/appellant for publishing what the claimant/respondent claimed to be 'libellous' suspension letter. The defendant/appellant while responding to the suit filed a statement of defence together with a motion on notice objecting to the jurisdiction of the National Industrial Court on grounds of diplomatic immunity he enjoys from proceedings in municipal courts of Nigeria by virtue of the Revised Treaty of ECOWAS, General Convention on Privileges and Immunities of ECOWAS and the Headquarters Agreement between ECOWAS and the Government of the Republic of Nigeria. He further placed reliance on Principles of Staff Employment and ECOWAS staff Regulations. In addition, he attached a certificate from Nigeria's Minister of Foreign Affairs which acknowledged the diplomatic immunity of the defendant/appellant. The trial judge while dismissing the defendant/appellant preliminary objection cited the provision of Section 254 (2) of the 1999 Constitution (as amended in 2011) and Order 14 Rule 1 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017 to hold that the National Industrial Court had jurisdiction to resolve all employment matters in Nigeria, including cases that have an international element such as the one under consideration.

However, on appeal it was held that the Certificate of the Minister of Foreign Affairs of Nigeria attached to the affidavit of Chika Onyewuchi in support of appellant's application/objection before the trial Court is sufficient and in fact, conclusive evidence of the immunity claimed by the appellant. The court went further to states that even Section 254C(2) of the 1999 Constitution of the Federal Republic of Nigeria which states that 'Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith,' does not by any means have the effect of conferring jurisdiction on the National Industrial Court over diplomats.

It is therefore obvious that one of noticeable challenges facing the ECOWAS Community Court of Justice is the enforcement mechanism. It has little or no efficient means of coercion and a well-defined enforcement mechanism for applying and enforcing its delivered judgements in its respective member states, thereby making the enforcement of the court's decision altogether difficult, cumbersome and sometimes impossible; this is more worrisome in its expanded jurisdiction of adjudication over human rights' violation and the enforcement of the decisions of the court especially on imposition of punitive measures and sanctions on member states who fail, neglect or refuse to fulfil their obligations under the ECOWAS Treaty.

7. Conclusion and Recommendations

The history of regional integration has been long in the developing world and in West Africa in particular. Since the inception of the ECOWAS in 1975, more than five decades ago, ECOWAS has been one of the more successful regions of Africa in terms of efforts towards economy integration. The ECOWAS efforts at integration including the structural, institutional framework and implementation of various ECOWAS policies as discussed above has been more impactful compared to other efforts in Africa. The future integration of this region looks bright so long as powers do not become imbalanced, leaders of these nations remain committed to solidarity, and the international community continues to support these efforts. The freak challenges in the various ECOWAS countries should not be allowed to overturn the ECOWAS goals. The leaders of the region must be attuned to the fact that the political will to move beyond the nation State is a vital pre-requisite to attaining some minimal degree of regional cooperation. Efforts to render West Africa totally borderless by graduating the Community from ECOWAS of states to ECOWAS of peoples are projected for 2030. The head of ECOWAS States must promptly comply with pronouncement/order or judgment of the court since the court was established in order to resolve dispute arises across the region most importantly dispute relating to human rights violation cases.

[71] *President of the Commission of ECOWAS v Ndiaye* (2021) LPELR 53523 (CA) 19-20.