

## THE ROLE OF NIGERIA IN THE GROWTH OF THE LAWS OF INTERNATIONAL ORGANIZATIONS

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### ABSTRACT

The goal of this paper is to evaluate the roles of Nigeria in the development of International laws with specific focus on the legal system of the Economic Community of West African States (ECOWAS). The paper adopted the legal history approach. The paper is divided into seven sections. Section one gives the background to the study. Section two discusses the pre-ECOWAS legal system, while section three highlights Nigeria's role in the establishment of ECOWAS Court of Justice. Section four analyses the functions of Community Court of Justice while section five examines the sources of the ECOWAS laws. Cases tried by the Community Court are discussed in section six, section seven being the summary and conclusions of the paper.

*Keywords:* ECOWAS, Legal system, Legal History, Protocol, International

### 1. INTRODUCTION

The starting point of this paper is to appraise Nigeria's pre-democratic foreign legal policy within the West African sub-region. The advent of military governance in Nigeria ushered several regional challenges in the areas of peace and security. The Nigerian military regimes believed that as far as peace, security and the spirit of good regional cooperation were concerned, the development of Nigeria would be influenced by developments in other West African countries. In 1975, the Military regime of General Yakubu Gowon sponsored the formation of a sub-regional international organization, ECOWAS, to facilitate economic, political, social, cultural and legal developments of West Africa. The focus of the paper is on the development of the ECOWAS legal system.

The Nigerian Military is older than Nigeria itself. Whereas Nigeria as a nation was created in 1914 and became independent in 1960, the birthday of the Nigerian Military as an institution could be traced to 1863. Whereas the grandfather of the Nigerian nation may be said to be Lord Frederick Lugard who amalgamated the hitherto diverse independent ethnic groups to form Nigeria in 1914, the grandfather of the Nigerian Military may be said to be the Lt. John Glover of the British Royal Navy who organized his brave escorts to form a local force known as the "Glover Hausa" or "Hausa Militia" in Lagos in 1863.<sup>1</sup> Perhaps, apart from the indigenous local government authorities, the Military is the oldest institution in Nigeria<sup>2</sup>. As an older institution, the Military produced regimes that presented themselves as "corrective regimes, saviours of the fatherland and the harbingers of the good life for the people". Nigeria was under

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<sup>1</sup> E. A. Akpan, *History of the Nigerian Army 1862 – 1992* (Abuja: Nigerian Army Headquarters, 1992), p.11.

<sup>2</sup> J. R. Bassey, *Epitaph to Military Rule: Political and Administrative History of the Nigerian Local Government, 1952 – 2003.*( Uyo: Minder International Publishers, 2005), pp. 1-15.

Military rule for 29 years (January 15, 1966 – October 1, 1979; December 31, 1983 – May 29, 1999). The Nigerian Military regimes adopted various policies and strategies aimed at not only building the Nigerian nation-state, but also integrating the West African sub-region for sustainable development. Thus, the Nigerian Military had not only provided leadership to the Nigerian nation-state but also to Africa. It is not an exaggeration to say that the Military has made Nigeria a respectable sub-regional and regional leader, one of the important key players in global politics and a major factor in international peacekeeping operations. For the purpose of this paper, we shall limit our discussion to Nigerian Military leadership in West Africa with particular reference to efforts at developing a common legal system in the sub-region.

The role of the Nigerian Military leadership in African, particularly West African affairs was not an accident. It had its antecedent in the foreign policy thrust developed by the civilian regime of Nigeria's first and only Prime Minister, Alhaji Sir Abubakar Tafawa Balewa. On October 1<sup>st</sup>, 1960, late Alhaji Sir Abubakar Tafawa Balewa delivered a maiden independence speech to mark the Nigerian's arrival as an independent sovereign nation after decades of British colonial rule. The Prime Minister said *inter alia*, that he felt "sure that history will show that the building of our nation proceeded at the wisest pace... upon firm foundations"<sup>3</sup>. Apart from addressing urgent national issues, Sir Balewa went international by declaring that Nigeria and Nigerians would "... not be allowed the selfish luxury of focusing our interest on our homes... In these days of rapid communications, we cannot live in isolation apart from the rest of the world, even if we wish to do so... This great country... finds that she must at once be ready to deal with grave international issues... we must at once play an active part in maintaining the peace of the world and in preserving civilization..."<sup>4</sup>.

Prime Minister Balewa's pronouncements were developed into Nigerian foreign policy towards Africa. Accordingly, on October 10, 1961 the Nigerian Minister of Foreign and Commonwealth Affairs, Dr. Jaja Wachukwu told the Sixteenth Regular Session of the United Nations General Assembly that, "our foreign policy is based on three pillars: the concept that Nigeria is an African Nation, it is part and parcel of that continent of Africa and therefore it is so completely involved in anything that pertains to that continent that it cannot be neutral and must never be considered a neutralist country"<sup>5</sup>. Again, Prime Minister Balewa had earlier told the world in 1960 that Nigeria's foreign policy will be founded on Nigeria's interest and will be consistent with the moral and democratic principles on which our constitution is based. Very particular attention will be devoted to adopting clear and practical policies with regard to Africa. It will be our aim to assist any African country to find a solution to its problems and to foster the growth of a common understanding among all nations and especially among the new nations of this continent. We are determined to encourage the development of common ties between all the states<sup>6</sup>.

With these words, Prime Minister Balewa did not only open a new chapter in the history of Nigeria and indeed of the world but also set a road map that would guide successive Nigerian governments. Historiographically speaking, what seems to have ran through Balewa's political and economic consciousness was a picture of Nigerian state emerging as a regional and sub-regional leader and one of the major players in world politics. It was Balewa's desire to see Nigeria being her brothers' keeper by extending assistance to other African countries through viable economic cooperation and integration programmes. Balewa believed that Nigeria's effort at nation building should be made side by side with the effort at sustainable safe neighbourhood, because a neighbourhood in which poverty and insecurity are endemic would always be prone to social unrests and armed conflicts with grave consequences on the country.

<sup>3</sup>Speech by Alhaji Sir Abubakar Tafawa Balewa, Prime Minister of Nigeria, October 1, 1960.

<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid*

<sup>6</sup>ECOWAS: Achievements, Challenges and Future Prospect\_(Lagos: ECOWAS Executive Secretariat, 1994), p.20.

On 22<sup>nd</sup> June 1966, Nigeria's first military leader, Major General Aguiyi Ironsi in his maiden broadcast to the nation after Balewa's government had been toppled, said: "... because of our population and potentials, the majority of opinion in the civilized world looks up to us to provide responsible leadership in Africa... we are convinced that whether in the political, economic or cultural sphere, our destiny lies in our role in the continent of Africa."<sup>7</sup> General Yakubu Gowon who took over from General Ironsi emphasized the need for economic integration in the Nigerian foreign policy pursuit thus:

I do not need to emphasize the urgent necessity to promote economic co-operations bearing in mind the level of poverty in Africa, which has the disheartening record of harbouring 16 out of the 25 countries classified by the United Nations as the least developed countries of the world. Economic integration will hasten economic and social development on the continent. The slow pace of economic growth and development in many countries make economic co-operation an urgent necessity<sup>8</sup>.

In order to play the expected leadership role at the world stage, Nigeria, immediately it regained independence, joined numerous international organisations such as the United Nations, Commonwealth, Non- Aligned Movement, Pan Africanism, World Bank, International Monetary Fund to mention but a few. Nigeria also sponsored or co-sponsored the formation of a good number of continental, inter-continental and sub- regional international organizations, including the Organisation of African Unity (OAU) now African Union (AU), Africa, Caribbean and the Pacific (ACP), and the Economic Community of West African States (ECOWAS). The regime of General Yakubu Gowon in collaboration with Togo played a leading role that led to the establishment of the ECOWAS in 1975, amidst damaging criticisms especially by the French-speaking countries<sup>9</sup>. The regime of General Badamosi Babangida was even more assertive about the West African integration. In one of his policy statements towards West Africa, General Babangida, Nigeria's first and only Military President said:

There is therefore no gain saying that when certain events occur in this sub-region depending upon their intensity and magnitude which are bound to affect Nigeria's politico-military and socio-economic environment, we should stand by as a helpless and hapless spectators. We believe that if the events are of such level that has the potentials to threaten the stability, peace and security of the sub-region, Nigeria in collaboration with others, in this sub-region, is duty-bound to react or respond in appropriate manner necessary to either avert the disaster to take adequate measures to ensure peace, tranquility and harmony<sup>10</sup>.

Like Prime Minister Balewa, President Babangida believed that Nigeria's politico-military and socio-economic environment could be affected positively or negatively by the situations in other West African States. Therefore, in order to maintain peace and security and

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<sup>7</sup> An Address by major-General Thomas U. Aguiyi-Irosi, Head of the Military Government to the Regional Conference of Heads of Diplomatic Missions in Africa (Lagos, June 9, 1966).

<sup>8</sup> Aaron T. Gana, "Nigeria, West Africa and the Economic Community of West African States", A. B. Akinyemi *et al*, Nigeria Since Independence the First 25 Years Volume X: International Relations (Ibadan: Heinemann Educational Books, 1989), p.126.

<sup>9</sup> Joseph Robert Bassey, "Nigeria – ECOWAS Relations in Historical Perspective, 1975 – 1999: A Study in Diplomatic History" (Unpublished Ph.D. Thesis Submitted to the University of Calabar, 2002)

<sup>10</sup> ECOWAS: *Contact*, Publication of the ECOWAS 2/3 (November, 1990),p.12.

to bring about sustainable developments in the West African sub-region, the Babangida regime championed the formation of the military wing of the ECOWAS called ECOMOG, and the establishment of the Market Integration Scheme (EMIS). The EMIS includes the ECOWAS Trade liberalization scheme (ETLS); Free movement of goods; Free movement of persons; Right of establishment; Right of residence; and monetary co-operation programme. The aspect of the economic integration scheme has been discussed elsewhere by the present author<sup>11</sup>. The present research deals with the legal aspect of the integration. Before going into analysis of this, it is deemed necessary to discuss briefly the pre- ECOWAS legal system.

## 2. THE PRE-ECOWAS LEGAL SYSTEM

With regard to the integration of the West African legal and judicial systems, the ECOWAS Court of Justice has its antecedent in the West African Court of Appeal (WACA) and the West African Court of Equity (WACE), which were established by the British chiefly to protect the European economic interests<sup>12</sup>. The actual amalgamation of the court systems in West Africa started in 1862. The British government introduced English law into the Colony of Lagos under the Ordinance No. 3 of 1863. In 1866, the four British settlements of Lagos, the Gold Coast, Sierra Leone and The Gambia were amalgamated into one government referred to as the government of the West African Settlements<sup>13</sup>. The government of the West African settlements established courts of Civil and Criminal Justice, which replaced the Supreme Courts in the British settlements.

The government of the West African Settlement also established the West African Court of Appeal (WACA) and the West African Court of Equity (WACE). The Judges of the West African Court of Appeal were drawn from among the four English-speaking colonies of Nigeria, Ghana, the Gambia, and Sierra Leone. The West African Court of Equity was made up of the supercargoes, commercial agents, local kings and the British Consuls. In 1874, a separate government was established for the British settlement of Lagos and the Gold Coast both of which were together called the Gold Coast Colony.<sup>14</sup>

The West African Court of Appeal gave judgments to numerous appeal cases brought before it from Supreme Courts of Nigeria, Ghana, Sierra Leone and the Gambia. The selected judgments of the West African Court of Appeal were reported in series of 15 volumes and are usually cited as "WACA". In Nigeria, the intermediate appeal to the West African Court of Appeal was abolished in 1954 when the country became a federation. With the demise of the WACA, there was no judicial institution to link the West African sub-region until the establishment of the Community Court of Justice in 1991, which was however inaugurated in 2001. The fact that the decisions of the WACA were no longer binding on the independent states of the West Africa was a clear evidence that the judicial integration of the sub-region had become weak, but not broken. Certainly, the regional judicial institution - the WACA - went into extinction from 1955 to 1990. The people of Anglophone West Africa could no longer share the same Court or operate the same judicial system as they did during the WACA era. It should also be noted that WACA only served the English-speaking West African countries.

<sup>11</sup>J. R. Bassey, "Nigeria's Economic Economic Diplomacy in West Africa: the Case of ECOWAS Trade Liberalisation Scheme, 1985-1999" in *African Journal of Economy and Society*(Vol.11, No.1, 2011),pp.51-65.

<sup>12</sup> J. R. Bassey, "The Evolution of the ECOWAS Court of Justice: A Study in Legal and Diplomatic History". *Journal of Research and Contemporary Issues* (Vol.5, No.1&2, December 2009), pp. 16-28.

<sup>13</sup> Akintunde Olusegun Obilade, *The Nigerian Legal System* (Ibadan: Spectrum Books Limited, 2001),pp. 18-19.

<sup>14</sup>*Ibid.*, p.19., see also, A.E.W. Park, *The Sources of Nigerian Law* (New Zealand: Sweet and Maxwell Ltd. 1963), p.4.

### 3. THE ROLE OF NIGERIA IN THE ESTABLISHMENT OF ECOWAS COURT

Certain factors made the revival of the West African legal system imperative. First, Nigeria and Togo founded the Economic Community of West African States (ECOWAS) on May 28, 1975. Second, although there was need for the ECOWAS to enforce the application of its decisions and interpret its Treaty. The organization lacked a judicial organ to do so. Third, the 1975 ECOWAS Treaty only made provision for establishment of a tribunal<sup>15</sup> to settle disputes among Member-States. The tribunal was the weakest of all the five institutions of the ECOWAS, as it could not enforce the decisions of the ECOWAS. Fourth, Member States needed legal minds from various backgrounds within the sub-region to help formulate, interpret and apply the ECOWAS legislation. The call for the establishment of ECOWAS Court of Justice was made more in the 1990s when:

- There were some conflicts in the interpretation and implementation of the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment;
- There were differences and conflicts among Members-States on the implementation of the trade liberalization scheme;
- There were problems and conflicts arising from the agricultural cooperation programmes of the ECOWAS; and
- There were many legal issues which arose as a result of the implementation of the ECOWAS Protocol on Community enterprises, which did not always permit settlement by diplomatic means<sup>16</sup>.

The ECOWAS did not have any judicial institution that dealt with human right *per se*. However, since the ECOWAS member States were and are still signatories to the African Charter on Human and Peoples Rights, the ECOWAS took that OAU instrument to be applicable to West Africa<sup>17</sup>. The ECOWAS also depended on the numerous protocols and conventions which are related to human rights, such as the Protocol on Community Court of Justice, Convention on Mutual Assistance on Criminal Matters, Convention on Extradition and Protocol on Free Movement of Persons.

In order to convince the entire Member States on the need to establish ECOWAS Court, a number of meetings of the ECOWAS Ministers of Justice were held especially in 1989 and 1990. At one of such meetings sponsored by Nigeria, the then Nigerian Minister of Justice, Prince Bola Ajibola reminded his colleagues of the directive of African Ministers of Justice which called on African States to get together and exchange points of view on legal problems confronting them. The Nigerian Justice Minister cited the examples of the Court of European Community and urged ECOWAS member states to support Nigeria's campaign to set up a Court of Justice for the West African sub-region.

There was also disagreement as to the designation of the proposed judicial arm of the ECOWAS. While some States preferred the name "Community Court", others opted for the then existing designation "Tribunal", because of fear of loss of sovereignty and national jurisdiction.<sup>18</sup> To dismiss such fear, Nigeria expressed the ardent hope that the Community Court would be given its rightful independence and authority. Nigeria stressed that the term "Court" was more proper when referring to a jurisdictional institution of the highest level having the sole competence in legal matters, and whose decision is final.

<sup>15</sup> ECOWAS: *ECOWAS Revised Treaty*, 1993, Article 56.

<sup>16</sup> Basse, "Nigeria – ECOWAS Relations... pp.221-222.

<sup>17</sup> ECOWAS: *The Human Rights Challenges for West Africa: Report of the Third West African Human Rights Forum* (Abuja: 29 March – 1 April 1999), p.15.

<sup>18</sup> *Ibid.*

In 1991, two major steps were taken towards the establishment of the Community Court. The first step was that a Protocol<sup>19</sup> for the Court, drafted in 1990, was signed by the West African Heads of State and Government in Abuja. The second step was that the ECOWAS Treaty was revised. The *Revised Treaty* seeks, *inter alia*, to encourage, foster, and accelerate the economic and social development of the West African States in order to improve the living standards of the peoples.<sup>20</sup> The *Revised Treaty* therefore provided for the establishment of the ECOWAS Court of Justice as one of the institutions of the Organization. Article 15 of the *Revised Treaty* provides as follows:

There is hereby established a Court of Justice of the Community. The status, composition, powers, procedure and other issues concerning the Court shall be set out in a Protocol relating thereto. The Court of Justice shall carry out the functions assigned to it independently of the Member States and institutions of the Community. The judgments of the Court of Justice shall be binding on the member-states, the institutions of the Community and on individuals and corporate bodies.<sup>21</sup> A Senior Legal Officer, Chidi Anselem Odinkalu of International Centre for the Legal Protection of Human Rights captured the innovative uniqueness of the Revised ECOWAS Treaty of 1993 in the following words:

Under the Revised ECOWAS Treaty of 1993 there is significant scope for a unique civil society and governmental partnership for the promotion and protection of human rights within both the ECOWAS sub-region and ECOWAS as an international instruction.... On its own and through incorporating the African Charter on Human and Peoples' Rights, the Revised Treaty makes remarkable provisions to safeguard human rights within its signatory States, in some cases, even more far reaching than traditional human rights instruments.<sup>22</sup>

Another important move was made in 1995 when the Council of Ministers made recommendation for harmonization of commercial laws<sup>23</sup> of the ECOWAS Member-States. Certain imperatives prompted this recommendation. The Council of Ministers was aware of the divergent legal traditions and systems as well as the differences in legal and judicial procedures and practices in the West African sub-region. The Council also recognized the need for harmonizing the commercial laws of Member States in order to rationalize and improve the legal and judicial framework for enterprises and commercial operators<sup>24</sup>. The Council's recommendation was in line with the recommendation of the ECOWAS Legal Experts made at its sixth meeting held in Lagos on 25<sup>th</sup> to 26<sup>th</sup> April 1995. To realize its objective, the Council mandated the Executive Secretariat to constitute a committee of three eminent personalities, each representing the Anglophone, Francophone and the Lusophone countries of the sub-region. The committee worked with highly qualified specialists in commercial laws and was tasked to:

- Collect and collate all texts on commercial laws in member-states;
- Advise on the appropriate structures to be established for the harmonization exercise;
- Gather all available information from relevant resource persons on procedures and practice relating to commercial laws of member-states;
- Identify those areas of commercial laws to be harmonized;

<sup>19</sup>ECOWAS: *Protocol A/P.1/7/91 on the Community Court of Justice*. (Abuja: ECOWAS Executive Secretariat, 1991), pp.1-11.

<sup>20</sup>ECOWAS: *ECOWAS Revised Treaty* (Abuja: ECOWAS Executive Secretariat, 1991), p.1.

<sup>21</sup>*Ibid.*, Article 15.

<sup>22</sup>ECOWAS: *The Human Rights Challenges for West Africa: Report of the Third West African Human Rights Forum* (Abuja: 29 March – 1 April 1999), p.15.

<sup>23</sup>ECOWAS: Decision C/DEC/7/7/95, "Relating to the Harmonisation of Commercial Laws of Member States".

<sup>24</sup>ECOWAS: *Official Journal of ECOWAS*, No.129 (July, 1995), p.25.

- Assist the Executive Secretariat in seeking funding from appropriate organizations and institutions for the harmonization exercise<sup>25</sup>.

In spite of its urgent need, the ECOWAS Court did not take off immediately as expected. Two main reasons accounted for the about eleven years delay. First, Nigeria that championed the establishment of the judicial institution was still under military rule. The second reason was that nomination of candidates from Member-States to serve as Judges in the Court posed a serious political problem to both the Authority of Heads of State and the Council of Ministers. The first problem was removed because, with the return to democracy on May 29, 1999, Nigeria under President Olusegun Obasanjo, was able to relate more effectively with other Member-States' political, legal and judicial institutions. Expectedly, the issue of strengthening the Community institutions was on top of the agenda of the twenty-fourth session of the authority of Heads of State and Government, held in Bamako on 15<sup>th</sup> to 16<sup>th</sup> December 2000. Short-listing 14 candidates to serve as Judges of the Court solved the second problem<sup>26</sup>. The number of short-listed candidates was finally reduced to seven Judges<sup>27</sup>.

With the hurdles removed, the Community Court was formerly inaugurated in 2001 as the fifth institution of the ECOWAS and the principal legal organ of the Community. This epoch-making occasion was marked by the swearing-in of the seven Justices of the Court on 30<sup>th</sup> January 2001, at Bamako – Mali, before Alpha Oumar Konare, the then President of Mali and Chairman of the Heads of State and Government of the ECOWAS. Under Article 3(1) of the Protocol<sup>28</sup>, the Court shall be composed of independent Judges selected and appointed by the Authority from nationals of the Member-States who are persons of high moral characters, and possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are Juris advocates of recognized competence in international law.

#### 4. JURISDICTION AND FUNCTIONS OF COMMUNITY COURT OF JUSTICE

The competence of the CCJ was provided for under Article 9 of the Protocol (1991) as follows:

- 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 Court shall also be competent to deal with dispute referred to it... by member-states or the Authority, when such disputes arise between the member-states or between one or more member-states and the institutions of the Community on the interpretation or application of the provisions of the Treaty.
- A member-state may, on behalf of its nationals, institute proceedings against another member state or institution of the community, relating to the interpretation and application of the provisions of the Treaty, after attempts to settle the disputes amicably have failed.
- The Court shall have any powers conferred upon it, especially by the provisions of this Protocol.<sup>29</sup>

As can be seen from the above provisions, the jurisdiction of the CCJ was too narrow. Its competence was not wide enough to cover fundamental issues such as honouring obligations by Member-States, actions for damages, contractual liability and violation of human rights, among others. ECOWAS citizens and business entities were not offered opportunities to have

<sup>25</sup>*Ibid.*

<sup>26</sup>ECOWAS: *Twenty-Fourth Session of Authority of Heads of State and Government: Final Communiqué* (Bamako 15<sup>th</sup> – 16<sup>th</sup> December 2000).

<sup>27</sup>ECOWAS: *Official Journal* (Vol.38 December 2006) Decision A/Dec/1/12/00: "Appointing the Judges of the Community Court of Justice", p.3.

<sup>28</sup>Protocol A/P.1/7/91 "On the Community Court of Justice", Article 3(1).

<sup>29</sup>ECOWAS: Protocol A/P.1/7/91 "On the Community Court of Justice", Article 9.

access to and coverage of the CCJ. The Authority of Heads of State and Government, on noticing this inadequacy, did not only fill the lacunae, widen the powers of the CCJ, but also deleted the provisions of Article 9 of the Protocol in its entirety. The Authority substituted with new Article 9 titled “Jurisdiction of the Court” in the Supplementary Protocol<sup>30</sup>. Under the said Article 9 of the Supplementary Protocol, the CCJ has competence to adjudicate on any dispute relating to several matters including:

- (a) The interpretation and application of the Treaty, Conventions and Protocols of the Community;
- (b) The interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by the ECOWAS;
- (c) The legality of regulations, directives, decisions and other subsidiary legal instruments adopted by the ECOWAS;
- (d) The failure by member-states to honour their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of the ECOWAS;
- (e) The provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of the ECOWAS member-states;
- (f) The Community and its officials; and
- (g) The action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions<sup>31</sup>.

Undoubtedly, the present Protocol has widened the jurisdiction of the CCJ. For instance, unlike the original Protocol (1991), which provided that only Member-States may represent individuals before the Court, the Supplementary Protocol (2005) has extended the range of proper parties to include individuals, institutions, and corporate bodies.

It could be seen so far from the above analysis that the ECOWAS seeks to harmonize the divergent legal traditions, systems, and the differences in legal and judicial procedures and practices in the West African sub-region<sup>32</sup>. To this end, under the *Convention on Mutual Assistance in Criminal Matters*, Member States undertake to afford to each other assistance in proceedings or investigations in respect of offences and punishments that fall within the jurisdiction of the judicial authorities of the requesting Member State<sup>33</sup>. Similarly, in order to rationalize and improved the legal and judicial framework for enterprises and commercial operators the Authority of Heads of State and Government of the ECOWAS decided to harmonize commercial laws of member states. A committee was set up to among other things, collect and collate all texts on commercial laws in member states and to gather information on procedures and practices relating to commercial laws of member states<sup>34</sup>. The Authority fixed 31<sup>st</sup> December, 1995 as the deadline for Member States to ratify all ECOWAS Treaty, Protocol and Conventions<sup>35</sup>. Now, one may likely ask: what are the sources of ECOWAS laws?

<sup>30</sup> ECOWAS: Supplementary Protocol A/SP.10/01/05 Amending Protocol A/P.1.7.91, Article 9: “Jurisdiction of the Court”, pp.3-5.

<sup>31</sup> *Ibid.*

<sup>32</sup> Decision C/DEC.7/7/95 “Relating to Harmonization of Commercial laws of Member States” 27 July, 1995.

<sup>33</sup> ECOWAS: Convention A/P.1/7/92 “On Mutual Assistance in Criminal Matters” (Done at Dakar, Senegal 29 July, 1992).

<sup>34</sup> See Decision C/Dec. 7/7/95 “Relating to the Harmonization of Laws of Member States” (Done in Accra, 27 July 1995).

<sup>35</sup> Decision A/DEC/4/7/95 “On the Ratification of the ECOWAS Revised Treaty, Protocols and Conventions” *Official Journal of the ECOWAS* (Vol. 29, July 1995), pp.5-6.)



## 5. THE SOURCES OF THE ECOWAS LAWS

The sources of the ECOWAS laws are the ECOWAS Treaty, ECOWAS Protocol, Decisions and Regulations and the laws of other international organizations United Nations Charter, OAU Charter now African Union Constitutive Act. The constitutions and laws of the ECOWAS Member States also form the sources of the Community laws. Other sources are the ECOWAS Court, ECOWAS Parliament and the Arbitration Tribunal.

### 5.1 THE ECOWAS TREATY

The *ECOWAS Revised Treaty* (1975) forms the ECOWAS legal system. In 1993, the 1975 *Treaty* was revised. The 1993 *Revised Treaty* has established a legal system for the sub-regional organization. This could be seen under Article 88 of the *Revised Treaty*, which states thus: (1) The Community shall enjoy international legal personality; (2) The community shall have in the territory of each Member State:

- a) The legal powers required for the performance of the functions assigned to it under this Treaty;
- b) Power to enter into contracts and acquire, hold and dispose of movable and immovable property. Also, “in the exercise of its legal personality under this Article, the community shall be represented by the Executive Secretary.”<sup>36</sup>

Article 4 deals with fundamental principles and states that Member States shall adhere to the principles of: “... recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Right”; “(h) accountability, economic and social justice and popular participation in development”; (i) recognition and observance of the rules and principles of the Community”.<sup>37</sup>

Article 44 deals with internal legislation and thus provides that Member States shall not enact legislation and/or make regulations, which directly or indirectly discriminate against the same or like products of another Member State.<sup>38</sup> Under Article 56, the signatory states to the Protocol on Non-Aggression, the Protocol on Mutual Assistance on Defence, the Community Declaration of Political Principles and the African Charter on Human and People’s Rights agree to cooperate for the purpose of realizing the objectives of these instruments.<sup>39</sup>

Similarly, under Article 57, Member States undertake to cooperate in judicial and legal matters with a view to harmonizing their judicial and legal systems. Accordingly, judicial and legal institutions have been established under the Revised Treaty. These are the Community Parliament<sup>40</sup> the Community Court of Justice<sup>41</sup> and the Arbitration Tribunal of the Community.<sup>42</sup> The *Revised Treaty* provides that the Court of Justice shall carry out the functions assigned to it independently of the Member States and the institutions of the Community. It is further stated that judgment of the Community Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.<sup>43</sup>

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<sup>36</sup> (Art. 88, *ECOWAS Revised Treaty*).

<sup>37</sup> Article 4 (g) – (i) of *ECOWAS Revised Treaty* 1993.

<sup>38</sup> Article 44, of *Ibid*.

<sup>39</sup> Article 56

<sup>40</sup> Article 13

<sup>41</sup> Article 15

<sup>42</sup> Article 6

<sup>43</sup> Article 15 (3-4).

Article 76 provides for settlement of disputes. It stipulate as follows:

- Any dispute regarding the interpretation or the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this Treaty and relevant Protocols.
- Failing this, either party or any other Member States or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal.

It has been observed that the ECOWAS Community legal system is a product of the limitation of the sovereignty of Members States.<sup>44</sup> This is true because the Treaty provides that the institutions (including the Parliament, Court and Tribunal) of the Community shall perform their functions and act within the limits of their powers conferred on them by the Treaty and by the Protocols relating thereto.<sup>45</sup> This implies that the law recognizes the sovereignty of respective Member States and the fact that the Member States are not willing to sacrifice or reduce their sovereignty in favour of Community sovereignty. However, the Heads of State and Government are convinced that the integration of the Member States into a viable regional Community may demand the partial and gradual pooling of national sovereignties to the Community within the context of a collective political will.<sup>46</sup>

## 5.2 PROTOCOLS AND DECISIONS

Article 7 of the treaty stipulates that the Authority of Heads of State and Government of Member States shall be the supreme institution of the Community. The Authority is composed of Heads of State and/or Government of Member States. Article 9 stipulates that “the Authority shall act by decision”.<sup>47</sup> The Decision of the Authority are adopted by unanimity consensus or by a two-third majority of Member States depending on the subject matter brought for consideration. The Authority is responsible for the general direction and control of the community. It prepares and adopts its Rules and procedures. It determines the general policy and major guidelines of the community, gives directives, harmonize and co-ordinates the economic, scientific, technical, cultural and social polices of Member States. All these are done through Decisions adopted by the Authority. The Decision of the Authority can be reached as protocol because Article 1 of the Treaty defines protocol as an instrument of implementation of the Treaty having the same legal force as the Treaty.

## 5.3 REGULATIONS

Regulations constitute another source of the ECOWAS law. Article 12 of the ECOWAS Treaty provides that “the council shall act by regulations”. Article 10 established the council of Ministers of the Community. The Council comprises the Ministers of each member state. Among other functions, the Council issues directives on matters concerning co-ordination and harmonization of economic integration policies; adopts staff regulations; and request the Community Court of Justice, where necessary to give advisory opinion on any legal questions. Regulations of the council are binding on institutions under its Authority. Regulations are also binding on Member States after their approval by the Authority. Nevertheless, Regulations made pursuant to delegation of powers by the Authority are binding forthwith.<sup>48</sup>

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<sup>44</sup> Ken Ukaoho and Aniekan Ukpe, “Sovereignty, Supra-nationality and Trade: The Case of ECOWAS Laws” in *ECOWAS Vanguard* (Vol.2 Issue 4, February 2013).

<sup>45</sup> Article 6 (2), *ECOWAS Revised Treaty*.

<sup>46</sup> see the Preamble to the *ECOWAS Revised Treaty* 1993, p.2

<sup>47</sup> Articles 7 and 9 *ECOWAS Revised Treaty*.

<sup>48</sup> See *ECOWAS Revised Treaty*, Article 10 (3) (c), (e), (f) and (h); Article 12 (1) – (4).

#### 5.4 CONSTITUTIONS AND LAWS OF MEMBER STATES

The constitutions and laws of each Member States are directly or indirectly connected to the ECOWAS laws. The application of the Treaty, Decisions, Protocols and Regulations of the ECOWAS by the Member States are not an automatic exercise. Article 5 (2) of the Treaty provides that: “Each Member State shall in accordance with its constitutional procedures, takes all the necessary measures to ensure the enactment and dissemination of such legislative and statutory text as may be necessary for the implementation of the provisions of the treaty”.<sup>49</sup> The constitutions of Member States are again made reference to under Article 89, which deals with entry into force and ratification of Treaty and Protocols of the ECOWAS. It stipulates: “This Treaty and Protocols, which shall form an integral part thereof, shall respectively enter into force, upon ratification by at least nine signatory states in accordance with the constitution procedures of each signatory state”.<sup>50</sup>

It appears that the procedures for the entry into force of the ECOWAS laws are not the same in the English speaking and the French speaking countries of the ECOWAS. When it comes to adopting ECOWAS laws, Member States are divided into two blocs namely, the “dualist” and the “monist”. The English speaking Member States of the ECOWAS are the “dualist” while the French speaking Member States are the “monist”. In the dualist states international law (including ECOWAS law) does not have force of law within the territories of these countries unless it has been promulgated as a national legislation through the process of ratification or domestication. Without such domestication the ECOWAS laws cannot have the force of law. For instance, section 12 (1) of the 2011 Constitution of Nigeria 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”.<sup>51</sup>

The clause “any other country” is construed to include international organizations such as ECOWAS, the UN and the AU. Similarly, Section 75 (1) of the 1992 constitution of Ghana provides that the President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana. Sub-section 2 of that section provides that a treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by (a) Act of parliament or (b) a resolution of parliament supported by the votes of more than one half of all the members of parliament.<sup>52</sup>

It has been observed that the dualist states are not taking any tangible measure towards the enactment of ECOWAS legislations at their national levels, “therefore making the Journey to full enforcement of ECOWAS laws still very far”.<sup>53</sup> Implementation of International Law is different in the French speaking ECOWAS as Members States because of their monist orientation. Unlike the case in dualist states, in the monist states international law becomes part of their national laws as soon as such international law is made. However, such domesticated laws are subject to the reciprocal enforcement of international law by other states. The Republic of Benin gives a vivid example of the monist doctrine in the French speaking ECOWAS. The constitution of Benin provides that Treaties or Agreement lawfully ratified shall have, upon their publication an authority superior to that of laws, without prejudice for each agreement or treaty in its application by the other party.<sup>54</sup> The implication of this provision is that subject to

<sup>49</sup> See Article 5 (2), of *Ibid.*

<sup>50</sup> Article 89, of *Ibid.*

<sup>51</sup> Section 12 (1) of the Constitution of the Federal Republic of Nigeria 2011 (as amended).

<sup>52</sup> See section 75 (1) and (2) of the 1992 Constitution of Ghana. Apart from Nigeria and Ghana, other English speaking ECOWAS Member States that are “dualist” and the relevant sections of their constitutions that demand ratification of international law before implementation are Sierra Leone, Article 40 (4)ii of the 1991 Sierra Leone Constitution; The Gambia, section 79 (1) of The 1997 Gambia Constitution; and Liberia, section 57 of the Liberian Constitution.

<sup>53</sup> Ukaoha and Ukpe, “Sovereignty, Supra-nationality and Trade...”p.3.

<sup>54</sup> See Article 147 of *Constitution of the Republic of Benin* (1990).

the requirement of reciprocal application, the ECOWAS Revised Treaty is direct applicable in Benin and other French speaking West Africa.

## 5.5 LAWS OF OTHER INTERNATIONAL ORGANIZATIONS

Laws of other international organizations equally constitute source of law for the ECOWAS. Examples of such international organizations are the OAU/AU, EU and the UN. The *Revised Treaty* specifically makes provisions for relations between the ECOWAS and the OAU/AU and their affiliate institutions. Article 83 of the *Treaty* authorizes the Community to conclude cooperation agreements with third countries. “In pursuit of its objective, the Community shall also cooperate with the organization of African Unity, the United Nations system and any other international organization”. Such cooperative agreement should be subject to the prior approval by the council upon the proposal of the Executive Secretary. Agreements concluded between the Community and other international organizations must not be incompatible with the provision of the ECOWAS Treaty. In event that agreement concluded before the entry into force of the Treaty between Member States or between Member States and non-Member State or organization are incompatible with the provisions of the Treaty, the Member States concerned should take appropriate measure to eliminate such incompatibility.<sup>55</sup> Mindful of principles of international law governing relations between states, the defunct OAU entrusted the coordination, harmonization and evaluation of activities to the sub-regional organizations (including ECOWAS) with a view to rationalizing the economic integration process.<sup>56</sup>

The *Constitutive Act* of the AU succeeding the *OAU Charter* has made an indirect reference to the ECOWAS. This could be inferred from one of the objectives of the AU, that is, “... to coordinate and harmonize policies between existing and future *Regional Economic Communities* for the gradual attainment of the objectives of the Union”.<sup>57</sup> The “Regional Economic Communities” referred to in AU Act include the ECOWAS. Thus, the ECOWAS has the direct or indirect legal connection with the AU, just as it has with the United Nations system. For instance, the ECOWAS/ECOMOG derived their legal authority to intervene in the internal crises of Liberia and Sierra Leone from Article 52 (1) of the UN Charter, which states thus:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to maintenance of international peace and security as are appropriate to regional action, provided that such arrangements or agencies and their activities are in consistent with the purposes and principles of the United Nations.<sup>58</sup>

The “purposes of the United Nations” are: “to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of act of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.” Other purposes of the United Nations, in brief, are: to develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples; to achieve international cooperation in solving international problems

<sup>55</sup> Article 83-85, *ECOWAS Revised Treaty*.

<sup>56</sup> OAU: *The Treaty of African Economic Community, Done at Abuja, June 3, 1991*; Article 88(4).

<sup>57</sup> The *Constitutive Act* of the African Union. Done at Lome, Togo 11<sup>th</sup> July, 2000

<sup>58</sup> See Article 52 (1) of *the United Nations Charter*, 1945.

and to be a centre for harmonizing actions of nations in attainment of these common ends.<sup>59</sup> The activities of the ECOWAS are not incompatible with the purposes of the United Nations rather they are in consistent with them. The purposes of the UN appear to be *in pari materia* with aims and objectives of the ECOWAS as stipulated in Article 3 of the Treaty.

Application of Article 52(1) of the UN Charter generated controversy when the ECOWAS/ECOMOG intervened in the Liberian crisis in the 1990s.<sup>60</sup> Particularly, Nigeria was accused of breaching the said Article because, according to critics, ECOWAS was not among the international organizations recognized by the UN Charter.<sup>61</sup> This criticism might have been based on the theory of categorization of international organizations. Actually, the ECOWAS is not a regional organization. It is a sub-regional organization, which might not have been contemplated when Article 52 (1) of the UN Charter was drafted in 1945. The AU (formally OAU), EU, OAS are examples of regional organizations within the contemplation of the UN Charter. However, by current practice in the international system, international organizations are usually grouped into global, regional and sub-regional arrangements<sup>62</sup>. More so, by virtue of the fact that the ECOWAS and its activities are in consistent with the purposes and principles of the United Nations, the sub-regional organization is deemed to be part of the “regional arrangements or agencies” referred to in Article 52 (1) of the UN Charter. This argument also holds for ECOMOG, which was an agency of the ECOWAS.

This argument in part justifies the reason Nigeria as a regional and sub-regional leader could not have folded its arms and watch Liberia and other ECOWAS Member States engulfed in bloody crises. In spite of the criticisms, the United Nations later worked with the ECOWAS in Liberia. By Resolution 1001 (1995) of June 29, 1995 the United Nations Security Council decided to extend the mandate of UNOMIL to 15<sup>th</sup> September 1995. The ECOWAS Authority considered that by participating through ECOWAS ceasefire Monitoring Group (ECOMOG) in the search for a peaceful settlement of the Liberian crisis, the ECOWAS was merely assisting the United Nations. The Authority was convinced that withdrawal of the UN Military Observer Mission (UNOMIC) from Liberia would irreparably compromise all the effort made so far by the ECOMOG. The Authority therefore appeal to the UN Security Council to review its Decision 1001, reconsider the situation in Liberia, provide adequate financial resources to ECOWAS and logistic to support ECOMOG for the restoration of peace to Liberia<sup>63</sup>. The fact that Nigerian as a leader “violated” Article 52 of the UN Charter to maintain international peace and security, safe the lives of the ECOWAS citizens and other purposes of the UN, has not only given Nigeria credit as a true regional leader, but also a country that has contributed to the development of international law.<sup>64</sup>

<sup>59</sup> See Article 1 of *the United Nations Charter*.

<sup>60</sup> Amadu Sesay) “Historical Background to the Liberian crisis in M.A. Vogt (ed.) *The Liberian Crises and ECOWAS: A Bold Attempt at Regional Peace-Keeping*.(Lagos: Gabumo Publishing 1992).

<sup>61</sup> See Margaret A. Vogt, “Nigeria’s Participation in the ECOWAS Monitoring Group (ECOMOG)” in *Nigerian Journal of International Affairs* (Vol.17, 1991)

<sup>62</sup> J. R. Bassey, “The Changing Roles of International Organizations in Modern International Politics and Economy: A Case Study of the ECOWAS” in *Ibom Journal of History and International Studies* (No. 10, 2002), pp.39-57.

<sup>63</sup> Resolution A/RES. 6/7/95 “Calling on the United Nations to Maintain its Presence in and Support to Liberia”. *Official Journal of the ECOWAS* (Vol. 29 July 1995), p.13

<sup>64</sup> Joseph Robert Bassey, “Nigeria, ECOWAS and the Development of International Law: A Study in Legal and Diplomatic History” in *Journal of Globalisation and international Studies*, (Vol.4, No.1&2, 2009), pp.159-183.

## 5.6 THE COMMUNITY PARLIAMENT

The idea for the establishment of an ECOWAS Parliament was initiated by President Ibrahim Babangida at the Abuja Summit held from 4<sup>th</sup> to 6<sup>th</sup> July, 1991. Prior to 1991, the committee of Eminent Persons under the chairmanship of General Yakubu Gowon, had in April 1991, identified the weaknesses and omissions of the 1975 Treaty to include the absence of supra – nationality and provisions dealing with co-operating in political and defence matters. After having made such diagnosis, the Committee of Eminent Persons in conjunction with Nigerian authorities agreed to revise the treaty so as to, among other things, “introduce new provisions to cover relevant areas of (political) co-operation and integration not included in the 1975 Treaty”<sup>65</sup>. Article 56 of the *Revised Treaty* states “in pursuit of the integration objectives of the Community, Member States undertake to co-operate on political matters, and in particular, to make appropriate measures to ensure effective application of the provisions of this treaty”<sup>66</sup>.

A decisive step was taken towards this end with the inclusion in the *Revised Treaty* of Article 13, which stipulates: “There is hereby established a Parliament of the Community. The method of election of the members of the Community Parliament, its composition, functions, powers and organization shall be defined in a Protocol relating thereto”<sup>67</sup>. As a follow up to the implementation of this provision, Nigeria convened a meeting of ECOWAS Minister of Justice in Lagos in April 1994. This meeting hammered out a draft protocol relating to the Community Parliament. The draft Protocol was considered by the 35<sup>th</sup> Sessions of the Council of Ministers which in turn recommended its adoption by the Heads of State and Government at the 17<sup>th</sup> ECOWAS Summit in Abuja in August 1994<sup>68</sup>.

While adopting the Protocol, the ECOWAS Heads of State took certain factors<sup>69</sup> into consideration. They were aware that the integration of member states into a viable regional community requires, for the settlement of issues, the will of member states to take all necessary measures for the success of such an enterprise. The Heads of State were convinced that the Community Parliament as a forum for dialogue, consultation and consensus of representatives of the people of the Community can effectively promote integration. Lastly, the proponents of the establishment of the Parliament backed up their demand with the *ECOWAS Declaration of Political Principles* adopted by the Authority of Heads of state and Government at its fourteenth Ordinary Session held in Abuja from 4-5 July, 1991.

## 5.6 ARBITRATION TRIBUNAL OF THE COMMUNITY

In addition to the Community Court and Community Parliament, Arbitration Tribunal has been established. Article 16 of the *Revised Treaty* provides for the establishment of the Arbitration Tribunal of the Community. The status, composition, powers, procedure and other issues concerning the Arbitration Tribunal are set out in the Protocol relating thereto<sup>70</sup>. In the 1975 Treaty, no provision was made for the ECOWAS Court, except a Tribunal.

<sup>65</sup> Article 13 of *ECOWAS: ECOWAS Revised Treaty*.

<sup>66</sup> Bisi Olawunmi, “Liberia Peace at Last, an ECOWAS Success Story.” *West African Bulletin* (Lagos: ECOWAS Executive Secretariat, 1997).

<sup>67</sup> Protocol A/P2/8/94 Relating to the Community Parliament; Article 5

<sup>68</sup> *Ibid.*, Article 5.

<sup>69</sup> *Ibid.*,

<sup>69</sup> *Ibid.*, Article 6.

<sup>70</sup> Article 16 of the *ECOWAS Revised Treaty*.

## 6. CASES TRIED BY THE COMMUNITY COURT OF JUSTICE

Apart from other sources of ECOWAS law, the Community Court is a source by itself. The first case tried by the CCJ was the case of *Olajide Afolabi vs. Federal Republic of Nigeria* in 2004. This case was filed by an individual Nigerian businessman against the government of Federal Republic of Nigeria. His contention was that Nigeria's closure of its border with the Republic of Benin had violated the ECOWAS law on free movement of persons and goods. He also contended that he had suffered losses due to the border closure because he could not transport his goods to the intended destination for sale. Ukaoha and Ukpe have observed that the Afolabi case was strictly a human right matter and not a commercial dispute. The Court ruled that the individual lacked the capacity to institute an action against the Federal Republic of Nigeria, stressing that only Nigeria might represent the individual in the CCJ. Of course, the individual being a Nigerian could not be presented by Nigeria against Nigeria! It has been rightly reported<sup>71</sup> that because the original Protocol was very limited, an individual (Nigerian) who brought an action against Nigeria could not be heard by the court.

The Court's ruling which was to the effect that under the Protocol (1991) only Member States and not individual could institute cases, triggered amendment of the Protocol. The amendment was an initiation of the CCJ Judges themselves who felt that the Protocol should provide for the *locus standi* of legal and natural persons especially on issues pertaining to human right violation and commercial disputes. Supplementary Protocol was adopted in 2005<sup>72</sup>. The Supplementary Protocol revised the jurisdiction of the CCJ, which now includes review of violation of human rights of all Member States. It also provides that the sources of law to be applied by the CCJ should include general principle of international law and these principles related to human rights. Thirdly, the Supplementary Protocol adds jurisdiction over any disputes arising under agreements between Member States other than that provided by the Revised Treaty. Fourthly, unlike the 1991 Protocol, the Supplementary Protocol makes it clear that the national courts of Member States have the right to seize the Community Court of Justice for a ruling on interpretation of ECOWAS law.

The legal changes brought about by the Supplementary Protocol have widened the road to the ECOWAS Court. At present, an individual can appear before the Court without being represented by his State by virtue of Article 9 of the Supplementary Protocol (2005). The ECOWAS and its institutions and staff can now sue and be sued by individuals or states on matters of violation of human right or breach of contractual obligations. Currently, a non-governmental organization known as Open Society Initiative West Africa (OSIWA) is working on a case of violation of treaties and standard of the ECOWAS relating human and citizenship rights by Cote D'Ivoire. The OSIWA has encouraged the Ivoirians and non-Ivoirians whose rights have been violated by the government to seek redress in the CCJ<sup>73</sup>.

Access to the Court is no longer the exclusive right of the Authority, the Council of Ministers, Member States, Executive Secretariat and Institutions, only; corporate bodies and individuals equally have the right to access to the court to seek redress for any legal injury or infringement of their rights. Complaints by any individuals appear to be limited to human rights issues. Unlike the national court where exhaustion of internal remedy is mandatory, the ECOWAS Court does not require exhaustion of remedies, thus further widening the jurisdiction of the Community Court. This implies that individual does not need to pursue national judicial remedies before he could bring his claim to the ECOWAS Court.

<sup>71</sup>*Daily Independent*, "Member States Obligated to Enforce ECOWAS Court Judgment" (Thursday January 11, 2007), p.11.

<sup>72</sup>ECOWAS: Protocol A/SP.1/01/05.

<sup>73</sup>Lillian Okenwa, "ECOWAS Court Must Uphold Citizenship, Human Rights", *THISDAY* (Wednesday August 30, 2006), p.47.

However, there are certain requirements that the applicant must fulfill. One of such requirements is that the application must not be anonymous: the full name, address and occupation of the applicant must be fully and clearly stated. The second requirement is that the matter in contention must not be pending before another international court. These requirements were spelt out in the human right case of *Koraou vs. Republic of Niger*<sup>74</sup>, where the Court stated, “[t]here is no domestic exhaustion of remedies requirement limiting the Court’s jurisdiction, meaning individuals do not need to pursue national judicial remedies before bringing a claim to the ECOWAS Court of Justice. Rather, the principal requirements are that the application (must) not be anonymous and that the matter is not pending before another international court.”

Interestingly, from 2004 (when the ECOWAS Court received the first case) to 2012, about one hundred cases had been entertained by the Court. As earlier said, majority of the cases relate to human rights issues. Ukaoha and Ukpe have grouped the cases so far handled by the Court into five categories to include right to education, freedom of movement, due process, right of women and slavery. For instance, the case of *SERAP vs. Nigeria*<sup>75</sup> which involved the right to education was brought by corporate bodies before the ECOWAS Court against Nigeria. In that case, the Court ruled that education is a legal and human right. In 2008, the Court handled the case of arbitrary detention of Journalists without due process and awarded damages against the Gambian authorities.<sup>76</sup> In *Falana vs. Republic of Benin*<sup>77</sup>, the Court ruled in favour of freedom of movement of the ECOWAS citizens within the Member States. *Henry vs. Cote D’Ivoire*<sup>78</sup> involved the rights of women and children brought to the Court for determination in 2009. In *Koraou vs. Republic of Niger*<sup>79</sup>, the Court entertained the case of slavery where women were held in slavery for nine years. The ECOWAS court concluded in the case of *Habre vs. Senegal*<sup>80</sup> that the former President Hissein Habre of Senegal could not be tried by the Senegalese Court for international crimes committed in Chad because such trial would violate the prohibition of non-retroactive penal law. Nevertheless, it should be pointed out that most of the cases so far tried by the Court relate to human rights issues.

## 7. SUMMARY AND CONCLUSIONS

This paper critically assessed the efforts being made to develop and harmonized legal system for the ECOWAS. The efforts were made or foundations were laid chiefly by Nigeria when it was under military rule. In order to strengthen the socio-economic policies and programmes of the ECOWAS, the Nigerian Military regimes persuaded other Member States of the Organisation to establish judicial and legal institutions. It single-handedly sponsored or co-sponsored the establishment of the ECOWAS Parliament, ECOWAS Court of Justice and the Arbitration Tribunal of the Community. The doors of these institutions are wide open for ECOWAS citizens to go and obtain justice, especially where they feel that their fundamental rights have been violated by government or corporate bodies. Nigeria under military regimes had not only helped established and sustained an international organization for the West African sub-region, it also facilitated the development of a legal system for the organization. The international laws of the ECOWAS, particularly human right laws and the modified principle of

<sup>74</sup> *Hadijatou Mani Koraou vs. Republic of Niger*. Judgment No. ECW/CCJ/JUD/00/08, 27 October 2008.

<sup>75</sup> *SERAP vs. The Federal Republic of Nigeria and Another*. Judgment No. ECW/CCJ/APP/08/08, October 27, 2009.

<sup>76</sup> *Manneh vs. The Gambia*. Judgment No ECW/CCJ/APP/04/07; AHRCR 171 ECOWAS.

<sup>77</sup> *Femi Falana & Ano. V. Republic of Benin & 2 Ors*. ECW/CCJ/APP/10/07) see also *Afolabi V. Federal Republic of Nigeria* . Judgment No. ECW/CCJ/APP/01/03 for another case involving freedom of movement.

<sup>78</sup> *Henry vs. Cote D’Ivoire*. Judgment No. ECW/CCJ/JUD/04/09, 17 December, 2009.

<sup>79</sup> *Koraou vs. Republic of Niger*. Judgment No. ECW/CCJ/JUD/06/08 27 October 2008.

<sup>80</sup> *Habre vs. Senegal*, Judgment No. ECW/CCJ/06/10, November 2010.



non-intervention, have direct influence on the laws of other international organizations, including the UN, and the OAU (now AU). The AU has followed the Nigerian-led ECOWAS to grant its Member States the rights to intervene in a Member State that is facing internal crisis such as the ones Nigeria fought against in Liberia and Sierra Leone in 1990s. Undoubtedly, the Nigerian Military had left indelible socio-economic, politico-military, judicial and legal development legacies on the West African sub-region. It is doubtful if it would have been possible to establish the ECOWAS and the ECOWAS legal system and other harmonized socio-economic and political systems without the efforts of the Nigerian military regimes.

#### ENDNOTES

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