# THE FRAMEWORK OF ECONOMIC AND HUMAN RIGHTS UNDER THE ECOWAS TREATY:

# A CASE STUDY OF IMPLEMENTATION IN NIGERIA.

**BY**

**ASO LARRYS PETERS**
**LL.M/LAW/27528/2001-2002**

**A THESIS SUBMITTED TO THE POST GRADUATE SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE, (LLM)**

**DEPARTMENT OF PUBLIC LAW**

**AHMADU BELLO UNIVERSITY, ZARIA**

**OCTOBER 2004**

# DECLARATION

I hereby declare that this thesis is the result of my research work. It has not been presented on any previous application for Higher Degree. All quotations are indicated in the endnotes and sources of information are dully acknowledged by means of reference. I assume responsibility for any error of either omission or commission herein.

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**ASO LARRYS PETERS**
**DEPARTMENT OF PUBLIC LAW**
**FACULTY OF LAW**
**A B U ZARIA**

# CERTIFICATION

This thesis entitled: **THE FARMEWORK OF ECONOMIC AND HUMAN RIGHTS UNDER THE ECOWAS TREATY: A CASE STUDY OF IMPLEMENTATION IN NIGERIA,** Meets the regulation governing the award of the DEGREE of MASTER of LAWS of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation.

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DR. M.T. LADAN DATE

_____ _____
DR. NUHU MUHAMMAD JAMO DATE

_____ _____
DR. MUHAMMAD TAWFIQ LADAN DATE
Head. Department of Public Law

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**DEAN POSTGRADUATE SCHOOL**

**AHMADU BELLO UNIVERSITY**

**ZARIA**

# DEDICATION

This thesis is dedicated to GOD ALMIGHTY the source of all wisdom, knowledge and my inspiration.

And to my beloved Late Father **Mr. ASO LAWRENCE OGUNMOLA** (aka REPAIRER ODE) who bought me application form for Common Entrance Examination into Secondary School but never stayed to witness my admission into secondary school. Daddy, the candle you lit that fateful day is still burning.

AND To You, **DR. M.T LADAN.** My Benefactor, my great Encourager, my Mentor and Teacher. You are just wonderful. "***Na gode. Allah saa mu da che.***"

# ACKNOWLEDGEMENT

To God be the glory. It has pleased Him to bring me to this height in my quest for acquisition of knowledge and wisdom. Thank you God Almighty for counting me this worthy.

I am eternally indebted to my elder brother: **Mr. Ben Toye Lawrence,** for his commitment to my excellence and his support morally, financially and other wise. May God reward you abundantly.

I also want to appreciate the assistance, tolerance, support, moral and otherwise of **Prof. JS. Aliyu, Gbenga Maiyaki; Mr. F.F Cho Barr. Madaki, N.C. Obi Esq** (my **Principal Partner in the office) Barr. Kersha Aerga, Barr. Alex Adum** for their encouragement support and providing me with some materials for this research work. I also want to thank **Barr. Femi Olutimehim** for his encouragement and support. And to all my good friends out there, too numerous to mention here – Thank you for your support and encouragement.

Once again, I like to thank my Supervisor **Dr. M.T LADAN,** who also taught me Public International law in the LLM class. **Dr. MT LADAN** is a special breed second to none that I know. He is one of the very few that actually impacted knowledge in me. Thank you Sir and may God continue to enrich you with wisdom and knowledge. Furthermore, I want to specifically thank **Professor K.S. Chukkol, Dr. Yusuf Aboki, Prof. M.G. Yakubu, Dr. J.G. Irokalibe, Dr, Nuhu Muhammed Jamo, Dr. S.M.G. Kanam, Mr. Linus A.H.** and other Lecturers for teaching me that, success is the result of hard work. Thank you for taking your time to impact knowledge in me. I remain eternally grateful.

**Vivian Ibiba Jackreece,** you played the role of a sister, sometimes a mother but you are my friend and fiancée. Your contribution is priceless. I pray that the cord that binds your heart to mine will ever remain strong. None could have done it better. I remain indebted to you forever.

***…… ASO LARRYS PETERS; 2004.***

# *ABSTRACT*

The 1975 ECOWAS Treaty made by the founding fathers of the West African Regional Integration Philosophy was revised in 1993 in view of the developments in the region and the new world order. ECOWAS is still today, the common partnership through which Member States attempts to aggregate their common dream and aspiration for a prosperous United Economic Union in the Africa sub-region.

The Integration instruments though very ambitious made no pretension of the hopes and aspiration it seeks to achieve in this globalize and competitive world. The carry over of Colonialism and the epileptic nature of the African Economy tends to presents the coming together of African Countries synonymous with coming together to share poverty. The divide and rule strategy of the West has made African States to distrust themselves that today, the Franco-phones speaking West African is suspicious of every move of the Anglo phone on the Integration Ideology. Hence every state party does not want to concede anything out of its sovereignty to the organization but wants to harvest the whole benefit of integration.

This thesis attempts in the main, to bring to the fore both the Economic and Human Rights frame work as enshrine in the ECOWAS Treaty and the journey so far and the implementation of the acts and decisions of the community in Nigeria in particular. The first chapter introduces the research work. The second chapter considers the meaning of Treaty and Treaty as a source of international law. The third chapter of this thesis deals with the meaning, nature and scope of Economic integration. The chapter also considers economic integration under the ECOWAS Treaty. The forth chapter considers the analysis of human right framework under the ECOWAS Treaty. The fifth and the concluding chapter, summarizes the work and offers some far reaching recommendation for policy makers and the operators of the ECOWAS Treaty.

This thesis presents to the reader a handy compendium of recent status and trends in the West African Integration agenda through ECOWAS and the issues, challenges and prospects of the Organization and the call for more commitments of State Parties to the ECOWAS Programmes.

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# TABLE OF ABBREVIATIONS

| | | |
|---|---|---|
| 1. | ECOWAS – | ECONOMIC COMMUNITY OF WEST AFRICAN STATES |
| 2. | O.A.U | ORGANSATION OF AFRICA UNITY |
| 3. | A.U | AFRICA UNION |
| 4. | E.U | EUROPEAN UNION |
| 5. | U.N | UNITED NATIONS |
| 6. | ICCPR | INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS |
| 7. | ICESCR | INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS |
| 8. | CERD. | CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRINATION |
| 9. | NEPAD | NEW ECONOMIC PARTNERSHIP FOR AFRICAN DEVELOPMENT |
| 10. | CEDAN | CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGANST WOMEN |
| 11. | NWLR | NIGERIA WEEKLY LAWS REPORT |
| 12. | ICJ | INTERNATIONAL COURT OF JUSTICE |
| 13. | ILR | INTERNATIONAL LAW REPORT |
| 14. | AEC | AFRICAN ECONOMIC COMMUNITY |

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1. ECOWAS TREATY 1975 AND ITS VARIOUS PROTOCOLS.
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# CHAPTER ONE

## 1.0 INTRODUCTION

### 1.1 HISTORICAL BACKGROUND

In many parts of the world today some form of economic integration is either in existence or actively in prospect. This wide spread enthusiasm for the formation of customs unions, free trade areas, common markets or economic unions among groups of countries derives from a complex of motives and sentiments. In Western Europe after the Second World War, the search for a permanent peace and world orders caused a spurt of integration initiatives some of which have been a success up to the present. For the Eastern bloc, socialist integration within the frame work of the council for mutual Economic Assistance sets itself the aim of achieving rapid economic, scientific and technical progress in all the member-countries and of raising the material and cultural standards of their peoples through deep structural changes in economy in accordance with the objectives requirements of scientific and technical progress[1].

The urge for close economic ties is further reinforced by the growing realisation, that the small size of some less developed countries is a serious obstacle to rapid economic development.

The birth of ECOWAS on 28th May 1975 in Lagos marked the beginning of a new era in the history of economic co-operation in West Africa. The United Nations Economic Commission for Africa (ECA) in Resolution 1429(viii) and 145(vii) passed at its seventh session held in Nairobi in February 1965, recommended that member- states of the commission should establish as soon as possible sub-regional Inter-governmental Machinery for harmonising their economic and social development. Because of the practical difficulties involved in forming economic groupings among independent states, especially less

developed ones, it took West Africa countries about ten years from the time of the ECA resolution to form ECOWAS[2].

The founding fathers of ECOWAS in 1975 went far beyond the concept of economic co-operation. They saw their enterprise in terms of an economic community and economic integration. They set about establishing a more structured form of co-operation that seeks the fusion of the national economies of the 16 sovereign partner states in order to accelerate, foster and encourage the economic and social development of their states and thus improve the living standards of their peoples.

Shortly after the ratification by member states of the 1975 treaty, omissions and weaknesses were noticed in the tenor of the Lagos treaty. The Lagos treaty it was discovered made no express provision for political co-operation regional peace and security. Perhaps the assumption here was that matters of regional peace and security, no less than political cooperation, were to be taken care of by the organisation of Africa Unity now Africa Union, so there was no need to provide for these expressly in the treaty. Its was to be realised shortly by states parties to the treaty that the economics of integration and the politics of integration were inseparable twins. Accordingly, the community adopted a protocol on Non-Aggression in 1978 and another protocol of mutual assistance in Defence matters in 1981. These two protocols reflect the realisation by the Heads of State that a politically peaceful, secure and stable environment was critical to the promotion of economic cooperation and integration among the member states[3].

Its worthy of note here that, the overall objective of ECOWAS is to promote co-operation and integration in order to create an economic and monetary union for encouraging economic growth and development in West Africa. The world now is a global village and the wind of change has put on the front burner of legal and

political discourse the issues of Democracy and Human Rights within the framework of developing societies where drastic state or regional action is some times needed to address acute socio-economic problems. To address this short coming of the ECOWAS treaty and its countless protocol and to be in tune with the new world order of democracy and Human Rights as vehicle for sustainable development, world peace and security, coupled with the slowness in the progress recorded by the ECOWAS and the new challenges in regional security the 1975 treaty was revised in 1993.

One of the most far-reaching consequences of the review of the 1975 ECOWAS treaty was a recommendation for the adoption of fundamental principle by the community. These principles now contained in Articles 4 of the 1993 treaty include maintenance of regional peace, stability and security through the promotion of good neighbourliness, peaceful settlement of disputes among member states, recognition, promotion and protection of human Rights in accordance with the provisions of the Africa Charter on Human and peoples Rights, accountability, economic and social justice and popular participation in development and promotion and consolidation of a democratic system of governance in each member state[5].

The treaty establishes various institutions for the community that will ensures the realisation of the goals and objectives of the founding fathers of the organisation. The institutions of the community as envisaged under the revised treaty are:

- The Authority of Heads of State and Government, which is the highest Authority of the Community.
- The Council of Ministers.
- The Community Parliament
- The Economics and Social Council.
- The Community Court of Justice.

- The Executive Secretariat, which is the Engine Room of the Community.
- The Fund for Co-operation, compensation and Development.
- Specialised Technical Commissions; and
- Any other Institutions established by the Authority.

It should be noted that among the Technical Commissions, there is one on Political, Judicial and Legal Affairs. A technical body on regional Security and Immigration now comprises a regular meeting of the service chiefs or representative of the service chiefs of the member states of the community. They are regularly joined by the Field Commander of ECOMOG whose, present operational base is Freetown, Sierra Leone [6].

The various institutions and commissions are established and empowered to oversee the realisation of the arms and objectives of ECOWAS as an international organisation.

The implementation of the acts and decisions of the community has been a bane in the realisation of the objectives of the regional organisation. This work appraises the integration philosophy of the ECOWAS treaty and considers how Nigeria has faired so far in the implementation of the programmes of the community as she is seen and treated as a super power both economically, politically and other wise within the community.

## 1.2 AIMS AND OBJECTIVES

This work in the main is to examines critically the ECOWAS treaty with a view to bringing to the fore for policy makers appreciation, the interplay of politics and economics in the new world order and the complexity of respect and protection of Human Rights. In trying to do this, this work considers the various frameworks enshrined in the revised ECOWAS treaty and its various protocols and how far

they have been implemented in Nigeria being the most dominant political and economic power in the sub region. It is often said that if the treaty provisions are fully implemented sincerely in Nigeria by the Nigeria government the lofty intentions of the founding fathers of ECOWAS would have been fifty percent realised. Since Nigeria influences both the political and economic climate to a great extent in the sub-region and in Africa.

## 1.3 NATURE AND SCOPE

This research work is purely theoretical it is an analysis of literatures and statutes in relation to the subject of research. The scope is limited to Economic and Human Rights frameworks under the ECOWAS treaty and its implementation only in Nigeria. The implementation by other state parties to the treaty is not considered and the Economic and Human Rights frame work in other instruments, legislation, charter etc are also not considered. However, where comparative analysis is desirable in a particular circumstance which are relevant for good and clear presentation of facts and position, references is made to other state parties or instruments respectively. These situations are clearly acknowledged and stated in this work where they exist.

## 1.4 METHODOLOGY

This work as mentioned above is theoretical. Hence, literatures, Law reports. Statutes Books, Journals, Standard text on the subject of research, charters, the ECOWAS treaty (both 1975 and Revised copy) and its various protocols are explored.

Relevant institutions were visited, Parastatals, Ministries responsible for the implementation of various programmes relating to the ECOWAS was visited and relevant materials and information obtained for this work. Ministerial briefing, of relevant Ministries and interim reports of principal officers of relevant institutions, which are relevant to the subject of study, are collected, explored and

analysed. Hence this work though theoretical, reflect first hand and current trend and development in the implementation of the ECOWAS treaty particularly in Nigeria.

## 1.5 STRUCTURE OF THE THESIS

This research work is divided into five main chapters.

Chapter one deals with the introduction of the work and starts with Historical Background. The chapter also deals with the Aims and Objectives of the work, the Scope and Nature of the work, the methodology used in the research and the structural layout of the research work; that is, structural presentation of materials.

Chapter Two titled: Treaty as a source of international Law, deals with, the meaning of treaty, the various types of treaties, Ratification of treaty and Status of a ratified treaty in Nigeria.

Chapter Three titled The Nature and Scope of the Concept of Integration under ECOWAS. The chapter deals firstly with the concept of Integration, Nature and Scope of economic Integration under ECOWAS. It further considers the Nature and Scope of Economic Integration in Africa. And rounded up with ECOWAS Programmes and the Nigerian Experience.

Chapter Four titled Analysis of Human Rights framework under ECOWAS Treaty. This chapter considers the Evolution of the concept of Socio-economic Rights in Human Rights Jurisprudence; the nature and scope of concept of Human Rights under Africa charter, Analysis of Human Rights framework under the ECOWAS treaty, Analysis of the incidental rights of regional economic integration in West Africa.

Chapter Five titled conclusion and Recommendation is the last chapter and summarises the entire research work by highlighting salient issues and offering useful recommendation for policy makers.

**END NOTES/REFERENCES**


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4. **See generally** Articles 3&4 of the Revised ECOWAS Treaty 1993

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6. **Ibid.**

# CHAPTER TWO

## 2.0 TREATY AS A SOURCE OF INTERNATIONAL LAW

## 2.1 MEANING OF TREATY

Treaties are evidence of the express consent of states to regulate their interests according to International Law[1]. Article 2 (1) of the Vienna Convention on the Law of treaties 1969 defined treaty as:

"…an International agreement concluded between states in written form and governed by

International Law, whether embodied in a single instrument or in two or more related instrument

and whatever its particular designation".

The nature of a treaty is either bilateral (between two states) or multilateral (between more than two states). The particular designation of a treaty, that is, whether it is called "Covenant" or "Convention" or "Protocol" or "Charter" is only of relative interest. What is important however is that a treaty whether bilateral or multilateral, creates legally binding obligations for the states that are party to the treaty and serves as the primary source of Law for the settlement of dispute between state parties in respect of the subject matter of the treaty[2]. In the case of NICARAGUA V USA[3], where Nicaragua brought a claim against the USA for alleged certain unlawful military and paramilitary activities against Nicaragua territory, including the mining of Nicaragua Port and support of Nicaragua rebels, the contras. The USA argued that the court had no jurisdiction because inter-alia, they had entered a reservation to the International Court of Justice; Jurisdiction if the dispute concerned the application of the multilateral treaty, here the UN Charter, particularity, Article 2 (4) on the non-use of force. Nicaragua claimed; however that the International Court of Justice had jurisdiction because its claim was based on rules of Customary Law which although similar in content to the Law of the UN Charter had not been made redundant by it.

The International Court of Justice stated in the present dispute, the court, while exercising its jurisdiction only in respect of the application of the customary rules of non-use of force and non-intervention, cannot disregard the fact that the parties are bond by these rules as a matter of Treaty law and of customary international law. Furthermore, in the present case, apart from the Treaty commitment binding the parties to the rules in question, these are various instances of their having expressed recognition of the validity thereof as customary international law in other ways. It is therefore in the light of these subjective elements that the court has to appraise the relevant practice.

There are many designations used other than 'Treaty' to refer to an international agreement, for example, convention, protocol declaration, charter, covenant, agreement, concordat, although treaty is the accepted generic term. It should be noted here that Protocol is used when the agreement is made or entered into to amend a previous treaty already enforce.

The Vienna convention on the law of treaties only concerns treaties between states. It is possible to have treaties between a state and international organisations and between international organisations to which the law of treaties applies. However, the capacity of international organisation to conclude treaties is governed by the constituent instrument or rules of that organisation. There are an increasing number of agreements between states and private entities mainly relating with Commercial Matters. The International Court of Justice has recorded that the law of Treaty does not apply to these agreements because these agreements do not regulate in any way the relations between governments[4]. However, in TEXACO OVERSEAS PETROLEUM COMPANY VS. THE LIBYAN ARAB REPUBLIC[5] the view was taken that private entities may be able to take advantage of general rules of International Law in areas such as nationalisation/expropriation in order to invoke rights which result from the agreement with the state.

In AUSTRALIA Vs FRANCE AND NEW ZEALAND VS. FRANCE[6] the International Court of Justice took the view that sometimes a state can be legally bound under the law of treaties even though it has acted unilaterally through its representative.

Articles 6 of the Vienna Convention provide that every state possesses the capacity to conclude a treaty. Generally a treaty will however only legally bind a state if he ratifies it or accede to it where she is not originally signatory to the

treaty. A treaty may legally bind a state upon the signature on the treaty by the state. If the treaty so provides or if it is the intention of the state or of it parties to the treaty that signature will bound state[7].

Many multilateral treaties provide that a certain number of states must have ratified (or acceded to) the treaty before the treaty enters into force. As many multilateral treaties take many years to enter into force, Article 18 of the Vienna Convention is an important provision, as it obliges states not to defeat the object and purpose of the treaty. Even if a treaty is not in force, the fact that many states are bound by its terms may be evidence of state practice. A treaty can be amended by agreement between the parties by the use of a Protocol. A Protocol therefore is an International Instrument for amending an existing treaty, charter convention etc. A treaty must be in existence before a protocol can be made to amend either part of or whole of its articles or provisions. Articles 39 – 41 of the Vienna Convention 1969 provide for the rules governing amendments. Some good instances where protocols are used to amend a treaty or convention or charter can be seen in the several protocols adopted pursuant to the ECOWAS Treaty (Protocol on non Aggression in 1978 and the Protocol of mutual Assistance in Defence Matter in 1981) see also the Protocol relating to the mechanism for conflict prevention, management, resolution, peace-keeping and security 1999 adopted pursuant to the Revised ECOWAS Treaty of 1993. The Geneva Convention 1949 was amended by two additional Protocols in 1977.

All states, which are parties to a treaty, should be subject to the same rights and obligation under it. This must always be the case with bilateral treaties, being treaties between only two states. However, where a multilateral treaty is concerned, a state may decide, for a variety of political, social and legal reasons to restrict the extent to which it is bound by the treaty's entire obligation. This is usually done by making a reservation to the treaty. Most treaties today have some

provision regarding reservations, in which case the provision on reservation in each treaty will apply. However, in many cases, the international tribunal considering a reservation such as in Human right treaty will strive to interpret a reservation so that the object and purpose of a treaty is upheld without compromising a state's limitation on its consent to be bound by that treaty[8]. A treaty may comply with all the formal procedure for making it but still be unenforceable if it is invalid. Due to the privacy of the consent of states, another party to a treaty can still agree to allow the treaty to remain enforce despite these being a ground for invalidity. The grounds for invalidating a treaty in ranges from consent, error, conflict with jus cogens, fraud, corruption, coercion, threat of use of force, etc.

A treaty may expressly provide for ground of termination and processes for termination. In the absence of an express provision, the Vienna Convention would apply. The decision in the Air Services Agreement Case could mean that proportional counter-measures could be taken by a state even though that state is also taking action to terminate a treaty in accordance with the procedures of the Vienna Convention. The Vienna Convention provides in its Articles 54, 56, 59, 60, 61 and 62 various grounds for terminating a treaty. These include withdrawal by consent, denunciation suspension of the operation of a treaty, conclusion of a later treaty, Breach Supervening Impossibility of Performance and Fundamental changes of circumstance.

## 2.2 **TYPES OF TREATY**

Treaties represent a second important material source of International Law. The effect of any treaty in leading to the formation or rules of International Law depends on the nature of the treaty concerned[9]. Treaty may be law making (which lay down rules of universal or general application) or treaty – contracts

e.g. a treaty between two bilateral or only a few states (dealing with a special matter concerning these states exclusively (multilateral).

The provisions of a Law-making treaty are directly a source of International Law. This is not so with treaty contracts - which simply purport to lay down special obligations between the parties only. A Law making treaty can not in the nature of things be one containing rules of International Law always of universal application. Law making treaties may be of two kinds, that is; treaties enunciating rules of Universal International Law e.g. United Nations Charter and treaties laying down general or fairly general rules[10].

Then, even to the extent that a Law - making treaty is universal or general, it may be really a frame work convention, imposing duties to enact legislation, or offering areas of choice, within the ambit of which states are to apply the principles laid down therein. Besides, some multilateral treaties are to a large extent either confirmatory of, or represent a codification of customary rules as for example the Vienna Convention on Diplomatic Relation 1961[11].

The use of the term Law-making applied to treaties, has been criticised by some writers on the ground that these treaties do not so much lay down rules of Law as set out the contractual obligations which the states parties are to respect. This criticism may not stand on the fact that number of conventions and International Legislative Instruments that are now adopted by the organs of International Institutions such as the General Assemble of the United Nations and the conference of the International Labour Organisation, instead as before of being signed by the plenipotentiaries at diplomatic conference. Agreed, it is that some of these conventions and instruments need to be ratified or accepted by states in order to come into force, but certain of them are not even expressed in the consensual form.

Professor Stark has argues further that it may be that the designation 'normative treaties' may be the more appropriate term. In his view, it would be capable of embracing: Treaties operating as a general standard setting instruments, or which state apply either on a defecto or on a provisional basis, un-ratified conventions, significant as agreed statements of principles to which a large number of states have subscribed, closed or limited participation treaties opened for signature by a restricted number of countries, treaties formulating regional community rules[12] etc. Inter-agency agreements, treaties, those between International organisations and in addition, even agreements between an international organisation and a state can also be 'normative' in the sense that they may lay down norms of general application in certain areas. The more fact that there are a large number of parties to a multilateral convention does not mean that its provisions are of the nature of International Law, binding non-parties. Generally speaking, non-parties must by their conduct or strictly evidence an intention to accept such provisions as general rules of International Law.

Treat-contracts on the other hand are not directly a source of International Law. They may, however, as between the parties or signatories thereto, constitute particular Law; hence the use of the expression Particular Conventions in Article 38 (i)(a) of the statute of the International Court of Justice. Such treaties lead also to the formation of International Law through the operation of the principles governing the development of Customary Rules[13].

## 2.3 RATIFICATION OF TREATY

Articles 11 of the Vienna Convention on the Law of treaties 1969 provides that the consent of a state to be bound by a treaty may be expressed by signatures, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession or by any other mean if so agreed. Articles 14(i) of the same convention provides that:

> "The consent of a state to be bound by a treaty is expressed by ratification when:
>
> (a) The treaty provides for such consent to be expressed by means of ratification;
>
> (b) It is otherwise established that negotiating states were agreed that ratification should be required;
>
> (c) The representative of the state has signed the treaty subject to ratification or;
>
> (d) The intention of the state to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

From the forgoing provision, it is clear that a state may be legally bound by a treaty upon the signature on the treaty by the state through it authorised representative, but only if the treaty so provides, or if it is the intention of the state or of the parties to the treaty that signature would bound states, if not, generally, a state will be legally bound by a treaty only when she has ratified the treaty. Ratification of a treaty in some jurisdictions is a constitutional matter. This usually occurs after the state internal political and some times legal processes to approve the terms of the treaty have been completed.

In Nigeria, by virtue of Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria which provides:

*"No treaty between the Federation and any other country shall have the force of Law except to the extent to which any such treaty has been enacted into Law by the National Assembly".*

No treaty entered into by Nigeria shall have the force of Law in Nigeria unless the Provisions in S 12 (1) of the 1999 Constitution is duly complied with. Although Nigeria may be a signatory to it, it may have no force of law here in the country inspite of its provision to the contrary.

Many multilateral treaties provide that a certain number of states must have ratified (or acceded to) the treaty before the treaty enters into force. For instance, the Vienna Convention provides in Articles 84 that it will enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

Where a treaty requires ratification before it enter into force it must be so ratified by such number of parties as provided by the instrument before it can validly be enforceable. Article 89 of the Revised ECOWAS Treaty also provides that the treaty and the Protocols, which shall form an integral part thereof, shall enter into force upon ratification by at least new signatories states, in accordance with the constitutional procedures of each signatory state.

## 2.4 STATUS OF RATIFIED TREATY IN NIGERIA

Generally speaking International agreements particularly those relating to human rights employ two approaches namely the "treaty" method and "non-treaty" method. Whereas the treaty method creates legally binding obligations on state parties, the non-treaty method establishes non-legal commitments to guide signatory countries. Most of Nigeria's international obligations particularly human rights obligations fall into the first category, that is, the treaty method. Examples of this include ICCPR, ICESCR, AFCHPR, CEDAW, CRC and so on.

The Helgiuthi final Acts is an example of the non-treaty method. Ratification is used in two senses namely, the International Law Sense and the Constitutional Law Sense. In the latter senses, it is used where a domestic law e.g. the constitution lays down its own requirements for a valid act of ratification for instance under Article 11(2) of the United States Constitution, the ratification of a treaty must be by the President, by and with the advice and consent of a two third majority of the Senate.

Ratification, in the Constitutional Law Sense, is unknown to Nigerian Constitutional Jurisprudence. However, ratification in the International Law Sense is the exchange or deposit of a formal instrument, which is usually, itself also called ratification, by which a state signifies its willingness to become bound by a treaty. In multilateral treaties, ratification is accomplished by depositing the instrument with the designated authority, usually the government of the country where the conference was held, or in the case of United Nations treaties with the Secretary General in accordance with Article 102 of the United Nations Charter [13a].

The Constitutions of South Africa and Unites States for instances stipulate the appropriate authorities whose responsibility it is to ratify treaties. This is not so in Nigeria. Neither the 1960, 1963, 1979 and 1999 constitutions nor the treaties making Procedure etc). Decree No. 16 of 1993 designated the organ of state whose duty it is to form treaty obligations by ratification. Sections 69, 1960 Constitution Section, 74 1963 Constitution, Section 12, 1979 Constitution and Section 12 of the 1999 Constitution are all concerned with the process of implementing treaty obligations already formed Since treaty implementation falls within Exclusive Legislative List of the National Assembly. It is submitted that treaty – making power is by necessary implication vested exclusively on the Federal Government.

Nigeria, however, is not alone in this dilemma. It is said to be a feature of most Modern Federal States that the overall control over foreign relation, and in particular, treaty – making, are matter vested exclusively in the Federal Government. Hence, treaty making has been the prerogative of the Executive. Nigeria inherited this practice from England. This possibly explains why there has been no express Constitutional Provision on this matter. This is however a very sad development which the present constitutional review committee should consider as a matter of urgency in their consideration of the review.

The question may be asked whether mere ratification would justify the enforcement of provisions of treaties. Research reveals that ever since the Bamgalore Judicial Colloquium, the Monist Theory has made considerable in – road into such dualist Commonwealth Jurisdictions such as Tanzania, Botswana, Zimbabwe and so on. Consequently, in Tanzania's case of EPHRAIM VS. PASTORY AND ANOTHER

The court struck down a norm of Customary Law, which violated human rights treaties, which were merely ratified by Tanzania. The court stated that Tanzania has ratified the convention on the elimination of all forms of discrimination against woman. Tanzania has also ratified the African Charter of Human and People's Rights and finally Tanzania has ratified the International Convention on Court and Political Rights. It is clear that the customary law under discussion flies in the face of our Bill of Rights as well as the International Conventions to which we are signatories. In effect, the court held these conventions, which were merely ratified to be part of Tanzania domestic laws, which are enforceable, by the courts [13b]. In Nigeria, the Supreme Court in SANI ABACHA V FAWEHINMI[14] held that an International treaty entered into by the government of Nigeria does not become binding until enacted into Law by the National

Assembly. In effect, mere ratification (if its known to Nigeria Constitution) does not connote enforceability or domestication.

Although ratification simpliciter does not connote enforceability, it is not devoid of utility. A state that has ratified a treaty may not invoke the provisions of its domestic or Municipal Law as justification for its failure to abide by the provisions thereof. Although in the event of non-compliance with the provision of a treaty, action to redress the breach of the state's obligations under the treaty lies only at International Law[15]. And secondly the citizens of the state party may not be able to invoke the treaty provision in their Municipal Courts to sustain an action brought under the provisions of that treaty. There is however another sense in which the utility of ratification may be assessed. That is, that the value of a treaty should not be assessed primarily in terms of its direct enforceability in domestic courts. In many aspects and in many situations the principal value of a treaty will be as guide to applicable standards, as a framework for decision-making and as an agenda for change.

The constitution of Nigeria makes it obligatory for treaties to be re-enacted into domestic Law before they become justiciable sources of rights for citizens. This is referred to as the concept of domestication, or transformation of treaties. Two types of transformation are usually possible. In the first place, a state may enact its domestic law and therein refer to specific rules of International Law. In addition, such laws sanction the implementation of the rules of International Law to regulate the social relations of the parties to them. This method is called reference. The second method, which is more popular, is for a state to enact new rules of national law (or revise, or rescind already existing rules) to promote the execution of the rules of International Law. This is referred to as reception.[16]

These two methods are adopted for the purpose of domesticating Nigeria treaty obligations; Nigeria's obligation under the African Charter was domesticated through the method of transformation by reference. The charter is subjoined to Cap 10 as a schedule thereto. On the other hand, the Labour Act for instance domesticates Nigeria International Law obligation under ICESCR through the method of reception. This it does by re-enacting certain provisions of ICESCR as provisions of the Labour Act.

These two methods constitute just one limb of Nigeria's obligation. That is the obligation of means in other words, the obligation to transform treaty provisions into domestic Law. This can only be done by complying with the constitutional provision relating thereto.

The provision of S. 12 (1) of the 1999 Nigerian Constitution is very clear on what to do for a treaty, which Nigeria is a signatory to be recognised and enforceable as a Law in Nigeria. The section made it clear that unless the National Assembly enacts a treaty into Law, it shall not have the force of Law. Treaties by their nature are expression of agreed, compromise principles by the contracting states and they are generally autonomous of the Municipal Laws of contracting states as regards its application and construction. In this regards it is useful to appreciate that an International agreement embodied in a convention or treaty is autonomous, as the high contracting parties have submitted themselves to be bound by its provision, which are therefore above domestic legislation. Thus any domestic legislation in conflict with the convention is void.

In FAWEHINMI VS. ABACHA,[17] One of the question that came up for determination was: what was the status of the African charter on Human and people's Rights in Nigeria as against municipal law. The Court after reviewing previous authorities unanimously came to the conclusion that the provision of the

African charter on Human and Peoples' Rights are in a class of their own and not fall within the classification of the hierarchy of local legislation's in Nigeria in order of superiority. According to PATS- ACHOLONU J.C.A.: 15

"By not merely adopting the African charter but enacting it into our organic law, the tenor and Intendment of the preamble and section seem to vest that Act with a greater vigour and strength than mere decree for it has been elevated to a higher pedestal and as Bello C.J.N said in Ogugu V state (supra) its violability becomes actionable. Indeed in the realms of jurisprudence and citizen right to seek for remedy where there is a violation of rights and law, it cannot be said that no remedy exists. The intention of cap 10 is that it be accorded full force of law by which Nigeria is seen as a country that not only signs, respects and adopts the full contents and import of the convention or charter but has gone the extra mile of Incorporating same into our municipal law"

The court went further to state that the African charter as embodied in cap 10 Laws of the federation of Nigeria 1990 is a Law to which the court, the executive and the legislature, by virtue of section 10 (2) of the then Decree No. 107 of 1993 must give due recognition and enforce. The Law is in full force and because of its genesis, it has an aura of inviolability unlike most municipal Laws and may as long as it is in the statute book be clothed with vestment of inviolability.

Consequently, the court held that the learned trial judge erred in Law in holding that because the provisions of the chapter 4 of 1979 (now 1999) constitution a citizen cannot have recourse to it. The sovereign state of Nigeria pursuant to the convention on African charter on Human and Peoples' Rights enacted a legislation incorporating it as Nigerian Law. By virtue of section 1 of the African charter on Human and Peoples' Rights (Ratification and Enforcement) Act cap10 Laws of the federation of Africa 1990, the provisions of the Africa charter on Human and Peoples' Rights shall, subject as provided, have force of law in

Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising Legislative, Executive or Judicial powers in Nigeria. Nigeria incorporated the charter into its Statute books because it is a signatory to the convention by signing same and incorporating it into Laws; seeks to act in accord with the dictates of section 12 (1) of the 1999 constitution which requires that no treaty between the federation and any other country shall have force of Law except to the extent to which any such treaty is enacted into Law by the National Assembly.

In the words of PATS-ACHOLONU J.C.A

"I behove by signatory to the convention i.e. the African charter, the sovereign government of Nigeria manifest its intention" and perhaps willingness to abide by the tenants of the convention. This by itself , did not connote its enforceability within the corpus juris civilis of Nigeria. Our national government however went further and incorporated the spirit of that treaty into our law thereby giving one notice that it is to be recognised and applied and enforced by the three arms of the government; giving message to all the signatories to the convention that it has adopted the treaty into to. It was in RVKEYA 1876 2 EXD. 63 that it was held that international Law in so far as it is incorporated into English Law by a decision of the courts or by an Act of Parliament. This might be construed in the case here to be that Nigeria government did not merely adopt the theory as embedded in the treaty by its signature. But went further by processes of incorporation to give it life and practice in the municipal context. The most portent determinant in theory and practice of assimilation and incorporation as I would describe it is the adoption and incorporation and enforceability of it into the municipal lex civilis."

In effect, Acholonu JCA. Was asserting that the only way to discharge an obligation under treaty Law is by compliance with both obligations not only by

domesticating the treaty, but also by effectuating its provisions, through express enactment's to that effect.

On appeal to the supreme court by both the parties (Appeal and a cross appeal) the supreme court while reviewing the entire jurisprudence of treaty Law particularly as its relates to Nigeria treaty obligations said a treaty is a compact, an agreement, or a contract – bilateral or multilateral – between sovereign states (two or more) whereby they establish or seek to establish a relationship between themselves governed by International Law.. A treaty according to the Supreme Court is therefore, in a broad sense, is similar to an agreement under the civil Law. The difference between an ordinary Civil contract and a treaty is that while the former is our arrangement between individuals and derives its bindings from municipal or domestic Laws of a State, a treaty on the other law derives its binding force and effect from International Law. The Supreme Court said that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law by the National Assembly, an International treaty has no such force of Law as to make its provisions Justiciable in our courts. Where however, the treaty is enacted into law by the National Assembly as was the case with the African charter which is incorporated into our municipal law by the African charter of human and Peoples' Rights (Ratification and Enforcement Act) cap 10 Laws of the federation of Nigeria 1990; it becomes binding and our courts must give effect to it like all other Laws falling within the Judicial powers of the courts. By cap.10, the African charter is now part of the laws of Nigeria and like all other laws, the courts must uphold it.

The Supreme Court said unincorporated treaty couldn't change any aspect of Nigeria Law, even though Nigeria is a party to those treaties. Indeed,

unincorporated treaties have no effect upon the rights and duties of citizen either at common law or statute.

They may however indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties. If such a treaty is not incorporated into the municipal law, our domestic courts would have no jurisdiction to construe or apply it. Its provision cannot therefore have any effect upon citizen's rights and duties. However the supreme court also observe that no doubt cap.10 is a statute with International flavour. Being so, therefore, if there is a conflict between it and another statute. Its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an International obligation. The court went on to state that the charter possesses greater vigour and strength than any other domestic statute. But that is not to say that the charter is superior to the constitution nor can its International flavour prevent the National Assembly from removing it from our body of municipal Laws. The validity of another statute can not necessarily be affected by the fact that it violates the African charter or any other treaty for that matter.

There, is therefore a presumption that a statute (or an Act of parliament) will not be interpreted so as to violate a rule of International Law. In other words, the court will not construe a statute so as to conflict with International Law. The rule that every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of Nations or established principles of International Law does not imply that a statute will be declare ultra vire as being in contravention of a treaty or of an International Law, or that the treaty is superior to the National Laws; but that courts would desist from a construction that leads to a breach of an accepted rule of International law.

According to the Supreme Court, the basis of the binding force of a treaty as a contract is agreement and the recognition given to agreements between states in international Law as a Law creating fact –pacta suit servanda. An act of state is essentially an exercise of sovereign power and hence cannot be challenged controlled or interfered with by municipal courts. The doctrine of act of state presupposes that no municipal courts has jurisdiction to pass judgement upon the validity or legality of the acts of a foreign state and or challenge executive statements of their own government on the conduct of foreign affairs. Every sovereign state is bound to respect the independence of another sovereign state and the courts of one state will not sit in judgement on the acts of another done within its territory.

From the foregoing analysis, it is crystal clear that the Supreme Court as well as the court below (the court of Appeal) has endorsed the concept of legitimate expectation by the citizenry that there would be a compliance with treaty obligations. But there is however abundance evidence that the legitimate expectation can never materialise given the inexplicable lethargy of the competent legislature towards the fulfilment of Nigeria's treaty obligation that is, obligation of means and obligation of results. A judicial Coup de grace is, therefore inevitable to obviate this legendary lethargy. In the face of this lethargy, the judicial evolution of a new trend, a new attitude, towards the application of treaty standards in domestic law must, in deed, be viewed as a whole some development. For this purpose, the ultimate judicial trump card may well be an espousal of the new trend, which signals the emerging triumph of monist doctrine over dualist legal philosophy which has rendered it perhaps unnecessary for National Constitutions to be burdened by Copious codification of the transformation or specific adoption theories regarding the application of International Law within domestic legal order.

We will now consider a table of treaties and protocols either ratified, signed or already domesticated by the Nigerian Government up till 2001 for proper appreciation of our discussion above.

## STATUS OF RATIFICATION OR OTHERWISE OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN TREATIES AS AT APRIL 1999.

### A. TREATIES RATIFIED OR ACCEDED TO

1. International Covenant of Civil and Political Rights (ICCPR)
2. International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
5. Convention of the Rights of the Child (CRC)
6. International Convention on the Suppression and Punishment of the Crime of Apartheid.
7. ILO Convention concerning equal rumination for men and women workers for work of equal value.
8. UNESCO Convention against Discrimination in Education.
9. Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes Against Humanity.
10. Slavery Convention of 1926 as amended.
11. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.
12. African Charter on Human and Peoples' Rights.

13. OAU Convention Governs the Specific Aspects on Refugees Problems in Africa.
14. ILO Convention concerning Forced Labour.
15. ILO Convention, concerning the Abolition of Forced Labour.
16. Convention relating to the Status of Refugees.
17. ILO Convention concerning Freedom of Association and Protection of the Right to Organise.
18. ILO Convention, concerning the Application of the Principles of the Right to Organise and Bargain Collectively.
19. Convention on the Political Rights of Women
20. Geneva Convention for the Amelioration of the Condition or the Wounded and Sick in Armed Forces in the Field.
21. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
22. Geneva Convention relative to the treatment of Prisoners of Wars.
23. Geneva Convention relative to the Protection of Civilian Persons in time of War.
24. Additional Protocol to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I).
25. Additional Protocol to the Geneva Conventions relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II).

## B. TREATY SIGNED, NOT YET RATIFIED

1. Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

## C. TREATIES NOT YET RATIFIED

1. Optional Protocol to the ICCPR.

2. Second Optional Protocol to the ICCPR aiming at the Abolition of the Death Penalty.
3. Convention on the Nationality of Married Women.
4. Convention on Connect to Marriage, minimum age for marriage and registration of Marriage.
5. Convention on the Rights of Migrant Workers and the Members of their Families.
6. Convention on the Prevention and Punishment of the Crime of Genocide.
7. African Charter on the Rights and Welfare of the Child.
8. Protocol to the African Charter on the Establishment of African Court on Human and Peoples' Rights.

**INTERNATIONAL TREATIES AND PROTOCOLS ON WOMEN AND CHILDREN SIGNED AND RAFITIED BY THE GOVERNMENT IN DECEMBER 2001.**

1. Convention 182 on Minimum Age.
2. Convention 138 on Elimination of the Worse Form of Child Labour.
3. Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women.
4. Optional Protocol, on the involvement of Children in Armed Conflicts.
5. Optional Protocol, on the Sale of Children, Child Prostitution and Child Pornography.
6. Convention against, Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.
7. Convention Against Transitional Organised Crime.
8. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
9. ECOWAS Declaration on the Fights against Trafficking in Persons.[18]

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# CHAPTER III

## 3.0 NATURE AND SCOPE OF ECONOMIC INTEGRATION UNDER ECOWAS.

### 3.1 THE CONCEPT OF ECONOMIC INTEGRATION

Integration in the ordinary parlance means unification or putting parts together into a whole. To economist the term economic integration is sometimes hard to pin down to a precise definition. Some authors include social integration in their conceptualisation; others define integration from static or dynamic stand points.[1] From the static point of view integration is considered as a state of affairs, which would obtain at the end of a fairly long process leading to the complete merger of national identities. The dynamic view, on the other hand, sees integration as a process whereby discriminations existing along national borders are progressively removed between two or more countries[2]. Others define integration to mean the mere existence of some measure of trade relations between independent national economies. Integration according to this view, progresses in stages from its lowest to its highest forms, the freeing of barriers to trade, the liberalisation of factor movements the harmonisation of national economic policies and finally the complete unification of these policies[3]. The dividing line between the static - dynamic dichotomy in the definition of integration is blurred. In this sense therefore integration may be defined as the gradual but steady process of harmonised tariff disarmament along with the removal of other barriers to trade between the contracting parties to their mutual advantage[4]. This seems to be the most feasible and achievable objective of market integration in today's West Africa in particular or Africa in general. A workable pattern of integration has to be realistic and pragmatic. It need not demand Political Union as a precondition for economic integration. Of course economic integration cannot operate in political vacuum; a good many integration movements could have been primarily politically inspired. Also, apart from the inter dependence between politics and

economics, economic integration is not an end in itself; it is a means to an end and the end is essentially a political goal. Even so, while a successful integration would require effective political understanding and good will amongst its members, complete political unity need not be a sine qua non especially in the early phases of economic integration[5].

The first stage of integration, which is much closer to economic co-operation which is a process of stage-by-stage lowering of tariff and other barriers to trade seems a convenient starting point, politically and otherwise for emergent less developed countries. But when and if there is an uninterrupted progress towards the completion of the integration progress then the static concept of integration could be applied.[6] In West African context for instance, we are primarily concerned with the integration path which ultimately leads to the integration goal when everything would be static and 'dead' and not the other way round. There is one more conceptual aspect of integration, which should be put in its proper perspective. The economic significance of national borders is that they introduce discontinuities, which actually lead to effective discrimination in the economic sphere. But when the discriminatory tariff walls are dismantled, obstacles to intra-zonal trade will be lessened or even completely removed. However, the degree of free movement of goods and factors would be a function of the stage of integration. There are often five major categorisation in classifying the stages of integration conventionally[7]. These include.

i. The free trade area, which implies the removal of quantitative restrictions and customs tariffs.
ii. The custom unions, which unifies the tariff of the countries within the area against outsiders.
iii. The common market, when all restrictions on factor movement within the area are abolished.

iv. The economic union where economic monetary, fiscal, social and counter-cyclical policies are to some extent harmonised.

v. The supranational union, where the respective governments completely abandon their sovereignty over the policies listed above and a supranational authority issues binding decisions.

Like most classifications, these are not watertight and conclusive. Some forms of market integration may well fall within these categories. For instance, the first three stages concern mainly trade and factor integration but more often than not such measures requires a complementary payments arrangement to make them work. And beginners in the field of integration usually start somewhere between the first two, with or without some elements of the third category. West African for instance, falls squarely within the beginners' class. The last two stages, which are some what very advance, would in any case have very little chance of success in most less developed countries like West African and Latin American countries[8].

The forms of integration mentioned above, represent varying degrees of economic integration, they share two basic characteristics. First, they promote expanded intra Zonal specialisation and exchange through the reduction or elimination of trade restriction among the Union members; and secondly, they entail discrimination of one kind or another against non-member countries[9].

The driving force behind the under spread interest in economic integration particularly in Africa is two fold. The first motive is political. As noted elsewhere earlier, colonialism in Africa left behind it a geopolitical configuration of divisions and fragmentations. Many of the new African States, although nominally independent were so small and weak both politically and economically that they had little prospect of rapid economic development on their own. This

made them extremely vulnerable to external pressures, which worked to perpetuate African dependence upon Western powers. There was therefore a widespread feeling in Africa during the 1960s to free the continent from its external influences and provide the safeguards and benefit of interdependence through the achievement of economic integration of one kind or another. For instance, the ideological base of the Pan African Movement was the goal of continental government of a United African[10].

The second and much more fundamental reason is economic. Given the micro-states and the export oriented, lop-sided, poor economic structures inherited from the colonial regimes, which were in dire need of reconstruction, integration was seen as a mean of helping to overcome the disadvantages of small size of making possible a greater rate of balanced economic growth and development.

Thus it could be said, in a nutshell, that the key rationale of economic integration particularly in Africa today is the acceleration of balanced growth in the partner countries-either in the short or in the long run. Therefore, freeing trade or factor movements is not an end itself but a means to reach higher levels of output. Indeed the benefit of the integration process has to be judged by the criterion of whether, on balance the area's growth rate is faster than it would otherwise be or not. As has already been indicated, there is little doubt that the marginal growth contribution which integration holds out for less developed countries in the foreseeable future underlines the cautions optimism with which particularly most African governments have so far approached economic integration issues. However, everything depends on the future of the industrial sector in Africa. Ironically one of the major objective functions of Central Planners like the United Nation in less develop countries of the world is the expansion of the industrial sector, a policy which would have suggested a much more positive attitude to integration than appears to be the case on many African countries at present[11].

Since the mid-1950s, the formation of economic groupings, especially among less developed countries of the world appears to have become a common phenomenon. But unfortunately, the experiences of many of these groupings especially ECOWAS, have been very disappointing. The in security in the sub region for instance, is to say the list frightening.

## 3.2 THE NATURE AND SCOPE OF ECONOMIC INTEGRATION UNDER ECOWAS

The overall objective of ECOWAS is to promote co-operation and integration in order to create an economic and monetary union for encouraging economic growth and development in West Africa,

**Article 3** (1) of the revised treaty provides

> *"The 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 Africa continent".*

To realise this laudable aims and objectives within the provisions of the treaty establishing this regional organisation the treaty provides that it shall ensures inter alia the 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 and communications, energy, trade, money and finance, taxation economic reform policies, human resources education information, culture, science technology, services, health tourism, legal matters etc.[12]

Member states also are to ensures 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 members states of customs duties

levied on imports and exports and the abolition of non-tariff barriers among member states in order to establish a free trade area as the community level.

The member states are to adopt a common external tariff and common trade policy vis-à-vis third world countries. The treaty in Article 3 provides further that member state should remove all obstacles to the free movement of persons, good services and capital, and to the right if residence and establishment; the establishment of an economic union through the adoption of common policies as the economic, financial, social and cultural sectors and the creation of a monetary union[13].

Members states of ECOWAS are to promote joint ventures by private sector enterprises and other economic operation in particular through the adoption of a regional agreement on gross border investments; the adoption of measures for the integration of the private sector particularly the creation of enabling environment to promote small and medium scale enterprises amongst others are to be vigorously pursued by member states in order to attain self-sufficiency through the integration of the member states unto an economic block with a single market organised around an economic and monetary union[14]. The community hence, confers legal mandate for the implementation of the obligation under the treaty through protocols and decisions of authority of Heads of states and Governments.

From the forgoing, in order to achieve the desired economic growth and development in West Africa envisaged under the revised treaty the following major operational guidelines must be considered

(a) The suppression of customs duties and equivalent taxes

(b) The establishment of a common external tariff

(c) The harmonisation of economic and financial policies

(d) The creation of a monetary zone

(e) Free movement of persons etc[15].

For ECOWAS to succeed, member state must honour their commitment to apply decisions taken and adhere to the provisions of the treaty and protocols thereto. Hence the treaty provides for the establishment of credible monitory organs that can enforce application of its decisions. The provision of or the establishment of the community court of justice and the community parliament therefore appears to be a valid means of expediting application of the community acts and decisions. The court of justice is an organ for jurisdictional control with the role of assessing the extent to which states parties fulfil their obligations, settling disputes and verifying the legality of acts adopted by the community institutions.

The ECOWAS parliament will facilitate implementation of community acts and decisions since its role will be to monitor in a democratic manner, both the institutions and the decisions taken. It will also foster a greater sense of belonging to the community in the minds of all sections of West African Society.

The ECOWAS treaty in its chapter VIII and IX envisages amongst the others creation of an economic monetary union based on removal of duties and equivalent taxes establishment of a common external tariff and harmonisation of economic and sectoral policies.

One major objective of the community is the liberalisation of cross-border trade and movement among its members. The removal of obstacles to free movement of persons, goods, services and capital and to the right of residence and establishment is cardinal to sustainable economic integration of the sub-region.

Based on the provisions, the ECOWAS citizens are to enjoy rights of free movement within the sub-region including rights to residence and establishment in member states. The protocol relating to free movement of persons and the right of residence and establishment outlines responsibilities that are incidental to these rights[16].

Articles 36 of the revised treaty provides that member states shall reduce and ultimately eliminate custom, duties and any other changes with equivalent effect except duties notified in accordance with Article 40 and other changes which fall within that Article, imposed on or in connection with the importation of goods which are eligible for community tariff treatment in accordance with Article 38, such duties or charges are to be referred to as import duties.

Article 37 deals with establishing a common external tariff. Article 40 deals with fiscal changes and internal taxation while Article 41 deal with quantitative restrictions on community goods. Article 42 prohibits dumping of goods within the community.

Article 46 provides for customs co-operation and administration amongst member states. Articles 50 provides trade promotion through use of local materials, intermediate goods an inputs, as well as finished products originating within the community Article 51provides for money finance and payment in order to provide monetary and financial integration and facilitate intra-community trade in goods and services.

Article 52 provides for the establishment of a committee of West African Central Bank, which shall comprise of the Governors of Central Bank of member states.

Articles 53 deals with movement of capital and committee for the purpose of ensuring the free movement of capital between member states.

Article 54 and 55 provides for the establishment of an economic union within the community and the monetary union respectively through the adoption of a common policy in all fields of socio-economic activity particularly agriculture, industry, transport, communication, energy and scientific research. It is from the

above framework in the revised treaty that the economic fortunes of the member states are to be improved to ensure a stronger sub-region in the international economic map. Although there are still difficulties in the implementation of some of these lofty provisions in the treaty and protocols thereto, it is hope that efforts will be made to ensure that the acts and decisions of the community would be honoured and respected by the member states.

The ECOWAS treaty is an ambitious documents but also a detail one. Despite the temptation to rush things, the treaty envisages the gradual achievement of a custom union of West Africa states over a period of time. The revised treaty envisages integration in virtually all aspect of human life with the sub region be them economic, political, social, cultural, science etc. The strict implementation of the ECOWAS Treaty will certainly detract from the traditional meaning of doctrine of sovereignty of the Member State.

The scope of the ECOWAS is therefore very wide. It ranges from market integration, development of physical infrastructures for roads, Telecommunication, and energy, cultural and social co-operation on peace and regional security etc.

Market integration philosophy appears to be more of economic importance as it envisages the free movements of persons within the community therefore abolishing visas and entry permits by introducing the ECOWAS travel certificate. The market integration principle also provides for free movement of goods by removing tariff barrier under the trade liberalisation scheme and common customs union, common currency and harmonisation of economic and financial policies, etc.

It is generally agree that trade liberalisation with a grouping maximises economic efficiency from the group's point of view vis-à-vis non trade (i.e. autarky). In

ECOWAS, this could be achieved by variety of ways. First, assuming that the conditions for effective integration exist, ECOWAS will create a single vast market of consumer in West Africa, which will create opportunities for specialisation in patterns of production and for the establishment of large-scale industries through the pooling of national markets.[17]

Secondly, the existence of a wide community market will stimulate production, which will in turn create employment opportunities, generate increase competition and reduce prices of goods and services within the community.

Thirdly, ECOWAS will promote specialisation and economic efficiency within the union, which will in turn bring about improvements in the terms of trade of the integrated group with the rest of the world.

Furthermore, the effective operation of ECOWAS can further economic equality not only among member countries, but also among different sectors within the member country. One of the most important class conflicts in the poor countries of the world today is due to the schism between the poor rural classes and the articulate and powerful urban classes. It is submitted that ECOWAS can bring about a more equitable distribution of income if well operated and will reduce the frequent and unending armed conflict and genocidal killing now fast becoming the a culture in the sub region.

## 3.3 THE NATURE AND SCOPE OF ECONOMIC INTEGRATION IN AFRICA

Regional co-operation in Africa is neither a free wheeling workaday option nor a lesson for Sunday school piety. It is as much a moral imperative in today's world as it is a political and economic necessity. [18]

When the scramble for Africa was under way in the second half of the nineteen century little did any of the actors of that drama realise that they were pursuing an exercise that would have many mini nation-states in Africa and also create what has been termed the balkanisation of Africa. The spread of various colonial authorities over Africa gave rise to efforts of the many nationalist movements that had the popular appeal of Africans being seen to be taking charge of their own affairs, and thus the beginning of an era in which the account was placed more on economic progress. It was reckoned that if independence was to mean anything, the emphasis had to be on the economy. Two questions may be raised: what has been the outlook for economic growth and development after the change of management from colonial rule to national independence. What exactly happened after three decades of endeavour, and in some cases, four decades of attempts at economic development? There is practically very little by way of evidence of success. This obvious lack of success and the deteriorating economic situation have been the motivating force now encouraging renewed exploration of alternative paths of economic development in Africa. From the Colonial era, there has been an undeclared situation of competition, suspicion and exclusion. The immediate post independence era marked a period of heightened sense of nationalism per excellence with each African State adopting and individualistic approach to economic development.[19] This explains some of the later problems of cooperation in Africa.

From this individualistic approach came many experiments at national development one thus followed another of national development policy prescription from agricultural development with food self-sufficiency as its centre piece, to import substitution industrialisation. It was not difficult to convince the new leader of independent Africa about the new strategy, because evidence abounds in the history and experience of other countries to show that that approach had worked well elsewhere. While all these was going on at the domestic level the colonial perception persisted at the external level of seeing the African economies as principally suppliers of raw materials and buyers of manufacture goods, a legacy of very open economies. The mismatch of domestic demand and supply became of the main structural disequilibria of Africa economic condition. This resultant heavy reliance on the external sector for growth was a major brake on the development process. It was not until Korean Boom of the Mid 1950s, that developing countries generally began to realise the unfavourable characteristics of the world commodity market –namely a low income elasticity of demand, a low price elasticity of supply-unpredictable and wide price fluctuations, growing competition from synthetic substitute, adverse terms of trade etc.[20] Soon after independence, the traditional market for raw material exports grew less and less buoyant and more and more unreliable and incapable of generating enough foreign exchange for the requirements of development. New market and new product have to be found.

It was against this backdrop that attention began to be focussed more and more in the 1970s on regional integration as an alternative development strategy. The first UN Development Decade had made a very limited impact on the economies of developing countries, so a second Development Decade was adopted for the 1970s. It introduced new strategies. Instead of the over reliance on external finance and support, the third world accepted that it had to bear the primary responsibility of its own socio-economic development. This principle was further accentuated in the 1974 Declaration of a New International Economic Order; which made collective self-reliance through economic cooperation among the development countries the corner stone of their development.

Through regional cooperation, it was expected that the resources of the participating countries will be pooled together, the tiny national market will be fused together to provide a large enough single market and large enough enterprises would be established to take advantage of the economies of scale that modern technologies make possible. Given that these countries are at about the same level of development with similar demand patterns, regional cooperation could move easily facilitate an auto-centred development strategy. In a way, the import-substitution strategy that had earlier been pushed at national level with little success would now stand a much better chance when operated within the regional context.[21]

Hence, the concept and practice of regional economic integration as it has come to be known, is of relatively recent vintage. Even the broader and more nebulous concept of economic cooperation was hardly known before the turn of the century. Examples of regional cooperation in Africa before political independence invariably had a very high colonial flavour. Indeed these particular characteristics led to the collapse after independence of such regional arrangements as the West Africa currency board, the West Africa Cocoa Research institute, the West Africa airways corporation and the West Africa force. Not until the proclamation of the New International Economic Order did regional integration gather renewed momentum. Thus, in West Africa, the conversion of UDEAO into CEAO was in 1973. The Mano River Union MRU was established in 1973 and ECOWAS came into existence in 1975.

Regional Economic groupings have now come to characterise the new international landscape and underpin the new world order. The emergence of a single market in the EEC, the North America free trade Area established between the United States, Canada and Mexico, the establishment of similar grouping in South America and the Caribbean, in Asia and the Pacific Rim, all merely underscore the point that regional economic groupings are here to stay.

For Africa, the issue was finally laid to rest when OAU (now AU) affirmed Africa's acceptance of regional integration as the main strategy for achieving the accelerated development of the African economy with signature of the Treaty established the Africa Economic community. This new country is conceptualised as a superstructure to be erected on the foundation of the existing sub regional economic communities within each sub-region, therefore, the AEC treaty calls for the strengthening of the existing communities and the rationalisation of existing integration arrangements as would eliminate duplication and make then strong pillars of the continental integration process.[22] Thus article 59 of the revised ECOWAS treaty provides for collaboration between ECOWAS and the AEC. The new partnership for Africa development (NEPAD) currently making the wave, represents one of African advocacy strategy for economic integration in Africa. It is hoped that towards the mid of the new millennium, all these strategies will begin to impact positively both economically, politically, socially and otherwise on the continent.

## 3.4 ECOWAS PROGRAMMES AND THE NIGERIA EXPERIENCE

An analysis of the West Africa experience of integration within the context of ECOWAS shows a poor record with regards to the executive of the community programmes. The provisions of the revised treaty instituting the principle of supranational are not being applied. Several protocol are contravened particularly those pertaining to free movement of goods and persons. The situation shows all too clearly that a sense of belonging to a pluri-national community is cruelly lacking.

Nigeria more than any member state has done remarkably well in the implementation of some of the programmes and provisions of the ECOWAS treaty and the protocol thereto. Nigeria for instance, housed the ECOWAS secretariat the community court of justice the ECOWAS residential quarters is currently under development in Nigeria. It should be noted here that Nigeria bears the lion share of the cost of these projects.

During the 22nd ordinary submit of ECOWAS Heads of government held in Lorne Togo in December 1999 for instance, the Nigerian President proposed the adoption of a two-track approach to the implementation of ECOWAS integration process. The approach is to allow two or more ECOWAS member states that are ready to co-operate in implementing agreed integration programmes on a fast-track without being drawn back by those countries which were not in the position to move along with them on the fast track. Following the adoption of the two track approach, Nigeria and Ghana agreed to work together and consequently identified the following five programmes for joint collaboration.

(a) Establishment of the second ECOWAS monetary zone.

(b) The ECOWAS trade liberalization scheme.

(c) The ECOWAS free trade Area

(d) The ECOWAS Regional Infrastructural programmes and

(e) Private sector collaboration. [23]

Nigeria and Ghana have been working together to ensure the implementation of the identified programmes on the fast track, with Nigeria providing the leadership role.

Nigeria has created a Ministry namely Ministry of Cooperation and Integration in Africa with one of its very important departments dealing on ECOWAS matters and implementation. In Ministries of Finance, Commerce, Foreign Affairs, Internal Affairs and the Central Bank, there are Departments in each, saddled with the responsibility of monitoring the implementation of ECOWAS programmes as it relates to them. This various departments work in collaboration with the ministry of cooperation and integration in Africa for proper implementation of the ECOWAS programmes.[24]

The West Africa Monetary Zone (WAMZ) is currently being follow up by Nigeria. Several meetings of the convergence council and the mini submits is said to have been held on the 2nd ECOWAS monetary zone. The first have been instituted among the French-speaking members of ECOWAS. A single currency regime is sine qua non to the success of the free trade philosophy of the community. It is only when one means of exchange within the community is recognised and accepted like t he Euro under the European Union that a meaningful progress can be made under the free trade programme of ECOWAS.[25] It is worthy of note that the West African monetary zone new currency (the ECO) is slatted to take effect in July 2005. it is hope that when this happen the trade liberalization programme will be fully operational within the community. However, one question that is yet to be answered is the status of member's states currencies and their respective Central Banks vis-à-vis that of Eco and the Community Central Bank. It is worthy of note here that up till now Britain has refuse to subject its pounds sterling to the Euro under the EU. It is submitted that currency being a very strong instrument of economic control and fiscal policy, ECOWAS Leaders should give the community members between 10 -15 years period before the Eco currency becomes the only legal tender that will be recognised the within the second monetary zone. It is hope that, ECOWAS Leaders will work out an acceptable common political and economic ground on this vexed issues when the currency finally come into force in 2005.

Although the ECOWAS trade liberalization scheme designed to promote trade within the sub-region is also appear to be implemented in Nigeria, when the currency comes into existence it will facilitate trade between Anglophone countries interest and also with Franco-Phone. Already about 25 Nigeria companies and their products for instance, were granted approval to participate in the ECOWAS trade liberalization scheme following the decision by the ECOWAS council of Ministers at the 48th session held in Darker Senegal between 15th – 17th December 2001. These companies with this approval will henceforth pay zero import for these products in the importing ECOWAS member state.

Nigeria has commenced the correct collection of 0.5% ECOWAS community levy. In line with the protocol, an account was also opened in 2001 at the Central Bank of Nigeria in which the levy is to be used to meet Nigeria obligation to ECOWAS institutions. [26]

Nigeria also participates at ECOWAS Trade, Customs, Immigration, Money and payment (TCIMP) commission meetings. The authority of ECOWAS Head of States approved the take off of the Free Trade Area (FTA) otherwise referred to as the borderless zone agreement with effect from the 30th April 2000. FTA involves among other things removal of all physical and non-physical barriers to facilitate free movement of persons, goods and services on community highways, complete eradication of all rigid border formalities, the application of the prescribed ECOWAS customs and immigration procedures, implementation of the joint border patrols and the adopting of a common External Tariff (CET) for all imports into the sub-region. The free trade areas cover seven countries: **Nigeria, Benin, Togo, Burkina, Faso, Niger, Mali and Ghana.**[27] this is a positive step in the integration philosophy.

So far, all visible road blocks appeared to have been dismantled especially or the Nigeria-Republic of Benin high ways with minor restrictions. The Nigeria Immigration Services whose responsibility is to provide the ECOWAS passport to enhance the free movement of persons has already awarded contracts for the printing of the passports. When the programme is fully implemented, it will facilitate easy movement of person across member states as envisaged by the ECOWAS treaty.

The Federal Government of Nigeria recently approved the implementation of physical infrastructural development programmes to further enhance the integration process in the region. A rail link between Lagos and Accra, a private Airline (ECOAIR) a shipping (ECOMARINE) and inter connection of electricity grids between Nigeria and Ghana are being worked out. The West African pipeline, the second phase of the ECOWAS telecommunication programmes (INTERCOM II) and the remaining sections of the trans West African High ways trans coastal from Nouakchott to Lagos and trans sahelian from Dakar N'djamena are nearing completion. Nigeria is a member of the Lake Chad Basin Commission (LCBNC) the Niger Basin Authority (NBA) and the Gulf of Guinea Commission (G.G.C.) she has taken measures to exploit all the potentials for infrastructure development available within the delimited comity of states. For example, on the Niger Basin to which the Benin Basin is also a Tributary, Nigeria has interest in the integrated management of the entire basin to protect Rainji, Shiroro and the utilization of the basin. Development up stream is also of interest to Nigeria particularly on the two tributaries coming from Benin republic. Similarly the potentials of the Benue Basin in irrigation and navigation could be promoted for economic development aid adverse effect of the Cameroon Lagdo dam releases on Nigeria could be monitored and ameliorated. Nigeria's membership of the LCBC and GGC placed her in the centrally advantageous position to facilitate the exploitation of the vast resources of the Congo Basin for regional integration. Furthermore, Nigeria in collaboration with ECOWAS secretariat has initiated programmes to ensure the involvement of the private sector in the integration process.[28] The action is aimed at providing a conducive environment for operators of the private sector to take full advantage of the trade and business opportunities resulting from the Free Trade Area and Trade Liberalization Programmes. One of such programme, study revealed, is the establishment of a private sector consultancy forum, to enhance exchange of information between private sector operator and government in the sub region.

Nigeria implementation and contribution to the success story of ECOWAS is remarkable, study revealed. Currently, Nigeria is actively involved through Ministries and Parastatals in several activities that have direct bearing to the ECOWAS secretariat.

Nigeria for instance, participated at the Expert and ministerial meetings on the restructuring of the ECOWAS executive secretariat, Ad hoc Ministerial Committee on the transformation of the ECOWAS fund into ECOWAS Bank for investment and development (EBID) with two subsidiaries ECOWAS Regional Investment Bank (ERIB) and ECOWAS Regional Development Bank (ERDB) provision of residential accommodation for ECOWAS secretariat staff, Board meetings of the ECOWAS fund at which loans estimated at USD 20.3 Million were approved for the implementation of project in Senegal, Togo Cape verde, Ghana and interconnection of electricity grid project of NEPA and communicate on Benin and Togo, the establishment of ECOWAS parliament and Court of Justice, the headquarter which is located in Abuja Nigeria.

Nigeria collaborates with various ECOWAS institutions in the sub-region to effect peace and security initiatives adopted by ECOWAS head of states. For Nigeria involvement in the ECOWAS security and mediation council affords her the opportunity to participate in mediating in the conflict situations and where appropriate, provide early warming signals (EWS). Examples of conflicts areas covered include the Manu River Union, Sierra Leone, Liberia Guinea Bissau and now Cote d'Ivoire. [29]

Nigeria is also involved in monitoring the implementation of several sub regional security initiatives adopted by Heads of Government. Nigeria is involved in the implementation of the ECOWAS moratorium on small Arms and light weapon through her National Committee, which comprises of officials of the ministries of Defence, Foreign Affairs, Co-operation and integration in Africa, Nigeria Police, State Security Service Nigeria Intelligence Agency, Nigeria Customs Service and the representatives of Six-geo-political zone in Nigeria.[30] Nigeria is also at the forefront of the ECOWAS heads of state, plan of action against human trafficking, HIV/AIDS pandemic NEPAD programme etc.

### 3.5 OBTACLES AND CHALLENGES OF ECOWAS

The integration agenda of ECOWAS is faced with a lot of challenges. The economic nationalism that was so strong after independence has left its mark on

West African countries. Many countries seem to have entered into regional co-operation without any intention of parting with some measure of national sovereignty. Rather, membership seemed to have been sought as a sign of being a good neighbour, in expectation of reaping benefit without much sacrifice, and as a means of obtaining additional external development assistance. For the success of ECOWAS, there must be a strong motivation on the part of each member state, without which most of the other obstacles cannot be removed. One such obstacle is lack of commitment, not just lack of political commitment, which focuses on the political leadership only, but commitment on the part of all the people involved in the co-operation and integration process. The non-payment of the financial contribution of a country to an organisation may not be due to inability or an official decision not to pay, but the failure of the officials involved to initiate action and push the papers through.[31]

In any international co-operation arrangement, and certainly in the case of regional integration grouping, the member states have to surrender a measure of their national sovereignty. A case in point is British and the EC's programmes for monetary and political union. Unless the decision-making organs are endured with the power, as in the EC to makes laws that are not only binding on institutions of the organisation but also directly applicable in member countries, the organisation would be hamstrung.

In ECOWAS, where the treaty, protocols and conventions have to be ratified by member states before they enter definitively into force, it has been uphill task getting these legal instruments ratified. It is gratifying to note however that the picture has changed substantially by the adoption of the revised treaty of 1993.

The economic communities and their administrative bodies needs minimum amount of power to function effectively. Neither is the Executive Secretariat

structured nor endured with powers as the commission of the European communities. Yet both institutions are performing essentially the same tasks[32].

The bane of all West African organisations has been inadequate funding of their operations. The organisations are dependent on member countries contributions for the financing of their operational budgets. The persistence economic crunch and the lukewarm attitude to economic regionalism have combined to render the performance of countries very tandly as far as meeting their financial obligations is concerned. The tight budgets the organisations have been obliged to run have not made it possible for these organisations to cover the full scope of their operations. In ECOWAS, for example, the secretariat's annual budget has been kept as more or less the same for years, inspite of inflation and the deepening integration process and increases out cost of crisis within the sub-region, even for these modest budgets member states arrears have been mounting over the years.

The world economy has not been kind to West Africa the past two decades that economic cooperation and integration have been pursued. Since the countries of the sub-region are heavily dependent on commodity exports, the steady decline in the terms of trade has spelt disaster in many national economics. The pre-occupation of most West African Countries throughout the 1980's – 90s even in the new millennium was with short-term economic recovery and structural adjustment; the development process is coming almost to a complete halt. It should therefore surprise no one that regional integration is receiving very little attention. The international donor community themselves appears not to believe in regional integration; they prefer giving directly to governments on a bilateral basis the little help extended to West Africa. While considerable support was received by organisations addressing specific issues such as drought, and crop research, HIV/AIDS, Polio etc the "general purpose" regional committee have had to plead hard to be heard. Fortunately, there are now signs of a positive

change. The UNDP intends paying more attention to regional integration and the World Bank too appears now to be having a change of heart.[33]

Membership of an economic community has serious long-term implications for the countries involved. It entails very close co-operation with one's neighbour and very often-traditional rivalry and differences do impede the integration process. Differences in linguistic and historical background, political systems and ideologies, legal and administrative systems have to be overcome, especially in West Africa. There is also the unexpressed fear of domination by the bigger and more wealthy member states. This usually is reflected in the reluctance with which trade liberalisation scheme are applied where countries are not sure of the appropriate compensation for loss of not only customs revenue but also the chance to locate the industries in their own territories[34].

Although regional communities have been in existence around Africa for so many years, it is rare to find any reference to them in the national development plans of their respective member states. Not only should these documents and basic development policies be formulated within the context of the regional integration frame work, but national constitutions and fundamental legal instruments should enshrine the objectives and ideals of regional cooperation. The government machinery should also reflect the importance accorded economic regionalism. The success of SADCC is the input to the ministerial arrangements each member country has put in place to handle SADCC affairs. There is the encouraging example of Nigeria and Senegal establishing a Ministry exclusively for regional integration matters. Generally however, there seems to be a lack of appreciation of what regional integration involves, and the obligation of the individual member states.

The implementation of Acts and decisions of the community is one challenge that has seemingly remained insurmountable. The ratification of protocols is but the first necessary steps towards implementation. The next is to translate the content of the protocols into language of domestic law or administrative action. This is where the record is poorest in ECOWAS. It is indeed the unfinished business in ECOWAS. Member states find it extremely difficult to implement the acts and decisions of the community in their respectively countries.[35]

ECOWAS became concerned very early with peace and regional security, which are necessary factors in the socio-economic development of the member states. Thus the authority of Head of State and Government adopted a non-aggression protocol in 1978, a defence assistance protocol in 1981 and a declaration of political principle in July 1991. This declaration, which is a plea for democratic principles in the sub-region, condemns unequivocally any seizure of powers by force of arms. It must also be pointed out that in 1990 the Authority of Head of State and Government created an ECOWAS cease-fire follow up group called ECOMOG. This peace keeping force had cause to intervene in Liberia Sierra Leone, Guinea Bissau and now in Cote D' Ivoire due to serious political crisis in these countries.

Drawing lessons from the failures in the previous peace keeping missions and in order to reinforce peace and security in West Africa, the Executive Secretariat of ECOWAS initiated the establishment of a mechanism for the prevention management and settlement of conflicts and for the maintenance of peace and security in the sub-region.

The fact of the matter is that economic cooperation and integration flourish better in an environment that is politically peaceful and stable. The locus classicus for such peace and stability is the freedom of the individual. If we accept this as a

truism, then we must equally accept democracy as the mother of all freedoms. I say this merely to underscore the point that democracy is the ultimate guarantee of free movement of persons, goods and capital as much within the domestic environment as between the member states of the community. Any other guarantee is illusory. It is imperative, therefore, that all member states of our community should not only recognise this important role of democracy but should also embrace it in all its plenitude; they should equally recognise that the wind of change blowing across the sub-region in favour of political pluralism is now irrevocable for anyone to stand up against it is to invite peril and oblivion.

It is heartening and encouraging observing the increasing official acceptance of democratic change, making the auguries look better for integration in the sub-region. There is no other way if our collective development and prosperity in the sub-region are to be assured. It is significant therefore that full cognisance is given to the changes taking place around in the community. This is vital because progress in economic co-operation is to a large extent conditioned by political stability in the sub-region as a whole. This acknowledgement merely underscores the practical inseparability of the economic from the political of integration. One cannot be reformed without the other indeed economic reform is hollow and pretentious without concomitant political reform. The two, it is submitted are sesame twins

Another obstacle to ECOWAS is endemic poverty in the sub-region caused by corruption of our political leaders. Our leaders are self-centred, wicked and always ready to do any thing to remain in power. Our youths are unemployed, neglected and rendered hopeless by deliberate policies of various governments in the sub-region just to further pauperise them. A region whose political leaders are not committed to the technological development of the abundant human resources in the region can not claim to be sincere and genuine in its economic integration agenda. Rather than use the

resources in the region for the good of the citizen, they are stolen and hidden in Foreign Bank Accounts leaving the region in abject poverty. We must get our priorities right, we must begin to set up factories for our artisan so that our youth through that means can be economically empowered which in essence is the true philosophy of a genuine regional economic integration, any thing to the contrary is to say the least a deceit.

Lastly, to succeed in our economic integration agenda we must consciously develop technologically. Our region is technologically backward and to stem the ugly trend, we must begin to invest in technology by training our youth abroad in technological acquisition skills to enhance our industrial base for a genuine industrial and technological development of our region.

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# CHAPTER IV

## 4.0. ANALYSIS OF HUMAN RIGHTS FRAME WORK UNDER THE ECOWAS TREATY

### 4.1 EVOLUTION OF THE CONCEPT OF SOCIO-ECONOMIC RIGHTS IN HUMAN RIGHTS JURISPRUDENCE

There are various schools of thought as to the exact origins of socio-economic rights sometimes refers to by contemporary human rights scholars as second-generation rights, or security-oriented rights[1] or rights of credit.[2] On the one hand, it has been claimed that they owe their emergence to the socialist revolutions against exploitation that took place in the early 1900s.[3] According to other views, this class of right is traceable to philosophical thoughts such as those found in Max's Critique of nineteenth century capitalism and the Roman Catholic Encyclicals like Rerum Nova rum of Leo XIII, 1891.[4] However, Professor Claire Palley disagrees with this account of the evolution of the right in question. The learned professor explains that their evolution ante-dates Engel's whose writings influenced the philosophical thoughts of Karl Marx. According to her:

> *"Contrary to prevalent opinions that such rights arose out of Marxist Critique and third world socialism, it would be more appropriate to say that Engel's and Marx's analyses derived from perusal of statutory reports under the united kingdom factory Act of 1833 and the Mines Regulation Act 1842 as well as from select Committee and Royal Commission reports.*[5]

Historical factors would appear to support the position of Professor Claire Palley. Industrialism laid the foundation for the emergency of socio-economic rights. It impacted negatively first on the United Kingdom. The UK thus took steps to ameliorate the indignities, which it occasioned in factories. Reforms became imperatives legislation to improve conditions of work followed. There was the Health and moral Act, 1802. Then came the already cited U.K. factory Act of 1833 and the Mines Regulation Act 1842.[6] According to professor Palley, the reports of the factory inspectors under the factory Act, 1833 altered public opinion in England. Working hours were limited to twelve, then to ten. The report also led to actions to protects children and women. These developments catalysed philosophical thought in all of Europe. The reports of the factory inspectors provided the raw materials from which Fredrick Engels published his Magnum OPUS, conditions of the working class in England. Engels Opus influenced Karl Marx. He also under took a perusal of the report of the inspectors. His classic capital shows that he placed so much reliance on the reports for his facts and certain analysis. It would therefore appear to be incorrect to argue that socio-economic rights are traceable to philosophical thoughts as those embodied in Karl Marx Critique of nineteenth century capitalism and the Rerum Novarum. The factories Act and Mine Regulation Act engendered far reaching changes. The result was mass migration of people from the countryside to the town and from cottage industries to factories and mines. Consequently, there was loss of identity and traditional family values. Karl Marx's communist manifesto was a reaction to that development. It was a tool for the emerging socialist party in most European countries including Italy, at the time. It enunciated the socialist creed. Pope Leo's Rerum Novarum was issued much after and in response to Marx's communist manifesto. The encyclical denounced socialism which prescribed the abolition of private ownership of the means of production as a false remedy which was to do harm to working class, do violence to lawful owners, divest government from its proper task and cause utter confusion in the state. From the above historical factors, one can tend to agree with professor Clair Palley that the concept of socio-economic rights sprang in large measure from legislation and criticism of social policy in the United Kingdom from the 18th century onwards. It must however be pointed out that the historical account of professor Claire let out the historical role of the British social reformer, Robert Owen who was among the first to recognise the inseparable linkage between individual rights and social justice. He was noted for his postulation that the individual, being a product of his environment, government policy must rectify deplorable economic and social conditions. He, it was, who insistently pressed for the Factory Act referred to by professor Claire Palley in her account[8].

It should be noted here that the above events succeeded only in securing the statutory protection of socio-economic rights for the emerging working classes in the soil of their contrivance, namely, England. Elsewhere, the emergence of working classes, clearly influenced by the above breath taking development in England, prompted the constitutional imprimatur of socio-economic rights. Hence they were guaranteed in the constitution of the united Mexican states, 1917. The constitution of the (now disintegrated) united soviet socialist Republics incorporated the declaration of the rights of the working and exploited people. These rights were also guaranteed in the German constitution of Weimar, 1919; the constitution of the Spanish republic 1931, the constitution of USSR, 1936 and the constitution of Ireland, 1938[9].

Although the human rights provisions of the United Nations Charter are of a general nature they catalysed the evolution and promulgation of international human rights law. The evolution of the precise definition of economic and social rights in international Human rights law has not enjoyed any consensus. Thus the assertion that the first precise definition of socio-economic rights can be found in Article 22 – 27 of the universal declaration of Human rights, 1948 has ignited a lively intellectual discourse.[10]

While Jean-Bernard Marie perceives a balance in the universal declaration of Human rights (UDHR) between Civil and political right-or the power to do- and political, social and economic rights or the power to demand[11].

Imre Szabo disclaims any such balances between liberty and security oriented rights. He contends that the security oriented rights or socio-economic rights are not examined in a manner comparable to that of other rights. Imre Szabo maintains that the socio-economic rights in the UDHR are referred to only in passing. Indeed out of the thirty-articles of the UDHR, only five (22 -27) mentioned socio-economic rights. He therefore concludes that on his account the balance of the declaration is upset[12]. It is submitted that this argument is of no utilitarian value. The question should be whether the UDHR has become a Jus Cogen, a peremptory norm of customary international law which states can not exclude or contravene and not the balance between Civil Right and economic, Social and Cultural Rights.

Expectedly the above question has polarised juristic opinions. On one hand are scholars who assert the non-binding character of the UDHR. The protagonist of this view contend that the UDHR is not a treaty; it is not an international agreement, it is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedom to serve as a common standard of achievement for all people of all nations.

The other school of thought argued that the universal declaration not only reflects a consensus of world opinion on the nature of the fundamental rights and freedoms belonging to every individual, but also expresses a unanimity of belief in the principle that the inherent dignity and worth of the human person requires respect for and protection of that person's right. Hence the declaration has now become a part of customary international law, and thus legally binding on all states.[13]

As optimistic as the view of the protagonist of the binding nature of the UDHR may sound, state practice does not seem to concede to UDHR the status of Jus Cogen. There are principal obstacles militating against such a status for UDHR.

In the first place, the evolution of customary human rights norms requires a substantial evidence of its universal acceptance by states. But universal acceptance in a concert of state polarised into dissimilar ideological persuasions is a near-impossible feat. Thus, notwithstanding the official collapse of socialism certain state still clings tenaciously to the political economy worldview. Others have remained rooted in capitalism. It may consequently be impossible to record substantial evidence of the universal acceptance of such norms.[14]

The developing countries are wont to emphasise the indivisibility of human rights. They insist that the first generation rights cannot be disassociated from socio-economic rights and that none can take precedence over the others. But it is pretty certain that the second-generation rights have not been universally accepted as part of customary human rights. Hence, such rights like the social right to provide for rest, and leisure and periodic holidays with pay, the rights to food, clothing medical care, necessary social services education, security in the event of unemployment or sickness are yet to ripen to universally accepted customary human rights.

Secondly, the various municipals legal system has evolved rules concerning their relationship with customary international law. Hence, in most national constitutions, provisions are made concerning international law. In Nigeria, surprising, neither the 1960, 1963, 1979 nor 1999 constitution addressed this vital aspect of the impact of international law on municipal law. The courts are left to grapple with the problem with no guide or assistance from the constitution. That notwithstanding Nigerian practice on the matter follows closely the position under English law. Under that law, unless customary human rights are codified in a statute, judicial decision or established usage, they cannot be directly enforced in a court. Notwithstanding these shortcomings, the impact of the UDHR in the evolution of international Human rights law is germinal[15].

In some jurisdiction the justiceability of socio-economic rights is statutorily guaranteed, although not constitutionally sanctioned. This judicial paradox automatically exposes the interest defect in this approach. The constitution is almost always the supreme law of the land where written constitutions obtain. Such constitutions enrobe themselves with the toga of supremacy over all other law. In the event of inconsistency of such laws with the provisions of the constitutions the constitutions prevail and the other laws shall be void to the extent of the inconsistency.

In Nigeria, for instance, there are two forms of statutory guarantee of justifiability. Under the first approach, certain sub-constitutional statutes ensure the justiceability of socio-economic rights. A noticeable failure of these statutes is that, while providing for justiceable socio-economic rights, they are silent on the obligation arising from international treaties that provide for such right. That is to say that the legislature does not indicate either in the preamble or by means of an explanatory note that the statutory provisions are enacted in fulfilment of the state's obligation arising from international treaties. Such statutes, create and re-affirm economic, social and cultural rights, the violation of which individuals may seek redress in domestic courts. Examples of such statutes in Nigeria include; the Labour Act, National providence Fund Act, (now social insurance's trust fund). Workmen's compensation Act, Pension Act.

The Labour Act does not make reference to Nigeria's obligation under any international covenant. However, in section 13,16, 18, and 34, it makes provision for "just and humane conditions of work". In International Human Rights Law, Comparable Provisions can be found in UDHR, ICESCR. The same provision is also found in AFCHPR. Under the Nigerian constitution, it is found in the non-Justiceable provision of Chapter II[16].

In effect, what the Labour Act has done is to re-affirm the social rights in the above covenants without making any reference to Nigeria's obligation under them. Again, Article 9 of ICESCR provides for the rights to social security, including social insurance. In Nigeria, two statutes provide for some form of social insurance or security for the workman. They are the National Providence Fund (now Social Insurance Trust Fund) and the workmen's compensation Act. The former Act made provision for three main benefits, which can rightly be discussed as social security benefits. These are old age benefits, survivor's benefits and invalidity benefits. What is note worthy here is that no mention is made of any obligation arising under any treaty. The net effect of this approach to the justiceability of socio-economic rights is that the above statutes, although sanctioning the justiciability of the rights they recognise, deny them the juridical status of human rights, clothing them

instead with the garb of ordinary Acts of parliament. In consequence, they are inferior to the human rights provisions, which, the constitution guarantee as fundamental rights.

The implication of this is that unlike the fundamental rights which are enshrined in the constitution so that they could be immutable to the extent of immutability of the constitution itself, these rights are ordinary legal rights which are part of the heritage of traditional analytical Jurisprudence. Their justiceability is by the ordinary legal rights, which are part of the heritage of traditional analytical jurisprudence. Their justiceability is by the ordinary legal process of issuance of writ of summons. The remedies awardable in the event of their breach are the ordinary private law remedies as opposed to fundamental rights where constitutional law remedies are awarded. In very exceptional circumstances however, the prerogative remedies may lie. The statutory guarantee of justiciability of socio-economic rights is best illustrated with the African charter on Human and people's right, (Ratification and Enforcement) Act Cap 10.

Although the AFCHRR lumps the liberty oriented rights and socio-economic rights together in one single charter. The right in the charter are not constitutionally guaranteed. They are guaranteed by a sub constitutional statute an Act of parliament. (i.e. Cap 10 LFN 1990) The charter rights-liberty oriented rights and socio-economic rights which Cap 10 domesticates, are subordinate, not only to Chapter iv but also to the supremacy clause in section 1 of the 1999 constitution.[17]

Chapter II of the 1999 constitution of Nigeria contains provision, some of which have the semblance of socio-economic rights. However, they are not justiciable. On the other hand, in addition to liberty right, Cap 10 also recognises socio-economic rights. The Nigerian Supreme Court per Bello CJN in Ogugu v state said.[18]

> *"The enforcement of the provisions of Cap 10……. Like all other laws fall(s) within the jurdicial powers of the courts as provided by the constitution and all other laws relating thereto. Thus by virtue of the provision of section 6 (6) (b) … of the 1979 constitution……., it is apparent that Human and Peoples' Right of the African charters are enforceable by the several High Courts depending on the circumstances of each case and in accordance with the rules and practice of each court."*

From the forgoing dictum, can we then say that the socio-economic rights of Cap 10 are direct sources of Justiciable rights for an aggrieved citizens in Nigerian courts? Recent pronouncement of appellate courts in Nigeria tend to establish the fact that rather than alienating themselves from the demands of social justice, the court are now poised to enhance it by associating socio-economic rights with fundamental rights.[19]

In India however, socio-economic rights are included among the "Directive Principles" of constitution. They are expressly stated to be non-Justiciable. But the non-justiciability clause has not hampered judicial activity in that regard. The India Supreme Court used the explicitly non-Justiciable directive principle to justify its broad interpretation of the right to life.

In **Mohini Jain V state of Karnataka**, [20] the right to education is one of the non-Justiciable directive principle of the India constitution, yet the Court in that case declared invalid a state law which permitted medical college to charge expensive admission fees that in effect discriminated against poor applicants. The court held that the right to education is essential to the right to life, which is a compendious expression for all those rights, which the court must enforce because they are basic to the dignified enjoyment of life. Also in **CORALIE V UNION TERRITORY OF DELHI,**[21] the India Supreme Court gave a broad interpretation to the right to life to the effect that the right to life includes the right to live with human dignity and all that goes along with it; namely the bare necessities of life such as adequate nutrition clothing and shelter over the head

The concern of these rights is the well being of the human person, it is therefore suggested that the concept of socio-economic rights should be promoted in such away as to strengthen recognition and assertion of these rights on a par with civil and political rights.

## 4.2 THE NATURE AND SCOPE OF HUMAN RIGHTS UNDER THE AFRICAN CHARTER.

On June 19th 1981, the 18th Assembly of the Heads of States and Government of the then Organisation of African Unity (now African Union) unanimously adopted the African Charter on Human and People's Rights. Africans, by this singular act, have indicated their irrevocable commitment to human and people's rights and their determination to shun the traditional view, which regarded the

question of human rights protection as a matter exclusively for the domestic jurisdiction of states.[22]

In formulating the guaranteed rights and correlative duties, the African Charter is animated by the Universalise vocation and naturalist principles, which under list human rights. But in many important respects, the African Charter has some specific characteristics whose inspiration is derivable solely from Africa's Colonial history, philosophy of Law and conception of man. This is in accord with the principle, which guided the committee of experts who drafted the charter that the African Charter should reflect the African conception of human rights and should take as a pattern the African Philosophy of Law, and meet the needs of African. [23]

The African States of the OAU Parties conceived the charter thereto as a further step towards the realisation of their vision of freedom, equality, justice and dignity, which are rightly considered essential objective for the achievement of the legitimate aspirations of the African Peoples. Some of these aspirations are stated in Paragraph 3 of the Preamble to the Charter to include: the eradication of all forms of colonialism from Africa, the co-ordination and diversification of co-operation amongst the African States and efforts to achieve a better life for the people of African and also the promotion of International Co-operation within the context of the United Nations and the Universal Declaration of Human Rights. The African Charter was intended to bring to bear African Traditions and Values on the conceptualisation and implementation of human rights. Since the Universal Declaration of human rights might be said to have been largely informed by the idea of individualism prevalent in Western Europe and America, the African States would prefer a communal approach which places emphasis on Peoples' Rights. That this category of rights are deliberately given primacy of place in the charter is evident in the wording of Paragraph 6 of the Permeable thereto which states that: [24]

*"While fundamental rights stem from the attribute of human beings and while their International Protections is justified, it is above all the reality and respect of the peoples' rights which effectively guarantee human right.*

Through the charter, African States have reaffirmed their support for International Protection of Human and Peoples' Rights and Freedom contained in other International Human Rights Instruments such as the UN Charter and the Universal Declaration of Human Rights. Having thereby Internationalised Human Right on the African region, no longer can gross breaches of human Rights be swept under the carpet as matters of domestic jurisdiction. [25]

The Charter contains two broad categories of rights guaranteed. These are the Civil and Political Rights and the Economic, Social and Cultural Rights.

The African Charter contains an elaborate list of Civil and Political Rights now commonly described as first generation rights. [26] The list beings with the right of every person to enjoy the rights and freedom guaranteed in the charter without distinction of any kind such as race, ethnic, group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status" (Article 2).

The intention of the Provision is to establish the Principle of complete equality in the enjoyment of the rights and freedom set forth in the charter. This being so, enjoyment of those rights and freedom may not be made subject to any kind of discrimination other than those which are either inherent in the nature of the right in question or are designed to remedy existing inequalities. [27]

Other rights guaranteed every person in the charter include equality before the Law, equal protection of the Law, inviolability of human person and respect for human life and integrity, and legal status. Thus all anti human practises such as slavery, slave trade, torture and cruel, inhuman or degrading treatment are prohibited. The charter further lay down a minimum requirement of fair hearing which every person shall be entitled. Moreover, retroactive laws are prohibited as no one may be condemned for an act or omission, which does not constitute a legally punishable offence at the time it was committed, and no penalty may be inflicted for an offence for which no provision was made at the time it was committed.

In most parts of African the foregoing rights which are also guaranteed by national constitutions exist more in theory than in reality. The cases of Ghana under Jerry Rawlings, Nigeria under the Military days are in point where political leaders where arrested and detained after suspending the constitutions, disbanded political parties and made obnoxious decrees where the detained leaders were held and tried. The African Charter also makes a fairly elaborate provision on right of entry and residence of aliens. This right guaranteed by Article 12 of the charter assumes a greater significance if considered with reference to the need for effective integration of the continent as a prerequisite for an efficient continental arrangement for human rights realisation. One of the most illusory provisions in the charter under the category of civil and political rights is that on the right to property. [28]

Article 14 of the charter simply states that the right to property is guaranteed and may only be encroached upon in the interest of public need or in the general interest of the community and this in the interest of public need or in the general interest of the community and this is in accordance with the provision of appropriate laws. The view has been expressed that the drafting of this provision

allows each state to adopt an attitude corresponding to its national interest in respect of private property and is properly intended to accommodate the conflicting ideological positions of the member states that are parties to the charter. To be meaningful, it is submitted that the charter provision on the right to property should be guarantee to every one not only the right to the use and enjoyment of property but also the right to just and adequate compensation where such property are compulsorily acquired for public utility or social interest and should be in accordance with established procedure.

The second-generation rights are those economic social and cultural rights that attained recognition in the twentieth century with the advert of socialism. These rights come under the second broad category of rights guaranteed under the African charter. They are also known as security oriented rights. [29] They seek to protect people's physical, material, social and economic well – being. This right requires significant levels of government involvement and intervention if they are to be achieved. This generation of right consist of claims rather than freedom. They require the intervention rather than the abstention of the states. Karel Vassak refers to them as the "right of credit" against the state and the organised national and international bodies as a whole. [30] To the extent that they require state intervention for their fulfilment. The second-generation rights can also be called affirmative or positive rights. [31]

The rights recognised by the African charter are, in most respects, classical in the sense that they do not deviate much from the international norms in the various international instruments. There are nevertheless, significant specificity, which are distilled from and based on the realties of the Africa situation and experience.

Among international instruments regulating economic, social and cultural rights, which are also applicable to Africa State, mention must be made of the United

Nations charter, the universal Declaration of human Right (1948) and the international covenant on Economic, social and cultural rights. There is also a plethora of conventions and recommendation adopted by the specialised agencies of the United Nation. (UN) especially the International Labour Organization (ILO), the united Nation education scientific and cultural Organisation (UNESCO) and the World Health Organization (WHO). The adoption of the United Nation charter gave a significant impetus to international regulation of economic, social and cultural rights. Chapter IX of the charter, entitled: International Economic and social cooperation states that one of the primary goals of the United Nations is higher standards of living, full employment and conditions of economic, social, health and related problems, and international cultural and educational cooperation.

The universal declaration of human rights adopted in 1948 contain an extended and specific list of economic, social and cultural rights. These rights are regulated more fully in the international covenant on economic/social and cultural rights whose provisions, as distinct from the declarations are designed to create binding obligations for states parties of the covenant. [32]

The African Charter in Article 15 provides that every person shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for work. The view has right been expressed that if the right to work is intended as imposing a legal duty on states to produce employment, then it is difficult to see how this can be translated into a concrete right capable of enforcement. The stark reality in Africa today appears to be the direct opposite of what the charter seeks to guarantee. People work under very harsh conditions, salaries are not paid as and when due, there is job insecurity, unemployment etc are the common features of African labour market.

Article 16 provides for the right to enjoy the best attainable state of physical and mental health. This is an obligation on the part of state parties to take necessary measures to protect the health of the people and to ensure that they receive medical attention when they are sick. There is also provided under charter, the right to education, the right of every person to take part in the cultural life of his country while a duty is imposed on the state to promote and protect the morals and traditional values recognised by a community.

The guarantee of these rights by the African charter and other human rights Instruments will not automatically make then available to the majority of the African people because the facilities required for their enjoyment are largely non-existence in the continent and also because the political economy is under the grip of a minority elite who are out to preserve their privileged position which in fact conditions the manner in which available resources are allocated and utilised. Many African leaders spend huge sums of money on white elephant projects such as construction of their official or personal mansions, churches and mosques while maintaining that they lack resources for implementing basic educational and health programmes required to improve the living standard of their people.

## 4.3 ANALYSIS OF THE GENERAL HUMAN RIGHTS FRAMEWORK UNDER THE ECOWAS TREATY.

The revised Treaty of 1993 accords primacy to human rights within the normative framework of ECOWAS. Within the scheme of the Community, human rights is recognized and dealt within three ways. First, there are those rights, which are incidental to the project of regional economic integration. These rights are protected within the framework of the right to free movement of persons, right of residence, the right of establishment. The scope of protection afforded to in this area is defined more specifically in the implementing protocol some of which we

have already referred to above. The right most positively affected in this context is the right to freedom from discrimination because the obligation, which states assume by being part of the community, is to accord national treatment to Community citizens irrespective of their country of origin. [33]

Second, the Treaty makes provisions for general human rights and contains three adhominem references to the African Charter on Human and people's Right. First, the Revised 1993 treaty refers to the African Charter on Human and Peoples' Rights in its preamble. The Treaty incorporates the Charter as one of the Fundamental Principles of the Community under Article 4(g) in which member states 'solemnly affirm and declare their adherence' to 'recognition' promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and People's Rights. [34] It is very arguable that, to t he extent that the ECOWAS treaty is a supranational treaty instrument directly applicable as domestic law within its member states, this provision achieves domestication of the African Charter on Human and People's rights through the ECOWAS treaty. Third, in Article 56(2(, member states of the Community agree to co-operate' for the purpose of realising the objectives of several instruments including, inter alia, the African Charter on Human and People's Rights.

Other fundamental principles of the Community which are relevant to human rights include accountability, economic and social justice and popular participation in development, promotion and consolidation of a democratic system of governance in each member state, and equitable and just distribution of the cost and benefits of economic integration.

Chapter X of the Treaty contains other general provisions relating to other aspects of human rights including immigration, regional peace and security, legal and

judicial matters, women and development, health and labour rights, information, radio and television, and the press. Many of these provisions are quite progressive. For instance, ECOWAS states agree under Article 63(2) of the Treaty to take all measures to

(a) Identify and assess all constrains that inhibit woman from maximizing their contribution to regional development efforts; and

(b) Provide a framework within which constraints will be addressed and for the incorporation of women's concerns and needs into the normal operations of society.

To attain these goals, they undertake, at the level of the community to, inter alia, 'stimulate dialogue among themselves on the kinds of projects and programmes aimed at integrating women into the development process and 'establish a mechanism for cooperation with bilateral, multilateral and non- government organizations under Article 66, the member States of the community agree, inter alia, to maintain within their borders, and between one another, freedom of access for professionals of the communications industry and for information sources, facilitate exchange of information between their press organs, and ensure respect for the rights of journalists .

The rights in the Treaty and the implementing protocols are designed to be implemented through a combination of political, administrative and judicial means in its report; the committee of eminent persons summarized these implementing mechanisms as follows:

Legal Proceedings against member states should however be a weapon of last report for obvious reason. As a rule, the community should seek accountability from member states through such subtle means as a regular submission of status

reports by member states on implementation of community decisions and regulations.

The Executive Secretariat may also be authorized to invite status reports on implementation from member states on a regular basis and also to bring to the attention of Council or the Authority breaches of Community Laws by member States. Where, however, a Community citizen alleges a breach or denial of a right conferred on him by a community legislation, a Treaty provision or a protocol, it should be possible for him to seek redress in the national court or the community Court of justice. This is particularly germane to the application of the Community's Protocol on free Movement of person, Right of Residence and Establishment. [35]

Presently, under, the protocol establishing the Community Court of where aggrieved person may not be able to seek redress in case of any violation of their rights guaranteed them under the treaty unless there is an amendment to the protocol to widen the jurisdiction of the court to accommodate the right of private persons to bring and sustain action in the court. The Committee of eminent person that consider the review of the ECOWAS treaty unanimously recommended that participation of Non governmental organisation be incorporated in the Revised treaty of 1993.

The importance of interest groups in the integration process cannot be over emphasized. One of the ultimate objectives of ECOWAS is stated in Article 2 (1) of the Treaty as raising the standard of living of (the community's) peoples'. This being the case, the imperatives of democracy require that the people be consulted on the measures designed to raise (their) standard of living. Besides, some of the community decisions have to be implemented either directly by these socio-economic operators and other interest groups. Their commitment in these regards

could be enhanced if they have been associated with the evolution of these decisions and their views, based on their practical experience as operators on the ground, have been brought to bear on the final outcome. Furthermore, the concept of grassroots participation in the development process has now gained currency at the national level. This awareness should be raised to the community level as well. Indeed, One of the reasons for the rather slow pace in the implementation of ECOWAS decisions is because of lack of involvement of the people in the decision – making process. [36-]

The committee also recommended the creation of an Economic and social Council (ECOSOC) as one of the organs of ECOWAS. The council is not yet operational, as the enabling protocol for its establishment has not yet been adopted. In its place, the technical commissions fill most of its role. So far the NGOS, which participate in ECOWAS activities, are mostly actors in the Economic sector such as the federation of West Africa Chambers of Commerce, Federation of west African manufactures and the west African enterprise Network. NGOs in the human rights and public interest sector have largely dismissed the body as not worthwhile, a view which, it has to be said, is largely premised on an inadequate understanding of the normative basis and workings of the executive rights. Provisions in the treaty provide a clear basis for NGO engagement with the ECOWAS process. [37]

The Revised ECOWAS of 1993 and the implementing protocols under it now clearly make human rights integral, if not central, to the mandate of ECOWAS. The evolution of ECOWAS from a regional economic community in which insecure national rules lacking political legitimacy and international credibility were allergic to human rights concerns reflects the sea change that has taken place in international relations since the decade of the 90s. But it also reflects an admission of the impossibility of realizing economic development or integration

in a region in which basic human rights and freedoms are habitually and egregiously breached by national governments interpreting sovereignty as a charted to wreak murder and mayhem in the name of the state. On its own and through incorporating the African charter on Human and peoples' Rights, the Revised ECOWAS Treaty makes remarkable provisions to safeguard human rights within its signatory States, in some cases, even more far reaching than the traditional human rights instruments. [38] This potential to actualise these rights under the treaty can only be exploited through the construction of a partnership between the civil society / NGOs constituencies and the governments of the member States of ECOWAS.

For its part, the Revised Treaty contains clear institutional mechanisms for actualising these in the Technical Commissions, the Economic and social Council and the community court. The establishment and institutionalisation of these mechanisms is unlikely to take place without active civil society / NGO agitation which, in turn, will have to be preceded by a recognition of the strategic transformation that regional Economic cooperation are assuming in African in particular.

ECOWAS is currently one of the last frontiers of splendid governmental isolation among international institutions.[39] As a first step towards initiating dialogue between the peoples and civil society in West African and their governments in ECOWAS, The community should adopt and publish at the earliest possible opportunity of rules of NGO access to its institutions and organs. These rules are long overdue. NGOs should also adopt and present to the ECOWAS Secretariat proposals for activating and operationalizing the Technical as well as the community court. Through these steps, the civil society in West Africa will be contributing to the objectives that informed the revision of the founding Treaty of the Community.

## 4.4. ANALYSIS OF THE INCIDENTAL RIGHTS OF REGIONAL ECONOMIC INTEGRATION IN WEST AFRICA.

Consequent upon the integration philosophy, certain incidental rights need consideration. Treaty parties or community members of the integration idea are to benefit certain right and protection from certain treatments. Some of these rights include free movement of persons, free movement of goods and services, free movement of capital, right of establishment etc. Article 13 of the universal declaration of Human Rights 1948 however provides that: "everyone has the right to freedom of movement and residence within the borders of each state" this shows that the universal declaration of Human Rights charter already provide for these rights that are also recognised and guaranteed by both the revised treaty and the protocols thereto relating to this incidental rights.

Before the ECOWAS treaty of 1975, the European Nations in 1957 signed an Economic community treaty (EEC TREATY) whereof Article 48 guaranteed freedom of movement for all workers within the community. The European community by this provision intends to break, legally, the remaining internal frontiers within its territorial scope and thus guarantee unfettered movement of European country. These rights are sine qua non to genuine integration agenda. We shall now consider these rights and there consequences on the ECOWAS integration goal. [40]

The first protocol relating to free movement of persons residence and establishment under the ECOWAS treaty was signed in Dakar on 29th May, 1979. This protocol spells out the various stages stipulated in Articles 27 (2) of that treaty. Article 2 of the Dakar protocol provides that the community citizens have the rights to enter, reside and establish in the territory of member states. A concomitant of free movement in its general context include the right of a

community citizen to enter freely a member state. In this connection, the Dakar protocol provides that a citizen of the community visiting any member state for a period not exceeding 90 days shall enter the territory of that member state free of Visa requirement. There are however conditions precedent to the exercise of this right of entry. For example, such community citizen must possess valid travel documents including the international health certificate. He must also present himself at any of the official entry points of the member state. It is trite to note that the right of entry is governed by the rules of international law. Under international law, the right to admit aliens is the exclusive preserve of every state. [41] In this direction; the Dakar protocol provides inter alias that;

"Member states shall reserve the right to refuse admission unto their territory a citizen who comes within the category of inadmissible immigrants under its laws."

Section 17 of the Nigerian Immigration Act for Instance lists, the various categories of prohibited immigrant who are liable to be refused admission. The revise treaty under Article 59 provides that citizens of the community shall have the right of entry, residence and establishment and member states undertakes to recognise these rights of the community citizen in their territories in accordance with the provision of the protocol relating thereto. This goes to suggest that any unlawful and unjustifiable refusal can be redressed in the community court by a community citizen who has been so refused or who right has been violated or likely to be violated. But sadly, the protocol establishing the community court precludes private citizen from bringing action in the court. It is suggested that the protocol should be amended.

The right of residence under the ECOWAS treaty is to be implemented in accordance with the provisions of the Abuja protocol, which defines right of residence as:

> *"The right of a citizen who is a national of one member state to reside in a member state other than his state of origin and which issues him, with a residence card or permit that may or may not allow him to hold employment".*

Articles 3 of the said protocol however provide that member states may restrict the right citizens for reasons of public order, public security and public health.

It is submitted that this provision may have made nonsense of the residency provision as a community citizen may be refused resident permit or card under the cover of public security or even public order. These terms are vague and could be manipulated to soothe the whims and caprices of the potential host country.

Under the Lome protocol on the right of establishment of 6th July 1985, the right of establishment means:

> *"... the right granted to a citizen who is a national of one member state to settle or establish in another member state other than his state of origin and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises and in particular, companies under condition define by the legislation of the host member state for its own nationals".*

It must be pointed out here that before now, Nigeria has long adopted the principle of non-discrimination in favour of African countries in matters of

establishment but only on reciprocal basis. The right of establishment is should be noted, does not necessarily mean a right to engage in all forms of economic activities. The exemptions specified by the relevant protocol include activities in which member states provide for different treatment for non-nationals where such measures are justified by exigencies of public order, security or public health. [42]

For instance, trading in arms and ammunitions or in military hardware and uniform may be prohibited to non-nationals of a member state.

Member state under international law has a right to expel aliens subject to the observance of the minimum standard of civilised behaviour. It is an established rule of international law that an aliens is not above the immigration laws of any country. It goes with out saying that the moment an ECOWAS citizen extends his stay beyond 90 days or take an employment without the permission of the Chief Federal Immigration officer or starts business without a resident or business card or permit or engages himself in criminal or immoral activities, such as car stealing, house breaking begging or prostitution etc, he may be liable to be treated as an illegal alien and thereby so treated as such and punished in accordance with immigration Act. Such a person either on the recommendation of a court, or by discretion of the Minister concerned may be deported. [43] It is submitted that in the interest of the integration philosophy, the exercise of deportation or expulsion power by a host member state ought to be exercised judicially and judiciously.[44] Only a court (The community court) ought to be able to give such an order. After all the aliens entered the host country as of right under the relevant treaty and protocol. Therefore, the determination of his right and liability should also be by a court established under the treaty or protocol and not by a discretion of a minister. To do otherwise, is to violate the rule of natural justice.

Article 50, 51 and 53 of the revised treaty provides for promotion of trade, monetary and financial integration and free movement of capital between member states in accordance with the objectives of the treaty.

To promote trade, there must be elimination between member states custom duties and charges having equivalent effect, quota restrictions as well as all other non-tariff barriers. There must also be adoption by member states of a common external custom tariff. Hence the revised treaty under Chapter VIII provides for co-operation in trade, customs, taxation statistics, money and payments. From Article 35 to 53 the revised treaty, provides for how these can be achieved under the integration objective.

However, inspite of this provisions, it cannot be said that there is actually any free movement of goods as services or capital within the community. The barriers are still very much around. May be because of selfish economic interest of member states as against the economic prosperity of the larger community. Its still not very easy to bring in goods freely in the true sense of it from one member state to the other. The custom duties and charges are still far from being harmonised. The age long allegation of trans-boarder crimes, smuggling, dumping, are still very much with member states. The drama between Nigeria and republic of Benin sometime in 2003 is in point here. Where the Nigeria government decided to shut it boarders against the Benirose on the allegation of serious cases of trans-boarder crimes and car theft masterminded by Republic of Benin based criminals, this led to serious break down in commercial transaction of traders along that route until the matter was resolved and the borders reopened.

It is submitted that to make this provisions realisable, member states should either amend their relevant laws relating thereto or make new laws that will provides for the enabling environment for the realisation of the treaty and protocol provisions. If the enabling environment is not created, whether or not the ECOWAS treaty is supranational its implementation will be difficult. This eventually will affect the realisation of the treaty objectives.

> In Afolabi V. Federal Republic of Nigeria (2003) (unreported, the first case that was filed and considered by the CCJ). The plaintiff a businessman was traveling through the border between Nigeria and Benin Republic; the defendants unilaterally closed the border thereby restraining the freedom of movement of the plaintiff, which consequently resulted in to the plaintiff incurring financial losses. The plaintiff brought this action to enforce his rights under the protocol on freedom of movement amongst others. The defendants brought a preliminary objection seeking the court to strike out the plaintiff case as the court has no jurisdiction because the plaintiff cannot sustain an action in the court by virtue of Article 9(3) of the Protocol of the court of Justice. That the plaintiff should have brought his action through his member state (Nigeria) and not himself as an individual cannot directly sustain an action before the community court.

The court considered the Article referred and upheld the submission of the defendant and struck out the action on the ground that the plaintiffs had no locus standi to institute an action directly before the court due to the provision of Article 9(3).

The court was therefore prevented from hearing the substantive matter as to determine the issues therein, in connection with the plaintiff's fundamental rights.

The drafters of the court of Justice Protocol say in Article 9(3) that:

"A member state may on behalf of its nationals institute proceedings against another member or institution of the community, relating to the interpretation and application of the provisions of the treaty, after attempt" to settle the dispute amicably have failed.

The draft men did not say Member State shall or even bring proceeding on behalf of their nationals against itself but against another member state. Inspite of the provision in Article 4 (g) of the Revised treaty (1993), which incorporated the African charter and the protocols, which specifically created rights for nationals of

member state. It is submitted that all the rights in the African charter and the various protocols meant to be enjoyed by Nationals of member states are empty shells. Some of these rights can only be enforced in the community court and some time against their own home state. But since Article 9(3) has taken away their rights to approach the community court directly then they have no remedy if their so called rights under the Treaty and Protocols are violated by particularly their own home member state as we saw in Afolabi's case.

Without any further delay the provisions of Article 9(3) ought to be amended to accommodate the rights of nationals at least to bring actions directly against their home member state to redress their rights either under the treaty or its protocols. It is scandalous that provisions like Article 9(3) are still found in statute books of Africa.

There have been concerns in the adjudication of matters on human rights in the Regional Courts, which have not been created per se as Human Rights Courts. The Court of Justice of the European Communities have similarities with the Court of Justice of the Economic Communities of West African States and the former being the older in the set up, would be considered in order to draw from its experiences.

The Court of Justice of the European Communities, ECJ Sitting in Luxembourg should not be confused with the European Court of Human Rights sitting in the Strasbourg. The ECJ is the highest Judicial Organ of the European Union (EU) and the most authoritative interpreter of its European Community Law.

The EU is a super-national system of regional Economic and Political Cooperation whose membership includes 15 Member-States. All the EU Member-States is also members of the much larger council of Europe, under whose auspices the European Court of Human Rights operates. Although all EU Members-States are parties to the European Convention, the EU itself is not a party and the actions of EU institutions are not subjects to challenge before the European Court of Human Rights. Among its other task, the ECJ decides upon the validity of actions taken by other EU institutions, and decides whether actions taken by Member-States conflicts with Community Law. The treaties that form the basis of EU contain a few express provisions that have a Human Rights character such as those of freedom

of persons, non-discrimination, and voting rights. Although decisions representing ECJ Laws have generated substantial jurisprudence in select areas, the impact on the citizens are yet to be felt with such impact.

In response to criticism of the paucity of express Human Rights Protection, the ECJ developed a jurisprudence that restricts the powers of EU institutions and the powers of member-states acting within the sphere of Community Law in order to ensure respect for additional Fundamental Human Rights. Fundamental Rights form an integral part of the general principles of the law, the observance of which the ECJ ensures. Those rights include rights protected by the European Human Rights Convention and other rights derived by the constitutional traditions common to member states. The ECJ has had occasion to recognize such rights as the right to fair-hearing, the right to privacy, freedom of Religion, freedom of expression and non-retroactivity to penal laws as well as Economic Rights such as right to property and a right to pursue a trade. Because the ECJ has the authority to interpret Community Laws, it is sometimes able to construe a measure narrowly in order to pursue Human Right violation. In other cases, its invocation of Human Rights has resulted in the invalidation of an action of an EU institution or a Member state.

On the question of the application of Human rights Law under the ECOWAS Article 4(4) of the Revised Treaty enjoined the adherence to the principles that would promote and protect Human Rights. Does it mean that there is a clear indication that the CCJ could adjudicate on Human Rights matters even though the Revised Treaty contains no such Bill or Right? The Court can apply the fundamental principles to bring in the application of fundamental Rights in its adjudication in the area of the interpretation and application of the provisions of the Treaty. In the Court of Justice of the European Communities, the Court similar to the Court of Justice in the ECOWAS, procedures were adopted in line with the promotion and protection of Human Rights. Initially the Court was reluctant in adjudicating on human rights cases because of the absence of the Bill of Rights in its Treaties. At first, an applicant sought to rely directly on a Fundamental Human Rights protected by his own law even by his National Constitution and the Court reacted vehemently by reasserting the supremacy of community law over the laws and constitutional laws of the Member States. However there was a turn of events when an administrative Judge Stullgart asked the Court whether a particular requirement was compatible not with the fundamental rights of National law but

with the general principles of community law, that the court expressly included the protection of fundamental rights within those principles. The court interpreted the provision on the basis of all the language versions and having regard to its purpose, and held that it did not require nor prohibit the identification of beneficiaries by name; then the Court ruled, that the interpretation contained nothing capable of prejudicing the Fundamental Human Rights enshrined in the general principles of Community law and protected by the Court. That decision recognized for the first time the principles for community law the term used by the staggart Court must be taken at short hand for the general principles of law recognized in the community legal order.*[45]

Secondly, the original French text of the judgement refers to *"les principes ge'ne'raux du troite communaute don la cour assure le respect".* These words repeat the formulation of Article 164 now Article 220 European Communities requiring the Court to ensure that in the interpretation ... and application of the Treaty, the law observed shows that the general principles including Fundamental Rights are part of the law referred to in Article 164 a point which is lost in the English version of the judgement. Do we have such provision in the Protocol of the CCJ? In article 9 paragraph 1 of the Protocol of Court, the provision of Article 1 sub paragraph 1 provides that the Court shall ensure the observance of law are of the principles of equity in the interpretation and application of the provisions of the Treaty.

The material words in the Article mentioned are *"the court shall ensure the observance of law",* the interpretation of the words in quotation one would not hesitate to hold that observance of law in the interpretation and application of the provisions of the Treaty would include the recognition, promotion and protection of Human and Peoples' Rights in accordance with the provision of the ACHPR as provided in Article 4(g) of the Revised Treaty of the Community.

In the ECJ, the recognition of Fundamental Rights has therefore taken a step further in the International law cases. * Where the Court stated that the general principles of law included the protection of funds and Rights. Another case where the Frankfurt administrative Court had already held certain provisions of community law; relating to the system of agricultural export licenses and the deposits attached to them, to be invalid as contrary to fund, rights protected by the German basic

company had forfeited a deposit equivalent to about 3000 pounds for not using export license for ground meat, which it had been granted. From a reference from the Frankfurt Court, the court again refused to look at German Constitutional law but asked instead whether there was any analogous guarantee of Fundamental Rights in Community Law. *[46]

The European Court of Justice held that the respect for such Rights formed part of the general principles of law. But the Court examined the provisions in question and ruled that those rights had not been infringed. Being dissatisfied, the Frankfurt Court referred the case to the German Federal Constitutional Court and asked whether the Community provisions were compatible with German Basic Law. The second chamber of the Constitutional Court agreed with the Court of Justice, however, the important question was whether the reference was admissible?

On the validity of the Community Law, the Constitutional Court in Europe ruled by a 5- 3 majority that the German Court could, so long as Community Law contained no catalogue of Fundamental Rights passed by a Parliament and equivalent to a catalogue of rights contained in the basic law. The German Court remained competent to examine whether the acts of German authorities, although done under Community Law, were compatible with the basic law. There was however much criticism about the judgement and the Court by its own action finally overruled its judgement in another case. But the challenge to the supremacy of Community Law, at least had the merit of reinforcing concern at the Community level for the protection of Fundamental Rights.

Another step was further taken by the Court of Justice after the Council of Europe's European Convention on Human Rights had been ratified by all the Member States. The Court in line with the known principles of law accepted in the second Nold's case; that the European Convention and also more generally International Treaties for the protection of Human Rights, in which the Member States have collaborated or of which they as signatories can supply guidelines which should be followed within the frame work of Community Law. The Court rested not on its oars when the case of Rustili came before it and took a further step to define the scope of the applicability of the European Convention. Rustili was an Indian National resident in France whose Trade Union and Political activities had incurred the approach of French authority. His residence permit was subject to a restriction

prohibiting him from residing in certain parts of France. The Court of Justice considered the limitation imposed by Community Law on the part of Member States in respect of aliens, in particular under Council directive 64/221 and regulation 1612/68. It held that these limitations were general principles enshrined in the European Convention to the effect that (in the words of the Convention) no restrictions in the interests of National security or public safety shall be placed on the Right secured by Articles 8,9,10 and 11 of the Convention other than such as are necessary for the protection of those interest in a democratic society.* [47]

The Court of Justice of the European Communities considered several cases touching on or outside the fore view of Fundamental Human Rights. In one of such cases, the Court confirmed that Article 8 served in Common Law to protect the private dwelling of natural persons rather than the premises of undertaking. Article 7 of the European Convention which prohibits retroactivity or penal provisions was held by the Court to prevent a Community regulation from validating retrospectively a line imposed by a British Court for a fishery infringement which was not punishable at the time it was committed. The court declared that the principle against retroactivity of penal provision common to all the legal orders of the Members States and enshrined in Article 7 as Fundamental Rights, takes its place among the general principles of Law, whose observance is ensured by the Court of Justice. In a later development, the German Federal Constitutional Court which ruled earlier that the Court of Justice had no sufficient competence to deal with Human Right or Fundamental Rights were sufficiently protected in Community Laws despite the absence still of any enacted catalogue. [48]

In conclusion, the opinion that appears to be more acceptable is that fundamental Rights. The end result in my view is that the Community Court of Justice (ECOWAS) can utilize its powers of interpreting provisions relating to Human Rights protection in order to develop the Community Human Rights jurisprudence, which can enhance the protection of Human Rights in general.

It is submitted that Human Rights and the Rule of law are interwoven, and that the objective of the African Charter on Human and Peoples Rights cannot be realized unless the imperatives of the Rule of Law and constitutional order in place in African States. Every government or state official must recognize the legal limitation of power and authority.

Since Africa has chosen a human rights regime, as was demonstrated by the adoption of the African Charter, the decision of the African commission on Human and Peoples Rights [49] where it stated as follows, must always be borne in mind;

"Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic generate at least 4 levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote and fulfill these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties".

We cannot deny the fact that many African countries pay lip service to Human rights. Injustice is always the bi-product of Human rights that are abused and not redressed. Krishna Iyer, a Judge of the Indian Supreme Court, quoted
Robert Ingersoll as predicting what would befall a national if justice to the people was denied thus;

"All the wrecks on either side of the stream of time, and all the nations that have passed away – all are warning that no national founded upon injustice can stand. From the sand-enshrouded Egypt, from the marble wilderness of Athens, and from every fallen, crumbling stone of the once mighty Rome, comes a wail as it were, the cry that no nation founded upon injustice can permanently stand".

We endorse the above view that in West African regime all States must respect the essentials of human rights. This no doubt is the spirit of the Economic Community of West African States (ECOWAS).

The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Limitations on the Court in respect of its competence were a major factor impairing efforts to actualize the proposed amendment of the Protocol, to permit individuals to have direct access to the Court.

The Reporting division under the office of the Chief Registrar can play a major role in informing the States and the people the measures taken to give effect to the rights and freedoms recognized by Article 4 (g) of the Revised Treaty of the Economic Community of West African States.

It is trite law of interpretation of treaties that the provision of the treaty should be given effectiveness. The Rule of effectiveness must mean something more than the duty of a tribunal to give effect to a treaty; that is the obvious and constant duty of a tribunal, which is what it is there to do.* The rule must surely mean, in the mind of the party invoking it, that if the (Tribunal) does not construe the treaty in the way that I submit to you to be correct, this treaty will fail in its object but that is a *pititio principii,* because as has been submitted, it is the duty of a tribunal to ascertain and give effect to the intention of the parties as expressed in the words used by them in light of the surrounding circumstances. Many treaties fail – and rightly failed – in their objects by reason of the words used and Tribunals are properly reluctant to step in and modify or supplement the language of the treaty.

The Principle of interpretation expressed in the maxim, *ut res magis valeat quam pereat,* often referred to as the rule of effectiveness cannot justify the court in attributing to the provisions for the settlement of disputes in the peace treaties a meaning which, as stated above, would be contrary to the words and spirit of the Treaty. No doubt the general object of the parties to the revised Treaty of 1993 of ECOWAS was recognized, to promote and protect Human and peoples' Rights in accordance with the provisions of the ACHPR as read into Article 4 (g) of the treaty. This view, if accepted, would mean that the Community Court of Justice which is saddled with the responsibilities of interpreting and applying the provisions of the Revised Treaty can safely apply these provisions and the principles of Law in respect of the promotion and protection of Human and peoples' Rights. *[50]

In the final analysis the court of justice, even though is not called a human rights court per se, may adjudicate on human rights matters in the course of interpretation and application of the Treaties and Protocols of the Community. The Court of Justice could adjudicate on matters of human rights under the provision of Article 9 (1) of the protocol of the court of justice of ECOWAS which provides thus:

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

The said provisions are akin to the provision of Article 164 now 220 of the European Communities whereby that court considered issues of human rights applying that provision to substantiate its reason for the assumption of jurisdiction to hear matters touching on Human Rights.

It is in that vein that it must be stated with clarity that the ECOWAS Court of Justice can adjudicate on human rights matters despite none catalogue of human rights in its protocol. [51]

Nevertheless, in considering the amendment of ECOWAS Court of Justice Protocol, the following issues must also be looked into:

1. The Hierarchy of the Community Court vis-à-vis the National or Municipal Courts in the Community.

2. The Right of appeal of a dissatisfied litigant from the Community Court.

3. Resolution of conflict of Laws in a situation where the community court is placed in the same hierarchical structure with Municipal or National Courts.

4. Possibility of amendment of the constitutions of the Community members to provide for the establishment of a division of the Community Court in their various constitutions.

Unless these vexed issues are also considered during the amendment process of the Protocol, the amendment may not be too tidy.

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# CHAPTER FIVE

## 5.0. CONCLUSION AND RECOMMENDATION

### 5.1 CONCLUSION

West African Countries, like other parts of the developing world, have at least conceptually, two alternatives for the fostering of their economic growth. The first is the autarkic path (non trade situation). This however, can be dismissed quickly given the high costs it imposes and, more important, its particular unsuitability for West African Countries. The second alternative, the so-called outward-looking path of development in which exports are concentrated in a few traditional products, also does not offer good prospects. The principal reasons for these are well-known with few exceptions. The exports products, except crude oil of less developed countries, like ECOWAS member states, are very unstable, the economic growth of countries following the foreign-trade oriented path of development depends heavily on economic condition in the industrial countries which they can not influence, and finally the industrial centres-despite the talk of a new international economic order have established so many obstacles to trade and migration that it is very difficult for less developed countries today to obtain the benefits of their comparative advantages.[1] It is against this background that ECOWAS member states have been seeking alternative strategies for economic development and economic integration becomes an alternative strategy, for it represent a middle way between the autarkic and the outward-looking paths of development. It takes something from both of them; from autarky the protection of the integration area from outside competition through the common external tariff, and from the out-ward looking path of development the opening of the national markets of each of the members countries to regional competition. Thus the integration programmes of ECOWAS should be seen much more as an alternative path of economic development than as a way of allowing a better allocation of a given stock

of factors of production or as a mere tariff issue.[2] The economic prosperity of ECOWAS is sine qua non to the enjoyment, protection and observance of human rights. The actual human right of a man is the protection and observance of his economic rights. The human rights provisions in the ECOWAS treaty will be an empty shell without economic prosperity of citizen of the sub-region.

It is therefore necessary that ECOWAS members states avoid expecting too much from economic integration, which cannot be a substitute for the internal efforts and measures that each country has to take. Economic integration is not a way to evade reforms by exporting the problems to the rest of the region. Member states are in urgent need of internal reforms and structural transformation of their economies with a view to ensuring the creation and optimal use of factors of production. Countries of the region must tap and exploit their resources to the full. Non-African multi-national corporations operating in West Africa should be replaced by indigenous multinational firms, if a large part of the benefits of integration is to be retained in the region. But this cannot be done by decree. West African businessmen must take up the challenge. It is also necessary that internal economic policies pursued by individual member of ECOWAS must be consistent with the integration idea.[3]

Efforts should be made to obliterate the remaining vestiges of the colonial legacy in West Africa in the relations between the Anglophones and Francophone. It thus appear that what is regarded as political differences between the two former colonies is traceable to past cleavages. Senegal for instance, sees ECOWAS as a possible channel through which Nigeria/an Anglophone country given its economic and political weight and clout could expand its wings over Africa South of the Sahara and assume a role as Big Brother, it is therefore thought that Nigeria's particular eagerness to see ECOWAS succeed. French government working on this seemingly false premise, have consistently supported and encouraged the strengthening of CEAO for reasons of self-interest. If there is concern in Senegal about domination, by Nigeria within ECOWAS, and in France about its own declining influence over its ex-colonies, then there would

be a common interest among them in inhibiting the development of ECOWAS. The fear of Nigerian domination is unreal, a mere delusion, and so, would serve no useful purpose.[4]

Consequently, an analysis of the West Africa experience of integration within the context of ECOWAS shows a poor record with regard to the execution of the community programmes. The provisions of the revised treaty instituting the principle of sup rationality are not being applied, several protocols are contravened, particularly those pertaining to free movement of goods and persons. The situation shows all too clearly that a sense of belonging to a pluri-national community is cruelly lacking. The first action instituted in the newly established ECOWAS community court of justice now, is by a Nigerian who seek the protection and enforcement of his rights under the treaty against the Nigerian government for violating his rights of free movement of goods and persons amongst others when the Nigerian government shut her boarder with republic of Benin some time in 2003 for alleged increase in trans-boarder crimes along Nigeria/Republic of Benin boarder at Seme. This case was thrown out for lack of jurisdiction of the court to entertain suits file by private persons. The same fate befell a similar suit also filed in the community court.

The Extent to which ECOWAS programmes succeed, and the materialisation of the political commitment of member states will depend on how effective the executive secretariat also prove to be at promoting the development of West Africa. This basic principle brings to the fore the need for coherent community programmes and policies that are realistic, pragmatic and capable of furthering the cause of regional integration. It will therefore be necessary to formulate programmes that emphasise the benefits of collective action. The executive secretariat will need to pinpoint priority areas of intervention within which action will be undertaken in tandem with efforts already being made by state parties.[5]

An enormous amount of work still needs to be done with regard to the implement action of the ECOWAS programmes. The achievement of success demands the constant support of the member states; each country must play a leading role in the achievement of the goals of integration. As it is at present, quite a number of the decisions of ECOWAS policy-makers have not been implemented by the member states. This is one of the main weakness of ECOWAS. Though Nigeria has taken some positive and decisive steps in the implementation of ECOWAS programmes, as we have seen above, but more still need to be done.

There must be broad-based public participation if community decisions are to be implemented and a consensus is to be developed on the strategic goals of regional integration and on how they may be attained. ECOWAS must endeavour to win the support of the economic operators, associations of professionals and mass movements of youth, woman, workers and others. Above all, ECOWAS must gain a better insight into the goals, concern and problems of the different stakeholders in the development process, in order to find appropriate solutions, which will contribute to the welfare of our people. This is one of the preconditions for the success of ECOWAS programmes; the successful functioning of ECOWAS will also depend on the financial and human resources mode available to the community institutions. Members states are therefore urged to comply with the authority decisions and apply them.[6] The political will and commitment of the West Africa governments external assistance will play an important role particularly through the enhancement of the internal capacities of the ECOWAS institutions.

It is however worrisome whether the present economic reforms embarked upon by the present democratic government in Nigerian does not assault some cherished programmes of ECOWAS. The penchant for ban on importation of goods such as textiles and other household without exception will certainly impugn on the free trade philosophy of the revised ECOWAS treaty. The internal economic policies pursued by individual members of ECOWAS must be consistent with the ECOWAS agenda. Hence incompatible monetary, fiscal and budgetary measures should be aligned with

those of the community, that is the only way forward else the need for the community will just be "one of those tea-party organisations meant not to succeed.

**RECOMMENDATION.**

ECOWAS was set up principally to enable the countries of the sub-religion to transcend the vestiges of colonialism or imperialism, which continue to inhibit progress and prosperity within the community. It is this aspiration and hope shared by the founding fathers of ECOWAS, which still constitutes the essential dynamic of the organisation. For the all-embracing West Africa integration experiment to have a chance of success, the following are recommended for consideration by the community policy makers and stakeholders.

1. Member –countries should align their internal development efforts and policies with those of the community. The harmonisation of the national movement codes is necessary in order to create an appropriate enabling environment that would enhance the participation of multilateral corporations along side indigenous companies.

2. Some of the organs of the community should be given supranational powers and their decisions and regulations should be made binding on member states as well as on the institutions of ECOWAS; they should also have direct applicability in the national jurisdictions of member states inspite of the requirements of the municipal laws of member states.

3. There should be commitment to the integration idea and its success among all groups in the region, whether social, professional or political, among private enterprises and among households, and individuals

4. Members should honour all obligations eg. Making their statutory contributions promptly and regularly.

5. The community should establish a fair and acceptable distributive mechanism to ensure equitable distribution of the benefits and costs of integration in order to eliminate disparities in their level of development. This will further help to allay the apprehensions and suspicions of the least endowed members of the community. The rich can not prosper without the progress by the poor.

6. New methods of financing regional integration efforts must be found in order to make ECOWAS less dependent on national budgetary appropriations.

7. The community should always enjoy strong political support from member states, irrespective of which governments are in power.

8. New mechanism should be work out to enable ECOWAS member states speak with one voice in the councils of the international community whose deliberations touch and concern the vital interest of ECOWAS and its member states.

9. The entire sub-region should recognise a greater and more dynamic role for the private sector not only in the execution of programmes but also in the decision-making process both at t he national and regional level

10. ECOWAS member states should be committed to democracy, good governance, accountability and transparency in the public affairs in order to reduce corruption to the barest minimum.

11. ECOWAS member states should be committed to the protection and respect of human rights in all its ramifications in order to step down cases of armed conflict prevalent in the sub-region. A genuine economic prosperity can only be achieved in an atmosphere of peace and security in the ECOWAS sub-region.
12. The protocol establishing the community court of justice should be amended to widen its jurisdiction so that private citizens can conveniently enforce their rights guaranteed under the treaty and its various protocols.

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