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The Role Of Ecowas Protocol For The Movement Of Persons, Goods And Services In Promoting Economic Growth On Africa's Development

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Abstract

This paper examined the legal instrument for regulating Economic Community for West African States framework for building common economic market through inter-regional trade to boost economic activity for Africa's growth and sustainable development by movement of persons, goods and services. The paper adopted doctrinal method by examining the ECOWAS protocol and other regulations made by member states in providing enabling environment for establishment of common market by trade liberalization or common external tariffs. The result of the study revealed that there was significant achievement in the movement of persons within the ECOWAS community using unified travel documents, however, the movement in goods and services aspects has not been fully implemented by the member states owing to myriad of challenges that ranges from harmonization or streamlining of Common External Tariffs (CET) by the member states. The paper provides solutions to the challenges facing the regulatory framework on implementation of the ECOWAS protocol to achieve greater heights in having one common market and economic growth within the region.

Keywords: Protocol, Economic Growth, Africa, Development.

1.1. Introduction

In May 25, 1975, fifteen West African countries came together to form the Economic Community of West African States (ECOWAS), with the aim of making the region a strong

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economic powerhouse in Africa. The countries are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Nigeria, Niger, Senegal, Sierra Leone and Togo. The lofty objectives of the ECOWAS union are to promote economic integration in all fields of endeavours, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial policies, social and cultural matters³

ECOWAS had the objective of internal free trade and a common external tariff within 15 years, to be followed by free movement of capital and labour. Generally speaking, the trade liberalisation scheme for the movement of goods, industrialisation of the region, projects for customs harmonisation or unions are some of the core objects of the union that were provided by the treaty and subsequent protocols meant to implement the ECOWAS economic objects.

The governing body of ECOWAS is the 'Authority' of Heads of Government, which has in practice exercised all authority, including appointing the Executive Secretary. Under it is the Council of Ministers, formed by ministers for ECOWAS, not by functional ministers, which supervises the Secretariat and the specialised organs. Since 1992, its decisions are directly applicable within ECOWAS, but there remains no clear implementation or enforcement mechanism to support this.

In the light of the foregoing, this paper examines the legal framework that establishes the ECOWAS union in relation to the movement of persons, goods and establishment of economic or entrepreneurial business within the region. The paper appraises the extant provisions of the ECOWAS treaty and the progress made in the aspect of implementing the objectives set out by it. The research is divided into ten related parts which are discussed hereunder.

1.2. Conceptual clarifications

It is imperative to begin with understanding the acronym the ECOWAS which stands for Economic Community of West African States primarily established by a treaty agreed by member states in 1975 to promote unity and to achieve economic objectives as earlier

³ Bello, O; CET: Is Nigeria ready for ECOWAS Common Market? Leadership Nigeria 24th March 2014. www.leadership.ng/business.com. accessed 2/7/2019

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highlighted to have a common external tariff on goods or one market, and through protocol of implementing the treaty objectives. Thus, ECOWAS is a regional economic union of fifteen countries located in West Africa. Collectively, these countries comprise an area of 5,114,162 km² (1,974,589 sq. mi), and in 2015 had an estimated population of over 349 million.

Market- the term is complex to define as market is hydra-headed term that is understood in literal practical perspectives as well as legal and commercial parlances. But in legal parlance, the term market is referred to as 'a place of commercial activity in which goods or services are bought and sold, or a geographic area or demographic segment considered as a place of a demand for particular goods or services, a securities or commodity market, a stock market trading shares (usually automated).⁴ In the context of this research, the market envisaged by this paper conjures up a geographic or demographic territory which refers to entire region of West African countries that form members of ECOWAS. It gives an inference that goods will have one common external tariff and trade barriers will be streamlined within the region where goods are taxed in one member country, and movement of such goods becomes easy across borders of member states.

Tariff, is also difficult term to define and it was defined in many perspectives. Thus, tariff is a scheduled or system of duties imposed by a government on imported or exported goods.⁵ The law views tariff in different concepts and practices that include antidumping, autonomous, preferential, protective, retaliatory, discriminatory and revenue tariffs. It could be gleaned from the general intendment of the ECOWAS treaty objective that the term tariff which the member states desired to achieve is harmonized or common external tariff that facilitates trading within the region in view of boosting revenue to all member states of the ECOWAS community as one common market. It must be emphasized that the context which tariff is referred to in this research paper denotes implementing harmonized tariffs approved customs union of the ECOWAS region where goods moves across the borders of member states from other regions using one single tariff.

⁴ Garner, B. A. Black's Law Dictionary 7th Edn (St.Paul Minn; West Group Co, 1999) p.982

⁵ Ibid. @p. 1468

Community in this context is referred to the territorial area of the West African region comprising of 15 member states that formed ECOWAS. This is spelt out from the treaty itself which define the term ‘Community’ as the Economic Community of West African States and a member or citizen of the community is any person belonging to any of the ECOWAS state.⁶ In the same vein the term ‘Treaty’ in the context of this research paper means treaty signed by the ECOWAS countries in 1975 which established the ECOWAS community to form a union of achieving economic objectives defined by the treaty,⁷

The term ‘protocol’ could pose great deal of difficulty both in contextual and in legal meaning. In this view, the term protocol in the legal domain connotes a summary of a document or treaty.⁸ It could also take the meaning of a treaty amending or supplementing another treaty. In another legal view, the term protocol may mean formal record of the proceedings of the conference or congress or minutes of meeting usually initialed by all participants after confirming accuracy or the rules of diplomatic etiquette, the practices that nations observe in the course of their contacts with one another.⁹ Essentially, the context which this write-up adopts or relates to protocol is referred to as supplementary legal instrument or subsequent agreement supplementing the existing treaty otherwise known as instrument of implementing the ECOWAS treaty designed into phrases which underscore the epicenter of this paper.

1.3. Scope of the Paper

This paper covers the economic growth of Western African region through ECOWAS union. The paper examined the main legal instrument which is the ECOWAS treaty signed in 1975 by the member states or countries and supplementary protocols which seek to implement economic model of growth in three major components that entail free movement of persons, goods and establishment of business within the region. The paper will be confined to the legal framework which provides the enabling environment for member states and their citizens to have common policy regulations in building viable economic hub that will

⁶ Article 1, Part 1 of the Revised ECOWAS Treaty 1975

⁷ Ibid

⁸ Garner, B. A, op. cit @ p. 1240

⁹ Ibid.

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stimulate growth and examine stages of implementation of the protocols between 1975 and 2019.

1.4.Objective of the Paper

This paper is written to appraise the extent of how Africa progresses; grows or achieved regional economic integration through the ECOWAS union. This research examined the ECOWAS treaty and its subsequent protocols with the aim of achieving specific objectives of:

- (a) Discussing the extant legal framework of the ECOWAS treaty aimed at achieving regional economic integration,
- (b) Assessing the impact of the treaty and its implementation protocols in stimulating economic growth within the ECOWAS community,
- (c) Assessing the level of implementation and challenges facing the ECOWAS community in achieving the target or goals of the treaty,
- (d) Discussing the effects of the implementing ECOWAS common external tariffs among the members,
- (e) Providing solutions to the challenges identified in the course of implementing ECOWAS treaty.

1.5. An Overview of the ECOWAS Treaty

The union was established on 28 May 1975, with the signing of the Treaty of Lagos, with its stated mission to promote economic integration across the region. A revised version of the treaty was agreed and signed on 24 July 1993 in Cotonou. Considered one of the pillar regional blocs of the continent-wide African Economic Community (AEC), the states goal of ECOWAS is to achieve "collective self-sufficiency" for its member states by creating a single large trade bloc in building a full economic and trading union. The revised treaty provides that:¹⁰

¹⁰ Article 2(1) Chapter II, ECOWAS Revised Treaty, 1975

The high contracting parties, by this treaty, hereby re-affirm the establishment of the Economic Community of West Africa States (ECOWAS) and decide 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.

The foregoing provision established the new bloc of economic community which achieved a landmark regional integration of the West African states to have a sole economic market. It is imperative to emphasize that the idea of having sole economy transcend from the existing sub-regional economic union known as the West African Economic and Monetary Union by its French¹¹ acronym UEMOA (also known by its French-language acronym UEMOA). It is an organization of eight, mainly French-speaking, states within the ECOWAS which share a customs union and currency union. Established in 1994 and intended to counterbalance the dominance of English-speaking economies in the bloc (such as Nigeria and Ghana), members of UEMOA are mostly former territories of French West Africa. The currency they all use is the CFA franc, which is pegged to the euro. Thus, the size of UEMOA is concerned with only French-speaking. However, the ECOWAS treaty is considered to be a regional entity comprising large number of over UEMOA and have advantage potentialities over the French economic union.¹²

ECOWAS also serves as a peacekeeping force in the region in view of fostering economic objective, with member states occasionally sending joint military forces to intervene in the bloc's member countries at times of political instability and unrest. In recent years these included interventions in Ivory Coast in 2003, Liberia in 2003, Guinea-Bissau in 2012, Mali in 2013, and Gambia in 2017. ECOWAS operates in three co-official languages which are French, English, and Portuguese and consists of many institutions to implement policies such as the ECOWAS Commissions and the ECOWAS Bank for Investment and Development (EBID), formerly known as the Fund for Cooperation until it was renamed in 2001. A few members of the organization have come and gone over the years. In 1976 Cape Verde joined ECOWAS and in

¹¹ Agyei J & Ezekiel C, Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration. <www.researchgate.net/publication> accessed 2/2/2019

¹² Ibid.

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December 2000 Mauritania withdrew, having announced its intention to do so in December 1999.

ECOWAS is structured into organs of institutions and commissions with designated functions pursuant to the revised treaty or any protocol made to supplement the treaty as any protocol made pursuant to revised treaty formed part of it.¹³ The institutions are the Authority of the Heads of state and government, the council of Ministers, the community of Parliament, the economic and social council, the community of court of justice, the executive secretariat, the fund for co-operation, compensation and development, specialized technical commission; and any other authority established by the authority. The authority of Heads of States is highest organ vested with express powers of ratification, direction, control and decision making. Whereas the council of ministers comprised the states ministers assigned for ECOWAS matters responsible for executing policies, carrying out directive of head of governments decisions, prepare and adopt its rules of procedure in achieving target of treaty objectives.

It is imperative also to state that the provision of various commissions of the ECOWAS are geared towards ensuring compliance with the implementation protocols of the ECOWAS as well as serve as mechanism for monitoring, executing and implementing the protocols and policy objectives of the union. The commissions of the ECOWAS are briefly expressed as (a) food and agriculture (b) industry, science and technology and energy, (c) environment and natural resources, (d) transport, communications and tourism, (e) trade, customs, taxation, statistics, money and payments (f) political, judicial, and legal affairs, regional security and immigration, (g) human resources, information, social and cultural affairs (h) administration.¹⁴

It is understood that ECOWAS union is a giant idea considering the above structure which strategically provides ample institutional framework to administer the treaty objectives on free movement of persons, right of residence, and establishment of economic activities through movement of goods, services and other enterprising or industrial businesses. It is a positive direction that the treaty identified and set up the commissions for the purpose of implementing the laudable objectives of the ECOWAS community of being a sole regional economy for the

¹³ Article 1 of the Revised ECOWAS Treaty 1975

¹⁴ See Article 22 of the Revised ECOWAS Treaty 1975

benefits over 300 million people with one common market. For instance, the trade, customs, taxation, statistics, payments commission will be a unitary body of customs union of member states responsible for implementing, monitoring and ensuring compliance of common external tariffs within the community. It will be the responsibility of the said commission to ensure free movement of goods and ensuring compliance with the sealing process at the border areas of the member states in view of having viable common market that will boost regional economic growth beneficial to the ECOWAS union in achieving a greater height of economic well-being.

1.6.Free Movement of Persons

This is the first phase of the ECOWAS protocol which is designed to be implemented within five years. Article 3 of the protocol provides that:¹⁵

- (1) Any citizen of the community who wishes to enter the territory of any other member shall be required to possess valid travel document and international health certificate
- (2) A citizen of the Community visiting any member state for a period not exceeding ninety days shall enter the territory of that member state through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days.

This phase has been fully implemented by the member states and the union has abolished visa requirements for entry permit within the ECOWAS countries by the citizens. The citizen or member of a community have to obtain any valid travelling and health certificate or commonly known as yellow before crossing any border of the ECOWAS or community. It must be emphasized that the ECOWAS union have achieved a landmark stage on free movement of persons within the community as envisaged by the treaty objectives.

However, there is a study that shows unofficial levy across the sub-region of some border states where citizens are subjected to payment of illegal fees before passage.¹⁶ Some payments are

¹⁵ ECOWAS Protocol A/P.1/5/79 Relating To Free Movement of Persons, Residence and Establishment, 1979

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made out of coercion particularly at land borders while payments are made freely by some immigrants or travelers accustomed to the expectations or practices perpetuated by custom or immigration officials at most border stations.¹⁷

It is important to observe that the requirement for staying within ECOWAS community by any citizen for 90 days suggests the need to control migration and not undermine the free movement of citizens. And a citizen is entitled to renew his stay after exhausting the initial 90 days as many times as he could as neither the treaty nor the protocol which is the implementing instrument provides any time limit. In addition to the foregoing, the right to movement freely cohabits with the movement of vehicles for the transportation of persons.¹⁸ The conditions to be met are simply possessing valid driving license, matriculation certificate (ownership card) or log and insurance policy recognized by member states and international customs carnet recognized by member states.¹⁹ These could be usual documents or car particulars which any person may possess and it is the express intention of the implementation instrument that free movement of persons is attained by private vehicles, commercial or public vehicles as case may be.

However, member states reserved to themselves the right to refuse admission to any community citizen within the category of inadmissible immigrant under their domestic laws.²⁰ This continues to provide broad scope to member states to undercut the purpose of the protocol through the elaboration of overly restrictive domestic inadmissibility laws. Thus, the grounds for denial of entry various across the states as Benin may refuse entry of a minor except with a guardian and also if person may likely constitute threat to public peace.²¹ Burkina Faso may refuse entry on health grounds whereas in Cote d' Ivoire ECOWAS citizen cannot exceed 30 months except with residential permit. Ghana, Nigeria, Gambia, Guinea Bissau, Liberia, Senegal all may refuse entry on health grounds, crime, threat to public peace, insanity, idiots, spies, communicable diseases, paupers, brothel keepers, sex workers, trafficking as well as lack of

¹⁶ Aderanti, et. Al, Promoting Integration Through Mobility: Free Movement Under ECOWAS < www.unhr.org > accessed 2/2/2019

¹⁷ Ibid at p.6

¹⁸ Article 5, Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment

¹⁹ Ibid.

²⁰ Article 4, Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment

²¹ Aderanti et. Al op. cit. at p. 9

valid travelling documents or any person likely to be burden or public charge.²² The community has endeavored to produce one uniform document called ECOWAS passport which any citizen of the member state could possess in travelling within the community state or any acceptable travelling document such as state passport.

1.7.ECOWAS Common Market

The treaty provides for the setting up of common market as the second phase or stage of implementing ECOWAS objectives of regional integration and economic growth. It was stated that:²³...the community shall, in stages, ensure:

- a) the harmonization and co-ordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, series, health, tourism, legal matters

- d) establishment of a common market through:
 - i) trade liberalization of trade by abolition, among member of customs duties levied on imports and exports, and abolition, among member states, of non-tariff barriers in order to establish a free trade area at the community level,
 - ii) adoption of common external tariff and a common trade policy vis-à-vis third countries,
 - iii) removal, between member states of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment.

In view of the foregoing legal provision, ECOWAS union agreed on new common external tariff (CET) which 10 countries have ratified and 5 member states are yet to sign the implementation

²² Ibid. p. 10

²³ Article 3(2)(a) & (d) (i), (ii),(iii), Revised ECOWAS Treaty of 1975

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instrument.²⁴ The CET has been on ECOWAS's wish list for many years, but it was only at a summit in the Nigerian capital, Abuja, sometimes in 2014 that country leaders finally agreed to go ahead with the scheme. The union decided that over the next five years it would phase in a 1.5% levy on goods from outside the region to finance bloc activities, replacing an existing 0.5% tax. The CET will standardize the tariffs charged on goods imported into all ECOWAS states, creating a more even competitive playing field and simplifying the economics for potential investors and project developers. It will increase competitiveness and give consumers access to cheaper goods. And by presenting a common trading face to the outside world, it will open the door to the negotiation with the European Union trade roundtable.²⁵ The harmonized tariff will also prevent West African governments from setting unilaterally high tariffs to protect local manufacturers from the competition presented by cheap imports. At present, manufacturing is not a major contributor to most West African economies, so access to cheaper imported components could facilitate the development of more local assembly and manufacturing businesses in the ECOWAS countries.

To achieve the CET by the member states, the union agreed on the protocol for the movement of goods within the ECOWAS community on terms covered by the said instrument of implementation that all goods shall be covered by the Inter-State Road Transit Declaration that reflects point of entry and destination of goods within the states.²⁶ The transportation of goods shall be carried out under the cover of the Inter-State Road Transit Booklet. Transportation shall be carried out through the offices indicated on the Inter-State Road Transit Declaration. However, when justified by circumstances, other passage offices may be used as directed by the appropriate authority. In each office open for transit, an official register shall be kept to register, in chronological order, all transit operations affected with reference to the number of ECOWAS /ISRT Log-Book. The Inter-State Road Transit Declaration leaflets shall be presented in each member state whenever demanded by the Customs authorities who shall ensure that the sealings

²⁴ Daily Post, 10 countries implement ECOWAS Common External Tariff www.dailypost.ng accessed 2/2/2019

²⁵ Ibid.

²⁶ Article 5(1), Convention A/P.4/5/82 Relating to Inter-State Road Transit of Goods

are intact. Except in cases where foul play is suspected, the Custom authorities of member states shall respect the sealings done at the office of departure.²⁷

In view of the foregoing legal position, it is understood ECOWAS have made a progress towards setting of a common market considering the legal framework that provides enabling environment that provides regulation for implementing the movement of goods and formalities thereof. However, there was lackluster attitude and undesirable delays by the union in fast-tracking the implementation of the common market operation as the CET policy was only ratified by 10 states in 2015 and other members are yet to sign the ratification protocol. It is further imperative to state the movement of goods under the CET policy is only 3 years²⁸ which began operation in 2015 and therefore the policy is not yet ripe for assessment as other members are yet to join the common market trade liberalization within the community. In similar critical view, the CET policy geared towards having a common market is being challenged by insecurity factor, ethno-religious, political unrest, unstable policies of governments among the member states of ECOWAS community that are mostly militating against the agenda of fast-tracking the operation of common market for the movement of goods and services. It is emphasized that economic integration and growth being the top most objective of the union was undermined by secondary objective or function of the ECOWAS of sourcing funds and mobilizing troops to address civil wars and political tensions within outside the region.

In contrast to its military successes (other interventions in the region include during the civil wars in Sierra Leone and Côte d'Ivoire, as well as the 2012-13 crisis in Mali), economic co-operation has lagged behind. This is a missed opportunity, given the natural complementarity between coastal West African economies and their landlocked neighbours in the Sahel. Cross border migration and informal trade between member states already takes place on a large scale across the region. With the membership of Nigeria, Sub-Saharan Africa's second-largest economy and most populous country, the bloc could have significant economic influence within the continent.

Despite some degree of integration, such as within ECOWAS community, as well as deepening cross border trade, the union has been slow to break down bureaucratic impediments to the

²⁷ See Article 16, *ibid.*

²⁸ At the moment of presenting this paper

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creation of a fully integrated economic single market. In this, they have particularly lagged behind the East African Community (EAC).

Yet with a rapidly rising population, already at over 300 million people, and a record in many countries of sustained positive economic growth right through the global downturn, ECOWAS offers attractive investment opportunities. Integration would make it much easier to fulfill this potential. In services sectors such as telecommunications, banking and transport, foreign investors have not been deterred and the region has also seen the growth of substantial local players, operating across a number of markets. Furthermore, seven ECOWAS member states Benin, Côte d'Ivoire, Ghana, Guinea-Bissau, Liberia, Sierra Leone and Togo are among the top 20 countries in the world for improving their business environment, according to the World Bank's 2014 Doing Business rankings. Even though Ghana is the only relatively "easy" place to do business, ranking 67th out of 189 economies (the others rank from 142nd to 180th), individual countries are pursuing a reformist policy agenda. There are already ambitious plans for a single regional currency by 2020: Anglophone states would first create their own shared currency, to be merged later with the CFA franc. However, such a monetary union poses huge bureaucratic challenges, and full realization of the scheme is probably many years off. By contrast, progress on trade integration and the harmonization of the region's trade regime vis-à-vis external partners is clearly achievable if not necessarily by 2015 and promises early positive benefits.

1.8.Implementation of CET ECOWAS Protocol

About 10 member states have so far implemented the Common External Tariff (CET), which came into effect in Jan. 2016. Eight countries within the West African Monetary Union (UEMOA), including Nigeria and Ghana had implemented the CET.²⁹ Member states will be expected to implement the common tariff within five years, adding that the remaining five countries would begin implementation of the CET soon. However, in the CET like every other

²⁹ Bello, O; CET: Is Nigeria ready for ECOWAS Common Market? Leadership Nigeria 24th March 2014. www.leadership.ng/business.com. accessed 2/7/2019

policy, there must be some transition period and the policy is still within the implementation stage. The UEMOA countries already had a CET so when ECOWAS CET came on board, it was very easy for them because they were already practicing it and they took off immediately. For some time now, Liberia, Sierra Leone and Guinea had the Ebola crisis that is why they could not implement the CET policy in order to resolve the crisis it is expected that the countries will implement the policy after recovering for that challenge.³⁰ Gambia also had some issues that affected the country's customs administration which caused a delay in the enforcement of the CET and Cape Verde is also yet to implement the CET.

It is imperative to state that agreeing on the common tariff by member states had so far demonstrated willingness to implement the common tariff in their countries. CET would ensure transparency and facilitate the ease of doing business both within the sub-region and with third party countries as expressed by the industrialist and economic policy makers.³¹ Thus, before the enforcement of the CET, at every border the goods are checked to know the tariff rates. But now once it is done in one country movement of such goods become easy across borders of member states; it is one single tariff rate that applies, and with that business is efficient.

Proper implementation of the common tariff would boost sub-regional trade which was projected to rise between 10 to 14 per cent as the trade volume will increase within the member states although the CET trade policy is yet to be evaluated to know the level of its or progress.³² The CET is one of the instruments of harmonizing ECOWAS member states and strengthening its Common Market. The ECOWAS CET has provision for temporary Import Adjustment Tax which was accommodated to allow countries to adjust to the scheme during the five-year transitional period ending in 2019. The CET is being implemented by member countries in phases. The first phase covers a period of five years, from 2015 to 2019, after which the scheme is expected to enter a more advanced phase.³³

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

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It must be emphasized that some reasons advanced by recent study reveals that CET policy for the movement of goods and services was impeded by number of challenges. The failure of some countries in signing the implementation protocol and there seems to be absence of custom union to monitor strict compliance of the CET protocol.³⁴ There are trans-border trades happening among member states but mostly unreported owing to corrupt practices and smuggling arrangements.³⁵ The menace of smuggling the CET targets to eliminate result in revenue loss and self-enriching the security operatives or customs that are not willing to push for the success of the CET policy. There was also an import ban by some states which they believe lifting such bans will collapse their industrial plants e.g. Nigerian import ban on textile goods was aimed at keeping the industrial operation on productive pedestal. However, the import ban have not yielded desired target neither did such policy provided employment, jobs or productivity.³⁶ Thus, the impact of CET is unfeasible to assess as the current trade profile of most ECOWAS countries like Nigeria is under reported owing to paucity of trade statistics, informal trade or smuggling and the official recorded trade did not capture the full picture of cross-border transactions within the region.

1.9.Right of Establishment

The right of establishment is the third phase of the treaty's broad objective of the ECOWAS union. It means '*...the right granted to a citizen who is a national of the member state to settle or establish in another member state other than his state of origin and to have access to economic activities, to carry out these activities as well as to set and manage enterprises, and in particular companies under the same conditions as defined by the legislation of the host member state for its nationals*'.³⁷ This was expressed in the protocol as the citizen's right to enter, reside and establish business in the territory of member states.³⁸ And the right of entry cohabits with the

³⁴ Erik Von Uexkull & Lulu Shui, 'Implementing the ECOWAS Common Tariff Challenges and Opportunities for Nigeria' Africa Trade Practice Working Paper Series Number 5, June 2014 < www.worldbank.org/africa/trade> accessed 2/2/2019

³⁵ Ibid.

³⁶ Ibid.

³⁷ Article 1, Supplementary Protocol A/SP.2/90 On the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment

³⁸ Article 2 (1) Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment

rights to reside and establish oneself in the territory within the community.³⁹ Essentially, the right to establish in the course of transitional period provided under the implementation protocol states that:⁴⁰

Upon the expiration of a maximum period of five (5) years from the definitive entry into force of this Protocol the Commission, based upon the experience gained from the implementation of the first phase as set out in Article 3 below, shall make proposals to the Council of Ministers for further liberalization towards the subsequent phases of freedom of residence and establishment of persons within the Community and these phases shall be dealt with in subsequent Annexes to this Protocol.

The ECOWAS community is finding it difficult to implement this phase owing to myriad of challenges. Firstly, this phase depends on the success of previous protocols on free movement of persons which has been implemented and setting up common market for the movement of goods. It is obvious that the first phase has been implemented whereas the second phase of the ECOWAS treaty on the movement of goods is still on the transition period.

The right of establishment purported to extend residency, including the right to seek and carry out income earning employment, to community citizens in host of the ECOWAS states, provided they had obtained an ECOWAS residence card or permit. Additionally, it obliged member states to grant migrant workers, complying with the rules and regulations governing their residence under the ECOWAS treaty, equal treatment with nationals in areas such as security of employment, participation in social and cultural activities and, in certain cases of job loss, re-employment and training.

This phase being the final phase is expected to be implemented within five year period, and it focused on the facilitation of business through the right of community citizens to establish enterprises (have access to, carry out and manage economic activities) in member states other than their states of origin. Its realization was intended to occur seamlessly, following the five

³⁹ Article (2) Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment

⁴⁰ Article 2(4), Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment

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years dedicated to implementing the right of residence. However, the right of establishment is not ripe for implementation in the sub-region.⁴¹

Progress on the second and third phases appears to have fallen victim to the sub regional decline in economic performance in the 1980's and massive, prolonged displacement from the wars in Liberia and Sierra Leone through the 1990s and into the early 21st century. With those wars now seemingly conclusively at an end and more favorable economic indicators apparent, there is renewed optimism in the sub region that the full promise of free movement, residence and establishment can be achieved. This in turn could promote increased political and economic stability in a sort of virtuous circle.⁴²

1.10. Conclusion

It is the view of the current research paper that role of the ECOWAS protocol for the movement of persons, goods and services in promoting economic growth on the Africa's development have reached a considerable milestone considering the agreed treaty and its supplementary protocols that provides enabling environment for the regional integration of the West African nations to foster unity and build a viable economic market for the well-being of their citizens. It is a laudable and landmark achievement for this giant stride that provides West African countries with the opportunities of building their economies through a single market.

It is understood that the treaty and supplementary protocols are mostly in the transition period and largely not implemented. Certain issues that are militating against realization of the opportunities of the treaty objectives have been identified as failure of the member states to set-up all the Commissions for monitoring the compliance of the protocols of the movement of goods, trade liberalization and effective implementation of CET trade policy. It is suggested that the ECOWAS high authority should fast-track the implementation of the protocols by providing adequate funding to the effective implementation of the regulations set out by the protocols.

⁴¹ Erik Von Uexkull & Lulu Shui, 'Implementing the ECOWAS Common Tariff Challenges and Opportunities for Nigeria' Africa Trade Practice Working Paper Series Number 5, June 2014 < www.worldbank.org/africa/trade> accessed 2/2/2019

⁴² Ibid.