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Analysis of the Jurisdiction of Ecowas Court of Justice on Human Rights Violation in Nigeria

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Abstract

The formation of Economy Community of West Africa States (ECOWAS) was prompted by the need to forge a collective response to the economic challenges that the states in the West African sub-region were faced with upon gaining political independence. The stages of integration as expected in the 1975 Treaty were not being achieved. The reason for this gap is not far-fetched as the road to integration was made difficult by the incapacity of West African leaders to manage their political and economic divergences. Moreover, the continued and persistent human right violations among the governments of the region became of great concern and led to the inclusion of human rights mandate into the jurisdiction of the ECOWAS Court of Justice in 2005. To this end, this paper, while adopting analytical research methodology, seeks to analyze the human rights mandate of the ECOWAS court of justice. The paper argues that the ECOWAS Court of Justice has jurisdiction over human rights violation cases in Nigeria, as a case study, even as a court of first instance. The paper contends that the jurisdiction of the ECOWAS Court of Justice is a laudable supplementary effort towards combating human rights violation in Nigeria and West Africa as a whole. However, the efficacy of the ECOWAS Court of Justice is being frustrated by lack of a solid enforcement regime. The paper recommends amendment of the ECOWAS 2005 Supplementary Protocol with a view to providing reasonable sanctions on any State government that fails to enforce the decision of the Court.

Key words: Jurisdiction, Justice, Human Right, Violation, ECOWAS Court, Nigeria

1. Introduction

The ECOWAS was founded on May 28, 1975 under the Treaty of Lagos which comprised fifteen West African countries[1]. The ECOWAS Court of Justice was created pursuant to the Revised Treaty of the Economic Community of West African States of

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[1] The countries are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo

1993, and is headquartered in Abuja, Nigeria.[2] The first step towards the achievement of this aim was free movement of Community citizens across the national boundaries of Member States.[3] Whilst the ECOWAS Treaty and the supporting Protocols[4] constitutionalize free movement, the implementation of free movement takes place in national domains. Thus, the effective implementation of free trade and economic integration partly depends on the extent to which the Community's constitutional provisions interact with the constitutional framework and policies of Member States, as well as compliance with the provisions by national authorities.[5]

The stages of integration as expected in the 1975 Treaty were not getting closer[6]. The reason for this gap is not far-fetched. As canvassed by authors, the road to the economic community was hardened by the incapacity of West African leaders to manage their political and economic divergences and give precedence to the ECOWAS over their respective national interests.[7] The continued and persistent human right violations among the governments of the region led to the inclusion of human rights mandate into the jurisdiction of ECOWAS court of justice in 2005.[8] Thus, the court has made a number of pronouncements on issues of violation of human rights[9] by member states. The

[2]O. A.Mojeed, 'Analysis of the Role of the ECOWAS Court in Regional Integration in West Africa' Thesis submitted for the degree of Doctor of Philosophy at the University of Leicester, 2013. Page 10

[3] The right to free movement covers the right of entry, residence and establishment as provided in the 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment [1979 Protocol].

[4] The Protocols include the following: Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security; Protocol and Supplementary Protocol Relating to the Definition of the Concept of Products Originating from Member States of the ECOWAS; Protocol Relating to the Application of Compensation Procedures for Loss of Revenue Incurred by ECOWAS Member States as a Result of the Trade Liberalisation Scheme; Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security; Protocol and Supplementary Protocols on the Free movement of Persons, Right of Residence and Establishment; Convention and Supplementary Convention on a Community Guarantee Mechanism for Inter-State Road Transit of Goods; Protocol Relating to Community Enterprises; Protocol Relating to Mutual Administrative Assistance in Customs Matters; Protocol Relating to the Definition of Community Citizens; Protocol Relating to the Fund for Cooperation Compensation and Development of the Economic Community of West African States; Protocol Relating to the Re-exportation Within the Economic Community of West African States of Goods Imported from Third Countries; Protocol on the Assessment of Loss of Revenue by Member States; and ECOWAS Energy Protocol. The texts of these Protocols are available at www.ecowas.int; last accessed 9 September 2019.

[5] F Olonsakin and EK Aning, ' Humanitarian Intervention and Human Rights: The Contradictions in ECOWAS' 1999, p. 3 The International Journal of Human Rights, p. 17

[6]*Ibid*

[7]S.T.Ebobrah, 'A Critical Analysis of the Human Rights Mandate of the ECOWAS Community Court of Justice' The Danish Institute of Human Rights, 13, http://www.escr-net.org/usr_doc/S_Ebobrah.pdf. 2008

[8]*Ibid*

[9]Among several cases are: Mr.ChudeMba v The Republic of Ghana, Hadijatou Mani Koraouvs the Repblic of Niger ECW/CCJ/JUD/06/08, Mannehvs the Gambia ECW/CCJ/JUD/03/08, The Registered Trustees Of The Socio-Economic Rights & Accountability Project (SERAP) & 10 0thers Vs The Federal Republic Of Nigeria & 4 Others ECW/CCJ/APP/10/10

ECOWAS Community Court of Justice (CCJ) has competence to hear individual complaints of alleged human rights violations. The applicant in this respect needs not to exhaust domestic remedies in order to apply to the CCJ for cases alleging a human rights violation in a member state. What the applicant in this respect must satisfy is that the applications should not be anonymous and cannot be made while the same matter is pending before another international court.[10] The decision of the court once pronounced can be enforced in an assigned court at the relevant member state. It is against this background that this paper analyses the relevance of the ECOWAS Court of Justice's jurisdiction on matters bothering on human rights violation in Nigeria.

2. Overview of Human Rights Jurisdiction of the ECOWAS Court

The ECOWAS Court of justice acquired jurisdiction on human rights in 2005 by a Supplementary Protocol amending the establishing Protocol of 1991[11]. The human rights jurisdiction of the ECOWAS Court is the power to hear cases for violations of 'the so-called Community rights endowed on ECOWAS citizens' and the power of the Court to receive cases on violations of the African Charter.[12] The ECOWAS Court of Justice's jurisdiction on human rights is largely due to the recognition that human rights and access to justice in the sub-region are fundamental values of the ECOWAS Community enshrined in Articles 4(g), 56(2) and 63(2) of the 1993 Revised ECOWAS Treaty and Articles 9(4) and 10(d) of the 2005 supplementary protocol.[13] Individuals can also bring complaints that allege violation of the African Charter and other human rights instruments before the ECOWAS Court[14]. The amended article 9 goes further to give the Court jurisdiction on matters relating to the legality of regulations, directives, decisions

[10]*Ibid* page 21

[11] Supplementary Protocol A/SP1/01/05 to Protocol on the Community Court of Justice (1991) adopted in 2005 which provisionally came into force upon signature in 2005

[12] E. S. Nwauche, 'Regional economic communities and human rights in West Africa and the African Arabic countries' in Anton Bösl& Joseph Diescho (eds) Human rights in Africa: Legal perspectives on their protection and promotion (2009) page 332

[13]MuhammedTawfikLadan Introduction to ECOWAS Community Law and Practice: Integration, Migration, Human Rights, Access to Justice, Peace and Security (Zaria: The Ahamdu Bello University Press), (2009), p. 269-280.

[14] In Manneh v The Gambia, the Court considered a case submitted against The Gambia by legal counsels of Chief EbrimahManneh, a Gambian journalist who was arrested without warrant by two officials of the National Intelligence Agency of The Gambia. The officials did not give any reason for his arrest. The plaintiff had been detained incommunicado. He had been detained for more than a year without any criminal charge. The counsels for the plaintiff submitted that the defendant violated Articles 4, 5, 6 and 7 of the African Charter. They requested the Court to order the defendant to release the plaintiff and pay him five million US dollars in damages. Although the defendant refused to make an appearance, the Court heard witnesses and found that Articles 2, 6 and 7(1) of the African Charter were violated. The Court also ordered the defendant to pay US$ 100,000 to the plaintiff as damages

and other subsidiary legal instruments of the Community[15], the failure of member states to honour their obligations as contained in the Treaty, Protocols, Conventions and other legal instruments of ECOWAS and on cases of human rights violations that occur in member states.[16]

Another important point to note about the jurisdiction of the ECOWAS Court is that it appears to cover economic freedoms as well as rights that fall in the different generations of human rights. Under the revised ECOWAS Treaty, economic freedoms are entrenched as rights of ECOWAS citizens and they carry the weight of fundamental rights under the ECOWAS regime as they are contained in the constitutive document[17]. The case of Kemi Pinheiro (SAN) v. the Republic of Ghana[18] is germane here. In this case, an applicant, a Nigerian national, sought to establish a branch of his law firm in Ghana and argued that he was denied acceptance to Ghana Law School because he was not of Ghanaian nationality. He claimed violations of the rights of Peoples under the African Charter, specifically the right to self-determination[19], and the right to pursue economic and social development[20]. He also alleged a violation of his right of establishment under the ECOWAS Supplementary Protocol on Free Movement, Right of Residence and Establishment. The Ghanaian government on the other hand argued that the advertisement for the law school course was limited to Ghanaians, and that the violations he claims are not rights enjoyed by individuals.

The Court held *inter alia* that People's rights under the African Charter should be enjoyed collectively and not individually, and that claims brought by individuals for such right must be brought in their capacity as a Peoples' representative. Accordingly, the applicant could not invoke the rights of Peoples under the Charter because the individual right to be enrolled in Ghana Law School is not included in the Peoples' rights to self-determination or to pursue economic and social development.[21]

One of the noticeable changes in Article 10 (d) (I & ii) of the supplementary protocol 2005 is that an individual bringing an application for violation of his human right must

[15] Article 9 of Protocol A/P.1/7/91. Also see the amended art 9(1) in art 3 of the 2005 Supplementary Protocol. The ECOWAS Court interprets art 89 of the revised Treaty to mean that Protocols made pursuant to the Treaty form an integral part of it

[16] Amended Article 9(4) of the Protocol. Other areas of competence of the Court include actions against the Community, Community institutions and officials of the Community and its institutions.

[17]MbuguaMureithi 'The Impact of regional courts in Africa in fostering regional integration and the development of international human rights jurisprudence' in George MukundiWachira (ed.) (2007), Judiciary Watch Report: Regional and Subregional Platforms for Vindicating Human Rights in Africa (Nirobi: Kenyan Section of International Commission of Jurists), p. 84; Madakufamba, supra note 64, p. 91

[18] Suit No. ECW/CCJ/APP/07/10, Judgment No. ECW/CCJ/JUD/11/2012

[19]Article 20 of African Charter on human and people's rights

[20]Article 22 of African Charter on human and people's rights

[21] Abdi Jibril Ali "The Admissibility Of Sub regional Courts' Decisions Before The African Commission Or African Court" Mizan Law Review Vol. 6 No.2, December 2012

ensure that the application is not anonymous nor be made when a similar pending application is before an international court for adjudication. The applicant in this regards needs not to exhaust internal remedies in the applicant's national courts, once the applicant satisfy the condition stated under article 10 then, the court will assume jurisdiction to hear the applicant's complaint. This condition was considered in the case of Mrs. *Oluwatosin Rinu Adewale v. The President of the ECOWAS Commission & 5 others*[22] the applicant, a Nigerian citizen, challenged the failure to award her a position she had applied for at the ECOWAS Community Court of Justice. She claimed that despite her performance being above that of other candidates, the position for which she interviewed was given to another candidate who did not possess required qualifications because the other candidate and the President of ECOWAS were both from Cote d'Ivoire. The applicant alleged violations of the right to equality before the law, the right to equal access to the public service, the right to be free from discrimination and the right of every individual to serve his Community and contribute to the best of his abilities at all times and at all levels. The respondents objected to the application for lack of interest to undertake this action because the selection of the candidate for the post was an administrative action that had not infringed on any of the applicant's rights, and that the African Charter is inapplicable. The Court upheld the objection on the lack of legal capacity and interest of the applicant to lodge the case and dismissed the application. The Court stated that while Article 9 of the Court Protocol, as amended, grants jurisdiction to adjudicate disputes over regulations against a Community institution or official, the case must be lodged by an entity with the necessary capacity to do so. Individuals may only have access to the Court under Article 10(c) or (d) of the Protocol. The applicant failed to demonstrate any direct violation of her rights or that the contested act caused her any harm, meaning that her case did not fall under Article 10(c); and the effect of the President's administrative decision did not implicate the applicant's fundamental rights, so it also did not fall under Article 10(d) of the Protocol[23]. The Court therefore dismissed the case as the applicant had no legal capacity to bring it.

One last point to be noted is that under the ECOWAS system, there is a statute of limitation clause that makes actions against Community institutions and any member of the Community statute barred after three years from the date the cause of action arose.[24] So, the applicant must ensure his action is not statute barred at the point of instituting the action, though this will still be subject to interpretation as to when the cause of action arose depending on circumstance of each case.

[22] Suit No. ECW/CCJ/APP/11/10, Judgment No. ECW/CCJ/JUD/07/2012
[23] *Ibid*
[24] Article 9(3) in art 3 of the 2005 Supplementary Protocol

3. ECOWAS Court and its Relevance to Nigeria

The Community Court of Justice is one of the institutions established by ECOWAS Treaty in 1975 to adjudicate disputes related to the interpretation and operation of the Treaty, as revised in the 1993 Treaty. The details for the operation of the Court were established by the 1991 Protocol. In furtherance of the stated aim, the Economic community of West African States under Article 4(g) of the Treaty guarantees its peoples the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People Rights. Established under Article 15(1) of the Revised Treaty as the principal legal organ of the Community, the Court's mandate is defined by Article 76(2) of the Treaty and by the Protocol on the Community Court of Justice.[25] The ECOWAS Court has become an intercross court since 2005 when the court was empowered with jurisdiction to hear cases on human rights violation. This mandate has transformed it into an international law court for adjudicating on human rights abuse for the West African region.[26]Articles 15, 16 and 17 establish the Court of Justice, Arbitration Panel and the Executive Secretariat respectively, whose functions are to be set out in protocols relating thereto. A president also chairs the court. The Court Registrar, who handles the administrative functions with the support of other professionals, assists him. The Court ensures the interpretation and application of Community laws, protocols and conventions.

Since acquiring jurisdiction over human rights violation in 2005, the ECOWAS Court has issued numerous decisions condemning human rights violations by the member states of the Economic Community of West African States. The case of Socio-Economic Rights Accountability Project v. Federal Republic of Nigeria[27] is apposite here. The applicant claimed that Peoples' right to satisfactory environment for development under Article 24 of African Charter have been infringed upon by the respondent. The applicant a non-governmental organization registered in Nigeria contended that the Niger Delta, rich in resources, plants and wildlife had suffered decades of oil spills which destroyed the surrounding environment, reducing its farming and fishing productivity for local communities. The spills impacted the communities' access to food and had a negative impact on their health.

[25] Hon. H.N. JusticeDonli 'the law, practice and procedure of the community court of justice: meaning and implication' being a paper presented by the president of the community court of justice, ECOWAS at the workshop on the law, practice and procedure of the community court of justice-ECOWAS organized by the west African human rights forum Bamako, Mali 7-9 December (2006)

[26] Supplementary Protocol A/SP1/01/05 Amending the Preamble and Articles 1, 2, 9 and 30 of Protocol (A/P.1/7/91) Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol, Jan. 19, 2005 [hereinafter 2005 Protocol], at http://www.courtecoas.org/site2012/pdf files/supplementary protocol.pdf. Accessed on April 17, 2017

[27] ECOWAS, General List No. ECW/CCJ/APP/09, Judgment No: ECW/CCJ/JUD/18/2012

The applicant attributed the damage to the government's poor maintenance of infrastructure, human error, vandalism, oil theft and conflict leading to poverty. The applicant argued that as a result of these failures, the people of the Niger Delta were denied their rights to an adequate standard of living, clean water and environment, social and economic development, life, dignity, and human security. The Court held that although ECOWAS has not adopted a specific human rights instrument, the Court considers all international human rights treaties to which ECOWAS member states are parties in matters that come before it[28]. In the same token, the case of Femi Falana and Waidi Moustapha v. Republic of Benin, The Federal Republic of Nigeria and Republic of Togo,[29] the applicants while travelling along a road linking Benin and Nigeria encountered several road blocks and check points. They identified themselves as lawyers travelling on business and were allowed to pass through, but they observed that other passengers and travellers were been subjected to the officers' harassment and extortion. The applicants were allegedly kept at the Togolese border until after Togolese elections took place, which they claim prevented them from carrying out their duties in Togo. The two applicants sought a declaration that the respondents had no power to close borders and erect checkpoints in ECOWAS member states, by virtue of the ECOWAS Protocol on Free Movement, and orders to remove road blocks and checkpoints. The Court held that the authorities' decision to restrict this was justified, because it was done on the grounds of internal security and Article 8 of the Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons provides for this exception[30]. Consequently, the applicant's rights to free movement within ECOWAS states have not been violated as contended by the applicants.

It is pertinent to note at this juncture that the Nigerian government was one of the leading members who championed the establishment of ECOWAS court of justice and by implication the court was situated in Nigeria. It therefore has little choice than to accept the decision of the court in its all ramification. However, the deference of the Nigeria government to the ECOWAS court of justice was questioned in the case of former National Security Adviser, Sambo Dasuki who triumphed at the ECOWAS court in challenging his alleged unlawful arrest and detention by the Nigerian government. Against the objection of government, the court ruled in Abuja that it has jurisdiction to entertain the suit brought before it by Mr. Dasuki for the enforcement of his fundamental rights to liberty and to own property as enshrined in the Nigerian 1999 constitution and under African Charter on human and people's rights. Despite the ruling of court in this case, the Nigerian government who was one the signatories to the treaty failed to obey the order of court which attracted public condemnation.

[28]*Ibid*
[29] ECOWAS, Suit No. ECW/CCJ/APP/10/07, Judgment No. ECW/CCJ/JUD/02/2012
[30]*Ibid*

3.1 How and When the ECOWAS Court Can Exercise Jurisdiction on Human Right Violations in Nigeria

In order for the court to effectively exercise jurisdiction over human right violation in Nigeria, recourse must be made to the preamble to the Fundamental Rights Enforcement Procedure Rules (FREP) 2009[31] together with the provision of Articles 9(4) and 10(d) of the 2005 supplementary protocol.[32] The preamble of the FREP Rules 2009 provides as follows "…the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include; (i) The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system, (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system. The effect of this provision is that for the purpose of enforcement of human right violations, Nigerian courts can adopt and rely on the provisions or articles of The African Charter on Human and Peoples' Rights, Universal Declaration of Human Rights and any other regional law which ECOWAS law is part of it.[33]

Similarly, the provision of Articles 9(4) and 10(d) of the 2005 supplementary protocol also empowers ECOWAS court to assume jurisdiction on human rights violation in Nigeria since it is one of the champions of the ECOWAS.[34] For this reason, the court has on several occasions made pronouncement on cases of violation of human rights brought before it by an applicant in Nigeria. See the case of Sa'Adatu Umar v. Federal Republic of Nigeria,[35] where the applicant was arrested and detained with her children without any charges brought against her. She claimed that this was arbitrary and illegal under Articles 6 and 12 of the African Charter. She also argued that doing so while she was a nursing mother in the company of her three children was a form of physical and mental torture violating Article 4 of the African charter. She asked to be set free unconditionally and claim of damages for the sum one million Naira. The respondent on the other hand contended that her case was inadmissible because the Federal High Court of Nigeria had already rendered a judgment in the applicant's favour.

The Court found that the declarations the applicant sought in the case, including the one million Naira award, were similar to those that had been heard and determined by the

[31] Fundamental Rights (Enforcement Procedure) Rules, 2009

[32] Amended Article 9(4) of the Protocol. Other areas of competence of the Court include actions against the Community, Community institutions and officials of the Community and its institutions. So my implication Nigeria is one of the communities of 16 countries that formed ECOWAS States

[33] See *E.F.C.C vsAkingbola* (2015) 11 NWLR (PT..1470) PG. 249 AT 289.

[34] N Nwogu, 'Regional Integration as an Instrument of Human Rights: Reconceptualising ECOWAS' (2007) 6 Journal of Human Rights p. 345

[35] Suit No. ECW/CCJ/APP/12/11; Judgment No. ECW/CCJ/JUD/17/12

Nigerian Court. The case was essentially the same as the earlier one whose settlement, if unsatisfactory, could have led to an appeal in the domestic system. The court therefore declined to re-consider the matter pursuant to the res judicata principle, in addition to its established jurisprudence on not ruling matters that have already been adjudicated in a national court of a member-state or where an appeal has not been sought.

This decision of the ECOWAS court of justice should be criticized because the decision is to the effect that before an applicant can bring an application to enforce his rights before the Court, the decision of the court must not have been in his favour and once the earlier decision either partially or full favoured the applicant, then it is left for the applicant to seek for the enforcement of same in the domestic court system and that the applicant cannot bring the same action for the ECOWAS court for adjudication. Also in *Siriku Alade v. FRN*[36] the applicant was arrested by a plain clothed person claiming to be a police officer on 9 May 2003. He was then forcefully dragged to the Ketu Police Station and detained until 15 May 2003, when he was later arraigned before the Magistrate Court, which detained him on a holding charge and remanded him to Kirikiri Maximum Security Prison, Lagos. He was detained there from 15 May 2003 until 2012, a period of nine years, awaiting trial.

The applicant lodged a complaint to the ECOWAS Court on 24 June 2011, asking for his release and a declaration that his right to fair trial and right to personal liberty had been violated. Among the documents submitted by the applicant to justify his allegations against Nigeria were his holding charge and an affidavit. Nigeria did not produce a detention warrant and denied that the applicant is in Kirikiri Prison. It also argued that the applicant was negligent in the delay of bringing the application. The Court stated that the holding charge and affidavit were sufficient to satisfy the applicant's burden of proof, evidence and persuasion to convince the Court that he was being detained in the Kirikiri Prison. The Court considered the state's failure to produce the detention warrant as an indication that it would have been unfavourable to its case had it been produced, and drew a negative presumption, concluding that the applicant was in fact being detained by the Nigerian authorities pursuant to the holding charge. It also rejected Nigeria's claim that it should not entertain the case because of a delay by the detained applicant in bringing it. Thus, the Court found that there were no grounds for the holding charge, and concluded that the applicant's prolonged detention violated his rights under Article 6 of the African Charter. The Court ordered his release, and ordered respondent to pay damages to the applicant

3.2 Challenges to the Enforcement of the ECOWAS Court's Judgments

The question to ask at this point is that what is the status or level of ECOWAS court of justice in hierarchy of court in Nigeria even though the court is an international court?

[36] Suit No. ECW/CCJ/APP/05/11, Judgment No. ECW/CCJ/JUD/10/12

The provision of the constitution is that an appeal from a high court[37] lies to the court of appeal[38] and to the Supreme Court as the final court in cases of violation or infringement of fundamental human rights. With respect to the provision of ECOWAS supplementary protocols, an applicant for infringement of human rights need not to exhaust internal remedy before approaching ECOWAS court.[39] So an applicant who has not approached any Nigeria court can directly seek redress at ECOWAS court or even when the decision of court of first instance does not favours him.[40] Though the conditions stipulated must be met i.e. the applicant must not be anonymous or have the same application before another international court for same redress,[41] and the decision of ECOWAS court is final.

Another point is that the provisions of ECOWAS supplementary protocol do not stipulate that an applicant cannot exhaust internal remedy before approaching ECOWAS court for redress[42], it is a matter of choice for the applicant. So if an interested applicant has exhausted internal remedy and the decisions did not favour him, he can still appeal the decision to the ECOWAS court for redress. The final point at this stage is that even when the decision of national court favours the applicant, but the concerned authority refused and neglected to comply with the decision of the court[43], the applicant can still approach ECOWAS court for redress. Thus, the ECOWAS protocol still requires the applicant to enforce ECOWAS court's decision in a designated court at national level.[44] So lack of political will which has hindered enforcement of human rights violation at national level of the states also poses a challenge to the enforcement of ECOWAS court decision among the concern states.

4. Conclusion

The purpose of this paper was to analyse how the ECOWAS human rights regime functions in practice. This evaluation was for the purposes of determining whether the regime is a valuable addition to the African human rights architecture and whether in its functioning, the regime works towards achieving symmetry for which the supplementary

[37] Section 277 of the constitution of federal republic of Nigeria 1999 as amended

[38]Section 247 of the constitution of federal republic of Nigeria 1999 as amended

[39]S.T. Ebobrah 'A Critical Analysis of the Human Rights Mandate of the ECOWAS Community Court of Justice' The Danish Institute of Human Rights, 13, http://www.escr-net.org/usr_doc/S_Ebobrah.pdf. 2008

[40] See Sa'Adatu Umar v. FRN (supra)

[41] Article 4(d) (i) & (ii) of the 2005 Supplementary Protocol

[42]*Ibid*

[43]See the case of Sambo Dasukivs FRN where federal high court in Abuja has directed and ordered for the release of the applicant but the government refused to comply with the said order of the court which later prompted the applicant to approach ECOWAS court for redress. Nigeria daily trust newspaper publication, published on 7th day of October, 2016 page 21.

[44]See the provision of Article 24 of the ECOWAS supplementary protocol 2005 which provides that execution of any decision of the court shall be in form of writ of execution, which shall be submitted by the registrar of the court to the relevant state for execution according to the rules of civil procedure of that member state.

protocol was established. The intention was to identify and highlight issues of jurisdictional conflicts and consistencies as well as situations of duplication of functions between ECOWAS institutions and national courts within ECOWAS communities.

As indicated above from cases of human rights violation within West African States where ECOWAS court was called upon to intervene, it shows that the ECOWAS human rights regime is relevant and adds value to the African human rights system. However, the regime still lacks political will on the part of the government of the region on the enforcement and compliance with the order of the court and faces a risk of resistance from other actors in the field. Thus, while the ECOWAS human rights regime is a model that can be recommended for other sub regions in Africa and other under developed regions, its export value depends on some modification that provides the balancing mechanisms which are presently lacking. To get rid of enforcement challenge facing the implementation of its decisions, the ECOWAS 2005 Supplementary Protocol clothing the ECOWAS Court of Justice jurisdiction on human rights violation cases should be amended to provide sanctions against any member State that fails to enforce the decisions of ECOWAS Court of Justice in her jurisdiction.