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# UNIVERSITY OF IBADAN

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## Challenges of Enforcement of Judgments of ECOWAS Community Court of Justice on Human Rights in Nigeria

Stephen Idowu Ilesanmi\*

### Abstract

The Economic Community of West African States (ECOWAS) is a sub-regional international organisation with primary aim of promoting economic Cooperation and championing the economic integration of the member states within the ECOWAS Community. The ECOWAS Community Court of Justice is a judicial organ of the ECOWAS with general jurisdictions to adjudicate on specific matters, among which is matter on human rights within the ECOWAS Community. Nigeria is one of the member States of the ECOWAS and the Community Court's judgments are bound to be enforced in Nigeria as one of the member States. This article looks into clarification of concepts on the challenges on enforcement of the judgments of ECOWAS Community Court of justice on human rights in Nigeria. The article further considers jurisdiction of the ECOWAS Community Court of human rights on human rights in Nigeria and other community members, few Nigeria human rights cases decided in the Community Court, that relate to the challenges of enforcing the judgments of the Court, and some challenges on enforcement of the ECOWAS Community Court in Nigeria, like constitutional supremacy of the Nigerian Constitution, executive interference, corruption in the polity, technicalities of enforcing judgments, financial burden and weak measure for compliance with treaties. The way forward to the challenges on enforcement of the judgments are considered in order to proffer better solutions to the challenges.

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## Introduction

The Economic Community of West African States (ECOWAS) was formed on 28 May 1975, in Lagos where Nigeria and 16 other West African countries – Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania<sup>1</sup> Niger, Nigeria, Senegal, Sierra Leone and Togo – created the community<sup>2</sup> as a sub-Regional entity with general aim of the economic integration of its member states. In the quest to have a judicial system within the ECOWAS Community (hereinafter referred to as “The Community”), Article 15 of the Revised Treaty of 1993, established the Community Court of Justice as one of the institutions of the Community. Also, Article 15 (4) of the ECOWAS Treaty states that judgments rendered by the Court of Justice are binding on member States, the Community institutions, individuals and corporate bodies. The Supplementary Protocol of 2005 amended the 1991 Protocol of the Court, then, under the 1991 protocol, only member states could bring disputes on behalf of their citizens against other member states or institutions of ECOWAS<sup>3</sup>. With the adoption of the Supplementary Protocol, individuals and corporate bodies can bring disputes before the Court<sup>4</sup>. These latter disputes include breaches of human rights<sup>5</sup> but the challenges on enforcement of the judgments of the Community Court of Justice in Nigeria are impediments to effectiveness of the Community Court. The article outlines clarification of concepts; jurisdiction of the ECOWAS Community Court of human rights; few Nigerian human rights cases decided in the Community Court; challenges on enforcement of the ECOWAS Community Court in Nigeria; and ways forward from the challenges are considered as the concluding part of this write-up. Nigeria as one of the members of the community and party to many international

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<sup>1</sup> Mauritania ceased to be a member of the ECOWAS Community in the year 2002.

<sup>2</sup> Treaty of the Economic Community of West African States (hereafter ECOWAS Treaty) reproduced in 1975 United Nations Treaty Series 1010, 17.

<sup>3</sup> Article 9(3) of the 1991 ECOWAS, Protocol. ECOWAS became one of the Regional Courts in African which primarily focus on promoting human rights in their respective regions.

<sup>4</sup> Article 10 in the Article 4 of the ECOWAS Supplementary Protocol, 2005 indicates the position at the presence.

<sup>5</sup> Article 4(c and d) of the Supplementary Protocol, 2005.

treaties on human rights which the power to obey and enforce the treaties are entrenched in Section 12 of Nigerian constitution.<sup>6</sup>

## Clarification of Concepts

### *What are human rights?*

The term “human rights” is used to stipulate a broad spectrum of rights ranging from the right to life; right to human dignity; political and civil rights; rights to economic, social, and cultural right; right to a cultural identity among other rights. These rights involve all elementary preconditions for a dignified human existence. These rights can be ordered and specified in different ways. Human rights have been defined in different ways. Human rights are defined as, ‘Basic moral guarantees that people in all countries and cultures allegedly have simply because they are people.’<sup>7</sup>The perspective of the United Nation on what are human rights is stated in Articles 1 and 2 of the Universal Declaration of Human Rights with provision that:

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.*<sup>8</sup>

From the above provisions, human rights are held to be universal in the sense that all people have and should enjoy them<sup>9</sup>without any form of discrimination of any kind. Another scholar, Prof. U. O. Umozurike defines, “Human rights as those rights which the international community recognizes as belonging to all individuals by the very fact of their humanity. These rights combine with traditional legal rights

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<sup>6</sup> The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>7</sup> Dworkin R., *Taking Rights Seriously*, (London: Duckwoth, 1978), p. 13.

<sup>8</sup> <http://www.un.org/en/universal-declaration-human-rights/>, assessed on the 12th May, 2016.

<sup>9</sup> Fin, John. *NaturalLaw and Natural Rights*, (Oxford; Clarendon Press, 1980), p.2.

that were hitherto considered to be moral or political."<sup>10</sup> These rights are also those rights which all human beings enjoy by virtue of their humanity and the deprivation of which would constitute an affront to one's natural sense of justice.<sup>11</sup>

### Concepts of judgment and enforcement

Judgment is defined as a court's final determination of the rights and obligations of the parties in a case<sup>12</sup> while the term 'enforcement' is defined as the act or process of compelling compliance with a law, mandate, command, decree, or agreement.<sup>13</sup> These two concepts work in tandem to achieve common purposes. The relationship is summoned up in the Black's Law Dictionary that an action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negates the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirm, or else denies, that such a duty or such a liability rests upon the person against whom the aid of the law is involved.<sup>14</sup> In another perspective, AfeBabalola opines that enforcement is the last stage of the judicial process after the legal right, claim or interest has been converted into a judgment or order which remains to be enforced.<sup>15</sup> Therefore, a party who has successfully obtained a final order or signed judgment against another has only won the first round in the fight.<sup>16</sup>

A judgment may require payment by one person to another or into court of a sum of money or it may require a person to do or to abstain

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<sup>10</sup> Umzurike, U. O., *Introduction to International Law*, (Ibadan: Spectrum, 1999), p. 139.

<sup>11</sup> Ajomo, A. and Okabgue, I. (eds), *Human Rights and the Administration of Criminal Justice in Nigeria*, (1991) N.I.A.L.S. Research Series, p. 1

<sup>12</sup> Bryan, A. G. (ed), *Black Law's Dictionary*, 9th ed., (USA: Thomson Reuter, 2009), P. 918

<sup>13</sup> Ibid. at page 608.

<sup>14</sup> Ibid. at page 918.

<sup>15</sup> Afe Babalola, *Enforcement of Judgment*, (Ibadan, Are Babalola 2003). P. 1

<sup>16</sup> Ibid.



from doing a particular act or acts. The overriding function of the judicial process of enforcement is to provide for the judgment creditor the fruits of the judgment, to obtain for him due satisfaction, compensation, restitution, performance or compliance with what the court has granted by way of remedy or relief.<sup>17</sup> Whatever the decision of ECOWAS Community Court decides subject to its competent jurisdiction is enforceable.

### Concept of jurisdiction

Jurisdiction is a court's power to decide a case or issue a decree<sup>18</sup> on what determines jurisdiction of court, it is the claim of the plaintiff that determines the jurisdiction of the court. Where a plaintiff has no *locus standi* (that is, the right to action to be heard in litigation before a court of law or tribunal) to bring an action the suit becomes incompetent and consequently the court lacks the jurisdiction to entertain it.<sup>19</sup> The ECOWAS Community Court's jurisdiction provision of advisory opinions on the meaning and interpretation of economic community law,<sup>20</sup> texts and treaties, adjudication over failure or refusal by a member state to comply with community law, settlement of disputes relating to the interpretation and application of the community acts, resolution of disputes between community institutions and their officials, community liability, human rights violations and legality of community laws, ordinances and policies.<sup>21</sup>

### Jurisdiction of the ECOWAS Community Court of Human Rights

Originally, ECOWAS was established on the 28<sup>th</sup> of May 1975 in Lagos, Nigeria. The main objectives of the community are to promote cooperation and integration in economic, social and cultural activity with the ultimate goal of establishing an economic and monetary union.<sup>22</sup> Further, it aims to raise the living standard of its people; maintain and enhance economic stability and foster relations among

<sup>17</sup> Ibid, at page 9.

<sup>18</sup> Ibid. at page 927

<sup>19</sup> *Networks Ltd V. George* [2015] 4 NWLR (Part 1448) 78. Explanation in bracket is supplied.

<sup>20</sup> Article 10, ECOWAS Protocol (A/P1/7/91) of the Community Court of Justice, Abuja, 2002.

<sup>21</sup> Ibid.

<sup>22</sup> Article 3 of the Revised Treaty of ECOWAS, it establishes the main objective.

member states. Due to the proliferation of internal conflicts in member states of the community, ECOWAS woke up to the need to go beyond economic development and integration and incorporate efforts towards peace and security in to its wider operations, which led to the establishment of the ECOWAS multilateral armed and peace keeping force known as the ECOWAS Monitoring Group (ECOMOG).<sup>23</sup> The 1975 Treaty was revised in 1993 and entered in to force in 1995. The ultimate goal of the revision was accelerated and sustained economic development through integration taking in to consideration of the necessity of regional peace and security and the increasing demand for democratisation, development and respect for human rights.<sup>24</sup>

There are many legal frameworks within the ECOWAS community that constitute the provisions for the human rights in the community. The ECOWAS revised treaties, protocols, conventions and legislative products of the ECOWAS community organs constitute the material sources of human rights in the ECOWAS community.

The ECOWAS Community Court assumed jurisdiction to determine cases of violations of human rights that occur in the member states of the community in 2005 with the implementation Supplementary Protocol of 2005<sup>25</sup> and the adoption of protocol on democracy and good governance which require that the court be given the jurisdiction to hear, among others, cases relating to violations of human right. the court's decisions on human rights matters interpret the African Charter on Human and Peoples' Rights, considered by Article 1(h) of Protocol A/SP1/12/0<sup>26</sup> to contain constitutional principles shared by all member states as legally binding on ECOWAS member states.

Corporations and individuals can submit complaints alleging human rights violations by the community or member state actors. There is absence of domestic exhaustion of remedies as requirement to limiting

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<sup>23</sup> Nwogu, N. "Regional Integration as an Instrument of Human Rights: Reconceptualising ECOWAS", Vol. 6 2007 *Journal of Human Rights*, 345-360, at 348.

<sup>24</sup> See the Preamble of the Revised Treaty of 1993 of the ECOWAS.

<sup>25</sup> See Protocol A/SP.1/01/05.

<sup>26</sup> See Protocol A/SP1/12/01.

the court's jurisdiction, this notion connotes that individuals do not need to pursue national judicial remedies before bringing a claim to the ECOWAS Community Court. Rather, the principal requirements are that the application not be anonymous and that the matter is not pending before another international court.

The human rights jurisdiction of the ECOWAS Community Court of Justice is not included in the revised treaty or in the 1990 Protocol of the court. The court's jurisdiction on human rights matters was established under a 2005 Supplementary Protocol. In the case of *Olajide Afolabi V. Federal Republic of Nigeria*,<sup>27</sup> the court faced with the question of individual access to the court to bring allegations of violations of rights by states parties. The court decided that the individual cannot bring proceedings against his country or member state which by law is saddled with the responsibility instituting proceedings on his behalf<sup>28</sup>.

It was this decision that made the judges of the community court to consider its jurisdiction and made appeal to the appropriate Authority that resulted into the adoption of legislation that expands the competence of the ECOWAS Community Court in the case of human rights violations. Analysing the arguments presented by the parties in the Afolabi case, Viljoen F. argues that had the court developed judicial activism, it could have viewed the matter differently.<sup>29</sup>

Nigeria as a member State has subjected itself to the jurisdiction of the ECOWAS Community Court. For instance, in the case of *Moukhtar Ibrahim Aminu V. Government of Jigawa State & 3 Ors*,<sup>30</sup> ECOWAS Community Court opined that:

It is trite that the question of domestication is entirely a local duty of the State to comply with its domestic laws including its constitution. However, where the action of the State is indicative of the fact that it

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<sup>27</sup> Unreported case Number 2004/ECW/CCJ/04. [www.courtceowas.org](http://www.courtceowas.org), accessed on 26th April, 2016.

<sup>28</sup> Ibid.

<sup>29</sup> Viljoen F., *International Human Rights Law in Africa*, Oxford University Press, 2007, p. 507

<sup>30</sup> Suit No. ECW/CCJ/APP/02/1, [www.courtceowas.org](http://www.courtceowas.org), accessed on the 26th April, 2016.

intends to abide by the contents of the Treaty and proceeded to enact into law the provision of the African Charter on Human and Peoples' Rights contained in Article 4(g) of the Revised Treaty makes the objection of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants a non-issue and immaterial. As always, a State cannot approbate and reprobate in respect of domestication of Treaties, that it derives benefits from its application. It is common knowledge that the Revised Treaty was ratified by the Federal Republic of Nigeria, on 1<sup>st</sup> July, 1994. With such ratification, the Revised Treaty as far as the Community Law is concerned, becomes applicable in the institutions of the community– ECOWAS including this Court. The Protocols of the Court which are annexed to the Revised Treaty form an integral part thereof.

The provision of Paragraph 3 of the Fundamental Right Rules<sup>31</sup> also provides to support the fact that ECOWAS Community Court has Jurisdiction on Human Rights in Nigeria, the paragraph reads that: “The Constitution, as well as the African Charters shall be expansively and purposely interpreted and applied a view to advancing and realizing the rights and freedom contained in them and affording the protections intended by them.”

### **Few Nigerian human rights cases decided in ECOWAS Community Court**

#### ***SERAP v Federal Republic of Nigeria (2012)***

In a dramatic and ground-breaking decision, ECOWAS Community Court of Justice in Abuja has declared that all Nigerians are entitled to education as a legal and human right. The court said that the right to education can be enforced before the Court and dismissed all objections brought by the Federal Government, through the Universal Basic Education Commission (UBEC), that education is “a mere directive policy of the government and not a legal entitlement of the citizens.”<sup>32</sup>

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<sup>31</sup> Fundamental Rights (Enforcement Procedure) Rules 2009 of the Federal Republic of Nigeria.

<sup>32</sup> SERAP's suit [No ECW/CCJ/APP/0808]. Accessed on 1<sup>st</sup> May, 2016 from, [www.serap-nigeria.org](http://www.serap-nigeria.org)

The ECOWAS court's decision, followed a suit instituted by the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) against the Federal Government and UBEC, alleging the violation of the right to quality education, the right to dignity, the right of peoples to their wealth and natural resources and to economic and social development guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights.

The fact of the case is presented in the following:

- The Plaintiff contended that Niger Delta has an enormously rich endowment in the form of land, water, forest and fauna which have been subjected to extreme degradation due to oil prospecting.
- It averred that Niger Delta has suffered for decades from oil spills, which destroy crops and damage the quality and productivity of soil that communities use for farming, and contaminates water that people use for fishing, drinking and other domestic and economic purposes.
- That these spills which result from poor maintenance of infrastructure, human error and a consequence of deliberate vandalism or theft of oil have pushed many people deeper into poverty and deprivation fuelled conflict and led to a pervasive sense of powerlessness and frustration.

It further contended that the devastating activities of the oil industries in the Niger Delta continue to damage the health and livelihoods of the people of the area who are denied basic necessities of life such as adequate access to clean water, education, healthcare, food and a clean and healthy environment.

The Plaintiff submitted that although Nigerian government regulations require the swift and effective clean-up of oil spills this is never done timorously and is always inadequate and that the lack of effective clean-up greatly exacerbates the human rights and environmental impacts of such spills.

It admitted that though some companies have engaged in development projects to help communities construct water and sanitation facilities

and some individuals and families received payments these were inadequate.

It submitted that government's obligation to protect the right to health requires it to investigate and monitor the possible health impacts of gas flaring and the failure of the government to take the concerns of the communities seriously and take steps to ensure independent investigation into the health impacts of gas flaring and ensure that the community has reliable information, is a breach of international standards.

It averred specifically that: In 1995 SPDC Petroleum, admitted that its infrastructure needed work and that the corrosion was responsible for 50 per cent of oil spills.

On 28 August 2008, a fault in the Trans-Niger pipeline resulted in a significant oil spill into Bodo Creek in Ogoniland. The oil poured into the swamp and creek for weeks, covering the area in a thick slick of oil and killing the fish that people depend on for food and for livelihood. The oil spill has resulted in death or damage to a number of species of fish that provide the protein needs in the local community. Video footage of the site shows widespread damage, including to mangroves which are an important fish breeding ground. The pipe that burst is the responsibility of the Shell Petroleum Development Company (SPDC). SPDC has reportedly stated that the spill was only reported to them on 5 October of that year. Rivers State Ministry of Environment was informed of the leak and its devastating consequences on 12 October. A Ministry official is reported to have visited the site on 15 October. However, the leak was not stopped until 7 November.

On 25 June 2001 residents of Ogbobo in Rivers State heard a loud explosion from a pipeline, which had ruptured. Crude oil from the pipe spilled over the surrounding land and waterways. The community notified Shell Petroleum Development Company (SPDC) the following day; however, it was not until several days later that a contractor working for SPDC came to the site to deal with the oil spill. The oil subsequently caught fire. Some 42 communities were affected as the oil moved through the water system. The communities' water

supply, which came from the local waterway, was contaminated. SPDC brought ten 500-litre plastic tanks of water to Ogbodo, but only after several days.

Although SPDC refilled the tank every two to three days, 10 tanks are insufficient for their needs, and are emptied within hours of refilling.

People in the area complained of numerous symptoms, including respiratory problems. The situation was so dire that some families reportedly evacuated the area, but most had no means of leaving.

Though companies have engaged in development projects to help communities construct water and sanitation facilities and some individuals and families have received payments however, some of these development projects and compensations have been criticised as inadequate and poorly executed.

Hundreds of thousands of people are affected, particularly the poorest and other most vulnerable sectors of the population, and those who rely on traditional livelihoods such as fishing and agriculture.<sup>33</sup>

The court said that “As SERAP’s claim is premised on Articles 1, 2, 17, 21 and 22 of the African Charter, the Court does have subject matter jurisdiction of the suit filed by SERAP.”<sup>34</sup>

Dismissing the government’s argument on *locus standi*, the court stated: “The authorities cited by both the government and SERAP support the viewpoints canvassed by them. However, we think that the arguments presented by SERAP are more persuasive for the following reasons: first, the doctrine of *Actio Popularis* developed under Roman Law to allow any citizen to challenge a breach of public right in Court was a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court. Second, SERAP cited authorities from around the globe which all concur in the view that in a human rights violation the plaintiff need not be personally affected or have any special interest worthy of protection.”

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<sup>33</sup> [www.courtecowas.org](http://www.courtecowas.org) accessed on the 2nd June, 2016

<sup>34</sup> *Ibid.*

The court also said: “Public international law in general is in favour of promoting human rights and limiting the impediments against such a promotion, lends credence to the view that in public interest litigation, the plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing.<sup>35</sup>

Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and that the matter in question is justifiable. This is a healthy development in the promotion of human rights and this court must lend its weight to it, in order to satisfy the aspirations of citizens of the sub-region in their quest for a pervasive human rights regime.”<sup>36</sup> It is important to note that the Federal government of Nigeria has not enforced the judgment against it. This is due to some of the challenges of enforcing the community court’s judgments in Nigeria.

***Hope Democratic Party & 1 or V Federal Republic of Nigeria & 5 Ors (2015)***<sup>37</sup>

The Plaintiffs claims are that they are entitled and have the rights to be allowed to freely choose or have their candidate at the presidential elections in accordance with the provisions of the law, that the human Rights of citizens of member states are to be protected and enforced and are entitled to commensurate damages thereof among other claims.<sup>38</sup>The Plaintiffs aver that their rights as guaranteed by the provision of the African Charter on Human and Peoples’ Rights to equality before the laws and participate freely in government through freely chosen representatives in accordance with the laws has been grossly violated by the Defendants since the 5<sup>th</sup>Defendant Notice of Election on February 14, 2015 general elections including the presidential election scheduled for February 14, 2015.<sup>39</sup>

The court decided that the first Plaintiff was not competent before it that:

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> ECW/CCJ/APP/04/2015. Accessed from, [www.courtecawas.org](http://www.courtecawas.org) on the 1<sup>st</sup> of May, 2016.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.



On the competency of this Court to entertain this suit because it is brought against persons who are not subject to the jurisdiction of this Court, it is hereby declared that the Defendants' Motions for Preliminary Objections are granted for the reasons stated herein. Accordingly, the claims against them severally and jointly are denied and the case dismissed; that 2<sup>nd</sup> through 6<sup>th</sup> Defendants not being competent parties Defendants before the ECOWAS Community Court of Justice, the case against these Defendants is ruled inadmissible against them, and they are dropped as improper parties before this Court, and the case accordingly dismissed severally and jointly.<sup>40</sup>

The essence of this case in relation to the challenges of enforcing the judgments of the community court in Nigeria, is that the court might have imported and been influenced by the judicial technicalities in the Nigeria judicial systems. The first Defendant in the case under review would have been held competent before the Court.

***Sikiru Alade v The Federal Republic of Nigeria (2012)***<sup>41</sup>

The applicant, a Nigerian citizen, was arrested by a plain clothes 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 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

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<sup>40</sup> Ibid.

<sup>41</sup> Suit No. ECW/CCJ/APP/05/11, Judgment No. ECW/CCJ/JUD/10/12. Accessed from, [www.opensocietyfoundations.org](http://www.opensocietyfoundations.org) on the 5<sup>th</sup> of May, 2016.

Kirikiri Prison. The court considered the state's failure to produce the detention warrant as an indication that it would have been unfavorable 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.<sup>42</sup>

It also rejected Nigeria's claim that it should not consider the case because of a delay by the detained applicant in bringing it. 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 right to personal liberty). The Court ordered his release, and ordered Nigeria to pay damages to the applicant.<sup>43</sup> The payment of damages after the decision of the Court might be difficult due the political bottlenecks which is a challenge for the court on its enforcement of such decisions.

***Col. Sambo Dasuki v Federal Republic of Nigeria (2016)***<sup>44</sup>

The ECOWAS Community Court ruled that it has jurisdiction to entertain the suit brought before it by Dasuki for the enforcement of his fundamental rights to liberty and to own properties as enshrined in the provisions of the Nigerian 1999 Constitution and the African Charter on Fundamental Rights of Persons. Justice Friday Chijoke Nwoke of ECOWAS Community Court stated, "In our opinion, what Dasuki brought before us as a case is an issue for the enforcement of his rights to liberty, to own property as well as against unlawful arrest, unlawful detention and seizure of properties without any court order or warrant of arrest. From the totality of the issues brought before this court, it is clear and there is no ambiguity that the applicant is seeking the enforcement of his right to freedom and not on the issue of his trial for any alleged offence before any Nigerian court."<sup>45</sup>

The defence of the Federal Government in this position would have amounted to breaches of the Applicant's human rights. The essence of

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> This matter is *Sub judice*. The ECOWAS Court's Ruling of its Jurisdiction to hear the case was reported in the Guardian Newspaper on the 12<sup>th</sup> of April, 2016. The substantive suit was slated for hearing on the 17<sup>th</sup> and 18<sup>th</sup> of May, 2016.

<sup>45</sup> Ibid at pages 1 and 6.

this case to this article is that there are many activities of the Federal Governments of Nigeria and its agencies that cause breaches to the human rights of the individuals in the country, even if the judgment is delivered from the court on the breaches, the problem of political interference may post difficulty to enforce the court's decisions in Nigeria.

## **Challenges on enforcement of the ECOWAS Community Court in Nigeria**

### *Preliminary on Enforcement of Judgments*

Judgement means a judgment or order given or made by a court in any civil proceedings and shall include an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.<sup>46</sup> The Foreign Judgments (Reciprocal Enforcement) Act of Nigeria does not refer to the judgement of ECOWAS nor any international court in all its provisions.

According to Sections 2 and 3 of the Act, a judgment must meet the following conditions to be enforceable in Nigeria:

1. Pronounced by a Superior Court of the country of origin.
2. Be a money judgment.
3. Be a final and conclusive judgment. Proof of same is on party who asserts.
4. Arbitral Awards.
5. Judgments given in criminal proceedings for the payment of money in respect of compensation or damages.

The ECOWAS Community Court as the judicial organ of the community has a significant part in the enforcement of ECOWAS law in national courts through the enforcement of its judgments in these States' courts. In particular, Article 15(4)<sup>47</sup> states that the judgments

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<sup>46</sup> Section 2 (1) of Foreign Judgments (Reciprocal Enforcement) Act, Law of the Federation of Nigeria.

<sup>47</sup> Supra, No 20 above.

of the court shall be binding on the member states, the institutions of the community and on individuals and corporate bodies. Also, Supplementary Protocol<sup>48</sup> provides for the insertion of Article 24 to the Protocol of the Community Court of Justice.<sup>49</sup> Methods of implementation of judgments of ECOWAS Community Court are provided thus:

1. Judgments of the court that have financial implications for nationals of Member States or member States are binding.
2. Execution of any decision of the court shall be in form of a writ of execution, which shall be submitted by the registrar of the court to the relevant member state for execution according to the rules of civil procedure of that member state.
3. Upon the verification by the appointed authority of the recipient member state that the writ is from the court, the writ shall be enforced.
4. All member states shall determine the competent national authority for the purpose of recipient and processing of execution and notify the court accordingly.
5. The writ of execution issued by the community court may be suspended only by a decision of the community court of justice.<sup>50</sup>

It is worth of note that in Nigeria, there are various courts' rules and procedures on enforcement of the various national courts. Since the judgment of ECOWAS Community Court is immediately binding on member states. Accordingly execution of its judgment by the highest courts of member states reinforces the fact that the judgment becomes automatically part of the national law and of the highest precedential value. It may be inferred that the Supreme Court of Nigeria, as the apex court, has the jurisdiction to enforce ECOWAS Community Court's judgments.

## **Challenges of enforcement of the ECOWAS court's judgments in Nigeria**

### ***Constitutional supremacy***

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<sup>48</sup> Supplementary Protocol A/SP.1/01/05 Amending the Preamble & Articles 1, 2, 9 & 30 of Protocol A/P.1/7/91 R

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) makes provisions for its supremacy over other laws in Nigeria. Section one of the constitution provides that:

- (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
- (2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of person take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

The provisions of the 1999 Constitution of Nigeria (as amended) provide through Sections 230 to 285 the courts in Nigeria and other related matters concerning the courts. There is no provision for ECOWAS Community Court. These provisions link to the principles of sovereignty under the International Law. In spite the fact that the judgments of ECOWAS Community Court shall be enforceable in the members' states, it becomes a challenge when constitutional supremacy is raised.

From the above view, Section 6 (5) which provides that Courts in Nigeria, excluding ECOWAS Community Court, have exclusive jurisdictions on certain matters. Many jurists and scholars believe that the judgments of ECOWAS Community Court, being not foreign judgments do not have the backing power for its enforcement in Nigeria. The position of the provision of the constitution on its supremacy goes further to its empowering the Supreme Court of Nigeria as the highest judicial institution in Nigeria. In spite of the fact that Section 12 of the constitution provides the procedures to domesticate treaties, there is no other provision in the constitution that refers to ECOWAS Community Court in Nigeria. This is a challenge in enforcing the community court's decisions being not foreign judgments which there are laws and judicial procedure to enforcing it.

### ***Executive Interference***

The interference of the Executive Arm of government in the Judiciary decisions hampers the enforcement of some ECOWAS Community

Court's judgments. For instance, during the administration of Chief Olusegun Obasanjo from 1999-2007, there was flagrant disregard for the rule of law. A foremost instance was the regime's penchant for disregarding and outright disobeying court orders and judgments; this was exemplified in the judgment passed by the Supreme Court of Nigeria in favour of Lagos State government over the withheld council fund by the Federal Government. The Lagos State government had gone to the Supreme Court for the interpretation of the Constitution of the Federal Republic of Nigeria if the Federal Government has the legal right to withhold funds from the Federations Account meant for any of the three tiers of government for any reason. The court ruled, in its wisdom, in favour of the Lagos State government. As Nwankwere, (2007) notes, the Federal Government under Chief Obasanjo refused to release the accumulated fund, on the ground that the creation of the additional 37 local government areas in the state by the state assembly was illegal even when the same Supreme Court had earlier ruled in favour of Lagos State.<sup>51</sup>

This was done with impunity setting very poor and dangerous examples for governance. The lower house was also not spared as Obasanjo maintained constant hostility to the then speaker of the House of Representatives, Alhaji Ghali Umar Na'Abba. Attempts to remove the speaker failed on many occasions but led to the near impeachment of Obasanjo on charges of constitutional violations.<sup>52</sup> As the executive interference affects the judgments of the national courts, even to the apex court, the Supreme Court in Nigeria, it affects the enforcement of the ECOWAS court's judgments as well. Also, in the era of Military regimes in Nigeria polity, Nigerians suffered many opportunities to enforce judgments of courts in Nigeria.

### **Corruption in the polity**

The bane of corruption cuts across every aspects in Nigeria. The judiciary is not left out of the bane of corruption. The problem with the Nigerian judiciary is that some dishonourable people not cut out to be judges got into the system and after that made it to the highest level

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<sup>51</sup> Efebeh, E. v., "Democracy and the Rule of Law in Nigeria: 1999-2015", Vol. 5, 2015, *Research on Humanities and Social Sciences*, p.74.

<sup>52</sup> Ibid.

of their judicial careers. Whoever dares to tell the truth is marked down for persecution. Members of the Bar often narrate horrific stories or tales of certain high-ranking judicial officers who act as couriers of bribe, but, they are never ready to come out with details. Such a person is engaged at a fee to reach out to judges in order to influence decisions in certain sensitive cases. At times, the bribe they collect for and on behalf of such designated judges never come to their knowledge, not to talk of its being delivered to them.<sup>53</sup> The former Chief Justice of Nigeria, Honourable Justice Dahiru Musdapher recently said, “Metaphorically, a corrupt judge has been described as more harmful to society than a man who runs amok with a dagger in a crowded street. The latter as you know can be restrained physically. But the former deliberately destroys the moral foundation of society and causes incalculable distress to individuals while still answering ‘honourable’ “. <sup>54</sup> A judgment of the ECOWAS Community Court will be difficult to be enforced before a corrupt Nigerian judge.

The current fight against corruption in Nigeria by the Buhari administration gives preview to how corruption has eaten deeply to the polity of Nigeria. For instance, the Federal Government has released an interim report of recoveries of looted assets and monies, whose announcement was initially fixed for Democracy Day but passed by President Muhammadu Buhari, who shifted it to the Information Minister. Cash recoveries made from 29 May 2015 to 25 May 2016 total N78,325,354,631.82; \$185,119,584.61; #3,508,355.46 Pounds Sterling and E11, 250 Euros, according to a press statement issued on Saturday by Segun Adeyemi, Special Assistant to the Minister of Information and Culture. In the statement released in Lagos, the Minister of Information and Culture, Alhaji Lai Mohammed, also disclosed that Recoveries under Interim Forfeiture (cash and assets) during the period totalled N126, 563,481,095.43; \$9,090,243,920.15; 2,484,447.55 Pounds Sterling and 303,399.17

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<sup>53</sup> Salami. Yisa Salami, *Eradicating Corruption in Nigerian Judiciary*, being a Paper presented at 2015 Annual Lecture of the Nigerian National Merit Award on the theme: Corruption Eradication and the Nigerian Ethical Revolution, held on 1st to 2nd December, 2015 at Merit House, Abuja. P. 1

<sup>54</sup> Speech of the Chief Justice Musdapher at the Media Roundtable on Promoting Ethics and Integrity, organized by SERAP in Ikeja, Lagos. [www.serap-nigeria.org](http://www.serap-nigeria.org) Accessed on 11th May, 2016

Euros.<sup>55</sup> All these funds would have been uncovered and the Nigeria polity would have still been tending towards deeper in the malady of corruption.

Corruption comes in many forms and guises<sup>56</sup>. According to Professor Epiphany Azinge, the most common features of corruption are giving and receiving bribes, inflation of contract, kick-back, exercise of undue influence, sexual harassment by public officials of female employees, applicants and staff seeking promotion, abuse of public property, diversion of official stationery, disappearance from government offices during office hours for private work, paying money to obtain party nominations, treating of voters, misuse of official vehicles, obtaining *estacodes* for trips that will not be undertaken, awarding of contracts to personal companies or relation's companies without abiding with by due process, lodging government fund in private account in anticipation of interest to be yielded...<sup>57</sup>

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<sup>55</sup> [www.thisdaylive.com/index.php/2016/06/04/fg-releases-interim-report-of-recovered-loot/](http://www.thisdaylive.com/index.php/2016/06/04/fg-releases-interim-report-of-recovered-loot/). Accessed on 9/6/2016.

<sup>56</sup> Lawal I. B., "Is Executive Immunity ContermiusWith Executive Corruption", Vol. 2 No. 2 (2005), *Ibadan Bar Journal*, page 150.

<sup>57</sup> Ibid. Quoting Professor Epiphany Azinge, "Corruption in Political Parties and Political Processes" Paper presented at National Conference on Problems of Corruption in Nigeria held at Chelsea Hotel, Abuja 26 – 29 March, 2001, page 3.



### ***Technicalities of enforcing judgments in Nigeria***

Legal and procedural technicalities are strict rules of procedure, points of law or a set of rules as contrasted with intent or purpose of the substantive laws. The technicalities ensure strict adherence to the letters of the laws and may prevent the spirit, intent or purpose of substantive laws from being enforced. The judicial system in Nigeria is beset with several deficiencies in its procedural set up that make it very difficult to obtain justice and quick resolution of disputes in courts. Most of the procedural rules of the various courts in Nigeria are in dire need of reform and review to make it accord with the need to discard technicalities and uphold substantive justice. A situation where many cases in Nigerian courts take years to be resolved does not bode well for the judicial system and encourages resort to self-help by disgruntled litigants.<sup>58</sup> There are instances that some cases take up to thirty years before their final decisions at the Supreme Court of Nigeria, while it may also take couple of years to enforce such judgments. With the problems of technicalities in Nigerian judicial system, the judgments of ECOWAS Community Court will face difficulty in their enforcements. In spite of the fact that the ECOWAS Community Court is guided by its rules of procedure,<sup>59</sup> the Nigerian Courts system has many procedures that are entirely different from the court's procedure. rules of national and international law may regulate the same matter, or may appear to do so. On closer analysis, however, it will usually be possible to identify differences between the legal relationships that are involved, the parties and the procedures.<sup>60</sup>

### **Financial burden**

The problem of under-funding the judiciary in Nigeria affects enforcement of ECOWAS Community Court judgments. For instance, the strike of the Judiciary Staff Union of Nigeria (JUSUN) in 2015 was premised upon the demand from the federal and states' governments to allow financial autonomy for the judiciary both at

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<sup>58</sup> Nigeria Judicial System, Problem and the Way Out. [www.nairaproject.com/projects/1044.html](http://www.nairaproject.com/projects/1044.html) Accessed on 10/6/2016.

<sup>59</sup> Rules of the Court of Justice of the ECOWAS, 2002.

<sup>60</sup> Gardiner, R. K., *International Law (England: Pearson Education Limited, 2003)*, page 162.

federal level and States' levels. Also, litigants are faced with some financial challenges in enforcing judgments due to huge fees payable at the national courts' registries and demands from judiciary workers before they would carry out their statutory duties. This instance affects the enforcement of ECOWAS Community Court judgments in Nigeria.

The issue of financial burden also affects litigants who bring cases to the ECOWAS Community Court. Besides the fact that that the court is housed in Abuja, Nigeria, not all Nigerian citizens whose human rights have been breached or likely to be breached are financially buoyant to institute matter before the Court let alone the fees and expenses involve in enforcing the judgments of the Court in Nigeria. There is possibility that only the rich may have the opportunity of approaching the ECOWAS Community Court, while the poor will have no option that takes fate in spite of the violations of their rights. Even the ECOWAS Community Court faces financial burden. The President of the ECOWAS Community Court, Hon. Justice Monterio lamented on the financial burden of the court to run its personnel.<sup>61</sup> In the other hand, a person whose rights might have been violated might not be able to pay legal practitioner's fees up to the stage of enforcing the judgment of the ECOWAS Community Court.

### **Weak measure for compliance of treaties**

Modern international law stems from three main sources: treaties, customs, and the generally accepted principles of law derived from national legal systems throughout the world.<sup>62</sup> The Treaties of the ECOWAS that member states of the Community entered into are not complied with. Most of the judgments of the Court are not enforceable in most of the member states including Nigeria. In spite of the provisions of Section 12 of the 1999 Constitution of Nigeria (as amended) which empowers the ratification of treaties and their enactments, Nigeria still pays lip service to most of the Treaties it entered into. For instance, the SERAP case<sup>63</sup> which judgment was

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<sup>61</sup> [www.courtccowas.org](http://www.courtccowas.org). Accessed on 10/6/2016 from the 2014/2015 Legal Year ceremony in Abuja.

<sup>62</sup> See Article 38 (1) of the Statute of the International court of Justice, Hague.

<sup>63</sup> [www.courtccowas.org](http://www.courtccowas.org). Accessed on 10/6/2016.

delivered against Nigeria Government 2012 is yet to be enforced in compliance with the court's decision. The ECOWAS Community Court does not have efficient mechanism towards the enforcement of the Court's decisions. There is also no apparatus for coercion to compelling the enforcement of the community court.

Also, the ECOWAS court registry does not have the personnel to follow through the compliance with the Court's decisions unlike the national courts. This is a challenge to enforcing the community Court's decisions in Nigeria.

### **Composition of ECOWAS Community Court's judges**

At the national level, the legitimacy and authority of the courts is tied to their independence. However, it is less apparent what the meaning of independence and impartiality in the context of the international courts should be. The idea of judicial independence is culture specific. But should the independence of a judge at the International Court of Justice be measured by the standards of his or her domestic jurisdiction, the standards of the International Court of Justice, or to some international minimum standard? If international norms exist or emerge, might they influence the content and application of—and perhaps even weaken—national standards? Should national courts give effect to international judicial decisions and rules that have been developed by judges who are not independent according to certain domestic standard?<sup>64</sup> The previous questions are related to the ECOWAS Community Court's composition as a regional court. The enforcement of the ECOWAS Community Court will be affected if the seven judges of the community court are influenced by national standards of the community's states member; if the seven judges are not independent from the grips of their national governments. For instance, a Nigerian judge in the community court that is influenced by Nigerian government might influence denial of justice even to the extent of perverting the enforcement of the community court's judgments in other to favour the government of the day.

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<sup>64</sup> Mackenzie, R. and Sands P., 'International Courts and Tribunals and the Independence of the International Judge' Vol.44 No. 1, 2003, *Harvard International Law Journal*, page 275.

### **Suggested ways out of the challenges**

The challenges on enforcement of the ECOWAS Community Court's judgment in Nigeria on human rights' matters can be resolved based on the following suggested factors:

#### ***Need to harmonise the community member states' constitutions***

There is need to harmonise the community member states' constitutions to conform with general principles, procedure and enforcements of the judgments of the ECOWAS Community Court on cases relating to breaches of human rights in the community. Since human rights are guaranteed in the political constitutions of almost all independent African States,<sup>65</sup> as well as the West African states in particular. These African states are to ensure that all treaties relating to actualization of the principles of the African Charter on People's Rights are achieved in their respective sovereignties. Despite the express codifications of human rights norms in the domestic legal systems of African states, large-scales, and unprecedented breaches of human rights have repeatedly occurred in Africa since independence.<sup>66</sup> The general council of the ECOWAS should ensure that member States adopt a common protocol of the community in other to ensure strict compliance with the domestic constitutions of the member states on enforcement of judgments of the ECOWAS Community Court' decisions without constraints.

#### **Strengthening the member states' judiciaries**

The judiciary in any independent state is usually associated with the concept of the rule of law. This rule is founded on the basic fundamental principles of the supremacy of the law, equality before the law and respect for fundamental rights or the protection of same from being abused by arbitrary government.<sup>67</sup> The General council should ensure that governments of the member States are not

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<sup>65</sup> Udombana N. J., "Toward the African Court on Human and Peoples' Rights: Better Late Than Never," African Journal on Human Right (Vol. 3 No. 45 2000), page 48.

<sup>66</sup> Ibid. at page 50.

<sup>67</sup> Essien E., Hanson M., Mfon J., Ekah R., Ekanem E., "The Nigerian Judiciary since Amalgamation: Strengths and Weakness." Proceeding of the 47th Annual Conference of the Nigerian Association of the Law Teachers (NALT) held at Ebonyi State University (2014 NALT), page 216.

hampering the due processes of law through their actions and inactions in relation to judiciaries' duties within their territories. The community states' governments are to be orientated often at the general council of the ECOWAS. The community states' governments should also be encouraged to ensure that the judiciaries are financed, sustained and empower to being dependent in order to actualise their purposes without favour or influence.

For instance, The High Court of Accra, Ghana<sup>68</sup> on 2nd February 2016, delivered a ruling on an application filed by Mr. Chude Mba, seeking an enforcement of the judgment of the Economic Community of West African States (ECOWAS) Community Court of Justice (ECOWAS Court) entered in his favour against the Republic of Ghana. In its ruling, the court held that the decisions of ECOWAS Court cannot be enforced by the courts in Ghana because the Republic of Ghana has not domesticated the protocols of the ECOWAS court. If allowed to stand, this decision, in our view, will set a dangerous precedent and succeed in jeopardizing the continued existence of ECOWAS as a sub-regional body. The implication of this decision is that pronouncements of the ECOWAS Court of Justice, are worthless pieces of paper, lacking any force of law, in total disregard of the provisions contained in Article 5(3) of the ECOWAS Revised Treaty<sup>69</sup> whereby member states of the ECOWAS had undertaken to honour their obligations under the treaty and to abide by the decisions and regulations of the community.<sup>70</sup>

### **Need for joint efforts to fight corruption in ECOWAS community**

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<sup>68</sup> [www.spaajibade.com/resources/wp-content/uploads/2016/03/Is-the-ECOWAS-Court-of-Justice-a-Toothless-Bulldog-that-Only-Bark1.pdf](http://www.spaajibade.com/resources/wp-content/uploads/2016/03/Is-the-ECOWAS-Court-of-Justice-a-Toothless-Bulldog-that-Only-Bark1.pdf), accessed on 8/6/2016. In Suit No. HRCM/376/15, In the Matter of Mr. Chude Mba v the Republic of Ghana.

<sup>69</sup> The Revised Treaty of the Economic Community of West African States (ECOWAS) was signed in Cotonou, Benin, on 24 July 1993 and entered into force on 23<sup>rd</sup> August 1995. It amended the ECOWAS Treaty of 1975

<sup>70</sup> [www.spaajibade.com/resources/wp-content/uploads/2016/03/Is-the-ECOWAS-Court-of-Justice-a-Toothless-Bulldog-that-Only-Bark1.pdf](http://www.spaajibade.com/resources/wp-content/uploads/2016/03/Is-the-ECOWAS-Court-of-Justice-a-Toothless-Bulldog-that-Only-Bark1.pdf), accessed on 8/6/2016. Supra No. 68 above.

There is no way a member State of the ECOWAS Community can achieve the primary aim of ECOWAS, that is, to promote economic integration and wellbeing of its member states if corruption eats deeper and deeper in any of the community member state's polity. On 21 December 2001, the ECOWAS heads of state adopted another protocol<sup>71</sup>, which deals with the fight against corruption, the protocol has the specific objective of strengthening effective mechanisms to prevent, suppress, and eradicate corruption in member states. The protocol has not been put into force in the ECOWAS Community. The general council of the ECOWAS has to ensure that member states comply with the Anti-Corruption Protocol 2001.

The Nigerian anti-corruption regime is regulated mainly by the Corrupt Practices and Other Related Offences Act of 2000 (CPA). Anti-corruption efforts in Nigeria are also supported by other legislation, including the Economic and Financial Crimes Commission (Establishment) Act of 2004 and the Fifth Schedule to the 1999 Constitution establishing the Code of Conduct Bureau. The CPA established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) with a mandate among others to investigate and prosecute persons suspected to have committed an offence under the CPA or any other law prohibiting corruption, to examine the practices, systems and procedures of public bodies with a view to directing and supervising the review of same where they aid or facilitate fraud or corruption, and to educate the public and enlist their support in combating corruption.<sup>72</sup> These agencies, although functioning better under the new government in Nigeria under the leadership of President Muhammadu Buhari Administration, have to carry their duties towards curbing corruption in the judicial systems in Nigeria.

### **Effective ECOWAS community judiciary**

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<sup>71</sup> [www.ecowas.int/](http://www.ecowas.int/), accessed on 4/6/2016. The ECOWAS Protocol *on the Fight against Corruption (2001)*.

<sup>72</sup> Economic Commission for Africa, "Assessing the Efficiency and Impact of National Anti-Corruption Institutions in Africa." Page 40. [www.anti-corruption.org/pmb321/pmb/opac\\_css/doc\\_num.php?explnum...](http://www.anti-corruption.org/pmb321/pmb/opac_css/doc_num.php?explnum...) Accessed on 3/6/2016.

The Judicial Council of the ECOWAS Community<sup>73</sup> must be strengthened by the general council of ECOWAS in order for the judicial council to carry out its responsibilities without fear or favour to any person and State in the community. Competent judicial personnel with impeccable character should be appointed to the Community by the judicial council and the council should work-hand-in-hand to ensure that the community laws are adhered to by member states among other functions and duties that will help the ECOWAS community judgments on human rights to be enforceable in Nigeria and other member states.

### **Eradication of conflict of jurisdictions**

The ECOWAS general council should make better decision on how to eradicate the conflict of jurisdictions between the ECOWAS Community Court and the community member national courts. Adequate measure should be taken towards functional collaboration among the judiciaries, executives and legislatures of the governments of the member states to accelerate eradication of the challenge of conflict of jurisdictions. Also, the three organs of governments of the member states should coordinate with the general council of the ECOWAS to put apparatus in place to ensure strict compliance with the enforcement of human rights decisions of the community court.

### **Public sensitizations about ECOWAS community court**

The general public in ECOWAS community must be sensitised about the jurisdictions of the community court especially on the violations of the human rights in the community. In order to access the community court for redresses on violation of human rights, the fees to be paid in accessing and filling matters in the community court must be made bearable for all and sundry in the community at large. The general council should provide legal aid initiative which will help indigent citizens of the community to access the community court whenever their human rights are trampled upon.

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<sup>73</sup> Established by the Supplementary Protocol A/SP.2/06/06, [www.ecowas.int](http://www.ecowas.int), accessed on 4/6/2016.

## Conclusion

The impact of ECOWAS Community Court to adjudicate on human rights cases in Nigeria is a great value to human rights' regime in Nigeria. But the challenges of implementing the judgments in Nigeria are burden to both the litigants and ECOWAS Community at large. The best measures to check these challenges are to reinforce the commitment of the member states to rise to their agreements and ensure that the judgments' of the community Court are enforceable in their national courts.

Also, the Nigerian government has to take drastic steps, as leader in the community, to ensure that the lapses in the judiciary and allied issues that hamper the enforcement of the ECOWAS Community Court judgments are strictly addressed.

Also, there is need to reconcile some provisions of the African charter with other international and regional human rights instruments. These include provisions on claw-back clauses, absence of derogation clauses, and individual duties among others. The African Human Rights Courts should endeavour to give vibrant and holistic interpretations of the provisions of African Charter by reconciling the controversial provisions of the charter. African states, parties to African human rights court protocol and protocol of the merged court should be willing to make the special declaration allowing individual direct access to the courts. In the long run, there is need to expunge the provisions of the instruments denying individual direct access to the courts. Judges of the courts should operate on a permanent basis. This is necessary because there is a glimmer of hope that many cases will be brought before the courts. The system will also avoid conflicts in their functions as judges and their official duties.<sup>74</sup>

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<sup>74</sup> Erma, T. Y., 2011. "Comparative Evaluation of the Challenges of African Human Rights Courts", Vol. 4 No 2, September, 2011, *Journal of Politics and Law*, pp. 125-126.