

The Legal Framework For Economic Integration, Trade and Investment in ECOWAS Sub-region

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ABSTRACT

After the Second World War provoked by Germany's attack on Poland, it was thought that regional economic integration will go a long way in preventing such aggression. It was reasoned that trade which economic integration would breed will create mutual interest which inhibits aggression and where goods were in circulation, weapons will fall silent. This thinking led to the formation of the United Nation (UN) with a view to ensuring world peace and to encourage the formation of regional economic institutions such as the European Union (EU) and Economic Community of West African States (ECOWAS) including Latin America Free Trade Association (FTA) in 1960, Central America Common Market (CACM) in 1961, Association of South-East Asian Nations (ASEAN) in 1967, The Caribbean Free Trade Association (CFTA) in 1968 and the Central African Economic Community (CAEC) in 1983¹. With regard to ECOWAS, the fundamental push for the formation of this regional economic community was the fact that trade relationship between nation States in the sub-region with European countries was a 'husband and spouse' arrangement. European countries were the husband while individual West African States were the spouse. The key feature of the husband and spouse arrangement was that trade between the husband and each spouse was naturally dominated by the husband to the detriment of the 'spouse' unless the 'spouse' work together to prevent this from happening. The formation of ECOWAS by the founding fathers was intended to give the different 'spouses' that constitute the Community the economic muscle that will thwart the dominance of the 'husband.' The above two fundamental considerations underpinned the formation of regional economic blocks such as ECOWAS. Whether ECOWAS in particular, has fulfilled the expectations of its founders is a question of fact that remains to be seen.

Keywords: Trade relationship, Economic integration, investment, ECOWAS

INTRODUCTION

The creation of Commercial Registry under its French acronym *Registre du commerce et du credit Mobilier* (RCCM)² can be considered as one of the most significant achievements in the commercial law field centralizing all the information concerning individual and corporate businesses operating in the region. The Commercial registry has two primary objectives under Article 19 of the Uniform Act in question: (a) to constitute a data bank on natural and corporate legal persons engaged in business activities; and (b) to register rights over the said businesses³. The Commercial Registry registers rights on moveable property as well as securities such as guarantees, mortgages, pledges etc. in the Organization for the

Harmonization of Trade Development Agency (OHADA) contracting states. The registry is also empowered to register moveable property such as shares and immovable property such as, bonds. The Uniform Act, under Articles 20-21, provides for the composition and structure of the registry. The effective functioning of the registry should be guaranteed in the, coming years, through full computerization of all the provinces of member states, a project initiated at the regional level of OHADA. In order to better understand or appreciate the necessity for the legal framework of trade or business laws in West Africa and the challenges ahead as well as the opportunities available to all 'stakeholders' in the region, this study seeks to realize the following objectives:

1. To provide conceptual clarification of selected key terms such as: "Integration", "harmonization," "Uniformity" and "Business Law".
2. To examine two broad issues of African regional integration efforts by providing:
 - (a) for an overview of ECOWAS' Integration and harmonization efforts and gaps identified using Nigeria as an example;
 - (b) for an overview of the imperatives of and lessons from past road - blocks to African regional integration;
 - (c) for the necessity of legal integration and the justification for harmonization of trade or business laws in Africa using Nigeria as an example;
3. To examine the three identified challenges of harmonization of laws in Africa;
4. To analyse the opportunities for harmonization available to all the stakeholders in the ECOWAS sub-region and,
5. To conclude with some recommendations on the best way forward.

Legal Framework for Investment under ECOWAS

Commercial Law, in Common Law Jurisdictions like Nigeria, Ghana, Sierra Leone and Gambia, is that branch of the law that regulates commerce, investment, trade and mercantile business. It is the law of contracts, of commercial transactions relating to Agency, Hire-Purchase, and Contract for the sale of Goods, and concerning secured transactions and, investment. It includes corporate law, banking and insurance and capital market laws; laws relating to partnerships, and joint ventures, competitions, debt recovery and enforcement, bankruptcy 'arbitration, among others.

In some Jurisdiction, business Law for the purpose of harmonization includes commercial law as defined above, labour and consumer laws, intellectual property and accounting laws. Of the fifteen ECOWAS member States, nine are State parties to the OHADA legal regime and the remaining six are: Nigeria, Ghana, Sierra Leone, Gambia, Liberia and Cape Verde Island. Out of the six non - OHADA States, only four are Anglophone, common Law oriented, namely, Ghana, Nigeria, Sierra Leone and Gambia. With Liberia, there are five Anglo-American Legal Jurisdictions in West Africa. The sources and functions of Commercial Law in the above mentioned common law countries of West Africa are similar or same due to their colonial history and legacy subject to reforms carried out in different countries since independence⁴. The principles and rules of Commercial Law or business law have been developed over the years to achieve certain objectives including the following:

Maintenance of Law and order: Commercial law aims at ensuring Orderliness and respect for the rule of law in all commercial transactions and in Commercial relationships created between parties as well as for the protection and enforcement of their respective rights and obligations thereunder.

Justice: Primarily, Commercial Law aims at promoting Justice in commercial dealings by ensuring the balancing of the interests of all the parties to commercial transactions. There are cases where the courts in common law jurisdiction have refused to adhere to the strict principles of law and applied the doctrines of equity.

Remedies: Commercial law seeks to provide appropriate remedies for breach of obligation in any aspect of the law or contractual relations. Such remedies include award of damages, payment of compensation, order of specific performance, injunction, rescission, and indemnity and many others.

Legal protection: Certain rules of contract have been developed basically to ensure that a group of legal persons are not exploited or defrauded in a contractual relationship because of their circumstances. This protected group Includes companies, illiterates, infants, drunkards, etc.

Promotion of trade and investment: Commercial Law ultimately aims at promoting trade and investment within a particular society or region. Since the development of Company Law, investment and securities law, new rules have been developed from time to time to promote efficiency in the management of the affairs of corporate and investment sectors of our economies. The primary sources of commercial Law in Anglophone/Common Law Countries like Nigeria are five:

- (1) The national constitution of a country may contain some guiding principles and obligations on specific organs of government to see to the realization of the above stated objectives of commercial law.
- (2) The Received English Law:- divided into the common law, the doctrines of equity and the Statutes of general application.
- (3) National Legislation or, Statutes or Acts of Parliament.
- (4) Case laws or Judicial Precedents and
- (5) Delegated legislations for subsidiary rules' and regulations¹ governing the Subject matter.

The secondary sources include customary law, rules of international law (relating to bilateral or multilateral agreements on the subject matter), and authoritative books.

The Role of ECOWAS in Promoting Trade and Investment in Nigeria

The concept of trade and investment is governed by the Uniform Act on General Commercial Law which came into force on 1st January 1998. It contains miscellaneous sets of rules, covering a number of disparate subjects which do not fall within the armpit of the other more specific Uniform Acts⁵. These rules cover the status of commercial operators (commercants), the commercial registry, the leasing of commercial premises, the operation and sale of businesses (*fonds de commerce*), commercial intermediaries and the sale of goods⁶. They are applicable to every individual commercial operators of commercial, companies which have their place of business or registered offices in any of the member

States, including any commercial companies in which the State or a public body is a shareholder⁷. This will be examined under the ECOWAS trade and investment laws. The term "regional integration" is a modern process of amalgamation or fusion or bringing together two or more sovereign entities within a given geo-political zone into one unit for the greater or, enhanced protection and promotion of their political, economic and legal priorities or interests. Hence, regional integration may be political, economic or legal or a combination of any two or all of the above interests or priorities. It may as well include social and cultural matters. Integration cannot be achieved without some measure of supernationalism. The experience of the Economic Community of West African States (ECOWAS), though not perfect, confirms that unless States give up some part of their national sovereignty and empower regional institutions to make binding decisions, and to implement them, little progress can be made. On the other hand, "Economic integration, simply put, is about member States adopting and implementing measures that would make doing business within the grouping cheaper by removing all constraints to intra-regional trade and investment and adopting measures which are conducive to trade and investment. One of the non-tariff barriers to intra-regional trade and investment is the disparity in the national commercial or business laws. It is submitted that the elimination of legal obstacles is vital to the effective functioning of any economic integration scheme in Africa.

Integration Policies and Strategies on ECOWAS Trade Barriers

The term "Harmonization" entails the convergence of various legal systems, laws or regulations, policies or practices which governments or organisations, agree in a friendly way to make them the same or similar, or to make them fit in well with each other. Harmonization brings about certainty in the law or practical and predictable rules for the determination of the appropriate law to apply in the realization of practical problems on uniform basis. It creates a culture of legal protection of community citizen's rights to move freely, engage in intra regional trade and investment activities without the fear of not getting accurate advice about the applicable rules, right of access to justice and legal remedies and enforcement of judgments of one country in another, country within the regional group.

It is beyond doubt that even where harmonization exists, each country will still retain its legal system. The advantage of this approach is that there would be convergence of various legal traditions and the consequent enrichment of the respective legal systems. It further encourages the establishment of a community court of Justice to provide uniform interpretation of concept and issues, which may arise under the regional treaty. This in turn encourages the development of autonomous Jurisprudence through a cosmopolitan approach to the interpretation of principles and concepts⁸. The term "Uniform" entails applying alike to all within a group or class. The same, not differing at different places or times in conformity to a rule, mode, pattern, or unchanging standard⁹. A law is said to be general and uniform when it applies equally to all persons within the circumstances and purview of the law or where persons under the same conditions and circumstances are treated alike as opposed to special, or discriminatory laws¹⁰. Hence if there is "uniformity" in some group of principles, ideas, or methods are applied in all parts of it. Business law is

that branch of the law that regulates investment, commerce, trade and mercantile business. It is the law of contracts, of commercial transactions relating to Agency, Hire-Purchase, Contract for the sale of Goods and concerning secured transactions and investment. It includes corporate law, banking, insurance and capital market laws; laws relating to Partnerships and Joint Ventures Competitions, recovery of debts and Enforcement, Bankruptcy and Arbitration, among others¹¹. In some jurisdictions, business law, for the purpose of harmonization, includes labour and consumer laws, intellectual property and accounting laws etc. The Economic Community of West African States (ECOWAS) was founded by law, based on the agreement of member States, which reaffirmed the establishment of the union and decided that it shall ultimately be the sole economic community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community. Under Article 3 of the ECOWAS Revised Treaty of 1993, the aims of the Community are to promote cooperation and integration, leading to the establishment of an 'economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among member States and contribute to the progress and development of the African Continent. The objectives of the Union in order to realize the above aims include ensuring the following:

- (a) The harmonization and coordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance taxation, economic reform, policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters;
- (b) The harmonization and coordination of policies for the protection of the environment;
- (c) The promotion of the establishment of joint production enterprises;
- (d) The establishment of a common market through: -
 - (i) the liberalization of trade by the abolition of customs duties levied on imports and exports, among member States, of non-tariff barriers in order to establish a free trade area at the community level;
 - (ii) the adoption of a common external tariff and trade policy vis-a-vis third countries;
 - (iii) the removal, between member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment;
- (e) The establishment of an economic union through the adoption of common policies in the economic, financial, social and cultural sectors, and the creation of a monetary union;
- (f) The promotion of joint ventures by private sector enterprises and other economic operators in particular through the adoption of a regional, agreement on cross-border investments,
- (g) The adoption of measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises;

- (h) The establishment of an enabling legal environment;
- (i) The harmonization of national investment codes leading to the adoption of a single community investment code
- j) The harmonization of standards and measures.

In the pursuit of the objectives stated above, Article 4 of the above treaty provides for the declaration of the member States to adhere to the following fundamental principles:

- (a) Equality and inter-dependence of member States;
- (b) Solidarity and collective self-reliance;
- (c) Inter-state cooperation, harmonization of policies and , integration of programmes;
- (d) Non aggression between member States;
- (e) Maintenance of regional peace, stability and security: through the promotion and strengthening of good neighbourliness;
- (f) Peaceful settlement of disputes among member States, active cooperation between neighbouring countries and promotion of a peaceful environment as a prerequisite for economic development;
- (g) Recognition, promotion and protection of human, and peoples' rights in accordance with the provisions of the African charter on Human: and Peoples' Rights,
- (h) Accountability, economic and social justice; and popular participation in development;
- (i) Recognition and observance of the rules and principles of the community; promotion and consolidation of a democratic system of governance in each member State; equitable and just distribution of the costs and benefits - of economic cooperation and integration.

By virtue of Article 5 of the same treaty, member States undertake to create favourable conditions for the attainment of the objectives of the Community, and particularly to take all necessary measures to harmonize their strategies and policies and to refrain from any action that may hinder the attainment of the said objectives. Furthermore, they undertake to provide all necessary measures to ensure the enactment and dissemination of such legislative Treaty. Furthermore, they undertake to honour their obligations as required by the treaty and to abide by the decisions and regulations of the Community. In Chapter 8 of the same treaty, from articles 35 - 53, nineteen economic policies in respect of cooperation in Trade, Customs, Taxation, Statistics, Money and payments are enunciated. Policies are made on the following issues: liberalization of trade; customs duties, common external tariff, community tariff treatment, trade deflection, fiscal charges and internal taxation, quantitative restrictions on community goods and dumping. Other issues are most favoured nation, internal legislation, re-exportation of goods and transit facilities, customs cooperation and administration, drawbacks, compensation, for loss of revenue, exceptions and safeguard clauses, trade promotion, money, finance and payments. Chapter 9, on the, other hand, discusses the establishment and completion of an economic and monetary union. However, it contains only two articles namely establishment of an economic union, and completion of economic and monetary union. The Executive Secretariat of ECOWAS has been making efforts to effectively implement all the policies contained in the Treaty. The Policy

Harmonization Directorate of the Secretariat is in charge of implementing the economic policies of the Treaty. The Directorate has recorded some achievements and where there are challenges, it has made efforts to address them effectively. The Secretariat has reported that in January 2003, the ECOWAS Authority of Heads of State and Government adopted the new instruments of the harmonized trade liberalization scheme (revised rules of origin, single customs declaration form, and simplified approval procedure revised compensation scheme). All member States are required to apply fully the provisions of the scheme to ensure the consolidation of the free trade area status established since January 2000 in order to get new products admitted into the scheme, the new approval procedure requires each member State to create a National Approvals Committee. Approval Committees of countries like Ghana, Nigeria, Burkina Faso, Senegal, Togo and Cote d'Voire have already granted approval to their enterprises and products covered under its area of competence¹². It further reported that, in December 1999, the ECOWAS authority as a strategy to accelerate the integration process adopted a set of macroeconomic convergence criteria. In addition, on 21 December 2001, the Authority in Dakar, Senegal, decided to create a mechanism for multilateral surveillance of economic and fiscal policies of, ECOWAS member states¹³.

The sole objective of the surveillance mechanism is to ensure the harmonization and closest coordination of economic policies of member States and convergence of the performance of national economies so as to promote stable and sustainable economic growth. The components of ECOWAS macro-economic policy harmonization which are aimed at achieving the emergence of a monetary union are as follows: (a) evaluation of macro-economic convergence programmes under the multilateral surveillance mechanism; (b) establishment of the second monetary zone and the single monetary zone; and (c) statistical harmonization and database development¹⁴.

The last tract integration process of 1999 has led to the establishment of the West African Monetary Zone (WAMZ), which is a currency zone for the non-UEMOA member States like Ghana, Nigeria, Gambia, Guinea and Sierra Leone¹⁵. It is evident from the above analysis that, despite many implementation challenges identified by the Executive Secretariat, efforts have been made so far, to translate into action the provisions and spirit of chapters 8 and 9 of the Treaty on the integration of economic programmes, projects and activities, and of harmonization of economic policies consistent with the provisions of articles 2 - 5 of the revised treaty earlier mentioned¹⁶. Due to undue, emphasis placed on the above mentioned integration and harmonization process, the following key gaps have been identified:

- (a) Lack of appreciation of the value of an integrated community legal order through the harmonization of legal systems/business legal regimes;
- (b) Lack of appreciation of the critical role of the Community Court of Justice in the integration and harmonization process.
- (c) Lack of appreciation of the fundamental role of both individual and corporate citizens of the Community in the integration process.

In respect of the first gap identified above, it is worth noting that Article 57 of the Revised Treaty provides that:

Member States undertake to cooperate in judicial and legal matters with a view to harmonizing their judicial and legal systems. The modalities for the implementation of this arrangement shall be the subject matter of a Protocol.

It is therefore regrettable that no concrete measures to date have yet, been taken to harmonize the legal systems of the sub-region, especially, the conflicting business legal regimes of diverse Anglophone and francophone jurisdictions in the region. It is the consensus of contemporary African jurists that no economic integration effort is achievable in a sustainable manner without a legal integration through harmonization or uniformity of business laws in the region. The reason being that harmonization of business laws can only be catalyst in the development process and guarantees access to justice, security of transactions and investment in West Africa.

Thus, a successful harmonization of business rules and procedures demonstrates the capacity of a Community Legal Order to promote sustainable development of economically and politically integrated societies. It enhances legal security and encourages investment. Essentially, the Community Laws of ECOWAS at present consists of the Revised Treaty, the annexed Protocols and Conventions, Decisions of the Authority, Regulations of the Council, Staff Rules and Regulations, Financial Regulations, Tenders Code and all other Supplementary Acts. It is, however, expected that with the harmonization of the member States, they would become an integral part of the ECOWAS Community Laws. In respect of the second gap identified above, it is worth noting that the experience of successful regional economic communities in Europe for instance, has shown that the process of integration and the establishment of an economic union can only be achieved where there is a virile Court of Justice. The judicial organ of ECOWAS was created by virtue of Article 15 of the Revised Treaty.

Its composition, competence and procedure are defined by the protocol of 6th July 1991 on the establishment of the Community Court of Justice. The essential role of the Community Court is to ensure the observance of law and justice in the interpretation and application of the Treaty and the Protocols and Conventions annexed thereto, and to be seized with the responsibility for settling such disputes as may be referred to in accordance with the provisions of Article 76 of the Revised Treaty and disputes between States and the Institutions of the Community. Its decisions shall be final and not subject to appeal to an independent Community Court. It can play a key role in the integration process by reinvigorating the concept and practice of the economic union through its legal rulings; by promoting an integrated Community Legal Order through its interpretation and application of Community Laws by protecting the rights of community citizens through the development of autonomous human rights jurisprudence, and effective dispensation of justice. The Community Court has faced a lot of challenges ranging from lack of basic infrastructure to the limited scope of its competence, since its inception in 2001. Under Article 9 of the Protocol of the Court, only member states and institutions of ECOWAS have direct access

to the court. Individuals do not have such access which clearly amounts to a denial of an important right to the community citizens. It also had the effect of rendering the court almost redundant. Since the inception of the court, only two applications have been filed before it and both cases were filed by individuals.

In the first judgement that was delivered by the Court in the case of Olajide Afolabi V. Federal Republic of Nigeria,¹⁷ the court struck out the application on the grounds that individuals do not have direct access to the court. Happily as at January 2005 the Authority of Heads of State has granted approval to the Supplementary Protocol at its summit, thereby granting right of access to the court for legal redress to citizens. Finally, with regards to the third gap identified above, it should be noted that community citizens' rights to freedom of movement of persons, goods and capital as well as rights of residence and of establishment on Free Movement and of Trade Liberalization Scheme, constitute the cornerstones of the regional integration process.

Thus, unless community individuals and corporate citizens have direct access to the court for human rights protection, for effective legal redress and administration of justice without discrimination fear or favour, the integration process and the cardinal objectives of ECOWAS cannot be meaningfully realized. The denial of citizens' right to access to justice as a fundamental human right is equally a denial of their rights to participate in, contribute to, and enjoy from sustainable community development that is contrary to articles 2 -5 of the Revised Treaty. There are three perspectives, on the imperatives of regional integration in Africa. These are:

- (a) The prevailing economic realities in Africa can make international cooperation among the African countries even more crucial. Here, a brief look at the problems and opportunities of the future would prove useful. Such considerations include the current crises in agriculture and the state of food insecurity resulting from it, the African liquidity problems and the climate of economic stagnation and poverty, in general. They also include the heavy debt burden of Africa and the declining level of international assistance particularly in the 1990s.
- (b) As the former Secretary General of the OAU/AU, Salim Ahmed Salim, quite correctly observed at the 26th summit of African Heads of State and Governments held in Addis Ababa in July 1990 that "Africa now, faces more formidable if not insurmountable challenges. Some of the old regional and domestic conflicts still linger on as the continent continues to be paralyzed by mounting debt burden, a growing trade imbalance, decreasing external flow of resources and increasing marginalization by the New International Division of Labour which favours the Pacific Countries.
- (c) All this would require that African States now more than ever before need to play down their differences and put on a more cohesive and unified front; as well as do away with the grim picture of the social dimensions of the African reality demanding urgent solutions today. These are graphically summed up as below:
 1. The social malaise which still haunts the continent such as inter and intra State conflicts,

2. Rehabilitation and resettlement of refugees and internally displaced persons (IDPS); poor coverage of social services such as those of education, health and human welfare; underdeveloped infrastructure; pandemics like AIDS and, epidemics like malaria and challenges posed by corruption and human insecurity as well as bad governance.
3. That a child in Africa dies of disease, famine armed- conflict every three seconds; 200 million people have no access to hospital services, 46%, of the population of sub-Saharan Africa, all live on less than one USA dollar per day.¹⁸
4. One need not flog negative implications of the conflicts, *coup d'etat* and counter-coups on Africa's potential for development, but it can be ascertained that foreign intervention has always been a factor behind it all. All told the most serious conflicts of post-colonial Africa derived from overt and covert operation of the ex-colonial powers and their allies who dreaded the prospects which nightmare of African political integration and eventual unity posed.
5. Thus, it can be said that diversity had to a large extent contributed towards unity and harmony, while conflicts formed the basis for deliberations in attempts towards greater understanding and integration in African politics.
6. It is against this backdrop and with the sobering awareness of this history that the African Union and NEPAD should embark upon the task of enhanced African economic and political integration and partnership with the industrialized world.
7. Economic integration among African States has been tried in many regions of the continent since the 1960s: the Common Market for Eastern and Southern Africa (COMESA), ECOWAS, the East African Community (EAC), the Southern African Development Cooperation (SADC) and Inter-Governmental Authority on Development for the Horn of Africa (IGAD), and the Magreb Union for North African Arab States. It indicates that the importance of economic Cooperation among African countries was also underlined by the size of the countries themselves. This resulted from the process of balkanization by the colonial powers.
8. It was also dictated by the new economic realities which called for the formation of larger economic groupings.¹⁹
9. In fact, the background to the African economic integration efforts advocated by the African Union and NEPAD dates back more than two decades in 1979, African Heads of State and Government met in Nairobi, Kenya to discuss Africa's economic future. The ultimate aim was to create a more self-reliant African economy.

The past roadblocks to African economic integration are based on two broad hurdles, namely, the procedural and external. The procedural hurdles relates to the effect of failure to incorporate agreements reached by different integration schemes into national plans. In other words, these have been the lack of full commitment or disparities in the level of commitment or because follow-up for decisions taken at the sub-regional meetings is left to the Head of State or to a few ministers or bureaucrats without involving the private sector and the public stakeholders. This tendency has played down the value of the collective agreements or protocols arrived at to expedite trade and harmonize policies at sub-regional

levels. Further hurdles include lack of local private entrepreneurs with technical and management skills to respond to opportunities for cross-border investments and joint ventures with businessmen from neighbouring countries and the developed world. Furthermore, excessive dependence of African economies on imported manufactured products from developed countries work against the viability and strength of sub-regional economic cooperation groupings, even when comparable products are available within a sub-regional preferential arrangement. Moreover, Africa's own making is the duplication of economic blocs essentially created to achieve the same objectives, for example, COMESA and SADC, and IGAD and EAC. Also, procedures governing movement of goods are lengthy and cumbersome and leads to delays and unnecessary bureaucratic work, e.g. customs duty, restrictive, import licensing among many others.

The External Hurdles relates to the problems of distributing benefits and the lack of necessary mechanisms in the African context that aimed at the equitable distribution of such benefits. Hence, the persistence of a tendency for the polarization of development in; some cooperation blocs. Further, the lack of maintenance or absence of basic infrastructure facilities such as transport, energy and information and communications technology (ICT) hampers effective sub-regional economic cooperation, and slows down success in generating user savings, more competitive exports and cheaper imports.

Furthermore, another roadblock to integration is the economic weakness and relative stagnation of African economies and its negative impact on government. The African Union/NEPAD has to draw lessons from such approach to integrations to avoid the errors and pitfalls of the past. One way of encouraging regional integration is learning from the experience of other regions which have achieved a measure of success. Europe has for instance risen from the ashes of a very destructive world war to achieve a common market. It is now striving toward achieving monetary union. The only impediment to the above is the issue of Sovereignty as it is being raised by the United Kingdom in the context of the Europe Union. In the African context, a major source of difficulty in integration has been the size of member countries, both in terms of population and economies of scale, and the size of the markets. One way of mitigating the effect of this problem is to have economic growth coupled with the diversification of exports, which can improve the ability of small economies to lobby for the improvement of price regimes to primary products and to attract foreign direct investment.

BRIEF CASE STUDY OF NIGERIAN TRADE AND INVESTMENT LAWS

A survey of the legislative enactments relating to foreign investment in Nigeria is necessary in order to establish the existing legal provisions governing foreign investment. Apart from basic instrument governing investment in Nigeria there are several enactments which contain essential requirements which the investor must fulfill before he can do business or invest in Nigeria or an enterprise in Nigeria. Section 16 of the Constitution of the Federal Republic of Nigeria²⁰ which states the objectives of the nation is consistent with the encouragement of foreign investment, particularly when it is read with section 19 which provides for the promotion of African integration, respect for international disputes by negotiation and

reconciliation, arbitration and adjudication as well as promotion of a first world economic order. Other relevant provisions include S.44 (3) of the 1999 constitution which provides that the entire property and control of all minerals, oil and natural gas under or upon any land in Nigeria or under or upon the territorial waters and the exclusive economic zone of Nigeria shall rest in the government of the federation and shall be managed in such a manner as may be prescribed by the National Assembly on which laws as the Territorial Water Act, the Exclusive Economic Zone Act, and Petroleum Act receive validity and the land in Nigeria under State control. On the controversial subject of expropriation of foreign investment by a host country the 1999 constitution sets standard in section 44(1). Prompt payment of compensation and a right of access to court on the issue are guaranteed. These accords with the standard set in the international instruments.

The protection of investors in colonial Nigeria was not taken for granted and the 1999 Constitution of Federal Republic of Nigeria (CFRN) because the colonial power, Britain understood the relevance and importance of foreign capital, hence other nationals like the Lebanese, Indians, Greek and French were allowed to invest or do business in Nigeria with reasonable protection of the law. Although every foreign State has power under the accepted principles of international law to exclude alien investors, yet as a practical matter in the interest of mutual commercial benefit, States refrain from excluding foreign investors when the gains perceived early the history of foreign investment was only reciprocity. Domestic law provided good environment for investment by imposing legal restraint against exclusion and discrimination against foreign traders.²¹

CONCLUSION AND RECOMMENDATIONS

From the foregoing analysis of the economic integration, trade and investment in the ECOWAS region, we have seen that it has done comparatively well in terms of the laws but, how it impact on the economic development of member countries especially Nigeria, particularly on the implementation of the ECOWAS Treaty is what is seen as a great lapse. Also, there are a lot of trade barriers created by ECOWAS member states at the border crossings which hinders trade and commerce seriously in terms customs check-points. Political instabilities in most ECOWAS states seriously hampers the establishment of businesses in these ECOWAS countries to wit trade and investment. Thus, it is recommended that a mechanism for proper implementation of the ECOWAS Treaty particularly on the provisions dealing with trade and investment should be put in place in order to achieve these trade and investment objectives. In addition to this, free trade and commerce between members States should be encouraged by removing trade tariffs and allow free access of goods and services at all border crossings of each country. Peaceful co-existence, good governance and adherence to democratic principles should be strongly encouraged in all ECOWAS States to enhance trade and investment initiatives.

NOTES

- ¹1948 United Nations Charter
- ²Article 19, ECOWAS Treaty, 1993
- ³Article 20-21 of ECOWAS Treaty 1993
- ⁴Ibid
- ⁵ECOWAS Protocol Bulletin no. 5, 1998
- ⁶Ibid p. 47
- ⁷Ibid p. 50
- ⁸Article 19, OHADA Protocol, 1998
- ⁹Article 2 of OHADA Protocol, 1998
- ¹⁰Ibid article 3-4
- ¹¹Ibid article 5-6
- ¹²ECOWAS bulletin vol. 4, 2000 p. 17
- ¹³Ibid p. 20
- ¹⁴Article 22, ECOWAS Revised Treaty, 1993
- ¹⁵Ibid
- ¹⁶ECOWAS bulletin vol.4 of 2000 p.18
- ¹⁷Suit no FHC/L/1/2000 P.27
- ¹⁸ECOWAS bulletin, vol. 4, 2000 p.23
- ¹⁹Ibid p.27
- ²⁰Constitution of the Federal Republic of Nigeria 1999
- ²¹Section 7 NIPC, 1993