



## The right of establishment under the ECOWAS protocol

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### Abstract

The Right of Establishment as enshrined in the 1990 Supplementary Protocol on the implementation of the Third Phase of the ECOWAS Protocol on Free Movement of Persons, Goods and Services, entitles nationals of member states to settle or establish in ECOWAS states and carry out business activities under the same conditions that apply to nationals of the host state. The purpose of this is to achieve the overall goal of the ECOWAS Treaty, which is to generate robust economic activities in the region in pursuit of regional prosperity. This would require the creation of a conducive climate for professionals and other business men, including corporate bodies, to harness the economic resources of the region and create a huge regional market. Unfortunately, the reality is far from satisfactory. The member states have in place, discriminatory legislation and regulations that make it well-nigh impossible for nationals of other member states to settle and establish business in the host state. For example, in 2010, discriminatory and virtually punitive levies were imposed on foreign companies in Ghana. Globacom, a Nigerian company even threatened to pull out. In Nigeria, there are rules and regulations that impose stringent conditions for foreign companies who want to establish businesses. The inevitable conclusion from the foregoing is that, the right of establishment as envisaged by the Treaty/Protocols is yet to be fully enjoyed by community citizens and corporate bodies. In fact, they are still being treated as foreigners, which negates the letter and spirit of the Treaty. This paper therefore advocates for the exercise of more political will on the part of member states to implement the Treaty to the hilt. In addition, the ECOWAS Commission should be more proactive in ensuring that member states comply with the Provision of the Treaty.

**Keywords:** Right, Establishment, Protocol, Discrimination, Regulations, Economic activities

### Introduction

The Supplementary Protocol was formulated in furtherance of the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment and was adopted at the thirteenth session of the Authority of Heads of State and Government of ECOWAS held at Banjul, the Gambia on May 28 and 29 1990. The Right of Establishment is enshrined in the 1990 Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol.

In Article 1, the Right of Establishment is defined as;

The right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than the State of origin and to have access to economic activities to carry out these activities as well as to set up and manage enterprises and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own national.

Under Article 2 of the Supplementary Protocol, the Right of Establishment includes access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals. With respect to companies, those formed in accordance with the laws and regulations of a Member State whose headquarters, central seat of administration or principal establishment are within the Community shall be considered in the same category as

individual nationals of Member States. If the statutory headquarters of the company are established in a Member State, the activities of such a company should have effective and sustained links with the economy of the Member State <sup>[1]</sup>. According to Oba, "it cannot be overemphasized that the right of establishment of Community Citizens under the ECOWAS Treaty... is the ultimate expression of economic integration" <sup>[2]</sup>. The Protocol seeks to encourage the ingress of liberal professions and businesses. In the words of Gasiowku, "like the other phases of the Protocol the spontaneous liberty for establishment which existed before 1975 for the ECOWAS countries of the West African sub-region is also replaced by a system of organized liberty" <sup>[3]</sup>. The Right of Establishment targets professional and business people and aims at creating a conducive atmosphere for individual businessmen and corporate organizations to survive and thrive. Such natural and legal persons enjoy equal treatment with the nationals of Member States.

The placement of companies in the same category as individual nationals is a further step towards enabling them to function and move freely within the host Member State for the purpose of pursuing their economic activities. The aim is to give absolute freedom to ECOWAS citizens as a way of motivating them to contribute to the economic development of the Member State in particular and the region, by necessary implication. It is another question entirely as to whether the letter and spirit of the Protocol is being observed but suffice it to say that if implemented, the aims of the Community in drafting the Protocol would be actualized. Such a regime and climate envisaged by the Protocol would facilitate 'the

optimum use of human resources within the community.”<sup>[4]</sup> Creating a conducive climate for professionals is an appropriate action because economic expansion requires States to look beyond the confines of their territories, to benefit from the advantages of international specialization<sup>[5]</sup>.

The right of establishment is aimed at facilitating a transition from an ECOWAS of states to an ECOWAS of peoples, where citizens enjoy the benefits of a borderless, peaceful, prosperous and cohesive region built on good governance<sup>[6]</sup>. In addition, the vision 2020 programme promises a regional resource with an inclusive society achieved through human capital development and empowerment<sup>[7]</sup>. This is to translate to a peaceful and healthy environment where women, children and youth are offered full opportunities for development, no matter where they live within the region.

Furthermore, regional integration leads to expansion of markets which would favour “industries and business.”<sup>[8]</sup> At the 2006 International Conference on ECOWAS,<sup>[9]</sup> Ogwu urged West African leaders to commit themselves to the objectives of economic integration and the development of the sub-region, which is the underlying goal of the Protocol. The right of establishment was also aimed at enabling citizens to “harness (the region’s) economic resources for ...massive growth and development.”<sup>[10]</sup> In addition, a BBC Report in 1992 stated pointedly that ‘the imminent financial bankruptcy facing several West African countries may be averted if concerted efforts are made towards real economic integration.’<sup>[11]</sup> It also stated that real economic growth could not be achieved from narrow national frontiers.

The ramifications and scope of the right of establishment are outlined in Article 4 of the Protocol. By this, Member States are obliged to accord non-discriminatory treatment to nationals and companies of other Member States<sup>[12]</sup> except where they are unable to do so, whereupon they “must indicate as such in writing to the Executive secretariat.”<sup>[13]</sup> Where this happens, other Member States “shall then not be bound to accord non-discriminatory treatment to nationals and companies of the State concerned.” At first glance, it may seem that the right given in Article 4(1) has been eroded in Article 4(2) but a second look reveals that the injection of the reciprocal condition constitutes an effective check on States which would otherwise be inclined towards non-compliance with Article 1. It must be remarked that it was a well thought through provision. It is pertinent to point out the delayed second phase (Right of Residence) of the Protocol came into force in July 1986, when all Member States ratified it but it is a negative factor that the Right of Establishment, which was to have come into effect in 1994 is yet to be implemented. In fact, Alistair Boulton is of the view that only the first of the rights has been implemented<sup>[14]</sup>. The revised Treaty of ECOWAS reiterated the right of Community citizens to entry, residence and settlement and Member States were urged to recognise and implement these rights in their domains. These rights have however become victims of the chequered economic dynamics characteristic of the region.

Take the case of Cote d’Ivoire. By 1995, there were about four million immigrants in a population of fourteen million people. The country’s immigration policy experienced a dramatic shift and anti-immigrant sentiment took a sometimes violent turn. Non-indigenes were forced to flee and in 1999, the Government had to expel foreigners (including ECOWAS citizens). In March 1999, Ghana also requested all aliens in the

country to register and be issued with identity cards. This reflected the simmering anti-immigrant feeling which has not abated. In 2010, Globacom, a Nigerian company threatened to close its Ghana branch because of hostile economic policies targeted at “foreign” businesses. It is not only Nigeria, Ghana and Cote d’Ivoire that have expelled Community citizens. Sierra Leone did (in 1968); Chad, (in 1979) Equatorial Guinea (in 1974); Senegal (in 1967); Guinea, (in 1968); Liberia (in 1983) and Benin, (in 1998).

The right of establishment has been enjoyed by ECOWAS citizens especially during times of armed conflict. ECOWAS countries have been havens for refugees many of whom settled in the countries they found themselves in, by the happenstance and spectre of conflict, which is hardly foreseeable. Enefiok Essien has opined that “refugees from ECOWAS states are covered by (ECOWAS) Treaty provisions, quite apart from, or additional to their rights under other refugee protection regimes.”<sup>[15]</sup> It is worthy of note however that despite these treaty obligations, in 1997, Ghana denied entry to refugees who were fleeing from Liberia during the Liberian Civil War. In the words of Essien, ECOWAS appeared incapacitated in the face of this clear non-compliance with International Humanitarian Law (IHL). There was no sanction against Ghana<sup>[16]</sup>.

Conditions stipulated by the laws and regulations of the country of establishment and the application of legislative and administrative provisions (which provide for special treatment for non-nationals, justified by the exigencies of public order, security or public health), vest the Member States with power to make “discriminatory regulations.” These discriminatory regulations are a clog in the wheel of the full enjoyment of the right of enjoyment. In exercise of this power, Member States have gone ahead to make such regulations. Examples are regulations forbidding ECOWAS citizens from taking up certain types of jobs.

Member states are also allowed to place restrictions justifiable by reasons of public order, public security and public health<sup>[17]</sup>. It is hereby submitted that discriminatory regulations defeat the purpose and spirit of ECOWAS and the dream of the founding fathers, to create an ECOWAS of peoples and not of countries. In Mohammed B. Davany’s words, “the ECOWAS Commission, since its transformation from a Secretariat to a Commission has developed a vision to have an ECOWAS of peoples as opposed to an ECOWAS of member States”<sup>[18]</sup>.

The dream of an ECOWAS of peoples and not of countries depends greatly on a proper administration of the right of establishment. ECOWAS citizens have to be made to feel at home in member countries. This will remain a dream in the face of discrimination, restrictions and regulations targeted at them-as if to say “you are welcome, but.....” with respect to doing business, in the exercise of their power to make discriminatory laws, Member States have enacted legislation restricting community citizens from engaging in certain types of business.

Thus, there are two discernible contradictory stances in the provisions under review. Article one of the Protocol Relating to Community Enterprises provides that legal persons are institutions or companies in which Member States or their nationals own not less than 51% of the equity capital. Article 1 of the Supplementary Protocol<sup>[19]</sup> is more elucidatory on the meaning of ‘company’, wherein it is defined as “any company, including cooperative societies or any other legal entity governed by public or company law. The foregoing clearly

indicate that a company duly registered in a Member State enjoys the rights of access, residence and establishment for the purpose of carrying on economic activities, as well as the creation and management of enterprises and companies subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals.

The Protocol's intention is clear, that the target group of community citizens to enjoy the right of establishment is that which commutes for the purpose of involving in activities that are economically beneficial to the host States. The thinking therefore is that if companies establish within the community, such companies or enterprises are also free to operate without restrictions<sup>[20]</sup>. But on the contrary, the Protocol has given host Member States the power to make discriminatory provisions in favour of their own nationals.

Implicit in Articles 2 and 3 of the Protocol (on the right of establishment) is the creation of an avenue for the mobility of non-wage-earners. In this vein, non-professionals are not supposed to suffer any discrimination based on their nationality. However, as laudable as this provision may seem, the Protocol envisaged some challenges thus;

There shall exist practical problems that need to be solved if this objective is to be realized. This is because the exercise of many professions may be dependent on the approximation and harmonization of national laws and customs as far as educational qualification and professional status are concerned<sup>[21]</sup>.

For example, in Nigeria, bodies like the Architects Association of Nigeria, the Chartered Accountants Association of Nigeria and others, have by-laws that discriminate against aliens. So long as those restrictions are in place, Community citizens will continue to be discriminated against. The doctrine of reciprocity in Article 4(2) entrenches a regime of discrimination because it means that if Member State A discriminates against the nationals of Member State B, the latter would follow suit. In practical terms, it is very difficult to create a scenario that is different from this because it would seem absurd and unrealistic to place Member States under an obligation to absorb Community professionals unlimitedly. A State can only absorb so much, as its ability to do so is determined by its economic, social, cultural and political capacity. However, it would help if national laws respecting issues of common concern are harmonized. But the problem is that "the (West African) sub-region is one of the least active in the world in the field of law harmonization."<sup>[22]</sup> Since there is no other way out of the conundrum, ECOWAS States require harmonization crucially and urgently. The reason for the *status-quo* of indolence in legal progress as it relates to harmonization is of course the hackneyed issue of sovereignty and nationalism which ECOWAS States give more consideration to than the interests of the Community.

To achieve harmonization, Lateef Adegbite has proffered the view that "each Member State would have to promulgate a Constitutional Law that any instrument emanating from the organs of the Community would have a legal effect, *ipso facto* within each State".<sup>[23]</sup> This is in order, but the snag is in getting the organs to make these 'instruments' to address divergent *status quos* with respect to issues such as the right of establishment. In the absence of this, the right suffers from a severe limitation.

The leeway given to States to make discriminatory legislation

is prone to and has been abused. In fact, as Chukwurah has so pungently asserted, "in spite of all the talks about" unity, many States were not ready to tolerate the presence of successful aliens in their territory<sup>[24]</sup>. 'He further opines that it is not easy for non-nationals to enter into another country in West Africa as a matter of course. New rules and regulations have been enacted in several countries aimed at preserving employment opportunities for citizens of the country even at the expense of aliens of long residence'<sup>[25]</sup>. The Ghanaian Aliens Deportation Order, affected several Nigerians who had lived in Ghana for a very long time and knew no other home. In Nigeria, the Nigerian Enterprises Promotions Act 1972 (and its successor, the Amended Nigerian Enterprises Promotion Act 2004), reserves certain types of businesses for Nigerians. The list is winding. By the time one "sweats" through the list, the question is, what then is left for the Community "brethren"? In like manner, the Ghanaian Business Promotion Act No. 334 1970 reserved certain sectors of the economy for its nationals and stipulated the categories of enterprises exclusively reserved for them.

In addition, the Ghana Investment Decree 1975 further solidified the *status quo*, despite assurances by the Ghanaian government that the Decree would be scrutinized closely so as not to have any 'adverse effects on Nigerian businesses in Ghana', and that it would 'ensure that the provisions of the decree were not understood by Nigerian or any other African nationals in such a way as to lead to a second mass exodus of Nigerians from Ghana.'<sup>[26]</sup> Needless to say, the assurances were never kept. With respect to the Nigerian and Ghanaian laws, one could argue that they were pre-ECOWAS instruments but that observation can be controverted very easily by the fact that, none of those laws have been abrogated or even amended to reflect the spirit of ECOWAS. This demonstrates that while at the macro level, integration and establishment are talked about with gusto, at the micro level, States are busy shutting doors here and there. Thus the spectre of super-nationalism remains a veritable conundrum and a hamstring on the drive towards integration.

This is unquestionably the reason why Gasiokwu is of the view that, Article 4(2);

Is defeatist in nature because instead of strengthening the mechanisms for the implementation and realization of the objectives of the phase (i.e. phase three on the right of establishment), it creates such a loophole which uncooperative states may exploit to the disadvantages of the citizens of other states while at the same time engaging in bilateral agreements with some in respect of such services<sup>[27]</sup>.

No such bilateral arrangement is within these writers knowledge but that does not extenuate the potential for factionalisation inherent in the Article, as Gasiokwu has so aptly portrayed. Certainly, no one expected that integration would be a roller coaster ride but it is obvious that a lot more needs to be done. At least, the Protocol has provided a blueprint.

In the words of Chukwurah;

If the Economic Community of West African States (ECOWAS) is to succeed as a regional functional organization, then its Charter provision on "the abolition

as between Member State of obstacles to free movement of persons, service and capital has to be generally accepted and guaranteed across the whole of West Africa'<sup>[28]</sup>.

Indeed, the Community needs to take a look at the provisions of the Treaty relating to free movement of persons, residence, establishment and capital as well as those relating to harmonization of common policies. This is because of their implications for labour and social policies in such areas as the harmonization of national labour legislation, and the role of employment exchanges in the machinery for facilitating the geographical mobility of workers and for equating labour supply with demand without seriously endangering standards of living and levels of employment in Member countries<sup>[29]</sup>. Unless this is done, the ECOWAS Protocol under discussion will remain a well-intentioned effort without much practical utility. Regional integration is a salutary irreversible phenomenon. Professor Asiawaju<sup>[30]</sup> has said that regional integration "could provide the impetus needed to solve problems encountered on the continent."<sup>[31]</sup> He observed further that important decisions are taken but these are often contradicted by observable action on the ground.

The ECOWAS Treaty with particular reference to the Protocol under discussion foster "the promotion of economic development of the sixteen Member States through the integration of their economies."<sup>[32]</sup> At its inception, it held a lot of promises as one of the dynamic strategies through which economic under-development could be surmounted and the all-pervading poverty in the sub-region eliminated<sup>[33]</sup>. Undoubtedly, the process of integration is "complex and arduous"<sup>[34]</sup>, and the "need for the ECOWAS in the sub-region is even stronger today (1991) than it was when it was founded..."<sup>[35]</sup> Super nationalism and sovereignty need to be reviewed and extenuated and States must be prepared to make sacrifices at several levels if the goal of integration as exemplified by the Protocol on Free Movement, Residence and Establishment are to crystallize into reality. It is trite to say that the main objective of integration is economic but, the process is political and requires the surrender of the major national economic instruments to the supranational (and regional) authority. This, it must be stated, is easier said than done. Unless development in the region becomes uniform and various States undertake to build strong institutions that will engender infrastructural and economic development, making the "supranational authority" really supranational would unleash a vice-grip on the nations that will have the 'misfortune' of employing their resources for national development. They will unfairly have to bear the brunt of the regional and integrative scheme of the sub-region. Corruption plays a big role here but that is outside the scope of this work. Phase I of the Protocol was ratified by Member States and as stated in the ECOWAS 2006 Annual Report, became effective in 1980. In the view of these researchers, the words "became effective" are misleading because they imply satisfactory implementation but, as the foregoing shows, this is far from being the case. For example, many of the States are yet to introduce the ECOWAS Travel Certificate – the basic travel document required for free movement. With respect to phase II, the situation is largely the same. Residence formalities have not been harmonized. On phase III, the Report states clearly that:

The formal operationalization is still pending. To facilitate the implementation process Member States have been urged to strengthen the relevant administrative services, while the community would take steps toward the harmonization of national legislations and procedures<sup>[36]</sup>.

As at the time of this writing, those steps were still in the egg. This is obviously what prompted Omonobi to state thus:

Since the leaders of the Economic Community of West African States decided to bury individual pride and put the interest of their people in the front burner and target real growth and development for the sub-region under the aegis of the Protocols on free movement of persons and goods and rights of residence and establishment, implementation of these mobile articles have not been forthcoming... The lack of progress in the implementation of these protocols and its attendant debilitating consequences for the sub-region has... become a challenge to the present leadership<sup>[37]</sup>.

The purpose of this thesis is not to design scenarios of West African integrative and cooperation schemes but to define and determine their scope, efficacy and utility. How the Community tackles the "challenge" highlighted above will determine whether the Treaty/Protocol under review will deliver the goods or remain documents containing copious good intentions and nothing more.

To make matters worse, the right of establishment is severely threatened by the persuasive insecurity in the region. One of the main causes is the proliferation of small arms and light weapons. The prevalence of armed groups and militias, such as Boko Haram in Nigeria, the Janjaweed Militia in Sudan are the underlying factors. The robust International Black Market in arms has made the procurement of arms to become as easy as procuring salt. International illicit arms dealers are always on the prowl, offering weapons to dissident groups. At times, the weapons used by these "armies" are even more sophisticated than those used by the regular army. Some of the groups make money by the sale of forcefully acquired mining fields, such as in Liberia and Sierra Leone. Some such as Boko Haram are supposedly funded by AL Qaeda, which is funded by masquerade charities around the world. This is what led the U.S to freeze the accounts of many charities in the U.S with known ties to AL Qaeda.

In order to address this problem, ECOWAS birthed the Arms Trade Treaty (ATT) and formulated the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (hereinafter referred to as Protocol on Conflict Prevention) (1999) and the ECOWAS Convention on Small Arms and Light Weapons which came into force on June 14, 2006, (hereinafter referred to as the Convention on Small Arms).

The ATT was birthed for the purpose of preventing uncontrolled and illegal procurement and sale of small arms and light weapons and to improve security<sup>[38]</sup>. In the words of Essien<sup>[39]</sup>

ATT is a legally binding instrument on the highest possible common International Standards for the responsible transfer and brokering of all conventional weapons. ECOWAS puts in much effort to ensure compliance with...international standards...in order to

ensure the blockage of transfer of arms and ammunitions whose nature are such that can be used to commit serious violations of International Humanitarian Law.

However, inspite of all these efforts, small arms and light weapons are still as available to militants and armed groups as coke. In fact, 60-90 per cent of deaths arising from armed conflicts in West Africa have been attributed to the illegal sale and proliferation of small 'arms and light weapons' [40].

When armed conflict breaks out in a country, the worst hit are the non-nationals, who have no roots in the country and are made to float around in terror, without any hiding place. Devoid of any social or economic, safety net, they lose everything and are left to the vagaries of harsh circumstances and many do not survive. During the conflict in Liberia, many non-nationals were forced to flee the country, leaving many of their businesses behind. Some of the conflicts do not even simmer any warning-they have the tendency to erupt spontaneously, giving no time for those concerned to tidy up their affairs before departing. This often leads to loss of fortunes.

In fact, the Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA) has pointed out that, insecurity at the border posts has led to a 60% drop in trade among ECOWAS member states [41]. The Director-General of NACCIMA has called on the governments of the region to tackle these challenges [42].

Furthermore, the 10<sup>th</sup> Annual Development Partners Coordinators Meeting of the ECOWAS Commission which held in Nigeria [43], discussed issues bordering on regional economic growth among five member states and concluded that addressing security issues was important for steady growth and development [44]. The Commission identified the issue of security as a cardinal one for development partners to give urgent attention to: Members "were confident that concerted efforts of member states and development partners as demonstrated during the deliberations would translate into actions that would transform the ECOWAS region in the days ahead.

At the time of this writing, the insecurity situation in the region has hardly abated. The Boko Haram insurgency group has spread its tentacles to Cameroon and Chad. There has been a coup in Guinea and threatened security in Burkina Faso and Mali, where Islamic separatists have battled state forces for years. ECOWAS expressed concern that if not checked, the insecurity could spread [45]. With the revived pounding of Boko Haram enclaves by the Military under General Muhammadu Buhari and the concerted military efforts of the member states, it is hoped that the situation might improve. Until this happens, cross border settlement within the region will remain a risk.

Other serious factors militating against the right of establishment are poverty and its twin brother, underdevelopment. Development has been described by Esso and Ukwayi as "orderly social change from pre-colonial primitive and primordial mode of production to attempts towards pulling resources for the greater good of the greatest number in the spirit of utilitarian theorists." [46] Underdevelopment in the context of this paper is the absence of modern infrastructure which translate into the socio-economic transformation of the society which makes for a standard of living that approximates to that of the civilized world. As Yella and Austin have pungently opined, "the stability of a country in

terms of physical security is necessary for economic development, when considered within the context of interstate rivalry and competition. However, the relationship between security and development reverses when the sources of insecurity emanate from within the borders of a country" [47].

There is hardly any ECOWAS country whose standard of living for the majority of its population is above poverty level. Thus, there is hardly greener grass anywhere else, such that the pull factors that would naturally attract foreigners to a country are absent. When Nigeria was enjoying the oil boom, there was a large influx of foreigner, to her shores. As a result, the unbridled migration over stretched the country's socio-economic infrastructure, leading to the infamous Ghana-Must-Go episode.

Today, there is hardly any ECOWAS country that is enjoying any type of "boom". To attract migration, residence or establishment, poverty and underdevelopment are the pervasive vogue and are the fodder for conflicts. Deng Boqing, the Chinese Ambassador to Nigeria and ECOWAS shares the view that poverty and underdevelopment are the major causes of conflicts in ECOWAS. During the International Conference on Traditional Methods of Dispute Resolution organised by the Chinese Embassy and the Institute for Peace and Conflict Resolution in Abuja in November, 2013, the Ambassador charged the Federal Government of Nigeria to "tackle poverty and under development and root them out" [48]. Precisely, it is only when this is done that the climate conducive for ECOWAS citizens to traverse borders and settle down for business or other occupations as the Treaty envisages, will be created.

In summary, the ECOWAS treaty, with particular reference to the Protocol on Free Movement, Residence and Establishment, as envisaged by the founding fathers was primed as the ideal instrument for generating economic activities in the region by fostering cross border movement and establishment. However, in light of the current realities, that expectation remains unrealized. The founding fathers also expected that the Protocol on Free Movement of Persons, Residence and Establishment would cement the region into a homogenous entity of peoples, united in the pursuit of economic 'nirvana.' But the prognosis is disheartening.

Terver Atsar, in his online article "Nigeria Must Go" [49], a new luggage bag will soon be on sale in Ghana. It is targeted at Nigerians who are recipients of quit notices or whatever else necessitates their sudden, compulsory return to Nigeria. He states that "Nigeria Must Go" is the fitting equivalent of the Nigerian version of the same type of bag which emerged in the Nigerian society two and half decades ago when the Nigerian Government gave marching orders to illegal Ghanaian Immigrants to leave. They needed those bags to pack their loads as they had to leave in a hurry like the Israelites fled from Egypt.

The preceding development is a real cause of worry for those with high expectations for the actualization of the dreams of the promoters of the ECOWAS Treaty. This is especially so as it relates to the context of the right of residence and establishment. The "Ghana-Must-Go" incident remains a blight in the template of ECOWAS inter-state relations not just as per the two major players, Nigeria and Ghana, but also the entire region. In 1983, over three hundred thousand aliens [50], were given 14 (fourteen) days to leave Nigeria, by a Presidential Expulsion Order. Majority of the expelled were Ghanaians, and

this was regarded as a retaliatory move for Ghana's 1969 Aliens Expulsion Order which affected thousands of Nigerians who abandoned their livelihoods and property in Ghana.

From the recent "Nigeria-Must-Go" development, it is obvious that the countries have not forgotten or forgiven each other for the incidents. One can only imagine the trepidation under which Nigerians in Ghana are under now. If the development comes to seed and the requisite rancour and vitriol is generated, with its attendant xenophobia which triggers another exodus of Nigerians, after a few years, Nigerians will find an excuse to retaliate. It would then become a ding-dong affair which will further belabour the already tenuous comity in ECOWAS.

In view of the foregoing, this paper recommends that the ECOWAS should, as a matter of urgency, transform itself from a talk shop to an action oriented body. Since its inception in 1975, a lot of clichés, slogans and programmes have been formulated, launched and re-launched over and over again. Despite all these, movement across the borders remains a nightmare and residence/establishment also remain a tortuous experience.

Second, discriminatory practices against non-nationals of ECOWAS countries should be abolished. Rather, policies and regulations which make it easier for non-nationals to reside and do business in member states should be put in place for legal documented migrants. Host countries should consider making their nations as commodious as possible, by relaxing tax regimes, beaureanrafic bottlenecks and administrative processes.

Third, a compulsory regime (supervised by the African Union and the UN) should be put in place by ECOWAS for the purpose of compensating non-nationals who lose their property and businesses in the event of the eruption of crisis or terrorist attacks. These are ECOWAS citizens who have left their natural habitats and have found themselves in a place where they lack the cushions of friends, extended family or peers. Any loss they suffer would therefore be severe, without any compensatory safety net. With respect to Nigeria and Ghana, as major leaders in the ECOWAS, they should work out modalities for mutual compensation and knock a final nail in the coffin of the "Must-Go" poltergeist. This will go a long way to balance of the tension between the two countries and open a new chapter in their relationship. The region should be able to look forward optimistically to a post "Must-Go" era in the two "giant" and "semi giant" nations.

Fourth, poverty and underdevelopment have to be deliberately and methodically tackled by the gestation of a community-wide industrial revolution. More industries would create more jobs, increase productivity and a better standard of living. This will enable the Member States to make the conditions for settlement in their domains less stringent. Skilled personnel and artisans will be 'pulled' to areas of need, thereby reducing unemployment. The export regime of the community will become more robust and economic growth will be engendered. The potential for the economic transformation of ECOWAS is so real, such that should compel the Member States to draw up a template for the creation of a conducive climate for the Protocol to be actualized. The Member States are enjoined to muster the requisite political will to make this happen. If this is done, the days when the ECOWAS region will become the desired prosperous community of peoples and not of States would crystallize into reality.

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22. Akinyemi. *et al* Readings and Documents on ECOWAS NIIA, Lagos (Selected papers and discussions from the 1979 ECOWAS Conference) 1983, 493.
23. *Ibid*, at. 480.
24. *Ibid* at. 495.
25. *Ibid*, at. 496.
26. Gen. Acheampong the Head of State of Ghana gave the assurance to Brigs. Yar Adua, Chief of Staff, Supreme Headquarters and Joe Garba, Commissioner for External Affairs, respectively, when they delivered a special message from Gen. Obasanjo (Nigeria's Head of State) concerning the Decree. Gen. Acheampong also gave an undertaking that the Decree would be scrutinized closely to avoid any adverse effects on Nigerian businesses in Ghana. He said that the Government would ensure that the provisions of the Decree were not understood by Nigerian or any other African nationalists in such a way as to lead to a second mass exodus of Nigerians from Ghana. See also West Africa Magazine, 1976; 3079:966.

27. *Op.cit.*, 126.
28. Readings and Documents on ECOWAS, *op. Cit*, 484.
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32. (Ike Nwachukwu, Former Minister of External Affairs), in the Introduction: Nigeria and the ECOWAS Since: Towards a Dynamic Regional Integration. Fourth Dimension Publishers Enugu and NIIA Lagos, *op. cit.*, 1985, 5.
33. *Ibid*
34. *Ibid*. 12.
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42. *Ibid*
43. 2014.
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