

AN ASSESSMENT OF THE STATUTE AND MANDATE OF ECONOMIC COMMUNITY OF WEST AFRICAN STATES TOWARDS ADVANCING HER MEMBER NATIONS*

Abstract

The Economic Community of West African States (ECOWAS) was founded to advance regional economic integration in West Africa states. The Institution was established by a treaty which can be referred to as her 'statute' as well as aim and objectives for her operation. So far, she has existed for a period of 45 years with about 15 countries in the West Africa Sub-region. However, the challenges faced by member of the ECOWAS appear to be overwhelming for her to handle. Hence, this paper adopts the traditional legal research methodology of theoretical approach through conventional contextual analysis of published and unpublished works to assess the status and performance of the Institution. The paper first examines ECOWAS treaty and mandate which is contained in the aims and objectives of the Institution with a view to assess its performances over the four and half decades. The paper argues that ECOWAS operational structure is deliberately organised as a means of achieving the purposes of her existence and mandate. It further discusses the ECOWAS strategic plans towards achieving its mandate. The paper posits that an assessment of the Institution will reveal that she has, to a large extent, succeeded on some of the original intentions of her existence due to the achievements recorded over the years in member states but the attendant challenges have limited the realisation of other objectives yet unfulfilled.

Keywords: ECOWAS, Institution, Mandate, Statute, Performances, Challenges.

1. Introduction

The Economic Community of West African States (ECOWAS) was founded in 1975 to advance regional economic integration in West Africa. The Institution came into being on 23 June 1975 with the ratification by the first seven members.¹ The Community now comprises of Benin, Burkina Faso, Cape Verde, Cote D'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo; Mauritania withdrew its membership. The Institution was established with clear cut goal of what can be tagged mandate by virtue of treaty signed by her member states in the West African sub-region. Indeed, most Institutions and organisations are put in place with a defined purpose of existence which they are meant to fulfil and be guided with. The use of the word 'mandate' in this context is deliberate to mean the focus, the Commission or 'assignment' given to the Institution to do-the rationale for her existence. Mandate according to Mozley and Whiteley is a "command of the queen, or her justices, to have anything done for the dispatch of Justice."² It also referred to as "an order or commission granted by the League of Nations to a member nation for the establishment of a responsible government over a ...territory".³ So, the mandate of ECOWAS constitutes the original instruction as agreed my member states to which the Institution should carry out as well as additional guidelines laid out by the concerned or relevant authoritative bodies of the Institution. Statute which is popularly known as 'law' is an Act of Parliament made by the Queen in Parliament or any other legislative body in the nation. A statute, in the original sense of the word, means the legislation of a session; the various Acts of Parliament passed in it being so many chapters of the entire statute.⁴ Also, a statute is a written law, as laid down by the legislature. It is a legislated rule of the society which has been given the force of law by those it meant to govern. Although, statutes of ECOWAS are not the conventional statute of member nations, it is the guidelines and rules made by the ECOWAS Parliament from the inception of the Institutions till date which the executive organ of the Institution is to implement in the collective effort to achieving of her mandate.

Assessing the performance of an Institution like ECOWAS therefore, requires an examination of whether she is living up to the mandate of her establishment or not. The Institution, by this paper, is presently being assessed on the basis of what she was initially put in place to do. This is important because there exist criticisms and assessment of ECOWAS which may be unfair paradigm in that comparison of performances by the Institution *vis-a-vis* other Institutions are made without bearing in the mind the peculiarities of each Institutions and purpose of establishment.⁵ While criticism is good for performance of an Institution, it must be fair and based on balanced tools of measurement and assessment. Thus, this paper assesses the performance of the Institution on the basis of her well spelt out treaty, statute and mandate which can be found in her aims and objectives.

*By **Akin Olawale OLUWADAYISI, PhD, BL, ACI Arb (Nigeria)**, Notary Public, Lecturer, Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Ondo State and Fellow, Centre for Comparative Law in Africa, University of Cape Town, South Africa; akin.oluwadayisi@aau.edu.ng

¹ ECOWAS, 'History' available at <<https://www.ecowas.int/about-ecowas/history/>> accessed 7 April 2020.

² Mozley & Whiteley, *Law Dictionary* (12th edition) (Butterworth's London. 2001)

³ Merriam-Webster, 'Mandate' available at < <https://www.merriam-webster.com/dictionary/mandate>> accessed 7 April 2020.

⁴ Mozley & Whiteley (n2) 2.

⁵KO Kufuor, 'Public Choice Theory and the Failure of the ECOWAS Trade Liberalisation Scheme' (2000) 23 *World Competition*, 137.

2. Statute of Establishment of ECOWAS

The Economic Community of West African States came into being in 1975 by a treaty with the ratification by the first seven members as stated above in the introduction of this work. The joint initiative of Nigeria and Togo in 1972 in resuscitating the idea of closer economic relations led to a series of diplomatic meetings and conferences that culminated in the signing of the ECOWAS Treaty on 28 May 1975 with the headquarters of the Institution in Abuja, Nigeria. Later, the Protocol on Non-Aggression⁶ and the Protocol Relating to Mutual Assistance in Defense⁷ were ratified which were both sought to locate regional defense and security at the heart of the ECOWAS project. Unfortunately, the Protocols articulated a narrow concept of peace and security that was reactive instead of proactive. It was reported that shortly after the outbreak of hostilities in Liberia but prior to the deployment of ECOMOG, the Authority of Heads of State and Government of ECOWAS decided to establish a Committee of Eminent Persons to review the 1975 Treaty.⁸ In the light of emerging regional security concerns, the Committee proposed a new draft treaty with significant new amendments to the 1975 Treaty.⁹ The revised treaty was adopted in Cotonou, Benin, on July 1993, and together with the protocol adopted before and after 1993. These Treaty and Protocols represent the normative and institutional framework of the Institution. However, the aims and objectives reveal the details of the framework of the Institutions as contained also in the treaty and protocols.

3. Aims and Objectives of ECOWAS

The objectives of ECOWAS are contained in article 3 of the revised treaty.¹⁰ As stated in article 3(1) of the Treaty: the aims of the Community are to promote co-operation and integration leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African continent. The fundamental objectives are: the creation of an area of free trade for the movement of persons, goods and services; the introduction of common tariffs the promotion of cooperation and integration and the raising of the standards of living. The principles that defines the Institution include the equality and interdependence of member states, non-aggression, peaceful settlement of disputes and the promotion and protection of Agriculture, Industries, Mining, Trade, Transport, Communications and other fields. One of the most far-reaching consequences of this review of the 1975 ECOWAS Treaty was a recommendation to adopt Fundamental Principles.¹¹ These Principles, now in Article 4 of the 1993 Treaty, include maintenance of regional peace, stability, security through the promotion of good neighborliness, peaceful settlement of disputes among member states, recognition, promotion and protection of human rights, accountability, economic and social justice, popular participation in government, and promotion and consolidation of a democratic system of governance in member state.¹² The revised Treaty of 1993 accords primacy to human rights within the normative framework of ECOWAS. Within the scheme of the Community, human rights are recognised and dealt with in three ways. First, there are those rights which are incidental to the project of regional economic integration. These rights are protected within the framework of the right to free movement of persons, the right of residence and the right of establishment.¹³

Closely connected with the broad objectives of the Institution are the individual national objectives towards achieving the goals of the Institution. Some of these objectives were more obvious than others.¹⁴ National goals ranged from the predominantly economic to a mix of motives, such as Nigeria's desire to stabilise her external environment after the Biafran war. Through regional economic integration, Nigeria did not only hope to create a market for her nascent industries, but also to neutralise her regional opponents, and reduce French influence in the region.¹⁵ Apart from Nigeria's concern for her national security, there were no other very obvious political reason for wanting to embark on a regional economic integration scheme except perhaps the Head of State to be

⁶ ECOWAS Protocol on Non-Aggression adopted in Lagos, Nigeria on 22 April 1978

⁷ ECOWAS Protocol Relating to Mutual Assistance in Defense adopted in Freetown, Sierra Leone, in May 1981

⁸ ECOWAS Treaty of 28 May 1975

⁹ *ibid.*

¹⁰ ECOWAS Treaty 1993, art.3

¹¹ ECOWAS, 'Fundamental Principles and Achievements' available at < <https://www.ecowas.int/about-ecowas/fundamental-principles/> > accessed 8 April 2020.

¹² ECOWAS Treaty 1993, art.4

¹³ DC Bach, 'The Politics of West African Economic Co-operation: CEAO and ECOWAS', in (1983) 4 *The Journal of Modern African Studies*, 21.

¹⁴ *ibid.*

¹⁵ *ibid.* 22.

attempting to re fracture international economic order.¹⁶ Unlike the European Community which, among other things, sought to solve the Franco-German problem through regional economic integration, the West African Economic Community was established as a means of developing the industrial capacity of the countries within the region, and to promote self-sufficiency in their economies. The goal and aims of ECOWAS must, therefore, be implemented first from the perspective of the economic integration that the member countries originally intended for setting it up. Other objectives such as political and security appeared to have pierced her heart of focus thereby diverting her resources and creating problems for achievement that should have been recorded.¹⁷

4. ECOWAS Structure as a Means of Achieving Its Existence and Mandate

As we have in all states of the world, a similar structure of enacting regulations, administration and enforcement is adopted by most international Institutions in order to enforce the mandate of their establishment. ECOWAS is not left out. The nature of the structure of ECOWAS if critically examined are not just to provide offices for personalities or to ensure governments of member states are part of the Institution but majorly to make sure that the Institution's structure work to bring to realisation and impactful benefit, aims and objective for which it was set up in the first place. Hence, on the top echelon of ECOWAS authority is the Heads of State and Government. In order to achieve her aim, the West African states agree to the Treaty and undertake to pursue a set of objectives, including harmonisation and coordination of national policies, as well as the promotion and integration of programmes, projects and activities in transport, natural resources, food and agriculture, economic reform policies, human resources, education, information, culture, science, environment, health, tourism and legal matters. The Institution confers legal mandates for the implementation of the obligations under the treaty through protocols and decisions of the Authority of Heads of States and Governments. By structural importance, this is the highest organ of the Institution, where each State has one vote. The authority gives the general direction for the control of the Institution, appoints the Executive Secretary and may delegate to the Council of Ministers the authority to take decisions by unanimous agreement, by consensus or by two-thirds majority depending on the subject matter. It may request the advisory opinion of the Institution Court of Justice on any legal question. It meets at least once a year but an extraordinary meeting may be called at the request of a member supported by a simple majority of states. The chairman is elected for one year single term.¹⁸ The above organ is followed by the Council of Ministers. This consists of two ministers from a State, one of whom must be in-charge of ECOWAS affairs. The Council coordinates and harmonises economic integration policies, approve the work programme and budgets of the Institution and may seek the advice of the Community Court on legal questions. It meets twice a year, one of which immediately proceeds the ordinary sessions of the Assembly.¹⁹

The legislative arm of the Institution is referred to as the 'Community Parliament'. This is established by the Protocol relating to the Parliament in 2002 providing for its structure, composition and competence among other things.²⁰ The 120 member Parliament provides for a minimum of 5 members for a State, the others are weighted according to the population such that Nigeria has 35; Ghana 8; Cote d'ivoire 7; Burkina Faso, Guinea, Mali, Niger and Senegal 6 each; while Benin, Cape Verde, the Gambia, Guinea Bissau, Liberia, Sierra Leone and Togo have 5 each. The Parliament is tangential to the fulfillment of the mandate of the Institution as such it is empowered to consider and make recommendations on issues relating to the community such as energy, communications and the telecommunications networks; review of community citizenship, human rights, economic and social integration. The Parliament functions in advisory capacity and has no specific law-making power.

In order to see that the statutes and mandatory rules of the Institution do not fall to the ground with disrespect, the next crucial organ to ensure enforcement of the Community Court of Justice.²¹ The Court, whose Rules of Procedure were adopted in 2002 has a quorum formed by the President and two other members of the bench. The Court sits with an uneven number of judges. The principal legal organ consists of seven members. The role of the Court cannot be underestimated in the fulfillment of the aim and objectives of the Institution. For example, the Court possesses the duty to ensure the observance of law and justice in the interpretation and application of the

¹⁶ This was a predominant theme at the time ECOWAS was formed. In the 1970s' Collective self-reliance' was a major policy alternative to the redistributive philosophy of the Group of 77 led new international economic order.

¹⁷ A Adepoju, A Boulton & M Levin, 'Promoting integration through mobility: Free movement under ECOWAS' available at <<https://www.unhcr.org/49e479c811.pdf>> accessed 7 April 2020.

¹⁸ ECOWAS, 'Governance Structure' available at <<https://www.ecowas.int/about-ecowas/governance-structure/>> accessed 7 April 2020.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ ECOWAS, 'Community Court of Justice', available at <<https://www.ecowas.int/institutions/community-court-of-justice/>> accessed 9 April 2020; ECOWAS Treaty 1971, art.24(4).

treaty.²² It settles disputes between Member States or Member States and institutions of the Community. A Member may institute proceedings on behalf of its nationals having failed to achieve an amicable resolution of the dispute. The Authority, Council, Member, Executive Secretary or an institution of the Community may seek the legal opinion of the Court on an issue within the scope of its duty. The court sits with an uneven number of judges and a decision can be taken by the majority and becomes immediately enforceable though with some palpable challenges.²³

Administratively, the Secretariat performs the day to day implementation of direction and instruction from both the Council of Ministers and even the Community Parliament. The Secretariat is headed by the Executive Secretary who is appointed by the Authority for a period of four years' renewable for another period of four years.²⁴ The Executive Secretary is assisted by two deputies, a financier: controller and other officers. Their appointments have due regard for the highest standards of efficiency and technical competence as well as equitable geographical distribution of posts among nationals of all Member States.²⁵ The secretary executes the decisions of the Authority, applies the regulations of the Council and is the Chief Executive Commissioner of the Community and all her institutions.²⁶ His duties include the submission of all Community activities for the consideration of the Authority, the preparation of budgets and programmes of activity and execution after approval.

5. ECOWAS Strategic Plans towards Achieving its Mandate

Achieving mandates, aims and objectives of an Institution requires conscious strategic plans adopted to bring the intention of the aims into practical realisation. Among some of the ECOWAS strategic plans towards achieving her mandate include but no limited to African Monetary policy for the sub-region, ensuring freedom of movement across border states, ECOWAS and ECOWAS security apparatus including ECOMONG put in place at a point in time. All these were believed to serve as direct or indirect tools in achieving the broad objectives and mandate of the Institution.

The West African Monetary Zone (WAMZ) aims at creating a single monetary zone out of 7 states each of which has a national currency. Five of these-Gambia, Ghana, Guinea, Nigeria and Sierra Leone are parties to the West African Monetary Institute created in 2001 while Liberia and Cape Verde are observers. While this stormed second monetary zone, the first is the CFA countries of Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo (UEMOA) whose currency is pegged to the French franc and now to the Euro. The third zone will be a merger of the first and second with a common central bank.²⁷ The policy strategies to achieve this objective include market-determined exchange rates, ticket-based monetary management, liberal exchange regimes and reduction of seal deficits.

Again, the freedom of movement and establishment within ECOWAS sub-region is another strategic plan which appear to be the most popular of her policies. This is the fundamental objectives of ECOWAS Treaty. Article 2 (2) (d) of the 1975 Treaty²⁸ calls on members to ensure by stages the abolition of obstacles to the free movement of persons, services, and capital while Article 27 confers on the citizens of member states the status of community citizenship.²⁹ Thus, the latter article requires that states parties exempt citizens with member permits from obtaining visas or residence permits and allow them to undertake commercial and industrial activities. Similarly, the supplementary Protocol on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and of Establishment 1985 provides for the humane treatment of illegal immigrants and the protection of the properties they acquired legally. Collective or arbitrary expulsion as in Article 12 of the African Charter on Human and Peoples' Rights 1981 is prohibited.³⁰ Each case is expected to be considered on its merits as all the fundamental rights of the migrant shall be respected.

The Supplemental Protocol on the implementation of the third phase 1990 calls for non-discriminatory treatment of nationals and companies of other Member States, equitable treatment of capital and the payment of fair and

²² ECOWAS Revised Treaty, art.77(1)

²³ ES Nwauche, 'Enforcing ECOWAS Law in West African National Courts' (2011) 55.2 *Journal of African Law*, 181-202.

²⁴ ECOWAS (n18)

²⁵ *ibid.*

²⁶ ECOWAS (n18)

²⁷ See ECOWAS, '2017 Member States' Macroeconomic Convergence on the Agenda of the 40th WAMZ Council Meeting' available at < <https://www.ecowas.int/28465/> accessed 9 April 2020.

²⁸ ECOWAS Treaty 1975, art.2(2)(d)

²⁹ ECOWAS Treaty 1975, art.27

³⁰ African Charter on Human and Peoples' Rights 1981, art.12

equitable compensation in the event of expropriation, nationalisation or even confiscation. What is doubtful and appears to be the practical reality is the lack of intended freedom within the ECOWAS sub-region among the member States as Tax and Custom and Excise restrictions clearly erode this freedom. The issue of security of member states is also an important strategy the Institution provides for in order to achieve her mandate. Under Article 58 of ECOWAS Treaty, members undertake 'to "safeguard and 'consolidate relations conducive to the maintenance of peace, stability and security within the region.³¹' It is well understood that without security of lives and property, trade and integration may not take effect. The Institution undertakes to establish appropriate mechanisms for the prevention and resolution of intra and interstate conflicts and settlement of conflict. Member States undertake to employ appropriate methods of dispute resolution such as good offices, conciliation and mediation and establish a regional peace and early warning system and peacekeeping forces where appropriate. The Protocol on Non-Aggression 1978 obligates States to refrain from the threat or use of force against the territorial integrity or political independence of States and not to allow their territories to be used by foreigners for such purposes. The Protocol relating to Mutual Assistance on Defense 1981 further strengthens security in the event of external aggression or internal armed conflict engineered and supported from outside.

6. Assessment of ECOWAS' Achievements

On the website of ECOWAS, the achievement of ECOWAS is summarised in the following words:

In promoting sustained economic development of the West African region through the implementation of the Community work programme, ECOWAS has laboured to bring about greater entrenchment of democratic culture, enhanced efficiency in dealing with conflicts, crisis prevention and resolution as witnessed in the restoration of stability to Member States caught in conflict over the years.³²

It must be mentioned here that although the Institution was formed in 1975, it was not until 1977 that the Secretariat was set up. Furthermore, the first decisions regarding the implementation of the Treaty were adopted in May 1979 in Dakar. The ten years needed for the freezing and eventual elimination of tariffs started in 1981 after an initial need to gather statistics and conduct studies on the various aspects of co-operation. Trade liberalisation was therefore supposed to be in place by 1990 after starting in 1981. The liberalisation programme was re-launched in 1983 because it had failed to move forward. The latest relaunch came into effect in January 1990.³³ Whilst the delay could be taken as a pointer to the problems faced by ECOWAS, the issue that concerns us here is how, in spite of member governments non implementation, the process manages to move forward. Part of the answer could be found in the detailing of the timetable and objectives in the Treaty in a form that gives it an internal dynamic of its own and therefore acts as a resource that enables decisions to be taken on various aspects of the scheme. Thus the little progress that has been made so far is made possible by the prior agreements in the Treaty. It could therefore be argued that without such a detailed scheduling in the Treaty, progress would be slower. Even though such prior agreements exist and ought to act as the blueprint for progress the lack of other complementary resources have been responsible for the long delay in liberalising trade and achieving economic union. One such resource that is important for the effective functioning of an international Institution and is internal to it is the extent of its cosmopolitan powers.³⁴ Even though some scholars, such as Lindberg, express skepticism about international powers,³⁵ as a resource, this paper agree that such influence is important in the case of ECOWAS especially where a country contribute the major financial resources for her operations and functioning. The position of Lindberg is premised on the fact that there are virtually no international Institution like ECOWAS that possesses independent resources of her own. According to him, the ability of supranational Institutions to play an important role in the decision making process, participate in all aspects of the stages that influence policy choice and goal preferences is determined more by the way the Institution's officials interact with national political actors, representatives and government officials "by providing services and skills that are in demand".³⁶ Although, this position overlooks the other factor as that the Institutions have her structured decision-making bodies which deliberate over issues and make policies. Definitely, such organisations are different from forum organisations³⁷ where decisions are usually taken by either heads of State or Council of Ministers. In the

³¹ ECOWAS Treaty 1975, art.58

³² ECOWAS, 'Achievements' available at <<https://www.ecowas.int/achievements-of-ecowas-at-40/>> accessed 8 April 2020

³³ Contact, Publication of ECOWAS, Vol. 12 No. 2, September 1990, 6

³⁴ MT Ladan, *Materials and Cases on Public International* (Ahmadu Bello University Press Limited, Zaria. 2007); Umozurike U.O., *Introduction to International Law* (Spectrum Books Limited Ibadan. 2005) 245-251

³⁵ These are the "Possession of clear decision making jurisdiction and authority or ability to impose sanctions". Lindberg L. N, *Politics International as a Multidimensional Phenomenon*, 84

³⁶ LN Lindberg(n28).

³⁷ JW Feld & RS Jordan, *Give a Good Distinction Between the two Categories in International Organisations: A Comparative Approach*. (Praeger Special Studies, New York. 1983).

member States, there is no strict border for nations due to interstate trades. This is not applicable to other nations in Africa. ECOWAS has enabled West Africans to easily move among the West African countries. Also, the trade barrier has been removed allowing People, goods and services travel around the countries with ease. Consequently, this has increased the interrelationship between citizens of member states. Some Citizens even migrate to establish their businesses in another country of the Institution. Also, the economy of each nation has been improved by this singular effort.

Peace and security throughout the sub-region has been enhanced through the intervention of ECOWAS at critical point in time in history. During the days of active participation of ECOWAS Monitoring Groups (ECOMONG) the state of peace in member nation were maintained by the Group. One can say that the rate and reports of insecurity in member nations nowadays were not as insurgent and recurrent as it was then. The nations where internal conflicts are experienced did not really lasts long compared to what it is currently being experienced. Even Nigeria, the champion nation and major financier of ECOWAS programmes has not been able to battle the problem of insecurity coming from Boko Haram Terrorist Group for almost two decades now let alone resolving the insecurity and internal conflict of other member states.

In the area of wealth creation, the Institution has achieved to affect not just the member States but also citizens living within the member state. For example, more than 300 million citizens of ECOWAS are being imparted through her accelerated implementation of sectoral programmes for wealth creation.³⁸ In addition, the Institution has engaged in reforms particularly proposing democratic ideals and needed reforms in member states. “Apart from the institutional reforms which are now putting ECOWAS on a much stronger footing, the West African region has benefitted immensely from the fruits of the Supplementary Protocol on Democracy and Good Governance.” The protocol has, over the years compelled member States to adapt to political best practices in respect of the terms of office of the President. It also prescribes the zero tolerance for unconstitutional seizure of power.³⁹ Through its electoral assistance mechanism, ECOWAS has continued to help in ensuring free, fair and credible elections in the member states.⁴⁰

In all, the major achievements of ECOWAS through the years spread to cover many areas which include:⁴¹

- (a) The adoption of the Macroeconomic Convergence Report by the ECOWAS Convergence Council.
- (b) Establishment of the ECOWAS Monetary Institute (EMI).
- (c) Adoption of methodological guides for the harmonisation of Public Finance Statistics, Government Financial Operations Tables (TOFE), External Trade Statistics, Balance of Payment (BOP) and International Investment Position (IIP)
- (d) Conclusion of the review of the Sahel Strategy document and its action plan to boost regional security.
- (e) Formulation of an ECOWAS Common Trade Policy (CTP) and ECOWAS Trade Development Strategy.
- (f) Completion of the Economic Partnership Agreement (EPA) with the signing by 13 Member States.
- (g) Custom Union in the offing with the implementation of the CET by Eight Member-States.
- (h) Free Movement of goods and persons boosted with the adoption of the ECOWAS Biometric Identity Card to facilitate mobility and promote security in the region.
- (i) Drafting of a Regional Border Management Manual for use in immigration/security training institutions.
- (j) Launching of the Ecolink project, which aims to transform and improve key operations within the ECOWAS Community.
- (k) The Systems, Applications & Products (SAP) component of Ecolink aims at improving the financial management systems and ensuring real-time information for effective decision-making in the Community Institutions.
- (l) Promotion of strategic products for food security and sovereignty including combating cross-border livestock disease.
- (m) Renewed efforts to enhance the environmental governance, general environmental protection, capacity building as well as Sustainable resource management for development in the Member States.
- (n) Re-award of the contract for the construction of the Sèmè-Kraké Joint Border Post (Benin-Nigeria).
- (o) Evaluation of tenders completed for the works, contract for final engineering designs for the rehabilitation of sections of the Enugu-Bemenda road between Nigeria and Cameroon and the construction of a Joint Border Post (JBP) and a Border Bridge at Mfum border.
- (p) Feasibility study for the extension of the West African Gas Pipeline Network concluded
- (q) Development of Regional Power Market with the setting up of regulatory and economic environment.

³⁸ ECOWAS (n26).

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

- (r) Promotion of renewable energy and energy efficiency technologies and services.
- (s) An ECOWAS Directive on Energy Efficiency Buildings (EEB) aimed at promoting energy efficiency in buildings in ECOWAS Member States has been developed by ECREEE
- (t) Establishment of a Regional Centre for Disease Control.
- (u) Maintain and strengthen the actions undertaken to consolidate peace and security in the region.
- (v) Consolidating the implementation of the, Common Market, Trade Liberalisation Scheme (TLS) and the Protocol on Free Movement of persons, goods and services.
- (w) Signing of the Supplementary Act on Dakar-Abidjan Corridor, and laying of the first stone for the regional electricity project. The project covers Cote d'Ivoire, Guinea, Liberia and Sierra Leone.
- (x) The regional peace and security architecture provides for conflict prevention, management and resolution, as well as early warning System. The latter allows ECOWAS to analyse human security issues and anticipate political crises, food shortages, health problems and disasters.
- (y) ECOWAS is now poised in the coming years to intensify efforts aimed at sustaining peace and political stability already achieved, in order to create the best conditions for the development of the region.

An examination of the above achievements of ECOWAS since inception will reveal that each is in the direction one of the aims of the Institution or the fundamental principles of her existence. In other words, the achievement can be correlated with the aim or objective of raising the living standards of its peoples or to maintain and enhance economic stability or foster relations among member states and contribute to the progress and development of the African continent. Some of the achievements can also find expression in the fundamental objectives which are: creation of an area of free trade for the movement of persons, goods and services; the introduction of common tariffs the promotion of cooperation and integration and the raising of the standards of living.⁴² In addition, the additional principles earlier mentioned under Article 4 of the 1993 Treaty, include maintenance of regional peace, stability security through the promotion of good neighborliness, peaceful settlement of disputes among member states, recognition, promotion and protection of human rights, accountability, economic and social justice, popular participation in government, and promotion and consolidation of a democratic system of governance in member state have some them fulfilled already in the listed achievements. However, some of the principles, aims and objectives, to a large extent, have not been achieved, perhaps, because of many challenges or bias of focus on those areas.

7. Challenges of ECOWAS

This paper contends that the challenges facing the Institution are responsible for some of the unachievable aims of her existence. Since the establishment of the ECOWAS, there has been some irreconcilable areas of her objectives with recorded achievements highlighted above due to certain challenges. The persisting challenges confronting the ECOWAS are discussed here. The ECOWAS is a troubled Institutions with quite a number of challenges threatening its relevance, in as much as the over four decades Institution has managed to survive so far. The persistence of these challenges portends the ECOWAS as defective and when overcome signals the renaissance of the Community among the comity of states. These challenges are discussed under two themes and elaborated herein as trade, infrastructural and regulatory challenges and challenges of governance, conflicts and Socio-culture.

Trade, Infrastructural and Regulatory Challenges

In the first instance, the trade factor and Member States' economic challenges are ever surfacing in the integration bid of the ECOWAS, posing one of the greatest challenges on the way of the establishment of an integrated market, with Common External Tariff (CET).⁴³ A look at the economy of the member of the community shows serious threat and challenges towards the attainment of her purpose.⁴⁴ Some of the member states are ranked as poor countries and countries with low economies among the developing nations of the world. Obviously the West African market for which the countries are to exploit is very small. This is worsened by the fact that industrialisation in member states is at a low ebb. Hence, harnessing the trade factor makes the progress that should be recorded in the member states unachievable. Also, there appears the challenge with the financial difference in the members' states and poor payment system. For instance, countries like Nigeria boasts of banks with a strong capital base while other countries are nowhere close in this aspect.⁴⁵ This means that the financial sector services of the member states are still undeveloped and lacks the existence of a uniform regulatory or

⁴² ECOWAS, 'Fundamental Principles and Achievements' available at <<https://www.ecowas.int/about-ecowas/fundamental-principles/>> accessed 8 April 2020.

⁴³ UO Umozurike, *Introduction to International Law* (Spectrum Books Limited Ibadan, 2005) 245-251

⁴⁴MT Ladan, *Materials and Cases on Public International Law* (Ahmadu Bello University Press Limited, Zaria, 2007)

⁴⁵ Umozurike (n36) 247

supervisory rules as well as an inefficient fund transfer.⁴⁶ The payment system of member states is nonfunctional due to delays of interbank transactions, incompatibility in the platform adopted and different inconsistent national payment legislations.

Another challenge is infrastructure and regulatory regime. As the case with economically weak states, infrastructure, which should be a rudimentary fuel to development, is at its worst state in the community. Inter and intra-regional railings, road networks, energy, telecommunication facilities as well as expedient border ancillaries is still at an uncomfortable state.⁴⁷ In the areas of telecommunication, ECOWAS's proposed fused telecom network- which will link the entire region is still an optical illusion as inter regional calls are charged at international rate while commuters bear the rage of roam tariff/charges.⁴⁸ But the Institution has not achieved yet a modernised network workable in member states. ECOWAS proposed West African Gas-pipeline, between Nigeria, Ghana, Benin and Togo has recently been completed though with less than optimal productivity.⁴⁹ Non-challance towards enforcement of ECOWAS rules and ECOWAS Court Judgements by member states especially the strong ones poses another challenge.⁵⁰ The ECOWAS Community Court of Justice has competence to hear individual complaints of alleged human rights violations.⁵¹ The decisions of the court is binding, subject to the provisions for review contained in article 25 and further specified in articles 92–94.⁵² The ECOWAS Treaty requires both member states and the institutions to take all measures necessary to ensure execution of the court's judgments.⁵³ Article 24 of the 1991 protocol requires the execution of ECOWAS Court judgments to be in the form of a writ of execution which the Chief Registrar is required to submit to the relevant member state, which is then required to execute the judgment according to the civil procedure of that state. A state member is in turn required by article 24(4) to determine the competent national authority to execute the judgment of the Court. It is to be noted that article 77(1) of the Revised Treaty provides that the Authority may impose sanctions against states which do not fulfil their obligations regarding ECOWAS. However, enforcement of judgement of the ECOWAS court has been a major problem and this relates to the fact that neither the ECOWAS Review Treaty, nor Supplementary Protocols nor other legal instruments make, provision regarding the means of enforcing the issue of execution where Member State fail to voluntarily comply with the terms of the judgement of the court.

In the case of *Hissein Habre v. Republic of Senegal*,⁵⁴ the Applicant, the former President of Chad, obtained asylum in Senegal after being overthrown in a military *coup d'etat* mounted by Idris Derby. But contrary to the expectations of the Applicant, and in contrast with judicial decisions which had become final, the Defendant had the Applicant tried in one of its Courts for acts committed while he was Head of State in Chad. The Applicant therefore considered that the Defendant does not guarantee him any condition whatsoever of a fair and just trial. He is asking the Court to determine the violation of the principle of non-retroactivity of Criminal Law, the Principle of equality before the law and the right to an equitable trial and also for an order directing the Republic of Senegal to stop all prosecutions and actions against him. The ECOWAS Community Court of justice after hearing the arguments of both parties ruled that the applicant ought to be given fair trial and that the Senegalese Court has no jurisdiction in such matters affecting member citizens of ECOWAS as all the litigants are members. However, nothing was done concretely to enforce the court's decision as the matter was politically volatile. This case shows how it is difficult to implement some of the ECOWAS Treaties in respect of human rights violation affecting ECOWAS citizens. Also, in *Dauda Garba v. Republic of Benin*,⁵⁵ the Applicant, a citizen of the Community, and a Programme Officer at the Centre for Democracy and Development, situated in Abuja, was questioned and beaten up by officers of the Immigration Services of Benin. He filed an application before the Court for the alleged violation of his fundamental human rights and the right to free movement, as guaranteed by Articles 1, 5, and 12 of the African Charter on Human and People's Rights. The court upheld his contentions and ruled in his favor. However, the problem the applicant had was the enforcement of the court judgment as regards payment of the compensation and the damages for the infringement of his human rights under the said charter. This also goes to show some of the weaknesses of the ECOWAS Court's mandate. These issues must be addressed by the ECOWAS Assembly of Heads of State and Governments.

⁴⁶ *ibid.*

⁴⁷ Umozurike (n36) 248; Ladan (n37).

⁴⁸ ECOWAS (n26).

⁴⁹ *ibid.*

⁵⁰ Nwauche, 'Enforcing ECOWAS Law in West African National Courts' (2011) 55.2 *Journal of African Law*, 181-202.

⁵¹ DE Joshua, 'An Appraisal of the Role of ECOWAS Court of Justice in the Protection of Human Rights under the ECOWAS Treaty' (Unpublished LLM Thesis, Ahmadu Bello University Zaria, 2012) 109.

⁵² ECOWAS Court Protocol 1991, art. 19(2).

⁵³ ECOWAS Treaty 1971, art.22(3).

⁵⁴ ECW/CCJ/APP/07/08

⁵⁵ ECW/CCJ/APP/09/08

Governance, Conflicts and Socio-cultural Challenges

Achieving economic integration in West Africa sub-region remain the primary effort of individual government making up the ECOWAS Institution. They are actually required to exert the necessary political will to achieve the desired integrative process. Achievement of her aims and objectives can only be ensured where the policies and programmes of the government of member states correlates with the central mandate of the Institution and these must be devoid of political instability, terrorism and conflicts. Thus, some of challenges in the areas of governance conflict and socio-culture which militates against the establishment and mandates of the Institution include absence of political will on the part of government of nations, corruption in member states, problem with integration culture and duplicity of policies of ECOWAS Regional Economic Communities (REC). There is palpable absence of political Will in the Head of government of the member state except for few. This is clear from the disposition of government towards enforcement of the rules of the Institution and obedience to court orders. Meanwhile, political will and governance amongst the states of the community has posed a serious challenge to the attainment of a common market in the West African region. Political Will is the primary energy that will deliver and made member state assimilate the Institution's agenda into each member States policy. The domestication of the community's policies is vital for the achievement of its agenda.⁵⁶

There are also the challenges of corruption and political instability in the member states, most especially the major players of the ECOWAS, regime of corruption, political instability, military 'distractions' is not far-fetched from them. It was argued that "despite the abundant research on economic development, corruption and political instability, little research has attempted to examine whether there is a causal relationship among them."⁵⁷ Thus, there is a clear link between corruption and economic undevelopment. This is resulting from "a long-run positive unidirectional causality from aid to corruption and a negative unidirectional causality from aid to economic development; including a long run positive bidirectional causality between economic development and corruption in ECOWAS countries."⁵⁸ The issue of corruption is coupled with political instability in member states and this affect the institution of ECOWAS. Issues of personalisation of power and other political selfishness through protracted stay in power, abuse of power, and bastardisation of election process through election rigging and its attendant consequence act as remote bane in the development of the ECOWAS. Meanwhile, the political and social upheaval which most times graduate to full scale war is eminent in the region and led to the adoption of the Protocol on Non-Aggression and the Protocol on Mutual Assistance in Defense in 1978 and 1981 respectively.⁵⁹ Again, socio-cultural challenges make the ECOWAS Institution suffers some setbacks. This is resultant effect of partly volatile historical antecedent as well as different colonial experience. Due to the make-up of countries forming the ECOWAS community that cuts across different socio-cultural backgrounds with regards to colonialism and diffused ethnic groupings.⁶⁰ Recurrent issues like xenophobia, colonial hang-over, suspicion among member states, lack of integrated and cultural affiliation all have their effects among member states. Colonial history has divided the region along ex-British colonies (Anglophone), former French colonies (francophone), and also Portuguese former colonies.⁶¹ No doubt, these divisions have instituted barriers in the areas of policy integration among the different blocs of the community.⁶² Most discouraging is the fact that these countries give preference to dictates of their former colonial overlords to the extent that it affects the educational system.⁶³ The countries appear to find it easier to stick to the wishes of their former colonial countrie at the expense of regional cohesion.⁶⁴

Again, the absence of integration culture among member states is another worry in the pipeline of achieving ECOWAS aims, objectives and mandate. Individual states ought to be developmental minded and strategise towards the attainment of common goal for development and integration of the Institution. The role and participation of private sector has not been reckoned with and this is integral to the achievement of economic

⁵⁶ Umozurike (n36) 248-249; Ladan (n37).

⁵⁷ A Nurudeen *et al.* 'Corruption, Political Instability and Economic Development in the Economic Community of West African States (ECOWAS): Is there a Causal Relationship?' (2015) 9.1 *Contemporary Economics*, 45-60.

⁵⁸ A Nurudeen, A Karim, & Mohd Zaini, 'The Causal Relationships among Corruption, Political Instability, Economic Development and Foreign Aid: Evidence from the Economic Community of West African States' (2015) 10.31 *Journal of Applied Economic Sciences*, 20-33.

⁵⁹ Umozurike (n36) 248-249; Ladan (n37).

⁶⁰ *ibid.*

⁶¹ M Gwendolyn, 'Ethnic Particularism and the Creation of State Legitimacy in West Africa' (1996) 4 *Tulsa J. Comp. & Int'l L.*, 99.

⁶² *ibid.*

⁶³ O Quist Hubert, 'Cultural Issues in Secondary Education Development in West Africa: Away from Colonial Survivals, Towards Neocolonial Influences?' (2001) 37.3 *Comparative Education*, 297-314.

⁶⁴ G Georgiana, 'Traditional Dance in West Africa' *Dance History* (Routledge, 2006) 73-94.

integration of the Institution.⁶⁵ She also need to face the political, economic and socio-cultural challenges of sustainable development as well as the protocol on free movement of persons intended for effective integration.⁶⁶ The good news is that as this challenge abound, there are opportunities for better integration in the sub-region if carefully harness.⁶⁷

Apart from the above duplicity of Regional Economic Communities among Member States has also posed a great challenge to ECOWAS. It appears that most members of the Institution belong to one or more other regional economic communities.⁶⁸ This results in duplication of integration effort. Amongst the 15 ECOWAS countries, three (Guinea, Liberia, and Sierra Leone) belong also to the Mano River Union, while five of the francophone countries (Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo) belongs to UEMOA; Guinea Bissau belongs to the trio. This duplicity is capable of creating not just division among member states but also individualistic focus rather than seeing to the promotion of sub-regional mandate and objectives.

8. Conclusion and Recommendations

So far, this paper has examined ECOWAS treaty and mandate which is contained in the aims and objectives of the Institution with a view to assess its performances over the four and half decades. The paper argued that ECOWAS operational structure is deliberately organised as a means of achieving the purposes of her existence and mandate. It further discussed the ECOWAS strategic plans towards achieving its mandate and highlighted the major achievements of the Institution over the years. The paper argued that an assessment of the Institution revealed that she has, to a large extent, succeeded on some of the original intentions of her existence due to the achievements recorded over the years in member states but the attendant challenges have limited the realisation of other objectives yet unfulfilled mandates and therefore need to focus to be able to reach a balance of all her mandates.

ECOWAS may continue to face certain challenges or achieve at a minimal level if the present operational of its organisation and financing modality continues. This is because the national governments are majorly the ones formulating their development strategies independently of the process envisaged in the collective philosophy of ECOWAS. It also means that governments are not as committed to programmes as they would be, if they had requested the pursuit of programmes themselves. The energies they devote to persuading other governments and offering side-payments and using package deals are low because of their relative apathy in view of the rather high hopes they usually express from the regional Institution and the type of integration that is needed to achieve the multidimensional goals of ECOWAS. Resources are also inadequate for processing demands or pushing forward the process timetable. The reasons as detailed above are essentially because of the low level of co-operation that existed before the formation of ECOWAS. They are also due to fragility of the institutional framework of ECOWAS itself. The difficulty of exacting compliance with regional decisions and implementation of projects results in low support because the benefits that would otherwise result and would reinforce the favour with which the regional Institution is viewed is lacking. If these countries can be united as one rather than giving preference to the impact of their former colonial overlord and suggestions at the expense of the regional cohesion, it will help to solve the challenge of colonial hangover. For the member states that are economically weak, infrastructure, and industry should be pursued to boost the development in the various member states of the ECOWAS.

⁶⁵ O E. Chijioke, B Aluko, & K Awuah, 'The ECOWAS Platform and the Persisting Challenges of Integrating the West African Region: A Discourse' (2013) 4.1. *Journal of Economics and Sustainable Development*, 1

⁶⁶ J Agyei & C Ezekiel 'Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-regional Integration' (2007) *International Migration Institute, University of Oxford*. <<http://www.imi.ox.ac.uk/publications/operationalizing-ecowas-protocol>> accessed 7 April 2020.

⁶⁷ A Adebusuyi, 'Regional Integration in the ECOWAS Region: Challenges and Opportunities' (2012) available at <www.africaportal.org> accessed 9 April 2020.

⁶⁸ C Nwangwu *et al.*, 'Interrogating the Relevance of the ECOWAS in Global Political Economy' (2019)13.2 *Central European Journal of International & Security Studies*.